Arbitration CAS 2017/A/5297 Club Estudiantes de Mérida v. Fédération Internationale de Football Association (FIFA), award of 15 October 2018

Panel: Mr Efraim Barak (Israel), President; Prof. Massimo Coccia (Italy); Mr Álvaro García-Alamán de la Calle (Spain)

Football
Disciplinary sanctions against a club for failing to comply with a previous FIFA decision
FIFA system of service of documents
Distinction between revision and appeal of a decision
Jurisdiction of FIFA bodies in disciplinary proceedings if jurisdictional objections were not raised in previous proceedings
Duty of FIFA disciplinary bodies to take into account evidence of compliance with previous decision of DRC or PSC
Distinction between disciplinary and enforcement proceedings

1. **It is well accepted in any legal system that the service of documents is more than just a notification, it is actually the trigger and legitimate legal starting point, from the point of view of the respondent or the accused, to legally be considered as duly summoned to the proceedings. This is why proving service of the documents to the respondent or the accused is so important and it is advisable for an international federation such as FIFA to require direct evidence from its affiliate members that the relevant letters are indeed served to the intended recipient, rather than assuming that this has been the case.**

2. **Asking for a revision of a FIFA Dispute Resolution Chamber (DRC) decision can clearly not be equated to an appeal. By failing to formally challenge the FIFA DRC decision while having been in the position to do so, a club forfeits its right to invoke any due process violations in the proceedings before the FIFA DRC in order to have such decision declared null and void within the context of proceedings before CAS concerning subsequent FIFA disciplinary proceedings for failing to comply with the FIFA DRC decision.**

3. **If a party failed to raise arguments in respect of *res judicata* and *lis pendens* in the proceedings before the FIFA DRC or in subsequent appeal arbitration proceedings before CAS, as a consequence of which these arguments could not be considered by the competent bodies, that party must be considered as having failed to exhaust the legal remedies available to it, and ultimately be deemed to have accepted the competence of the FIFA DRC (*"Einlassung"*). Therefore, it can no longer validly invoke such arguments in the context of subsequent FIFA disciplinary proceedings.**

4. **Although the FIFA Disciplinary Committee can indeed not review or modify the substance of a previous decision issued by the FIFA DRC or the FIFA Players' Status Committee (PSC), in assessing whether a debtor complied with the terms of such previous decision, the FIFA Disciplinary Committee should take into account evidence**

presented by the debtor that could lead to the conclusion that the debtor already complied with its duties prior to the issuance of the decision to be enforced or other circumstances that may for whatever reason lead to the conclusion that the debtor cannot be held liable for the fact that it did not comply with the terms of such decision in circumstances where the debtor claims that he was not aware of the pending procedure at the moment it made the payment to the creditor.

5. **It is important to distinguish disciplinary proceedings before the FIFA Disciplinary Committee from actual "enforcement" proceedings. The FIFA "enforcement" system is a disciplinary sanctioning system of a Swiss association. An enforcement / "Zwangsvollstreckung" in the Swiss legal terminology is reserved exclusively and only to the State and not to a private association. However, in FIFA and also CAS terminology the notion of enforcement is often used if reference is made to the disciplinary sanctioning system of FIFA.**

I. PARTIES

1. Club Estudiantes de Mérida (the "Appellant" or the "Club") is a football club with its registered office in Mérida, Venezuela. The Club is registered with the Venezuelan Football Federation (Federación Venezolana de Fútbol – the "FVF"), which in turn is affiliated to the Fédération Internationale de Football Association.

2. The Fédération Internationale de Football Association (the "Respondent" or "FIFA") is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the world governing body of international football. It exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and football players worldwide.

II. FACTUAL BACKGROUND

3. Below is a summary of the main relevant facts, as established on the basis of the parties' written submissions and the evidence examined in the course of the present appeals arbitration proceedings and at the hearing. 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 25 June 2013, the Club and the Argentinian football player L. (the "Player") concluded an employment contract (the "Employment Contract") for a period of one sporting season, i.e. valid until 31 May 2014.

B. Proceedings before the Dispute Resolution Chamber of the FVF

5. On 16 December 2013, the Player filed a claim against the Club before the national Dispute Resolution Chamber of the FVF (the "NDRC"). By means of this claim, the Player requested to be awarded overdue salary concerning the months of July, August, September, October, November and December 2013, amounting to a total sum of Venezuelan Bolívar Fuerte ("VEF") 230,100. The Player also requested his Employment Contract to be terminated.

6. On 14 January 2014, the NDRC indicated that the Player's Employment Contract was effectively terminated by the Player by filing a claim against the Club before the NDRC.

7. According to the Club, on 15 January 2014, the Player concluded an employment contract with the Venezuelan football club Atletico Venezuela FC.

8. On 3 June 2015, the Club issued a cheque in the amount of VEF 230,100 to the Player.

9. On 8 June 2015, the FVF informed the Player that it appeared the Club had paid him the full amount of VEF 230,100.

C. Proceedings before the Single Judge of the FIFA Dispute Resolution Chamber

10. On 24 June 2014, thus before the Club issued the cheque in the amount of VEF 230,100 to the Player, but after the Player had lodged a claim against the Club before the NDRC, the Player also filed a claim before the FIFA Dispute Resolution Chamber (the "FIFA DRC").

11. On 29 September 2014, FIFA notified the FVF of the claim filed against the Club by the Player and requested it to forward such communication to the Club. According to the Club, the FVF never forwarded this document to it. According to FIFA, this document was validly forwarded to the Club.

12. On 3 November 2014, FIFA informed the FVF that the investigation-phase was closed and requested it to forward such communication to the Club. According to the Club, the FVF never forwarded this document to it. According to FIFA, this document was validly forwarded to the Club.

13. On 27 August 2015, FIFA informed the FVF that a decision was going to be taken on 2 September 2015 and requested it to provide a valid fax number of the Club.

