



Arbitration CAS 2017/A/5356 South African Football Association v. Fédération Internationale de Football Association (FIFA), Fédération Burkinabé de Football, Fédération Sénégalaise de Football & Federação Caboverdiana de Futebol, award of 31 October 2018

Panel: Prof. Martin Schimke (Germany), President; Mr Hendrik Willem Kesler (The Netherlands); Mr Jean-Philippe RoCHAT (Switzerland)

Football

Decision ordering the replay of a match

Decision “final and binding” according to Art. 3 para. 3 WC Regulations

Principles of interpretation of articles of associations

Validity of Art. 3 para. 3 WC Regulations

Scope of Art. 3 para. 3 WC Regulations

Compliance of a decision to replay a match with the WC Regulations and CAS jurisdiction

1. **Article 3 para. 3 of the Regulations for the 2018 FIFA World Cup Russia (WC Regulations) provides that decisions taken by the Organising Committee are “final and binding and not subject to appeal”. It must be read together with Article 14 para. 3 of the WC Regulations, which clearly states that should a decision be “declared as final and binding and not subject to appeal”, a formal appeal with CAS is not possible. Therefore, on the basis of Article 3 para. 3 of the WC Regulations, appeals before CAS are not available against decisions issued by the Organizing Committee.**
2. **There is not one method of interpretation that prevails over the others, when statutes of a private legal entity are at stake. An objective or a subjective approach is acceptable depending on the specificities of the situation. When called upon to interpret articles of associations, a CAS panel should therefore adopt a pragmatic approach and follow a plurality of methods, without assigning any priority to the various means of interpretation. The situation must be assessed on a case-by-case basis and the interests at stake have to be balanced in respect of the principle of proportionality.**
3. **Article 3 para. 3 of the WC Regulations is not incompatible with Article 58 of the FIFA Statutes. FIFA Statutes are not meant to deal with issues relating to the organisation of the FIFA World Cup. These aspects need to be resolved through specific regulations, which, as such, must be seen as a *lex specialis*. In this context, if an appeal could be lodged against each decision taken by the Organizing Committee within the frame of the organisation of the FIFA World Cup, it could seriously impede the competition and would thereby be in direct conflict with one of the main goals of FIFA; *i.e.* the organisation of its own international competitions. In addition, it must be observed that Article 3 para. 3 of the WC Regulations is not new. A similar (when not identical) provision can be found in the 2006, 2010 and 2014 WC Regulations. Under these circumstances, it is unconvincing that a rule that has not changed over the last 10 years**

and that has been applied systematically and continuously in the last 4 FIFA World Cups, can be considered as null and void, just because it was implemented without an express legal basis in the FIFA Statutes. Given the fact that Article 3 para. 3 of the WC Regulations is part of FIFA's current and constant practice and has been in force for many years and has never been put into question by FIFA's supreme and legislative body (the Congress), it seems reasonable to submit that such a provision can be considered as having been ratified by it.

4. It is obvious that “[the] decisions taken by the FIFA Organising Committee and/or its bureau/subcommittee are final and binding and not subject to appeal” insofar that they are reasonable, not arbitrary and taken with respect to the fundamental rights of the parties concerned. Likewise, Article 3 para. 3 of the WC Regulations cannot empower the Organising Committee with the absolute discretion to take just any measure regardless of whether it is within its area of its responsibility. Would the Organizing Committee make an ill-founded decision, a possibility of recourse to a higher judicial body must be provided. Moreover, should the Organizing Committee take a decision which goes beyond its prerogatives, it would not fall under the WC Regulations, which would therefore simply not be applicable.
5. If it has been established that the outcome of a match has been influenced “*in a manner contrary to sporting ethics*” because the match was fixed and, consequently, its result may have affected the proper functioning of the entire competition as well as the image of FIFA, it is reasonable to say that it was the duty of the Organising Committee to manage the situation. In addition, the decision to replay a fixed match does not seem to be arbitrary, to go beyond the scope of the WC Regulations or to be unfair. On the contrary, to keep a manipulated result would give an unmerited advantage to the team that benefited from it and would obviously be incompatible with fair play. As a consequence, the decision to replay a match is compliant with the WC Regulations, not arbitrary nor unreasonable. Article 3 para. 3 of the WC Regulations is therefore fully applicable and, as a consequence, CAS must decline jurisdiction.

I. THE PARTIES

1. The South African Football Association is the governing body of football in South Africa, with its registered seat in Johannesburg, South Africa. It has been affiliated with FIFA since 1992 (together with the Fédération Burkinabé de Football, the “Appellants”).
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. The Fédération Burkinabé de Football is the governing body of football in Burkina Faso, with its registered seat in Ouagadougou, Burkina Faso. It has been affiliated with the Fédération Internationale de Football Association since 1964 (together with the South African Football Association, the “Appellants”).
4. The Fédération Sénégalaise de Football is the governing body of football in Senegal, with its registered seat in Dakar, Senegal. It has been affiliated with FIFA since 1964.
5. The Federação Caboverdiana de Futebol is the governing body of football in Cape Verde, with its registered seat in Praia, Cape Verde. It has been affiliated with FIFA since 1986.
6. All the above national federations are members of the Confédération Africaine de Football (“CAF”), which is one of the six continental confederations of FIFA. CAF is the governing body of African football, dealing with all questions relating to African football and exercising regulatory, supervisory and disciplinary functions over national associations, clubs, officials and players of the African continent.

II. FACTUAL BACKGROUND

A. Background facts

7. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions and evidence adduced. References to additional facts and allegations found in the Parties’ written submissions and evidence will be made, where relevant, in connection with the legal analysis that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in its award only to the submissions and evidence that it deems is necessary to explain its reasoning.

B. The FIFA World Cup, Edition 2018

8. The FIFA World Cup is an event embodied in the FIFA Statutes (Article 1 of the Regulations for the 2018 FIFA World Cup Russia; “the WC Regulations”). It takes place every four years. As a general rule, every association affiliated to FIFA may participate in the FIFA World Cup with its representative team (Article 5 para. 1 of the WC Regulations).
9. The final phase of the next edition of the FIFA World Cup is to take place in Russia between 14 June and 15 July 2018.
10. The characteristics of the 2018 FIFA World Cup, relevant for the present dispute, are the following¹:

¹ There are two editions of the WC Regulations. One version is dated September 2016, (the “Old Version”) and the other version is dated February 2018, (the “New Version”). The Panel relies on the New Version in its Award unless indicated otherwise.

- The FIFA World Cup consists of two stages: a) the preliminary competition; b) the final competition (Article 5 para. 2 of the WC Regulations).
- The FIFA Council has appointed the Organising Committee for FIFA Competitions (“Organising Committee”) to organise the competition (Article 1 para. 6 and Article 3 para. 1 of the WC Regulations).
 - The Organising Committee organises all official FIFA competitions in compliance with the provisions of the regulations applicable to the respective competitions, the hosting documents and the hosting requirements contained or referred to therein (Article 43 of the Statutes).
 - The Organising Committee is responsible for organising the FIFA World Cup in accordance with the FIFA Statutes and the FIFA Governance Regulations (Article 3 para. 1 of the WC Regulations). It may, if necessary, appoint a bureau and/or a sub-committee to deal with emergencies. Any decision taken by the bureau or the sub-committee shall come into effect immediately but shall be subject to confirmation by the plenary committee at its next meeting (Article 3 para. 2 of the WC Regulations).
 - The decisions taken by the Organising Committee and/or its bureau/subcommittee are final and binding and not subject to appeal (Articles 3 para. 3 and 20 para. 1 of the WC Regulations).
- Pursuant to Article 4 para. 2 of the WC Regulations *“All Team Delegation Members shall comply with the Laws of the Game and the FIFA Statutes and all applicable FIFA regulations (including these Regulations), in particular the FIFA Disciplinary Code, the FIFA Stadium Safety and Security Regulations, the FIFA Anti-Doping Regulations, the FIFA Code of Ethics, the FIFA Media and Marketing Regulations and the FIFA Equipment Regulations as well as all circulars, directives and decisions of FIFA bodies unless these Regulations stipulate otherwise”*.

