



Arbitration CAS 2018/A/5647 Civard Sprockel v. Fédération Internationale de Football Association (FIFA) & PFC CSKA-Sofia, award of 28 December 2018

Panel: Mr José Juan Pinto (Spain), President; Mr Manfred Nan (The Netherlands); Prof. Martin Schimke (Germany)

Football

Refusal by FIFA to open disciplinary proceedings against a club under insolvency proceedings

CAS jurisdiction

Appealable decision

Referral to previous instance in order to render decision on player's claim and club's potential successor

1. In circumstances where on several occasions, a player requested the FIFA Disciplinary Committee (FIFA DC) to proceed against a club (the new club) as the presumed sporting successor of a club against which the player had obtained a decision by the FIFA Dispute Resolution Chamber (FIFA DRC) awarding him outstanding remuneration (the old club), but FIFA, by means of a letter informed the player that it did not “appear” to be in a position to proceed with the case, the player does not have, within the disciplinary proceedings, any internal legal remedy to exhaust and may thus resort to CAS jurisdiction. Specifically, it is not necessary for the player to start new proceedings before the FIFA DRC to resolve the issue of the old club's succession and determine the nature of the relationship between the old club and the new club; such issue can be dealt with within the existing disciplinary proceedings.
2. In order to determine whether or not there exists an “appealable decision”, the following definitions and characteristics have been established, *inter alia*: (a) the form of the communication has no relevance; 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; (b) 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; (c) a decision is a unilateral act, sent to one or more determined recipients and is intended to produce legal effects; (d) 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. A letter by FIFA by which it communicates to the addressee that it is not in a position to continue with the proceedings requested by the addressee in order to enforce a decision by the FIFA DRC awarding him outstanding remuneration is based on an ‘*animus decidendi*’; it further objectively affects the addressee's legal position with regard to his right to pursue the enforcement of his claim.

3. According to Article R57 of the CAS Code, a CAS panel may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. *E.g.* a CAS panel may decide to refer a case back to FIFA in circumstances where a player, in the context of disciplinary proceedings in front of the FIFA DC initiated by him in order for the FIFA DC to enforce a decision by the FIFA DRC obtained by the player against his former club for outstanding remuneration, and where the FIFA DC, instead of taking a decision, suspends the proceedings following the bankruptcy of the player's former club. This is even more the case where a new club, presumably the sporting successor of the old club has appeared and where it would be for FIFA to resolve whether the new club is the same as – and/or the sporting successor of – the old club.

I. PARTIES

1. Civard Sprockel (the “Player” or the “Appellant”) is a Dutch professional football player, born on 10 May 1983.
2. The Fédération Internationale de Football Association (“FIFA” or the “First Respondent”) is the global governing body of football with its registered office in Zurich, Switzerland. FIFA exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and players worldwide.
3. PFC CSKA-Sofia (the “New Club” or the “Second Respondent”) is a professional football club with its registered office in Sofia, Bulgaria and is affiliated with the Bulgarian Football Union (“BFU”), which in turn is affiliated to FIFA.

II. FACTUAL BACKGROUND AND PROCEEDINGS BEFORE THE FIFA BODIES

4. A summary of the most relevant facts and the background giving rise to the present dispute will be developed based on the parties' written submissions, the evidence filed with such submissions, and the statements made by the parties and the evidence taken at the hearing held in the present case. Additional facts may be set out, where relevant, in connection with the legal discussion which follows. The Panel refers in the present Award only to the submissions and evidence it considers necessary to explain its reasoning. The Panel, however, has considered all the factual allegations, legal arguments, and evidence submitted by the parties during the present proceedings.

5. On 12 June 2012, the Player and the professional football club PFC CSKA Sofia (hereinafter, the “Old Club”)¹ entered into an employment contract valid as of 2 July 2012 until 30 June 2014 in which the Player was entitled to receive the total amount of EUR 360,000 (the “Contract”).
6. On 17 December 2012, the Player terminated the Contract due to the overdue payment of salary owed by the Club.
7. On 15 January 2013, the Player lodged a claim against the Old Club before the FIFA Dispute Resolution Chamber (hereinafter, the “FIFA DRC”) claiming the total amount of EUR 332,400, plus 5% interests *p.a.* as well as the legal and procedural costs.
8. On 19 February 2015, the FIFA DRC partially confirmed the requests of the Appellant and sentenced the Old Club to pay the following amounts (hereinafter, the “DRC Decision”):
 - EUR 40,000 plus 5% interest (as of different dates until the date of effective payment) as outstanding remuneration;
 - BGN 4,693,99 as the reimbursement of accommodation expenses;
 - EUR 127,000 plus 5% interest (as of 15 January 2013 until the date of effective payment) as compensation for breach of contract.
9. During the 2015/2016 football season, no club under the name PFC CSKA Sofia (or similar) participated in the first or second division of the BFU.
10. On 3 September 2015, the Player informed FIFA that the Old Club had not complied with the DRC Decision and requested to submit the case to the FIFA Disciplinary Committee (hereinafter, the “FIFA DC”) *“for consideration and a formal decision”*.
11. On 2 October 2015, the Sofia City Court declared the Old Club insolvent with its Decision No. 1581.

“IT DECLARES THE INSOLVENCY OF PROFESSIONAL CLUB CSKA AD (...).

IT INITIATES PROCEEDINGS FOR INSOLVENCY on the grounds of art. 630 (...).

*IT APPOINTS AS A TEMPORARY RECIEVER (...)*².
12. On 7 October 2015, the BFU informed FIFA that the Old Club *“asks for postponement of the judged by the Disciplinary Committee of FIFA sanctions, till clarification of the possibility for rehabilitation of the club in the process of the insolvency proceedings”*.

¹ Please note that the names of the clubs PFC CSKA-Sofia (*i.e.* the New Club) and PFC CSKA Sofia (*i.e.* the Old Club) are different due to the hyphen in the former.

² Translation provided by the Second Respondent not contested by the Appellant.

13. On 5 November 2015, the amount due to the Player as foreseen in the DRC Decision was registered in the insolvency proceedings.

14. On 16 December 2015, FIFA informed the Player that:

“(..) we are opening disciplinary proceedings against the club PFC CSKA Sofia in respect of a violation of article 64 of the FDC.

However, since we have been informed by the Bulgarian Football Union (...) that the club PFC CSKA Sofia is currently under insolvency proceedings, we would like to inform you that, after a detailed analysis and especially taking into account the provided information, the Chairman of the Disciplinary Committee came to the conclusion that the present disciplinary proceedings will be suspended until the club PFC CSKA Sofia’s liquidation process finalizes in accordance with Bulgarian law”.

15. On 11 January 2016, within the insolvency proceedings, the Old Club objected to the amount registered in the final and binding DRC Decision as due to the Player.

16. On 25 May 2016, by Decision No. 2837, the Sofia City Court partially accepted the objection of the Club and reduced the Player’s credit to the amount of BGN 19,853 (approx. EUR 10,000).

17. Apparently, the Player was notified of this decision and did not file any legal remedy to try to change it.

18. In May and June 2016, the New Club appeared in the Bulgarian football scope under the auspices of a group of entrepreneurs, Mr. Grisha Danailov Ganchev, Mr. Julian Sefedov and Mr. Hristo Stoichkov (hereinafter, the “Entrepreneurs”).

