Arbitration CAS 2018/A/5799 Club Estudiantes de Mérida v. Fédération Internationale de Football Association (FIFA) & Andrés Lizardo Angulo Quiñonez, award of 7 June 2019

Panel: Mr José Juan Pintó (Spain), President; Mr Efraim Barak (Israel); Mr João Nogueira da Rocha (Portugal)

Football
Disciplinary sanction for failure to comply with a previous FIFA decision
Standing to be sued
Valid payment of a debt
Ne bis in idem

1. **The question of standing to sue or to be sued shall be reviewed *ex officio* by CAS' panels. Except specific circumstances, the only party with standing to be sued in an appeal against a disciplinary decision it rendered and to which a player was not a party is FIFA. However, a player has standing to be sued with reference to the part of an appeal where an appellant requests that FIFA's underlying decision taken by its Dispute Resolution Chamber and in which said player was a party and was awarded various amounts be declared null and void.**

2. **It is a debtor's responsibility to do all relevant efforts to comply with its payment obligation in accordance with a decision and according to his creditor's discretion to determine the details of the bank account into which an amount due is to be transferred. The latter is therefore free not to accept a payment which would not be made on the bank account which details he has been requested to provide, which obligation he met.**

3. **The application of the legal principle *ne bis in idem* is subject to the establishment of an identity in respect of the object of the dispute, the parties and the facts.**

I. PARTIES

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

2. The Fédération Internationale de Football Association (hereinafter, the "First Respondent" or "FIFA") is an association under Swiss law which has its registered office in Zurich, Switzerland.

FIFA is the world governing body of international football at a global level and exercises regulatory, supervisory and disciplinary functions over continental federations, national associations, clubs, officials and football players worldwide.

3. Andres Lizardo Angulo Quiñonez (hereinafter, the "Second Respondent" or the "Player") is a professional player of Colombian nationality.

II. FACTUAL BACKGROUND

4. Below is a summary of the most relevant facts and the background giving rise to the present dispute that will be developed based on the Parties' written submissions and the evidence examined in the course of the present appeals arbitration proceedings and at the hearing. Additional facts may be set out, where relevant, in connection with the legal analysis. In the present Award, the Panel refers 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. In 2013, the Player signed an employment contract with the Club valid from 11 January 2013 until 31 December 2013 (hereinafter, the "Contract").

6. The FIFTH clause of the Contract established that the Player *"devengará Honorarios profesionales mensuales por el periodo (…) de este Contrato, por un monto de CINCO MIL QUINIENTOS DOLARES AMERICANOS (5.500,00 $) montos que serán pagados directamente o acreditados en mensualidades vencidas, en moneda de curso legal, mediante depósito o transferencia a una cuenta bancaria cuyo titular sea "El Jugador".*

   Freely translated into English as follows:

   > *"the Player will earn monthly professional fees for the period (…) of this Contract, for an amount of FIVE THOUSAND FIVE HUNDRED AMERICAN DOLLARS ($ 5,500.00) amounts that will be paid directly or credited in due installments, in the legal currency, by deposit or transfer to a bank account whose owner be "The Player".*

7. The Club failed to pay the Player the corresponding salary for the months of February, March, April and May 2013.

8. On 14 June 2013, the Player granted a power of attorney to the *Asociación Única de Futbolistas Profesionales de Venezuela* (hereinafter, the "Union"), to represent him before the national Dispute Resolution Chamber of the FVF (hereinafter, the "NDRC"). In such power of attorney the Player authorized the Union *"to receive amounts of money owed to me by granting the corresponding receipt"* (in its original Spanish: *"recibir cantidades de dinero que se me adeuden otorgando su respectivo recibo"*).

9. On 19 June 2013, the Union, on behalf of the Player, filed a claim against the Club before the NDRC for breach of contract and specifically requested the following:

"a la fecha se le adeuda a nuestro representado la cantidad de ***CIENTO TREINTA Y OCHO MIL SEICIENTOS (Bs.138.600)*** *correspondiente a los meses de FEBRERO, MARZO, ABRIL, MAYO, más los intereses generados y la indexación de la deuda.* ***Por lo que el Club ESTUDIANTES DE MÉRIDA adeuda la cantidad de CUATRO MESES*** *(…).*

PETITORIO

Por todos y cada uno de los razonamientos de hecho y de derecho es por la que ocurro ante su competente autoridad para SOLICITAR DE MANERA INMEDIATA LA LIBERTAD DEL JUGADOR ANDRES LIZARDO ANGULO QUIÑONES, AUTORIZÁNDOLO A JUGAR EN CUALQUIER OTRO CLUB LA PRÓXIMA TEMPORADA y ***condenar al Club ESTUDIANTES DE MÉRIDA para que convenga en pagar a favor de mi representado CIENTO TREINTA Y OCHO MIL SEISCIENTOS (Bs.138.600) adicionalmente sea aplicada la INDEXACIÓN DE LA DEUDA*** *(…)"* (bold and underlined as the original document).

Freely translated into English as follows:

"until today, the amount of ***ONE HUNDRED and THIRTY-EIGHT THOUSAND SIX HUNDRED (Bs.138.600)*** *is owed to our represented player corresponding to the months of FEBRUARY, MARCH, APRIL, MAY, plus the accrued interests and the indexation of the debt.* ***Thus, the Club ESTUDIANTES DE MÉRIDA owes the amount of FOUR MONTHS*** *(…).*

PRAYERS FOR RELIEF

For each and every one of the factual and legal reasons I concur before your competent authority in order to IMMEDIATELY REQUEST THE RELEASE OF THE PLAYER ANDRES LIZARDO ANGULO QUIÑONES, AUTHORIZING HIM TO PLAY IN ANY OTHER CLUB FOR THE NEXT SEASON and ***sentence the Club ESTUDIANTES DE MÉRIDA to pay in favor of my represented Player ONE HUNDRED and THIRTY-EIGHT THOUSAND SIX HUNDRED (Bs.138.600) and additionally to apply the INDEXATION OF THE DEBT*** *(…)".*

10. Meanwhile, on 2 January 2014, the Player, through his lawyer Mrs Melanie Schärer, filed a second claim against the Club before the FIFA Dispute Resolution Chamber (hereinafter, the "FIFA DRC") by which it requested the following:

"1. El demandado deberá pagar al demandante la suma de ***USD 22,000*** *a título de salarios adeudados para los meses de febrero, marzo, abril y mayo de 2013, más un interés del 5% por año a partir de la fecha de vencimiento de cada salario mensual, hasta la fecha del pago efectivo.*

2. El demandado deberá pagar al demandante la suma de ***USD 33,000*** *a título de indemnización, más un interés del 5% por año a partir de la sumisión de la presente demanda, hasta la fecha del pago efectivo".*

Freely translated into English as follows:

"1. The defendant shall pay the claimant the sum of USD 22,000 as owed salaries corresponding to the months of February, March, April and May 2013, plus a default interest at a rate of 5% per year as from the due date of every monthly salary until the day of effective payment.

2. The defendant shall pay the claimant the sum of USD 33,000 as compensation, plus a default interest at a rate of 5% per year as from the submission of this claim until the day of effective payment".

11. On 20 January 2014, the FVF received a FIFA communication dated 7 January 2014 with the request to notify the Club of the Player's claim (and attachments) against it. Moreover, the Club was granted with a deadline of 28 January 2014 to provide its position to the Player's claim.

12. On 21 January 2014, the FVF notified the Club of the FIFA's letter dated 7 January 2014. Said communication was signed as acknowledgement of receipt, by Mr Alberto Angulo, general manager of the Club at that time.

