



Arbitration CAS 2014/A/3665, 3666 & 3667 Luis Suárez, FC Barcelona & Asociación Uruguaya de Fútbol (AUF) v. Fédération Internationale de Football Association (FIFA), award of 2 December 2014 (operative part notified on 14 August 2014)

Panel: Mr Bernhard Welten (Switzerland), President; Prof. Luigi Fumagalli (Italy); Mr Marco Balmelli (Switzerland)

Football

Assault committed by a player during a match

Standing to sue of a club directly affected by a sanction against a player

Principle ne bis in idem and application of two different rules to the same facts

Principle nulla poena sine lege certa

Discretion of the FIFA disciplinary bodies in the consideration of mitigating and aggravating factors

Recidivism

Proportionality of the sanction

1. According to art. 119 para. 1 FIFA DC, 2011 edition, anyone who has been a party to the proceedings before the first instance and has a legal protected interest justifying amendment or cancellation of the decision may lodge an appeal with the Appeal Committee. If a club was not a party to the proceedings before the FIFA disciplinary bodies, in a case where the FIFA authorities are issuing a sanction against a player and such sanction affects direct financial interests of a club, such club must have the possibility to appeal such decision in order to be able to protect its legal interests, even if these interests became actual after the challenged decision was issued.
2. The application of two different rules to the same facts involves the question of the relation between the two applied rules, in the sense that the application of one of these rules possibly “consumes” the application of the other rule. This question is not covered by the principle “*ne bis in idem*” which, in fact, appears to give rise to a kind of *procedural* defence, forbidding a defendant from being tried again on the same (or similar) charges following a legitimate acquittal or conviction, and does not concern the *substantive* issue of the possible concurrent application by a single hearing body of a plurality of rules to the same and only behaviour.
3. It is not necessary for the principles of predictability and legality to be respected that the football player should know, in advance of his infringement, the exact rule he may infringe, as well as the measure and kind of sanction he is liable to incur because of the infringement. The principles of predictability and legality are satisfied whenever the disciplinary rules have been properly adopted, describe the infringement and provide, directly or by reference, for the relevant sanction. The fact that the competent body applying the FIFA DC has the discretion to adjust the sanction mentioned in the rules deemed applicable to the individual behaviour of a player breaching such rules is not

inconsistent with those principles and with the general principle “*nulla poena sine lege certa*”.

4. The FIFA DC, unlike State criminal codes, does not provide a system of general rules defining standard sanctions to be increased (or reduced) by given percentages (by the half, one third or the like) if named aggravating or mitigating circumstances are found. In view of art. 39 par. 4 FIFA DC, the bodies pronouncing the sanction for a violation of the FIFA DC shall take into account all relevant factors in the case, as well as the degree of the offender’s guilt. In other words, the disciplinary bodies have to consider all the relevant circumstances, which include mitigating but also aggravating factors.
5. Recidivism is specifically mentioned as an aggravating factor to be considered, in view of art. 39 par. 4 FIFA DC, without any limitation with regard to the circumstances of the previous violations, i.e. irrespective of the level (national or international) of the competition in which the same infringement had already occurred.
6. If an offender is responsible (only) for the violation of one provision of the FIFA DC, he can be sanctioned only under that provision. Therefore, different kinds of sanctions cannot be applied to the offender. However, in the determination of the sanction *in a kind* allowed by that provision, *the measure* of the sanction applied by the first instance disciplinary bodies must be taken into account, in order to respect the principle of proportionality.

I. THE PARTIES

1. Luis Alberto Suárez Díaz (hereinafter referred to as the “Player”) is a Uruguayan professional football player who played for the national team of Uruguay in the 2014 FIFA World Cup Brazil™. Since 16 July 2014, Mr Suarez is playing for Fútbol Club Barcelona, Spain.
2. Fútbol Club Barcelona (hereinafter referred to as “FC Barcelona” or the “Club”) is a football club with its registered seat in Barcelona, Spain. It is a member of the “Liga de Fútbol Profesional (LFP)” and the “Real Federación Española de Fútbol (RFEF)” which has been affiliated to the Fédération Internationale de Football Association since 1904.
3. The Asociación Uruguaya de Fútbol (hereinafter referred to as “AUF”; the Player, the Club and AUF are hereinafter jointly referred to as the “Appellants”) is the national football association governing football in Uruguay. It has been a member of the Fédération Internationale de Football Association since 1923.
4. The Fédération Internationale de Football Association (hereinafter referred to as the “Respondent” or “FIFA”) is the international governing body of football on a worldwide level. It is an association under Swiss law, has its registered office in Zurich, Switzerland and exercises

regulatory, supervisory and disciplinary functions over continental confederations, national associations, clubs, officials and players, worldwide.

II. FACTUAL BACKGROUND

5. The elements set out below are a summary of the relevant facts emerging from the Parties' written pleadings or in the evidence offered in the course of the proceedings. Additional facts may be set out, where relevant, in connection with the legal discussion which follows.
6. On 24 June 2014, the national team of the AUF played a match against Italy in the 2014 FIFA World Cup Brazil™ (hereinafter referred to as the "Match"). In the 78th minute of the Match there was an incident between the Player and Giorgio Chiellini, a player from the Italian national team. Both players fell to the ground, the referee stopped the Match and granted a free kick to Italy. The referee as well as the assistant referees and the fourth referee did not mention anything about this incident in their official reports. On the same 24 June 2014, the secretariat of the FIFA Disciplinary Committee asked the referee, the assistant referees and the fourth official if they had seen the before mentioned incident. All four referees confirmed that they had not seen it.
7. On 24 June 2014, the FIFA Disciplinary Committee initiated disciplinary proceedings against the Player for having violated art. 48 par. 1 lit. d) and art. 57 of the FIFA Disciplinary Code (hereinafter the "FIFA DC").
8. On 25 June 2014, the Player and the AUF sent their written statements to the FIFA Disciplinary Committee.
9. On 25 June 2014, the FIFA Disciplinary Committee decided the following¹:
 1. *The player Luis Suárez is declared guilty of the infringement of art. 48 par. 1 d) of the FIFA Disciplinary Code for having committed an act of assault during the match between Italy and Uruguay played on 24 June 2014 at the 2014 World Cup Brazil™.*
 2. *The player Luis Suárez is declared guilty of the infringement of art. 57 of the FIFA Disciplinary Code for having committed an act that contravenes the principles of fair play and sportsmanship during the match between Italy and Uruguay played on 24 June 2014 at the 2014 FIFA World Cup Brazil™.*
 3. *In application of art. 11 c) of the FIFA Disciplinary Code, the player Luis Suárez is suspended for nine (9) consecutive official matches of the representative team of Uruguay, which must be served in the following manner:*

¹ Unofficial translation by FIFA from the Spanish original of the decision of the FIFA Disciplinary Committee.

