Arbitration CAS 2018/A/5552 Kenneth Joseph Asquez v. FC Manisaspor K.D. & Fédération Internationale de Football Association (FIFA), award of 4 December 2018

Panel: Mr Lars Hilliger (Denmark), Sole Arbitrator

Football
Failure of a club to comply with a settlement agreement settling an agent's financial claim pending before FIFA
Principle of estoppel/venire contra factum proprium
Requirement of good faith

1. **According to the principle of *estoppel/venire contra factum proprium*, a party cannot act against its own actions that created an assumption to another party relying in good faith on that assumption.**

2. **The principle of *estoppel/venire contra factum proprium* cannot be invoked by a party that did not act in good faith.**

I. THE PARTIES

1. Mr Kenneth Joseph Asquez (the "Appellant" or the "Agent") is a players' agent of British nationality.

2. FC Manisaspor K.D. (the "First Respondent" or "Manisaspor") is a Turkish football club affiliated with the Turkish Football Federation (the "TFF"), which in turn is a member of FIFA.

3. The Fédération Internationale de Football Association ("FIFA" or the "Second Respondent") is the world governing body of football, whose headquarters are located in Zürich, Switzerland.

II. FACTUAL BACKGROUND

4. The following considerations set out below are a summary of the main relevant facts as established by the Sole Arbitrator on the basis of the written and oral submissions of the Parties and the exhibits filed. Additional facts may be set out, where relevant, in the legal considerations of the present Award.

5. On 26 April 2011, the Appellant lodged a claim before the FIFA Players' Status Committee (the "PSC") against Manisaspor, claiming the club's payment of Euro 285,000 to the Appellant pursuant to an Agent Contract (the "Agent Contract") between the Appellant and Manisaspor.

6. The PSC initiated its procedure regarding the Appellant's claim and informed the TFF accordingly by letter of 27 April 2011.

7. By letter of 12 July 2011, Manisaspor informed the FIFA Players' Status & Governance department, *inter alia*, that the claim had no legal grounds pursuant to the rules and regulations of FIFA.

8. By letter of 30 August 2012, the Appellant's initial claim was amended.

9. On 19 September 2012, the FIFA Players' Status & Governance department informed the Appellant and Manisaspor that the matter would be submitted to the PSC for its consideration at its meeting to be held on 25 September 2012.

10. By letter of 4 October 2012, the Appellant informed the PSC, *inter alia*, that:

"We would like to inform this Hon Committee that in relation to the above, the parties have executed a "Settlement Agreement Signed by and Between Manisaspor Kulubu Dernegi and Mr, Keneth Asquez", dated 17th September 2012, (hereinafter, "the Agreement")

[….]

Consequently, we hereby kindly request the PSC to suspend the proceeding with reference […] Kenneth Joseph Asquez Vs. Manisaspor Kulubu Dernegi and as long as Manisaspor fulfils the payment calendar established in clause 2 of said Agreement and complies with all the remaining terms and conditions stated therein".

11. The Settlement Agreement signed by and between the Agent and Manisaspor (the "Settlement Agreement") stated, *inter alia*, as follows:

"[…]

I. That by virtue of a Transfer Agreement dated September 1, 2010 (hereinafter, "the Transfer Agreement"), the Portuguese Club, Benfica, transferred the professional football player A. (hereinafter, "the Player") to Manisaspor, being the Agent the FIFA agent that assisted Manisaspor in such transfer operation for a total agreed remuneration to be paid by Manisaspor to the Agent of TWO HUNDRED AND EIGHTY FIVE THOUSAND EUROS (285.000,00 €).

II. That the aforementioned remuneration to the Agent, as well as the transfer fee to Benfica in the amount of one million nine hundred thousand euros (1.900.000,00 €), have been unpaid by Manisaspor after becoming due and payable, and therefore constituting a contractual breach committed by Manisaspor regarding its financial obligations with both the Agent and Benfica.

III. That in the view of the aforementioned non-payment, Benfica decided to file a claim before the Player's Status Committee of FIFA (hereinafter, "FIFA PSC") which triggered the opening of a new proceeding with a case reference number 11-02318/ari (hereinafter, "the Proceedings").

IV. That in the frame of the above mentioned Proceedings, the Single Judge of the FIFA PSC issued a decision on May 11 2002 (notified to the clubs on June 4, 2012) condemning Manisaspor to pay Benfica de amount of

one million, nine hundred thousand euros (Eur 1.9000.000,00) as principal plus an interest at 6% per annum and the amount of CHF 20,000 for the costs of the proceedings and attorney's fees (hereinafter, "the Decision").

[…]

VI. That at this stage of the matter, in the view of the very critical economic and financial situation of Manisaspor, which prevents it from complying with the Decisions in the terms stated therein, the Agent has promoted and negotiated for Manisaspor and Benfica a settlement agreement dated in the same date as the present contract, by which Benfica has agreed to fix the amount to be paid by Manisaspor in TWO MILLION ONE HUNDRED THOUSAND EUROS (2.100.000,00 €) to be paid in a new payment calendar and, as long as Manisaspor sticks to such new payment calendar, Benfica agrees not to enforce the Decision issued by the Single Judge of the FIFA PSC on May 11 2012 referred to in the Declaration IV, and therefore Manisaspor and the Agent have mutually agree to subscribe the following:

CLAUSES

–OBJECT

The object of the Present Agreement is the formal recognition and expressly acceptance without reserve by the Club to the Agent of a debt amounting TWO HUNDRED AND EIGHT FIVE THOUSAND EUROS (285.000,00 €) arising from the unpaid remuneration for the assistance by the Agent to Manisaspor in the Transfer Agreement with the Benfica regarding the Player.

Such amount shall be paid by Manisaspor to the Agent in accordance with the payment calendar stated in clause 2 below.

–PAYMENT OF THE AMOUNTS OWED BY MANISASPOR TO BENFICA

2.1. - Manisaspor hereby proposes and the Agent expressly accepts the following payment calendar for a total amount of TWO HUNDRED AND EIGHTY FIVE THOUSAND EUROS (285.000,00 €) payable in the following instalments and amounts:

a) ONE HUNDRED THOUSAND EUROS (€ 100.000,00) payable on or before 30.09.2012.

b) TWENTY FIVE THOUSAND EUROS (25.000,00 €) payable before 30.03.2013.

c) ONE HUNDRED THOUSAND EUROS (100.000,00 €) payable before 30.09.2013.

d) SIXTY THOUSAND EUROS (60.000,00 €) payable before 31.12.2013.

[…]

2.3 - Both parties regard the above amounts and method of payment as reasonable, fair and just, undertaking not to dispute in front of any authority or to attempt to denounce or annul for no other reason other than those, and only those, mentioned in the present Agreement.

3. - STAY OF THE PROCEEDINGS AND BREACH OF THE AGREEMENT

3.1 - By virtue of the present Agreement and as long as Manisaspor sticks to the payment plan in the terms stated in clause 2 above, the Agent will cooperate with Manisaspor for Benfica not to enforce the Decision issued by the Single Judge of the FIFA PSC on May 11 2012 referred to in the Declaration V above that otherwise might be entitled to execute.

3.2. - Notwithstanding the above, the Agent will cooperate with Benfica for the reactivation of the Proceedings should Manisaspor not fulfil the present Agreement, in particular the payment plan established in clause 2 above.

In addition, should any amount stipulated in this Agreement not be paid by Manisaspor to the Agent, all the remaining amounts pending payment shall immediately become due and payable as of the date of the breach, accruing the corresponding interests.

[…]

5.3 - Entire Agreement - This Agreement represents the entire agreement between the parties relating to the subject matter of the present Agreement and supersedes all prior agreements, understandings, representations and warranties relating to the subject matter of this Agreement. No party has relied on or been induced by any representations or promises made to it prior to entering into this agreement in reaching its decision to enter into this Agreement on these terms.