14. On 31 August 2015, the FVF undisputedly forwarded the letter of FIFA dated 27 August 2015 to the Club.

15. On 2 September 2015, the Singe Judge of the FIFA DRC rendered his decision (the "FIFA DRC Decision"), with the following operative part in a translation into English from the original Spanish text provided by FIFA that remained undisputed by the Club:

> *"1. The claim of the* [Player] *is partially accepted.*

2. *The* [Club] *has to pay to the* [Player] *within the following 30 days as from the date of notification of* […] *this decision, the amounts of VEF 100,000 and USD 48,000.*

3. *If the aforementioned outstanding amounts are not paid within the deadline established in the point above, interest at a rate of 5% p.a. will fall due as of the expiration of the aforementioned time limit and the present case shall be submitted, upon request of the interested party, to the FIFA Disciplinary Committee, for consideration and a formal decision.*

4. *Any other claim of the* [Player] *is rejected.*

5. *The* [Player] *is directed to inform the* [Club] *immediately and directly of the account number to which the remittance are to be made and to notify the DRC judge of every payment received".*

16. On 21 September 2015, the FIFA DRC Decision was notified to the FVF by courier. The FVF was requested to forward such communication to the Club.

17. According to the Club, on 21 September 2015, the FVF forwarded the FIFA DRC Decision to a fax number that does not belong to the Club. The Club maintains that the FVF *"finally delivered the communication to the Appellant in 2017 that contained the decision made on the 2 of September 2015 in detriment of the Appellant"*. According to FIFA, the FIFA DRC Decision was validly forwarded to the Club.

18. On 10 November 2015, the Player informed the FIFA Players' Status department that the Club had not made any payment of the amounts due and requested the case to be referred to the FIFA Disciplinary Committee for disciplinary measures to be taken against the Club.

19. On 19 November 2015, the FIFA Players' Status department urged the Club to pay the outstanding amounts to the Player and the Player was instructed to provide the Club with the account number to which the remittance was to be made. The letter addressed to the Club was sent to the FVF with the request to forward such communication to the Club.

20. According to the Club, on 24 November 2015, the FVF forwarded FIFA's letter dated 19 November 2015 to a fax number that does not belong to the Club.

21. On 27 November 2015, the Player sent a letter to the Club and to the FIFA Players' Status department by means of which he provided his bank details.

22. Also on 27 November 2015, the Club sent a letter to the FIFA Players' Status department, informing it that i) the Player had already lodged the same claim before the NDRC, requesting the termination of his Employment Contract with the Club; ii) that the NDRC declared the termination of the Employment Contract on 14 January 2014; and iii) that the Club paid the outstanding amounts to the Player. The Club therefore requested the Player's claim to be rejected.

23. On 18 December 2015, the Player informed the FIFA Players' Status department that the Club had not paid the outstanding amounts and requested the case to be forwarded to the FIFA Disciplinary Committee.

24. On 27 January 2016, the FIFA Players' Status department informed the Player and the Club that the Club had not provided any evidence of payment and that the matter was forwarded to the FIFA Disciplinary Committee. The letter addressed to the Club was sent to the FVF with the request to forward such communication to the Club.

25. On 23 March 2016, 18 October 2016 and 27 January 2017, the Player informed FIFA that the Club had not yet complied with the FIFA DRC Decision and requested disciplinary proceedings to be opened.

D. Proceedings before the FIFA Disciplinary Committee

26. On 30 January 2017, the secretariat to the FIFA Disciplinary Committee (the "Secretariat") opened disciplinary proceedings against the Club due to its failure to respect the FIFA DRC Decision.

27. On 1 February 2017, the FVF undisputedly forwarded FIFA's letter dated 30 January 2017 to the Club.

28. On 1 February 2017, the Club informed the Secretariat that the Club was managed by a new president, who was willing to settle the matter. The Club also claimed to have reached a payment plan with the Player.

29. On 10 February 2017, the Secretariat informed the Club that the scope of the disciplinary proceedings was limited to the enforcement of the FIFA DRC Decision and that the secretariat could not impose a payment plan on the Player. The parties were informed that the proceedings would follow their course and that the case would be submitted to the FIFA Disciplinary Committee on 15 March 2017, unless a payment plan would be finally concluded.

30. On 16 February 2017, the Club informed the Secretariat that a payment plan had been reached on 1 February 2017, but that after the conclusion of such agreement the Club found proof that the debt had already been paid, repeating the facts as set out in its letter dated 27 November 2015, but adding that it paid an amount of VEF 230,100 to the Player. As a consequence thereof, the Club requested a revision of the FIFA DRC Decision.

31. On 23 February 2017, the Secretariat forwarded a copy of the Club's letter dated 16 February 2017 to the Player and invited him to present his position in that respect.

32. On 24 February 2017, the Player informed the Secretariat that the Club had been invited to submit its position in respect of his claim, but failed to do so. The Player also indicated that the cheque provided by the Club on 16 February 2017 had already been presented to FIFA. The Player indicated that the Club was just trying to avoid paying the outstanding amounts to him and requested the matter to be referred to the FIFA Disciplinary Committee.

33. On 28 February 2017, the Secretariat forwarded the Player's letter to the Club and invited it to present its position thereto. The Club did not respond to this invitation.

34. On 15 March 2017, the FIFA Disciplinary Committee issued its decision (the "Appealed Decision), with the following operative part in an English translation from the original Spanish text provided by FIFA that remained undisputed by the Club:

- *"the* [Club] *was pronounced guilty of failing to comply with a decision of a FIFA body in accordance with art. 64 of the FIFA Disciplinary Code;*
- *the* [Club] *was ordered to pay a fine to the amount of CHF 7,500 to FIFA within 30 days as from notification of the FIFA Disciplinary Committee's decision;*
- *the* [Club] *was granted a final period of grace of 30 days as from notification of the FIFA Disciplinary Committee's decision in which to settle its debt to the* [Player]*;*
- *if payment is not made by this deadline, the* [Player] *may demand in writing from the secretariat to the FIFA Disciplinary Committee that six (6) points be deducted from the first team of the* [Club] *in the domestic league championship. Once the* [Player] *has filed this request, the points will be deducted automatically without a further formal decision having to be taken by the FIFA Disciplinary Committee. The order to implement the point deduction will be issued on the association concerned by the* [Secretariat].
- *if the* [Club] *still fails to pay the amounts due even after deduction of the points in accordance with point 4. above, the FIFA Disciplinary Committee will decide on a possible relegation of the first team of the* [Club] *to the next lower division.*
- *the costs and expenses of these proceedings amounting to CHF 1,000 shall be borne by the* [Club]*".*

35. On 4 and 7 April 2017 respectively, the Appealed Decision was notified to the Player and the Club.

36. On 13, 28 and 29 April 2017, the Club requested to be provided with the grounds of the Appealed Decision.

37. On 3 and 11 July 2017 respectively, the grounds of the Appealed Decision were notified to the Player and the Club.

38. On 14 August 2017, the Player informed the Secretariat that the Club had not paid the outstanding amount.

39. On 21 August 2017, the Secretariat informed the Player that point III.4 of the Appealed Decision could only be implemented upon express request of the creditor and requested the Player to clarify whether he was requesting FIFA to deduct points from the first team of the Club.

