Arbitration CAS 2017/A/5133 LLC CPF Karpaty v. Volodymyr Hudyma, award of 24 November 2017

Panel: Mr Lars Halgreen (Denmark), Sole Arbitrator

Football
Request for reconsideration of a decision
Notion of decision
Consequences of the request for reconsideration on the time limit for appeal before CAS

1. **The term "decision" ought to be interpreted in a broad manner so as not to restrain the relief available to the person(s) affected. According to well-established CAS jurisprudence, i) what constitutes a decision is a question of substance not form (ii) a decision must be intended to affect the legal rights of a person, usually, if not always, the addressee (iii) a decision is to be distinguished from the mere provision of information.**

2. **A request for reconsideration of a decision ("Wiedererwägungsgesuch"), neither effects whether the time limit recommences nor whether it is suspended. This follows from the principle of good faith; otherwise it would be easy for the "appellant" to simply extend the "time limit for appeal" as he or she wished. An appellant cannot be permitted simply to resurrect an option (i.e. to appeal) open to it, but not pursued, at an earlier date since this would frustrate the policy of Article R49 CAS Code. Any other understanding of the calculation of the time limit would indeed indefinitely perpetuate the limitation period by characterising the refusal of a request for reconsideration as itself an appealable decision. This result would not sit well with the intent behind a fixed and definitive time limit for an appeal to the CAS.**

I. THE PARTIES

1. LLC CPF Karpaty ("Karpaty" or the "Appellant") is a professional football club from the city of Lviv, playing in the Premier League in the Ukraine. Karpaty is an associate member of the Football Federation of Ukraine (the "FFU").

2. Mr Volodymyr Hudyma (the "Player" or the "Respondent") is a professional football player and a Ukrainian national. The Player was under contract with Karpaty from 26 August 2011 until 9 July 2014.

3. The Appellant and the Respondent together shall hereinafter be referred to as the "Parties".

II. FACTUAL BACKGROUND

4. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out where relevant in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, he refers in this Award only to the submissions and evidence he considers necessary to explain his reasoning.

5. This case concerns a dispute over Karpaty's fulfilment towards the Player of various financial obligations under contract, and in particular whether Karpaty may bring this matter to the CAS under the present appeal.

6. On 9 July 2014, the Dispute Resolution Chamber of the FFU (the "FFU DRC") reached a decision, which awarded the Player an amount of USD 73,800 (the "2014 DRC Decision"). The FFU DRC held that the Player was entitled to an additional remuneration according to his contract, regardless of his non-participation in the first 11 football matches for Karpaty, through no fault of the Player. According to the laws of the Ukraine, the FFU DRC stated that the decision not to make use of the Player in matches could not be considered a valid ground for depriving him of his personal bonus, as this was considered an integral part of his monthly remuneration for the whole duration of his employment.

7. The 2014 DRC Decision was reportedly not appealed by Karpaty to the CAS, nor at the time to any other court or sports tribunal in the Ukraine or elsewhere.

8. On 8 December 2016, the FFU CDC ruled that Karpaty, no later than on 30 January 2017, should either fulfil the 2014 DRC Decision and present to the FFU CDC respective confirming documents afterwards, or settle the dispute with the Player and bring the settlement agreement for the FFU CDC's approval. In case Karpaty did not comply with the FFU CDC ruling, Karpaty would be automatically deprived of the right to register new footballers, until its fulfilment of the ruling.

9. After the ruling by the FFU CDC, Karpaty filed a lawsuit against the Player in the civil District Court of the city of Lviv, claiming that the Player was not entitled to any additional payments under the contract. On 9 March 2017, the District Court reached a decision by default judgment, whereby the court held in favour of Karpaty and in its conclusion stated the following:

"So, taking into account the terms of the contract and the agreement on additional payments dated on August 26, 2011, the court comes to the conclusion that the obligation to pay to the defendant, independent of any circumstances, of the personal extras (even in the smallest possible amount of 3000 US dollars) by the plaintiff does not arise".

