



Arbitration CAS 2018/A/5661 Deyvid Franck Silva Sacconi v. Fédération Internationale de Football Association (FIFA), award of 24 December 2018

Panel: Mr Fabio Iudica (Italy), President; Mr Ercus Stewart (Ireland); Prof. Petros Mavroidis (Greece)

Football

Club's failure to comply with a DRC decision related to its payment towards a player

CAS jurisdiction in light of the notion of "appealable decision"

Admissibility of the appeal

Lack of FIFA jurisdiction over a dispute involving a disaffiliated club

1. With regard to appeals against a decision of FIFA's bodies, the relevant legal basis is set out in Article 58 para 1 of the FIFA Statutes establishing that "*final decisions*" are subject to appeal before CAS within 21 days of notification. As a consequence, the first condition to be met in order for the CAS to have jurisdiction is that a proper "*decision*" has been issued, and that it is "*final*", i.e. that all the other internal opportunities to challenge the decision have already been exhausted and therefore, that there are no further options for appeal within FIFA. The form is not the decisive criterion to be applied in order to establish the existence of a "*decision*", e.g. a decision may be formulated in a letter with a dubious and not peremptory language. The main aspect to be considered, instead, is the content or the substance of the communication in question, which shall prevail over its external appearance. In general, a communication is qualified as a decision if it contains a "*ruling*" either intending or capable to affect the legal situation of the addressee (or of other parties), entailing the creation or suppression of a right by the authority in question. Moreover, a negative decision of a FIFA body, and, specifically, a decision not to open a disciplinary proceedings (without addressing the merits of the case) – or the absence of any reaction – may also be considered a final decision within the framework of Article R47 of the CAS Code, thus subject to an appeal with CAS. Furthermore, according to the principle of *bona fide*, it would be excessively formalistic to find that a decision signed by the chairman of the FIFA Disciplinary Committee on behalf of the competent legal body was not passed in fact by this legal body itself.
2. A party shall not take advantage of a situation of uncertainty which it has created, to the detriment of the other party. If in a first communication to a player, FIFA led the latter to believe that such communication did not constitute an appealable decision and to further request a formal decision ultimately resulting in the issuance of a further communication refusing to entertain the player's request, it cannot be argued that the first communication is to be considered as the sole appealable decision and that the time limit to appeal before the CAS started at the time of notification of said first communication. Rather, it is the time limit in which the further communication was

appealed that needs to be considered in order to assess whether the appeal is admissible.

3. According to the applicable FIFA Statutes, football clubs (as well as athletes) are not direct members of FIFA, as their relationship with FIFA depends on their affiliation to football associations which in turn are members of FIFA. Based on such affiliation, football clubs are subject and bound to FIFA rules and regulations as well as to the relevant decisions of the competent FIFA bodies. In fact, in accordance with the provision of Article 14 of the FIFA Statutes, member associations shall not only comply with the Statutes, regulations, directives and decisions of FIFA bodies (as well as the decisions of the CAS in appeal proceedings), but they shall also cause their own members to comply with the same regulations and decisions. On the contrary, whenever the affiliation of a club to the association of reference is lacking, there is no precondition to the club's subjection to FIFA's legal system. As an association under Swiss law, FIFA has broad autonomy in determining its own jurisdiction over disputes as well as the rules about membership which solely lie within the competence of FIFA. In this respect, FIFA is correct, in general terms, in declining jurisdiction over a dispute where it is clear from the application of the FIFA Statutes and regulations that clubs which are no longer affiliated with members associations are not subject to FIFA's authority.

I. INTRODUCTION

1. This appeal is brought by Mr Deyvid Franck Silva Sacconi (the "Appellant" or the "Player") against the letter of the Deputy Secretary to the Disciplinary Committee of the Fédération Internationale de Football Association (the "Respondent" or "FIFA") on 14 March 2018 (the "Appealed Decision"), regarding an employment-related dispute between the Appellant and the Club FK Khazar Lankaran.

II. PARTIES

2. The Appellant is a Brazilian professional football player, born in Alfenas, Minas Gerais, Brazil, on 10 April 1987.
3. The Respondent is the international governing body of football, having its headquarters in Zurich, Switzerland.