40. On 28 August 2017, the Club informed the Secretariat that it had lodged an appeal before CAS against the Appealed Decision.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

41. On 2 August 2017, the Club lodged an appeal against the Appealed Decision with the Court of Arbitration for Sport ("CAS"), pursuant to Article R48 of the CAS Code of Sports-related Arbitration (edition 2017) (the "CAS Code"), naming FIFA as the sole respondent. In this Statement of Appeal, the Club requested the proceedings to be conducted in Spanish.

42. On 3 August 2017, the Club nominated Prof. Massimo Coccia, Attorney-at-Law and Professor of Law in Rome, Italy, as arbitrator.

43. On 31 August 2017, FIFA proposed to conduct the proceedings bilingually in the sense that the language of the written proceedings would be English, but that there would be no need to translate any written evidence filed in Spanish.

44. On 1 September 2017, the Club agreed to FIFA's proposal regarding the language of the proceedings.

45. On 22 September 2017, the Club filed its Appeal Brief, pursuant to Article R51 of the CAS Code. This document contained a statement of the facts and legal arguments giving rise to the appeal. The Club challenged the Appealed Decision, submitting the following requests for relief:

> *"I. The DRC Decision of the 2 September 2015 is declared null and void.*
>
> *II. The Disciplinary* [sic] *of the 7 April 2017 decision is set aside.*
>
> *III. Alternatively, to points I and II to declare that the Appellant already payed* [sic] *the player.*
>
> *IV.* ***Fédération Internationale de Football Association*** *shall be ordered to bear all arbitration costs, if any, and to reimburse* ***Club Estudiantes de Mérida FC*** *the minimum CAS court office fee of CHF 1000.*
>
> *V.* ***Fédération Internationale de Football Association*** *to pay* ***Club Estudiantes de Mérida FC*** *a contribution towards the legal and other costs incurred in the framework of these proceedings in an amount to be determined at a later stage or at the discretion of the Panel".*

46. On 25 September 2017, the CAS Court Office informed the parties that in light of FIFA's failure to nominate an arbitrator within the given deadline, it would be for the Division President to appoint an arbitrator *in lieu* of FIFA, pursuant to Article R53 of the CAS Code.

47. On 19 October 2017, pursuant to Article R54 of the CAS Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the parties were informed that the arbitral tribunal appointed to decide the present matter was constituted by:

- Mr Efraim Barak, Attorney-at-Law in Tel Aviv, Israel, as President;
- Mr Massimo Coccia, Attorney-at-Law and Professor of Law, Rome, Italy; and
- Mr Álvaro García-Alamán de la Calle, Attorney-at-Law, Madrid, Spain, as arbitrators

48. On 27 October 2017, FIFA filed its Answer, pursuant to Article R55 of the CAS Code. FIFA submitted the following requests for relief:

> *"1. To reject the Appellant's appeal in its entirety.*
>
> *2. To confirm the decision hereby appealed against.*
>
> *3. To order the Appellant to bear all costs incurred with the present procedure and to cover all legal expenses of the Respondent related to the present procedure".*

49. On 3 November 2017, upon being invited to express its opinion in this respect, FIFA indicated that it did not require a hearing to be held.

50. On 6 November 2017, the CAS Court Office informed the parties that Mr Dennis Koolaard, Attorney-at-Law in Arnhem, the Netherlands, had been appointed Ad hoc Clerk.

51. On 7 November 2017, following a request of the Club, the CAS Court Office provided the parties with four arbitral awards issued by CAS.

52. On 10 November 2017, upon being invited to express its opinion in this respect, the Club indicated that it considered a hearing essential.

53. On 15 November 2017, the CAS Court Office informed the parties that the Panel had decided to hold a hearing.

54. On 1 and 4 December 2017 respectively, FIFA and the Club returned duly signed copies of the Order of Procedure to the CAS Court Office.

55. On 6 March 2018, the legal representative of the Player informed the CAS Court Office that the FIFA Secretariat had informed him on 5 September 2017 that the Club had filed an appeal against the Appealed Decision with CAS and that, as a consequence, the disciplinary proceedings against the Club were suspended. The Player inquired about the status of the proceedings and why he had not been informed in this respect.

56. On 7 March 2018, the CAS Court Office informed the Player that the appeal filed by the Club was indeed pending before CAS. The Player was informed that the Club had only called FIFA as a respondent and that the CAS Court Office is not required to inform third parties about pending proceedings, but that, should he wish to intervene, he could submit a request in this respect on the basis of Article R41.3 of the CAS Code.

57. On 16 March 2018, counsel for the Club filed 53 new documents (exhibit 45 – 92 and A – E) with the CAS Court Office, indicating that such documents had just been provided to him by the Club. On the basis of these documents, the Club questioned the legality of several documents filed by FIFA and argued that such documents were not real and lacked legal validity. The Club also filed a letter derived from another pending dispute before CAS in which the Club and FIFA were involved, based on which the Club argued that such letter evidenced that from 2016 on FIFA tried to notify the Club through DHL directly, and not through the

FVF. Finally, the Club also filed certain translations into English of Venezuelan domestic law provisions.

58. On 20 March 2018, FIFA objected to the new evidence filed by the Club on the basis of Article R56 of the CAS Code. FIFA argued that the documents were always at the Club's disposal or could have been obtained before its Appeal Brief was due. FIFA also stated that the Club did not invoke any exceptional circumstance justifying the filing of such new evidence only three weeks before the hearing and almost six months after filing of the Appeal Brief. Finally, FIFA clarified that it made reference to Venezuelan law only to describe the organisation of football in the country, but that only FIFA regulations and Swiss law were applicable.

59. On 26 March 2018, upon being invited by the CAS Court Office to clarify certain issues regarding the new documents filed on 16 March 2018, the Club made a table explaining each of the new documents filed. The Club maintained that almost all the evidence referred to arguments made by FIFA and the evidence supporting such arguments.