19. On 30 June 2016, the Player insisted before FIFA *“on staying of the proceedings against PFC CSKA to continue before your Committee as far as there is no legal basis [for] the proceedings to be stopped. In the meantime the Bulgarian Football Union recognized and accepted a new legal person with the name PFC CSKA, the same owners of the club and with the same headquarters while currently PFC CSKA is under insolvency proceedings.*

In the insolvency case of the debtor club the claim of Mr. Sprockel was not accepted and the decision of the Dispute Resolution Chamber of FIFA was not recognized because according to the ground of the legal act of the court the claim of my client should have been lodged in front of the Bulgarian Court”.

20. On 13 July 2016, FIFA DC received a letter, allegedly on behalf of the Judicial Administrator of the Old Club, Ms. Dora Mileva-Ivanova³ (hereinafter, the “Administrator”), which stated, *inter alia*, as follows:

³ The signature and contents of this letter were denied by Ms. Mileva-Ivanova at the hearing.

“I am writing to you in my capacity of Court Administrator of PFC CSKA AD (...) my primary duties are to administer the insolvency proceedings, to protect the interests of the creditors whose receivables have been accepted by the court and to exercise control on the management of the company. (...).

In the case of Mr. Sprockel: I had initially included the full amount that he claimed from the Club (approximately EUR 167 thousand) in the insolvency proceedings. (...). The management of the Club submitted an objection and due to this, the court excluded most of the amount except for BGN 19,853 (approximately EUR 10 thousand). (...). All creditors whose claims were rejected with this court ordinance, had 7 days to file a separate claim in the Sofia city court (...) but Mr. Sprockel and his lawyer did not do this. As a result, Mr. Sprockel lost the right to claim the rest of his receivables from PFC CSKA AD.

(...).

However, FIFA needs to be aware also of and investigate the following actions of the Bulgarian Football Union (BFU) and two Bulgarian football clubs.

During the past several months, the majority shareholders of the Club (PFC CSKA AD) had been trying to deliberately bankrupt their own Club which means that the creditors will have to write off all their receivables in the amount exceeding EUR 15 million. At the same time, these same businessmen have taken steps to rename two other clubs with the name CSKA, including:

- the football club PFC Chavar (...).

- the football club PFC Litex AD (...) changed its name to PFC CSKA Sofia AD and moved its seat from the town of Lovech to the address of PFK Sofia AD (...).

Surprisingly, the second club (i.e. PFC Litex) was recently licensed by the BFU for participation in the newly established First Professional League in Bulgaria under the new name PFC CSKA Sofia AD, which is identical to the name of the Club. (...) They are even using the logo of CSKA, which is a registered trademark (...).

The sole result of these actions of BFU and these two clubs is that the Club is forced intentionally into bankruptcy with the sole goal to rob the creditors of PFC CSKA AD who will have to write off 100% of their receivables from the Club, which are almost BGN 30 million (i.e. approximately EUR 15 million). This seems a brutal violation of the Financial Fair Play regulations of FIFA and UEFA. (...).

21. In the 2016/2017 season, the New Club effectively participated in the highest division of Bulgarian football and finished third place in the league's final rankings.
22. On 28 July 2016, the Player informed FIFA DC that the Old Club was participating in the Bulgarian league under the New Club's name despite the insolvency proceedings and insisted that *“the new club should be responsible for the debts towards [the Player]”*.
23. Several months later, the Entrepreneurs financially supported the company “Red Animals EOOD” (hereinafter, “Red Animals”) and, on 30 May 2017, under a public tender, Red Animals acquired the assets of the Old Club (including its image rights) for an amount of BGN 8.000.000 (approx. EUR 4.000.000).

24. On 16 June 2017, the Old Club's list of creditors was published within the scope of the insolvency proceedings. An amount totalling BGN 19,853 (approx. EUR 10.000) was designated as due to the Player.
25. On 23 August 2017, the Appellant directly requested that the New Club comply with the financial obligations deriving from the DRC Decision by no later than 1 September 2017.
26. On 28 August 2017, the New Club informed the Player that it was a *"new and different football club and an entirely different entity from the previous football club "Professional Football Club CSKA"* and that it had *"no legal or financial links to the club "Professional Football Club CSKA"* which was *"undergoing bankruptcy proceedings"*.
27. On 8 September 2017, the FIFA DC informed the parties that it was *"closely investigating the current situation of the club PFC CSKA Sofia"*.
28. On 13 September 2017, the BFU informed the FIFA DC that:

 “(...)

 1. *By Decision No. 1584/09.09.2016, the Sofia City Court has declared PFC "CSKA" Sofia in bankruptcy and terminated the club's activity (...).*

 2. *On May 30, 2017, an auction for the sale of the entire property of the club, which was won for the amount of BGN 8 million was held. A breakdown has been prepared between the 143 creditors approved by the court. The Player Civard Sprockel is included in the list of creditors under No. 123 with an amount of BGN 19 853.*

 3. *According to Article 27, Paragraph 1, Item 2 of the BFU Statute, the membership of any club declared in bankruptcy shall be terminated. The termination of membership of PFK "CSKA" Sofia is stated by a decision of the BFU Executive Committee that was adopted at a meeting on June 20, 2017. The decision of the BFU Executive Committee will be submitted for consideration by the BFU Congress, to be held in early 2018"*.
29. On 21 September 2017, the Appellant filed several documents in the disciplinary proceedings with the aim to provide evidence that the New Club should be considered as the same club as and/or the sporting successor of the Old Club, and requested that FIFA DC *"immediately continue the execution of the FIFA DRC decision against the club which is currently competing in the Bulgarian championship under the name PFC CSKA-Sofia and not to let any possible argument that said club cannot be considered responsible for the obligations deriving from the relevant FIFA DRC Decision delay the execution any further"*.
30. On 8 February and 13 March 2018, the Appellant requested the FIFA DC to acknowledge receipt of the above communication and provide an update of the disciplinary proceedings.
31. On 14 March 2018, the FIFA Disciplinary Committee sent the Appellant the following communication (hereinafter, the "Appealed Letter"):

“(...) we take due note from the aforementioned correspondence from the Bulgarian Football Union that Mr. Sprockel was “(...) included in the list of creditors under No. 123 with an amount of BGN 19 853 (about 10 150)”. The same information was previously included in the letter dated 13 July 2016 from the court administrator of the club PFC CSKA Sofia which was forwarded to the parties by correspondence dated 25 July 2016(...).

On the account of the above, we must inform you that, as a general rule, the FIFA Disciplinary Committee cannot deal with cases involving clubs which have been declared bankrupt and/or are no longer affiliated to their association.

As a consequence of the foregoing, on behalf of the chairman of the FIFA Disciplinary Committee, we regret having to inform you that we do not appear to be in a position to proceed with the case of the reference in which the club PFC CSKA Sofia is involved since the club was declared bankrupt and became disaffiliated.

Finally, we would like to add that our statements made above are primarily based on the information we received from the court administrator of the club PFC CSKA Sofia, Mr. Sprockel’s legal representative and the Bulgarian Football Union and hence are of a general nature and without prejudice whatsoever”.

32. On 20 March 2018, the Appellant sent the FIFA Disciplinary Committee another letter, which, *inter alia*, reads as follows:

“(...) we strongly disagree with the conclusions that you and/or the chairman of the FIFA Disciplinary Committee seem to reach. (...) we have outlined that the club currently competing in the highest division of the Bulgarian Football Union under the name PFC CSKA Sofia is one and the same club as the club with which Mr. Civard Sprockel signed an employment contract in June 2012.