(The Appellant and the Respondent are hereinafter jointly referred to as the "Parties")

III. FACTUAL BACKGROUND

A. Background facts

4. Below is a summary of the main relevant facts and claims based on the Parties' written and oral submissions and relevant documentation produced in this appeal. Additional facts and allegations may be set out, where relevant, in connection with the further legal discussion. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this award only to the submissions and evidence it considers necessary to explain its reasoning.
5. On 28 August 2013, the Player signed an employment contract with FK Khazar Lankaran, an Azerbaijani football club (the "Club"), valid from the date of signature until 30 June 2014, according to which the Player was entitled to receive a monthly salary of USD 21,600.
6. On 19 May 2014, the Player and the Club reached an agreement for the termination of the employment contract, under which the Club undertook to pay to the Player the amount of USD 19,483 by no later than 1 June 2014.
7. On 21 August 2014, the Player filed a claim before the FIFA Dispute Resolution Chamber (the "DRC"), contending the Club's failure to comply with its obligation of payment and requesting the amount of USD 19,483, plus default interest at the rate of 5% per annum, as from 1 June 2014.
8. On 7 July 2015, the FIFA DRC rendered a decision according to which the Club was ordered to pay to the Player the amount of USD 19,483 plus 5% interest, within a deadline of 30 days, failing which the matter would be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.
9. Although the DRC decision had become final and binding, the Club failed to comply with the relevant payment order.
10. On 17 January 2017, the Player notified FIFA of the Club's failure to comply with the terms of the DRC decision and requested the submission of the matter for consideration and decision of the FIFA Disciplinary Committee.
11. By fax letter dated 26 January 2017, FIFA acknowledged receipt of the Player's request of enforcement of the DRC decision and informed the Player and the Association of Football Federations of Azerbaijan ("AFFA") that it was going to forward the entire file to the Disciplinary Committee.
12. On 27 January 2017, by means of a correspondence, the AFFA informed FIFA that the Club was disaffiliated from the Association of reference.
13. On 5 October 2017, the Deputy Secretary to the Disciplinary Committee informed the Player and the Club, as well as the AFFA, that based on previous correspondence with the AFFA (on 21 September 2016), FIFA had noted that *"the club FK Khazar Lankaran is no longer affiliated*

to the Association of Football Federations of Azerbaijan. Nevertheless, the Association of Football Federations of Azerbaijan has granted the club FK Khazar Lankaran's U-17 team the right to participate in the U-17 championship.

After an analysis of the specific circumstances of the case, the chairman of the FIFA Disciplinary Committee considered that the club FK Khazar Lankaran's U-17 team (which appears not to be a member of the Association of Football Federations of Azerbaijan) is not liable for the debts incurred by the professional team of the club FK Khazar Lankaran which is now disaffiliated.

With this in mind, we must inform you that, as a general rule, our services and competent decision-making bodies (i.e. the Players' Status Committee and the Dispute Resolution Chamber as well as the Disciplinary Committee) cannot deal with cases involving clubs which are not affiliated to their association any longer.

Consequently, 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 Khazar Lankaran FC is involved.

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

14. In reply to the abovementioned letter, on 9 October 2017, the Player requested the FIFA Disciplinary Committee *“to confirm whether the contents of your correspondence shall be interpreted as a proper decision rendered by the FIFA Disciplinary Committee. If not, we kindly request the matter to be submitted for consideration and decision of the FIFA Disciplinary Committee as soon as possible and in this case communicate us accordingly.*

Please note that if you fail to address any clarification relating the query raised above to our attention within the upcoming 10 days, we will interpret it as a proper decision and, as such, susceptible of being appealed before the Court of Arbitration for Sport (cf. 64 par. 5 of the FIFA Disciplinary Code)”.

15. On 18 October 2017, in response to the request above, the Deputy Secretary to the Disciplinary Committee informed that *“in line with our correspondence dated 5 October 2017, we wish to reiterate that our statements regarding the disaffiliation of the club FK Khazar Lankaran are based on the information we received from the Association of Football Federations of Azerbaijan only and hence are of a general nature and without prejudice whatsoever.*

Therefore, and since the secretariat to the FIFA Disciplinary Committee was only passing on the information received by the Association of Football Federations of Azerbaijan, the correspondence in question is not to be considered a decision”.

16. By letter to the Deputy Secretary, dated 20 October 2017, the Player objected to the alleged lack of competence of the FIFA Disciplinary Committee to render a decision in the relevant matter, based on article 64 and 94, par 2, lit. e) of the FIFA Disciplinary Code. Moreover, the Player emphasized that according to article 115, para 1 lit f) of the FIFA Disciplinary Code, a decision rendered by the FIFA Disciplinary Committee shall contain *“the terms of decision”.*

17. In conclusion, the Player reiterated his request that the Disciplinary Committee addresses the matter at stake for consideration and the issuance of a proper decision.
18. Subsequently, by the challenged letter, which was forwarded to the Player and to the AFFA via e-mail on 14 March 2018, the Deputy Secretary to the Disciplinary Committee replied to the Player referring back to the previous FIFA correspondence, confirming that the Disciplinary Committee was not in a position to further proceed with the relevant case as it is not competent to deal with cases involving clubs which are no more affiliated to their association any longer.
19. Finally, the Deputy Secretary concluded that *“our statements made above are based on the information we received from the Association of Football Federations of Azerbaijan only and hence are of a general nature and without prejudice whatsoever”*.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