C. The Proceedings before the Organising Committee

i) In general

11. The format of the preliminary competition to the World Cup could vary depending on the continental Confederation. With respect to the CAF, the competing teams had to go through two first preliminary stages in order to bring the number of representative teams down to 20. These remaining teams were divided into five groups of four teams to play home-and-away round-robin matches (the “Third Preliminary Stage”). The winners of each group qualified for the 2018 FIFA World Cup.
12. The representative teams of Senegal, Burkina Faso, Cape Verde and South Africa were in the same group (Group D) of the Third Preliminary Stage. The matches were played between 8 October 2016 and 14 November 2017.

13. During the second round of matches, the representative team of South Africa won against the representative team of Senegal on the score of 2 - 1. The result was eventually cancelled because the referee of the match was found to have manipulated the outcome of the game, which had to be replayed on 10 November 2017, just before the final round of the Third Preliminary Stage. The exact events and their chronology will be addressed more specifically later in the present award. Beforehand, however, it is noteworthy to display the standing of each team of Group D during each series of the Third Preliminary Stage.
14. At the end of round 1 of the Third Preliminary Stage (8 October 2016), the results were the following:
- Senegal 1 victory, 3 points
 - Burkina Faso 1 draw, 1 point
 - Cape Verde 1 defeat, 0 point
 - South Africa 1 draw, 1 point
15. At the end of round 2 of the Third Preliminary Stage (12 November 2016), the results were the following before the game between Senegal and South Africa was cancelled:
- Senegal 1 victory, 1 defeat for a total of 3 points
 - Burkina Faso 1 victory, 1 draw for a total of 4 points
 - Cape Verde 2 defeats, for a total of 0 point
 - South Africa 1 victory, 1 draw for a total of 4 points
16. At the end of round 3 of the Third Preliminary Stage (1-2 September 2017), the results were the following before the game between Senegal and South Africa was cancelled:
- Senegal 1 victory, 1 draw, 1 defeat for a total of 4 points
 - Burkina Faso 1 victory, 2 draws for a total of 5 points
 - Cape Verde 1 victory, 2 defeats for a total of 3 points
 - South Africa 1 victory, 1 draw, 1 defeat, for a total of 4 points
17. At the end of round 4 of the Third Preliminary Stage (5 September 2017), the results were the following before the game between Senegal and South Africa was cancelled:
- Senegal 1 victory, 2 draws, 1 defeat for a total of 5 points
 - Burkina Faso 1 victory, 3 draws for a total of 6 points
 - Cape Verde 2 victories, 2 defeats for a total of 6 points
 - South Africa 1 victory, 1 draw, 2 defeats, for a total of 4 points
18. The decision to cancel and to replay the match between Senegal and South Africa was taken on 6 September 2017. The Appellants filed a separate petition before the Court of Arbitration for Sport (“CAS”) for a stay of the execution of the decision. Both requests were dismissed by CAS on 17 October and 6 November 2017, respectively.

19. At the end of round 5 of the Third Preliminary Stage (7 October 2017), the results were the following before the game between Senegal and South Africa was cancelled:
- Senegal 2 victories, 2 draws, 1 defeat for a total of 8 points
 - Burkina Faso 1 victory, 3 draws, 1 defeat for a total of 6 points
 - Cape Verde 2 victories, 3 defeats for a total of 6 points
 - South Africa 2 victories, 1 draw, 2 defeats, for a total of 7 points
20. On 10 November 2017, the game between South Africa and Senegal was played again. The visiting team won on the score of 2 - 0.
21. Before the last game of the Third Preliminary Stage, taking into account the new result of the first game between South Africa and Senegal, the standing was the following:
- Senegal 3 victories, 2 draw, 0 defeat for a total of 11 points
 - Burkina Faso 1 victory, 3 draws, 1 defeat for a total of 6 points
 - Cape Verde 2 victories, 3 defeats for a total of 6 points
 - South Africa 1 victories, 1 draw, 3 defeats, for a total of 4 points
22. At the end of the Third Preliminary Stage (14 November 2017), the final results were the following:
- Senegal 4 victories, 2 draws, 0 defeat for a total of 14 points
 - Burkina Faso 2 victories, 3 draws, 1 defeat for a total of 9 points
 - Cape Verde 2 victories, 0 draw, 4 defeats, for a total of 6 points
 - South Africa 1 victory, 1 draw, 4 defeats, for a total of 4 points
23. With the above results, the representative team of Senegal was the winner of Group D and, thus, qualified for the final phase of the 2018 FIFA World Cup.

ii) The litigious match between South Africa and Senegal

24. On 12 November 2016, the second round of the Third Preliminary Stage took place in South Africa, where the representative team of South Africa played against the representative team of Senegal (the “Match”). Mr Joseph Odartey Lamptey (“Mr Lamptey”), of Ghanaian nationality, was the referee.
25. The representative team of South Africa won on the score of 2 - 1. It opened the score by converting a penalty into a goal at minute 43 of the Match. It scored again two minutes later. Finally, the representative team of Senegal scored the final goal of the Match at minute 75.
26. According to the official match report, Mr Lamptey awarded the penalty for a nonexistent handball. In addition and according to the betting monitoring company Sportradar Integrity Services, there was “*a clear and overwhelming evidence that the course or result of this match was unduly influenced. The betting evidence ultimately indicated that bettors held prior knowledge of at least three goals being*

scored in total". Likewise, Early Warning System Gmbh provided FIFA with an alert that it detected irregular betting patterns during the Match.

27. The FIFA Disciplinary Committee eventually initiated disciplinary proceedings against Mr Lamptey and, on 15 March 2017, issued a decision whereby it found Mr Lamptey guilty of having unlawfully influenced the Match results and, therefore, of breaching Article 69 para. 1 of the FIFA Disciplinary Code. As a consequence, Mr Lamptey was "*banned from taking part in any kind of activity at national and international level (administrative, sports or any other) for life*".
28. On 31 March 2017, Mr Lamptey lodged an appeal before the FIFA Appeal Committee, which, on 27 April 2017, upheld the decision of the first instance.
29. On 6 June 2017, Mr Lamptey filed an appeal with CAS. The matter was recorded under CAS 2017/A/5173 Joseph Odartei Lamptey v. FIFA.
30. On 2 August 2017, CAS issued the operative part of its award, whereby it dismissed the appeal filed by Mr Lamptey and confirmed the decision of the FIFA Appeal Committee. On 4 December 2017, the complete award was notified. In substance, CAS concluded that Mr Lamptey had intentionally taken wrong decisions in order to influence the result of the Match. "*This conclusion, in addition, is reinforced by the obvious link between the wrong Field Decisions, deliberately taken, and the deviation from normality in betting patterns for the live Totals market. Such link shows that the Field Decisions were taken to influence the Match in a manner contrary to sporting ethics as they appear dictated by purposes contradicting the principles of fair play and compliance with the rules which are at the basis of sporting activities*" (CAS 2017/A/5173, consid. 85).

iii) The replay of the Match

31. On 6 September 2017, FIFA notified both the South African Football Federation and the Fédération Sénégalaise de Football of the decision of the Bureau for the FIFA World Cup™ Qualifiers (the "FIFA Bureau"). This document has the following content (the "FIFA Bureau's Decision"):

"3rd round of the 2018 FIFA World Cup Russia™ Qualifiers, African zone - Group D - Matchday 2 - Replay of the match South Africa vs Senegal, which was held on 12 November 2016

Dear Sirs,

Please take note that, with regards to the captioned match, FIFA was made aware that the result of the match may have been influenced by the referee, Mr Josef Odartei Lamptey. FIFA immediately launched a thorough preliminary investigation, following which disciplinary proceedings were opened against Mr Lamptey.