The first suspension:

- *The first suspension must be served during the next match of the representative team of Uruguay within the final competition of the 2014 FIFA World Cup Brazil™, i.e. the following match:*
 - *Colombia vs. Uruguay, 28 June 2014*

The subsequent suspensions must be served in the following manner:

- *If the representative team of Uruguay qualifies for the next round(s) of the final competition of the 2014 FIFA World Cup Brazil™, the remaining suspensions must be served during this competition.*
 - *The remaining suspensions that are not served in the final competition of the 2014 FIFA World Cup Brazil™ must be carried over to the next official matches of the representative team of Uruguay, as stipulated by art. 38 par. 2 a) of the FIFA Disciplinary Code.*
4. *In application of art. 22 of the FDC, the player Luis Suárez is banned from taking part in any football-related activity (administrative, sporting or of any other kind) for four (4) consecutive months as from the date of notification of this decision to the Uruguayan Football Association.*
 5. *In application of art. 21 of the FDC, the player Luis Suárez is banned from entering the confines of any stadiums during the period of four (4) months in which he is banned from taking part in any football-related activity (cf. point II.4) and the stadiums in which the representative team of Uruguay plays for the duration of the suspension for nine (9) consecutive official matches of the representative team of Uruguay (cf. point III.3).*
 6. *In application of art. 10 c) of the FDC, the player Luis Suárez is sanctioned to pay a fine in the amount of CHF 100,000. This fine is to be paid within 30 days of notification of this decision. This payment may be made in Swiss francs (CHF) to [...].*
 7. *The procedural costs will be dispensed in application of art. 105 par. 5 of the FIFA Disciplinary Code”.*
10. On 26 June 2014, the decision of the FIFA Disciplinary Committee was communicated to the Player and the AUF.
 11. On 27 June 2014, the Player informed the FIFA Appeal Committee through his legal representative of his intention to lodge an appeal against the decision of the FIFA Disciplinary Committee rendered on 25 June 2014.
 12. On 29 June 2014, the AUF informed the FIFA Appeal Committee of its intention to lodge an appeal against the decision of the FIFA Disciplinary Committee of 25 June 2014 as well.
 13. On 30 June 2014, the Player released a statement on his personal website, the media and social networks, in which he recognized his misconduct, expressed his deepest regrets, apologized and promised that nothing like the incident in question would ever happen again.
 14. Against the decision of the FIFA Disciplinary Committee rendered on 25 June 2014 appeals were filed by the Player on 1 July 2014 and by the AUF on 3 July 2014.

15. On 8 July 2014, the FIFA Appeal Committee issued its decision on such appeals and stated the following²:
 1. *The appeal submitted by the player Luis Suárez is rejected.*
 2. *The appeal submitted by the Uruguayan Football Association is rejected.*
 3. *The decision of the FIFA Disciplinary Committee taken on 25 June 2014 is confirmed in its entirety.*
 4. *The costs and expenses of these proceedings amounting to CHF 6,000 must be shared equitably by the Player and the Uruguayan Football Association. This amount is set off against the amounts paid by each of CHF 3,000, which were paid as a deposit by the Player and the Uruguayan Football Association”.*
16. On 10 July 2014, the operative part of the decision rendered by the FIFA Appeal Committee was communicated to the Player and the AUF by facsimile and email.
17. On 11 July 2014, the Player and the AUF requested to be provided with the reasoning of the decision passed by the FIFA Appeal Committee.
18. On 22 July 2014, the reasons of the decision rendered by the FIFA Appeal Committee on 8 July 2014 were communicated to the Player and the AUF.

III. PROCEEDINGS BEFORE THE CAS AND PARTIES' REQUESTS FOR RELIEF

19. On 23 July 2014, the Player, FC Barcelona and the AUF filed separate statements of appeal with the Court of Arbitration for Sport (hereinafter referred to as the “CAS”) to challenge the decision of the FIFA Appeal Committee of 8 July 2014 (hereinafter referred to as the “Appealed Decision”), pursuant to art. R47 et seq. of the Code of Sports-related Arbitration (hereinafter referred to as the “Code”). By these appeals, in essence, the Appellants sought the setting aside of the Appealed Decision or, if the case, the reduction to a milder measure of the sanction thereby imposed on the Player.
20. The arbitration proceedings so started were registered by the CAS Court Office as follows: CAS 2014/A/3665, *Luis Suarez v. FIFA*; CAS 2014/A/3666, *FC Barcelona v. FIFA*; and CAS 2014/A/3667, *Uruguayan Football Association v. FIFA*. In their respect, the Player and FC Barcelona in their statements of appeal designated Prof. Luigi Fumagalli as a member of the Panel. In its statement of appeal the AUF consented to such appointment.
21. In addition, the Appellants indicated that the Parties had reached an agreement regarding an expedited procedural timetable, according to which the Player and FC Barcelona would file their appeal briefs on 27 July 2014, the AUF would file its appeal brief on 28 July 2014, FIFA would file its answer on 6 August 2014 and the hearing would be held on 8 August 2014.
22. On 24 July 2014, the CAS Court Office acknowledged receipt of the statements of appeal,

² Unofficial translation by FIFA from the Spanish original of the decision of the FIFA Appeal Committee.

informed the Parties that the President of the CAS Appeals Arbitration Division had decided to consolidate the three appeal proceedings in accordance with art. R52 of the Code, and took note of the Parties' agreement to the expedited calendar.

23. On 27 July 2014, the Player and FC Barcelona filed their respective appeal briefs, of identical content, and confirmed their requests for relief as follows:

- “1. *The present appeal against FIFA Appeal Committee’s decision dated 8 July 2014 is accepted.*
2. *The decision by FIFA Appeal Committee dated 8 July 2014 shall be annulled and a new decision is issued in which, having considered all the pertinent factors and attendant circumstances, the sanction to be imposed is a lesser one than the sanction imposed in the Appealed Decision, and specifically consist of:*
 - a. *A match ban for a number of consecutive official matches of the Uruguayan national team between 2 and 9, or*
 - b. *Alternatively, a match ban for a number of consecutive official matches of the Uruguayan national team between 2 and 9, and a monetary fine for an amount that is no greater than the CHF 100,000 established in the Appealed Decision.*
3. *FIFA shall be condemned to pay the legal costs and other expenses incurred by the Appellant in relation to this proceeding”.*

24. On 28 July 2014, the AUF filed its appeal brief with the following requests for relief:

- “(i) *Set aside the decision of the FIFA Appeal Committee dated 8 July 2014,*
or
Amend the decision of the FIFA Appeal Committee dated 8 July 2014 to significantly reduce the sanctions imposed upon Mr Luis Suárez therein;
- (ii) *Order FIFA to pay a contribution towards the legal costs and other related expenses of the AUF”.*

25. On 31 July 2014, the CAS Court Office indicated that none of the Parties had objected to the nomination of Prof. Luigi Fumagalli as arbitrator in the present matter, and therefore confirmed such appointment.

26. On 31 July 2014, FIFA appointed Dr. Marco Balmelli as a member of the Panel.

27. On 4 August 2014, the CAS Court Office informed the Parties about the constitution of the Panel as follows: Mr Bernhard Welten, President, Prof. Luigi Fumagalli and Dr. Marco Balmelli, arbitrators.

28. On 6 August 2014, FIFA filed its answer, requesting the CAS:

- “1. *To declare that the Club has no standing to sue;*
2. *To reject the AUF’s request to set aside the decision hereby appealed against;*

3. *To reject the Appellants' request to set aside the decision hereby appealed against and to issue a new one;*
 4. *To confirm in its entirety the decision hereby appealed against;*
 5. *To order the Appellants to bear all costs incurred in connection with these proceedings and to cover all legal expenses of the Respondent in connection with these proceedings”.*
29. On 8 August 2014, a hearing was held at the CAS headquarters in Lausanne. All the members of the Panel were present. At the outset of the hearing, the Parties declared that they had no objection with regard to the composition of the Panel.
30. The following persons attended the hearing:
- Mr Luis Alberto Suárez Díaz in person, assisted by Mr Lucas Ferrer and Mr Alexis Schoeb, counsel;
 - Fútbol Club Barcelona, as represented by its secretary of the board, Mr Antoni Freixa and by its legal director, Ms Laura Anquera, assisted by Jordi López, counsel;
 - Asociación Uruguaya de Fútbol, represented by its secretary general, Dr. Alejandro Balbi, and assisted by Mr David Casserly and Mr Daniel Cravo Souza, counsel, together with the research assistant Ms Melissa Knox and an interpreter, Mr Gabriel Cordova;
 - FIFA, as represented by Mr Marc Cavaliero, head of Disciplinary & Governance Department, Ms Christine Fariña and Mr José Rodríguez, legal counsel at the Disciplinary & Governance Department.
31. During the hearing, the Parties made full oral submissions. No witness was called to testify; instead, all Parties asked questions from the Panel and the other Parties, and Mr Suarez rendered some declarations.