20. On 4 April 2018, the Appellant filed a statement of appeal with the Court of Arbitration for Sport (the “CAS”) against FIFA with respect to the Appealed Decision, in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the “CAS Code”). In his statement of appeal, the Appellant nominated Mr Ercus Stewart, Barrister in Dublin, Ireland, as an arbitrator.
21. On 19 April 2018, the Appellant filed his appeal brief in accordance with Article R51 of the CAS Code.
22. On 23 April 2018, the Respondent informed the CAS Court Office that it considered there is no “appealable decision” in the present case and that, in any event, the appeal would have been untimely filed. Therefore, FIFA requested that a preliminary decision on admissibility be issued before submitting its answer, not objecting to a bifurcation of the proceedings.
23. On 25 April 2018, the Respondent nominated Mr Petros C. Mavroidis, Professor in Commungny, Switzerland, as an arbitrator.
24. On 17 May 2018, the Parties were informed that the Panel was constituted as follows:
 - Mr Fabio Iudica, Attorney-at-law in Milan, Italy, President;
 - Mr Ercus Stewart, Barrister in Dublin, Ireland, and Mr Petros C. Mavroidis, Professor in Commungny, Switzerland, arbitrators.
25. On 12 June 2018, the CAS Court Office informed the Parties that the Panel had decided that it has jurisdiction to entertain this appeal and that the appeal is admissible, reserving the grounds of such decision to the final Award.

26. On 13 June 2018, the Respondent requested the CAS Court Office to extend the time limit to file its answer until 23 July 2018. On the same day, the Appellant was invited to state whether he consented to the Respondent's request for an extension.
27. On 18 June 2018, the Appellant informed the CAS Court Office that he had no objection to the extension requested by the Respondent; consequently, on 19 July 2018, the CAS Court Office informed the Parties that the new time limit for the Respondent to file its answer was fixed on 23 July 2018.
28. In accordance with Article R55 of the CAS Code, on 23 July 2018, the Respondent filed its answer in the present arbitration proceedings.
29. On 26 July 2018, the CAS Court Office invited the Parties to state whether they preferred a hearing to be held in the present proceedings or for the Panel to issue an award based solely on the Parties' written submissions.
30. On the same date, the Respondent indicated that it did not deem a hearing necessary in the present matter and that it consented that an award be rendered on the basis of the written submissions.
31. On 2 August 2018, the Appellant informed the CAS Court Office that he preferred a hearing to be held in the present matter.
32. On 8 August 2018, the CAS Court Office informed the Parties that the Panel had decided to hold a hearing in the present arbitration proceedings.
33. On 5 September 2018, the Parties were informed by the CAS Court Office that a hearing would be held in the present matter on 4 October 2018 in Lausanne.
34. On 10 September 2018, the CAS Court Office forwarded the Parties a copy of the Order of Procedure which was returned duly signed by the Respondent on 12 September 2018 and by the Appellant on 18 September 2018. By signature of the Order of Procedure, the Parties confirmed the jurisdiction of the CAS in the present matter.
35. On 4 October 2018, a hearing took place in Lausanne, Switzerland.
36. In addition to the members of the Panel and Mr William Sternheimer, CAS Deputy Secretary General, the following persons attended the hearing:
 - For the Appellant: Mr Breno Costa Ramos Tannuri, Counsel to the Appellant,
 - For the Respondent: Ms Alejandra Salmeròn Garcia, Group Leader in the FIFA Disciplinary Department and Mr Stefan Privee, Junior Legal Counsel in the FIFA Disciplinary Department.

37. In their oral submissions to the Panel, the Parties presented their respective cases, confirming the arguments already put forward in their written pleadings / submissions.
38. Before the hearing was concluded, the Parties expressly stated that they did not have any objection with the procedure adopted by the Panel and that their rights to be heard and to be treated equally had been duly respected.

V. SUBMISSIONS OF THE PARTIES

39. The following outline is a summary of the Parties' arguments and submissions which the Panel considers relevant to decide the present dispute, but does not comprise each and every contention put forward by the Parties. The Panel has nonetheless carefully considered all the submissions made by the Parties, even if no explicit reference has been made in the following summary. The Parties' written and oral submissions, documentary evidence and the content of the Appealed Decision were all taken into consideration.