[…]

6. – APPLICABLE LAW AND LEGISLATION

Any dispute concerning this Agreement will be resolved, expressly waiving any jurisdiction that may correspond, by the corresponding competent FIFA body according to its regulations. In case FIFA rejects its competence, such dispute must be solved by the Court of Arbitration for Sport (CAS) based in Lausanne, Switzerland, both proceedings according to the Swiss law and FIFA regulations applicable at any possible dispute.

[…]".

12. On 5 October 2012, the FIFA Players' Status & Governance department wrote to the Parties as follows:

"We refer to the matter of the reference and in particular to our previous correspondence dated 19 September 2012, by means of which we informed you that the present matter would be submitted to the Players' Status Committee for consideration and formal decision.

In this respect, we would like to inform you that the matter at stake was submitted to the Players' Status Committee on the occasion of its plenary meeting which took place last 25 September 2012 and that the cited deciding body passed a formal decision on the relevant matter.

Notwithstanding the above, the players' agent Kenneth Joseph Asquez has informed our services through correspondence of his legal representative dated 4 October 2012, that both parties reached an agreement on 17 September 2012 in relation to the matter at stake and has specifically asked to "suspend the proceeding". Club Manisaspor Kulübu Dernegi will find enclosed herewith a copy of the cited correspondence and its respective enclosure for its information.

In view of all the above, please take note that we will proceed to suspend the present proceedings without notifying the decision passed by the Players' Status Committee last 25 September 2012, since it now appears to have become obsolete".

13. By letter of 1 July 2015 to the PSC, and with reference to the above-mentioned correspondence of 4 and 5 October 2012, the Appellant stated, *inter alia*, as follows:

"[…]

Notwithstanding the above, the reality of the facts shows that, up to date – 14th July 2015 -, that is to say, one year and a half after the last payment to the Agent was supposed to be undertaken, Manisaspor still owes the

Agent a total amount of € 100,000.00 out of the € 285,000.00 he was entitled to receive as a result of his intervention for the Club in the transfer of the Player A. from Portuguese Club Benfica to Manisaspor.

For that reason, provided that the Club has failed to comply, in several occasions up to date, with the terms agreed between the parties in Clause 2 of the cited Settlement Agreement, this party wished to kindly request the FIFA Player's Status Committee to reopen the cited proceedings mdo. 11-01009, with the aim of obtaining a new and binding decision according to which Manisaspor shall be condemned to pay the outstanding amount of €100,000, plus interests, costs and expenses arising from present proceedings.

For the sake of clarity, it is important to point out that the aforesaid debt in the amount of €100,000 has been indeed, fully and expressly recognized by the Club by means of the formal communication issued by its Administrative Director, Mr. Abdurrahman Baskir, to the Agent last 31st March 2015, which is hereby enclosed as Annex nº 3.

Without prejudice of the content of the above-detailed formal communication, it shall be noted that, up to date, not even the amount of € 50,000.00 the Club committed itself to be paid to the Agent on 10 April 2015, has been, as to date, transferred to Mr. Asquez.

As a consequence of all the above-mentioned, since the Settlement Agreement signed on September 17th 2012 – according to which the FIFA case mdo. 11-01009 was suspended - has not been effectively duly complied by the Club, the Agent requests the FIFA Player's Status Committee to reinitiate the proceedings and render a final decision in the case at hand by means of which the Club shall be condemned to pay the Agent the outstanding amount of €100,000 plus interests, costs and expenses arising from the present proceedings".

14. On 17 August 2015, the FIFA Players' Status & Governance department answered the Appellant as follows:

"We refer to the abovementioned matter and acknowledge receipt of your correspondence dated 1 July 2015 but received by our services on 16 July 2015, the content of which we duly noted.

In this respect and after a first thorough analysis of the documentation you submitted to our services, we understand that you were players' agent licensed by The Football Association in the sense of the Players' Agent Regulations (edition 2008) and that you would like to lodge a complaint with FIFA against the Turkish club, Manisaspor Kulübu Dernegi.

On account of the above, we would like to remind you that on 1 April 2015, the new Regulations on Working with Intermediaries came into force replacing the Players' Agent Regulations (edition 2008). Furthermore, on 1 April 2015, also a new edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber came into force, which stipulates that parties in front of our decision-making bodies are member associations of FIFA, clubs, players, coaches or licensed match agents.

In view of the above, we have to inform you that since 1 April 2015, FIFA is no longer competent to hear claims lodged by players' agents in the sense of the Players' Agents Regulations (edition 2008).

Moreover and for the sake of good order, please be informed that our statements made above are based on the information we received from you only and are therefore of a general nature and thus without prejudice whatsoever".

15. On 27 August 2015, the Appellant replied to the PCS, *inter alia*, as follows:

"In this regard, we would like to kindly inform this Honorable Committee that the intention of the correspondence issued on behalf of Mr. Kenneth Joseph Asquez dated 1st July 2015 was not aimed to lodge a new complaint before the FIFA Players' Status Committee against the Turkish club Manisaspor Kulübü Dernegi, but solely and exclusively to request the reopening of the proceeding in course with reference mdo. 11-01009, which was already initiated.

The above petition was made by Mr. Asquez on the basis that the procedure of reference was, in fact, provisionally suspended by the FIFA Players' Status Committee due to the formalization of a Settlement Agreement between Mr. Asquez and Manisaspor Kulübü Dernegi, dated 17 September 2012, by means of which both parties agreed on a new scheduled calendar for the payment by the Club of the outstanding amounts owed to Mr. Asquez. Please take note that said agreement is already gathered under the FIFA current procedural file.

[…]

At this regard, it seems to be evident and undisputable that the proceedings initiated by the Claimant were not definitively filed, but suspended pending the full compliance by the Respondent of the payments established under the new calendar agreed, which obviously, entails that should the Respondent fail to fulfil its economic obligations the Claimant would have the option to request FIFA the reopening of the proceedings.

Thus, in consideration of the fact that the Club has not complied at all with the payment calendar conditions set out in the indicated Settlement Agreement, Mr. Asquez wishes, for the sake of proper justice and in order to get the legal protection and respect of his rights, to respectfully request the FIFA Players' Status Committee to reopen the above-referenced procedure.

Otherwise decided by this Honorable Committee would cause, as evident and may be properly understood by this Tribunal, a total defenselessness for the present party, all the more since the Claimant was obliged - as a mandatory requirement for the claimant's lawsuit admission -, to make a payment to FIFA in the amount of FIVE THOUSAND SWISS FRANCS (CHF 5,000) as procedural advance of costs, which up to date have not been reimbursed by FIFA nor by the Respondent.

Furthermore, and for FIFA's full reminder and comprehension of the background of the case, it shall be noted that both, the formal procedure and the Players' Status Committee competence to hear the issue were based on both, (i) the 2008 edition of the Players' Agent Regulations and, (ii) the 2008 Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber, which were the Regulations in force at the time of filling the Claim by Mr. Kenneth Asquez.

Therefore, to the extent that Mr. Asquez's intention is none but uniquely to reopen such proceedings in order to get his rights duly protected, neither the 2015 version of the FIFA Regulations on the Status and Transfer of Players nor the 2015 Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber shall be applicable to the case at stake.

For all the above-indicated, we do respectfully demand the FIFA Players' Status Committee, to reopen the procedure of reference, which was suspended pending the full compliance of the agreement signed by the Respondent Manisaspor Kulübü Dernegi and, consequently, render a final decision by means of which the Turkish club Manisaspor Kulübü Dernegi shall be condemned to pay the Claimant the pending amount of ONE HUNDRED THOUSAND EUROS (€100,000), plus interests, costs and expenses arising out from the present procedure".