Taking into account:

1. *The FIFA Disciplinary Committee decision of 15 March 2017 to impose a lifetime ban on the match referee, Mr Joseph Odartei Lamptey, for unlawfully influencing the match result.*
2. *The FIFA Appeal Committee decision of 27 April 2017, confirming the first instance decision in its*

entirety.

3. *The Court of Arbitration for Sports decision of 2nd August 2017, confirming in full the decision passed by the Appeal Committee.*
4. *The FIFA zero tolerance policy on match manipulation.*
5. *The remaining match schedule fixtures and available replay dates for the teams in group D.*
6. *The provisions of article 3, paragraph 3, letter o)² of the Regulations for the 2018 FIFA World Cup Russia™.*

The Bureau for the FIFA World Cup™ Qualifiers took the following decision:

1. *The first-leg match South Africa vs Senegal shall be replayed.*
2. *The result of the match of 12 November 2016 shall be cancelled for all purposes.*
3. *The match shall be replayed during the international match window of November 2017.*
4. *The order of the matches between the two teams shall be respected, thus South Africa shall first host Senegal prior to playing the last match day in Senegal a few days later.*

In accordance with Article 3, paragraph 4³ of the Regulations for the 2018 FIFA World Cup Russia™, this decision is final and binding and not subject to appeal.

On behalf of the Bureau for the FIFA World Cup™ Qualifiers”.

32. On 8 September 2017, the Fédération Burkinabé de Football wrote to FIFA to contest the authority of the FIFA Bureau to decide the replay of a match. In addition, it submitted that the regulatory requirements for a match to be replayed were not met. The Fédération Burkinabé de Football concluded that the FIFA Bureau’s Decision was illegal, arbitrary and to be annulled. On 10 September 2017, FIFA answered to the various allegations of the Fédération Burkinabé de Football, which maintained its position and brought up further arguments in another letter, sent on 12 September 2017 to FIFA.
33. On 14 September 2017, the Organising Committee “confirmed the decision of the Bureau for the FIFA World Cup™ Qualifiers, which had ordered a replay of the qualification match between South Africa and Senegal held on 12 November 2016. This confirmation came after the [CAS] upheld the lifetime ban on match referee Joseph Lamptey for match manipulation, the ruling imposed by the FIFA Disciplinary and Appeal Committee. The match will be replayed during the November 2017 international window, with the exact date to be confirmed in due course” (the “Appealed Decision”).
34. On 10 November 2017, the Match was replayed and the representative team of Senegal won on the score of 2 - 0.

² This citation refers to the Old Version. This provision does not exist in the New Version.

³ This citation refers to the Old Version. This paragraph corresponds with Article 3 para. 3 of the New Version.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

35. The FIFA Bureau's Decision was challenged before CAS by the Fédération Burkinabé de Football and the Appealed Decision by the South African Football Association, respectively. Each dispute was recorded in the CAS roll under a specific number and, eventually, was submitted to the same Panel.
36. On 18 September 2017, the Fédération Burkinabé de Football lodged with CAS its statement of appeal against the FIFA Bureau's Decision. The case was recorded under CAS 2017/A/5324 Fédération Burkinabé de Football v. FIFA, South African Football Association, Fédération Sénégalaise de Football & Federação Caboverdiana de Futebol ("CAS 2017/A/5324") and only FIFA was named as Respondent.
37. On 25 September 2017, the CAS Court Office acknowledged receipt of the statement of appeal filed by the Fédération Burkinabé de Football as well as of its payment of the CAS Court Office fee. It noted that the Fédération Burkinabé de Football chose French as the language of the arbitration. In this respect, it informed FIFA that, unless it objected within three days, the procedure would be conducted in French. The CAS Court Office took note of the Fédération Burkinabé de Football's nomination of Mr François Klein as arbitrator and invited FIFA:
- to comment within two days on the request of the Fédération Burkinabé de Football to proceed in an expedited manner as provided under Article R52 of the Code;
 - to file within 10 days its position on the request of the Fédération Burkinabé de Football for a stay of the execution of the FIFA Bureau's Decision.
38. On 28 September 2017, FIFA confirmed to the CAS Court Office that it did not object to the request of the Fédération Burkinabé de Football to proceed in an expedited manner.
39. Via facsimile dated 27 September 2017 but received on 28 September 2017, the Fédération Burkinabé de Football informed the CAS Court Office that its appeal was actually lodged not only against FIFA but also against the South African Football Association, the Fédération Sénégalaise de Football and the Federação Caboverdiana de Futebol.
40. On 29 September 2017, the CAS Court Office invited:
- the Respondents to appoint a common arbitrator within 10 days;
 - the South African Football Association, the Fédération Sénégalaise de Football and the Federação Caboverdiana de Futebol:
 - to comment within two days on the request of the Fédération Burkinabé de Football to proceed in an expedited manner as provided under Article R52 of the Code;
 - to state within two days whether they objected to the present procedure be conducted in French;

- to file within 10 days their respective position with respect to the request of the Fédération Burkinabé de Football for a stay of the execution of the FIFA Bureau's Decision.
41. On 28 September 2017, the Fédération Burkinabé de Football filed its appeal brief.
 42. On 28 September 2017, FIFA confirmed that it objected to the request of the Fédération Burkinabé de Football for a stay of the execution of the FIFA Bureau's Decision. According to FIFA, CAS had no jurisdiction over the dispute, as the FIFA Bureau's Decision was final, binding and not subject to appeal. Furthermore, FIFA was of the view that the request of the Fédération Burkinabé de Football for provisional measures did not comply with the requirements of Article R37 of the Code.
 43. On 4 October 2017, the Fédération Sénégalaise de Football confirmed that it agreed to proceed in French and in an expedite manner.
 44. On 5 October 2017, the South African Football Association lodged with CAS its statement of appeal against the Appealed Decision. The case was recorded under CAS 2017/A/5356 South African Football Association v. FIFA, Fédération Burkinabé de Football, Fédération Sénégalaise de Football & Federação Caboverdiana de Futebol ("CAS 2017/A/5356").
 45. On 5 and 6 October 2017, the CAS Court Office informed the Parties that neither the South African Football Association nor the Federação Caboverdiana de Futebol had taken position as to the language of the procedure or to the request of the Fédération Burkinabé de Football for a stay of the execution of the FIFA Bureau's Decision.
 46. On 12 October 2017 and in a motivated brief, the Fédération Sénégalaise de Football confirmed that it objected to the request of the Fédération Burkinabé de Football for a stay of the execution of the FIFA Bureau's Decision.
 47. On 13 October 2017, the CAS Court Office informed the Parties that the South African Football Association had lodged with the CAS an appeal against the Appealed Decision. The CAS Court Office invited the Parties to state on or before 19 October 2017 whether they agreed to submit the present procedure to the same Panel as in the proceedings CAS 2017/A/5324.
 48. In an order issued on 17 October 2017, the President of the Appeals Arbitration Division of the CAS decided to dismiss the request of the Fédération Burkinabé de Football for a stay of the execution of the FIFA Bureau's Decision. It is noteworthy to mention that, in another order issued on 6 November 2017 in the present procedure, the President of the Appeals Arbitration Division of the CAS dismissed the request for a stay of the execution of the Appealed Decision filed on 5 October 2017 by the South African Football Association.
 49. On 19 October 2017, FIFA and the Fédération Sénégalaise de Football confirmed to the CAS Court Office that they agreed to the proceedings CAS 2017/A/5324 and CAS 2017/A/5356

be submitted to the same Panel and also expressed the opinion that both proceedings should actually be consolidated.