IV. SUBMISSIONS OF THE PARTIES

32. The following outline of the Parties' positions is illustrative only and does not necessarily comprise every contention put forward by the Parties. The Panel, indeed, 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 summary.
- a) *The Player and FC Barcelona*
33. As the Player and the Club filed identical submissions, their position can be jointly summarized. They assert that:
- i. the object of the appeal is not to request the complete annulment of the sanction imposed on the Player, since the Player recognizes that his conduct deserves to be punished;

- ii. however, the sanction imposed by the FIFA disciplinary bodies must be reduced, since “*it is not adjusted to the FIFA DC and is contrary to basic disciplinary and punitive principles*”. Four reasons can be identified for such reduction:
 - consideration of the Player’s acknowledgment and remorse as a mitigating factor for the sanction;
 - wrong application of sanctions by FIFA according to its own disciplinary code;
 - breach of basic disciplinary principles in the imposition of sanctions on the Player;
 - the clear disproportion and inadequacy of the sanction imposed.
- iii. as to the consideration of the Player’s acknowledgment and remorse as a mitigating factor for the sanction:
 - not all relevant factors were taken into account by the FIFA disciplinary bodies: especially, the Player’s acknowledgment of the facts and the remorse he expressed with full and absolute publicity were not considered as mitigating factors;
 - in fact, the Player apologized publicly and also privately to his opponent player Giorgio Chiellini for what he did;
 - in addition, the Match was a “high voltage” match, and within a few hours after the Match the Player and the AUF had to take position in front of the FIFA Disciplinary Committee, which left them barely any time to reflect on the incident, at a time when the next crucial match was already waiting (1/8-final);
 - the Player is willing to undergo personalized medical treatment to improve his self-control, and the Club is willing to support him to start the treatment sessions, which further shows the Player’s remorse;
- iv. as to the wrong application of sanctions by FIFA according to its own disciplinary code:
 - FIFA imposed a total of four distinct sanctions for one single act committed by the Player, applying two different articles of the FIFA DC; the FIFA authorities therefore wrongly applied the Disciplinary Code. Biting as an “assault” does imply a “violation of the principles of fair play” and therefore no additional sanction, based on a second provision (art. 57 FIFA DC), is possible;
 - Art. 57 FIFA DC cannot be applied in the case at hand; only art. 48 FIFA DC shall be applied, which clearly defines the concrete sanction to be imposed (match ban plus possibly a fine); this specific rule (*lex specialis*) of art. 48 FIFA DC shall prevail over the general rule (*lex generalis*) of art. 32 FIFA DC, which would enable the deciding body to combine sanctions, unless otherwise specified;
- v. as to the breach of basic disciplinary principles in the imposition of sanctions on the Player:
 - the Appealed Decision breaches the principle of “*ne bis in idem*”, as four distinct sanctions are imposed for one single act, embodied in two different articles. The purpose of art. 48 para. 1 lit. d) and art. 57 FIFA DC is the same (to sanction a

football player for misconduct in the performance of his profession) and it is obvious that art. 48 para. 1 lit. d) incorporates within its scope a “*violation of the principles of fair play*”;

- the Appealed Decision further breaches the principle of legality “*nulla poena sine lege certa*” as it is impossible to anticipate the duration and scope of the sanctions that the Player could have expected in this case. In the case at hand the so-called “predictability test” is breached and shows that the Appealed Decision is arbitrary. The only sanction predictable *ex ante* to the Player is the suspension for a minimum of two matches plus a fine, therefore no further sanctions beside these should be applied;
- vi. as to the clear disproportion and inadequacy of the sanction imposed:
- the sanctions imposed on the Player are completely inadequate and disproportionate, especially the stadium ban or the ban on taking part in any football-related activity, which are generally handed out when an administrative official, hooligans, club managers, referees or players have committed a crime, a match fixing offense, have violated the principle of contractual stability or some other non-football-related injury, *i.e.* have committed an offense occurring outside the pitch. In this case the Player committed an assault contending the ball and is not responsible for any offense occurring outside the pitch. Biting can be compared to other acts of misconduct, even if it is less frequent and more exceptional than others. The assault was committed during a game of the Uruguayan national team and therefore the sanction affecting the Club is incoherent;
 - the sanctions applied are disproportionate as the victim (Mr Chiellini) was able to continue to play without medical assistance and injury. In addition, if other assaults, committed by differed players in World Cup matches, such as Mauro Tassotti in 1994 and Zinedine Zidane in 2006, are considered, it can be noted that no such harsh sanctions (as those adopted for the Player) were imposed. Therefore, adding to the already heavy sanction of a 9-match ban and a fine, the four-month ban from participating in every football-related activity and from accessing stadium grounds is obviously disproportionate.

b) *The AUF*

34. The AUF assertions may be summarized as follows:

- i. art. 77(a) of the FIFA DC was applied inappropriately by the FIFA disciplinary bodies, as the case in question does not concern serious infringements which have escaped the match officials attention. As a result, the Appealed Decision should be set aside in its entirety;
- ii. FIFA did not correctly apply the principles of sanctioning under Swiss law, it misapplied its own rules regarding recidivism and it misdirected itself in several other respects when considering an appropriate sanction. In fact, there must be a reduction in the 9 match

ban:

- to take into account that Swiss sanctioning principles will be violated by a sanction that favours punishment, while the principal objective of the sanction imposed on the Player should be to deter him from re-offending in the future. Such purpose is not best served by the imposition of a lengthy ban. On the other hand, AUF is in contact with psychiatrists in order to ensure that the Player's treatment will continue uninterrupted whenever he is on international duty with the AUF; the AUF is supporting an educational program entitled "*Campaign against violence in sport 2014*", in which the Player will be able to play the leading role;
- to take into consideration the incorrect minimum sanction starting point. In fact, the Player's conduct clearly falls under art. 48 para. 1 lit. d) FIFA DC and therefore the sanction is a two-match ban; biting cannot lead to a minimum six-match ban pursuant to art. 48 para. 1 lit. e) FIFA DC;
- to take into consideration the illegitimate finding of recidivism. The Appealed Decision considered the Player's recidivism as an aggravating factor. However, only prior infringements occurring in matches organized by FIFA can be taken into account to decide whether a player is a recidivist, on the basis of art. 40 FIFA DC. The interpretation of art. 40 FIFA DC, in fact, has to be made in a narrow way, while, in the case at hand, the FIFA bodies applied art. 40 FIFA DC arbitrarily, as the previous events which had involved the Player had occurred in national competitions. It is the first time FIFA has taken into account incidents at national levels in the context of disciplinary proceedings opened against players during FIFA competitions;
- to take into account the mitigating factor of remorse, that was incorrectly not considered by the FIFA Appeal Committee. Based on CAS jurisprudence, the fact that a party apologises and recognises his mistake must be taken into account for the purposes of sanctioning. The Player made a public and a separate private apology to Mr Chiellini;
- to take into consideration the lack of damage or consequence for Mr Chiellini, who was able to keep playing after the incident ;
- to take into account the fact that the FIFA Appeal Committee did not consider the effect of the sanction on third parties, such as the national team of AUF and the Club;
- to ensure the proportionality of the sanction in practical terms. Indeed, the nine-match ban is very long and will prevent the Player's participation in the 2015 *Copa America* in Chile as well as in the first qualification games of the preliminary competition of the FIFA World Cup 2018. A reduction of the suspension to four matches would in any case imply the loss for the Player of the possibility to play at the *Copa America* in 2015. In addition, the sanctions imposed on the Player appear clearly disproportionate, if compared to the cases of Tassotti (1994 - eight-match ban), Leonardo (1994 - four-match ban), Zidane (2006 - three-match ban, plus

CHF 7,500 fine), and Song (2014 - three-match ban, and CHF 20,000 fine).