13. Despite having received the FIFA's communication, the Club did not file any position or answer against the Player's claim before FIFA in the given deadline.

14. On 7 February 2014, the NDRC decided that the Club should pay various debts to several footballers, including the Player. In particular, the NDRC stated that an amount of Bs. 138.600, corresponding to four months of unpaid salary, should be paid to the Player. The relevant part of the aforementioned decision reads as follows (hereinafter, the "NDRC Decision"):

"DISPOSITIVO

Se determina que el CLUB ESTUDIANTES DE MÉRIDA F.C. debe cancelar a los jugadores:

(…)

v) ANDRES LIZARDO ANGULO QUIÑONES la suma CIENTO TREINTA Y OCHO MIL SEISCIENTOS BOLIVARES (Bs.138.600) que corresponden a los meses de salario febrero, marzo abril y mayo de 2013".

Freely translated into English as follows:

"DISPOSITIVE

It is decided that CLUB ESTUDIANTES DE MÉRIDA F.C. shall pay the players:

(…)

v) ANDRES LIZARDO ANGULO QUIÑONES the sum of ONE HUNDRED THIRTY-EIGHT THOUSAND and SIX HUNDRED BOLIVARS (Bs.138.600) corresponding to the salary of February, March, April and May 2013".

15. On 26 February 2014, the Player requested that the Club comply with the NDRC Decision and transfer *"la suma de Bs.138.600 correspondiente a los meses de salario febrero, marzo, abril y mayo 2013"* (freely translated into English as follows: *"The amount of Bs.138.600 corresponding to the monthly salary of February, March, April and May 2013"*) to his bank account in Bogotá, Colombia.

16. On 7 March 2014, the FIFA DRC communicated to the Player and the Club (the latter via the FVF) that despite not having received the Club's position with regard to the Player's claim, the investigation phase of the case was deemed closed. In such communication, FIFA also requested that the FVF provide the Club's fax number.

17. On 9 March 2015, after the Club's failure to comply with the NDRC Decision, the Disciplinary Commission of the FVF sanctioned the Club with a 6-point deduction in the Venezuelan league.

18. On 15 April 2015, the Club delivered a cheque amounting to Bs. 138.600 to the Consejo de Honor FVF in order to pay the Player.

19. On the same day, 15 April 2015, Mr Timshel Tabarez, representative of the Union, collected the cheque for the Player.

20. On 7 May 2015, the FIFA DRC communicated to the Player and the Club (the latter via the FVF) that the case would be submitted for decision. FIFA requested that the FVF, once again, provide the fax number of the Club.

21. On 12 May 2015, the FIFA DRC reached a decision with regard to the Player's claim filed before FIFA. The findings of such decision read as follows (hereinafter, the "FIFA DRC Decision"):

> *"1. La demanda del demandante, Andrés Lizardo Angulo Quiñones, es parcialmente aceptada.*
>
> *2. El demandado, Sociedad Civil Estudiantes de Mérida FC, debe pagarle al demandante,* ***dentro de los próximos 30 días*** *a partir de la fecha de notificación de la presente decisión, la cantidad de USD 22,000, correspondiente a salarios pendientes de pago, más intereses del 5% anual hasta la fecha de pago efectivo, aplicables de la siguiente manera:*
>
> *a. 5% p.a sobre la cantidad de USD 5,500 desde el 1 de marzo de 2013;*
>
> *b. 5% p.a sobre la cantidad de USD 5,500 desde el 1 de abril de 2013;*
>
> *c. 5% p.a sobre la cantidad de USD 5,500 desde el 1 de mayo de 2013;*
>
> *d. 5% p.a sobre la cantidad de USD 5,500 desde el 1 de junio de 2013;*
>
> *3. El demandado debe pagarle al demandante, dentro de los* ***próximos 30 días*** *a partir de la fecha de notificación de la presente decisión, la cantidad de USD 5,500 como indemnización por incumplimiento contractual más intereses del 5% anual desde el 2 de enero de 2014 hasta la fecha de pago efectivo.*

4. *En caso de que las cantidades adeudadas al demandante conforme a los puntos 2. y 3. anteriores más intereses no fueran pagadas dentro de los plazos establecidos, el caso se trasladará, a solicitud de parte, a la Comisión Disciplinaria de la FIFA para su consideración y decisión formal.*

5. *Cualquier otra demanda del demandante es rechazada.*

6. *El demandante deberá comunicar directa e inmediatamente al demandado el número de cuenta en la que deberá depositarse la suma adeudada, así como también informar al juez de la CRD sobre cualquier pago efectuado.*

(…)

*En un plazo de **10 días tras** la recepción de esta notificación se podrá solicitar por escrito a la secretaria general de la FIFA el fundamento íntegro de la decisión. En su defecto, la decisión se considerará firme y vinculante y se asumirá que las partes han renunciado a su derecho de apelar".*

Freely translated into English as follows[1]:

"1. The claim of the claimant, Andrés Lizardo Angulo Quiñones, is partially accepted.

2. *The respondent, Sociedad Civil Estudiantes de Mérida FC, shall pay the claimant, **within 30 days** from the date of notification of this decision, the amount of USD 22,000 corresponding to outstanding salaries, plus 5% of interest per year until the date of effective payment as follows:*

   a. 5% p.a on the amount of USD 5,500 from 1 March 2013;

   b. 5% p.a on the amount of USD 5,500 from 1 April 2013;

   c. 5% p.a on the amount of USD 5,500 from 1 May 2013;

   d. 5% p.a on the amount of USD 5,500 from 1 June 2013;

3. *The respondent is ordered to pay the claimant, **within 30 days** from the date of notification of this decision, the amount of USD 5,500 corresponding to compensation for breach of contract plus 5% per year as of 2 January 2014 until the date of effective payment.*

4. *If the aforementioned outstanding amounts are not paid in accordance with points 2 and 3 above and within the established deadlines, the present case shall be submitted, upon request of the interested party, to the FIFA Disciplinary Committee for consideration and a formal decision.*

5. *Any other claim of the claimant is rejected.*

6. *The claimant shall inform the respondent immediately and directly of the account number to which the remittance is to be made and to notify the DRC judge of every payment received".*

[1] Translated by FIFA within its Answer to the Appeal, not objected by the Appellant.

22. On 4 June 2015, the FVF notified the findings of the FIFA DRC Decision to Mr Pasquale Coppola, sporting director of the Club, who signed a FVF letter as acknowledgement of receipt.

23. On the same day, 4 June 2015, the Club's president at that time, Mr Frank Roberto Castillo Salazar, informed FIFA that the Club had already paid the Player (through the Union) the amount of Bs. 138.600 in accordance with the NDRC Decision of 7 February 2014, and, therefore, there was no decision for FIFA to make.

24. None of the parties requested the grounds of the FIFA DRC Decision.

25. On 19 June 2015, FIFA answered the Club's letter of 4 June 2015 and informed them that the FIFA DRC had already resolved the matter. In addition, FIFA suggested that the Club contact the Player directly.

26. On 27 July 2015, the Club filed an *"escrito de apelación"* before FIFA stating that, on 15 April 2015, it had already paid the amount of Bs. 138,600 to the Player, in accordance with NDRC Decision, and that FIFA had no competence to decide the dispute.

27. On 29 July 2015, FIFA referred to its previous letter of 19 June 2015 and stated that, as none of the parties requested the grounds of the FIFA DRC Decision, such decision had become final and binding and the parties' right to appeal had been waived.