50. On 20 October 2017, the CAS Court Office observed that the Fédération Burkinabé de Football and the Federação Caboverdiana de Futebol failed to state within the granted deadline whether they agreed to submit the cases recorded under CAS 2017/A/5324 and CAS 2017/A/5356 to the same Panel. It took note that, within the present procedure, the South African Football Association had agreed to submit the case to the same Panel as the one in charge of the procedure CAS 2017/A/5324. In addition:
- should both CAS procedures be submitted to the same Panel and bearing in mind that, in their respective appeal, the Appellants had nominated Mr Henk Kesler as arbitrator, the CAS Court Office invited the Parties to state on or before 25 October 2017, if they agreed that FIFA, the Fédération Sénégalaise de Football and the Federação Caboverdiana de Futebol appoint a common arbitrator;
 - the CAS Court Office asked the Appellants, the Fédération Sénégalaise de Football and the Federação Caboverdiana de Futebol to state, within the same deadline, whether they agreed for the procedure to be in English;
 - the CAS Court Office confirmed that the procedure would not be conducted in an expedited manner as provided under Article R52 of the Code.
51. Eventually, the Parties either expressly or tacitly (Federação Caboverdiana de Futebol) agreed a) to submit the cases CAS 2017/A/5324 and CAS 2017/A/5356 to the same Panel, b) to proceed in English and c) that Mr Henk Kesler be nominated as common arbitrator appointed by the Appellants and Mr Jean-Philippe Rochat as common arbitrator appointed by FIFA, the Fédération Sénégalaise de Football and the Federação Caboverdiana de Futebol.
52. On 2 November 2017, the CAS Court Office informed the Parties that the President of the CAS Appeals Arbitration Division had decided a) that the proceedings CAS 2017/A/5324 and CAS 2017/A/5356 were to be submitted to the same Panel, b) that the language of the present procedure was English and c) that all previous submissions filed in French did not need to be translated.
53. On 14 December 2017 and considering the outcome of the Third Preliminary Stage in Group D, the Fédération Burkinabé de Football requested to be authorised to amend its requests for relief and to file a second brief. The South African Football Association filed a similar petition on 18 December 2017. These requests were eventually granted with the express or tacit consent (Federação Caboverdiana de Futebol) of the other Parties.
54. On 15 December 2017, the CAS Court Office informed the Parties that the Panel to hear the case had been constituted as follows: Prof. Martin Schimke, President of the Panel, Mr Hendrik Willem Kesler and Mr Jean-Philippe Rochat, arbitrators.

55. On 9 January 2018 and within the prescribed deadline, each of the Appellants filed their second brief.
56. On 11 January 2018, the CAS Court Office invited FIFA, the Fédération Sénégalaise de Football and the Federação Caboverdiana de Futebol to file their respective answer within 20 days.
57. FIFA and the Fédération Sénégalaise de Football required their deadline to file their respective answer to be extended until 7 February 2018, which was granted in view of the agreement of the Appellants.
58. On 14 February 2018, the CAS Court Office acknowledged receipt of the answers filed on 7 February 2018 by FIFA and by the Fédération Sénégalaise de Football. It observed that the Federação Caboverdiana de Futebol failed to file its answer within the prescribed deadline.
59. On 16 and 21 February 2018 and in reply to the request of the CAS Court Office, all the Parties (with the exception of Federação Caboverdiana de Futebol, which remained silent) confirmed their preference for the matter to be decided solely on the basis of their written submissions.
60. On 15 June 2018, the CAS Court Office informed the Parties that the Panel did not find sufficient ground to hold a hearing in this matter and announced that an award would be rendered based solely on their written submissions.
61. On 20 June 2018, the Fédération Burkinabè de Football, the South African Football Association and FIFA signed and returned a copy of the Order of Procedure, expressly confirming that their right to be heard had been respected. The Fédération Sénégalaise de Football returned a signed copy of the Order of Procedure on 22 June 2018. The Federação Caboverdiana de Futebol did not return a signed copy of the Order of Procedure.

IV. THE SUBMISSIONS OF THE PARTIES

A. The South African Football Association

62. In its second brief, the South African Football Association submitted the following requests for relief:

“Following the position presented by [the South African Football Association] it is hereby respectfully requested from the Court of Arbitration for Sport to issue a ruling in the following terms:

- I.- *Admit the present appeal and issue a declaratory judgment declaring that the Decision should not have been pronounced, that it should have been subsequently annulled, and that in all scenarios, the replay of the Match was wrongfully ordered by FIFA;*
- II.- *To annul the result of the replayed Match, and declare as valid the result of the match held on the 10th of November 2016;*

- III.- Order FIFA to bear entirely [the legal fees of the South African Football Association], as they will be determined and communicated to the CAS Court Office at the end of the dispute;
- IV.- Order FIFA to cover entirely the costs of the CAS and the fees of the Panel in connection with the present proceedings;
- V.- Order any other measure deemed necessary or appropriate by the Panel”.

63. The submissions of the South African Football Association, in essence, may be summarized as follows:

- CAS has jurisdiction in the present matter. The fact that Article 3 para. 3 of the WC Regulations states that decisions taken by the Organising Committee are final, binding and not subject to appeal, is of no avail. As a matter of fact, such a provision is null and void as it is in conflict with Articles 57 and 58 of the FIFA Statutes concerning CAS jurisdiction, which cannot be modified by hierarchically inferior regulations.
- The Appealed Decision was issued on 14 September 2017 following the confirmation by CAS of the decision passed by the FIFA Appeal Committee against Mr Lamptey. However, on 14 September 2017, only the operative part of the CAS award had been notified and, therefore, the CAS decision had not yet entered into force. In other words, the Appealed Decision was not only taken prematurely but it was not sufficiently reasoned as, at the time it was adopted, the detailed position of the CAS Panel was unknown. The Appealed Decision is therefore inadmissible.
- The right to be heard of the South African Football Association was breached as it was not a party to the disciplinary procedure initiated against Mr Lamptey. The outcome of this procedure was at the origin of the replay of the Match, which had a direct impact on the interests of the South African Football Association. This association has never had an opportunity to present its argument before the Appealed Decision was taken.
- When the Appealed Decision was taken, two more matches were to be played by each of the representative teams of Group D of the Third Preliminary Stage. “[FIFA] gave the Senegalese representative team, in the middle of the competition, the unprecedented opportunity to play a third game and opt again to reverse its defeat in the Match.(...) Ordering the replay of the Match had an undeniable psychologic and sporting impact on the said rest of teams competing in group D”.
- “Ordering the replay of the Match had an undeniable psychologic and sporting impact on the rest of the teams in group D, particularly over [the representative team of South Africa], which saw how a match played a year before had to be repeated. Undeniably, before the Decision was issued, [the representative team of South Africa] was one point down from the Senegalese representative team. To make matters worse, said one-point difference was even smaller, as [the representative team of South Africa] benefitted from a positive vis-a-vis goal average in direct confrontations over the Senegalese representative team.

However, after the Decision, [the representative team of South Africa] found itself four points down, having lost said positive goal average in direct confrontations and even more, subject to the Senegalese representative team being afforded the chance to entirely reverse the result of the Match from -3 (points) to +3 (points),

i.e. the Decision could have a detrimental overall impact of + - 6,5 points over [the representative team of South Africa] in case the latter lost in the Match to be replayed.

Two other matches still had to be played by [the representative team of South Africa] when the Decision was taken, particularly, the scheduled direct confrontation against the Senegalese representative team to be played on the 14th of November 2017.

Accordingly, the urgency to obtain positive results of [the representative team of South Africa] as of the Decision, particularly in its direct confrontations against the Senegalese representative team became enormous, quite conversely to the position it had been if the Decision had not been pronounced, as its margin to secure its chances to qualify in the following matches would be much higher, allowing the latter to qualify in several different scenarios and results' combination.