A. The Appellant's Submissions and Requests for Relief

40. The Appellant's submissions in his statement of appeal and appeal brief may be summarized as follows.
41. The Appellant maintains that the Appealed Decision, notwithstanding its apparent features as a letter, actually contains a unilateral ruling which was forwarded to the Appellant, to the AFFA and to the Club through the said Association.
42. According to the Player, such letter primarily consists in the FIFA Disciplinary Committee's decision "*of not addressing the matter for consideration and decision*", which had the clear intention to produce legal effects, and in fact, affected the legal position of both the Player and the Club.
43. The relevant correspondence contains the ruling that the FIFA Disciplinary Committee had no competence to consider any more the matter submitted by the Player, based upon the fact that the Club was no longer an affiliated member of AFFA.
44. Moreover, the letter also includes the consideration by the Disciplinary Committee that although the AFFA had granted the youth teams of the Club the right to participate in the local championships "*it is not liable for the debt incurred by the professional team*".
45. As such, the Appellant contends that the said communication had the "*animus decidendi*", and notably, the intention to decide that the FIFA Disciplinary Committee had no competence to rule the matter at hand.
46. Consequently, the letter fulfils the provisions set forth under article R47 of the CAS Code and therefore, the Panel has the necessary jurisdiction over the present case.

47. In the alternative, should the Panel hold that the above mentioned correspondence is not a decision, in the sense clarified above, but merely has an information purpose, the Appellant pointed out that the Disciplinary Committee would therefore be responsible for having refused to address the matter for consideration and decision, notwithstanding the explicit request by the Player.
48. In this regard, even excluding the claim that the letter is a formal decision, one should conclude that there was an unfair denial of justice to the detriment of the Player, also resulting, essentially, in a ruling falling within the meaning of Article R47 of the CAS Code.
49. Moreover, the Appellant objects that, in accordance with the FIFA Disciplinary Code, the Secretariat to the Disciplinary Committee, which is the author of the letter, does not have the authority to render any decision whatsoever on behalf of the Disciplinary Committee, and only the members of the Committee have the competence to decide on the issue of their own jurisdiction. The Appellant also stresses the fact that he is entitled to obtain a proper decision by the Disciplinary Committee regarding the relevant matter, in particular, whether the fact that the Club is no more affiliated to AFFA is a sufficient element to support the alleged lack of competence of the Disciplinary Committee.
50. In addition, the Disciplinary Committee has the responsibility to provide clarifications whether, or eventually, why, the application of sanctions to clubs under article 64 of the FIFA Disciplinary Code are limited to professional clubs only.
51. As to the scope of the Panel's review in this case, the Appellant restricts the purpose of the present arbitration proceedings to whether the Secretariat to the Disciplinary Committee had the authority to render any decision on the lack of jurisdiction of the Disciplinary Committee, or, to deny the Appellant access to any proper decision whatsoever from the said judicial body of FIFA.
52. Consequently, the Player requests the Panel to annul the Appealed Decision and refer the case back to the previous instance, without entering into the merits of whether the Disciplinary Committee had or had not the necessary jurisdiction to impose sanctions on the Club pursuant to Article 64 of the FIFA Disciplinary Code.
53. In his appeal brief, the Appellant submitted the following requests for relief:

“FIRST – To set aside the decision previously rendered by FIFA;

SECOND – To remit the matter at hand to the FIFA Disciplinary Committee with order to render a reasonable decision, within a reasonable timeframe, on its competence to entertain the matter at hand, notably, the impositions of sanctions on the Club;

THIRD – To order FIFA to pay all arbitration costs and be ordered to reimburse the Appellant the minimum CAS court office fee of CHF 1.000 and any other advance of costs (if applicable) paid to the CAS; and

FOURTH – To order the Respondent to pay to the Appellant any contribution towards the legal and other costs incurred and regarding the ongoing proceedings in an amount to be duly established at discretion of the Panel”.

B. The Respondent’s Submissions and Requests for Relief

54. The position of the Respondent as set forth in its answer can be summarized as follows.
55. Although, the Respondent does not contest the relevant facts as set out by the Appellant.
56. FIFA objects that the alleged Appealed Decision is not a formal decision within the meaning or purpose of Article R47 of the CAS Code.
57. What is also disputed by FIFA is that the present appeal is not admissible and is baseless due to the lack of jurisdiction of the FIFA Disciplinary Committee over a disaffiliated club, (such as the Club).
58. Although the CAS has *de novo* power to review a dispute, according to Article R57 of the CAS Code, its appeal jurisdiction is limited to the extent of the jurisdiction allocated to the tribunal of the previous instance (which is excluded in the present case) and, with regard to disciplinary cases, the power to review is further limited to sanctions which are grossly disproportionate to the offence (there was no sanction at all in the present case).
59. With regard to the letter in dispute, FIFA maintains that neither its content, nor the intention behind it, suggest that it was a formal decision, despite any consideration regarding its formal appearance.
60. According to the Respondent, the letter sent by the Secretariat on 14 March 2018 can only be considered as part of the administrative duties carried out by the FIFA administration in accordance with Article 84 and 109 of the FIFA Disciplinary Code and, as such, cannot be considered as an appealable decision.
61. Although FIFA concurs with the Appellant that the FIFA Disciplinary Code does not contain any definition of a “decision”, the Code nevertheless sets out in detail all the requirements in order for a decision to be considered as such, which are totally missing in the Appealed Decision, except for the name of the parties.
62. As a consequence, the Appealed Decision is a mere informative correspondence sent by the Secretariat in the context of its administrative functions, having the sole purpose of informing the Player of the following:
 - Acknowledge receipt of the previous correspondence from the Player;
 - To refer the Player once again to the information regarding the disaffiliation of the Club and that, as a general rule, FIFA’s competent decision-making bodies cannot deal with cases involving clubs which are no longer affiliated to their respective association;