28. On 30 July 2015, the Player informed FIFA that the Club failed to comply with the FIFA DRC Decision and requested that the case be submitted to the FIFA Disciplinary Committee.

29. On 18 August 2015, FIFA sent a communication to the Club, via the FVF, urging it to pay the outstanding amounts by 28 August 2015.

30. The Club did not pay the amounts of the FIFA DRC Decision by the given deadline.

31. On 29 September 2015, FIFA informed the Club, via the FVF, that the case would be submitted for consideration and formal decision to the FIFA Disciplinary Committee.

32. On 20 January, 3 March, 5 April, 16 April and 16 June 2016, the Player requested that the FIFA Disciplinary Committee sanction the Club for not paying the amounts of the FIFA DRC Decision.

33. On 17 August 2016, the FIFA Disciplinary Committee informed the Club that it had opened disciplinary proceedings against it for its failure to comply with the FIFA DRC Decision. FIFA, once again, invited the Club to pay the amounts owed to the Player.

34. On 18 August 2016, the Club reiterated that it had already paid the amount of Bs. 138, 600 through the cheque given to the Union (received by Mr Timshel Ismael Tabarez) and stated that the disciplinary proceedings should be closed.

35. On 5 September 2016, the Appellant informed FIFA that, on 9 March 2015, the FVF had already sanctioned the Club with a 6-point deduction and, based on principles of *res judicata* and *ne bis in idem*, the disciplinary proceedings before FIFA should be closed.

36. On 8 November 2016, the Player informed FIFA that the amount paid by the Club to the Union was equivalent to USD 500 and that it did not correspond to the amounts granted in the FIFA DRC Decision. Furthermore, the Player stated that he was willing to reduce Bs. 138, 600 from the total amount granted in the FIFA DRC Decision as long as the Union transferred him such amount.

37. On 18 November 2016, the Club filed several documents before FIFA intended to demonstrate that the cheque of Bs. 138, 600 had been delivered to the Union and that it had complied with the NDRC Decision.

38. On 12 December 2016 and 8 October 2017, the Player requested that FIFA, once again, take disciplinary sanctions against the Club.

39. On 12 December 2017, FIF-Pro confirmed that the Union had received *"un cheque por parte del Club Estudiantes de Mérida para el Sr. Angulo el 15 de abril de 2015, pero que no fue en relación a la decisión de la CRD de la FIFA. Igualmente, se nos informó que dicho cheque no fue cobrado, sigue estando en posesión de AUFPV* [*i.e.* the Union]*, y ya está vencido"*.

    Freely translated into English as follows:

    > *"a cheque from the Club Estudiantes de Mérida to Mr Angulo on 15 April 2015, but that it was not related to the FIFA DRC Decision. Furthermore, we were informed that such cheque had not been cashed, it is still in possession of the Players' Union and it has already expired"*.

40. On 15 December 2017 and 16 February 2018, FIFA urged the Club to pay the outstanding amounts owed to the Player and to provide proof of payment.

41. On 15 January and 28 February 2018, the Club insisted that FIFA close the disciplinary proceedings based on the principles of *res judicata* and *ne bis in idem*.

42. On 1 March 2018, the FIFA Disciplinary Committee rendered the following decision (hereinafter, the "Appealed Decision"):

    > *"1. El Club Sociedad Civil Estudiantes de Mérida FC es considerado culpable del incumplimiento de la decisión del juez de la Cámara de Resolución de Disputas de la FIFA de fecha 12 de mayo de 2015 y, por consiguiente, en violación del art.64 del Código Disciplinario de la FIFA.*
    >
    > *2. Se condena al Club Sociedad Civil Estudiantes de Mérida FC a pagar una multa de CHF 5,000 (francos suizos). La multa deberá abonarse en los treinta (30) días siguientes a la notificación de la presente decisión.*
    >
    > *(…)*

3. *Se otorga al Club Sociedad Civil Estudiantes de Mérida FC un último plazo de 30 días a partir de la notificación de la presente decisión para saldar su deuda con el acreedor, el jugador Andrés Lizardo Angulo Quiñones.*

4. *Si el pago no se efectúa dentro de este plazo, el acreedor podrá solicitar por escrito a la secretaría de la Comisión Disciplinaria de la FIFA la deducción de tres (3) puntos al primer equipo del deudor en el campeonato nacional. Una vez que esta solicitud haya sido realizada, los puntos deberán obligatoria y automáticamente ser deducidos, sin que la Comisión Disciplinaria de la FIFA tenga que tomar una decisión formal. La secretaría de la Comisión Disciplinaria de la FIFA dará a la asociación en cuestión la orden de ejecución de la deducción de puntos.*

5. *Si, tras la deducción de los puntos conforme a lo estipulado en el punto 4., el Club Sociedad Civil Estudiantes de Mérida FC sigue sin saldar su deuda, la Comisión Disciplinaria de la FIFA decidirá sobre una posible relegación del primer equipo del deudor a la categoría inmediatamente inferior.*

   (…)

7. *Las costas y gastos de este procedimiento ascendiendo a la cantidad de CHF 1,000 quedan a cargo del Club Sociedad Civil Estudiantes de Mérida FC. Este monto se deberá abonar observando las modalidades de pago establecidas en el punto 2. ut supra".*

Freely translated into English as follows:

"1. The Club Sociedad Civil Estudiantes de Mérida FC is pronounced guilty of failing to comply with the decision passed by the Judge of the FIFA Dispute Resolution Chamber on 12 May 2015 and is, therefore, in violation of Article 64 of the FIFA Disciplinary Code.

2. *The Club Sociedad Civil Estudiantes de Mérida FC is ordered to pay a fine to the amount of CHF 5,000. The fine is to be paid within* ***thirty (30) days*** *of notification of the present decision.*

   (…)

3. *The Club Sociedad Civil Estudiantes de Mérida FC is granted a final period of grace of 30 days as from notification of the present decision to settle its debt with the creditor, the player Andrés Lizardo Angulo Quiñones.*

4. *If the payment is not made by this deadline, the creditor may demand in writing from the secretariat to the FIFA Disciplinary Committee that three (3) points be deducted from the debtor's first team in the domestic league championship. Once the creditor has filed this request, the points will be deducted automatically, without a further formal decision having to be taken by the FIFA Disciplinary Committee. The order to implement the points deduction will be issued on the association concerned by the secretariat to the FIFA Disciplinary Committee.*

5. *If, the Club Sociedad Civil Estudiantes de Mérida FC still fails to pay the amounts due even after deduction of the points in accordance with point 4 above, the FIFA Disciplinary Committee will decide on a possible relegation of the debtor's first team to the next lower division.*

(…)

7. *The costs of these proceedings amounting to CHF 1,000, are to be borne by the Club Sociedad Civil Estudiantes de Mérida FC and shall be paid according to the modalities stipulated under point 2 above".*

43. On 4 June 2018, the FIFA Disciplinary Committee notified the grounds of the Appealed Decision to the parties, which can be summarized as follows:

- The Club is guilty of failing to comply with the FIFA DRC Decision and, thus, of violating article 64 of the FIFA Disciplinary Code.

- Considering that the Club is illegally withholding the creditor's money, it is considered appropriate to fine the Club for CHF 5,000, which complies with the established practice of the FIFA Disciplinary Committee.

- It is also considered appropriate to grant the Club with a final deadline of 30 days to pay the amounts due to FIFA and to the Player.

