



Arbitration CAS 2017/A/5187 Cleiton Ribeiro Xavier v. Fédération Internationale de Football Association (FIFA), Metalist FC & Football Federation of Ukraine (FFU), award of 2 March 2018

Panel: Prof. Petros Mavroidis (Greece), Sole Arbitrator

Football

Governance

Establishment of its competence by an international arbitral tribunal sitting in Switzerland

Definition of a decision

Application of the rules of an international federation

Appeal for denial of justice

1. By virtue of the “*Kompetenz-Kompetenz*” principle recognised in article 186 para. 1 of the Swiss Law on Private International Law, an international arbitral tribunal sitting in Switzerland is competent to decide on its competence to adjudicate a dispute.
2. The form of a communication is irrelevant to determine whether there exists a decision or not. In principle, for a communication to be a decision, such communication must contain a ruling, whereby its issuing body intends to affect the legal situation of its addressee or other parties. A simple information cannot be considered a decision.
3. Based on the concept of “*indirect reference*” to the rule of an international federation, a club is, on the basis of its (direct or indirect) membership with its national federation, also bound by the applicable international regulations.
4. An authority’s refusal without reason to make a ruling or its delaying a ruling beyond a reasonable period of time open the way of an appeal against the absence of a decision.

I. PARTIES

1. Mr Cleiton Ribeiro Xavier, born on 23 March 1983, is a professional football player of Brazilian nationality (the “Player”).
2. The Fédération Internationale de Football Association (“FIFA”) is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the governing body of international football at worldwide level. It exercises regulatory, supervisory and disciplinary functions over continental confederations, national associations, clubs, officials and players worldwide.

3. Metalist Football Club (“FC Metalist”) is a football club, registered in Karkhiv, Ukraine. On 9 August 2016, FIFA was informed of the fact that FC Metalist lost its affiliation to the Football Federation of Ukraine.
4. The Football Federation of Ukraine (“FFU”) is the governing body of football in Ukraine. It has its registered office in Kiev, Ukraine, and was founded in 1991. It is affiliated to FIFA since 1992.

II. FACTUAL BACKGROUND

A. Background facts

5. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions, pleadings, and evidence adduced. References to additional facts and allegations found in the Parties’ written submissions, pleadings, and evidence will be made, where relevant, in connection with the legal analysis 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 his award only to the submissions and evidence that he deems is necessary to explain his reasoning.

B. The Proceedings before the FIFA Dispute Resolution Chamber

6. On 1 July 2013, the Player and FC Metalist entered into an employment contract, valid from the date of signature until 30 June 2017 (the “Employment Contract”).
7. On 13 February 2015, the Player lodged a claim before FIFA against FC Metalist for breach of the Employment Contract.
8. On 11 June 2015, the FIFA Dispute Resolution Chamber (the “DRC”) decided the following:

- “1. *The claim of [the Player] is partially accepted.*
2. *(...) FC Metalist has to pay to the [Player], within 30 days as from the date of notification of the present decision, outstanding remuneration in the amount of USD 1,166,666.68 plus 5% interest p.a. until the date of effective payment as follows:*
 - a. *5% p.a. as of 2 October 2014 on the amount of USD 500,000;*
 - b. *5% p.a. as of 1 November 2014 on the amount of USD 166,666.67;*
 - c. *5% p.a. as of 1 December 2014 on the amount of USD 166,666.67;*
 - d. *5% p.a. as of 1 January 2015 on the amount of USD 166,666.67;*
 - e. *5% p.a. as of 1 February 2015 on the amount of USD 166,666.67.*
3. *[FC Metalist] has to pay to the [Player], **within 30 days** as from the date of notification of the present decision, compensation for breach of contract in the amount of USD 3,093,112.40 plus 5% interest p.a. as from 13 February 2015 until the date of effective payment.*