(...) Sprockel has been the victim of an outrageous scam in which a bogus-bankruptcy and a bogus-disaffiliation have been created just to avoid paying the debts to their former players. It goes unmentioned that such actions cannot be rewarded by FIFA and the BFU and that we therefore do not share the conclusions reached by you or the BFU.

(...) we kindly ask you to proceed with the matter and submit it to the FIFA Disciplinary Committee in the next meeting in order for said committee to pass a well-informed decision based on all the documentation at disposal.

(...) we kindly – but urgently – ask you to confirm to us by no later than 27 March 2018 whether or not you will submit Mr. Sprockel’s request, argumentation and documentation included (...) to the FIFA Disciplinary Committee. Should we not hear from you within the mentioned deadline, we will consider that you do not intend to submit the matter to the FIFA Disciplinary Committee and will consider your letter dated 14 March 2018 as your final decision in this respect”.

33. FIFA did not answer the Appellant’s letter.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

34. On 3 April 2018, the Appellant filed a Statement of Appeal before the Court of Arbitration for Sport (hereinafter, the “CAS”) in accordance with Articles R47 and R48 of the CAS Code of Sports-related Arbitration (hereinafter, the “CAS Code”) against the Appealed Letter rendered by FIFA on 14 March 2018.
35. On 20 April 2018, the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code with the following requests for relief:
- a) *To declare that the letter of FIFA dated 14 March 2018 constitutes a decision.*
 - b) *To annul such decision and rule that there is no disaffiliation and/or bankruptcy that prevents FIFA from proceeding with the execution of the FIFA DRC decision dated 19 February 2015.*
 - c) *To rule that PFC CSKA-Sofia (i.e. the Bulgarian professional football club currently playing in the highest division of the Bulgarian professional competition under this name) is responsible for the payment of the amounts due to the Appellant in accordance with the FIFA DRC decision of 19 February 2015.*
 - d) *To order FIFA to execute the FIFA DRC decision dated 19 February 2015 against PFC CSKA-Sofia.*
 - e) *To order FIFA to impose disciplinary sanctions on PFC CSKA-Sofia in accordance with art. 64 of the FIFA Disciplinary Code for the non-compliance of said club with the FIFA DRC Decision dated 19 February 2015.*
 - f) *To condemn the Respondents to pay the entire CAS administration costs and the arbitration fees – if applicable – and to reimburse the Appellant of any and all expenses he incurred in connection with this procedure.*
 - g) *To rule that the Respondents have to pay the Appellant a contribution towards his legal costs”.*
36. On 24 April 2018, the First Respondent objected to the admissibility of the appeal and requested the CAS to render a preliminary award on admissibility.
37. On 25 April 2018, the CAS Court Office informed the Appellant that he should pay an advance of costs in accordance with Article R64 of the Code as the matter was related to the issue of the enforcement of a FIFA decision and was not of a purely disciplinary nature. Furthermore, the parties were invited to state their position on the First Respondent’s request of rendering a preliminary award on admissibility.
38. On 3 May 2018, the Appellant objected to the First Respondent’s request for CAS to render a preliminary award on admissibility.

39. On 4 May 2018, in view of the Appellant's position, the CAS Court Office informed the parties that the issue of the First Respondent's request to bifurcate the present proceedings was to be submitted to the CAS Appeals Arbitration Division.
40. On 8 May 2018, the President of the CAS Appeals Arbitration Division decided that it would be for the Panel, once constituted, to decide whether to bifurcate the proceedings or not.
41. On 22 May 2018, the CAS Court Office, on behalf of the President of the CAS Appeals Arbitration Division, informed the parties that the Panel appointed to decide the present case was constituted as follows:

President: Mr. José Juan Pintó Sala, Attorney-at-law in Barcelona, Spain.

Arbitrators: Mr. Manfred Nan, Attorney-at-law in Arnhem, The Netherlands.

Prof. Dr. Martin Schimke, Attorney-at-law in Düsseldorf, Germany.

42. On 28 May 2018, the CAS Court Office informed the parties that Mr. Roberto Nájera Reyes, attorney-at-law in Barcelona, Spain would assist the Panel as *ad hoc* Clerk.
43. On the same day, the parties were informed that the Panel had decided not to bifurcate the present proceedings.
44. On 11 June 2018, upon the parties' agreement, the Second Respondent's deadline to file its Answer was extended until 9 July 2018.
45. On 12 June 2018, upon the parties' agreement, the First Respondent's deadline to file its Answer was extended until 9 July 2018.
46. On 5 July 2018, the Second Respondent requested an extension to the deadline to file its Answer until 16 July 2018. On the same day, the Appellant objected to such extension.
47. On 6 July 2018, the Panel decided to grant the Second Respondent a final extension to the deadline to file its Answer until 16 July 2018.
48. On 9 July 2018, the First Respondent filed its Answer to the Appeal in accordance with Article R55 of the CAS Code with the following requests for relief:

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

2. To confirm that the letter sent by the Deputy Secretary to the FIFA Disciplinary Committee on 14 March 2018 cannot be considered a decision and declare the appeal inadmissible.

3. Alternatively, to confirm the content of the letter sent by the Deputy Secretary to the FIFA Disciplinary Committee on 14 March 2018 hereby appealed against.

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

the First Respondent related to the present procedure”.

49. On 12 July 2018, the Second Respondent informed the CAS Court Office that the Appellant had lodged a claim before the FIFA DRC against them by which it was making the exact same financial demands as the ones related to the enforcement of the DRC Decision. In view of this, the Second Respondent requested that its deadline to file its Answer be suspended until receipt of the cited claim lodged before FIFA.
50. On 13 July 2018, the Appellant and the First Respondent were invited to comment on the Second Respondent’s request to suspend its deadline to file its Answer. Meanwhile, the Second Respondent’s deadline to file its Answer was provisionally suspended.
51. On the same day, the Appellant provided the Second Respondent with the new claim that it had filed before FIFA DRC and justified its submission based on the considerations of the CAS award 2017/A/5460.
52. On 16 July 2018, the CAS Court Office lifted the suspension to the Second Respondent’s deadline to file its Answer.
53. On 18 July 2018, the Second Respondent filed its Answer to the Appeal Brief in accordance with Article R55 of the CAS Code with the following requests for relief:

“PRAYERS FOR RELIEF

Prayer 1: *CAS shall rule that it has no jurisdiction to bear this Appeal.*

Subsidiary to Prayer 1:

Prayer 1A: *The Appeal shall be declared inadmissible.*

Subsidiary to Prayer 1A:

Prayer 1B: *The Appeal shall be rejected.*

Prayer 2: *Mr. Civard Sprockel shall be ordered to bear the costs of the arbitration and he shall be ordered to contribute to the legal fees incurred by Second Respondent at an amount of CHF 15.000.*

And with the following

PROCEDURAL REQUESTS

Request 1: *CAS shall render a Preliminary Award on Jurisdiction.*

Subsidiary to request 1:

Request 1A: *CAS shall render a Preliminary Award on Admissibility”.*

54. On 23 July 2018, the Appellant requested a second round of written submissions.
55. On 25 July 2018, the Panel decided to grant the Appellant's request for a second round of written submissions.
56. On 8 August 2018, the Appellant filed his Reply.
57. On 10 August 2018, the Respondents were invited to file their respective Rejoinders.
58. On 3 September 2018, the CAS Court Office acknowledged receipt of the Rejoinders filed by the First Respondent on 27 August 2018 and by the Second Respondent on 29 August 2018, and invited the parties to inform CAS whether they preferred a hearing to be held regarding this matter or not.
59. On 7 September 2018, the First Respondent stated that it did not require a hearing to be held.
60. On 10 September 2018, the Appellant stated that it should be left to the Panel to decide whether they deemed a hearing necessary or not.
61. On the same day, the Second Respondent stated that it did not require a hearing to be held.
62. On 13 September 2018, the CAS Court Office informed the parties that the Panel had decided to hold a hearing in this matter and instructed the Second Respondent to take the necessary steps in order to ensure the presence of the Administrator, Ms. Dora Mileva-Ivanova, at the hearing.
63. On 28 September 2018, the CAS Court Office acknowledged receipt of the Order of Procedure duly signed by the Appellant's representative.
64. On 3 October 2018, the CAS Court Office acknowledged receipt of the Order of Procedure duly signed by the First and Second Respondent's representatives.
65. On 24 October 2018, the Second Respondent filed two documents with evidence that Red Animals had already made the payment into the bankruptcy mass of the Old Club in the context of the public tender by which it acquired the assets of the Old Club. In this regard, the Appellant was invited by the CAS Court Office to inform whether he agreed to admit such documents to the file or not.
66. On 25 October 2018, the Appellant did not object to the admissibility of the documents filed by the Second Respondent.
67. The hearing in the present procedure took place in Lausanne, Switzerland, on 1 November 2018. At the hearing, the Appellant was represented by his Legal Counsels, Mr. Louis Everard and Mr. Roy Vermeer. The First Respondent was represented by Mr. Jaime Cambreleng, Head of Disciplinary, and by Mr. Julien Deux and Mr. Alexander Jacobs, respectively, Group Leader and Legal Counsel of the Disciplinary Department. The Second Respondent was represented by its in-house lawyer, Mr. Georgi Cholakov, and by its Legal Counsel, Dr. Jan Kleiner. In

addition, Mr. William Sternheimer, Deputy Secretary General of the CAS, and Mr. Roberto Nájera Reyes, *ad hoc* Clerk, assisted the Panel at the hearing.

68. At the outset of the hearing, the parties confirmed that they had no objections to the constitution of the Panel.
69. After the respective opening statements, the Second Respondent stated that in addition to Ms. Ivanova's testimony, Ms. Zornitsa Lazarova, a lawyer who helped the Administrator during the bankruptcy proceedings, was also ready to give her testimony as to the facts of the case. The Appellant did not object to the potential examination of Ms. Lazarova and, thus, the Panel admitted her as a witness. Ms. Dora Mileva-Ivanova and Ms. Lazarova were invited by the President of the Panel to tell the truth subject to the sanctions of perjury. The Panel and the Parties had the opportunity to examine and cross-examine the witnesses with the help of the translator, Ms. Nedyalka Chakalova. The Panel shall stress that one of the most remarkable and surprising statements of Ms. Mileva-Ivanova was her denial of having signed or sent the letter received by the FIFA DC on 13 July 2016.
70. During the hearing, the parties had the opportunity to present their case, to submit their arguments and to comment on the issues and questions raised by the Panel.
71. At the end of the hearing, all the parties expressly declared that they did not have any objection with respect to the procedure and that their right to be heard had been fully respected.
72. Finally, the Panel invited the parties to settle the case and granted them one week to inform the CAS Court Office if it was possible to reach a settlement agreement between them.
73. On 9 November 2018, in absence of any communication from the parties of a possible settlement agreement, the parties were informed that the Panel would proceed with the issuance of this award.

IV. SUMMARY OF THE PARTIES' SUBMISSIONS

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

IV.1. The Appellant (Civard Sprockel)

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

A. The letter from FIFA is an appealable decision

76. According to CAS jurisprudence (CAS 2015/A/4266), the following elements shall be taken

into account for a letter to be considered an appealable decision:

- The form of the communication has no relevance in determining whether it is a decision or not.
- The communication must contain a ruling that seeks to affect the legal situation of the addressee.
- The decision is a unilateral act sent to one or more determined recipients intended to produce legal effects.
- An appealable decision of a sport association or federation *“is normally a communication of the association directed to a party and based on “animus decidendi”, is an intention of a body of the association to decide on a matter [...]”*.

The Appealed Letter fulfills these elements and affects the Appellant’s legal position once FIFA decided not to proceed with the execution of a FIFA DRC decision entitling the Appellant to a significant amount of money.

In addition, the FIFA letter appealed in the case CAS 2015/A/4162, which is almost identical to the one in the present case, was considered to be an appealable decision.

77. If the Appealed Letter is not considered an appealable decision, the Player will not have access to justice as FIFA contends that (i) there is no appealable decision, (ii) the Old Club has been declared in bankruptcy and (iii) that the suggestion of the Sole Arbitrator in the CAS 2017/A/5460, is not a feasible solution.

FIFA shall be responsible for investigating and sanctioning when there is a mechanism of false insolvencies, administrative mismanagement and company reorganization like the case at stake, especially when a player has been a victim for more than three years.

B. With respect to the considerations in the CAS 2017/A/5460

78. According to the New Club, based on the conclusions of the case CAS 2017/A/5460, this appeal is to be considered a new claim *“on the merits”* and, thus, in its opinion, the Player has to seek redress through the FIFA DRC by filing *“a new claim against a different legal entity”*. The Player cannot follow this reasoning for the following reasons:

- (i) Both, the FIFA DRC as well as the FIFA DC, are in a position to decide if a club is the same and/or the successor of another club (there is no provision to the contrary);
- (ii) There is no specific reference to any rule or regulation which would prevent the FIFA DC from making that assessment itself;
- (iii) If the player would follow the New Club’s line of reasoning, this would mean that the Player has to start his procedure in front of the FIFA DRC once again. Assuming that

the FIFA DRC accepts the case and comes to the conclusion that the New Club is the successor of the Old Club – after a procedure of another year or two – (i) the New Club would again deny the payment, (ii) the Player would have to request disciplinary measures to execute this new decision and (iii) the New Club could change again its legal form to avoid the payment in a never-ending story;

- (iv) FIFA has stated that the suggestions in the award referred to and the reasoning of the New Club is not feasible;
- (v) The “*merits*” of the case only relate to the actual dispute itself (*i.e.* whether or not a club or a player had just cause to terminate the Contract, whether or not salaries were paid, etc). In fact, in the case at stake, the only thing that FIFA DC has to do is assess if the New Club is to be considered the same as the Old Club, or its sporting successor.

C. On the Appealed Decision

- 79. The Appealed Letter considered that it cannot enforce the DRC Decision due to the disaffiliation and liquidation of the Old Club. This is wrong because the bankruptcy was triggered by the New Club which (i) is currently in the Bulgarian first division, (ii) without being involved in any insolvency proceedings and (iii) can freely manage its assets.
- 80. Article 107 of the Disciplinary Code states that the disciplinary procedure may be closed if “*a party declares bankruptcy*”. However, the CAS has stated that the closing of a disciplinary procedure due to insolvency is not automatic and it would depend on the circumstances of each case in order to avoid a misuse of insolvency proceedings (CAS 2015/A/4162). FIFA did not take into account the particularities of this case and simply decided to take the easy way out by stating that the Old Club was declared bankrupt and disaffiliated.