- In accordance with article 64 of FIFA Disciplinary Code, the Club is warned that, in case of default of payment within the stipulated period and at the request of the creditor, 3 points will be deducted from its first team in the domestic league. The number of points to be deducted is considered appropriate in light of the owed amount and the constant practice of FIFA.

- The costs of the disciplinary proceedings shall be borne by the Club (CHF 1.000).

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

44. On 25 June 2018, pursuant to Articles R47 and R48 of the Code of Sports-related Arbitration (hereinafter, the "CAS Code"), the Club filed a Statement of Appeal before the Court of Arbitration for Sport (hereinafter, the "CAS") against the Appealed Decision rendered by the FIFA Disciplinary Committee on 1 March 2018, requesting the following:

"Club Estudiantes de Mérida FC applies for the Court of Arbitration for Sport to rule as follows:

I. The DRC Decision of May 12th, 2015 to be declared null and void.

II. The Disciplinary Decision of the March 1th, 2018 to be set aside.

III. Fédération Internationale de Football Association and Mr Andrés Lizardo Angulo Quiñonez shall be ordered to bear all arbitration costs, if any, and to reimburse Club Estudiantes de Mérida FC the minimum CAS court office fee of CHF 1000.

IV. Fédération Internationale de Football Association and Mr Andrés Lizardo Angulo Quiñonez to pay Club Estudiantes de Mérida FC a contribution towards the legal and other costs incurred in the framework of these proceedings in an amount to be determined at a stage or at the discretion of the Panel".

45. Furthermore, the Appellant requested in its Statement of Appeal (i) the conduction of the proceedings in Spanish, (ii) the production of the full case files of the proceedings before FIFA and (iii) the suspension of the deadline to file the Appeal Brief until the reception of the requested files.

46. On 27 June 2018, the First Respondent proposed to conduct the present arbitration proceedings in English without the need to translate any written evidence that may be filed in Spanish. The Second Respondent also agreed to this proposal.

47. On 28 June 2018, pursuant to Article R29 of the CAS Code, the CAS Court Office confirmed that the proceedings would be conducted in English.

48. On 27 July 2018, pursuant to Article R54 of the CAS Code, the CAS Court Office informed the Parties that the Panel appointed to settle the present dispute would be composed of the following:

President: Mr José Juan Pintó, Attorney-at-Law in Barcelona, Spain;

Arbitrators: Mr Efraim Barak, Attorney-at-Law, in Tel Aviv, Israel (appointed by the Appellant);

Mr João Nogueira da Rocha, Attorney-at-Law, in Lisbon, Portugal (jointly appointed by the Respondents).

49. On 2 August 2018, the CAS Court Office informed the Parties that Mr Roberto Nájera Reyes, attorney-at-law in Barcelona, Spain, had been appointed as *ad hoc* Clerk in this matter.

50. On the same day, 2 August 2018, the First Respondent was requested to provide the CAS Court Office with the full case files of the DRC and the disciplinary proceedings before FIFA.

51. On 13 August 2018, the First Respondent provided the CAS Court Office with the requested files and the Appellant was granted a deadline to file its Appeal Brief.

52. On 28 August 2018, the Appellant lodged its Appeal Brief pursuant to Article R51 of the CAS Code confirming the requests for relief filed in its Statement of Appeal.

53. On 28 September 2018, the Second Respondent filed its Answer to the Appeal with the following requests for relief:

"1. To reject the Appellant's appeal and to confirm the decision passed by the Disciplinary Committee of FIFA on 1 March 2018.

2. *To order the Appellant to bear all the costs incurred through the present procedure, as well as all legal costs incurred by the second Respondent".*

54. On 1 October 2018, the First Respondent filed its Answer to the Appeal with the following requests for relief:

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

2. To confirm the decision 160482 PST VEN ZH passed by the FIFA Disciplinary Committee on 1 March 2018 hereby appealed against.

3. To order the Appellant to bear all costs and legal expenses related to the present procedure".

55. On 3 October 2018, the CAS Court Office advised the Parties that, pursuant to Article R56 of the CAS Code, they were no longer authorized to supplement or amend their requests or their arguments, produce new exhibits, or specify further evidence on which they intended to rely. Furthermore, the Parties were invited to inform the CAS Court Office whether they preferred a hearing to be held in this matter or for the Panel to issue an award based solely on the Parties' written submissions.

56. On 5 and 8 October 2018, the Second and First Respondent, respectively, informed the CAS Court Office that they did not consider holding a hearing necessary.

57. On 15 October 2018, the Appellant informed the CAS Court Office that it did not consider holding a hearing necessary but requested a second round of written submissions from the CAS.

58. On 16 October 2018, the CAS Court Office informed the Parties that the Panel, pursuant to Article R57 of the CAS Code, had decided to hold a hearing on the present matter and to reject the Appellant's request for a second round of written submissions.

59. On 28 October 2018, the Second Respondent filed the Order of Procedure duly signed by his representative.

60. On 29 October 2018, the Appellant filed the Order of Procedure duly signed by its representative.

61. On 30 October 2018, the First Respondent filed the Order of Procedure duly signed by its representative.

62. On 12 December 2018, the hearing for the present matter was held in Lausanne, Switzerland. At the hearing, the Appellant was represented by Mr Christian Toni, current President of the Club, and by Mr Antonio Quintero, Counsel to the Club. The First Respondent was represented by Mr Jaime Cambreleng, Head of Disciplinary, and Mr Jacques Blondin, Group Leader with the FIFA Disciplinary department. The Second Respondent was represented by Mrs Melanie Schärer, Counsel to the Player. In addition, Mr Antonio de Quesada, Counsel to the CAS, and Mr Roberto Nájera Reyes, *ad hoc* Clerk, assisted the Panel at the hearing.

63. At the outset of the hearing, the Parties confirmed that they had no objections as to the composition of the Panel or to the jurisdiction of the CAS.

64. 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. No fact witnesses or expert witnesses were heard at the hearing. Moreover, the floor was given to Mr Toni to make some concluding remarks in Spanish on behalf of the Club.

65. Before the end of the hearing, the Parties agreed that they would attempt to reach a settlement and informally requested the Panel to await the issuance of the award. Finally, all the parties attending 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.

66. On 14 January 2019, the Appellant informed the CAS Court Office that the Parties could not reach a settlement. Consequently, the Panel renders the present Award.

IV. SUBMISSIONS OF THE PARTIES

67. 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 carefully considered, for the purposes of the legal analysis which follows, all the submissions made by the Parties, even if there is no specific reference to those submissions in the following section.