4. *In the event that the amounts due to the [Player] are not paid by [FC Metalist] within the stated time limit, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.*
5. *Any further claim lodged by the [Player] is rejected”.*
9. On 23 June 2015, the findings of the DRC were notified to the Player and to FC Metalist (the “DRC Decision”).
10. On 4 March 2016, and following the request filed timely by FC Metalist, the grounds of the DRC Decision were divulged to the club.
11. It is undisputed that the DRC Decision became final and binding.
12. On 11 May 2016 and in the absence of payments within the 30 days prescribed in the DRC Decision, the Player requested from FIFA to initiate a disciplinary procedure against FC Metalist.
13. On 17 May 2016, the FIFA Players’ Status department advised FC Metalist to immediately comply with the DRC Decision, failing which it would *“forward the entire file to the Disciplinary Committee”*, which it eventually did on 31 May 2016.
14. On 31 May 2016, 13 September 2016, 18 April 2017 and 9 May 2017, the Player reiterated his request for the opening by FIFA of a disciplinary procedure against FC Metalist.
15. On 9 May 2017, the Deputy Secretary to the FIFA Disciplinary Committee sent the following letter to the FFU:

“We refer to the abovementioned club FC Metalist and, in particular, to the information that we received by letter dated 8 August 2016 according to which the mentioned club is no longer affiliated to the Football Federation of Ukraine.

In this respect, we would be grateful if you could inform us by 16 May 2017 at the latest what the actual Status of the club is, whether the club is still participating in any competitions and if the club has any (legal) successor”.
16. On 15 May 2017, the FFU informed FIFA that FC Metalist was not affiliated to it anymore, and, consequently, would not be taking part in any competition organized by it. In addition, the FFU confirmed that it ignored whether the club had a legal successor.
17. On 17 May 2017, the Deputy Secretary to the FIFA Disciplinary Committee sent the following letter to the Player (the “FIFA Letter of 17 May 2017”):

“Club FC Metalist, Ukraine (...)

Dear Sirs,

We refer to the abovementioned matter and in particular to the correspondence received from the Football Federation of Ukraine dated 8 August 2016 and 15 May 2017, a copy of which we herewith enclose for the perusal of Mr Cleiton Ribeiro Xavier, for his information and any action he may deem appropriate.

In this respect, we were informed by the Football Federation of Ukraine that “despite of the fact that the club still exists as a legal entity, registered under legislation of Ukraine, after losing the membership in the Ukrainian Premier League the FC Metalist Kharkiv lost affiliation with the Football Federation of Ukraine since the club did not enter any other professional or amateur league directly affiliated with the FFU or regional federations”.

On account of the above, we must inform you that, as a general rule, our services and competent decision-making bodies cannot deal with cases involving clubs which are not affiliated to their Association any longer. As a consequence, on behalf of the chairman of the FIFA Disciplinary Committee, we regret having to inform you that we do not appear to be in a position to further proceed with the case of the reference in which the club FC Metalist is involved.

Finally, we would like to add that our Statements made above are based on the information we received from the Football Federation of Ukraine only and hence are of a general nature and without prejudice whatsoever”.

18. It is undisputed that, to date, FC Metalist has not paid to the Player any amount included in the DRC Decision.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

19. On 7 June 2017, the Player filed a statement of appeal with the Court of Arbitration for Sport (the “CAS”) in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (the “Code”). The Player’s appeal was directed against the FIFA Letter of 17 May 2017. In his statement of appeal, the Player requested that this procedure be referred to a Sole Arbitrator.
20. On 19 June 2017, the FFU accepted the Player’s application for a Sole Arbitrator, whereas, on 20 June 2017, FIFA requested the matter to be referred to a Panel of three arbitrators. FC Metalist failed to provide its position within the prescribed time limit.
21. On 28 June 2017, the CAS Court Office informed the Parties that FC Metalist was “*refusing delivery of all courier attempts and to date, [it has] not acknowledged receipt of any correspondence from the CAS Court Office by facsimile/email*”. Under these circumstances, it advised the Parties that it would continue to make delivery attempts to FC Metalist and the club’s eventual refusal would be deemed a tacit acceptance of service.