- to take into account the fact that the Player did not gain anything from the infringement he committed (no goal scored), but suffered personal difficulties, being blamed by the Uruguayan population, had worldwide negative publicity, with sponsors dropping him, and especially had his family life publicly exposed in an embarrassing and ashaming way;
- iii. the imposed stadium ban and the ban on all football-related activity are also inappropriate and should be set aside.

c) *FIFA*

35. The Respondent's assertions may be summarized as follows:

- i. FC Barcelona has no standing to sue, as the Club was not part of the proceedings in front of the FIFA Disciplinary or FIFA Appeal Committee, and it has no legally protected interests. In addition, the Club did not request to join or intervene in these proceedings. In any case, all consequences of the Appealed Decision are directed only to the Player himself and any possible claim the Club may have is an indirect consequence of the sanction imposed on the Player;
- ii. the AUF did not raise the argument of a wrong application of art. 77 FIFA DC in front of the FIFA bodies, and cannot raise it before the CAS, since, in view of the new wording of art. R57 of the Code, the CAS power of review is limited by the object of the dispute that was before the previous instance. In any case, the contention of the AUF that the match officials witnessed the incident under investigation, and therefore that art. 77 lit. a) FIFA DC is not applicable, is wrong: the match officials, in fact, clearly stated that they had seen the incident. Such facts are presumed to be accurate on the basis of art. 98 FIFA DC;
- iii. all possible misconducts foreseen in the FIFA DC can be regarded as having an unsporting nature. However, the Player's biting is a serious violation of the principle of fair play and sportsmanship due to the abnormality of the act. This is confirmed by the specific contractual provisions included by the Player and the Club in the employment contract they entered into on 16 July 2014, which was not contemplated in the other Club's contracts with its players, as evidenced by information collected through the FIFA transfer matching system;
- iv. art. 48 para. 1 lit. d) and art. 57 FIFA DC apply independently, and one incident may certainly result in a violation of several articles of the FIFA DC. The concurrent application of art. 48 para. 1 lit. d) and art. 57 FIFA DC, without overlap, is confirmed by the fact that Art. 48 aims at protecting the physical integrity of another player, whereas art. 57 FIFA DC intends to protect *inter alia* the spirit of fair-play;
- v. as only one single disciplinary procedure was conducted against the Player within the framework of FIFA, the principle of *ne bis in idem* cannot be invoked, as it applies only

to protect an individual against the “double jeopardy” caused by the concurrent exercise of multiple proceedings for the same facts. The principle of *nulla poena sine lege certa*, as well as the “predictability test”, are fully respected in the case at hand. There is a clear connection between the incriminated behaviour and the sanction;

- vi. FIFA has an autonomy and its bodies enjoy a margin of discretion to apply the FIFA Regulations. The CAS should amend a disciplinary decision of a FIFA judicial body only in cases in which it finds that the relevant FIFA body exceeded that margin of discretion; therefore a sanction must be considered as evidently and grossly disproportionate to the offense in order to be open to correction;
- vii. due to its abnormality, biting was compared with spitting; however, this was not done due to its “infrequent” or “unusual nature” as claimed by the AUF. The circumstances of the incident under review are truly exceptional;
- viii. the facts that Mr Chiellini was not injured cannot be taken into consideration as mitigating circumstance; the cases mentioned by the Appellants cannot be compared to the case of the Player, as every single case has its own peculiarities and biting cannot be compared to any other type of assault;
- ix. the FIFA DC does not limit the possibility for its judicial bodies to consider, for any purpose, including recidivism, only previous cases that took place in certain competitions and/or within a determined time period. The FIFA judicial bodies have to right to take into account cases that have (or should have) been dealt with by FIFA member associations, as well as by confederations or other sports organisations under the conditions of art. 70 para. 2 FIFA DC. Art. 40 para. 1 FIFA DC does not explicitly state that the infringements the provision refers to are only those that occurred in competitions organized by FIFA. Therefore the two prior incidents involving the Player of the same nature as the incident in question may certainly be taken into account when assessing the sanction;
- x. in the proceedings before the first instance body the Player fully denied the facts and failed to apologize for his behaviour. Only after having been notified of the decision of the FIFA Disciplinary Committee did the Player apologize publicly. It seems that such apology was only made in order to seek a reduction of the sanction he had received. The FIFA Appeal Committee considered these facts and behaviour and decided not to treat them as mitigating circumstances;
- xi. the Player is a role model and he therefore should always behave in a professional and respectful way. Before this incident, he was not provoked by his opponent player, Mr Chiellini; the Player assaulted him with the purpose of getting an advantage by destabilising or even injuring him;
- xii. the Club was completely aware of the sanction imposed on the Player when signing the employment contract on 16 July 2014;
- xiii. only during the four-month ban on taking part in any kind of football-related activity,

as imposed by the FIFA Appeal Committee, the Player is not allowed to play friendly matches for the representative team of Uruguay; thereafter he will be allowed to play friendly matches of such representative team.

V. CAS JURISDICTION

36. The jurisdiction of CAS derives from art. 60 ff. of the FIFA Statutes and art. R47 of the Code and is not disputed by the Parties.
37. Therefore, CAS has jurisdiction to decide on the present dispute.
38. Under art. R57 of the Code, the Panel has full power to review the facts and the law.

VI. APPLICABLE LAW

39. Art. R58 of the Code provides as follows:

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

40. Art. 66 par. 2 of the FIFA Statutes states:

“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”.

41. Based on this, in the case at hand, FIFA rules and regulations and, subsidiarily, Swiss law, shall be applicable.

VII. ADMISSIBILITY

42. The three statements of appeal were all filed on 23 July 2014 and therefore within the deadline provided by the FIFA Statutes and as stated in the decision of the FIFA Appeal Committee of 8 July 2014. The appeals complied with all other requirements of art. R48 of the Code, including the payment of the CAS Court Office fees.
43. While the admissibility of the appeal filed by the Player and by the AUF is not contested, FIFA, in its answer of 6 August 2014, FIFA objected to the admissibility of the appeal of FC Barcelona, as the Club was at no stage part of the proceedings in front of the FIFA Disciplinary or the FIFA Appeal Committee and the Club does not have any direct and individual “aggrieved right”.