- The information received from the AFFA regarding the disaffiliation are of a general nature and without prejudice whatsoever.
63. According to the Respondent, the relevant letter has no power to modify the Appellant's legal situation and does not contain any ruling, but simply had the objective to inform the Player about the chairman's acknowledgement of the FIFA Disciplinary Committee's lack of jurisdiction to deal with such matter: *"The Appealed Letter solely informs the parties about the obvious: the impossibility of the FIFA Disciplinary Committee to proceed with the enforcement of such debt as the debtor is no longer bound by FIFA's regulations"*.
 64. FIFA contends that the present situation was caused by the Player's negligence, since the DRC decision was notified to the parties on 22 October 2015, while it was only on 17 January 2017 when the Appellant requested the submission of the matter for the FIFA Disciplinary Committee's consideration, i.e. after the time when the disaffiliation occurred (15 June 2016) and therefore, the Player is now estopped or prevented from requesting the enforcement of the relevant DRC's decision.
 65. As an alternative, and without prejudice to its arguments above, should the Panel establish that correspondence merely informing a party about the disaffiliation of the Club is a proper decision, FIFA contends that the correspondence sent on 5 October 2017, and not the alleged Appealed Decision of March 2018, should be considered as the appealable decision in the present case, since the content of both letters is the same and the later letter [the Appealed Decision] only reiterated the content of the letter on 5 October 2017.
 66. Therefore, if the content of those letters shall be considered to contain a ruling, it would be evident that the time limit to lodge an appeal before CAS had already expired on 27 October 2017 and therefore, the present appeal would be time barred, and the relevant decision would have become final and binding.
 67. In the event that the CAS would consider the present appeal admissible, the Respondent insists that since football clubs are only indirect members of FIFA, through the affiliation to an association which in turn is affiliated to FIFA, and as such they are bound by FIFA Statutes, Regulations and decisions, the FIFA Disciplinary Committee can no longer intervene in any capacity whatsoever when a club is disaffiliated from a Member Association, as is the present case.
 68. With regard to the Appellant's argument that the Secretariat to the Disciplinary Committee does not have authority to render a decision on behalf of the Disciplinary Committee, the Respondent asserts that this contention confirms, in fact, that the Appealed Decision is not a proper decision, and the mere request by the Appellant for a decision to be rendered does not itself result in transforming the answer by the Secretariat to the Disciplinary Committee into an appealable decision.
 69. In addition, FIFA emphasizes that according to its longstanding practice in cases where a club has been disaffiliated, the interested parties are usually informed on behalf of the chairman

accordingly, recalling the Disciplinary Committee's impossibility to intervene and that none of those letters have been appealed against, given their evident informative purpose.

70. With respect to the alleged denial of justice, FIFA objects that this fact cannot occur when a judicial body that has no jurisdiction informs the party concerned about said lack of jurisdiction in a reasonable period of time, as is the present case, and contends the contrary is true since the Player missed the chance to seek timely enforcement of the relevant DRC decision as he only requested submission of the matter to the Disciplinary Committee after the disaffiliation of the debtor.
71. In any case and ultimately, the Appellant failed to lodge a proper case of denial of justice before the CAS, since he did not submit a proper request for relief, as it is confirmed by the fact that CAS has not requested the payment of the necessary advance of costs that a non-disciplinary matter entails.
72. In its answer, the Respondent submitted the following requests for relief:

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

2. To confirm that the letter sent by the secretariat to the FIFA Disciplinary Committee on 14 March 2018 cannot be considered as a decision and declare the appeal inadmissible.

3. Alternatively, to confirm that any appeal should have been lodged against the letter sent by the secretariat to the FIFA Disciplinary Committee on 5 October 2017, thereby declaring the appeal inadmissible.

4. Alternatively, to confirm the content of the letter sent by the Secretariat to the FIFA Disciplinary Committee on 14 March 2018 hereby appealed against.

5. To order the Appellant to bear all costs incurred with the present procedure and to cover all expenses of the Respondent related to the present procedure”.

VI. JURISDICTION

73. The Appellant relies on Article R47 of the CAS Code and on Article 58, para 1 and para 2 of the FIFA Statutes as conferring jurisdiction to the CAS over the present case.