A. The Appellant (Club Estudiantes de Mérida FC)

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

1. The nullity of the FIFA DRC Decision

69. The FIFA DRC Decision shall be annulled, because it was rendered:

a. In violation to the principle of due process:

a. The Club was not aware of the Player's claim filed before FIFA until June 2015, when the FIFA DRC Decision was already rendered.

b. FIFA, by not notifying the Player's claim to the Club, committed a clear violation to the due process and to the right to be heard. Furthermore, there is no convincing evidence that the representatives of the Club duly received the communications from FIFA.

c. FIFA did not act with diligence when it notified the Club through the FVF only, instead of contacting the Club directly.

d. The FVF had the incorrect telephone and fax numbers of the Club due to this information coming from an illegal and non-credible institution called *Registro del Deporte*. This is why the FVF could never notify the Club of the communications from FIFA. FIFA was well aware of this situation, hence requesting the Appellant's fax number from the FVF in several communications.

e. This is not the first time that FIFA has not properly notified the parties involved in a dispute. In the case *CAS 2013/A/3155* it was established that the principle of due process was at risk and the party is not properly served when FIFA notifies the national association instead of contacting the interested club directly.

f. Furthermore, in another case (*CAS 2017/A/5597*), it is evidenced that FIFA stopped sending communications to the Venezuelan clubs through the FVF, showing a clear lack of faith in the FVF's communication system.

g. The burden of proof to demonstrate that FIFA duly notified the Appellant lies solely on FIFA.

h. The Club was not aware of the Player's claim before FIFA DRC until 2 June 2015. This means that the Appellant could not appeal the FIFA DRC Decision (because it was only communicated when such decision was already rendered) and, thus, the Club was deprived of its right to appeal.

i. On 4 June 2015, FIFA notified the FIFA DRC Decision and, on the same day, the Club requested that the FIFA DRC declare its lack of jurisdiction on the matter. In an act of bad faith, FIFA waited until 19 June 2015 to answer the Club's communication, *i.e.* only once the FIFA DRC Decision had become final and binding.

j. Furthermore, the Club had no interest in appealing the FIFA DRC Decision because the cost of filing a remedy before the CAS (approximately USD 23.000) would have been more costly than the granted amount provided in such decision (USD 22.000). This prevented the Appellant from seeking justice.

k. Regarding the WhatsApp conversations allegedly held between Mrs Schärer (the Player's Counsel) and Mr Frank Castillo (Club's representative) to settle the Player's debt, there is no real evidence that Mr Castillo was actually the person who was responding to Mrs Schärer.

b. In violation of the own procedural rules of FIFA:

a. A decision rendered by an association that is in violation of its own rules can be annulled in accordance with Article 75 of the Swiss Code of Obligations and with the Swiss doctrine.

b. In this regard, by rendering the FIFA DRC Decision, FIFA violated the following articles of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber:

- **Article 9.3** which states that a party's claim shall be notified to the opposing party or to any other affected party. *In casu*, the Player's claim before FIFA was never notified to the Club and FIFA carries the burden of evidence that such a claim was duly notified.

- **Article 12.3** which provides the parties' right to submit the relevant facts of the case and any kind of evidence. As the Club was not notified of the Player's claim, it did not have the opportunity to exercise this right. Once again, the burden of proof to establish the contrary lies on FIFA.

- **Article 5.2** that establishes that all parties must act in good faith. In the case at stake, the Player did not act in good faith as he filed the same claim in several jurisdictions in an active forum shopping.

- **Article 5.8** that foresees the parties' right to be heard and to access the case file. It is obvious that the Appellant, by not being notified of the claim, was deprived of these rights.

- **Article 19.1** which states that the decisions shall be sent to the parties directly, with a copy to the respective associations. The FIFA DRC Decision was only sent to the FVF.

c. In view of the violation to these articles, the FIFA DRC Decision shall be deemed null and void.

c. Non-compliant with the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters:

a. This Convention, of which Switzerland and Venezuela are a part of, establishes that for a document to be duly served it must firstly be sent to the central authority in Switzerland which, in turn, has to forward it to the central authority in Venezuela, which finally has to deliver it to the interested party in accordance with the Venezuelan law. In the case at hand, this was not complied with, thus, the FIFA DRC Decision shall be declared null and void.

d. The aforementioned violations were so severe that they affected the outcome of the FIFA DRC Decision:

a. According to *CAS 2014/A/3574*, *"a procedural violation is not enough in and by itself to set aside an appealed decision; it must be ascertained that the procedural violation had a bearing on the outcome of the case"*. In other words, a procedural flaw in itself is not sufficient to deem a decision null and void but it has to have an impact on the outcome of the case for that effect.

b. In the case at hand, the outcome of the FIFA DRC Decision could have been different if the Player's claim was duly notified to the Appellant as he would have had the chance to state that (i) the Club paid the Player through the Union; (ii) the Player acted in bad faith when claiming the same amounts in different forums; (iii) the Club could have filed a *lis pendens* exception once the case before the NDRC was still standing; or, (iv) the Club could have filed a *res judicata* exception, causing the closure of the case, once the NDRC Decision was issued prior to the FIFA DRC Decision.

e. In violation to the principle of res judicata:

a. Under the principle of *res judicata*, a claim already decided cannot be assessed again in another forum or jurisdiction if it involves the same parties, the same object and the same legal grounds. These three conditions are fully met in this case, where (i) the parties are the same; (ii) the Player claimed four monthly salaries based on the Contract (the amount of Bs. 138.600 claimed in the NDRC proceedings is equivalent to the amount of USD 22.000 claimed in the FIFA proceedings); and (iii) the claim was firstly decided in the NDRC Decision.

b. The Player's bad faith is evident when he intentionally claimed the same amounts in different forums in a clear attempt to obtain the best possible result.

c. Furthermore, the Club has already paid the Player through the Union and, as a consequence, the execution of both decisions would cause an illicit financial benefit for the Player. In fact, conduct of this kind is considered a felony in Venezuela and the Player's actions are under investigation by the Venezuelan criminal authorities.

d. It should be considered that when the Union received the cheque of Bs. 138.600 on behalf of the Player, the Club was released from its payment obligation towards the Player. The cheque was paid in bolivars due to the Contract stating that the salaries would be paid in the legal currency of Venezuela.

e. FIFPro's Secretary General, Mr Theo van Seggelen, informed the FIFA Disciplinary Committee that the cheque was in fact received by the Union but it corresponded to another case. However, this information should be considered dubious as Mr van Seggelen was also the *Single Judge* who issued the FIFA DRC Decision. That is to say, he was performing a different function in the same matter when he decided the case and when he attempted, as a third party representing FIFPro, to influence the Disciplinary Committee. This conduct may be considered a violation of Article 5.7 of FIFA's procedural rules, which state that *"members of the Player's Status Committee and of DRC may not perform different function in the same matter. They shall refrain from attempting to influence other bodies and committees"*.

70. For all the above mentioned reasons, the FIFA DRC Decision rendered on 12 May 2015 shall be declared null and void.

2. The Appealed Decision should be set aside

71. The Appealed Decision should be set aside because, as stated during the disciplinary proceedings, the Club has already paid the Player through the cheque given to the Union.

72. Furthermore, the sanctions imposed by FIFA in the Appealed Decision are to be deemed disproportionate because the Appellant has already been sanctioned by the FVF with a 6-point deduction in the national competition for the exact same facts. It is worth noting, that being sanctioned twice for the same reason is against the Venezuelan public order and laws.

73. For these reasons, the Appealed Decision should be set aside.

B. The First Respondent (FIFA)

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

1. On the alleged nullity of the FIFA DRC Decision

75. Under FIFA's established practice, in absence of direct contact details of a club, the relevant correspondence and decisions can be notified to the parties through the member association concerned (*in casu*, the FVF). This is also foreseen in Articles 9 (5) and 19 (3) of FIFA's procedural rules and in Circular FIFA n. 1468 of 23 January 2015 which states as follows:

> *"A new par.5 to art.9 and a new par.3 to art.19 of the procedural rules were added to have a more concrete and explicit legal basis which allows the FIFA administration, in the absence of direct contact details, to continue, as it is the practice today, to notify documents and decisions via the member associations concerned. The new provisions correspond to the existing regulatory framework within the FIFA Disciplinary Code".*

76. Contrary to the Appellant's allegations, the FVF did notify the Club of FIFA's communication dated 7 January 2014 jointly with the claim filed by the Player. In fact, Mr Alberto Angulo, general manager of the Club, signed such communication as acknowledgement of receipt on 21 January 2014.