44. At the hearing of 8 August 2014, the Player and the AUF confirmed that they do not challenge the FC Barcelona's standing in these proceedings, and that they agreed to the participation of the Club in this arbitration.
45. FC Barcelona stated in its oral pleadings that the Club has been accepted by all Parties when discussing the time schedule of these proceedings. FC Barcelona underlined that even FIFA did not oppose to the Club's involvement at such stage. The specific interest of the Club, so said FC Barcelona, is related to the Player's ban to engage into any football-related activity, imposed by the FIFA bodies. This interest originated only after the Club and the Player signed the employment contract on 16 July 2014. Before this date – the decisions of the FIFA Disciplinary Committee is of 25 June 2014 and the decision of the FIFA Appeal Committee is of 8 July 2014 – the Club could not participate in the FIFA proceedings, but just followed them from the outside; therefore, the possibility open to the Club to assert its interests is the appeal to the CAS. The Club claims to have a direct, individual and specific interest in relation to its marketing and therefore revenue generating activities with possible negative effects on sponsors, ticketing and merchandising. The Club was not able to present the Player to his fans and the media, and further the new coach of the first team is not able to train and integrate the Player (as a new player in the team) in the pre-season matches. This all leads to a heavy sporting and financial interest the Club has itself in relation to the decision of FIFA Appeal Committee.
46. An indication of the conditions under which FIFA itself recognizes a right of appeal against (first instance) disciplinary decisions can be found at art. 119 par. 1 FIFA DC, 2011 edition, which states that:

“Anyone who has been a party to the proceedings before the first instance and has a legal protected interest justifying amendment or cancellation of the decision may lodge an appeal with the Appeal Committee”.
47. In the view of the Panel it is a fact that the ban of the Player on any football-related activity and from visiting any stadium for four months, until late October 2014, does burden the Club in its own direct interests to work with the Player, to promote its brand and activities by taking advantage of the image of the Player, and to include him in the new season's team. Therefore, in light of the specific circumstances of the case, taking into account the impact of the specific sanction imposed, the Panel finds that the Club is sufficiently affected by the Appealed Decision and that the Club has a tangible interest of financial and sporting nature at stake.
48. If the conditions stated in art. 119 par. 1 FIFA DC are considered, the only open question is therefore posed by the fact that the Club was not a party to the proceedings before the FIFA disciplinary bodies. The Panel, however, notes that the Player only signed his employment contract with the Club on 16 July 2014, *i.e.* after the FIFA decisions had been adopted. Up to that moment, the Club did not have any direct interest, which became actual only when the employment contract was signed. Therefore, FC Barcelona could not participate in the FIFA proceedings. The Panel is of the view that in a case where the FIFA authorities are issuing a sanction against a player and such sanction affects direct financial interests of a club, such club must have the possibility to appeal (within the applicable deadline) such decision in order to be able to protect its legal interests, even if this interests became actual after the challenged decision

was issued.

49. For this reason and in the specific circumstances of the case at hand, the Panel finds that the Club has a standing to sue, even if it was not a party to the proceedings before the first and second FIFA instance; the direct legally protected interest of the Club justifies its own request for an amendment or cancellation of the Appealed Decision.
50. As a result, all appeals, including the appeal of FC Barcelona, are admissible.

VIII. MERITS OF THE APPEALS

51. In these proceedings, the Panel has to take a decision purely based on the interpretation of FIFA regulations, as the events at the Match are clear and not contested by the Parties – with only one specific exception, referred to the factual conditions grounding the power for the FIFA bodies to start disciplinary proceedings against the Player pursuant to art. 77(a) of the FIFA DC.
52. As a result of the Parties' contentions, therefore, there are two main questions that the Panel has to address:
 - i. had the FIFA Disciplinary Committee the power to sanction the Player pursuant to art. 77(a) of the FIFA DC?
 - ii. if so, was the sanction on the Player imposed at a proper level?
53. The first question is related to the AUF's request to entirely set aside the Challenged Decision, because, if the FIFA bodies had no power to start disciplinary proceedings against the Player pursuant to art. 77(a) of the FIFA DC, no sanction of any nature and measure could be imposed on him.
54. The second question, then, underlies the Appellants' common request that the sanction on the Player be reduced. In its connection, and based on the Appellants' reasoning, the Panel has to consider a number of specific points:
 - a. the alleged wrong application of sanctions by FIFA and breach of basic disciplinary principles;
 - b. the existence of mitigating factors and of aggravating circumstances;
 - c. the alleged disproportion and inadequacy of the sanction.
55. The Panel shall examine all those issues separately.

i. Had the FIFA Disciplinary Committee the power to sanction the Player pursuant to art. 77(a) of the FIFA DC?

56. Art. 77 of the FIFA DC provides that

“The Disciplinary Committee is responsible for:

a) sanctioning serious infringements which have escaped the match officials’ attention”.

57. Such provision is to be read in conjunction with art. 108(1) of the FIFA DC, under which *“disciplinary infringements are prosecuted ex officio”.*

58. The AUF denies in this arbitration the possibility for the FIFA disciplinary bodies to sanction the events at the Match, by submitting that there are not *“serious infringements which have escaped the match officials’ attention”*, as the referee saw the actions of the Player. In that respect, the AUF maintains that the referee sanctioned the biting with a free kick in favour of Italy, as confirmed by the video footage, which shows that the referee was directing his attention to the events in the Italian penalty area, where the Player and Mr Chiellini entered into contact.

59. FIFA denies the admissibility of the contention, because it was not raised before the FIFA disciplinary bodies. In any case, the Respondent maintains that no evidence was brought in support of the AUF’s submission that the referees had seen the actions of the Player, and that such contention is contradicted by the declarations of the match officials.

60. The Panel finds that the claim brought by AUF is admissible, even if it relates to a question not specifically discussed before the FIFA disciplinary bodies. Art. R57 of the Code, in fact, gives this Panel the possibility of unrestricted review, as to the facts and the law, of the dispute between parties. And, in the Panel’s view, there is no reason not to exercise such power in the case at hand, since in any case the contention of the AUF is directly referred to the use by FIFA of its disciplinary supervision on the Match – the issue which is – and has always been – at the heart of the dispute between the Parties.

61. However, the Panel finds that the claim brought by AUF cannot be sustained. In the Panel’s opinion, in fact, the conditions indicated by art. 77(a) of the FIFA DC are satisfied.

62. First, there is no doubt that the biting is to be treated as a serious offence under the FIFA DC.

63. Second, the Panel notes that all the officials at the Match declared, and thereafter confirmed, without hesitation or contradictions, that they had not seen the biting of Mr Chiellini by the Player. Such declarations are, pursuant to art. 98(1) of the FIFA DC, presumed to be accurate, and the AUF has not brought sufficient evidence to disprove their content: the video footage is not persuasive, as it shows that the referee was directing his attention to the area of the pitch where the ball was being contented by other players; the fact that a free kick was granted to Italy does not mean that the referee had seen the biting, as it could be explained by the perception of a different (less serious) foul.

64. In light of the foregoing, the Panel concludes that the FIFA disciplinary bodies had the power

to investigate the events at the Match and sanction the Player pursuant to art. 77(a) of the FIFA DC.

ii. Was the sanction on the Player imposed at a proper level?

ii(a) The alleged wrong application of sanctions by FIFA and breach of basic disciplinary principles

65. The first point relating to the determination of the nature and measure of the sanction for the Player is linked to the identification of the rule violated by the Player. In fact, even though there is a *consensus* that the Player committed an infringement under the FIFA DC, the proper identification of such an infringement is disputed. In fact, the Appealed Decision imposed on the Player four different sanctions (a fine, a match suspension, a stadium ban, and a ban on taking part in any football-related activity) for two distinct infringements: the infringement contemplated by art. 48(1)(d) and the infringement described in art. 57. The Appellants contend that by doing so the FIFA bodies wrongly applied the FIFA rules and breached basic disciplinary principles, while the correct application of the mentioned rules and principles should have led to a milder sanction.

66. Art. 48 of the FIFA DC provides as follows:

- “1. ... any recipient of a direct red card shall be suspended as follows: ...
d) at least two matches for assaulting (elbowing, punching, kicking etc.) an opponent or a person other than a match official”.
[...]
2. A fine may also be imposed in all cases”⁶.

67. Under art. 57 of the FIFA DC, then:

“Anyone who insults someone in any way, especially by using offensive gestures or language, or who violates the principles of fair play or whose behaviour is unsporting in any other way may be subject to sanctions in accordance with art. 10 ff.”.

68. Art. 10 ff. of the FIFA DC list the sanction applicable to natural and legal persons. For natural persons, as the Player, they include the fine (art. 15), the match suspension (art. 19), the stadium ban (art. 21), and the ban on taking part in any football-related activity (art. 22).