22. On 3 July 2017, the Player requested a 30-day extension of the deadline to file his appeal brief. In support of his request, the Player stated that he had just learned that bankruptcy proceedings had been initiated in Ukraine against FC Metalist.
23. On 4 July 2017, the CAS Court Office acknowledged receipt of the Player's application for a 30-day extension of the time to file his appeal brief. It informed the Parties that it found out that FC Metalist was actually *"not refusing service but that no one is available at the [communicated] address to accept the deliveries. Therefore, the [Player] is invited to provide the CAS Court Office with working contact details for [FC Metalist] **within seven (7) days** failing which the CAS will not proceed with this appeal. In the interim, this procedure is temporarily suspended"*.
24. On 11 July 2017, the Player provided the CAS Court Office with the contact details of *"the competent court for supervising [FC Metalist's] bankruptcy proceedings as well as the contact details of FC Metalist's current insolvency manager"*.
25. On 12 July 2017, the CAS Court Office notified the existence of the present CAS procedure to the Commercial Court of Kharkiv Region and to Mr Vevhen Vitaliovykh Yakovlev, in his capacity of insolvency manager of FC Metalist. It invited the addressees to inform it whether they agreed to accept service of documents on behalf of FC Metalist.
26. On 25 July 2017, the CAS Court Office informed the Parties that the Commercial Court of Kharkiv Region and Mr Vevhen Vitaliovykh Yakovlev left its notification of 12 July 2017 unanswered. Under these circumstances, it requested from the Player to inform it how to proceed with the appeal procedure.
27. On 3 August 2017, the Player requested the CAS Court Office to make further efforts to contact the Commercial Court of Kharkiv Region and Mr Vevhen Vitaliovykh Yakovlev.
28. On 4 August 2017, the CAS Court Office informed the Parties that Mr Vevhen Vitaliovykh Yakovlev would be considered as the representative of FC Metalist in this procedure and that *"[s]ervice of any documents on behalf of [FC Metalist] will be deemed achieved upon receipt by Mr. Yakovlev"*. It set a 10-day deadline to the Player to file his appeal brief.
29. On 14 August 2017, the Player requested for a 2-day extension of the deadline to file his appeal brief, which was eventually granted.
30. On 16 August 2017, the Player filed his appeal brief in accordance with Article R51 of the Code.
31. On 2 October 2017, the CAS Court Office advised the Parties that the President of the CAS Appeals Arbitration Division appointed Prof. Petros Mavroidis, Professor, Commugny, Switzerland, as Sole Arbitrator.
32. On 19 October 2017, the FFU filed its answer in accordance with Article R55 of the Code.
33. On 26 October 2017, FIFA filed its answer in accordance with Article R55 of the Code.

34. FC Metalist failed to file an answer within the given time limit.
35. On 21 and 22 November 2017, respectively, the Player, FIFA and the FFU signed and returned the Order of Procedure in this appeal procedure. FC Metalist did not return a signed copy of this document within the prescribed deadline.
36. The hearing was held on 1 December 2017 at the CAS premises in Lausanne. The Sole Arbitrator was present and assisted by Mr José Luís Andrade, Counsel to the CAS/Head of Mediation, and Mr Patrick Grandjean, acting as *ad hoc* Clerk.
37. The following persons attended the hearing:
 - Mr Pedro Fida and Mr Bichara Abidão Neto, counsels for the Player (in person).
 - Mr Alexander Jacobs and Mr Julien Deux, in-house counsels for FIFA (in person).
 - Mr Ihor Gryshchenko, Head of legal department of the FFU (via Skype). It must be observed that, for some unknown reason, and shortly after his opening statement, Mr Ihor Gryshchenko terminated the call. In spite of the Sole Arbitrator's efforts, the latter could not be reached again.
38. FC Metalist was not represented at the hearing.
39. At the outset of the hearing, the attending Parties confirmed that they had no objection as to the appointment of the Sole Arbitrator.
40. After the attending Parties' final arguments, the Sole Arbitrator closed the hearing, and announced that his award would be rendered in due course. At the conclusion of the hearing, the Player and FIFA confirmed that their right to be heard in the present proceedings had been fully respected.

IV. SUBMISSIONS OF THE PARTIES

A. The appeal

41. In his appeal brief, the Player submitted the following requests for relief:

"[The Player] respectfully requests the CAS:

I. To accept the appeal against the decision adopted by FIFA on 17 May 2017;

II. To annul the decision issued by FIFA on 17 May 2017 and issue an arbitral award establishing that:

- (i) FC Metalist shall pay the following amounts to Mr. Cleiton Xavier within 30 (thirty) days as from notification of this Arbitral Award, regarding the salaries due by the Club and pursuant to the Decision issued by the FIFA Dispute Resolution Chamber on 4 March 2016 (ref. nr.*

Emo 15-00383):

a) *Outstanding salaries in the amount of USD 1,166,666.68 plus 5% interest p.a. until the date of effective payment as follows:*