60. On 2 April 2018, the Club filed another new document that it requested to be admitted as evidence.

61. On 3 April 2018, on behalf of the Panel, the CAS Court Office informed the parties that due to the amount of documents filed by the Club and the need to grant FIFA sufficient time to comment on such documents, the hearing initially scheduled for 9 April 2018 was cancelled.

62. On 4 April 2018, on behalf of the President of the Panel, with the agreement of the co-arbitrators, the CAS Court Office informed the Club that the new document filed on 3 April 2018 was not admitted into the file and would therefore not be considered as evidence for the purposes of these proceedings. The Club was also informed that, should it like, once again, to lately submit a new document, it was expected to conduct itself according to the CAS Code.

63. On 12 April 2018, on behalf of the Panel, the Club was invited to file a witness statement of Mr Frank Castillo, former President of the Club and witness called by the Club, failing which Mr Castillo would not be admitted as a witness at the hearing.

64. On 23 April 2018, following an invitation from the CAS Court Office in this respect, FIFA provided its comments with regard to the new documents that were extemporaneously filed by the Club and submitted certain new documents itself. FIFA principally argued that the Club failed to provide valid reasons that would justify an impossibility to provide such documents by 22 September 2017, i.e. the date of filing of the Appeal Brief. FIFA also submitted that the Club failed to prove the existence of "exceptional circumstances", justifying the belated filing of new documents.

65. On 24 April 2018, the Club informed the CAS Court Office that Mr Castillo would finally not appear at the hearing.

66. On 25 May 2018, the CAS Court Office informed the parties as follows:

"The Panel has duly considered the Appellant's requests for the submission of new documents filed on 16 March 2018 and on 2 April 2018 as well as the Respondent's position in this respect submitted on 23 April 2018. The Panel has decided to reject the admissibility of such documents into the file due to (i) the late filing of said documents, (ii) the Appellant's lack of providing sufficient justification for such delay and (iii) considering the undisputed facts of the case and the facts as presented by the Appellant in its Appeal brief, the Panel is of the opinion that the documents that the Appellant requested to submit lack sufficient relevancy. The detailed grounds of this decision will be included in the final award".

67. On 28 May 2018, a hearing was held in Lausanne, Switzerland. At the outset of the hearing, both parties confirmed not to have any objection as to the constitution and composition of the Panel.

68. In addition to the Panel, the *Ad hoc* Clerk, and Mr Antonio de Quesada, Counsel to the CAS, the following persons attended the hearing:

For the Appellant:

- Mr Christian Toni, President of the Club;
- Mr Antonio Quintero, Counsel

For the Respondent:

- Mr Jacques Blondin, Group Leader in the FIFA Disciplinary department;
- Mr Francisco Chamut, Legal Counsel in the FIFA Disciplinary department

69. No fact witnesses or expert witnesses were heard. The parties had full opportunity to present their case, submit their arguments and answer the questions posed by the Panel. As agreed between the parties at the start of the hearing, at the end of the hearing the floor was given to Mr Toni to make some concluding remarks on behalf of the Club.

70. Before the hearing was concluded, both parties expressly stated that they did not have any objection with the procedure adopted by the Panel and that their right to be heard had been respected.

71. The Panel confirms that it carefully heard and took into account in its decision 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 arbitral award.

IV. SUBMISSIONS OF THE PARTIES

72. The Club's submissions, in essence, may be summarised as follows:

- A sanction may be imposed on a club if it does not pay another a sum of money as instructed. The obligation to pay a certain amount of money derives from the FIFA

DRC Decision. If the FIFA DRC Decision is null and void, since there is no factual situation *"producing a disciplinary decision"*. According to Swiss law, a decision can be held null and void if it breaches mandatory rules of law, public policy, or the fundamental rules of the association. These decisions can always be challenged and are not limited by the time limit established in Article 75 Swiss Civil Code ("SCC").

- The FIFA DRC Decision is null and void because it was reached in clear violation of the principles of due process. If a party in a proceeding is not served then this party's right to be heard is not respected, because it does not know that a claim is pending against it. This is what happened in the present case. The Player went forum shopping and filed several claims against the Club, before the NDRC and before the FIFA DRC. During the FIFA DRC proceedings, the Club was never served. Besides the letter dated 27 August 2015 informing the Club when the FIFA DRC would render a decision, no letters were received by the Club. It was nearly impossible for the Club to challenge the FIFA DRC Decision, because it did not have this decision. Because it is difficult to prove for the Club that it did not receive any letters, FIFA bears the burden of proof to demonstrate that it duly notified the Club of the procedure before the FIFA DRC. Although not carrying the burden of proof, the Club established that the fax number used by the FVF to forward certain documents did not belong to the Club.

- In addition, the FIFA DRC Decision is also to be declared null and void because it was reached in violation of FIFA's own procedural rules. If there is an infringement of the articles of association, this decision can be challenged and is to be deemed null and void. The following provisions of the FIFA Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (the "FIFA Procedural Rules") were not respected:

    - Article 9.3: This article establishes that notification of a party's claim shall be sent to the opposing party or to any person affected by the claim. Still, to this day, the Club does not have this document. This is a negative fact, which means that FIFA bears the burden of proof.

    - Article 12.3: This article seeks to establish two important issues. First, that a party claiming a right shall bear the burden of proof. Second, that all parties shall submit the relevant facts and evidence. Here, the Club does not have any knowledge as to what evidence was submitted by the other party. Moreover, the Club did not have the opportunity to submit any type of evidence. This is a negative fact; then again the burden of proof rests on FIFA.

    - Articles 14.2 and 9.1: These articles explain that the decision shall be communicated directly to the parties and that the time to file an appeal starts from the moment of notification. In this case, FIFA sent out the decision dated 2 September 2015 to the FVF, and the letter forwarded the decision to a hotel fax number, not to the Club's offices. Concerning the appeal, the Club never

got the opportunity to respond, since the notice of the decision was not delivered in a timely manner.

- Articles 5.2 and 5.8: These articles state several principles to apply to the proceedings before the FIFA DRC. In the first place, all parties must act in good faith. This is clearly not the case, as the Player acted in bad faith when he actively engaged in forum shopping and filed the same claim in several jurisdictions. Secondly, all parties have the right to be heard, which comprises the right to present evidence; the right to access the files; the right for evidence leading to a decision to be inspected and the right to a motivated decision. As we have shown in several opportunities throughout this document, the Club was not allowed to exert his right to be heard and to present relevant evidence because he was not served in a timely and proper manner.