The sudden disappearance of said several possibilities, leaving an almost nil margin to [the representative team of South Africa], dropped a disproportionate pressure over it which ended up, severely affecting it in its subsequent matches.

In these circumstances, in order to having avoided making victims by repairing a wrong, for the sake of sport justice and equity, the status quo produced by the result of the Match should have been kept, in which, the Referee, was the only actor who was subject to an ongoing prosecution”.

- FIFA must take the responsibility for the referees appointed and their possible wrongdoings. It is not for the representative teams to pay for the consequences of the bad choices made by FIFA, when selecting the referees.
- The Organizing Committee issued the Appealed Decision without complying with the requirements of Article 20 para. 10 of the WC Regulations.
- With its Appealed Decision, the Organizing Committee sanctioned the representative teams of Burkina Faso, Cape Verde and South Africa without giving them a chance to be heard. Such a decision is disciplinary in nature.
- The replay of a match for disciplinary reasons is governed exclusively by the FIFA Disciplinary Code and can only be ordered by the FIFA Disciplinary Committee. The Organizing Committee relied on Article 6 para. 7⁴ of the WC Regulations to issue the Appealed Decision. However, *in casu*, the requirements of this provision are obviously not met.
- The replay of a match is of paramount importance and can only be ordered on the basis of explicit and clear sets of rules. *“The principle of legality needs to be strictly complied with, as otherwise affiliated members of FIFA are left in the utmost legal uncertainty, what is not permissible, particularly when the stakes are as high as in the case at hand”*. In this context, the *“Specific Recommendations to Combat Match Manipulation Guidelines for FIFA member Associations”* clearly state that *“even in cases of the unlawful influencing of matches, the results of the matches remain in force”*. In other words, FIFA had envisaged the situation where the outcome of a game had been manipulated and

⁴ Article 6 para. 7 of the Old Version expressly states that *“the FIFA Organising Committee”* is competent, whereas the New Version stipulates that *“FIFA”* is competent.

decided that, in such a situation, the result should remain in force. The FIFA Bureau and the Organising Committee cannot go beyond what FIFA - in its capacity of legislator - has decided.

- The fact that, in compliance with the WC Regulations, decisions issued by the FIFA Bureau and the Organizing Committee cannot be appealed before CAS or in front of ordinary courts is in breach with FIFA Statutes, Swiss legislation and the jurisprudence of CAS.
- The WC Regulations do not give the authority to the FIFA Bureau or to the Organizing Committee to order the replay of a match. As a result, when they rendered their respective decisions on 6 and 14 September 2017, they exceeded their powers. Under these circumstances, the fact that the Appealed Decision is final and not subject to appeal is all the more illegitimate.
- The South African Football Association has a legal interest in obtaining the declaratory judgement sought in its request for relief, as such a ruling will enable it to seek compensation for the financial damages caused by the Appealed Decision and by its *“economic impact further to non-qualification for the World Cup, impact over sponsors” of [the South African Football Association], sporting and fan engagement losses*.

B. The Fédération Burkinabé de Football

64. In its second brief, the Fédération Burkinabé de Football submitted the exact same requests for relief as the South African Football Association.
65. The submissions of the Fédération Burkinabé de Football are similar, if not identical, to those of the South African Football Association.

C. FIFA

66. In its answer, FIFA submitted the following requests for relief:

“Based on the foregoing developments, FIFA respectfully requests the CAS to issue an award:

- ***Declaring that CAS has no jurisdiction over the matter;***

Subsidiarily, and in the unlikely event the Panel finds it has jurisdiction,

- ***Dismissing the Appellants’ appeals;***
- ***Confirming the Appealed Decision;***

In any event

- ***Ordering the Appellants to pay the costs of the arbitration;***

- ***Ordering the Appellants to pay a significant contribution towards the legal fees and other expenses incurred by FIFA in connection with these proceedings***”.

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

- In accordance with Article 3 para. 3 of the WC Regulations, the decisions taken by the FIFA Bureau, ratified by the Organising Committee, are final, binding and not subject to appeal. As a consequence, CAS has no jurisdiction in the present matter.
- The appeal lodged by the South African Football Association is inadmissible as it was filed after the 21-day deadline envisaged by Article 58 of the FIFA Statutes and/or Article R49 of the Code. This deadline began to run as of 6 September 2017; *i.e.* when the FIFA Bureau issued its decision and not as of 14 September 2017, *i.e.* when the Organising Committee ratified the FIFA Bureau’s Decision. As a matter of fact and in accordance with Article 3 para. 2 of the WC Regulations, the FIFA Bureau’s Decision “*shall come into effect immediately*”.
- The Appellants do not have any sufficient legal interest in the present proceedings:
 - The relief sought by them will not change the fact that the representative team of the Fédération Sénégalaise de Football is the winner of Group D, with such a margin that “*even if the Match has not been replayed and/ or the [the FIFA Bureau’s Decision and the Appealed Decision] had not been taken, the [Senegalese team] would have won Group D and qualified for the 2018 FIFA World Cup irrespectively. (...) Therefore, no matter what decision might be taken by the CAS Panel in this matter it will not have any effect over the qualification of [the representative team of the Fédération Sénégalaise de Football] as the winners (sic) of Group D*”.
 - They failed to establish how the FIFA Bureau’s Decision or the Appealed Decision could possibly have an “*economic impact further to non-qualification for the World Cup*” as the representative team of the Fédération Sénégalaise de Football would have been the winner of Group D in any event.
 - Their request for a declaratory judgement does not meet the necessary requirements consistent with CAS jurisprudence.
- The FIFA Bureau’s Decision and the Appealed Decision were taken in accordance with the relevant FIFA Regulations and should not be interfered with.
- The Appealed Decision does not have a disciplinary character and certainly does not sanction the representative teams of Burkina Faso, Cape Verde and South Africa. The decision “*only addresses the distortion of sporting competition that resulted from what the Referee did and does not imply either explicitly or implicitly any element of guilt or stigmatisation of [the representative team of the South African Football Association]. [The representative team of the Fédération Burkinabé de Football] was not even a party to the Match*”.

- Contrary to the submissions of the Appellants, the replay of a match can be ordered outside of a disciplinary procedure. Match replays may be imposed as sanctions but also as other measures. Such is for instance the case with Article 6 para. 7 of the WC Regulations.
- In its capacity of FIFA body responsible for organising the FIFA World Cup, the Organising Committee and its Bureau must have the possibility to order match replays. In this respect and pursuant to Article 32 of the WC Regulations, the Organising Committee and its Bureau are competent to decide all matters not provided for, such as the replay of a match for reasons other than the ones specifically provided for in the WC Regulations.
- The “*Specific Recommendations to Combat Match Manipulation Guidelines for FIFA member Associations*” are not applicable when the match has been fixed by the referee. Furthermore these guidelines are not included in the FIFA regulatory framework and are merely recommendations.
- The Appellants have not substantiated in any manner the alleged psychological and sporting impact of the FIFA Bureau’s Decision and of the Appealed Decision.

D. The Fédération Sénégalaise de Football

68. In its answer, the Fédération Sénégalaise de Football submitted the following requests for relief:

“(...) [the Fédération Sénégalaise de Football] hereby respectfully request the Panel of the Court of Arbitration for Sport to :

1. Declare the CAS has no jurisdiction over the [Appellants’] appeals;

As a subsidiarily main request for relief,

2. Declare the [Appellants’] appeals inadmissible.

As a subsequent subsidiarily main request for relief,

3. Dismiss the [Appellants’] appeals in their entirety.

In any circumstances,

4. Confirm the Decision;

5. Order the Appellants to pay the full amount of the CAS arbitration costs.

6. Order the Appellants to pay a significant contribution towards the legal costs and other related expenses of the Federation Sénégalaise de Football in connection with these proceedings”.