    The Appellant was unquestionably aware of the Player's claim before FIFA because when it finally decided to participate in the proceedings (*i.e.* on 4 June 2015) it made a clear reference to the claim without stating that it had not received the previous communications of FIFA.

77. The letter of FIFA dated 7 March 2014 was sent to the Club on 11 March 2014 to the fax number 0274 935 26 01 and the fax's delivered confirmation was received. In this regard, the Club's fax number (*i.e.* 0274 935 26 01) registered in FVF, was actually provided by the own Club to the *Registro Nacional del Deporte de Venezuela*. According to Article 62 and 21.3 of *Ley Orgánica de Deporte, Actividad Física y Educación Física de Venezuela,* clubs must register and update their contact details in said register. The validity of this contact list has been confirmed by Mr Pedro José Infante Aparicio, president of the *Instituto Nacional de Deportes de Venezuela*. Therefore, if the Club's fax number was not updated in the FVF it would have been the fault of the Club.

78. In any case, the FIFA DRC Decision was duly notified to the Club once signed, as acknowledgement of receipt, by Mr Pasquale Coppola, another member of the Club's management. The Club did not appeal the aforesaid decision and thus, it was the Club itself who renounced its right to appeal and who permitted the decision to became final and binding. Now, through these proceedings, the Appellant is lately seeking to restore that right.

79. In summary, the Club has not been deprived from its procedural rights once all communications from FIFA were duly served to the Club, either by post or fax.

80. Should the Panel consider that the Appellant has not been duly notified, *quod non*, this would entail a procedural flaw rather than a manifest error of law. Consequently, the FIFA DRC Decision would only – at most – be voidable and not null and void. Being a voidable decision, the Appellant should have challenged the FIFA DRC Decision within one month as from the date when it became aware of such decision (*i.e.* June 2015), as established in Article 75 of the Swiss Code of Obligation.

81. It is worth mentioning that the Club did not state during the disciplinary proceedings of FIFA that it was not aware of the Player's claim or of the FIFA DRC Decision. This argument was only brought forward at this CAS proceeding.

82. For the above reasons, all arguments in respect of the alleged nullification of the FIFA DRC Decision shall be rejected.

2. Regarding the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters

83. Article 57(2) of FIFA Statutes sustains that CAS shall primarily apply FIFA's regulations and, additionally, Swiss law. Consequently, as the procedure for the notification of communications is included in FIFA's regulations, neither Swiss law nor any other international treaty is applicable to this case (*CAS 2005/A/983 & 984*).

84. Furthermore, the invoked Convention by the Appellant is not applicable because Article 1 establishes that this only applies to *"all cases, in civil or extrajudicial document for service abroad"* and it is evident that none of the bodies of FIFA can be considered an *"authority or judicial officer competent under the law of the State"* (art. 3) nor as *"authorities and judicial officers of a Contracting State"* (art. 17). Therefore, FIFA's documents do not fall under the category of judicial or extrajudicial as defined in the convention.

3. The Appellant's failure to comply with the FIFA DRC Decision and the proportionality of the Appealed Decision

85. The Swiss Federal Supreme Court has deemed that the system of sanctions implemented by FIFA in the event of non-compliance with its decisions, as lawful (decision of the Swiss Federal Supreme Court dated 5 January 2007, 4P.240/2006). In this sense, article 64 of the FIFA Disciplinary Code clearly establishes the sanctions that may be imposed on anyone who fails to comply with a FIFA decision.

86. The FIFA Disciplinary Committee has the sole task of analysing if the debtor has complied with the final and binding decision of the relevant body. It is clear that the Club was ordered to pay the amounts established in the FIFA DRC Decision and it has not complied with said order; nor has the Club attempted to agree upon a payment plan with the Player.

The Club has alleged that a cheque for the payment was given to the Union to in turn give to the Player. FIFPro has confirmed that the Union received a cheque but that it was not related to the amount of the FIFA DRC Decision. Furthermore, the Union confirmed to FIFPro that the cheque was never cashed and has already expired. In short, the existence of this cheque cannot be used to mitigate or eliminate the Appellant's violation of the rules of FIFA.

87. The Appellant's allegation regarding Mr van Seggelen, Secretary General of FIFPro, shall be rejected as he has never influenced the Disciplinary Committee and he only reported a fact given by the Union to FIFPro.

88. FIFA requested on several occasions that the Club comply with the FIFA DRC Decision (*i.e.* 18 August 2015; 29 September 2015; 17 August 2016; 15 December 2017; 16 February 2018) and to contact the Player directly to clarify any pending issue. However, instead the Club decided to avoid making any payment or agreeing on a settlement.

89. The Appealed Decision is proper to the circumstances of the case. As it has been largely established in CAS jurisprudence, CAS shall only amend a disciplinary decision of a FIFA judicial body when it is considered evidently and grossly disproportionate to the offence (*CAS 2014/A/3562 et al.*).

90. With the aim to demonstrate that the Appealed Decision is proportional and complies with FIFA longstanding practice, the following decisions and sanctions were passed in similar scenarios such as the one at stake:

Case number	Outstanding amount in CHF	Fine	Period of grace	Deduction
170620 PST ZH	CHF 20,249.9	CHF 5,000	30 days	3 points
170055 PST ZH	CHF 29,805.5	CHF 5,000	30 days	3 points
170124 PST ZH	CHF 28,708.7	CHF 5,000	30 days	3 points
170160 PST ZH	CHF 22,483.2	CHF 5,000	30 days	3 points
170034 PST ZH	CHF 28,300.1	CHF 5,000	30 days	3 points
150218 PST ZH	CHF 22,551.7	CHF 5,000	30 days	3 points
160102 PST ZH	CHF 23,583.1	CHF 5,000	30 days	3 points
160625 PST ZH	CHF 23,800.5	CHF 5,000	30 days	3 points
140112 PST ZH	CHF 24,411	CHF 5,000	30 days	3 points
130576 PST ZH	CHF 20,327.31	CHF 5,000	30 days	3 points

91. In light of the above, the Appealed Decision is to be deemed issued in accordance with the principle of proportionality and FIFA's longstanding practice and, consequently, the Club's appeal must be rejected.

C. The Second Respondent (Andrés Lizardo Angulo Quiñonez)

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

1. On the alleged nullity of the FIFA DRC Decision

93. It is false that the Club only became aware of the Player's claim in June 2015 as the Player's lawyer, Mrs Schärer, initiated contact with the Club on 26 February 2014 to claim the amounts owed to the Player.

94. This was not the sole procedure that the Player's lawyer had against the Club. Mrs Schärer also represented Club Santa Fe (previous club of the Player) and another two footballers who had claimed other amounts from the Club. In all of these cases, the Club received the relevant communications from FIFA and, after receiving a payment on behalf of Club Santa Fe (approximately 16 April 2015), the Player's lawyer remained in contact with the Club to resolve the Player's situation. In particular, Mrs Schärer and Mr Frank Castillo (president of the Club at that time) held, *inter alia*, the following conversations:

- On 25 April 2015, the Player's lawyer held a telephone conversation with Mr Castillo during which it was stated that the cheque in favor of the Player should be changed to US dollars and that the Player was willing to reduce such amounts from the FIFA DRC Decision.

- On 7 May 2015, Mrs Schärer wrote to Mr Castillo by Whatsapp message, stating that the Player's claim filed before FIFA was going to be resolved in the near future. In addition, Mrs Schärer shared FIFA's communication dated 7 May 2015.