10. On 11 April 2016, Karpaty subsequently filed with the FFU DRC a new petition, called *"Submission of Reconsideration of Decision No. 145/05/2014"*, as the club presented various statistic

data, not previously submitted, regarding the Player's performance/participation in matches over the course of the contract, but more importantly, combined this data with the interpretation of the contract in the default judgment of 9 March 2017 by the District Court. On the basis hereof, Karpaty argued that the Player had received personal extras in amounts higher than he was entitled to in his contract, and accordingly, it did not have any indebtedness towards the Player, when the 2014 DRC Decision was made. Thus, the 2014 DRC Decision should be reversed.

11. On 26 April 2017, the FFU DRC issued a decision refusing to take the petition (i.e. the Challenged Decision) under consideration, stating among others as follows:

"The petition of FC Karpaty concerns the decision of the Chamber that was already adopted and has entered into force. It concerns the same subject, the same parties and the same grounds. Applying the well-known principle of res judicata, the Chamber cannot consider a case, where the final decision has already been taken, especially when it was taken by the Chamber itself".

12. With respect to the possible appeal and (new) review of the 2014 DRC Decision, the FFU DRC expressed the following opinion:

"The party that do not agree with the decision of the Chamber, has an opportunity to challenge such a decision in the Court of Arbitration for Sports (Lausanne, Switzerland). As far as the Chamber is aware, FC Karpaty did not file an appeal against the decision in case no. 145/05/2014 to the Court of Arbitration for Sports. Therefore, it came into force and is mandatory for the recognition and fulfilment by all football subjects under the aegis of FFU, including, at the moment, FC Karpaty".

13. On these grounds, the FFU DRC decided:

1. *"To return the petition of "Club of Professional Football "Karpaty" Ltd. under date of 11 April 2017, on revision of the Decision of the DRC of FFU from 09.07.2014 in case No. 145/05/2014 based upon newly discovered evidences, in accordance with clause 1 of part 1 of Article 32 of the Regulation of the Dispute Resolution Chamber of FFU".*

2. *"The corresponding petition of "Club of Professional Football "Karpaty" Ltd. dated 11 April 2017, including all the attached documents, in particular, the decision of the Frankivskyy District Court of Lviv from 09.03.2017 in case No. 465/422/17, to hand over to the Control and Disciplinary Committee of FFU to consider the possible application of appropriate disciplinary sanctions".*

14. The resolution of the FFU DRC came into force from the moment of its adoption. It is unclear from the decision itself how and when the Challenged Decision was communicated to the parties, but the FFU has later confirmed to the CAS Court Office that a full copy was sent to Parties by e-mail on 28 April 2017. This fact is undisputed by the Parties.

III. PROCEEDINGS BEFORE THE CAS

15. On 5 May 2017, Karpaty filed its Statement of Appeal at the Court of Arbitration for Sport (the "CAS") in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration

(the "Code") against the Respondent with respect to the Challenged Decision. Together with its Statement of Appeal, Karpaty also made an application, pursuant to Article R37 of the Code, for a stay of the execution of *"Decision No. 145705/2014 and all the Decisions of FFU CDC and FFU AC about applying the sanctions to the Appellant for non-fulfilment of Decision 145/05/2014 for the period of present Appeal investigation"*. No supporting reasoning or analysis was provided in support of this request.

16. On 10 May 2017, the CAS Court Office asked the Appellant to complete its request for arbitration by nominating an arbitrator in accordance with Article R48 of the Code, and on 12 May 2017, the Appellant informed the CAS Court Office that it requested the appointment of a Sole Arbitrator.

17. On 17 May 2017, the CAS Court Office acknowledged receipt of Karpaty's complete Statement of Appeal and *inter alia* invited the Respondent to inform the CAS Court Office whether he agreed to the appointment of a Sole Arbitrator. In the absence of an answer or in case of disagreement in accordance with Article R50 of the Code, it would be for the President of the CAS Appeals Arbitration Division, or her deputy, to decide the issue taking into account the circumstances of the case. In case of submission of the present dispute to a Sole Arbitrator, the latter should be appointed in accordance with Article R54 of the Code. Moreover, the Respondent was invited to file his position on the application for a stay within 10 days of such letter, pursuant to Article R37 of the Code.