69. The submissions of the Fédération Sénégalaise de Football, in essence, may be summarized as follows:

- In view of the clear wording of Article 3 para. 4 of the WC Regulations (Old Version), CAS has no jurisdiction in the present matter.

- For the same reasons as those put forward by FIFA, the appeal lodged by the South African Football Association is inadmissible as it was filed after the 21-day deadline envisaged by Article 58 of the FIFA Statutes. In addition, it must be observed that, on 14 September 2017, the Organising Committee merely issued a communication of informative nature with respect to the FIFA Bureau's Decision. The statement made by the Organising Committee is not an appealable decision
- Neither the Fédération Burkinabé de Football nor the South African Football Association has any sufficient legal interest in the present proceedings. Their alleged interest is unsubstantiated and purely speculative. In particular their request for a declaratory judgement "*shall be rejected, as the prerequisite for such an action are not fulfilled*".
- The Appellants "*have not provided - not even tried to - substantiate their possible financial claim against FIFA. They even candidly admitted that they decided to no file (sic) relevant elements of proof, merely referring to the eventual examination of unknown witnesses at the hearing*". The Appellants have not met their burden to demonstrate their legal interests to request a declaratory judgement, in order to obtain financial compensations from FIFA.
- The Appellants have no standing to sue as they do not have any legal interest in the annulment of the Appealed Decision. At least, they have not established the contrary.
- The Appealed Decision was validly taken by the Organising Committee, which complied with all the applicable regulations.
- The Appealed Decision is not of a disciplinary nature.
- The Organising Committee and its Bureau are competent to order the replay of a match. Contrary to the submissions of the Appellants, the replay of a match can be ordered outside of a disciplinary procedure. Match replays may be imposed as sanctions but also as other measures. Such is for instance the case with Article 6 para. 7 of the WC Regulations.
- With respect to the argument of the Appellants related with the "*Specific Recommendations to Combat Match Manipulation Guidelines for FIFA member Associations*", the Fédération Sénégalaise de Football adopts the same position as FIFA.
- The contention of the Appellants related to the alleged psychological and sporting impact of the Appealed Decision, is purely speculative and unsubstantiated.

E. The Federação Caboverdiana de Futebol

70. The Federação Caboverdiana de Futebol failed to submit its answer within the prescribed deadline.

V. JURISDICTION**A. The relevant provisions with regard to the issue of jurisdiction**

71. Pursuant to Article R47 of the Code, *“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”*.
72. Article 58 of the FIFA Statutes states the following:

58 Jurisdiction of CAS

1. *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.*
2. *Recourse may only be made to CAS after all other internal channels have been exhausted.*
3. *CAS, however, does not deal with appeals arising from:*
 - a) *violations of the Laws of the Game;*
 - b) *suspensions of up to four matches or up to three months (with the exception of doping decisions);*
 - c) *decisions against which an appeal to an independent and duly constituted arbitration tribunal recognised under the rules of an association or confederation may be made.*

73. The WC Regulations provide so far as material as follows⁵:

Article 3 Organising Committee for the FIFA World Cup (New Version)

1. *The Organising Committee for FIFA Competitions (the “FIFA Organising Committee”), appointed by the FIFA Council, is amongst others responsible for organising the 2018 FIFA World Cup Russia™ in accordance with the FIFA Statutes and the FIFA Governance Regulations. (...)*
3. *The decisions taken by the FIFA Organising Committee and/or its bureau/subcommittee are final and binding and not subject to appeal.*

Article 3 Organising Committee for the FIFA World Cup (Old Version)

1. *The FIFA Organising Committee for the FIFA World Cup™, appointed by the FIFA Executive Committee, shall be responsible for organising the FIFA World Cup™ in accordance with the FIFA Statutes. (...)*
3. *The responsibilities of the FIFA Organising Committee include but are not limited to:*

⁵ As indicated above, there are two versions of the WC Regulations. As the Parties refer to the Old Version in their submissions in line with the Appealed Decision, the Panel deems it appropriate to state the relevant sections from both the New Version and the Old Version at this point.

- a) *supervising general preparations and deciding on the competition format, the draw and the formation of groups and sub-groups;*
 - b) *fixing the dates and venues of the matches in the final competition as well as in the preliminary competition whenever associations fail to agree;*
 - c) *determining the match schedule and kick-off times for the final competition;*
 - d) *choosing the stadiums and training grounds for the final competition in accordance with the HA after consultation with the LOC;*
 - e) *choosing the official football and stipulated technical material for the final competition;*
 - f) *approving the choice of the WADA-accredited laboratory that will carry out the doping analyses as proposed by the FIFA Anti-Doping Unit;*
 - g) *appointing FIFA Match Commissioners for the final competition of the FIFA World Cup™;*
 - h) *reporting cases in relation to article 6 of these Regulations which fall under the jurisdiction of the FIFA Disciplinary Committee to the latter for its deliberation;*
 - i) *replacing associations that have withdrawn from the FIFA World Cup™;*
 - j) *judging protests and taking appropriate steps to verify their admissibility, with the exception of protests concerning the eligibility of players, which are dealt with by the FIFA Disciplinary Committee (cf. art. 8 par. 2 and 3 as well as art. 15 par. 3);*
 - k) *deciding cases of participating member associations failing to adhere to the time limits and/or the formal requirements for submitting the necessary documents;*
 - l) *dealing with cases of abandoned matches (cf. Law 7 of the Laws of the Game) in accordance with these Regulations;*
 - m) *deciding on the rescheduling of matches due to extraordinary circumstances;*
 - n) *settling cases of force majeure;*
 - o) *dealing with any other aspect of the FIFA World Cup™ that is not the responsibility of any other body under the terms of these Regulations or the FIFA Statutes.*
4. *The decisions taken by the FIFA Organising Committee and/or its subcommittee(s) are final and binding and not subject to appeal.*

Article 14 Disputes (Old Version and New Version identical)

1. *All disputes in connection with the FIFA World Cup™ shall be promptly settled by negotiation.*
2. *In compliance with the FIFA Statutes, participating member associations, players and officials may not take disputes to an ordinary court of law but to the exclusive jurisdiction of FIFA*
3. *The participating member associations, players and officials acknowledge and accept that, once all internal channels have been exhausted at FIFA, their sole recourse shall be to the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland, unless excluded or the decision is declared as final and binding and not subject to appeal. Any arbitration proceedings at CAS shall be governed by the CAS Code of Sports-related Arbitration.(...)"*

B. The Parties positions

74. The Appellants claim that CAS has jurisdiction to decide on the present dispute. According to them, the fact that Article 3 para. 3 of the WC Regulations states that decisions taken by the Organising Committee are final, binding and not subject to appeal, is of no avail. As a matter of fact, the scope of Articles 57 and 58 of the FIFA Statutes concerning CAS jurisdiction cannot be modified by hierarchically inferior regulations, *i.e.* Article 3 para. 3 of the WC Regulations above. In other words, the decisions, which cannot be appealed before CAS, are exhaustively enumerated in Article 58 para. 3 of the FIFA Statutes, which cannot be modified by the WC Regulations. In support of their position, the Appellants rely on a CAS precedent rendered on 16 January 2017 (CAS 2016/A/4654).
75. FIFA and the Fédération Sénégalaise de Football submit that, in view of the clear wording of Article 3 para. 3 of the WC Regulations, CAS has no jurisdiction in the present matter. They put forward that this provision is a *lex specialis*, which applies to any decision taken by the Organising Committee, within the scope of its competence. According to them, a very recent CAS precedent dated 26 June 2017 (TAS 2016/A/4830) endorses their position.
76. It appears that the Appellants, on the one hand, and FIFA and the Fédération Sénégalaise de Football, on the other hand, base their submissions on two contemporary CAS precedents, where the respective Panel/Sole Arbitrator reached completely opposite conclusions.
77. In CAS 2016/A/4654, the Panel of three arbitrators, in substance, made the following findings:
- The FIFA Statutes provide for a clearly defined right to lodge an appeal against internally final and binding decisions of FIFA. Specific exceptions to this general rule are given in article 58 para. 3 of the FIFA Statutes.
 - The decisions taken by the Organising Committee do not fall under any of the exceptions listed in Article 58 para. 3 of the FIFA Statutes.
 - “FIFA, by enacting the FIFA WC Regulations, could not further restrict the scope of decisions that can be appealed to CAS, *i.e.* the FIFA WC Regulations cannot trump the FIFA Statutes. This is all the more so because several references to the FIFA Statutes are made in the FIFA WC Regulations (...)”.
 - Hence, by enacting Article 3 para. 3 of the WC Regulations, FIFA enacted rules that are in contradiction with its own Statutes. Absent a legal basis in the FIFA Statutes delegating the power to further restrict the jurisdiction of CAS, FIFA could not restrict the jurisdiction of CAS in regulations of a lower hierarchy than the FIFA Statutes. A reference to the *lex specialis principle* is possible only insofar regulations are of the same hierarchy level.