16. By letter of 5 April 2016, the FIFA Players' Status & Governance department wrote to the Appellant, *inter alia*, as follows:

"[…] In this respect, we understand that you would like to lodge a claim with FIFA against the said club on the basis of the settlement agreement concluded between the parties on 17 September 2012.

[…]

On account of the above we would like to remind you, once again, that on 1 April 2015, the new Regulations on Working with Intermediaries came into force replacing the Players' Agents Regulations (edition 2008). Furthermore, on 1 April 2015m also a new edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber came into force, which stipulates that parties in front of our decision-making bodies are member associations of FIFA, clubs, players, coaches or licensed match agents.

In view of the above, we have to reiterate that since 1 April 2015, FIFA is no longer competent to hear claims lodged by players' agents in the sense of the Players' Agents Regulations (editions 2008).

Moreover and for the sake of good order, please be informed that our statement made above are based on the information we received from you only and are therefore of a general nature and thus without prejudice whatsoever.

[…]".

17. By letter of 10 March 2017, the Appellant informed FIFA that he *"did not intend to file a new claim"* but *"simply requested that the decision already reached by the FIFA Players' Status Committee in its plenary meeting of 25th September 2012 in relation to the proceedings […] be notified to the parties.*

18. Furthermore, the Appellant stated as follows:

"Alternatively, I request that the FIFA Players' Status Committee, or its Single judge issue a formal decision in respect of FIFA's refusal to proceed on my behalf.

Failing any answer by FIFA within a reasonable time limit, I will be left with no other option that to escalate this matter at the Court of Arbitration for Sport".

19. On 26 April 2017, the Appellant maintained his position before FIFA, stating, *inter alia*, as follows:

"[…] In this reference I kindly take your attention to the fact that the system of dispute resolutions for the agents as for the subjects of football was in force until 01 April 2015, as correctly noticed in the two notices of the FIFA PSC in the present case. However, it became impossible for the NEW CLAIMS to be handled by the FIFA PSC where among the parties was an agent. All current and pending proceedings were not touched by said reform.

In this sense I could kindly quote a number of examples where the claim was filed before 01 April 2015, however, the case procedure was lasting until the further period of time. E.g. the case with ref. mdo 14-01208 with the parties of football agent Mr. José Mesas Puerta and football club Al Jazira where the claim was initially filed in March 2014 and the decision in referenced case was rendered by the FIFA PSC only in August 2016. The Parties have never received any notification that the dispute between them is not anymore admissible by the FIFA PSC.

To the fact of that the procedure at stake was effectively suspended and not terminated, contributes such fact that the Agent has been never reimbursed the amount of CHF 5,000 of the advance of costs initially paid in order for his claim to be viewed by the FIFA PSC.

In the view of the abovementioned, I kindly ask you to proceed to one of the further actions with regard to the present application.

1) Reinitiate previously SUSPENDED proceedings between the parties at stake,

Or,

2) Notify to the parties in the decision taken by the FIFA Players' Status Committee on occasion of 25 September 2012. Said measure would be crucial for the final aim of the Agent's initial application to the FIFA PSC - rendering justice in the case at stake.

Should I not receive any response from you in 10 (ten) days or should your response on any of the two mentioned actions will be negative, that would be considered as a formal decision and I see myself obliged to initiate corresponding legal actions to defend my clients' interests".

20. By letter of 17 May 2017, the FIFA Players' Status & Governance department replied to the Appellant, *inter alia*, as follows:

"[…]

"Along those lines, we would like to underline that already on 17 September 2012 the parties to the present matter apparently reached an agreement in connection with the "Agent Contract" dated 1 September 2010, i.e. before the Single Judge of the Players' Status Committee had rendered its decision on 25 September 2012 and which was unknown to the Single Judge at the time of passing said decision.

In consequence to the above, we kindly inform you, once again, that the decision rendered by the Single Judge of the Players' Status Committee on 25 September 2012 has apparently become obsolete.

In addition, and in order for our services to proceed with the reimbursement of the advance of costs paid at the start of the present proceedings, we kindly ask you to send us, at your earliest convenience, the full relevant bank account details and, in particular, the following information: […]".

21. On 5 June 2017, the Appellant lodged a claim before the CAS against the Respondents due to an alleged denial of justice (CAS 2017/A/5171).

22. By letter of 15 June 2017, the FIFA Players' Status & Governance department notified the finding of the decision of the PSC dated 25 September 2012 (the "PSC Decision") to the Appellant and the First Respondent specifically mentioning that *"the relevant decision appeared to have become obsolete insofar as both parties had reached an agreement in relation to the matter at stake on 17 September 2012".*

23. The PSC Decision stated as follows:

"1. The claim of [the Appellant] is partially accepted.

2. [The First Respondent] has to pay to [the Appellant], within 30 days as from the date of notification of the present decision, the amount of EUR 285,000 as commission, plus an interest at a rate of 5% p.a. as follows:

- *over the amount of EUR 95,000 from 26 April 2011 until the date of effective payment,*
- *over the amount of EUR 95,000 from 1 August 2011 until the date of effective payment,*

- *over the amount of EUR 95,000 from 1 August 2012 until the date of effective payment.*

3. *If the aforementioned sums, plus interest, are not paid with the aforementioned deadline, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.*

4. *Any further claims lodged by [the Appellant], are rejected.*

5. *The final costs of the proceedings in the amount of CHF 7,000 are to be paid by [the First Respondent], within 30 days as from the date of notification of the present decision, as follows:*
5.1 The amount of CHF 5,000 has to be paid directly to [the Appellant];
5.2 The amount of CHF 2,000 has to be paid to FIFA […]".

24. By letter of 19 July 2017, the Appellant informed the FIFA Players' Status & Governance department that the First Respondent had failed to comply with the PSC Decision and requested that the case be forwarded to the FIFA Disciplinary and Governance department in order to initiate the necessary disciplinary proceedings against the First Respondent.

25. On 20 July 2017, the FIFA Players' Status & Governance department wrote to the First Respondent, *inter alia*, as follows:

"We refer to the above-mentioned matter as well as to the decision passed by the Players' Status Committee on 25 September 2012.

In this respect, it seems that [Manisaspor] has still not fully fulfilled its obligations as established in the relevant decision […].

As a result, we kindly inform [Manisaspor] hat it should immediately pay the relevant amount to [the Agent].

In this respect, we kindly ask [Manisaspor] to provide our services with a copy of the payment receipt of the relevant amount by no later than 31 July 2017.

In the event [Manisaspor] does not provide the proof of payment within the above mentioned time frame, we will proceed to forward the entire file to the Disciplinary Committee".

26. On 21 July 2017, the Appellant withdrew his appeal to the CAS (CAS 2017/A/5171), following which the CAS issued a Termination Order on 7 August 2017.

27. By letter of 26 July 2017, the First Respondent replied to the FIFA Players' Status & Governance department, *inter alia*, as follows:

"[…] we would like to express our astonishment due too sudden change of the approach of FIFA deciding body in referenced matter. As it is well understood by the previous correspondence of FIFA, before the FIFA Players' Status Committee rendered its decision in referenced matter above, the claim lodged by the Players' agent has been considered terminated due to the fact that the parties reached an agreement about the settlement of the debt and in conclusion withdrawal of the case before FIFA deciding bodies.

We kindly and respectfully would like to state that since 1 April 2005, FIFA is no longer competent to hear claims lodged by the Players' agents in sense of the Players' Agents Regulations.

FIFA PSC rendered its decision in referenced matter after the parties reached an agreement about the settlement of the debt. On account of above, the players' agent's claim has to be reinitiated due to the above seen explanation. […]".