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

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

75. According to Article 58, para 1 and 2 of FIFA Statutes, “1. Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or league 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 channel have been exhausted”.

76. At the outset of the proceedings, the Respondent argued that the letter of the Deputy Secretary to the FIFA Disciplinary Committee dated 14 March 2018, which is challenged by the Appellant, is a merely informative communication and shall not be considered as an “*appealable decision*” within the context of Article R47 of the CAS Code, thus raising an issue on the jurisdiction of the CAS over the present dispute.
77. The Appellant maintained that the relevant letter contains a unilateral ruling by the FIFA Disciplinary Committee, consisting in the refusal to open a disciplinary proceeding against the Club, due to the alleged disaffiliation from the AFFA. As such, according to the Appellant, the challenged letter had the clear intention and the capacity to produce legal effects on the position of both the Player and the Club and is therefore to be considered as appealable before the CAS under the provision of Article R47 of the CAS Code.
78. As already put forward above in the present Award, the Panel has already decided that it has jurisdiction to entertain this appeal, and the Parties were informed of the relevant decision by letter of the CAS Court Office on 12 June 2018. In this respect, the Panel reminds that, in accordance with Article 186 of the Swiss Private International Law Act (the “PILA”), which is applicable to CAS arbitration pursuant to Article 176 of the same PILA, the CAS shall itself decide on its own jurisdiction.
79. Therefore, it is established that CAS has jurisdiction to hear the present case.
80. Moreover, the Panel observes that, by signing the Order of Procedure, the Respondent ultimately implicitly confirmed CAS jurisdiction over the dispute at stake.
81. However, in consideration of the preliminary objections raised by the Respondent on the relevant matter, the grounds of the Panel’s decision on its jurisdiction will be set forth under the following paragraphs.
82. The main issue in the present proceedings relates to the dispute between the Parties whether the letter of the Deputy Secretary to the FIFA Disciplinary Committee dated 14 March 2018 may or not be considered as a proper decision within the framework of Article R47 of the CAS Code and therefore, whether it is or not appealable before the CAS, which subject ultimately involves the matter of jurisdiction of the CAS.
83. The Panel notes that, with regard to appeals against a decision of FIFA’s bodies, the relevant legal basis is set out in Article 58 para 1 of the FIFA Statutes, as mentioned above under para 78, establishing that “*final decisions*” are subject to appeal before CAS within 21 days of notification. As a consequence, the first condition to be met in order for the CAS to have jurisdiction is that a proper “*decision*” has been issued, and that it is “*final*”, i.e. that all the other internal opportunities to challenge the decision have already been exhausted and therefore, that there are no further options for appeal within FIFA.

84. Primarily, in view of the conflicting positions of the Parties as summarized in the paragraphs above, the Panel refers to CAS jurisprudence, and doctrine, in order to establish which are the conditions for the qualification of a decision as an appealable decision before CAS and the criteria to be applied in order to distinguish a proper decision from a purely informative communication.
85. Since the FIFA Statutes do not provide any definition of the term “*decision*”, the Panel turns to CAS jurisprudence and first observes that the form is not the decisive criterion to be applied in order to establish the existence of a “*decision*” within the meaning of Article R47 of the CAS Code. The main aspect to be considered, instead, is the content or the substance of the communication in question, which shall prevail over its external appearance.
86. As a first consideration, the Panel abides by previous CAS case law and holds that the fact that FIFA’s position was transmitted to the Appellant under the form of a letter does not, in principle, prevent the FIFA letter from being considered a decision (CAS 2012/A/2854).
87. In general, according to the well-established CAS jurisprudence, a communication is qualified as a decision if it contains a “*ruling*” either intending or capable to affect the legal situation of the addressee (or of other parties), entailing the creation or suppression of a right by the authority in question CAS 2015/A/4213; CAS 2008/A/1633; CAS 2007/A/1251; CAS 2005/A/899; CAS 2004/A/748; CAS 2004/A/659).
88. In accordance with the arguments above, other CAS panels have previously determined that under certain circumstances, CAS also has jurisdiction in case of challenging of letters issued by a FIFA body, providing that the relevant requirements are met, therefore establishing that the existence of a decision does not depend on the form in which it was issued:
- “The existence of a decision does not depend on the form in which it is issued and thus a communication made in the form of a letter may also constitute a decision subject to appeal before CAS. A communication intending to be considered a decision shall contain a unilateral ruling sent to one or more recipients and tending to affect the legal situation of its addressee or other parties”* (see CAS 2008/A/1633; CAS 2005/A/899).
- “... 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”* (see CAS 2015/A/4213).
89. Moreover, with specific regard to the present case, the Panel notes that CAS also accepts that a negative decision of a FIFA body, and, specifically, a decision not to open a disciplinary proceedings (without addressing the merits of the case) - or the absence of any reaction – may also be considered a final decision within the framework of Article R47 of the CAS Code and it is thus subject to an appeal with CAS (see CAS 2008/A/1633; CAS 2009/A/2000):

“Under certain circumstances, <negative decisions> or <refusal to decide> can be considered as appealable decisions. In this respect a letter of FIFA to a physical trainer declining its jurisdiction and implicitly informing the latter that he has to seek relief in front of another jurisdiction, possibly a civil court, obviously affect the trainer’s legal situation and must be considered a decision” (see CAS 2009/A/2000).