- “(...) as article 3(4) of the FIFA WC Regulations⁶ purports to restrict the type of internally final and binding FIFA decisions that can be appealed to CAS beyond the restrictions enumerated in article 58(3) of the FIFA Statutes, such restriction is null and void”.

78. The position adopted by the Sole Arbitrator in the case TAS 2016/A/4830 can be summarized as follows:

- The literal interpretation of Article 3 para. 3 of the WC Regulations clearly rejects the possibility to appeal before CAS. This is the result of the combined use of the words “final” and “not subject to appeal” as well as the structure of the WC Regulations.
- Article 58 para. 3 of the FIFA Statutes cannot be exhaustive. The interpretation of the FIFA Statutes - implying that any exclusion of CAS jurisdiction should necessarily be included in the FIFA Statutes and could never be included in FIFA regulations - is too strict. The FIFA Statutes do not set forth such a rule.
- Given the volume of the FIFA regulations, it does not appear reasonable or legally justified to interpret the FIFA Statutes in the sense that all cases of exclusion of the appeal to CAS should necessarily be listed in Article 58 para. 3 of the FIFA Statutes. It is further stated that everything cannot be regulated at the level of the FIFA Statutes;
- The WC Regulations are clearly a specific regulation (*lex specialis*) compared to the more general provisions of the FIFA Statutes.

C. The Panel’s position

a) *Opening remarks*

79. Before anything else and for the sake of completeness, it seems useful to address the question of the exact scope of Article 3 para. 3 of the WC Regulations. The wording of this provision does not eliminate the proposition that decisions taken by the Organising Committee are “*final and binding and not subject to appeal*” in the sense that they cannot be dealt with through legal internal channels anymore. If correct, this interpretation would lead to the result that such decision could be directly challenged before CAS as all the legal remedies available at FIFA level would have been exhausted.

80. However, the Panel finds that Article 3 para. 3 of the WC Regulations must be read together with Article 14 para. 3 of the WC Regulations, which clearly states that should a decision be “*declared as final and binding and not subject to appeal*”, a formal appeal with CAS is not possible.

81. In this context, the Panel finds that, on the basis of Article 3 para. 3 of the WC Regulations, appeals before CAS are not available against decisions issued by the Organizing Committee.

⁶ This citation refers to the Old Version.

82. The main issues to be resolved are i) whether the list of exceptions to the jurisdiction of CAS provided under Article 58 para. 3 of the FIFA Statutes is exhaustive and ii) whether it can be completed by the WC Regulations.

b) *The interpretations of articles of associations*

83. There is no unified view on how articles of associations should be interpreted in Switzerland (FLEISCHER H.; die Auslegung von Gesellschaftsstatuten: Rechtsstand in der Schweiz und rechtsvergleichende Perspektiven; GesKR 4/2013, p. 8; ZEN-RUFFINEN P., Droit du Sport, Schulthess 2002, p. 63). The issue is whether the articles of associations should be interpreted by using the principles applied to the interpretation of contract or to the interpretation of laws. As the articles of association form the contractual basis of an association - a private law institution - it can be argued that they have much in common with contracts and should therefore be interpreted through the contractual principles of the subjective intent of the parties and good faith (FORSTMOSER/MEIER-HAYOZ/NOBEL, §7 N 4; Zeller, §11 N 129-133; VALLONI/PACHMANN, p. 25). However, articles of association also set forth constitutive principles which may have effects to others apart from the original members of the association, and should therefore be subject to the more objective approach followed with respect to statutory laws (FORSTMOSER/MEIER-HAYOZ/NOBEL, §7 N 3; CAS 2013/A/3365; CAS 2013/A/3366 para. 140 ss).

84. According to the Swiss Federal Tribunal (SFT), the statutes of a private legal entity are normally interpreted according to the principle of good faith, which is also applicable to contracts (Decision of the SFT 4A_392/2008, 22 December 2008, at 4.2.1 and references). However, the method of interpretation may vary depending on the nature and dimension of the legal person involved. As regards the statutes of larger entities, it may be more appropriate to have recourse to the method of interpretation applicable to the law, whereas in the presence of smaller associations, the statutes may more legitimately be interpreted by reference to good faith (Decision of the SFT 4A_600/2016, 28 Jun 2017, consid. 3.3.4.1 and references).

85. Under Swiss law, the methods of interpretation of the law are the following:

- the literal interpretation (“*interprétation littérale*”);
- the systematic interpretation (“*interprétation systématique*”);
- the principle of purposive interpretation (“*interprétation téléologique*”).

86. According to the SFT, the starting point for interpreting is indeed its wording (literal interpretation). There is no reason to depart from the plain text, unless there are objective reasons to think that it does not reflect the core meaning of the provision under review. This may result from the drafting history of the provision, from its purpose, or from the systematic interpretation of the law. Where the text is not entirely clear and there are several possible interpretations, the true scope of the provision will need to be narrowed by taking into account all the pertinent factors, such as its relationship with other legal provisions and its context (systematic interpretation), the goal pursued, especially the protected interest (teleological

interpretation), as well as the intent of the legislator as it is reflected, among others, from the drafting history of the piece of legislation in question (historical interpretation) (ATF 132 III 226 at 3.3.5 and references; ATF 131 II 361 at 4.2).

c) *The Panel's findings*

87. It results from the above considerations that there is not one method of interpretation that prevails over the others, when statutes of a private legal entity are at stake. An objective or a subjective approach is acceptable depending on the specificities of the situation.
88. As a matter of fact, on the one hand, one could argue that FIFA is a very large legal entity with over two hundred affiliated associations, but also far more numerous indirect members, who must also abide by FIFA's applicable regulations. Under these circumstances, it is safe to say that FIFA's regulations have effects, which are felt worldwide, and should therefore be subject to the more objective interpretation principles. On the other hand, the FIFA World Cup is a very specific event, limited in time (14 June - 15 July 2018), which concerns a limited number of teams (at least during the final phase of the competition) and which is governed by a very specific set of rules (*i.e.* the WC Regulations). Under these circumstances, it could be submitted that the provisions governing this competition are more of a contractual nature and should therefore be interpreted through the contractual principles of the subjective intent of the parties and good faith.
89. In the Panel's view, when called upon to interpret articles of associations, it should adopt a pragmatic approach and follow a plurality of methods, without assigning any priority to the various means of interpretation. The situation must be assessed on a case-by-case basis and the interests at stake have to be balanced in respect of the principle of proportionality.
90. Bearing in mind the above and the fact that it is the responsibility of the Organising Committee to organize the FIFA World Cup (see Article 43 of the FIFA Statutes as well as Article 3 of the WC Regulations), it makes sense to allow this body to make the necessary final decisions to meet its numerous obligations sometime in a very short notice (listed in an illustrated manner in Article 3 para. 3 of the WC Regulations (Old Version); e.g. deciding on the competition format; fixing the dates and venues of the matches; choosing the stadiums and training grounds; replacing associations that have withdrawn from the FIFA World Cup, deciding on the rescheduling of matches due to extraordinary circumstances, settling cases of force majeure; etc.). As exposed by the Sole Arbitrator in TAS 2016/A/4830 (consid. 10.6) and subject to a few exceptions (see Articles 28 para. 2 (s) and 69), FIFA Statutes are not meant to deal with issues relating to the organisation of the FIFA World Cup. These aspects need to be resolved through specific regulations, which, as such, must be seen as a *lex specialis*.
91. In this respect, it must be noted that if an appeal could be lodged against each decision taken by the Organizing Committee within the frame of the organisation of the FIFA World Cup, it could seriously impede the competition and would thereby be in direct conflict with one of the main goals of FIFA; *i.e.* the organisation of its own international competitions (Article 2 (b) of