*5% p.a. as of 2 October 2014 on the amount of USD 500,000;
5% p.a. as of 1 November 2014 on the amount of USD 166,666.67;
5% p.a. as of 1 December 2014 on the amount of USD 166,666.67;
5% p.a. as of 1 January 2015 on the amount of USD 166,666.67;
5% p.a. as of 1 February 2015 on the amount of USD 166,666.67; and*

b) *Compensation for breach of employment contract in the amount of USD 3,093,112.40 plus 5% interest p.a. as from 13 February 2015 until the date of effective payment.*

(ii) *The costs eventually related to the present arbitration shall be borne in its entirety by FIFA and FC Metalist and the Football Federation of Ukraine; and*

(iii) *FIFA, FC Metalist and the Football Federation of Ukraine shall pay the legal fees and other expenses incurred by Cleiton Xavier Ribeiro in connection with the present arbitration procedure, according to the discretion of the Sole Arbitrator, in an amount not lower than CHF 20'000.00 (twenty thousand Swiss francs)".*

42. The Player's submissions, in essence, may be summarized as follows:

- The FIFA Letter of 17 May 2017 constitutes a final decision, which can be challenged before the CAS.
- FC Metalist has been put into bankruptcy. The DRC Decision is of no use in such proceedings. The Player needs a formal award issued by the CAS in order to establish his claim against FC Metalist as well as its employment-related nature. *"This will allow the Ukrainian Court to recognize the Player as a creditor in Category I, which is the category related to salaries due to employees. Creditors under Category I have priority in receiving the amounts due"*.
- The Player is not only a victim of FC Metalist but also of FIFA. On 13 February 2015 and in compliance with FIFA regulations, the Player lodged a claim before the DRC against FC Metalist for breach of the Employment Contract. It took several months for FIFA to finally issue the grounds of the DRC Decision. As soon as the DRC Decision became final and in the absence of any payment by FC Metalist, the Player immediately requested from FIFA to initiate disciplinary proceedings against his former employer in order to enforce his claim. For unexplained reasons, FIFA waited a year before it notified the Player of the fact that it had no jurisdiction over FC Metalist. At the date of receipt of the FIFA Letter of 17 May 2017, more than three years had elapsed since the Player lodged his claim before the DRC. At the end of this lengthy procedure, the Player has obtained nothing more than the DRC Decision, which is of no practical use in bankruptcy proceedings initiated in Ukraine. This situation is unfair and CAS must rectify it by issuing an award confirming the Player's requests for relief.

- In view of the specific circumstances of the case, FIFA has committed a denial of justice and, therefore, the CAS has jurisdiction to hear the present dispute.

B. The answers

1. FIFA

43. FIFA filed an answer, with the following requests for relief:

“we respectfully request the Sole Arbitrator:

- (1) To reject the Appellant’s appeal in its entirety.*
- (2) To confirm that the letter sent by the Deputy Secretary to the FIFA Disciplinary Committee 17 May 2017 cannot be considered a decision.*
- (3) To confirm the content of the letter sent by the Deputy Secretary to the FIFA Disciplinary Committee on 17 May 2017 hereby appealed against.*
- (4) To order the Appellant to bear all costs incurred with the present procedure and to cover all [FIFA’s] expenses relating to the present procedure”.*

44. The submissions of FIFA, in essence, may be summarized as follows:

- The FIFA Letter of 17 May 2017 was issued in the context of a disciplinary procedure initiated at the request of the Player. However, the Player is not filing an appeal against this document for disciplinary reasons. The only purpose of the present procedure before the CAS is to obtain *“an arbitral award (...) in order to secure [the Player’s] credit and allow him to present a final and enforceable arbitral award before the Ukrainian Court. (...) It is evident that the present proceedings are not the correct forum to request the recognition of an amount that was already ordered to be paid in the DRC decision”.*
- The FIFA Letter of 17 May 2017 does not constitute a decision and, therefore, it cannot be challenged before the CAS.
- The FIFA Disciplinary Committee has no jurisdiction over a club such as FC Metalist, which is not a member of an association affiliated with FIFA. Hence, it is not in a position to put the club under any pressure to meet its financial obligations.
- There cannot be any denial of justice on the part of the FIFA Disciplinary Committee, as this body has no longer the authority to pursue the disciplinary procedure initiated against FC Metalist, which lost its affiliation with the FFU.

2. FC Metalist

45. FC Metalist did not file an answer within the prescribed time limit.

3. The FFU

46. The FFU filed an answer, with the following requests for relief:

“Taking into consideration all mentioned above and in accordance with clauses R55, R59 of [the Code] we are asking the Court to exclude FFU as the Third Respondent from this case and accept the justified award”.