28. On 15 August 2017, the FIFA Players' Status & Governance department confirmed to the Appellant and the First Respondent that it had forwarded the entire file to the FIFA Disciplinary Committee ("FIFA DC") for consideration and a formal decision.

29. By letter dated 22 August 2017, the First Respondent informed the secretariat to the FIFA DC that the case should be dismissed since the decision is to be considered obsolete. In particular, the First Respondent argued that the FIFA DC *"can no longer be competent to enforce the decision due to the fact that the relevant decision is no longer valid"*. Furthermore, the First Respondent argued that in case the Appellant should request payment of the outstanding amount under the settlement agreement signed on 17 September 2012, a new claim should be lodged with FIFA.

30. By letter of 5 January 2018, the Parties were informed that *"the chairman of the FIFA Disciplinary Committee is currently analysing the present matter"*.

31. On 17 January 2018, the Appellant informed the FIFA DC that if no response was received regarding the matter within two days, the Appellant would initiate a procedure before the CAS for the denial of justice committed by the internal bodies of FIFA.

32. By letter of 18 January 2018 from the FIFA DC (the "FIFA DC Letter"), the Appellant and the First Respondent were informed as follows:

"We refer to the above mentioned matter and in particular acknowledge receipt of the correspondence dated 17 January 2018 as received from the legal representative of [the Appellant], contents of which received our full attention.

In this respect, we take due note from the consent of the file that the decision of the Players' Status Committee passed on 25 September 2012 and communicated on 15 June 2017 to the parties "appeared to have become obsolete insofar as both parties had reached an agreement in relation to the matter at stake on 17 September 2012".

In this regard, we would like to inform the parties that the decision passed by the Players' Status Committee on 25 September 2012 does not meet the requirements established in art. 64 of the FIFA Disciplinary Code since the aforementioned decision is indeed obsolete due to the conclusion of the aforementioned agreement between the parties.

As a consequence, on behalf of the Chairman, please be informed that the FIFA Disciplinary Committee is not in a position to enforce the said decision and therefore cannot open disciplinary proceedings against [Manisaspor] concerning the abovementioned matter".

III. SUMMARY OF THE ARBITRAL PROCEEDINGS BEFORE THE CAS

33. On 29 January 2018, the Appellant filed its Statement of Appeal with the Court of Arbitration for Sport (the "CAS") in accordance with Articles R47 and R48 of the Code of Sports-related

Arbitration (the "CAS Code") against the Respondents with respect to the FIFA DC Letter of 18 January 2018.

34. On 8 February 2018, the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code.

35. By letter dated 13 April 2018, the Parties were informed by the CAS Court Office that Mr Lars Hilliger, attorney-at-law, Copenhagen, Denmark, had been appointed as Sole Arbitrator to resolve the dispute at hand.

36. On 30 April 2018, the Second Respondent filed its Answer in accordance with Article R55 of the Code.

37. The First Respondent did not file any answer.

38. By letter of 17 May 2018, the Parties were informed that the Sole Arbitrator had decided to hold a hearing in this matter.

39. The Appellant and the Second Respondent duly signed and returned the Order of Procedure. The First Respondent failed to do so.

40. On 12 September 2018, a hearing was held in Lausanne, Switzerland.

41. In addition to the Sole Arbitrator and the Counsel to the CAS, Mr Antonio de Quesada, the following persons attended the hearing:

    The Appellant, Mr Kenneth Joseph Asquez, and Mr Juan De Dios Crespo Pérez, attorney-at-law.

    For the Second Respondent: Mr Julien Deux and Mr Baptiste Butschu, legal counsel in the FIFA Disciplinary Department.

    The First Respondent was not represented at the hearing despite having been duly summoned by the CAS Court Office. In accordance with Article R57 of the Code, the Sole Arbitrator decided to proceed with the hearing and render this Award.

42. At the outset of the hearing, the Appellant and the Second Respondent confirmed that they had no objections to the constitution of the Panel. The Appellant and the Second Respondent were afforded ample opportunity to present their case, submit their arguments and answer the questions posed by the Sole Arbitrator. After the final submissions, the Sole Arbitrator closed the hearing and reserved his final award. The Sole Arbitrator took into account in his subsequent deliberations all the evidence and arguments presented by the Parties, although they may have not been expressly summarised in the present Award. Upon the closure of the hearing, the Appellant and the Second Respondent expressly stated that they had no objections in respect of their right to be heard and to have been treated fairly in these arbitration proceedings.

IV. THE PARTIES' REQUESTS FOR RELIEF AND POSITIONS

43. The following outline of the Parties' requests for relief and positions is illustrative only and does not necessarily comprise every contention put forward by the Parties. The Sole Arbitrator has, however, carefully considered all the submissions and evidence filed by the Parties with the CAS, even if there is no specific reference to those submissions or evidence in the following summary.

The Appellant

44. In his Appeal Brief, the Appellant requested the following relief from the CAS:

"1. To uphold the present appeal of [the Appellant], in view of the several reasons pointed out in both Statements of Appeal ad this Appeal Brief.

2. To accept his application on the denial of justice committed by the FIFA in the dispute between [the Appellant] and [Manisaspor], from Turkey.

3. To revert the case back to FIFA in order for the latter to proceed with the disciplinary proceedings upon the application of the [Appellant].

4. To oblige FIFA to initiate the disciplinary proceedings and sanction [Manisaspor] for on-compliance with the FIFA PSC decision of 25 September 2012.

5. To oblige FIFA to reimburse to [the Appellant] the advance of costs previously paid by him to FIFA in the amount of CHF 5,000 as the prerequisite for his claim to be treated by the FIFA Players' Status Committee.

6. To fix a sum of 25,000 CHF to be paid by the Respondents to the Appellant, to help the payment of his legal costs.

7. To condemn the Respondents to the payment of the whole CAS administration costs and the Arbitration fees".

45. In support of its requests for relief, the Appellant submitted, *inter alia*, as follows:

- In April 2011, the Appellant initiated proceedings against Manisaspor in front of the PSC, claiming the club's payment of EUR 285,000 pursuant to the Agent Contract between the Appellant and Manisaspor. The PSC accepted the said claim and initiated its procedure.
- By letter of 4 October 2012, the Appellant informed the PSC that the Appellant and Manisaspor had reached an agreement regarding the said claim and thus requested for the suspension of the proceedings before the PSC *"as long as Manisaspor fulfils the payment calendar established in clause 2 of said Agreement and complies with all the remaining terms and conditions therein".*
- Article 3.2 of the Settlement Agreement provides that in case of failure to comply with its terms, the Appellant and Manisaspor agreed that the proceedings in front of FIFA would be reactivated.