- The outcome of the FIFA DRC Decision could have been different if the Club had been provided with an opportunity to defend itself.

- Before the NDRC, the Player claimed six months of salary and an early termination of the one-year Employment Contract he had entered into with the Club. Before the FIFA DRC, the Player filed the exact same claim, arising from the same Employment Contract, pertaining to the exact same parties, asserting that he was owed salaries for the duration of the entire one-year Employment Contract. In essence, the Player managed to file the same action in different jurisdictions and still managed to obtain a favourable result in both. The Player acted in bad faith by going forum shopping, and thereby violated the FIFA Procedural Rules.

- The Club suffered a tremendous loss, because it lost one of its employees by means of the NDRC Decision. The Club already paid a great amount of money and is now being forced to pay the equivalent of 18 months of overdue salary on a 12-month contract.

- The FIFA DRC was also not competent to deal with this case, because there was already a case arising from the same matter and pertaining to the same parties before the NDRC. In other words, the Club would have objected to the Player's claim on the basis of the legal principle of *lis pendens*, a principle recognised in the Commentary on the FIFA RSTP (the "FIFA RSTP Commentary").

- Under the principle of *res judicata*, a claim cannot be asserted again before any jurisdiction or forum if it passes the "triple identity" test, meaning that the arbitral proceedings involve the same subject matter, the same legal grounds and the same parties. It may seem that the doctrine of *lis pendens* is the one to be considered here; however, and as mentioned several times in the jurisprudence and legal literature the time of filing does not preclude the possibility to raise the matter of *res judicata*. There is a considerable amount of time between the date the NDRC issued its decision (3

June 2015)[1] and the date the FIFA DRC Decision was rendered (2 September 2015). The Player should therefore have informed the FIFA DRC of the final and definite NDRC Decision and inform it that the case could be concluded, showing good faith.

- Finally, at the moment the Player's claim was filed with the FIFA DRC, the Club was no longer in any sort of financial debt with the Player, since the payment of the overdue salaries, pertaining to six months on a 12-month contract, claimed before the NDRC, was already transferred. The Player was also granted an early release under his Employment Contract, granting him everything he had requested before the NDRC and therefore relieving the Club of any further commitments or debts towards the Player. The early release enabled the Player to procure employment with another football club for the same salary he earned with the Club. The ultimate six months of salary should not be awarded because it was the Player's request to be released early. In any event, no amount should be awarded to the Player because he fully mitigated his damages.

73. FIFA's submissions, in essence, may be summarised as follows:

- The Club's arguments in respect of the FIFA DRC's alleged failure to respect the principles of due process are completely false and deceptive. The fax number that allegedly does not belong to the Club, was provided by the Club itself to the *"Registro Nacional del Deporte, la Actividad Física y la Educación Física"*, the national registry of sporting legal entities in Venezuela. Pursuant to Venezuelan law, professional clubs are obliged to register and keep up-to-date its date in this registry. Such information was also added to the official list of the FVF with contact details of all clubs participating in the national championship during the 2013/2014 sporting season. The FIFA DRC letters dated 29 September and 3 November 2014 as well as the FIFA DRC Decision were sent to this fax number. It is therefore clear and undeniable that the Club was fully aware of the claim lodged by the Player, of the closure of the investigation and of the FIFA DRC Decision. Moreover, in its letter dated 27 November 2015, the Club made a clear reference to the claim filed by the Player without ever arguing that no previous communications had been received. When the presidency of the Club changed in 2016, the contact details in the national registry were amended accordingly, and from this date all correspondence from FIFA was diligently forwarded to the Club's updated contact details. All of the above information is confirmed by the FVF. Therefore, at no point in time the principles of due process and FIFA's procedural rules were not respected.

- The Club solely shifts the guilt to the FVF by stating that it is *"clearly known that Venezuelan federations do not keep a very organized filing system regarding the forwarding of communications"*, but from an analysis of the documents at hand, it is clear that the only disorganisation that can be verified is the one of the Club itself. The Club openly

[1] In view of the fact that the NDRC only issued a preliminary decision on 14 January 2014, but was not required to issue a final decision because the Club issued a cheque in the amount of VEF 230,100 to the Player on 3 June 2015, the Panel understands that Club intended to refer to the date of such payment.

admitted that certain files concerning several legal disputes could not be found in the archives of the Club. By no means can the Club's negligence entitle it to have a final and binding decision be declared null and void.

- Furthermore, reference is made to the FIFA Procedural Rules which foresee that, in the absence of direct contact details, decisions intended for the parties to the proceedings are addressed to the member association concerned with the instruction to forward it. These communications are considered to have been communicated properly to the addressee four days after communication of the decision to the member association.

- Should the Panel find that the documents were not properly communicated to the Club, *quod non*, at the most, the FIFA DRC Decision would be vitiated by a mere procedural flaw and not by a manifest error of law. The FIFA DRC Decision would be only voidable – and not null and void as the Club is trying to construe – and would have had to be challenged within the one-month time limit established in Article 75 SCC, which is to be considered peremptory and cannot be amended. The Club should have filed an appeal when it became aware of the FIFA DRC Decision, while the Club was made aware of this decision during the proceedings following the FIFA DRC Decision and before the FIFA Disciplinary Committee. The one-month time limit would therefore have elapsed.

- The proceedings provided for under Article 64 FIFA Disciplinary Code could be regarded as enforcement proceedings under Swiss law. Nonetheless, these proceedings are to be considered not as enforcement but rather as the imposition of a sanction for breach of the association's regulations and under the terms of association law. The FIFA Disciplinary Committee cannot review or modify as to the substance a previous decision, which is final and binding and thus has become enforceable. The FIFA Disciplinary Committee is therefore not allowed to analyse a case decided by the relevant body as to the substance but has as a sole task to analyse if the debtor complied with the final and binding decision of the relevant body. The main question to be answered by the FIFA Disciplinary Committee is whether or not the financial amounts as defined in the final and binding decision had been paid to the party claiming it, or, as the case may be, for a certain reason the outstanding amount is not due anymore.