D. The New Club is the same as - and/or the successor of the - Old Club

- 81. The only possible reason why FIFA refused to proceed with the disciplinary case against the New Club is because FIFA considers that the New Club is not the same as the Old Club or its sporting successor.
- 82. The CAS jurisprudence has stated that:

“(...) in front of FIFA’s decision-making bodies (...), on the one side, a club is a sporting entity identifiable by itself that, as a general rule, transcends the legal entities which operate it. Thus, the obligations acquired by any of the entities in charge of its administration in relation with its activity must be respected; and on the other side that the identity of a club is constituted by elements such as its name, colours fans, history, sporting achievements, shield, trophies, stadium, roster of players, historic figures, etc. that allow it to distinguish from all the other clubs” (CAS 2013/A/3425).

And that:

“(...) in the case at hand, Ujpest 1885 is actually the sporting successor of Ujpest FC” once it considered that *“with regard to the application of the RSTP in particular, the issue of the succession of two sporting clubs might be different that if one were to apply civil law, regarding the succession of two separate legal entities”* (CAS 2016/A/4576).

83. Based on the aforementioned jurisprudence, the New Club is the same as - and/or the successor of the - Old Club for the following reasons:
- (i) The only difference between the Old Club (“PFC CSKA Sofia”) and the New Club (“PFC CSKA-Sofia”) is the hyphen in their name. This is true despite the Second Respondent’s statements regarding its alleged lack of a legal or financial relationship with the Old Club;
 - (ii) The New Club publicly portrays itself as the same club as the Old Club against which the DRC Decision was passed. Furthermore, the New Club is taking advantage of and exploiting the history and commercial value of the Old Club. However, in the court room when the New Club is compelled to fulfil the Old Club’s obligations, it states that it is a new legal entity with no links whatsoever;
 - (iii) The New Club identifies itself as a sports entity founded in 1948 and, publicly and without reservations, is celebrating its *“70th anniversary”* (the same as the Old Club would be celebrating were it still in existence);
 - (iv) It is evident that there are financial links between the Old Club and the New Club since the latter is capitalizing on the Old Club’s history, identity, fan base and legacy. With this same reasoning, the New Club should be considered the club which signed the Contract with the Player and therefore should be responsible for paying the amounts payable pursuant to the DRC Decision;
 - (v) The history of the Old Club is exactly the same as that of the New Club. In fact, in the history section of the New Club’s webpage, it is stated that for the season 2012/2013 *“[t]he owners of the club systematically don’t pay the wages and the crisis in the club severs. During the winter break most of the summer signings are fired with strange motives and they all sue the club afterwards (...)”*. In this season 2012/2013 the Player was hired by the Old Club which demonstrates that the New Club considers it as part of its history;
 - (vi) A great number of players who played for the Old Club are in fact recognized in the New Club’s history. This means that if the New Club is recognizing the Old Club’s players it is because they are the same club;
 - (vii) Both Clubs have their premises at the same address;
 - (viii) Both Clubs have the same stadium;
 - (ix) The stadium has not changed its name: *“Bulgarian Army Stadium”*;
 - (x) Both Clubs use the same logo;

- (xi) Both Clubs have won exactly the same trophies and championships;
- (xii) Both Clubs use the same colors and uniform;
- (xiii) Both Clubs use the same Twitter account;
- (xiv) Both Clubs use the same Facebook account;

For all the aforementioned reasons, it is clear that both Clubs are the same sporting entity and the Old Club is trying to circumvent its financial obligations through the new company.

- 84. These actions cannot be accepted in football since they infringe the integrity of competitions and the concept of fair play, are a detriment to players and other clubs, and contravene FIFA and UEFA Statutes. These kinds of actions have no room in the football family and similar mechanisms have been condemned in the CAS cases TAS 2011/A/2646 and CAS 2011/A/2476.
- 85. In addition, if permitted, they would create a precedent in which clubs are rewarded by acting in bad faith when they clear their balance sheet and continue their business as though nothing had happened. *In casu*, the situation is even worse since the New Club returned for the 2016/2017 Bulgarian sporting season without any sporting merit and when a registration ban was imposed on the Old Club (CAS 2014/A/3740), this did not prevent the New Club from contracting with three new Portuguese players.
- 86. For all the reasons above, there is no doubt that the New Club should be considered the same club as the Old Club or, at least, the Old Club's sporting successor and, thus, it must comply with the DRC Decision to render the amounts payable to the Appellant.

E. With respect to the Second Respondent's allegations

- 87. There are several inconsistencies in the New Club's version of events about its creation:
 - (i) The public tender through which *Red Animals* obtained the "assets" of the Old Club was held in May 2017, while the New Club was already using the Old Club's history, uniform, stadium and logo as of July 2016. Thus, how could they use the image of the Old Club if they did not have the rights?;
 - (ii) Mr. Ganchev, the majority shareholder of the New Club, was trying to take over the Old Club for years. In fact, there are multiple pieces of evidence that confirm that Mr. Ganchev had been managing the Old Club since 2015, *i.e.* when it declared bankruptcy. There is an interview that undoubtedly indicates Mr. Ganchev's intention to let the Old Club die and to make a fresh start. To understand Mr. Ganchev's actions to take over the Old Club, the timeline of the facts is very significant;
 - (iii) The letter sent by the Administrator to the FIFA DC clearly stated that "*the sole result of these actions of BFU and these two clubs is that the Club is forced intentionally into bankruptcy with*

the sole goal to rob the creditors of PFC CSKA AD who will have to write off 100% of their receivables from the Club, which are almost BGN 30 million (i.e. approximately EUR 15 million). This seems a brutal violation of the Financial Fair Play regulations of FIFA and UEFA (...)”;

- (iv) It is false that the New Club is Litex’s successor because a club named Litex Lovech currently participates in the Bulgarian second division and its website is active;
 - (v) The question of why the New Club is a creditor in the Old Club’s insolvency proceedings has not been answered.
88. For all the reasons above, the Panel shall grant the Appeal.

IV.2. The First Respondent (FIFA)

89. The First Respondent’s submissions, in essence, may be summarized as follows:

A. Inadmissibility of the appeal

90. The Player has appealed a letter signed by the Deputy Secretary of the FIFA Disciplinary Committee. Said letter can by no means be considered an appealable decision.
91. The Appealed Letter was only intended to (i) acknowledge receipt of the Appellant’s correspondence, (ii) acknowledge receipt of the BFU’s correspondence which stated that the Player was already included in the Old Club’s list of creditors, (iii) inform that FIFA’s decision-making bodies cannot deal with cases involving clubs which have been declared bankrupt and/or are no longer affiliated to their respective association. In short, FIFA’s letter was merely informative.
92. The Appealed Letter lacks *animus decidendi* and does not affect the legal situation of the Appellant. In fact, with or without the letter, the Player remains in the exact same legal position: as a creditor to the Old Club and entitled to use all legal remedies foreseen under Bulgarian bankruptcy law.
93. The Sole Arbitrator of the case CAS 2017/A/5187 considered that the appealed letter in that case, which is almost identical to this case, was inadmissible.

B. Bankruptcy proceedings and analysis of the case at stake

94. Contrary to what is stated by the Player, FIFA confirms that it has analyzed the particular circumstances of this case. In short: (i) the Old Club did not comply with the DRC Decision, (ii) the BFU confirmed that the Old Club was involved in the insolvency proceedings, (iii) the credit of the DRC Decision was included in the preliminary list of creditors within the scope of the insolvency proceedings, (iv) the Old Club objected to the amount of the DRC Decision and it was reduced by the Bulgarian courts, (v) the Player no longer appealed such decision and,

thus, (vi) the Player was recognized as a final creditor with an amount of BGN 19,853 (*i.e.* EUR 10,015).