the FIFA Statutes). For this reason already, the Panel finds no contradiction between Article 3 para. 3 of the WC Regulations and the FIFA Statutes.

92. In addition, it must be observed that Article 3 para. 3 of the WC Regulations is not new. A similar (when not identical) provision can be found in Article 3 para. 4 of 2014 WC Regulations - FIFA World Cup Brazil, Article 3 para. 4 of the 2010 WC Regulations - FIFA World Cup South Africa and Article 12 para. 6 of the WC Regulations - FIFA 2006 World Cup Germany. Under these circumstances, it is unconvincing that a rule that has not changed over the last 10 years and that has been applied systematically and continuously in the last 4 FIFA World Cups, can be considered as null and void, just because it was implemented without an express legal basis in the FIFA Statutes. Given the fact that Article 3 para. 3 of the WC Regulations is part of FIFA's current and constant practice and has been in force for many years and has never been put into question by FIFA's supreme and legislative body (the Congress), it seems reasonable to submit that such a provision can be considered as having been ratified by it.
93. As an intermediary conclusion, the Panel finds that Article 3 para. 3 of the WC Regulations is not incompatible with Article 58 of the FIFA Statutes.
94. This said and bearing in mind the private nature of articles of associations and their analogy with contracts, it is necessary to apply the WC Regulations on a good faith basis. For this, the judging body must assess the situation according to its general experience of life (ATF 118 II 365 consid. 1 and references). The requirements of good faith tend to give the preference to a more objective approach. The emphasis is not so much on what a party may have meant but on how a reasonable person would have understood its declaration (ATF 129 III 118 consid. 2.5 p. 122; 128 III 419 consid. 2.2 p. 422). It is obvious that "*[the] decisions taken by the FIFA Organising Committee and/ or its bureau/ subcommittee are final and binding and not subject to appeal*" insofar that they are reasonable, not arbitrary and taken with respect to the fundamental rights of the parties concerned. Likewise, Article 3 para. 3 of the WC Regulations cannot empower the Organising Committee with the absolute discretion to take just any measure regardless of whether it is within its area of its responsibility. Would the Organizing Committee make an ill-founded decision, a possibility of recourse to a higher judicial body must be provided. Moreover, should the Organizing Committee take a decision which goes beyond its prerogatives, it would not fall under the WC Regulations, which would therefore simply not be applicable. This would be particularly true for Article 3 para. 3 of the WC Regulations.
95. The present Panel would have reached the same result as the Panel in the matter CAS 2016/A/4654 but by a different route. In the latter case, the Panel found that it had jurisdiction because Article 3 para. 3 of the WC Regulations was null and void. On the merits, it held that the decision taken by the Organizing Committee was not compliant with the WC Regulations as it decided that a match of the preliminary phase of the FIFA World Cup had to be played on a neutral venue on the simple request of the visiting team, without having heard the position of the team to host the match. In particular, the Panel considered that "*in rendering the Appealed Decision, neither the FIFA Emergency Bureau, nor [the visiting team] deemed it necessary to involve [the hosting team] in the decision-making process. There is no evidence on file suggesting that [the hosting team] was aware of the discussions taking place between [the visiting team] and FIFA, nor is this contended by [the visiting team]*"

or FIFA. In the absence of any failure to agree between [the hosting team] and the [visiting team] being established, the Panel finds that the FIFA Emergency Bureau was not entitled to interfere in the matter and order [the hosting team] to play its home match against [the visiting team] on neutral territory before conducting a negotiation with all parties involved [and thereby failed to meet the burden imposed by Article 14 para. 1 of the WC Regulations]. The FIFA Emergency Bureau's failure to hear [the hosting team] before issuing the *Appealed Decision* made it impossible for the FIFA Emergency Bureau to decide on the matter in accordance with the FIFA WC Regulations" (consid. 159).

96. In a similar situation, the present Panel would have held that the decision taken by the Organizing Committee is not compliant with the WC Regulations and, therefore, is not covered by this set of rules. Consequently, the WC Regulations would not have been applicable and, in particular, Article 3 para. 3 of the WC Regulations would not have come into play. The situation would have therefore been assessed according to the standard regulations and the jurisdiction of CAS would be established based on Article 58 para. 1 and 2 of the FIFA Statutes.
97. In the present case, it has been established that the outcome of the Match had been influenced "in a manner contrary to sporting ethics" by wrongful decisions taken by Mr Lamptey (CAS 2017/A/5173 para. 85). In light of the foregoing, bearing in mind that the Match was fixed and, consequently, its result may have affected the proper functioning of the entire competition as well as the image of FIFA, the Panel finds reasonable to say that it was the duty of the Organising Committee to manage the situation, in the spirit of Article 3 para. 3 (o) of the WC Regulations (Old Version), which provides that it is the responsibility of the Organizing Committee to deal "with any other aspect of the FIFA World Cup™ that is not the responsibility of any other body under the terms of these Regulations or the FIFA Statutes". In addition, the decision to replay a fixed match does not seem to be arbitrary, to go beyond the scope of the WC Regulations or to be unfair. On the contrary, to keep a manipulated result would give an unmerited advantage to the team that benefited from it and would obviously be incompatible with fair play. Moreover, the *Appealed Decision* does not appear to have had a negative and disproportionate impact on the interests of the Appellants, as their representative team would in any event not have qualified for the final phase of the 2018 FIFA World Cup.
98. As a consequence, the Panel finds that the decision to replay the Match is compliant with the WC Regulations, not arbitrary or unreasonable. Article 3 para. 3 of the WC Regulations is therefore fully applicable and, as a consequence, CAS must decline jurisdiction.
99. The South African Football Association argues that the replay of a match is governed exclusively by the FIFA Disciplinary Code and can only be ordered by the FIFA Disciplinary Committee. The Panel dismisses this submission as the *Appealed Decision* is certainly not of disciplinary nature. As a matter of fact, none of the Parties concerned by the *Appealed Decision* can be blamed for the litigious match fixing. With its decision, the Organising Committee did not seek to sanction any wrongdoing committed by any representative team of Group D but to protect the integrity and the reputation of the competition and the principle of fair-play.
100. This conclusion makes it unnecessary for the Panel to consider the other requests submitted by the Parties.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Court of Arbitration for Sport has no jurisdiction to decide on the appeal filed on 5 October 2017 by the South African Football Association against the decision issued on 14 September 2017 by the Organizing Committee for the FIFA World Cup™ Qualifiers.
2. The arbitration procedure CAS 2017/A/5356 South African Football Association v. FIFA, Fédération Burkinabé de Football, Fédération Sénégalaise de Football & Federação Caboverdiana de Futebol shall be removed from the CAS roll.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.