- On 4 June 2015, Mrs Schärer informed Mr Castillo that FIFA had already resolved the Player's case.

Despite several invitations to settle the case, the Club only answered with ambiguous statements and messages, which only intended to delay the negotiations.

95. The abovementioned clearly demonstrates that the Appellant was well aware of the claim before FIFA and, even when it had the possibility to file its position with the case (including its *res iudicata* objection), it did not do so. The Club merely kept silent and, consequently, lost its right to present its arguments or to appeal the FIFA DRC Decision. Such rights cannot be invoked at this stage once the FIFA DRC Decision has become final and binding.

96. The Appellant has never been deprived from its right to be heard and all its procedural rights have been respected. Furthermore, as it has been established in the CAS jurisprudence (*CAS 2004/A/743*), FIFA cannot be held liable if the corresponding national federation does not transmit communications to its affiliates.

2. On the NDRC Decision and the alleged payment

97. The Appellant has stated that the Player's claims were solved in the NDRC Decision prior the FIFA DRC Decision and, thus, we are in a scenario of *res judicata*.

98. The exceptions of *res judicata* and *lis pendens* must be rejected due to the fact that the amounts of both decisions do not correspond to the same dispute. The amount of the NDRC Decision (Bs. 138,600) was in Bolivars and the Player's claim before FIFA corresponded to (i) the club's breach of contractual obligations, (ii) the non-payment of four monthly salaries in dollars (4 x USD 5,500) and (iii) a compensation in dollars for the Club's termination of the Contract without just cause (USD 33,000). In short, both decisions grant different amounts in different currencies and thus, they correspond to different matters. Despite the above, the Player was willing to discount the amounts of the NDRC Decision from the FIFA DRC Decision (as long as they were deposited to the appointed bank account) but he did not receive any answer from the Club.

99. It is false that the Club has paid the Player because up until today, and despite the numerous requests from the Player's lawyer, he has not received any amounts from the Appellant.

100. With regard to the alleged cheque delivered to the Union's representative, Mr Tabarez, it shall be recalled that the creditor is the only person who can allow the debtor to make a payment in a different bank account other than his own. Mrs Schärer was appointed as the counsel of the Player on 1 November 2013 and, consequently, all the previous powers of attorney granted by the Player to other lawyers lost their effect.

101. Furthermore, the Club was aware that Mrs Schärer was the representative of the Player at least from 26 February 2014, when the lawyer contacted the Club for the first time and instructed the Club to transfer the owed amounts into the Player's bank account in Colombia.

    Taking into account such information, the Club should, as a minimum, ask the lawyer or the Player who the authorized persons were to receive the monies. In no possible scenario the Club should have delivered the cheque to an unauthorized person.

102. In conclusion, the FIFA DRC Decision and the Appealed Decision were accurate, without violating procedural rights of the Club, and without misinterpreting the facts of the case. Furthermore, both decisions correctly applied the law and the corresponding jurisprudence.

103. Given the arguments raised by the Appellant, it is clear that the only purpose of this appeal is to delay the payments owed to the Player; thus, the Panel should dismiss the appeal and confirm the Appealed Decision.

V. JURISDICTION

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

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

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

105. The jurisdiction of the CAS, which has not been disputed by the parties, arises out of Articles 57 and 58 of the FIFA Statutes in connection with the above-mentioned Article R47 of the CAS Code and is also confirmed with the Order of Procedure which was duly signed by the Parties.

106. Therefore, the Panel holds that the CAS has jurisdiction to rule on this case.

VI. ADMISSIBILITY

107. Pursuant to Article 58, paragraph 1 of the FIFA Statutes, in connection with Article R49 of the CAS Code, the Appellant had 21 days from the notification of the Appealed Decision to file its Statement of Appeal before the CAS.

108. The grounds of the Appealed Decision were communicated to the Appellant on 4 June 2018, and the Statement of Appeal was filed on 25 June 2018, *i.e.* within the time limit required by both the FIFA Statutes and the CAS Code.

109. Consequently, the Appeal filed by the Appellant is declared admissible.

VII. APPLICABLE LAW

110. 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".

111. In addition, Article 57, paragraph 2 of the FIFA Statutes establishes 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".

112. Therefore, the Panel considers that the present dispute shall be resolved on the basis of the applicable FIFA Regulations and, subsidiary, based on Swiss Law.

VIII. MERITS

113. The particularities of this case refer the Panel to address the question of the standing to be sued of the Player in an appeal against a disciplinary decision of FIFA to which the Player was not a party. The question of standing to sue or to be sued shall be reviewed *ex officio* by CAS' panels (cf. *CAS 2012/A/2906*).The Panel is well-aware that the CAS jurisprudence has repeatedly established that, unless specific circumstances, the only party with standing to be sued in such appeals is FIFA (*ad exemplum*, *CAS 2007/A/1329-1330; CAS 2007/A/1367,* para. 14; *CAS 2012/A/3032*, para. 43) and that no other party (*e.g.* a club or a player) should take part as a respondent in the relevant appeal against such disciplinary decision.

However, the Panel considers that in this particular case the Player has standing to be sued since the Appellant is not challenging only the disciplinary decision of FIFA but is also requesting that *"The DRC Decision of May 12th, 2015 to be declared null and void"*. In this FIFA DRC Decision, where the Player was a party, the Player was awarded various amounts and, considering that a potential decision on this issue could affect him and the Player has a legitimate interest in the outcome of this proceeding in respect of this part of the Appeal, the Panel deems that the Player has standing to be sued in the part of this appeal where the Appellant challenges the FIFA DRC Decision but not in the challenge against the Appealed Decision.

In regards to the core of the case, and after revising the facts and arguments raised by the parties and taking into account the Appellant's requests for relief, the Panel considers that the following issues shall be addressed to resolve the present dispute:

A. Whether or not the FIFA DRC Decision is to be declared null and void.

B. Whether or not the Appealed Decision shall be set aside.

A. Whether or not the FIFA DRC Decision is to be declared null and void

114. The Panel notes that the Appellant has requested the nullification of the FIFA DRC Decision as it alleges that it was not notified of the Player's claim before FIFA and that it only became aware of the FIFA DRC proceedings in June 2015. Thus, in its view, the FIFA DRC Decision was rendered (i) in violation to the principle of due process, (ii) in violation to the own procedural rules of FIFA and (iii) non-compliant with the Convention on the Service Abroad of Judicial and Extrajudicial documents. To justify these arguments, the Appellant highly focused its written and oral submission on establishing that the FVF had a wrong fax number of the Club and that neither FIFA nor the FVF sent any communications directly to it. Consequently, by not being informed of such proceedings, the Club considers that it was deprived from its right to defend itself during the FIFA instance.

115. The Panel is not convinced by the Appellant's arguments. Given the evidence brought to these proceedings, the Panel is convinced that the Club was notified and was well aware of the Player's claim from the beginning of the FIFA DRC proceedings and, for unknown reasons, decided not to participate in same proceedings even when it had the opportunity to present its position and objections.

116. Even conceding that there was a procedural flaw in the notifications as sent by FIFA (*quod non*), the Panel cannot review this issue for the reasons expressed in the following paragraphs.