90. The same principle was upheld in CAS award 2005/A/899 where the CAS panel stated that “...there can also be a decision where the body issues a ruling as to the admissibility or inadmissibility of a request, without addressing the merits of such request”.
91. CAS doctrine concurs with the abovementioned case law and agrees that “... 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, being also only the mere decision on its competence (or non-competence). A simple information, which does not constitute any ruling cannot be considered as a decision. Under certain circumstances, *<negative decisions>* or *<refusal to decide>* can be considered as appealable decisions” (see BERNASCONI M., When is a “decision” an appealable decision? in RIGOZZI/BERNASCONI (eds), the proceedings before the Court of Arbitration for Sport, p. 273).
92. With specific regard to the present case, the Panel notes that, in reply to the Player’s last request regarding “*the issuance of a proper decision from the members of the FIFA as soon as possible*”, the relevant excerpt of the Appealed Decision reads as follows:
- “In this sense, we wish to refer you once again to the content of our correspondences dated 5 and 18 October 2017 and reiterate that, based on the information we received from the Association of Football Federations of Azerbaijan regarding the disaffiliation of the club FK Khazar Lankaran, as a general rule, our services and competent decision-making bodies cannot deal with cases involving clubs which are not affiliated to their associations any longer.*
- As a consequence, on behalf of the chairman of the FIFA Disciplinary Committee, we regret having to inform you once again that we do not appear to be in a position to further proceed with the case of the reference”.*
93. In consideration of the above, the Panel believes that the Appealed Decision did not have merely informative purpose, as maintained by the Respondent, but, in its substance, contains a decision within the meaning specified above in the present award, and specifically, the decision not to open disciplinary proceedings against the Club due to the lack of jurisdiction.
94. In this respect, the Panel deems that although the language used in the “*letter*” is dubious and not peremptory, the real meaning of the communication corresponds to a refusal to open disciplinary proceedings.
95. The Panel is satisfied that the substance of the challenged correspondence, even regardless the intent thereof, was FIFA’s definitive refusal to deal with the Appellant’s request, by denying its jurisdiction in the present case, implicitly informing the Appellant that he had to seek redress before another jurisdiction.
96. In this regard, the Panel recalls CAS jurisprudence which has previously dealt with such issue, concluding as follows: “*A letter sent by FIFA stating that <the given information is based on the documents currently in our possession only and that it is without prejudice whatsoever> is without importance if the Appellant, following this letter, did not have any other way to make his case before FIFA. What is relevant for an animus decidendi is the objective effect of a decision on its addressee, and not the subjective intent of the authority which renders the decision*” (CAS 2012/A/2854).

97. In essence, the content of the Appealed Decision actually has the capacity to affect the legal position of the Player (at least), barring him from seeking the enforcement of the DRC Decision before FIFA, under the threat of the imposition of disciplinary sanctions on the Club.
98. In this sense, the Panel observes that the relevant correspondence from FIFA was elicited by a specific reiterated request by the Appellant to issue a formal decision, to which FIFA actually responded declaring not to be in a position to entertain the relevant dispute, which, in the Panel's opinion, consists in a ruling on FIFA's jurisprudence/competence of negative content, ultimately resulting in a decision not to open disciplinary proceedings.
99. Furthermore, it is notable that, in contrast with FIFA's argument that the Appealed Decision actually consists in a merely informative letter to be considered within the framework of the duties carried out by FIFA administration, the "letter" dated 14 March 2018 is allegedly being sent "*on behalf of the chairman of the FIFA Disciplinary Committee*" (emphasis of the author), which fact lays in favour of the qualification of the "letter" as a proper decision of the FIFA's body of reference, also taking into account that according to Article 78 of the FIFA Disciplinary Code "*Cases involving matters under art. 64 may be decided by one member of the committee alone*".
100. In this regard, the Panel is in accordance with CAS jurisprudence, according to which "*In this respect, it would be excessively formalistic to find that a decision signed by such a person on behalf of the competent legal body was not passed in fact by this legal body itself, according to the principle of bona fide*" (CAS 2009/A/2000).
101. Finally, since the Appealed Decision was passed on behalf of the chairman of the FIFA Disciplinary Committee, as mentioned above, upon the Appellant's request within the context of Articles 64 and 74 of the FIFA Disciplinary Code, the Panel is also persuaded that the Appealed Decision was a final decision in accordance with Article R47 of the CAS Code and Article 58 of the FIFA Statutes, since the Player had no other possibility to lodge any internal appeal with another FIFA's body against the Appealed Decision.
102. As a consequence of all the foregoing, the Panel concluded that, despite being formulated in a letter, FIFA's refusal to entertain the Appellant's request is in substance a decision within the framework of Article R47 of the CAS Code, thus conferring jurisdiction to CAS over the present case.