- As a general principle, in order to be able to assess the issue whether or not the financial amounts as defined in the decision has been paid to the creditor, or for a certain reason the outstanding amount is not due anymore, the FIFA Disciplinary Committee has to and can only take into consideration all possible facts arising after the date on which the decision has been rendered. First, it is clear and uncontested that the Club was ordered to pay three sums of money (VEF 100,000 plus interest as well as USD 48,000) to the Player. No agreement or payment plan was reached. Even though the Club claims that the amounts due had been paid to the Player on 3 June 2015, this fact was constantly denied by the latter and refers to an event that, potentially, had occurred before the FIFA DRC Decision was passed.

- The Club was fully aware about the claim lodged by the Player and could have raised such arguments at any moment of the proceedings. However, at this stage, those circumstances are totally irrelevant for the simple reason that they were submitted after the FIFA DRC Decision became final and binding. The exact same principle applies to all the other allegations of the Club regarding the alleged nullity of the FIFA DRC Decision. The Club renounced its right to raise those arguments when it decided not to participate in the proceedings before the FIFA DRC.

- Even though the Club has not claimed the contrary, it is demonstrated that the sanctions imposed on the Club are proportionate. A CAS panel shall amend a disciplinary decision only in cases in which it finds that the relevant FIFA judicial body exceeded the margin of discretion accorded to it by the principle of association autonomy. The FIFA Disciplinary Committee is refrained from imposing a fine lower than CHF 300 and higher than CHF 1,000,000. The FIFA Disciplinary Committee considered that a fine in the amount of CHF 7,500 and a possible 6 points deduction and the possibility to order the first team's relegation to a lower division were appropriate and proportionate in the light of the amount of the outstanding debt. In this respect FIFA refers to 9 decision issued by the FIFA Disciplinary Committee where similar outstanding amounts were due and where the same fine was imposed and six points were threatened to be deducted.

V. JURISDICTION

74. The jurisdiction of CAS, which is not disputed, derives from Article 58(1) 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.

75. Article 64(5) FIFA Disciplinary Code (2017 edition) determines as follows:

> *"Any appeal against a decision passed in accordance with this article shall be lodged with CAS directly".*

76. In accordance with Article 64(5) FIFA Disciplinary Code and because the Appealed Decision was based on the application of Article 64 FIFA Disciplinary Code, the Club was not required to file an appeal with the FIFA Appeals Committee before challenging the Appealed Decision before CAS. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by both parties.

77. It follows that CAS has jurisdiction to adjudicate and decide on the present dispute.

VI. ADMISSIBILITY

78. 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.

79. It follows that the appeal is admissible.

VII. APPLICABLE LAW

80. Both parties agree that the dispute shall be resolved on the basis of the various regulations of FIFA, and, subsidiarily, Swiss law.

81. 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, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".*

82. 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".*

83. The Panel is satisfied that primarily the various regulations of FIFA are applicable to the substance of the case, in particular the FIFA Disciplinary Code (2011 edition), and subsidiarily, Swiss law, should the need arise to fill a possible gap in the various regulations of FIFA.

VIII. PRELIMINARY ISSUES

A. Admissibility of extemporaneously filed documents

84. As indicated *supra*, on 16 March 2018, three weeks before the initially scheduled hearing day and almost six months after filing the Appeal Brief, counsel for the Club filed 53 new documents. FIFA objected to the late production of the documents, and, on 25 May 2018, the CAS Court Office informed the parties as follows:

> *"The Panel has duly considered the Appellant's requests for the submission of new documents filed on 16 March 2018 and on 2 April 2018 as well as the Respondent's position in this respect submitted on 23 April 2018. The Panel has decided to reject the admissibility of such documents into the file due to (i) the late filing of said documents, (ii) the Appellant's lack of providing sufficient justification for such delay and (iii) considering the undisputed facts of the case and the facts as presented by the Appellant in its Appeal brief, the Panel is of the opinion that the documents that the Appellant requested to submit lack sufficient relevancy. The detailed grounds of this decision will be included in the final award".*

85. As appears from the more detailed reasoning below, the Panel finds that the discussion on whether or not certain letters from FIFA were forwarded to the Club by the FVF is not decisive for the outcome of the present arbitration, because i) it is not in dispute between the parties that FIFA's letter dated 27 August 2015 was duly forwarded to the Club on 31 August

2015 and that the Club was therefore aware of the proceedings before the FIFA DRC Decision was rendered; and ii) it is not in dispute between the parties that FIFA's letter dated 30 January 2017 was duly forwarded to the Club on 1 February 2017 and that the Club was therefore aware of the content of the FIFA DRC Decision.

86. The Panel deems it important that the Club neither approached FIFA immediately when it became aware of the proceedings – in accordance with the Club's allegation that it was not aware until that moment of the pending proceedings – nor lodged an appeal against the FIFA DRC Decision in due course after it became aware of the content thereof.

87. Since all the documents filed by the Club on 16 March 2018 and 2 April 2018 related to the notification process before the above-mentioned dates, which for the above reasons was not deemed decisive, the Panel found that the new documents filed lacked sufficient relevancy.

88. Furthermore, the Panel was not satisfied with the reasons advanced by the Club as to why such documents could not have been produced earlier.

89. Consequently, the Panel decided that the documents filed by the Club on 16 March 2018 were not admitted to the file. As a result, the new documents filed by FIFA on 23 April 2018 in response to the documents, filed by the Club with the purpose of rebutting the allegations of the Club in support of the request to submit the documents, are also irrelevant and were not admitted to the file.

IX. MERITS

A. The Main Issues

90. The main issues to be resolved by the Panel are:

i. Is the FIFA DRC Decision to be declared null and void?
ii. Are the sanctions imposed on the Club by the FIFA Disciplinary Committee justified?

i. Is the FIFA DRC Decision to be declared null and void?

91. The Panel observes that a large part of the parties' submissions are dedicated to the matter as to whether the Club was duly informed about the proceedings filed against it by the Player before the FIFA DRC. The Club denies having received several correspondences filed by FIFA, as the FVF allegedly failed to duly forward these correspondences to the Club.

92. The Panel however notes that it remained undisputed by the Club that it received FIFA's communication dated 27 August 2015, by means of a letter issued by the FVF on 31 August 2015.

93. By means of this letter, FIFA informed the FVF that a decision was going to be taken on 2 September 2015 and requested it to inform the parties involved accordingly (*"En este sentido, quisiéramos informar a las partes involucradas que el presente asunto será presentado ante el Juez de la Cámara da Resolución de Disputas,* […]*, para su consideración y decisión en la ocasión de su próxima reunión programada para el día 2 de septiembre de 2015"*).