69. Based on the Parties’ submissions, it is uncontested that the Player’s biting his adversary is considered as “*assaulting*” in accordance to art. 48 par. 1 lit. d) FIFA DC. The question is then whether the actions of the Player at the Match constitute at the same time an “*unsporting behaviour*” to be sanctioned also under art. 57 FIFA DC. The Player and the Club, in fact, claim that the concurrent application of art. 48 par. 1 lit. d) and art. 57 FIFA DC for the Player’s

³ As made clear by art. 48 through the reference to art. 77 FIFA DC, such sanction can be imposed also on a player who had not received a direct red card, if the infringement had escaped the match officials’ attention.

assaulting in the case at hand breaches the constitutional principles “*ne bis in idem*” and “*nulla poena sine lege certa*”. More in general, the Appellants maintain that the concurrent application of art. 48 par. 1 lit. d) and art. 57 FIFA DC to the same action committed by the Player is wrong, as only of art. 48 par. 1 lit. d) could be applied, to the exclusion of art. 57. The Respondent denies such submissions, and holds that no breach of those fundamental principles was committed.

70. Regarding the argument relating to the principle of “*ne bis in idem*”, the Panel agrees with the Respondent, that the application of two different rules to the same facts involves the different question of the relation between the two applied rules (art. 48 par. 1 lit. d, and art. 57 FIFA DC), in the sense that the application of one of these rules possibly “consumes” the application of the other rule. The principle “*ne bis in idem*”, in fact, appears to the Panel to give rise to a kind of *procedural* defence, forbidding a defendant from being tried again on the same (or similar) charges following a legitimate acquittal or conviction, and does not concern the *substantive* issue of the possible concurrent application by a single hearing body of a plurality of rules to the same and only behaviour. Therefore the Appellants’ reproach to the Respondent’s bodies to have breached the general principle of “*ne bis in idem*” cannot be supported by the Panel.
71. The Player and the Club further reproach to FIFA Appeal Committee that the Appealed Decision breaches also the principle of “*nulla poena sine lege certa*” in applying the sanctions of art. 48 par. 1 lit. d) and art. 57 FIFA DC to the Player’s assaulting committed at the Match. The Appellants’ reproach is mainly that it is impossible for players and clubs to anticipate the duration and scope of the sanctions issued: therefore, the Appealed Decision fails to pass the so called “predictability test” and is to be considered arbitrary.
72. The Panel notes that the Appellants did not contest that the FIFA DC emanates from a duly authorized body and was adopted in a fair and transparent way complying with the rules of association (Art. 60 ss. of the Swiss Civil Code) and was therefore not the product of an obscure process of accretion. Further, it is not claimed by the Appellants that the FIFA disciplinary rules cannot be understood generally, or that such rules are contradictory. The reproach made is that for the very infringement attributed to the Player (*i.e.*, the assaulting at the Match) the sanctions applied by the FIFA Appeal Committee were not predictable and could not be anticipated – and chiefly so because of the concurrent application of two rules (art. 48 and art. 57 of the FIFA DC).
73. In the case at hand, however, the Panel is of the opinion that it was clear to the Player that his biting was wrong, that he breached the disciplinary regulations and that an appropriate sanction will have to be applied. However, it is not necessary for the principles of predictability and legality to be respected that the football player should know, in advance of his infringement, the exact rule he may infringe, as well as the measure and kind of sanction he is liable to incur because of the infringement. Such fundamental principles are satisfied whenever the disciplinary rules have been properly adopted, describe the infringement and provide, directly or by reference, for the relevant sanction. The fact that the competent body applying the FIFA DC has the discretion to adjust the sanction mentioned in the rules deemed applicable to the individual behaviour of a player breaching such rules is not inconsistent with those principles.

74. The Panel therefore finds that the general principle “*nulla poena sine lege certa*” – to the extent applicable for sanctions under the Swiss law of associations – was not breached by the Appealed Decision.
75. As already mentioned, however, the main question is whether the actions of the Player at the Match constitute at the same time a violation of (and can be punished under) both art. 48 par. 1 lit. d) and art. 57 FIFA DC.
76. The Panel finds that under civil law and disciplinary regulations it is in abstract possible that one act breaches at the same time more than one rule, and is therefore sanctioned under all those rules. However, the question before this Panel is whether in the specific case, the Player could be found in violation, for a single action (the biting of Mr Chiellini), not only of art. 48 par. 1 lit. d) FIFA DC, but also of 57 FIFA DC. The question is not merely theoretical: it concerns the actual behaviour of the Player when “assaulting” Mr Chiellini, and whether this behaviour is fully covered by art. 48 par. 1 lit. d) FIFA DC or room is left for an application of art. 57 FIFA DC. The Panel notes that an answer to this question cannot be found in art. 32 FIFA DC, since this provision indicates that *sanctions* provided in Chapter I (general part) and Chapter II (special part) of the FIFA DC *may* be combined: in other words, it allows a combination of sanctions (without imposing it), and does not address the different issue of “combination of infringements”, which is involved in the case at hand.
77. In general, the wording of art. 57 FIFA DC shows that this provision contains a mere general clause, trying to cover all possible conducts against fair play, which are not yet covered by other articles, or “consumed” by the application of any other provision, of the FIFA DC. In other words, to the extent the action of biting (in the circumstances in which it occurred at the Match) falls within the scope of art. 48 par. 1 lit. d) FIFA DC (as all the parties concede), since the kinds of “*assaulting*” therein described (“*elbowing, punching, kicking*”) are expressly not exhaustive (“... *etc.*”), the same action could not be comprised in the scope of art. 57 FIFA DC, even though the Player’s assaulting in the case at hand, being a misconduct, is also against fair play. The conclusion would be that the punishment of the Player is already and fully covered by the application of art. 48 par. 1 lit. d) FIFA DC – with no room left for art. 57 FIFA DC, wrongly applied by the FIFA disciplinary bodies.
78. The Panel finds this to be the case and concludes that the Player could be sanctioned, for the infringement he committed at the Match, only on the basis of art. 48 par. 1 lit. d) FIFA DC, being the “*lex specialis*” compared to the general provision set by art. 57 FIFA DC. Biting, as mentioned, is an “*assault*” for the purposes of that provision, and no room is left in this case for the application of the general rule set by art. 57 FIFA DC. The Panel, in any case, finds that in the case at hand any sanction going beyond those allowed by art. 48 par. 1 lit. d) FIFA DC would be inappropriate to the peculiarities of the case and would be disproportionate (see §§ 90 ss. below). As a result, the sanction to which the Panel unanimously agrees hereinafter is issued on the basis of art. 48 par. 1 lit. d) FIFA DC only.
79. As a result of the foregoing, the Panel does not need to review the arguments brought forward against the Appealed Decision with respect to the sanctions imposed on the basis of art. 57

FIFA DC and shall focus on the sanctions to be issued.