18. The Respondent did not file any comments in response to the Appellant's request for a stay.

19. On 6 June 2017, the Appellant informed the CAS Court Office that its Statement of Appeal was to be considered its Appeal Brief.

20. On 8 June 2017 the CAS Court Office acknowledged receipt of the Respondent's objection to CAS jurisdiction, referred to as an "Answer" (undated), and received by CAS on 6 June 2017. The Appellant was invited to file its response within 10 days in accordance with Article R55 of the Code.

21. On 12 June 2017, the CAS Court Office informed the Parties that the Respondent had not stated whether he agreed to the appointment of a Sole Arbitrator. In accordance with Article R50, it would now be for the President of the CAS Appeals Arbitration Division, or her Deputy, to decide the number of arbitrators of the case. Finally, the CAS Court Office noted that the Respondent had not replied within the time limit regarding the Appellant's request for provisional measures.

22. On 19 June 2017, the Appellant filed its response to the Respondent's objection to jurisdiction. In its response, the Appellant requested that the Respondent's defence of lack of jurisdiction be dismissed and that CAS affirmed its jurisdiction to rule on the dispute relation to the Challenged Decision and the overall context of the dispute.

23. On 20 June 2017, the President of the Appeals Arbitration Division ruled, *in camera*, that the request for a stay filed by the Appellant was rejected. The costs deriving from the present

order would be determined in the final award.

24. On 27 June 2017, the CAS Court Office acknowledged receipt of the Respondent's original Answer. The Respondent's answer contained an objection to CAS jurisdiction, and the Appellant was invited to respond to such further comments on jurisdiction, if necessary.

25. On 3 July 2017, the Appellant requested that a hearing be held in the matter. No comments on a hearing was provided by the Respondent.

26. On 6 July 2017, the CAS Court Office informed the Parties that Mr. Lars Halgreen, attorney-at-law, in Gentofte, Denmark had been appointed as Sole Arbitrator.

27. On 10 July 2017, the Appellant filed its observations on the Respondent's submission dated 27 June 2017.

28. On 26 July 2017, the CAS Court Office, on behalf of the Sole Arbitrator, invited the Parties to make one final round of written submissions which should principally focus on CAS jurisdiction. The Parties were also invited to substantiate their request, if any, for a hearing including a short statement as to the evidence they intended to present at a hearing, if necessary.

29. On 31 July 2017, the Appellant confirmed that it did not wish to make any further submissions on jurisdiction.

30. On 4 August 2017, the Respondent filed three e-mails (with attachments) in support of his objection to CAS jurisdiction.

31. On 30 August 2017, the Respondent signed and returned the order of procedure to the CAS Court Office. Included with his signed order of procedure were certain "provisos".

32. On 11 September 2017, the Appellant informed the CAS Court Office that it disagreed with the "provisos" attached by the Respondent. Furthermore, the Appellant noted, *inter alia*, its request that a hearing be held in this procedure and that he never received a purported submission dated 8 August 2017 (as expressed by the Respondent in his "provisos"). Accordingly, the Appellant did not sign the order of procedure.

33. On 12 September 2017, the CAS Court Office informed the parties that no submission dated 8 August 2017 existed on file. The Appellant's objections to the Respondent's "provisos" were duly noted. With respect to the holding of a hearing, the CAS Court Office reminded the Appellant that on 26 July 2017 the Sole Arbitrator specifically requested the parties to substantiate their request for a hearing, including providing a short summery of the evidence they intended to present at the hearing. No such response was provided by the Appellant. Nevertheless, in consideration of the entire file, the Sole Arbitrator deemed himself sufficiently well informed to render an award in this matter based solely on the Parties' written submissions in accordance with Article R57 of the Code.