47. In substance, the FFU submits that the Player and FC Metalist contractually agreed to bring any dispute arising from their employment relationship before FIFA and, possibly, the CAS. *“Thus, it seems that involving the FFU as the Third Respondent is mistaken. Moreover, it will be out of rules to consign any penalties to FFU instead of football club”.*

V. JURISDICTION - ADMISSIBILITY

48. According to the Player, the CAS has jurisdiction to hear the present dispute on the basis of his appeal against the FIFA Letter of 17 May 2017, which shall be considered as a final and binding decision. Moreover, the Player submits that the CAS is also competent to deal with the present matter because he *“has been repeatedly denied justice, once the FIFA DRC took over 09 (nine) months to notify the parties of the grounds of the decision and the FIFA DisCo never opened the Disciplinary Proceedings against the Club, even after the Player requested them to do so for over a year”.*
49. In his appeal brief, the Player admits that he is *“exclusively seeking for an arbitral award that acknowledges precisely his credit against FC Metalist - as established in the FIFA DRC Decision -, including all the amounts and interests due, specifying its nature within the operative part”.* In other words, and by means of the present procedure, the Player is seeking to obtain an award, which fully reinstates the DRC Decision. His requests for relief are absolutely unrelated to any disciplinary measures to be taken against FC Metalist.
50. The Sole Arbitrator observes that the object of the present dispute before the CAS is the decision, or - in case of a denial of justice - the absence of decision issued by the FIFA Disciplinary Committee, as well as the alleged procrastination throughout the proceedings that lasted over two years counting the procedure before the DRC as well as the FIFA Disciplinary Committee. In this respect, it must be underlined that, in the course of a disciplinary proceeding before it, the FIFA Disciplinary Committee is not allowed to review or to modify the substance of any previous decision (CAS 2013/A/3380). The issue at stake in case of appeal against a decision rendered by the FIFA Disciplinary Committee within such a framework is only the question of whether FC Metalist respected and fulfilled the DRC Decision, but no longer the content of the decision, which cannot be modified anymore (CAS 2012/A/3032).

51. In this vein, and following questions by the Sole Arbitrator, the Player held that the quintessential reason for appealing before the CAS was to obtain an arbitral award that would quash the “decision” by the FIFA Disciplinary Committee, and reinstate the original decision by the DRC. Two qualifications are in order here: first, the Respondents reject the view that the FIFA Disciplinary Committee’s action amounts to a formal decision; second, the Player’s action was warranted because, as the Player explained, the DRC decisions lack executory force before Ukrainian courts where the bankruptcy proceedings against FC Metalist had been initiated.
52. Consequently, the issues to be resolved by the Sole Arbitrator are the following ones:
- Is the FIFA Letter of 17 May 2017 a final decision, which can be quashed (leading, eventually, to the reinstatement of the DRC decision)?
 - Is there a case of denial of justice, assuming, of course, that its content extends beyond the issuance of a “decision” by the FIFA Disciplinary Committee?

A. Is the FIFA Letter of 17 May 2017 a final decision?

1. Preliminary remarks

53. The Sole Arbitrator finds that the CAS is competent to determine its own jurisdiction, and whether it may adjudicate the merits of the appeal. First, by virtue of the so-called “*Kompetenz-Kompetenz*”, an international arbitral tribunal sitting in Switzerland is competent to decide on its competence to adjudicate a dispute. This much is recognized in Article 186 para. 1 of the Swiss Law on Private International Law, which is applicable to CAS arbitration proceedings (CAS 2015/A/4213; CAS 2009/A/1910; CAS 2005/A/952; CAS 2004/A/748).
54. Furthermore, as this is an appeal arbitration procedure, the Sole Arbitrator must address any jurisdictional issue, by considering Article R47 para. 1 of the Code, which reads as follows:
- “An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body”.*
55. The legal basis for an appeal against a decision of FIFA is set out in Article 58 para. 1 of the FIFA Statutes, April 2016 edition (in force at the moment of the request for disciplinary measures), according to which “*Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of notification of the decision in question*” (“FIFA Statutes”).
56. Thus, in accordance with the above provisions, the CAS has the power to adjudicate appeals against a sports organization (*i.e.* a federation, association or sports-related body) provided notably that an actual “*decision*” has been issued, that it is final (*i.e.* all other available stages of appeal have been exhausted), and that it is challenged in a timely manner.