95. It is evident that the Player decided to obtain the amounts of the DRC Decision through the insolvency proceedings but then did not see the process through until the end. FIFA cannot be responsible for this decision of the Player.
96. The Old Club cannot comply with the DRC Decision even if it remained affiliated to the BFU, as it would imply a circumvention of the Bulgarian court's decision (see for example, the case CAS 2013/A/3321 which established that "*Appellant, in accordance with a valid decision rendered by a Greek State Court which is solely competent with regard to such bankruptcy proceedings, will therefore not legally be capable of complying with the DRC Decision*"). This fact cannot be changed by FIFA and under no circumstances may the debtor pay the creditor outside the scope of the Bulgarian courts because this would also be in detriment to the interests of all other creditors and would directly contradict the principle of equity between creditors ("*par condition creditorum*").

C. Regarding CAS 2017/A/5460

97. FIFA respectfully disagrees with the Sole Arbitrator's considerations in CAS 2017/A/5460 which suggested that the appellant of said case had to file a new claim before the FIFA DRC against the New Club in order to establish that the latter is the successor of the Old Club.
98. The FIFA DRC would not be competent to decide this because it only reviews employment-related disputes and cannot decide on a possible extension of the relevant liability for an established monetary debt. The FIFA DRC has already made a decision regarding the credit of the Appellant and concerning the fact that the Old Club is the entity that shall be considered the debtor. This DRC Decision is final and binding.
99. For all of the aforementioned reasons, the Panel shall decide that (i) the Appealed Letter lacks *animus decidendi*, (ii) the Appellant has not evidenced how the Disciplinary Committee may overrule the bankruptcy proceedings or the decisions of the Bulgarian courts, (iii) or how FIFA can assign debts from one entity to another or enforce a debt against a club that has been declared bankrupt by a state court.

IV.3. The Second Respondent (PFC CSKA-Sofia)

100. The Second Respondent's submissions, in essence, may be summarized as follows:

A. The lack of CAS jurisdiction

101. The CAS has no jurisdiction to hear the present case. As it was stated in the case CAS 2017/A/5460 (which is very similar to the present dispute), the sole arbitrator decided that:
 - The appellant was seeking before the CAS a decision on the merits and not a disciplinary enforcement proceeding.

- The claim must be submitted to FIFA DRC rather than the FIFA Disciplinary Committee.
- That the New Club is different from the Old Club (because otherwise it would have allowed the enforcement of the FIFA decision against the New Club).
- The CAS does not have jurisdiction to hear a new claim against the New Club without having passed through the first instance of FIFA.

102. The Player is attempting to circumvent the ordinary procedural steps by directly requesting disciplinary sanctions against the New Club, without a prior decision of the FIFA DRC establishing that the New Club shall be responsible for the Old Club's debts. As long as there is no such decision on the merits of the case, there can be no jurisdiction of the CAS, because there is no appealable decision.

B. Inadmissibility of the Appeal

103. This appeal shall be declared inadmissible once the Appellant has no legal interest as he is trying to enforce a settlement of credit against a party other than the debtor. Moreover, he participated in the insolvency proceedings and his credit is recognized and will be paid in the Bulgarian courts. However, he is now attempting to enforce the same credit covered by the DRC Decision before FIFA. There is no legal interest worthy of protection for such a kind of "forum shopping".
104. Furthermore, there is no valid object because the Appealed Letter is not appealable.

C. Lack of standing to be sued and the current situation of the Appellant

105. The requests against the New Club cannot be granted because the New Club did not hire the Player, is an entirely different entity, and did not participate in the disciplinary proceedings before FIFA. Furthermore, the New Club did not take any responsibility for the Old Club's debts. Thus, it shall be declared that the New Club has no standing to be sued.
106. The Appellant's credit granted by the DRC Decision was included and registered in the Bulgarian Commercial Registry within the scope of the Old Club's insolvency proceedings. The Appellant correctly participated in these proceedings but unfortunately his credit was reduced by the state court. The Appellant decided not to take any further legal action even when he had an available remedy. Now, the Appellant is trying to fix his error and enforce the same credit against the New Club which is a different entity and not the successor of the Old Club.
107. The Player did not explain why he participated actively in the insolvency proceedings and then argued that the process was a fraud. It is important to mention that the Player conveniently did not tell FIFA that he had participated in the insolvency proceedings. Surely, because he saw a forum for which he thought he could receive the full amount in a faster way.

D. The New Club is the successor of Litex Lovech, not of the Old Club

108. The New Club is the universal legal successor of “PFC Litex Lovech AD” (hereinafter, “Litex”), not of the Old Club.

109. The New Club was created as follows:

- Until summer 2016, Litex participated in competitions of the BFU.
- In the summer of 2016, Litex was expelled from professional football.
- The Entrepreneurs bought the legal entity of Litex.
- The company “PFC Litex Lovech AD” changed its name to “PFC CSKA Sofia EAD”
- The team also changed the name from PFC Litex to PFC CSKA-Sofia, which faithfully maintains the image and history of the Old Club.
- The New Club was admitted to take part in the newly created “*First Professional League*” in the season 16/17, using the sporting licence of Litex.
- The New Club paid the debts and financial obligations of Litex.
- The New Club also assumed the registration of Litex players.

There has never been anything shady in this operation and the New Club has always been transparent; even FIFA and the TMS were informed of the New Club’s creation.

110. It is true that the New Club uses a similar logo and image to the Old Club’s but this is because it has financially supported Red Animals, the company that acquired the image rights of the Old Club for BGN 8,000,000 (approx. EUR 4,000,000), in the public tender conducted by the Administrator. This amount has already been paid to the court and will compensate the creditors recognized in the insolvency proceedings, including, of course, the Player.

111. Contrary to the Appellant’s allegations, this is not a case in which a club wanted to clear its balance sheet and dispose of its creditors. This is a standard, typical case of insolvency under national law. The New Club truly regrets the situation of the Player but cannot be responsible for the Old Club’s debts.

112. The present case does not comply with the conditions established in the CAS jurisprudence to recognize that the New Club shall be considered the sporting successor of the Old Club, because:

- The administration of the Old Club and the New Club are different;
- The New Club did not take control of the Old Club’s players’ rights, licenses, etc;

- The New Club never created the expectation that it would become liable for the Old Club's responsibilities and debts;
 - The New Club did not use the federative license of the Old Club;
 - The BFU has not treated the New Club as the successor to the Old Club;
 - There is no single piece of evidence that may entail that the New Club or the Entrepreneurs deliberately made the Old Club bankrupt.
113. If the New Club is considered a successor of the Old Club it would mean that, despite paying Litex's debts to its players and other creditors and paying a significant amount for the Old Club's assets (amount that would serve to pay the Old Club's recognized creditors), it would, once again, have to pay the debts that are currently being paid in the insolvency proceedings. This is absurd and against Swiss public order.
114. The appeal is unjustified for the aforementioned reasons. However, if admitted, it would severely violate the principle of equality among the Old Club's creditors. Thus, the Panel shall dismiss entirely the present Appeal.