IV. SUBMISSIONS OF THE PARTIES

A. The position of the Appellant

34. In its Requests for Relief, the Appellant provides as follows:

> *1. To accept this Statement of Appeal for investigation;*
>
> *2. To revoke Challenged Decision (FFU DRC Resolution dated 26.04.2017)*
>
> *3. To reconsider Decision No. 145/05/2014 according to newly discovered evidences on the basis of the provisions of the Articles 3, 4, 87 of FFU Disciplinary Rules and Decision of Frankivskyy District Court of the city of Lviv taken on 09.03.2017 in the case No. 465/422/17 and:*
>
> *a. to adjudge the Contract No. 11/56 dated 26.08.2011 concluded between the Club and the Footballer to be terminated pre-term on 09.07.2014 NOT on the Club's fault:*
> *b. to revoke the clause 4 of Decision No. 145/05/2014*
> *c. to keep Decision No. 145/05/2014 without changes in its other parts;*
>
> *4. To stay execution of Decision No. 145/05/2014 and also all the Decisions of FFU and CDC and FFU AC about applying the sanctions to the Appellant for non-fulfilment of Decision No.145/05/2014 for the present Appeal investigation.*

35. The Appellant's submissions, in essence, may be summarised as follows:

- According to Article 87 of FFU Disciplinary Rules, the FFU DRC may reconsider its previous decisions upon the application of a party or a third party, when newly discovered evidence have been brought forward.
- The grounds for reviewing the decision on newly discovered evidence are significant circumstances that were not and could not be known to the person who filed the application during the proceedings in a case.
- The ruling of 7 April 2017 from the District Court in the City of Lviv is directly related to the order of determination of personal extra amounts in the Parties' contract, and represents "significant circumstances" in the case, as it completely refutes the FFU DRC position and argumentation on which the decision No. 145/05/2014 is based.
- The Challenged Decision misinterpreted the form and essence of the ruling from the District Court, as the latter did not establish the fact that there was no indebtedness of Karpaty to the Player, but focussed solely on the interpretation of the content in the agreement on Additional Payments of 26 August 2011.
- The presence of the ruling from the District Court from the city of Lviv does not replace or cancel Decision No.145/05/2014 itself, but it creates preconditions and necessity for the FFU DRC to reconsider the previous decision in essence, *"according to newly discovered evidences and to procedure stipulated by the documents of football regulation"*.
- With respect to the issue of CAS jurisdiction, the Appellant refers to Article 60 of the FFU DRC Regulations, stipulating that an appeal against the Chamber's decision can be

filed to the CAS in the course of 21 days from the parties received the decision in full form.

- The Challenged Decision was communicated to the Appellant on 28 April 2017 via e-mail and the Statement of Appeal was submitted the CAS on 5 May 2017. Hence, the CAS has jurisdiction to hear this matter, and the time limit for the appeal in accordance with Article R49 of the Code has been observed.
- As for the Respondent's claim that the Challenged Decision of 26 April 2017 is not a "decision", the Appellant refutes this argument, stating that the FFU DRC's dismissal of the Appellant's application for a review clearly contains a ruling that affects the Appellant's legal situation and rights, i.e. it is a "decision" that may be appealed to the CAS. The fact that the Appellant has proceeded in front of a civil court, does not affect CAS jurisdiction with regard to the Challenged Decision.

B. The position of the Respondent

36. In its Request for Relief, the Respondent provides as follows:

1. To refuse to satisfy the FC Karpaty's appeal

2. To terminate the proceedings due to lack of jurisdiction of CAS

37. The Respondent's submissions, in essence, may be summarised as follows:

- The Challenged Decision is not a "decision" within the meaning of the Rules of Dispute Resolution Chamber FFU. The FFU DRC issued an "award" about returning the petition, not a "decision". The Appellant has thus mistakenly referred to Article 60 of the Rules of Dispute Chamber FFU.
- The Respondent refutes that the ruling from the District Court of the city of Lviv should be considered as "newly discovered evidence" within the meaning of the Regulations of the FFU DRC. Procedures for reviewing the 2014 DRC Decision on newly discovered circumstances do not exist in the Regulations of the FFU DRC.
- Hence, the Challenged Decision is not a "decision" *per se*, and the arbitration procedure should be terminated for lack of CAS jurisdiction.
- The Appellant is misleading the CAS by saying that the 2014 DRC Decision is not disputed. It is clearly stated in the Requests for Relief that the 2014 DRC Decision is to be reviewed. Moreover, clause 4 of the Decision regarding the payment of USD 73,800 is to be revoked by the CAS.
- The Appellant missed the deadline of 21 days to file an appeal to the CAS against the 2014 DRC Decision dated 9 July 2014, and the possibility to challenge this decision has therefore lapsed.