117. In the last paragraph of the FIFA DRC Decision on 4 June 2015 (document proven to be received by the Club's representative) it was stated that:

> *"En un plazo de **10 días tras** la recepción de esta notificación se podrá solicitar por escrito a la secretaria general de la FIFA el fundamento íntegro de la decisión. En su defecto, la decisión se considerará firme y vinculante y se asumirá que las partes han renunciado a su derecho de apelar".*

118. The Panel finds that if the Club would have wanted to challenge the conduction of the procedure (*e.g.* lack of reception of a specific FIFA communication that would have led to the fact that the Club did not present any answer in FIFA's proceedings), or in respect of the outcome of FIFA's decision in essence, including the invocation of any legal exception (*e.g. res judicata*), it should have taken immediate action when it was notified about the FIFA DRC decision by requesting the relevant grounds of such decision in order to further lodge an appeal through the available means. However, instead of this, the Club limited itself to sending a communication (between 4 and 5 June 2015) stating that FIFA had no competence to decide the case and, two months after the issuance of the decision, attempted to challenge it with an *"escrito de apelación"* which was untimely filed (on 27 July 2015) and addressed to the wrong forum (*i.e.* to the FIFA DRC judge rather than the CAS). Furthermore, for these reasons, the Panel is not persuaded by the Appellant's alleged impossibility to appeal due to the costs of the CAS which in any case is not a valid ground to try and appeal the FIFA DRC decision in a later stage when the disciplinary proceedings were initiated.

119. In light of the Appellant's failure to request the grounds of the FIFA DRC Decision and to properly appeal such decision in a timely manner, the FIFA DRC Decision became final and binding and, consequently, the Club indeed lost its right to invoke any due process violations during the proceedings and/or challenge the outcome concluded by FIFA.

120. The Club has also alleged that the FIFA DRC Decision is null and void under the *res judicata* principle. In this regard and in connection with the fact that the Appellant failed to appeal the FIFA DRC Decision, the Panel endorses the reasoning found in para. 105 of *CAS 2017/A/5297* which reads as follows:

> *"the Club's arguments in respect of res judicata and lis pendens must be dismissed, because the Club* [*i.e.* Club Estudiantes de Mérida] *failed to raise this arguments in the proceedings before the Single Judge of the FIFA DRC or in subsequent appeal arbitration proceedings before CAS, as consequence of which these arguments could not be considered by the competent bodies. By failing to exhaust the legal remedies available to it, the Club* [*i.e.* Club Estudiantes de Mérida] *must ultimately be deemed to have accepted the competence of the Single Judge of the FIFA DRC ("Einlassung") and can no longer validly invoke such arguments in the context of the present disciplinary proceedings".*

121. In light of the above, the Panel dismisses the Appellant's requests and arguments to set aside the FIFA DRC Decision.

B. Whether or not the Appealed Decision shall be set aside

122. The Club essentially requests to set aside the Appealed Decision because it considers that the Player has already been paid through a cheque given to a Union representative, and because it has been already sanctioned by the FVF due to the same facts.

123. The Panel decides to reject the arguments and requests of the Appellant in this regard for the reasons set out below.

124. With respect to the alleged payment, on the one hand, it has been proven that the Club indeed issued a cheque for the Player amounting Bs. 138,600 and that it was delivered to Mr Timshel Tabárez (Players' Union representative). On the other hand, both Respondents alleged that such cheque did not correspond to the amounts foreseen in the FIFA DRC Decision and that, in any case, FIFPro confirmed that such cheque was never cashed, was never delivered to the Player (apparently it is still with the Union) and that it has already expired.

125. For clarification of this fact, during the hearing the Panel specifically asked Mr Christian Toni, current President of the Club, whether the cheque was cashed by the Union or the Player. The President responded that he could not verify such information because he has no access to the bank accounts of the Club, but that he was going to attempt to search for said evidence. The Panel naturally was not satisfied with such an answer and, up until the issuance of this award, the Club did not request to file any further evidence in this regard. Thus, it is clear to the Panel that, independently of whether the cheque corresponded to the amounts of the FIFA DRC Decision or not, no evidence was presented to convince the Panel that the Player indeed received the awarded amount from the Club.

126. *Ad abundantiam*, the Panel considers that the Player cannot be held liable for not cashing the cheque and that the Club has not been released from its obligation once it has been proven that the Player expressly determined and requested, on 26 February 2014 (*i.e.* before the issuance of the cheque), that the amounts should be paid into his Colombian bank account, which apparently was the same account also known to the Club due to the relations between the parties. In this regard, the CAS jurisprudence has stated the following:

> *"The Panel fully adheres to the fact that it is to the discretion of the creditor to determine the details and the place of the bank account into which the amount due is to be transferred.*
>
> *(…)*
>
> *The Panel is of the view that the utmost obligation of the debtor is to duly transfer the amount to the bank account provided by the creditor, and, therefore, it is the responsibility of the debtor to do all relevant efforts to comply with its payment obligation in accordance with a FIFA decision and according to the creditor's wishes.*
>
> *The latter is therefore free not to accept a payment which would not be made on the bank account which details he has been requested to provide, which obligation he met.*

The Panel further makes reference to the Swiss Code of Obligations. With respect to the location of payment of an obligation, Article 74 provides as follows:

Art. 74.

1. Le lieu où l'obligation doit être exécutée est déterminé par la volonté expresse ou présumée des parties.

2. A défaut de stipulation contraire, les dispositions suivantes sont applicables:

1. Lorsque qu'il s'agit d'une somme d'argent, le paiement s'opère dans le lieu où le créancier est domicilié á l'époque du paiement. (When it is a sum of money, the payment occurs at the place where the creditor is domiciled at the time of payment – free translation by the Panel)" (*CAS 2013/A/3323*, paras. 83, 84 & 86).

In the case at stake, the Appellant never made an attempt to deposit the cheque into the bank account designated by the Player or to deposit the amounts in his established place of residency. Thus, the Panel concludes that the Club is still under duty to pay the Player.

127. With regard to the application of the *ne bis in idem* principle, the Panel notes that according to CAS jurisprudence such principle may be a valid argument subject to the establishment of an identity in respect of three elements (a) the object of the dispute, (b) the parties and (c) the facts (cf. *CAS 2015/A/4319* paras. 70-72; *CAS 2007/A/1396 & 1402*, para. 119). The Panel notes that such principle does not apply in the circumstances of the case at hand, among other reasons, as the FVF Consejo de Honor sanctioned the Club, not only because it had failed to pay the Player, but also for its failure to comply with the payments towards Messrs. Juan García, Ever Alexander, Marlon Rivero (*i.e.* at least the facts that gave rise to the sanction on national level are not the same).

128. Finally, with regards to the proportionality of the sanction, the Panel deems that FIFA has correctly evidenced that the Appealed Decision has been rendered according to Article 64 of the FIFA Disciplinary Code and to the practice of FIFA disciplinary body.

129. Given the fact that the Club has failed to comply with the payments awarded in the FIFA DRC Decision, the Panel considers that the Club indeed violated Article 64 of the FIFA Disciplinary Code and therefore the Appealed Decision shall be confirmed.

IX. CONCLUSION

130. In conclusion, the Panel dismisses the appeal filed by the Appellant and confirms that the Appealed Decision is appropriate and proportionate in the particular circumstances of the present case.

Notwithstanding the outcome of these proceedings, the Panel finds it important, in the spirit of sport and good governance, to recognize and pay respect to the efforts described at the

hearing by Mr Christian Toni to solve the difficult legal situations in which the Club is involved that were apparently provoked by the conduct of previous administrations.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Club Estudiantes de Mérida against the Decision 106482 PST VEN ZH rendered by the FIFA Disciplinary Committee on 1 March 2018 is dismissed.

2. The Decision 106482 PST VEN ZH rendered by the FIFA Disciplinary Committee on 1 March is confirmed.

3. (…).

4. (…).

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