- By letter of 5 October 2012, FIFA informed the Parties, *inter alia*, that *"In view of the above, please take note that we will proceed to suspend the present proceedings"*.
- As such, FIFA confirmed the request in an explicit and clear manner and thus created a legitimate assumption of the Appellant that the case was effectively suspended. As such, the advance of costs, initially paid by the Appellant, was retained by FIFA for all the time that procedure was pending, although suspended, in front of the PSC.
- According to the principle of *estoppel*, or the principle of *venire contra factum proprium*, a party cannot act against its own acknowledgement that created an assumption of the other party relying on the good faith of compliance with the terms of the agreed issue.
- Nevertheless, that is exactly what FIFA is doing when acting contrary to its own previous correspondence and thus violating such principles without any legal basis while also breaching the basis of justice and denying justice to the Appellant.
- Furthermore, FIFA was wrong when referring to the new regulations on intermediaries and the corresponding circular letters, according to which the licensed players' agents were deleted from the list of parties who are entitled to lodge a claim before the PSC as from 1 April 2015.
- These new rules does not cover cases already pending in front of the PSC, such as the Appellant's claim against Manisaspor, which was confirmed suspended by FIFA in its letter of 5 October 2012.
- As confirmed by the CAS in its jurisprudence, based on the application of the legal principle *tempus regit actum*, the Appellant's claim cannot be precluded from being reinitiated, nor could his claim to the FIFA DC be rejected on the basis of the fact that football agents are not at the current moment regulated by the FIFA RSTP.
- The execution of the PSC Decision, initiated on the basis of the FIFA RSTP, which provided for the possibility of the players' agents to initiate proceedings in front of the PSC, and corresponding provisions of the FIFA Players' Agents Regulations is thus valid on the basis of the application of the said principle.
- As such, the case was undoubtedly suspended, and then, without any legal and valid reason, the FIFA refused to reinitiate it and thus committed a denial of justice to the Appellant.
- In support of the refusal of initiating disciplinary proceedings before the FIFA DC, FIFA argued that the PSC Decision had become obsolete since the Settlement Agreement had been entered into as early as 17 September 2012 and, thus, before the PSC had rendered its decision on 25 September 2012.
- The PSC Decision did not become obsolete by the fact that the Appellant and Manisaspor entered into the Settlement Agreement.
- First of all, it should be noted that the amounts indicated in the Settlement Agreement were identical to the amounts mentioned in the PSD Decision, and the option to admit the case to the disciplinary proceedings was just and correct as the PSC Decision was only partially respected by Manisaspor, leaving the amount of EUR 100,000 as remaining outstanding.

- The Settlement Agreement was neither newer nor better than the PSC Decision, and it was never the intention of the Appellant and Manisaspor to replace the decision of the PSC, but only to suspend the procedure subject to the condition that Manisaspor would in fact comply with the payment schedule set forth in the Settlement Agreement.
- It is evident that the decision of the PSC was at no point obsolete, and once Manisaspor did not respect the terms of the Settlement Agreement, the Appellant, by virtue of the provisions of the said agreement, could proceed to reinitiate the proceedings in front of FIFA in order to obtain a decision imposing on Manisaspor a duty to meet its initial obligations.
- Furthermore, when applying to the FIFA DC, the Appellant requested that the application be admitted on the basis of the communication of the PSC Decision and given the fact that Manisaspor did not comply in full with the said decision.
- In accordance with Article 64 of the FIFA RSTP, the necessary requirements to initiate disciplinary procedures in front of FIFA are met in this matter, since Manisaspor, based on the PSC Decision Manisaspor, is still in debt to the Appellant.
- As such, and since no one but FIFA could initiate disciplinary proceedings against its affiliated members, being national associations or clubs, the Appellant sees no other remedy than to request the CAS to pronounce that the actions of FIFA were incorrect while refusing to admit the Appellant's application and to oblige FIFA to initiate the disciplinary proceedings against Manisaspor.
- With regard to the admissibility of the appeal, the FIFA DC Letter clearly is an appealable decision containing a ruling by the PSC intended to affect the legal situation of, at least, the Appellant.

The First Respondent

46. As already mentioned under para 3.9, the First Respondent never filed any answer within the specified deadline.

The Second Respondent

47. In its Answer, the Second Respondent requested the CAS:

"1. To reject the Appellant's appeal in its entirety.

2. to confirm that the "obsolete decision" passed on 25 September 2012 by the Players' Status Committee does not meet the requirements of art. 64 of the FDC and cannot be enforced by the FIFA Disciplinary Committee.

3. Or alternatively, to declare the present appeal inadmissible considering that the letter sent by the Deputy Secretary to the FIFA Disciplinary Committee 18 January 2018 cannot be considered a decision.

4. To order the Appellant to bear all costs incurred with the present procedure and to cover all expenses of the Second Respondent related to the present procedure".

48. In support of its request for relief, the Second Respondent submitted, *inter alia*, as follows:

- First of all, it must be emphasised that the principal purpose of an appeal against a decision of the FIFA DC is to contest the disciplinary measures imposed by the latter. However, in this matter no disciplinary proceedings could be conducted or disciplinary measures imposed, rendering the Appellant's appeal as being essentially baseless.
- Secondly, it must be noted that the Appellant is constantly seeking enforcement of the PSC Decision, which is to be considered "obsolete" since the Appellant and Manisaspor settled the object of the dispute on 17 September 2012 by entering into the Settlement Agreement and thereby making the Appellant's initial claim against Manisaspor, as well as the proceedings resulting therefrom, groundless.
- The present appeal proceedings before the CAS are not the correct forum to request the enforcement of an "obsolete" decision since the Settlement Agreement that settled the object foresees another forum to solve any dispute arising from the said agreement.
- With regard to the FIFA DC Letter where it was, *inter alia*, stated *"*[..] *that the FIFA Disciplinary Committee is not in a position to enforce the said decision and therefore cannot open disciplinary proceedings against [Manisaspor] concerning the abovementioned matter"*., it need to be recalled that the spirit of article 64 of the FIFA Disciplinary Code is to enforce decisions comparable to judgments that have been rendered by a body, a committee or an instance of FIFA or the CAS which are final and binding.
- As such, article 64 of the FIFA Disciplinary Code provides FIFA with a legal tool enabling it, to a certain extent and through the application of certain stipulated sanctions, to have the rights of a creditor and/or FIFA finally respected.
- In this regard, the particular proceedings provided for under article 64 of the FIFA Disciplinary Code could be regarded as the enforcement proceedings pursuant to Swiss law and, consequently, the FIFA DC could be regarded as acting similarly as an "enforcement authority".
- Thus, and in line with the CAS jurisprudence, the FIFA DC is not allowed to analyse a case decided by the relevant body as to substance, but has the sole task of analysing whether the debtor complied with the final and binding decision of the relevant body.
- In this particular case, the initial dispute between the Appellant and Manisaspor was, in reality, settled on 17 September 2012 and, therefore, not only prior to the letter of the Players' Status and Governance department dated 19 September 2012 informing about the submission of the matter to a FIFA deciding body for its consideration in its upcoming meeting to be held on 25 September 2012, but also prior to the PSC Decision of the same date.
- As a consequence of the Settlement Agreement, the Appellant's initial claim lodged before FIFA had become groundless since it had no longer any object after the conclusion of the Settlement Agreement.
- As this very particular and unusual situation is not foreseen by FIFA in any of its regulations, Swiss law should apply. In this respect, article 242 of the Swiss Code of Civil Procedure ("SCCP") provides that *"If for any other reasons the proceedings end without a decision, the proceedings shall be dismissed"*.