ii(b) The existence of mitigating factors and of aggravating circumstances

80. Disputed in this arbitration is whether the FIFA disciplinary bodies properly considered all the relevant circumstances and factors in the determination of the kind and measure of the sanction. The Appellants, in fact, contend that the Challenged Decision did not take into account the remorse expressed by the Player; and that, on the other hand, considered the Player a recidivist, while no relevant recidivism could be found under the FIFA DC.
81. With regard to the question of the relevance to be given to the Player's remorse as a mitigating factor, the Panel, looking at the non-contested facts and the Parties' allegations, finds that the margin of discretion the FIFA Appeal Committee had to judge this case was not exceeded, and that it was correctly exercised.
82. From the sequence of events it is obvious that the FIFA Disciplinary Committee was not able to take into consideration the Player's acknowledgement of his mistake and remorse, as such public acknowledgement and excuse was only made on 30 June 2014, *i.e.* after the decision of the Disciplinary Committee was issued. On the other hand, the Panel notes that the FIFA's Appeal Committee did take into consideration this acknowledgement of his mistake and remorse. However, it did not see this behaviour to be a mitigating factor when assessing the measure of the sanction.
83. The Panel agrees with the conclusion reached in the Appealed Decision, and finds that the remorse of an offender can hardly be given any weight when the same offender had in precedent occasions committed the same infringement and in those occasions had already expressed its remorse and pledged not to repeat that infringement. In addition, the Panel finds that the remorse and apologies shown by the Player after having already been sanctioned cannot have the same impact as a remorse expressed immediately after the event and before any disciplinary proceeding is started and/or sanction is imposed. In that respect, the Panel wishes to underline that it has no doubt as to the veracity of the Player's repentance and apologies: the frank and apologetic attitude taken by the Player in the course of the CAS proceedings and at the hearing is certainly commendable, as a sign of understanding of his problems: the relevance of such genuine behaviour for the purposes of the sanction is however a different issue.
84. In addition, the Panel notes that, in view of art. 39 par. 4 FIFA DC, the bodies pronouncing the sanction for a violation of the FIFA DC shall take into account all relevant factors in the case, as well as the degree of the offender's guilt. In other words, the disciplinary bodies have to consider all the relevant circumstances, which include mitigating but also aggravating factors. Actually, the FIFA DC, unlike State criminal codes, does not provide a system of general rules defining standard sanctions to be increased (or reduced) by given percentages (by the half, one third or the like) if named aggravating or mitigating circumstances are found. Indeed, the FIFA DC does not even mention "remorse" or "excuses" as reasons for possible reduction. The FIFA DC, indeed, require a global consideration of the offender's personality, including his attitude as a "serial" offender (art. 40), without any automatic consequences deriving from the

occurrence of a specific circumstance.

85. As a result, the FIFA disciplinary bodies were certainly entitled to “weigh” the Player’s acknowledgement of his mistake and remorse, taking into account the circumstances of time in which they were expressed and together with other factors.
 86. Such factors could legitimately include the Player’s and the AUF’s behaviour before the FIFA Disciplinary Committee, when the real facts, clearly proven by the videos timely provided to the Player and the AUF, were unreasonably denied.
 87. In the same way, in the mentioned exercise of the global examination of the offender’s attitude, the disciplinary bodies could take into account the fact that the Player had already committed in two preceding occasions the very same infringement, and irrespective of the level (national) of the competition in which they had occurred. In any case, the Panel notes that recidivism is specifically mentioned as an aggravating factor to be considered, in view of art. 39 par. 4 FIFA DC, without any limitation with regard to the circumstances of the previous violations. The disciplinary bodies as well as the Panel can certainly not look away if recidivism is notorious to them.
 88. The Panel is further not convinced that the Player really took his problem seriously when the first infringements were committed, and followed the recommended psychologist treatment. At least the two meetings with the psychologist in the UK for a total of two hours, happening after the incident when the Player was playing for Liverpool in the year 2013, cannot really be considered as a proper psychological treatment.
 89. The explanation brought forward by the Player and the AUF regarding the time pressure to file their statement to the FIFA Disciplinary Committee does not, in the view of the Panel, justify the Player’s and the AUF’s behaviour in front of the FIFA Disciplinary Committee. For all involved parties the situation in a Football World Cup is clear and it is obvious that such disciplinary proceedings would be solved in an expedited manner (in the interests of all) before the next match. In other words, time constraints were not erratically dictated by FIFA: they were the result of the specific situation of the case, at a moment a prompt resolution of the question of the disciplinary responsibility of the Player was required.
 90. Summing up all the arguments in relation to the acknowledgement of the Player’s mistake, his remorse as well as recidivism, the Panel is of the opinion that the FIFA Appeal Committee properly exercised the discretion granted by art. 39 par. 4 FIFA DC.
- iii(c) The alleged disproportion/inadequacy of the sanction imposed and the determination of the proper sanction for the Player*
91. The Appellants are of the opinion that the sanctions imposed on the Player are not proportional and appropriate to the factual scenario and the relevant *ratio legis*. Especially out of the four different sanctions that the Player received, the stadium ban and the ban on every football-related activity for four months is described not to correspond to the infringement for which

the Player is responsible. Such sanctions usually apply to officers, employees, managers, or supporters, etc. for breaches of football rules committed outside of the football pitch like, e.g. for match fixing.

92. The Appellants further are of the opinion that the assaulting committed by the Player at the 2014 FIFA World Cup Brazil™ should not have any influence on the Club, playing competitions organized at different levels, but only on the national team of the AUF, or in any case that the effect on those third parties (the Club and the representative team of AUF) should be considered in setting the sanction.
93. The Appellants further point out that the biting of the Player is not an act of extreme violence and that there was no damage or injury caused to the opposing player, as he was able to continue to play without medical assistance. The Appellants further refer to earlier cases to show that no other case of assault was sanctioned with similar harsh sanctions as those received by the Player in the case at hand.
94. The Respondent, on the other hand, states that an association under Swiss law, like FIFA, has the power to set up its own set of rules, and that CAS should not correct any of its decisions if it is not considered to be “*evidently and grossly disproportionate to the offence*”.
95. The Respondent points out that art. 48 par. 1 lit. d) FIFA DC sets a minimum of two matches ban and from there the FIFA disciplinary bodies were starting. The biting is absolutely foreign to football and therefore to be considered as a sort of aggravated assault, similar to the abnormal behaviour of spitting. In addition, the fact that the opposing player was not injured could not be considered a mitigating factor in the case at hand.
96. As already mentioned, the Player is responsible (only) for the violation of art. 48 par. 1 lit. d) FIFA DC. As a result, the Player can be sanctioned only under that provision, which allows the imposition of a match suspension and of a fine. Therefore, different kinds of sanctions cannot be applied to the Player. In other words, the four (4) month ban on taking part in any football-related activity and the prohibition of entering the confines of any stadiums, not allowed for a violation of art. 48 par. 1 lit. d) FIFA DC, could not be applied. However, in the determination of the sanction in a *kind* allowed by art. 48 par. 1 lit. d) FIFA DC, the Panel deems proper to take into account the *measure* of the sanction applied by the FIFA disciplinary bodies, in order to respect the principle of proportionality.
97. In that regard, the Panel remarks that, as also the Parties stated and agreed, biting is to be considered an act of “assaulting” in the sense and for the purposes of art. 48 par. 1 lit. d) FIFA DC. However, if biting is compared to elbowing, kicking, etc., it appears first of all obvious that it is much less frequent than the other forms of “assaulting” happening on the pitch. Further, biting is only possible if done with intent, whereas elbowing, punching, kicking etc. are also possible if done with (gross) negligence. In the case at hand, it remains uncontested that the biting was done by the Player with intent. As a result, it deserves a sanction well above the minimum level of a two match suspension and a fine indicated as such in art. 48 FIFA DC.