V. JURISDICTION

38. Article R47 of the Code provides as follows:

"An appeal against the decision of a federation, association or sports-related body may be filed with the 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 him prior to the appeal, in accordance with the statutes or regulations of that body.

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

39. Article 60 of the FFU DRC Regulations provides as follows:

"Appeal against Chamber's decision can be filed to the Court of Arbitration for Sports (CAS, Lausanne, Switzerland) in course of 21 (twenty-one) days from the moment the party receives decision in full. In case All-Ukrainian Court of Arbitration for Sports will be created, the parties are obliged to exhaust all internal means is resolving the dispute before turning to CAS".

40. It is undisputed that an All-Ukrainian Court of Arbitration for Sports does not and did not exist at the time the appeal was submitted to CAS. Hence, the question to be resolved as to CAS jurisdiction is whether the Challenged Decision should be considered a "decision" within the meaning of Article R47 of the Code.

41. The Sole Arbitrator has considered the submission of the Respondent claiming that the Challenged Decision was not a "decision" *per se*, but instead an "award" to return the petition to the Appellant. The Sole Arbitrator understands this argument asserts that Article 60 of the FFU DRC Regulations is not admissible in this specific context and that the CAS therefore does not have jurisdiction to adjudicate in this matter.

42. First, it should be noted that the CAS, in accordance with Article 186 in the Swiss Private International Law Act, has the power to decide upon its own jurisdiction. Hence, the Sole Arbitrator finds that the question of CAS jurisdiction to adjudicate in this appeal case depends entirely on the meaning and understanding of the term "decision" pursuant to Article R47 of the Code, and the way that this concept has been interpreted in CAS jurisprudence.

43. Second, the Sole Arbitrator believes that the term "decision" ought to be interpreted in a broad manner so as not to restrain the relief available to the person(s) affected. The Sole Arbitrator has the advantage of several previous CAS decisions, which provide an illuminating analysis of what is involved in the concept of a "decision", with which the Sole Arbitrator respectfully agrees (see e.g., CAS 2005/A/899; CAS 2004/A/748; and CAS 2004/A/659).

44. The discussion of what constitutes a "decision" vis-à-vis Article R47 of the Code has also been conducted in a more recent CAS award, (see CAS 2010/A/2315), in which the panel concluded the following as to the characteristic features of a "decision":

"In short (i) what constitutes a decision is a question of substance not form (ii) a decision must be intended to

affect the legal rights of a person, usually, if not always, the addressee (iii) a decision is to be distinguished from the mere provision of information".

45. In the Sole Arbitrator's view, and applying the test elaborated in well-established CAS jurisprudence, the decision by the DRC FFU of 26 April 2017 clearly and undoubtedly came (i) in the form of an official version, entitled a "decision" and signed by the Head of the FFU DRC, including the ruling of the Chamber and the entire reasoning for its decision; (ii) it has materially affected the Appellant directly, as its submission for reconsideration of the 2014 DRC Decision was flatly rejected on various legal grounds and the ruling also included the decision to hand over the case to the FFU CDC to consider possible application of appropriate disciplinary sanctions; and (iii) it most definitely could be distinguished from the mere provision of information.

46. Accordingly, the Sole Arbitrator rules that the Challenged Decision is a "decision" within the meaning of Article R47 of the Code, and that CAS has jurisdiction to adjudicate and render an award in this appeal case.

VI. APPLICABLE LAW

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

48. In their submissions, the Parties refer to the FFU DRC Regulations, as well as Ukrainian and Swiss law, when it comes to the merits, but none of the parties have chosen any substantive rules of law. The FFU DRC is domiciled in the Ukraine, so accordingly the Sole Arbitrator shall apply the rules and regulations of the FFU and, to the extent necessary, Ukrainian law. However, with respect to the procedural law as to the application of the Code, the Sole Arbitrator shall apply the *lex fori,* i.e. Swiss law, if necessary, since the seat of the arbitration is in Switzerland.