94. Notwithstanding the Club's contention that several letters issued by FIFA were not forwarded to it by the FVF, the Panel finds that, in principle, the mere fact that the Club became aware of the fact that proceedings were pending against it before a decision was going to be taken by the FIFA DRC should have prompted the Club to take action expeditiously. By failing to address FIFA immediately, by a simple letter that could have been sent by fax on the very same day and requesting for the decision-making process to be postponed until after it had been given the chance to respond to the Player's claims, the Club took the risk of being barred to validly argue that its procedural rights were violated.

95. However, notwithstanding these comments of a general nature, the Panel finds that the period available for the Club to undertake any such action in the specific matter at hand (i.e. it was informed on 31 August 2015 that a decision was going to be rendered on 2 September 2015) may have been too short to justifiably condemn the Club only for its lax attitude at this point in time.

96. In this respect, the Panel finds that it is also to be taken into account that the notification process utilised by FIFA leaves significant room for improvement. FIFA would be well-advised to require direct evidence from its affiliate members that the relevant letters are indeed served to the intended recipient, rather than assuming that this had been the case. It is well accepted in any legal system that the service of documents is more than just a notification, it is actually the trigger and legitimate legal starting point, from the point of view of the respondent or the accused, to legally be considered as duly summoned to the proceedings. This is why proving service of the documents to the respondent or the accused is so important and FIFA should and could have asked the FVF to confirm that the documents were indeed served to the Club. At the occasion of the hearing, FIFA's representatives indicated that FIFA has currently changed its practice in this respect, which in the Panel's view would be a change in policy that is to be welcomed.

97. Accordingly, despite these doubts, the Panel finds that the Club is not *per se* barred from validly arguing that its procedural rights were violated in the proceedings before the FIFA DRC, but that it had at the very least a duty to act in good faith by trying to find out what kind of claim was actually filed against it, even after the FIFA DRC Decision was already rendered on 2 September 2015.

98. The Club however did not undertake any action and remained silent.

99. Be this as it may, and for the sake of the argument assuming that the FVF indeed failed to forward any of FIFA's subsequent letters (including the FIFA DRC Decision itself) to the Club in the meantime, the Panel notes that the Club does not dispute to have received a communication from the FVF on 1 February 2017, by means of which it was provided with

FIFA's letter dated 30 January 2017, informing the Club that the FIFA Disciplinary Committee had opened proceedings against it for an alleged violation of Article 64 FIFA Disciplinary Code, explicitly mentioning that the Club apparently failed to comply with the FIFA DRC Decision to pay an amount of VEF 100,000 plus interest and USD 48,000 to the Player.

100. It is therefore undisputed that the Club was aware of the operative part of the FIFA DRC Decision on 1 February 2017. Therefore, at this point in time, the Club not only knew already for almost a year and a half that there were pending proceedings against it and that a decision was supposed to be taken, but the Club in fact knew that a decision was taken on 2 September 2015 and became aware of the operative part of the DRC decision. Since it is undisputed that the Club became aware of the content of the FIFA DRC Decision on 1 February 2017 at the latest, the Panel finds that the Club should have taken immediate action by appealing the FIFA DRC Decision at this moment in time. Indeed, assuming that the FIFA DRC Decision was not validly notified to the Club before, the deadline to file an appeal against the FIFA DRC Decision at least commenced upon receipt of this letter.

101. The Club however did not undertake action until defending itself against the allegation that it had committed a violation of Article 64 FIFA Disciplinary Code and requesting FIFA for a revision of the FIFA DRC Decision on 16 February 2017.

102. Asking for a revision of the FIFA DRC Decision can clearly not be equated to an appeal and by failing to formally challenge the FIFA DRC Decision while having been in the position to do so, the Panel finds that the Club finally indeed forfeited its right to invoke any due process violations in the proceedings before the Single Judge of the FIFA DRC in order to have such decision declared null and void within the context of the present proceedings before CAS concerning the subsequent disciplinary proceedings.

103. Accordingly, even if it were true that the majority of the documents sent by FIFA were indeed not forwarded to the Club by the FVF during the proceedings before the FIFA DRC and the FIFA Disciplinary Committee, the fact remains that the Club did not challenge the validity of the FIFA DRC Decision, either on substantive or procedural grounds or both, in the appropriate manner and timely, when it found out about the existence of such decision, which decision therefore became final and binding.

104. The arguments advanced by the Club as to why it could not file an appeal against the FIFA DRC Decision (e.g. that under the applicable procedural rules FIFA had to notify the FIFA DRC Decision to the Club directly) are not considered legitimate by the Panel, as the outcome of the FIFA DRC Decision was ultimately communicated to the Club, while the Club did not undertake any legal actions against this decision at the time. In the absence of any evidence being filed in this respect, the Panel also does not consider the Club's argument convincing that challenging the FIFA DRC Decision before CAS was too expensive for the Club.

105. All the arguments advanced by the Club with the aim of invalidating the FIFA DRC Decision or to have this decision declared null and void are dismissed. Although the Panel finds that FIFA's practice in notifying documents to parties involved in legal proceedings before any of

FIFA's adjudicatory bodies is to be improved, it is not convinced that, in the circumstances of this case, the flaws in the process of serving the documents should lead to such decision being declared null and void when the Club had the right and could appeal against the FIFA DRC Decision but failed to do so on time. Finally, the Club's arguments in respect of *res judicata* and *lis pendens* must be dismissed, because the Club failed to raise these arguments in the proceedings before the Single Judge of the FIFA DRC or in subsequent appeal arbitration proceedings before CAS, as a consequence of which these arguments could not be considered by the competent bodies. By failing to exhaust the legal remedies available to it, the Club must ultimately be deemed to have accepted the competence of the Single Judge of the FIFA DRC (*"Einlassung"*) and can no longer validly invoke such arguments in the context of the present disciplinary proceedings.

106. Consequently, the FIFA DRC Decision is not null and void, but it became final and binding upon the Player and the Club.

ii. Are the sanctions imposed on the Club by the FIFA Disciplinary Committee justified?

107. Notwithstanding the validity of the FIFA DRC Decision, the question as to whether the sanctions imposed on the Club by the FIFA Disciplinary Committee are justified is a completely different question.