V. JURISDICTION

115. Article R47 of the Code provides as follows:

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

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

116. Article 58.1 of the FIFA Statutes read as follows:

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

117. The Second Respondent has objected to the CAS jurisdiction as it considers, mainly based on the findings in CAS 2017/A/5640, that the Appellant should submit a new claim before the FIFA DRC by virtue of which the latter shall decide if the New Club is the same as – and/or the successor of – the Old Club. The relevant paragraphs of the cited CAS award read as follows:

“91. In the case at hand, the Original Club only went into insolvency after the FIFA DRC and the CAS had given their judgments. As such, the Player has the CAS decision and seeks to enforce it. Unfortunately for him, the Original Club then went into insolvency and ultimately the FIFA Disciplinary Committee said it could do no more, as a result of Article 64 of the FIFA Disciplinary Code. However, what the Player appears to be requesting is that the FIFA Disciplinary Committee (and now the CAS through the matter at hand) should turn its attention away from the Original Club and instead put pressure on its apparent successor, the Club, to pay the Original Club’s debt to the Player. This however, is a new claim against a different legal entity. The Player should bring his claim against the Club following Article 22 of the RSTP, through the FIFA DRC (not the FIFA Disciplinary Committee), respecting the time limitations of the RSTP. He should then seek to convince the FIFA DRC that the Club is the successor of the Original Club and should, somehow, be responsible for the debt of the Original Club contained in the CAS award in CAS 2016/A/4450. If the FIFA DRC finds against him, then he has a right to appeal that decision to the CAS.

92. This is the procedure the Sole Arbitrator would have expected the Player to follow and, as such, notes that even if FIFA’s letter of 7 September 2017 could somehow be taken as a decision, the Player has not exhausted all his legal remedies and should, as he is seeking a remedy against the Club, have taken his new dispute to the FIFA DRC first before coming to the CAS”.

118. The Panel, respectfully, does not endorse the Second Respondent’s line of reasoning in the case at stake.
119. The Appealed Letter derives from disciplinary proceedings opened by FIFA upon the Appellant’s request. Within these proceedings, the Appellant requested on several occasions that FIFA proceed against the New Club on the basis of the arguments set out above. Unlike in the proceedings that led to the issuance of the CAS award 2011/A/2646 (where FIFA disciplinary bodies, within the same disciplinary proceedings, decided to resolve a number of issues stemming from numerous bankruptcy proceedings), FIFA decided here not to resolve such issue and by means of the Appealed Letter, it informed the Appellant that it did not “appear” to be in a position to proceed with the case. This letter being a “decision” for the reasons explained below, it is the Panel’s view that the Appellant did not have, within the disciplinary proceedings, any internal legal remedy to exhaust and, thus, he correctly resorted to CAS jurisdiction. In this context, it was not necessary, in the Panel’s opinion, for the Appellant to start new proceedings before the FIFA DRC to resolve the issue of the Old Club’s succession and determine the nature of the relationship between the Old Club and the New Club, especially when precedents (CAS 2011/A/2646) reveal that such an issue can be dealt with within the existing disciplinary proceedings.
120. Taking the above into consideration, the Panel considers that the Appealed Decision is a decision that complies with the prerequisites foreseen in Article R47 of the CAS Code and, therefore, the CAS has jurisdiction to rule on this case.

VI. ADMISSIBILITY

121. The First and Second Respondents have objected the admissibility of the appeal as they consider that the Appealed Letter (i) is merely informative, (ii) it was sent by the Deputy Secretary of the

FIFA DC (who has no power to decide), (iii) it lacks *animus decidendi* and (iv) does not affect the Player's legal position.

122. The Panel notes that the Appealed Letter established, *inter alia*, the following:

"(...) On the account of the above, we must inform you that, as a general rule, the FIFA Disciplinary Committee cannot deal with cases involving clubs which have been declared bankrupt and/or are no longer affiliated to their association.

As a consequence of the foregoing, on behalf of the chairman of the FIFA Disciplinary Committee, we regret having to inform you that we do not appear to be in a position to proceed with the case of the reference in which the club PFC CSKA Sofia is involved since the club was declared bankrupt and became disaffiliated".

123. The Panel further endorses the definitions and the characteristics that an "appealable decision" has according to the CAS precedents, *inter alia*:

(i) *"the form of the communication has no relevance to determine whether there exists a decision or not. In particular, the fact that the communication is made in the form of a letter does not rule out the possibility that it constitute a decision subject to appeal"* (CAS 2005/A/899 para. 63; CAS 2007/A/1251 para. 30; CAS 2008/A/1633 para. 31; CAS 2015/A/4213 para. 49; CAS 2017/A/5200, para. 94);

(ii) *"In principle, for a communication to be a decision, this communication must contain a ruling, whereby the body issuing the decision intends to affect the legal situation of the addressee of the decision or other parties"* (CAS 2004/A/748 para. 89; CAS 2005/A/899 para. 61; CAS 2008/A/1633 para. 31; CAS 2007/A/1251 para. 30; CAS 2015/A/4213 para. 49; CAS 2017/A/5200, para. 94);

(iii) *"A decision is thus a unilateral act, sent to one or more determined recipients and is intended to produce legal effects"* (CAS 2004/A/659 para. 36; CAS 2004/A/748 para. 89; CAS 2008/A/1633 para. 31; CAS 2015/A/4213 para. 49; CAS 2017/A/5200, para. 94);

(iv) 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"* (BERNASCONI M., "When is a 'decision' an appealable decision?" in: RIGOZZI/BERNASCONI (ed.), *The Proceedings before the CAS*, Bern 2007, p. 273; CAS 2008/A/1633 para. 32; CAS 2015/A/4213 para. 49; CAS 2017/A/5200, para. 94).

124. Taking the aforementioned considerations into account, the Panel concludes that the Appealed Letter is indeed a decision appealable to the CAS as:

(i) It is a unilateral act from FIFA intended to produce legal effects: not continuing with the disciplinary proceedings requested by the Appellant;

(ii) Contrary to the First Respondent's views, the "animus decidendi" of the letter is evident

when FIFA established that it “cannot deal with cases involving clubs which have been declared bankrupt and/or are no longer affiliated to their association” and “that we do not appear to be in a position to proceed with the case of the reference in which the club PFC CSKA Sofia is involved since the club was declared bankrupt and became disaffiliated”; and

- (iii) The Appealed Letter is objectively affecting the Appellant’s legal position with regard to his right to pursue the enforcement of his claim against a club which could potentially be considered the same as – and/or the sporting successor of – another club.

125. The Panel shall dismiss the First Respondent’s arguments with respect to the similarity of this case to CAS 2017/A/5187 where it was found that the appealed letter was not considered a final decision. The Panel notes that the situation in both cases is different. In the case CAS 2017/A/5187, the FIFA DC was requested to enforce a decision against an evidently disaffiliated club and the Player was “*exclusively seeking for an arbitral award that acknowledges precisely his credit against FC Metalist – as established in the FIFA DRC Decision –*”. The sole arbitrator in that case considered that the player was not affected by the FIFA letter because it only stated that (i) FIFA could not go against a club beyond its scope and (ii) because the legal value of the DRC decision was not changed by such letter. As it will be further explained, this case has more particularities (*i.e.* the request by the Player to go against the New Club that may be considered the same as – and/or the sporting successor of – the Old Club) and, thus, the Panel considers that the letter indeed affects the Player’s position.