- Such article applies in cases there the lawsuit becomes groundless when the subject-matter of the dispute or the legitimate interest of the claimant or any procedural requirements definitely cease after the beginning of the *lis pendens,* or in other words: it becomes legally impossible to pronounce a judgement on the basis of the initial complaint of the claimant.
- According to the Swiss doctrine, the conclusion of an extrajudicial settlement agreement is to be considered as "other reasons" making the initial claim groundless.
- As the Settlement Agreement is to be considered as an extrajudicial settlement agreement having an impact on both the proceedings pending before the PSC and on the legal relationship between the Appellant and Manisaspor, it is undisputable that the Settlement Agreement deprived the Appellant's initial claim of any object and therefore rendered such claim groundless since the matter in dispute had been settled by the parties.
- As a consequence, the Appellant no longer had any legitimate interest in requesting a court ruling on the basis of its initial claim, and thus, pursuant to article 242 of the SCCP, the proceedings before the PSC are to be considered dismissed and any decision passed, like the PSC Decision, subsequent to the date of the Settlement Agreement, is to be considered null and void due to its lack of any procedural basis and object to be decided.
- Furthermore, by recognising the amount payable by Manisaspor to the Appellant and by planning its payment in different instalments, the said parties decided to settle the object of the initial claim, i.e. the debt arising from an alleged breach of the Agent Contract, thus mutually agreeing to replace it with a new obligation, in other words, the said parties undoubtedly intended to novate such original obligation by means of the Settlement Agreement.
- Under Swiss law, novation exists where a debt is settled by contracting a new debt relationship, which requires first a settlement agreement creating a new obligation and secondly presupposes a willingness of the parties to create a new debt in lieu of the former one.
- Such intention of the said parties to novate the old obligation is confirmed in the Settlement Agreement whereby it is agreed that *"*[…] *this agreement represents the entire agreement between the parties relating to the subject matter of the present Agreement and supersedes all prior agreement, understandings representations and warranties relating to the subject matter of this Agreement".*
- Furthermore, the behaviour of the Appellant and Manisaspor left no doubt of their intentions, and in their subsequent correspondence with FIFA, the said parties, *inter alia*, referred only and solely to the non-fulfilment of the Settlement Agreement. As such, Manisaspor, apart from recognising *"a debt in the amount of EUR 100,000 arising from non-fulfilment under the terms of the [Settlement Agreement*], furthermore informed FIFA that *"the claim lodged by [the Appellant] has been considered terminated due to the fact that the parties has reached an agreement about the settlement of the debt and in conclusion withdrawal if the case before the FIFA deciding bodies".*
- Based on that, it is evident that the Appellant and Manisaspor intended to novate the initial debt arising from the Agent Contract by creating a new one by means of the extrajudicial Settlement Agreement. As such, and since the older debt is thereby replaced

by a newer one, the PSC Decision undoubtedly became obsolete and therefore null and void since the original debt, leading to the Appellant's initial claim and to the PSC Decision, had been replaced/novated and was therefore not in use anymore.

- With regard to the alleged denial of justice raised by the Appellant, it should be recalled that in accordance with CAS jurisprudence, *"what is decisive is whether there is a ruling, - or, in case of denial of justice, an absence of ruling where should have been a ruling – in the communication"*.
- Based on the foregoing, the FIFA DC is not even in a position to consider opening disciplinary proceedings which could lead to a ruling since the *condition sine qua non* to initiate such disciplinary proceedings provided by article 64 of the FIFA Disciplinary Code, i.e. the existence of a final and binding decision, is not fulfilled due to the fact that the PSC Decision is groundless, and as such, must be considered null and void.
- As such, the FIFA DC is neither in the position to enforce the obsolete PSC Decision nor to open disciplinary proceedings against Manisaspor for failing to comply with an inexistent decision, for which reason there can be no denial of justice from a body that is no longer competent to deal with the matter.
- Furthermore, and with reference to the fact that an extrajudicial settlement agreement, contrary to the judicial one, cannot be assimilated to a court decision and therefore does not have any *res judicata* effect, a new complaint should be lodged with a body of competent jurisdiction in case of non-fulfilment of an extrajudicial settlement agreement in order to obtain an enforceable decision.
- In this regard, it should be noted that, even if it was not the intention of the Appellant, the Appellant did in fact lodge a new claim on 16 July 2015 when requesting the PSC to render a final decision on the case at hand by means of which [Manisaspor] should be condemned to pay the [Appellant] the outstanding amount of EUR 100,000 out of the Settlement Agreement, thus basing his claim on a disputed object different from the original claim.
- However, such request could not be granted since, prior to the date of the claim, the new Regulations on Working with Intermediaries came into force on 1 April 2015 with, *inter alia*, the consequence that FIFA was no longer competent to hear claims lodged by players' agents.
- It was the Appellant who decided to wait nearly two years before requesting the intervention of the PSC for such decision with regard to the Settlement Agreement, which meant that the request was only filed after the new Regulations on Working with Intermediaries came into force.
- In addition, the Appellant and Manisaspor had already foreseen a situation in which FIFA would not be the competent body to decide any dispute arising from the Settlement Agreement by including in said agreement an arbitration clause according to which *"[...] any dispute concerning this Agreement will be resolved, expressly waiving any jurisdiction that may correspond, by the corresponding FIFA body according to its regulations. In case FIFA rejects its competence, such dispute must be solved by the [CAS] based in Lausanne"*.

- In light of the foregoing, the Appellant's request to oblige the FIFA DC to initiate the procedure to enforce the PSC Decision should be dismissed since the said decision, due to its lack of validity, does not meet the requirements established in article 64 of the FIFA Disciplinary Code and could therefore no longer be subject to disciplinary proceedings on the basis of the said code.
- For the sake of good order, and notwithstanding the fact that the FIFA DC was not in a position to initiate the disciplinary proceedings against Manisaspor, is should be noted that the present appeal could not even have been lodged against the FIFA DC Letter.
- The FIFA DC Letter was in fact only a letter lacking *animus decidendi*, and the Appellant's appeal against such letter should not be considered admissible according to article R47 par. 1 of the CAS Code and article 57 par. 1 of the FIFA Statutes, which provide that an appeal at the CAS can only be lodged against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, member associations or leagues.
- The FIFA DC Letter, which is in fact only an informative letter since it is not affecting the legal situation of the Appellant, but merely aims at informing the latter on the impossibility of the FIFA DC to proceed with the enforcement of the obsolete decision, does not constitute an appealable decision. Therefore, the present appeal is to be declared inadmissible due to the lack of a challengeable decision.

V. CAS JURISDICTION AND ADMISSIBILITY OF THE APPEAL

49. The CAS is competent to determine its own jurisdiction and whether it may adjudicate the merits of the appeal. The so-called "Kompetenz-Kompetenz" of an international arbitral tribunal sitting in Switzerland is recognised by Article 186 para. 1 of the Swiss Law on Private International Law, which is applicable to CAS arbitration proceedings.

50. Article R47 of the CAS Code states 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".

51. Article 58 par. 1 of the FIFA Statutes states as follows:

"Appeals against final decisions passed by FIFA's legal bodies against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of notification of the decision in question".

52. The Appellant relies on Article R47 of the CAS Code and on Article 58 of the FIFA Statutes as conferring jurisdiction on the CAS while submitting that the FIFA DC Letter communicated to the Appellant and Manisaspor on 18 January 2018 constitutes an appealable and final decision passed by a legal body of FIFA.

53. FIFA, on the other hand, submits that the FIFA DC Letter is only an informative letter lacking *animus decidendi* and that the appeal is consequently not admissible, but nevertheless confirming the jurisdiction of the CAS when signing the Order of Procedure.

54. The Sole Arbitrator initially notes that, in accordance with the above-mentioned provisions, the CAS has the power to adjudicate appeals against a sport organisation provided notably that an actual *decision* has been issued, that it is final and that it is challenged in a timely manner.

55. Although the applicable regulations of FIFA do not provide any definition of the term *decision*, however, the possible characterisation of a letter as a decision was considered in several previous CAS cases (for instance CAS 2008/A/1633; CAS 2007/A/1251; CAS 2005/A/899).

56. The Sole Arbitrator endorses the characteristic features of a decision stated in those CAS precedents, pursuant to which *"the form of the communication has no relevance to determine whether there exists a decision or not. In particular, the fact that the communication is made in the form of a letter does not rule out the possibility that it constitutes a decision subject to appeal. In principle, for a communication to be a decision, this communication must contain a ruling, whereby the body issuing the decision intends to affect the legal situation of the addressee of the decision or other parties.*, *an appealable decision of a sport association or federation is normally a communication of the association directed to a party and based on an animus decidendi, i.e. an intention of a body of the association to decide on a matter. […] A simple information, which does not contain any ruling, cannot be considered a decision"*.

57. In the present case, the Sole Arbitrator notes that the Appellant originally lodged a claim before the PSC, which actually led to the PSC Decision ultimately being communicated to the Appellant and Manisaspor.