98. The comparison with cases that occurred at previous editions of the FIFA World Cup is somehow difficult: first of all, the “Tassotti incident” happened twenty years ago, and was already then sanctioned with a ban of seven matches; and the “Zidane case” of 2006 can certainly not be compared to the case at hand, as Zidane was clearly provoked by his adversary player, which led to sanctions against both players. In the case at hand, the Player never claimed that he had been provoked by his adversary player Chiellini immediately before his biting or even earlier during the Match.
99. Based on art. 39 par. 4 FIFA DC, all relevant factors and the degree of the Player’s guilt shall be taken into account when imposing the sanction.
100. In this view, it is first of all uncontested that the Player acted with intent when biting Mr Chiellini.
101. Further, it is clear that Mr Chiellini did not provoke the Player, and that there was no immediate chance to score a goal as the ball was at the side line and therefore far away from the Player and the Italian goal. In other words, the action of the Player was fully gratuitous.
102. When biting his opponent, the Player tried to destabilize Mr Chiellini, but not necessarily to effectively injure him. However, this assault would have resulted in a direct red card if the referee or one of the assistant referees had seen the scene. Therefore the national team of the AUF had an advantage to be able to continue the Match with all eleven players when the Match was still at 0:0.
103. After the assaulting, the Player tried to show that he was the victim of a collision with his opponent, as it is unfortunately common in football. When asked for a statement in front of the FIFA Disciplinary Committee within roughly twenty-four hours of the Match, the Player denied the assault. This attitude (which prompted a misplaced outcry against FIFA in the Uruguayan media and public opinion) may be explained (but not justified) by the fact that the AUF was eager to secure the services of the Player (the star of its national team) for the 1/8-final match at the World Cup. However, since a total of over 30 cameras were observing the Match, and therefore no facts could be hidden, the Player’s and the AUF’s behaviour proved only to show an underestimation of the disciplinary obligations, on the pitch and before the competent FIFA bodies. It was only after the decision of the FIFA Disciplinary Committee that the Player publicly issued his acknowledgement and excuses on 30 June 2014. Nevertheless, he admitted the assault and apologized to his adversary player Chiellini. It is important that the Player takes his behaviour seriously and, under the pressure of the Club, is now willing and able to get the necessary medical treatment. This seems especially required in view of the same infringements committed in 2010 when playing for Ajax Amsterdam and in 2013 when playing for FC Liverpool.
104. In view of all factors in the case at hand, the Panel finds that the four (4) month ban of the Player on taking part in any football-related activity and the prohibition of entering the confines of any stadiums are not contemplated by art. 48 par. 1 lit. d) FIFA DC, and are also not appropriate to the infringement committed by the Player on the pitch. It seems that the FIFA

Disciplinary Committee wanted to “expel” the Player from the 2014 FIFA World Cup Brazil™ and did therefore not see any other option than imposing these sanctions in order to assure the absence of the Player in the stadiums after his assaulting.

105. In addition, in the view of the Panel, the FIFA Disciplinary Committee and the FIFA Appeals Committee did not take into consideration that with the four (4) months ban of the Player on taking part in any football-related activity and from entering the confines of any stadiums, the Player actually was prohibited to train with a team and keep his fitness in order to be ready to start playing for the Club after and above this four (4) month ban. In fact, as the Player cannot be integrated into the Club’s team, he would not be able to start playing for the Club after the end of the ban. Therefore, such ban would have an even longer impact on the Player’s ability to exercise his profession as a football player than the four (4) months he is not allowed to take part in any football-related activity. In addition, this prohibition appears to impact, without any legitimate justification in the case at hand, on the general possibility for the Player to derive profits from his image as football player – beyond the simple participation in football matches.
106. Finally, the Panel notes that no justification was offered in the Appealed Decision (beyond a generic reference to the gravity of his actions) in support of the specific sanction of the stadium ban – a measure usually imposed to hooligans, which in the case of the Player does not seem to pursue any legitimate purpose. It does, in other words, not emerge from the Appealed Decision why it is necessary for the Player to be banned from any football-related activity and from entering the confines of any stadiums for four (4) months.
107. The Panel, however, finds that the duration (4 months) of the Player’s ban on taking part in any football-related activity and from entering the confines of any stadium gives an appropriate indication for the measure of the sanction to be imposed as set forth in art. 48 FIFA DC. In fact, in light of all the elements of the case, the Panel finds that, by exercising its powers granted under art. R57 of the Code, it has to replace the sanction of the prohibition on exercising any football-related activity for four (4) months with the sanction of a match ban (applicable to official matches played at any level) for the same period. Such sanction would prevent the Player from playing with the Club within official competitions, but would not prevent him from training and integrating in the Club in order to be able to play effectively in competition after the end of the suspension period.
108. The Panel concedes that the Player’s suspension for nine (9) consecutive official matches of the representative team of Uruguay and the ineligibility to play official matches at any level for a period of four (4) months (combined with the fine imposed by FIFA, to be confirmed) is a tough sanction. However, considering all relevant facts (and chiefly the attitude of the Player and the fact that he had already committed in two different preceding occasions the same infringement), such sanction is not excessive and disproportionate.
109. Based on art. 39 par. 1 FIFA DC it is up to the body pronouncing the sanction to decide on its duration.
110. Art. 19 par. 3 FIFA DC states that a match suspension is imposed in terms of matches, days or

months. In the case at hand, the FIFA authorities imposed a suspension in terms of matches and months as well.

111. The match suspension for the representative team of Uruguay has to be served in accordance to the detailed rules already stated by the FIFA Disciplinary Committee which follows art. 38 FIFA DC.
112. The match suspension for the period of four (4) months shall start on the day of the decision taken by the FIFA Disciplinary Committee and therefore on 25 June 2014. It is not clear, why such decision was only sent to the Player and the AUF on 26 June 2014: in any case, this fact is irrelevant, since the Challenged Decision is to be set aside and replaced by the award of CAS, which can also decide on the starting date of the sanction. The Panel, in addition, notes that the Player did not participate in any match anymore after 24 June 2014.

IX. CONCLUSION

113. The Panel partially upholds the appeal and sets aside the decision of the FIFA Appeal Committee of 8 July 2014 and replaces it by a new decision by sanctioning the Player for having committed an act of assault and banning him for nine (9) consecutive official matches of the national team of the AUF, declaring him ineligible to play in official matches at any level for a period of four (4) consecutive months, starting on 25 June 2014, and sanctioning him to pay a fine in the amount of CHF 100,000.

ON THESE GROUNDS

The Court of Arbitration for Sport rules as follows:

1. Fútbol Club Barcelona has a legal interest and a standing to appeal the decision of FIFA Appeal Committee of 8 July 2014 and its appeal filed on 23 July 2014 is therefore admissible.
2. The appeals filed on 23 July 2014 by Luis Alberto Suárez Díaz, Fútbol Club Barcelona and Asociación Uruguaya de Fútbol against the decision issued by the FIFA Appeal Committee on July 2014 are partially upheld.
3. The decision of FIFA Appeal Committee of 8 July 2014 is set aside and replaced by this award.
4. Luis Alberto Suárez Díaz is found guilty of violation of art. 48 par. 1 lit. d) of the FIFA Disciplinary Code for having committed an act of assault during the match between Italy and

Uruguay played on 24 June 2014 at the 2014 FIFA World Cup Brazil™.

5. In application of art. 11 lit. c) and art. 19 of the FIFA Disciplinary Code, Luis Alberto Suárez Díaz is banned for nine (9) consecutive official matches of the national team of the Asociación Uruguaya de Fútbol:
 - The first ban was fulfilled in the 2014 FIFA World Cup Brazil™ match Columbia vs. Uruguay of 28 June 2014;
 - The remaining bans will be fulfilled in the future official matches of the national team of the Asociación Uruguaya de Fútbol based on art. 38 par. 2 lit. a) of the FIFA Disciplinary Code.
6. Based on art. 11 lit. c) and art. 19 of the FIFA Disciplinary Code, Luis Alberto Suárez Díaz is declared ineligible to play in official matches at any level for a period of four (4) consecutive months, starting on 25 June 2014.
7. Based on art. 10 lit. c) in connection with art. 15 of the FIFA Disciplinary Code Luis Alberto Suárez Díaz is sanctioned to pay a fine in the amount CHF 100,000. This amount has to be paid within 30 days of the communication of the present award in Swiss francs (CHF) to FIFA.
8. (...)
9. (...)
10. All further prayers for relief are hereby dismissed.