2. *Is the FIFA Disciplinary Committee's action a "decision" in the sense of Article 58 para. 1 of the FIFA Statutes?*

57. The applicable FIFA regulations, in particular the FIFA Statutes, do not provide for a definition of the term "*decision*". The Sole Arbitrator thus, turns to relevant case law and see how this term has been interpreted in previous cases. The possible characterisation of a letter as a decision was considered in several previous CAS cases (CAS 2015/A/4213; CAS 2008/A/1633; CAS 2007/A/1251; CAS 2005/A/899; CAS 2004/A/748; CAS 2004/A/659).

58. The Sole Arbitrator endorses the definition of "*decision*" and the characteristic features of a "*decision*" stated in those CAS precedents:

- "*the form of the communication has no relevance to determine whether there exists a decision or not. In particular, the fact that the communication is made in the form of a letter does not rule out the possibility that it constitute a decision subject to appeal*" (CAS 2015/A/4213 para. 49; CAS 2008/A/1633 para. 31; CAS 2007/A/1251 para. 30; CAS 2005/A/899 para. 63; CAS 2004/A/748 para. 90).
- "*In principle, for a communication to be a decision, this communication must contain a ruling, whereby the body issuing the decision intends to affect the legal situation of the addressee of the decision or other parties*" (CAS 2008/A/1633 para. 31; CAS 2007/A/1251 para. 30; CAS 2005/A/899 para. 61; CAS 2004/A/748 para. 89).
- "*A decision is thus a unilateral act, sent to one or more determined recipients and is intended to produce legal effects*" (CAS 2008/A/1633 para. 31; CAS 2004/A/748 para. 89; CAS 2004/A/659 para. 36).
- "*an appealable decision of a sport association or federation "is normally a communication of the association directed to a party and based on an 'animus decidendi', i.e. an intention of a body of the association to decide on a matter (...). A simple information, which does not contain any 'ruling', cannot be considered a decision*" (CAS 2015/A/4213 para. 49; CAS 2008/A/1633 para. 32).

3. *Applying CAS Case Law to the Present Case*

59. As already explained above, the main object of the appeal before the CAS is the "*decision*" taken by the FIFA Disciplinary Committee.

60. Pursuant to Article 53 of the FIFA Statutes, "*the function of the Disciplinary Committee shall be governed by the FIFA Disciplinary Code*".

61. Article 3 of the FIFA Disciplinary Code, entitled "*Scope of application: natural and legal persons*", states the following:

"The following are subject to this code:

- a) associations;*

- b) *members of associations, in particular the clubs;*
 - c) *officials;*
 - d) *players;*
 - e) *match officials;*
 - f) *licensed match and players' agents;*
 - g) *anyone with an authorisation from FIFA, in particular with regard to a match, competition or other event organised by FIFA;*
 - h) *spectators”.*
62. FIFA is at the top of the pyramidal structure of football governance, its 211 member associations are at the bottom, and in the middle, are the six continental confederations (which, nevertheless, are not members of FIFA formally). Based on the concept of the “*indirect reference*” to the rule of an international federation, a clubs is, on the basis of its (direct or indirect) membership with the national federation, also bound by the applicable international regulations. Thus, all participants to national and international sports are bound by the same set of rules (CAS 2012/A/3032 para. 55 *et seq.* and references).
63. On 9 August 2016, FIFA was made aware of the fact that FC Metalist lost its affiliation to the FFU. It obtained this information in the context of a disciplinary procedure initiated against FC Metalist at the request of another player. On 15 May 2017, the FFU confirmed to FIFA that the status of FC Metalist had not changed and that the club was still not one of its members.
64. In other words, since the summer of 2016, FC Metalist has not been a member of the FFU anymore, and has not taken part in any event or competition organised either by the FIFA or the FFU. From that moment onwards, FC Metalist could not be subjected to the sanctions included in the FIFA Disciplinary Code. As a result, the FIFA Disciplinary Committee could not rule or entertain disciplinary actions against FC Metalist.
65. On 17 May 2017, following the confirmation received by the FFU to this effect, the Deputy Secretary of the FIFA Disciplinary Committee advised the Player that FIFA “*services and competent decision-making bodies cannot deal with cases involving clubs which are not affiliated to their Association any longer. As a consequence, on behalf of the chairman of the FIFA Disciplinary Committee, we regret having to inform you that we do not appear to be in a position to further proceed with the case of the reference in which the club FC Metalist is involved*”.
66. The Sole Arbitrator finds, in light of the above, that the FIFA Letter of 17 May 2017 does not contain a ruling, which produces any legal effect. It bears repetition that Sole Arbitrator’s position is guided by the simple fact that FC Metalist, at the moment when the decision was issued, was not lawfully subjected to the sanctions of the FIFA Disciplinary Committee, since