VII. ADMISSIBILITY

49. Article R49 of the Code provides as follows:

"In the absence of a time limit in the statutes or the regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against…".

50. To determine whether the appeal is admissible, it is, in the view of the Sole Arbitrator, very important to establish first and foremost that the 2014 DRC Decision was *not* appealed to the

CAS or reportedly to any other tribunal or court by the Appellant. Since the Appellant chose not to appeal the 2014 DRC Decision within the deadline of 21 days from the receipt of that decision on 7 July 2014, an appeal of this decision to the CAS is for obvious reasons inadmissible nearly three years later on 5 May 2017, and should therefore be rejected.

51. However, the Challenged Decision from the FFU DRC was communicated to the Parties by e-mail on 28 April 2017, and the Statement of Appeal, filed by the Appellant with the CAS on 5 May 2017, was therefore at face value filed within the dead-line of 21 days set out in both Article R49 of the Code, as well as in Article 60 of the FFU DRC Regulations, cited above.

52. In this respect, it is therefore necessary to consider what is legally meant by "the decision appealed against" for the purposes of Article R47.

53. When the Sole Arbitrator examines the requests for relief presented in the Statement of Appeal, it is to him beyond any doubt that the essential intent behind the appeal of the Challenged Decision is to have the CAS to (a) *"reconsider Decision No. 145/05/2014 according to newly discovered evidences"* and to (b) *"adjudge the Contract … to be terminated pre-term on 09.07.2014 NOT on Club's fault"*, and finally (c) *"to revoke the clause 4 of Decision No, 145/05/2014"*, which ordered the Appellant to pay USD 73,800 to the Player.

54. The Appellant's appeal of the Challenged Decision could therefore appear to be a legally "camouflaged" attempt to appeal a decision, which was in fact made three years ago, and *not* appealed at the time, under the pretext of a new request for reconsideration. Thus, it is necessary for the Sole Arbitrator to peruse how CAS jurisprudence and Swiss procedural law has regarded appeals that were based upon "requests for reconsideration" in relation to the time limit for appeal, pursuant to Article R49.

55. Professor Ulrich Haas from Zürich University has in 2011 published an article, entitled "The "Time Limit for Appeal" in Arbitration Proceedings before the Court of Arbitration for Sport (CAS)" (See SchiedsVZ 1/2011, pp.1-13). In this article, professor Haas examines the same issue as in this case, namely the consequences in relation to the calculation of the time limit in Article R47, when a party has filed a request for reconsideration. He makes the following observations in para. IV.3.b):

"aa) Filing a request for reconsideration ("Wiedererwägungsgesuch")

A measure taken by a sports-related body cannot be appealed against under Art. R47 CAS Code unless the body's internal legal remedies have been exhausted. Apart from the ordinary legal remedies against a measure taken by a federation or association, the party concerned is always free to file a request for reconsideration ("Wiedererwägungsgesuch") (without any requirement as to form or time limit). If the party concerned files a request for such an extraordinary legal remedy the question arises as to what influence this has on the running of time under the "time limit for appeal". The correct view is that it does not have any effect on the running of time for the purposes of the preclusion period. The request for reconsideration ("Wiedererwägungsgesuch"), therefore, neither effects whether the time limit recommences nor whether it is suspended. This follows from the principle of good faith; otherwise it would be easy for the "Appellant" to simply extend the "time limit for appeal" for as he or she wished".

56. This academic review by Professor Haas was analysed in one of the few CAS cases, which previously has dealt with the issue of how the time limit in Article R47 ought to be calculated in case of a request for reconsideration. In the above-mentioned case CAS 2010/A/2315 Netball New Zealand v. IFNA, the panel was faced with an almost identical situation, in which the Appellant, the NNZ (the National federation for Netball in New Zealand), had received a decision from IFNA, the International Netball Federation Ltd., but had declined from appealing this decision, and had instead asked INFA to reconsider. The panel made the following remarks in this context:

"7.7: When it received the letters of 18th March and 14th. October 2009, NNZ had a choice either to appeal to the CAS or to attempt to persuade IFNA to change its mind and risk being out of time for any appeal to CAS. In respect of the original decision, NNZ opted for the latter course of action and prompted the second decision, itself appealable. Thereafter, rather than exercising its right of appeal, NNZ chose again to attempt to persuade IFNA to change its mind, on a number of occasions in 2010. In that exercise it failed. IFNA was indeed never prepared to overturn its original decision; in deed it questioned whether it had the power to do so – see e.g. the NNZ record of the meeting of August 2010.