126. For these reasons, the Panel rejects the Respondent’s objections on the admissibility of the Appeal.

127. Moreover, only for sake of completeness, the Panel acknowledges that the appeal was filed within the 21 days set by Article 58(1) of the FIFA Statutes, as the Appealed Letter was communicated by the Respondent on 14 March 2018 and the Appellant filed its Statement of Appeal before the CAS on 3 April 2018.

128. For all the above, the Panel rules that the appeal filed by the Appellant is admissible.

VII. APPLICABLE LAW

129. Article R58 of the CAS Code reads as follows:

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

130. The Panel notes that Article 57(2) of the FIFA Statutes provides 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”.

131. Based on the aforementioned provisions, the Panel considers that the present dispute shall be resolved according to the FIFA regulations and, subsidiarily, Swiss law.

VIII. MERITS

132. The Panel shall start its approach to the matter at hand by analyzing the facts that are undisputed by the parties:

- (i) In January 2015, the DRC Decision ordered the Old Club to pay an amount to the Player.
- (ii) In September 2015, after the Old Club's failure to pay such amount, the Player requested FIFA to submit the case to the FIFA DC "*for consideration and a formal decision*" aiming to enforce the DRC Decision.
- (iii) On 7 October 2015, the BFU informed FIFA that the Old Club "*asks for postponement of the judged by the Disciplinary Committee of FIFA sanctions, till clarification of the possibility for rehabilitation of the club in the process of the insolvency proceedings*".
- (iv) On 16 December 2015, FIFA confirmed to the Player that it was opening disciplinary proceedings against the Old Club. However, since the Old Club was under insolvency proceedings, the Chairman of the Disciplinary Committee "*came to the conclusion that the (...) disciplinary proceedings will be suspended until the club PFC CSKA Sofia's liquidation process finalizes in accordance with Bulgarian law*".
- (v) In June 2016, the Player alleged that a "*new legal person with the name PFC CSKA*", with "*the same owners of the [Old Club]*", was recognized and accepted by the BFU and that this new club "*should be responsible for the debts towards [the Player]*" and brought this to FIFA's attention.
- (vi) In June and July 2016, FIFA DC requested information from the BFU regarding the insolvency proceedings in Bulgaria.
- (vii) In September 2017, FIFA DC informed the parties that "*we are closely investigating the current situation of the club PFC CSKA Sofia*".
- (viii) On 21 September 2017, the Player filed a written submission before FIFA with several documents that provided evidence, in his view, that the New Club was the same club as the Old Club and requested that FIFA DC "*immediately continue the execution of the FIFA DRC against the club which is currently competing in the Bulgarian championship under the name PFC CSKA-Sofia [i.e. the New Club] and not to let any possible argument that said club cannot be considered responsible for the obligations deriving from the relevant FIFA DRC Decision delay the execution any further*".
- (ix) On 14 March 2018, FIFA communicated the Appealed Letter to the Appellant:

“We take due note from the aforementioned correspondence from the Bulgarian Football Union that Mr. Sprockel was “(...) included in the list of creditors under No. 123 with an amount of BGN 19 853 (about 10 150)”. The same information was previously included in the letter dated 13 July 2016 from the court administrator of the club PFC CSKA Sofia which was forwarded to the parties by correspondence dated 25 July 2016 (...).

On the account of the above, we must inform you that, as a general rule, the FIFA Disciplinary Committee cannot deal with cases involving clubs which have been declared bankrupt and/or are no longer affiliated to their association.

As a consequence of the foregoing, on behalf of the chairman of the FIFA Disciplinary Committee, we regret having to inform you that we do not appear to be in a position to proceed with the case of the reference in which the club PFC CSKA Sofia is involved since the club was declared bankrupt and became disaffiliated”.

133. The Panel shall further analyze the contents of the Appellant’s prayers for relief and shall firstly note that the request for relief a) has already been addressed in the section “V. Jurisdiction” of this award. Concerning the requests b), c), d) and e), they mainly depend on an issue submitted by the Appellant to FIFA and that in the Panel’s opinion, FIFA should have resolved but failed to resolve, either in the Appealed Letter or in another decision, namely whether the New Club is the same as – and/or the sporting successor of – the Old Club. A decision on this issue would determine whether the execution of the DRC Decision should be enforceable against the New Club and/or whether the New Club should be liable for the Old Club’s debt to the Player.
134. According to Article R57 of the CAS Code, “[t]he Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance”.
135. In the case at stake, the Panel decides to refer the case back to FIFA DC for the following reasons:
- (i) As evidenced above, since the beginning of the disciplinary proceedings the Player requested *“the consideration and the formal decision”* of the FIFA DC to enforce the DRC Decision. Furthermore, FIFA opened the disciplinary proceedings and stated that it was closely investigating the situation. After the “appearance” of the New Club, the Player clearly requested, at least twice, that the DRC Decision be executed against the New Club because, in his view, it was the same entity as the Old Club.
 - (ii) The Panel notes that the Appealed Letter does not dismiss or grant the Appellant’s requests. The letter only states that, *“we regret having to inform you that we do not appear to be in a position to proceed with the case of the reference in which the club PFC CSKA Sofia is involved since the club was declared bankrupt and became disaffiliated”*, but does not address the specifically mentioned issue of the Old Club’s succession or the relationship between the Old Club and the New Club. FIFA disciplinary bodies are in a position to decide on the issue submitted by the Appellant; in the Panel’s view it should decide on it and the parties should not be deprived of one level of jurisdiction.

- (iii) The FIFA DC is not prevented from reviewing, making a legal assessment and deciding if the New Club is the same as – and/or the successor of – the Old Club. In the case CAS 2011/A/2646, FIFA DC decided that the Appellant (*i.e.* the new club in that case) was liable for not complying with a FIFA decision against the Respondent (*i.e.* the old club in that case) which was declared bankrupt. FIFA has not denied that its Disciplinary Committee can in fact make this assessment and it has not brought any legal provision that could prevent it from this. Furthermore, FIFA has not explained why it carried out a formal legal assessment and decision in the aforementioned CAS case but not in this one.
 - (iv) Even when the FIFA Disciplinary Code provides in Article 107 that the “*Proceedings may be closed if: a) the parties reach an agreement; b) a party declares bankruptcy; c) they become baseless*”, the Panel notes that the Player brought into the scene the New Club which, in his view, has to be considered the same as – and or the sporting successor of – the Old Club. This New Club is not bankrupt and is currently affiliated to the BFU and, thus, under these circumstances the Player deserves a formal consideration and decision of a substantive nature from FIFA.
136. In view of all the above, the Panel considers that the Appealed Letter shall not have any effect and orders FIFA to render a formal decision on the Appellant’s requests concerning the liability of the New Club towards the debts of the Old Club, the continuity of the execution against the New Club and those related to the Old Club’s succession. Given the result of this Award, no decision is taken by the Panel on the other requests and arguments raised by the parties.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. It has jurisdiction to entertain the appeal filed by Mr. Civard Sprockel against the letter rendered by FIFA on 14 March 2018.
2. The appeal filed by Mr. Civard Sprockel against the letter rendered by FIFA on 14 March 2018 is partially upheld.
3. The letter rendered by FIFA on 14 March 2018 shall not have any effect.

4. The case is referred back to the FIFA Disciplinary Committee for a formal consideration and decision on the requests and arguments filed by Mr. Civard Sprockel within the relevant disciplinary proceedings.

(...)

7. All other or further motions or prayers for relief are dismissed.