the club had ceased to be affiliated to the FFU. Since the decisions by FIFA Disciplinary Committee in the realm of the request by the Player, can only serve as means to secure enforcement of the DRC decision, and thus, are of prospective nature, the matter had become moot at the moment when the FIFA Disciplinary Committee was in a position to decide the issue. Accessorily, it is noted that it also seems evident, from the plain text of the letter that the Deputy Secretary of the FIFA Disciplinary Committee has issued, did not intend the communication to be a decision issued on behalf of the FIFA. On the contrary, with his letter dated 17 May 2017, he was only reporting to the Player that FC Metalist was not validly bound to the rules and regulations of FIFA, and that the FIFA Disciplinary Committee was not in position to impose any sanctions against it. The Deputy Secretary to the FIFA Disciplinary Committee did not raise any new question nor implement new measures affecting somehow the legal situation of the Player. Finally, even if the communication by FIFA were considered to be a decision, *quod non*, its annulment would have no effect at all on the legal value of the DRC decision, which continues to produce its effects as it has not been appealed and remains binding on FC Metalist. Since, nevertheless, the current is not an ordinary, but an appeals procedure, the Sole Arbitrator refrains from ruling beyond the current scope of the appeal. The FIFA Disciplinary Committee's communication is not a decision, and thus, cannot be quashed.

67. For all the above reasons, the Sole Arbitrator holds that the FIFA Letter of 17 May 2017 is not a decision.

B. Is there a case of denial of justice?

68. An appeal for denial of formal justice is possible when the authority refuses without reason to make a ruling, or to delay a ruling beyond a reasonable period. If a body refuses without reason to issue a decision or delays the issuance of a decision beyond a reasonable period of time, there can be a denial of justice, opening the way of an appeal against the absence of a decision (2013/A/3148 para. 132).
69. For the reasons already exposed here above, from the moment it was disaffiliated from the FFU, FC Metalist was not governed by FIFA Regulations any longer and, as a consequence, it was not subject to FIFA disciplinary proceedings. In other words, FIFA bodies, and more specifically the FIFA Disciplinary Committee, lack the necessary authority to issue a decision against FC Metalist and, therefore, cannot be blamed for not making a ruling.
70. FIFA was informed of the fact that FC Metalist lost its affiliation to the FFU on 9 August 2016. It is regrettable that it waited until 17 May 2017 to forward this information to the Player. Nevertheless, no argument was presented to the Sole Arbitrator to the effect that the duration of the process before the FIFA Disciplinary Committee's was unusually long. In fact, the evidence presented by the FIFA representative that there was nothing unusual regarding the length of the process, was not rebutted. Finally, even if the communication of the FIFA Disciplinary Committee had been issued earlier, nothing would have changed with respect to the Player's situation or rights. At least, the Player did not prove otherwise. In this respect, at the hearing held on 1 December 2017 the Player's representative was asked to state what he would have done, had the disaffiliation of FC Metalist come to his knowledge earlier. He confirmed that he would have also filed an appeal to CAS. An earlier appeal against the

communication of the FIFA Disciplinary Committee could likely also have led to the same outcome.

C. Conclusion

71. The Sole Arbitrator concludes that the FIFA Letter of 17 May 2017 is not a final decision. He also finds that there has been no denial of justice resulting from the length of procedures before the FIFA bodies. Based on Article R47 of the Code and the applicable FIFA Regulations, the appeal lodged by the Player shall be declared inadmissible.
72. This conclusion makes it unnecessary for the Sole Arbitrator to consider the other requests submitted by the Parties. Consequently, all other prayers for relief are rejected.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Court of Arbitration for Sport has no jurisdiction to decide the appeal brought by Mr Cleiton Ribeiro Xavier against Fédération Internationale de Football, FC Metalist and Football Federation of Ukraine concerning the issuance of the FIFA Letter dated 17 May 2017.
2. (...).
3. (...).
4. All other claims are dismissed.