7.8: NNZ cannot be permitted simple to resurrect an option (i.e. to appeal) open to it, but not pursued, at an earlier date since this would frustrate the policy of Article R49. To call the decision of 14 December 2010 the final decision elevates form over substance. Neither the original nor the second decision with which NNZ sought to contrast it, was in any sense provisional. The logical conclusion of NNZ's line of argument would mean by constantly asking for a reconsideration of a decision duly taken and receiving a refusal, the subject of that original decision could indefinitely perpetuate the limitation period by characterising that refusal as itself an appealable decision. In common parlance the refusal might be said to be a decision; but the issue is whether, in the context of Article R49, it qualifies as such. The decision which affected NNZ's (and Ms Latu's legal rights) was in the Panel's view taken on either or both of 15 March and 13 October 2009. The repeated refusals of IFNA thereafter to reconsider did not further affect either's legal rights. Professor Haas rightly, in the panel's view, argued that a request for reconsideration cannot extend a time limit (p.10). The panel would only add that a refusal to reconsider cannot restart the limitation clock running".

57. The Sole Arbitrator fully agrees with the opinion of the panel above. Having examined the file, in particular the Appellant's request for relief, the Sole Arbitrator puts special emphasis on the fact that the various requests outlined above essentially, if not solely, concerned the effects of the 2014 DRC Decision, whereas the Challenged Decision in itself did not include any particular points, which the appeal wished to challenge. The 2014 DRC Decision was indeed the "decision appealed against" in the precise legal context of Article R49. Thus, the appeal of 5 May 2017 must therefore be regarded as an attempt to circumvent the time limit of 21 days in Article R49, which lapsed in 2014, when the original and – to the Appellant - *crucial* decision was made by the FFU DRC. As in the cited comments by Professor Haas, and by the Panel in the case above, the Sole Arbitrator finds that the Appellant's request for reconsideration has not vacated the time limit running from the time of the 2014 DRC Decision. Any other understanding of the calculation of the time limit would indeed indefinitely perpetuate the limitation period by characterising the latter refusal as the original decision. This result would not sit well with the intent behind a fixed and definitive time limit for an appeal to the CAS.

58. In the Sole Arbitrator's assessment, there is neither anything legally substantial to support that the so-called "newly discovered evidences" should change the above position in terms of Article R47. These "newly discovered evidences" are, in reality, in the opinion of the Sole Arbitrator, the (beneficial) legal findings in the default judgment from the District Court from the city of Lviv. This judgment, although favourable to the Appellant's views, has not changed or added anything in relation to the legal and factual circumstances of the case, as it was presented by the Appellant before the FFU DRC in 2014. Whether the District Court agreed or not with the FFU DRC on the issue of how the employment contract between the Parties should be understood in relation to the bonus clause, is today irrelevant to the only significant issue in this context, namely that the Appellant chose *not* to appeal the 2014 DRC Decision to the CAS. Hence, the fact that the Appellant brought the case before the civil courts in the Ukraine in 2017 and received a default judgement over the Respondent does not change the conclusion that the deadline of a possible appeal of the 2014 DRC Decision to the CAS lapsed long ago, pursuant to Article R49 of the Code, and cannot be recommenced by an appeal in 2017.

59. In conclusion, and for the reasons set out above, the Sole Arbitrator must decline to enter upon a consideration of the merits, but must dismiss the appeal.

60. For all these above reasons, any other or further prayer for relief must be rejected.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by LLC CPF Karpaty against Mr. Volodymyr against the decision of the Football Federation of Ukraine Dispute Resolution Chamber dated 26 April 2017 is dismissed.

2. The decision of the Football Federation of Ukraine Dispute Resolution Chamber dated 26 April 2017 is upheld.

3. (…).

4. (…).

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