58. By letter of 19 July 2017, the Appellant requested the FIFA Players' Status & Governance Department to forward the case to the FIFA Disciplinary and Governance department in order to initiate the necessary disciplinary proceedings against Manisaspor, which request led to the letter of the FIFA Players' Status & Governance Department dated 20 July 2017 to Manisaspor, urging the latter to pay the relevant amount to the Appellant.

59. By letter of 26 July 2017 from Manisaspor to FIFA, Manisaspor submitted, *inter alia*, that the claim of the Appellant pursuant to the Agent Contract, and thus pursuant to the PSC Decision, had been terminated due to the fact that the Appellant and Manisaspor had settled the dispute when concluding the Settlement Agreement, just as it was submitted that since 1 April 2015, FIFA was no longer competent to hear claims lodged by players' agents.

60. Based on that, on 15 August 2017, the FIFA Players' Status and Governance Department informed the Appellant and Manisaspor, *inter alia*, that *"In this respect and in line with our previous correspondence, we kindly inform the parties of the reference that we will now proceed to forward the entire file to the FIFA Disciplinary Committee for consideration and a formal decision"*.

61. Under these circumstances, the Sole Arbitrator finds that with the FIFA DC Letter it was made clear that the FIFA DC did not consider the PSC Decision to meet the requirement established

in article 64 of the FIFA Disciplinary Code even if FIFA, through its letter dated 20 July 2017, did urge Manisaspor to pay the relevant amount to the Appellant, thus indirectly referring to the PSC Decision.

62. In light of the above, the Sole Arbitrator finds that the FIFA DC Letter did in fact affect the legal situation of the Appellant and Manisaspor and that the said parties, not least based on the letter of 15 August 2017 from the FIFA Players' Status and Governance Department, did in fact have a legitimate expectation of the FIFA DC issuing a formal decision regarding the dispute.

63. Thus, based on the circumstances of the case, the Sole Arbitrator finds that the FIFA DC Letter is to be considered as a decision, which can be challenged before the CAS.

64. The FIFA DC Letter was forwarded to the Parties on 18 January 2018, and the Appellant filed its Statement of Appeal on 29 January 2018, i.e. within the statutory time limit set forth by the FIFA Statutes, which is not disputed.

65. It follows that the CAS has jurisdiction to decide on the Appeal and that the Appeal is admissible.

66. Under Article R57 of the CAS Code, the Sole Arbitrator has full power to review the facts and the law and may issue a *de novo* decision superseding, entirely or partially, the decision appealed against.

VI. APPLICABLE LAW

67. Article R58 of the Code states 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 the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

68. Article R57 paragraph 2 of the FIFA Statutes states as follows: *"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".*

69. The Sole Arbitrator notes that the Appellant and the Second Respondent both agree that Article 57 paragraph 2 is applicable to these proceedings.

70. As such, the Sole Arbitration is satisfied to apply primarily the various regulations of FIFA and, subsidiarily, Swiss law should the need arise to fill a possible gap in the rules and regulations of FIFA.

71. Finally, and for the sake of good order, the Sole Arbitrator notes that at the of the Appellant's original claim before the PSC, the FIFA Players' Agents Regulations (2008 edition) were in force and were, at least at that time, applicable to the dispute.

VII. DISCUSSION ON THE MERITS

72. Initially, the Sole Arbitrator notes that it is undisputed that in April 2011, the Appellant initiated proceedings against Manisaspor in front of the PSC, claiming the club's payment of EUR 285,000 pursuant to the Agent Contract between the Appellant and Manisaspor, and that the procedure was initiated by the PSC.

73. It is further undisputed that on 17 September 2012, the Appellant and Manisaspor entered into the Settlement Agreement, which settled the claim pending before FIFA, at least for the time being. Only on 19 September 2012, FIFA informed the Appellant and Manisaspor that the dispute will be submitted for the consideration of the PSC at the meeting scheduled on 25 September 2012.

74. Finally, it is undisputed that on 4 October 2012, the Appellant informed FIFA about the Settlement Agreement and requested the PSC *"to suspend the proceedings with reference […] Kenneth Joseph Asquez Vs. Manisaspor Kulubu Dernegi and as long as Manisaspor fulfils the payment calendar established in clause 2 of said Agreement and complies with all the remaining terms and conditions stated therein"* which request FIFA replied to, *inter alia*, as follows: *"In view of all the above, please take note that we will proceed to suspend the present proceedings without notifying the decision passed by the Players' Status Committee last 25 September 2012, since it now appears to have become obsolete".*

75. As regards the Appellant's request for suspension, the Sole Arbitrator notes initially that this request was solely made by the Appellant, whereas Manisaspor subsequently argued to FIFA that the PSC proceedings were in fact terminated as a consequence of the Settlement Agreement.

76. Moreover, the Sole Arbitrator notes that the Appellant is found not to be right in submitting that Article 3.2 of the Settlement Agreement provides that in case of failure to comply with its terms, the Appellant and Manisaspor agreed that the proceedings in front of FIFA would be reactivated.

77. It is correct that Article 3.2 of the Settlement Agreement states that *"Notwithstanding the above, the Agent will cooperate with Benfica for the reactivation of the Proceedings should Manisaspor not fulfil the present Agreement, in particular the payment plan established in clause 2 above",* however, in accordance with point III of the same Agreement, the *"Proceedings"* are not the proceedings initiated by the Appellant before the PSC, but instead the proceedings under case number 11-02318/ari, initiated by Benfica against Manisaspor.

78. Given these circumstances, the Sole Arbitrator therefore cannot assume that Manisaspor was also of the opinion that in case of failure to comply with the terms of the Settlement Agreement,

the Appellant and Manisaspor agreed that the proceedings in front of the FIFA would be reactivated.

79. On the contrary, the Sole Arbitrator takes note that it is expressly stated in Article 3.2 of the Settlement Agreement that *"In addition, should any amount stipulated in this Agreement not be paid by Manisaspor to the Agent, all the remaining amounts pending payment shall immediately become due and payable as of the date of the breach, accruing the corresponding interests"*., which the Sole Arbitrator perceives as a declaration to the effect that any further proceedings before the PSC regarding the said claim will no longer be necessary since Manisaspor has already admitted owing the amount in question to the Appellant.

80. Nevertheless, the Sole Arbitrator agrees with the Appellant that FIFA, by its explicit and clear confirmation of the suspension, did in fact create an assumption with the Appellant that the proceedings were effectively suspended as requested, which was indirectly supported by FIFA's failure to reimburse the Appellant for its advance of costs already paid.

81. The Sole Arbitrator further agrees that according to the principle of *estoppel/venire contra factum proprium*, a party cannot act against its own actions that created an assumption to another party relying in good faith on that assumption.

82. However, in order to decide which legal effect the creation of the assumption of suspension may have, if any, the Sole Arbitrator finds it relevant to examine the facts leading to this assumption, including but not limited to examining the conduct of the parties.

83. The Sole Arbitrator initially notes that the Settlement Agreement was entered into by the Appellant and Manisaspor on 17 September 2012. Thus, before the initial claim was dealt with by the PSC at its meeting on 25 September 2012.

84. Neither the Appellant, nor Manisaspor, managed to inform FIFA about the Settlement Agreement before the scheduled PSC meeting on 25 September 2012, which made the PSC decide on the initial claim leading to the PSC Decision.

85. FIFA submits that since the initial claim was actually settled between the parties even before the PSC Decision was made, the PSC Decision became obsolete and, thus, null and void.

86. The Sole Arbitrator notes that the Settlement Agreement deals with the same (and full) amount which was dealt with by the Appellant's initial claim lodged by the Appellant before FIFA in April 2011, since the Settlement Agreement includes, *inter alia*, Manisaspor's recognition of the full amount due and owing to the Appellant. Moreover, the parties have agreed on a future payment plan providing for payment of the whole of this amount in different instalments.