108. During the proceedings before the FIFA Disciplinary Committee, the Club argued that it had already complied with its obligations vis-à-vis the Player.

109. Upon being invited by the Secretariat to comment on this contention during the proceedings before the FIFA Disciplinary Committee, the Player denied this and argued that the Club was just trying to avoid paying the outstanding amount to him.

110. Although it remained unclear whether the Player cashed the cheque (counsel for the Club indicated during the hearing that he believed that the Player did not cash the cheque), it remained undisputed between the parties that the Club issued a cheque to the Player in the amount of VEF 230,100 and that also the NDRC informed the Player about this. There is no evidence on file suggesting that the FIFA Disciplinary Committee took this cheque and the fact that it was sent to the Player shortly before the issuance of the FIFA DRC Decision into account in rendering the Appealed Decision.

111. The Panel however finds that the FIFA Disciplinary Committee should have done so and should not have ignored such relevant information when dealing with the question whether the Club respected the FIFA DRC Decision or not, especially when such information is presented together with the allegation that the Club was not aware of the proceedings before the FIFA DRC.

112. Although the FIFA Disciplinary Committee can indeed not review or modify the substance of a previous decision issued by the FIFA DRC or the FIFA PSC, in assessing whether a debtor complied with the terms of such previous decision, the FIFA Disciplinary Committee should take into account evidence presented by the debtor that could lead to the conclusion

that the debtor already complied with its duties prior to the issuance of the decision to be enforced or other circumstances that may for whatever reason lead to the conclusion that the debtor cannot be held liable for the fact that it did not comply with the terms of such decision in circumstances where the debtor claims that he was not aware of the pending procedure at the moment it made the payment to the creditor.

113. In the specific circumstances of the matter under review, the Panel is satisfied to accept that the Club made an amount of VEF 230,100 available to the Player on 3 June 2015 by issuing a cheque for this amount. This cheque was issued for the same contractual dispute between the Player and the Club, regardless of the *fora* where such proceedings took place (i.e. the NDRC and the FIFA DRC). The Panel finds that the Club cannot be held liable for the Player's possible failure to cash such cheque. Although the Club's contention that it made the cheque available to the Player may have been too weak to establish this fact in and of itself, the Panel is comforted in its conclusion by the fact that the NDRC also informed the Player that it appeared that the Club had paid him the full amount of VEF 230,100, while there is no evidence on file suggesting that the Player ever disputed this or that the cheque issued by the Club was not covered or otherwise invalid.

114. Importantly, this is not to say that the Player is no longer entitled to this money in case he failed to cash the cheque to date, but in the context of the present disciplinary proceedings the Club cannot be sanctioned for having failed to pay this part of its debt towards the Player.

115. Indeed, as alluded to by FIFA, it is important to distinguish disciplinary proceedings before the FIFA Disciplinary Committee from actual "enforcement" proceedings. One CAS panel stated the following in this respect:

> *"In its decision BGer 4P.240/2006, consideration 4.2, the Swiss Federal Tribunal qualified the FIFA "enforcement" system as a disciplinary sanctioning system of a Swiss association. This due to the fact that an enforcement / "Zwangsvollstreckung" in the Swiss legal terminology is reserved exclusively and only to the State and not to a private association.*
>
> *However, in FIFA and also CAS terminology the notion of enforcement is often used if reference is made to the disciplinary sanctioning system of FIFA.* […]*"* (CAS 2016/A/4426, para. 3-4).

116. The question to be addressed by this Panel is not necessarily whether the Club timely paid the relevant amounts to the Player, but whether the Club must be sanctioned for its failure to do so.

117. Applying the latter yardstick to the matter at hand, the Panel finds that the Club cannot be held liable for failing to comply with the FIFA DRC Decision to pay the amounts of VEF 100,000 and USD 48,000 to the Player, but that the amount of VEF 230,100 is to be deducted from the amounts awarded in the FIFA DRC Decision.

118. The amount of VEF 100,000 is entirely covered by the amount VEF 230,100 and the remaining amount of VEF 130,100 is to be set-off against the amount of USD 48,000. The Panel notes that the exchange rate between VEF and USD on the date of payment (i.e. 3 June

2015) was 0,15873. The amount of VEF 130,100 can therefore be equated to USD 20,650.77 at the relevant moment in time. The Club can thus only be held liable for failing to pay the Player an amount of USD 27,349.23 (USD 48,000 -/- USD 20,650.77).

119. As a consequence, since the FIFA Disciplinary Committee considered it fitting to impose a fine of CHF 7,500 for the Club's failure to pay the amounts of VEF 100,000 and USD 48,000 to the Player, while the Panel finds that the Club can only be held liable for failing to pay an amount of USD 27,349.23 (i.e. approximately 1/3 of the amount awarded in the FIFA DRC Decision), the Panel finds that the fine imposed on the Club shall be reduced accordingly. Hence, a reduction of the fine to an amount of CHF 2,500 is considered appropriate.

120. The Panel does not deem it appropriate to reduce the number of points to be deducted from the first team of the Club in the domestic league championship in case the Club fails to pay the residual amount to the Player (USD 27,349.23) within 30 days upon issuance of the present arbitral award and its possible relegation in case of persistent failure, so as to incentivise the Club to settle its debts. Also the other terms and conditions of the Appealed Decision, including the costs of the proceedings in the amount of CHF 1,000, are confirmed.

121. Consequently, the fine imposed on the Club by means of the Appealed Decision is reduced to CHF 2,500, but the other terms and conditions of the Appealed Decision are confirmed.

B. Conclusion

122. Based on the foregoing, the Panel holds that:

i. The FIFA DRC Decision is not null and void.
ii. The fine imposed on the Club by means of the Appealed Decision is reduced to CHF 2,500, but the other terms and conditions of the Appealed Decision are confirmed.

123. All other and further motions or prayers for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 2 August 2017 by Club Estudiantes de Mérida against the decision issued on 15 March 2017 by the Disciplinary Committee of the *Fédération Internationale de Football Association* is partially upheld.

2. The decision issued on 15 March 2017 by the Disciplinary Committee of the *Fédération Internationale de Football Association* is confirmed, save for the fine set out in point 2. of the operative part, which is reduced to CHF 2,500 (two thousand five hundred Swiss Francs).

3. (…).

4. (…).

5. All other and further motions or prayers for relief are dismissed.