87. Furthermore, it follows from the wording of the Settlement Agreement that *"*[...] *this agreement represents the entire agreement between the parties relating to the subject matter of the present Agreement and supersedes all prior agreement, understandings representations and warranties relating to the subject matter of this Agreement"*., and further states that *"*[…] *In addition, should any amount stipulated in this Agreement*

not be paid by Manisaspor to the Agent, all the remaining amounts pending payment shall immediately become due and payable as of the date of the breach, accruing the corresponding interests".

88. Against the wording of the Settlement Agreement, the Sole Arbitrator agrees with FIFA that it can be concluded that the Appellant and Manisaspor did in fact novate Manisaspor's debt pursuant to the Agent Contract since the payment of the outstanding amount should in future be regulated by the Settlement Agreement.

89. In that context, the Appellant has denied that the Settlement Agreement is capable of novating the PSC Decision for the mere reason that the PSC Decision is newer than the Settlement Agreement. This argument should be rejected. In the Sole Arbitrator's view, is not a novation of the PSC Decision, but rather a novation of the original debt pursuant to the Agent Contract, resulting in a new outstanding amount, pursuant to the Settlement Agreement.

90. As already mentioned, the conclusion of the Settlement Agreement implies, *inter alia*, that the Appellant and Manisaspor entered into an agreement on a payment plan, under which Manisaspor was not supposed to pay the first instalment of EUR 100,000 to the Appellant until 30 September 2012.

91. As a consequence of this, the Appellant's initial claim before FIFA was in fact legally groundless at the time when the claim was considered and decided by the PSC on 25 September 2012 since any reference to the Settlement Agreement implies that an outstanding amount between the Appellant and Manisaspor actually no longer existed on 25 September 2012.

92. At the time, when the PSC was considering the Appellant's initial claim, the Appellant had therefore no legitimate interest in having the claim considered by the said body of FIFA.

93. The Sole Arbitrator notes that if the Appellant (or Manisaspor) in due time had responded FIFA's letter of 19 September 2012 and, therefore, had informed FIFA in good faith of the conclusion of the Settlement Agreement, then it must reasonably be assumed that the PSC would have elected not to consider the initial claim at its meeting on 25 September 2012.

94. Given these circumstances, the Sole Arbitrator finds that the PSC's decision to consider the Appellant's initial claim leading to the PSC Decision and the later creation of the assumption of suspension was in fact, at least partially, caused by the Appellant's failure to inform FIFA of the Settlement Agreement in good faith and in due time.

95. The Sole Arbitrator acknowledges and understands that FIFA did in fact render a decision regarding the initial claim and that FIFA, vis-à-vis the Appellant, accepted and confirmed the suspension of the proceedings as requested by the Appellant after the PSC Decision was rendered. However, the Sole Arbitrator finds that the Appellant cannot rightly invoke the principles of estoppel/*venire contra factum proprium* on the ground that the latter did not act in good faith. In this respect, the Sole Arbitrator considers that the Appellant should have informed FIFA of the Settlement Agreement immediately after its conclusion and, under any circumstances, immediately after receiving FIFA's letter of 19 September 2012.

96. Moreover, the Sole Arbitrator notes that the Appellant, in his request to FIFA to reinitiate the proceedings, refers to Manisaspor's recognition of its debt of EUR 100,000 pursuant to the Settlement Agreement. For that reason, the Sole Arbitrator agrees with FIFA that this may be assumed to be a new claim (see more details on novation below).

97. Accordingly, the Sole Arbitrator finds that no violation of these principles has been committed that would involve any denial of justice to the Appellant.

98. As regards the PSC Decision itself, the Sole Arbitrator notes initially that FIFA has stated consistently, and already in its letter of 5 October 2012, that the decision was to be considered "obsolete" and therefore null and void, for which reason it has no formal legal effect according to FIFA.

99. The Sole Arbitrator further notes, as submitted by FIFA, that article 242 of the Swiss Code of Civil Procedure provides that *"If for any other reason the proceedings end without a decision, the proceedings shall be dismissed"*.

100. This provision is assumed to be applicable, for instance in a situation where the legitimate interest of the claimant definitively ceases after the beginning of the *lis pendens*, for instance due to the parties' conclusion of an extrajudicial settlement agreement.

101. As already mentioned above, the Appellant failed to inform FIFA in due time about the Settlement Agreement, which, in the Sole Arbitrator's opinion, deprived the Appellant of his legitimate interest in having the PSC render a decision at the time concerned.

102. However, without any information regarding the claim already having been settled by the parties in the Settlement Agreement, the PSC failed to dismiss the claim and instead proceeded with rendering the PSC Decision even though the Appellant no longer had a legitimate interest in having his initial claim decided on.

103. Based on that, and since the Appellant failed to inform FIFA in good faith and in due time of the Settlement Agreement, thus causing the PSC to proceed with its proceedings and to render the PSC Decision, the Sole Arbitrator finds that the PSC Decision does not meet the requirements for FIFA to initiate disciplinary proceedings against Manisaspor, pursuant to Article 64 of the FIFA Disciplinary Code. As such, FIFA's refusal to initiate such disciplinary proceedings on the basis of the PSC Decision does not constitute any denial of justice to Appellant either.

104. The Sole Arbitrator will not refrain from mentioning, however, that it is found inappropriate that FIFA, while considering the PSC Decision "obsolete", nonetheless chose to send this decision to the Appellant and Manisaspor in 2017, which to some extent may be presumed to have been instrumental in causing the present case.

105. The Sole Arbitrator further notes for the sake of completeness that this does not automatically imply that the Appellant is precluded from initiating proceedings for the purpose of receiving payment of the outstanding amount pursuant to the Settlement Agreement from Manisaspor.

106. Accordingly, the Settlement Agreement states that *"Any dispute concerning this Agreement will be resolved, expressly waiving any jurisdiction that may correspond, by the corresponding competent FIFA body according to its regulations. In case FIFA rejects its competence, such dispute must be solved by the Court of Arbitration for Sport (CAS) based in Lausanne, Switzerland, both proceedings according to the Swiss law and FIFA regulations applicable at any possible dispute"*.

107. Even if the Sole Arbitrator does in principle agree with the Appellant in relation to the principle of *tempus regit actum* as regards any (theoretical) claim against Manisaspor arising out of the Agent Contract, the Sole Arbitrator emphasizes that since the Appellant's current claim against Manisaspor arises out of the Settlement Agreement and therefore formally constitutes a claim other than the Appellant's initial claim, the Sole Arbitrator agrees with FIFA that after 1 April 2015 (and the coming into force of the Regulations on Working with Intermediaries), FIFA is no longer competent to hear claims lodged by players' agents, and the case before us consequently does not amount to a wrongful denial of justice.

108. The Sole Arbitrator notes for the sake of completeness that if the Appellant had lodged a claim with FIFA against Manisaspor arising out of the Settlement Agreement before 1 April 2015, then FIFA, all else being equal, would probably have been competent to hear the claim. During these proceedings, the Appellant has not explained why this did not happen.

109. Based on the foregoing and after taking into consideration all the evidence produced and all arguments made, the Sole Arbitrator finds that FIFA has not committed an act of denial and justice to the Appellant by denying to reinitiate the proceedings before the PSC and refusing to initiate disciplinary proceedings against Manisaspor.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed on 29 January 2018 by Kenneth Joseph Asquez against the decision of the FIFA Disciplinary Committee issued on 18 January 2018 is dismissed.

2. The decision of the FIFA Disciplinary Committee issued on 18 January 2018 is upheld.

(…)

5. All further and other requests for relief are dismissed.