VII. ADMISSIBILITY

103. Having established that CAS has jurisdiction over these proceedings, the Panel shall now address the issue on the admissibility of the present appeal, which is contested by the Respondent in its answer, as an alternative plea.
104. Preliminarily, the Panel reminds that according to Article 58 para. 1 of the FIFA Statutes: "*Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question*".

105. In this context, FIFA argued in its answer that, even admitting that FIFA correspondence to the Appellant may be qualified, in theory, as an appealable decision, the Player should have challenged the previous correspondence from FIFA, and not the Appealed Decision which merely reiterates the content of FIFA's letter on 5 October 2017.
106. As a consequence, according to the Respondent's position, the present appeal would not have been timely filed within the deadline of 21 days from notification, which actually expired on 27 October 2017, and the relevant decision would have become final and binding.
107. The Panel is not persuaded by the Respondent's argument for the following reasons.
108. It is crucial to recall that the Appellant expressly requested FIFA on 9 October 2017 *"to confirm whether the contents of your correspondence [the letter dated 5 October 2017, n.d.r.] shall be interpreted as a proper decision rendered by the FIFA Disciplinary Committee"*, and concluded as follows: *"Please note that if you fail to address any clarification relating the query raised above to our attention within the upcoming 10 days, we will interpret it as a proper decision and, as such, susceptible of being appealed before the Court of Arbitration for Sport"* (cf. 64 par. 5 of the FIFA Disciplinary Code).
109. In reply to such request, FIFA informed the Player that the letter dated 5 October 2017 was not to be considered as a decision, clearly stating as follows: *"in line with our correspondence dated 5 October 2017, we wish to reiterate that our statements regarding the disaffiliation of the club FK Khazar Lankaran are based on the information we received from the Association of Football Federations of Azerbaijan only and hence are of a general nature and without prejudice whatsoever.*
- Therefore, and since the secretariat to the FIFA Disciplinary Committee was only passing on the information received by the Association of Football Federations of Azerbaijan, the correspondence in question is not to be considered a decision"* (emphasis added).
110. FIFA's reply led the Player to a further request that the case be addressed by the Disciplinary Committee with the issue of a formal decision, which ultimately resulted in the issuance of the alleged Appealed Decision.
111. The Panel agrees that the Player has genuinely tried to get FIFA to formally issue a proper decision. This later, albeit alternative position of the Respondent in these proceedings is that it now seeks to rely on its letter dated 5 October 2017 as the sole appealable decision (in order to ground the alleged inadmissibility of the appeal), after having expressly maintained that the same letter did not constitute a formal decision.
112. The Panel first believes that the Respondent shall not take advantage of a situation of uncertainty which it has created, to the detriment of the Appellant. Moreover, it has to be taken into account that, by its reply to the Player on 5 October 2017, FIFA led the Appellant to believe that the relevant correspondence was not appealable.
113. As a consequence, considering that the Appealed Decision was notified via e-mail to the Appellant on 14 March 2018, the Panel concludes that the Appellant timely filed its statement of appeal against the Appealed Decision on 4 April 2018 and therefore, that the present appeal

is admissible according to Article 58 para 1 of the FIFA Statutes and Article R49 of the CAS Code.

VIII. APPLICABLE LAW

114. Article R58 of the CAS Code provides the following:

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

115. Article 57 para 2 of the FIFA Statutes so provides:

The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law.

116. The Panel notes that both the Appellant and the Respondent maintain that the relevant FIFA regulations, and subsidiarily, Swiss law, shall apply to the present dispute.

117. In consideration of the above and pursuant to Article R58 of the CAS Code, the Panel holds that the present dispute shall be decided principally according to FIFA Regulations, with Swiss law applying subsidiarily.

IX. MERITS – LEGAL ANALYSIS

118. In order to decide the present case, the Panel shall primarily ascertain what is the scope of the present arbitration.

119. In this respect, the Panel recalls that pursuant to Article R57 of the CAS Code, it has the full power to review the facts and the law and may issue a new decision which replaces the decision appealed or annul the challenged decision and/or refer the case back to the previous instance.

120. However, the full power of review of the CAS cannot be construed as being wider than the power of the body that issued the challenged decision and therefore, the Panel, in its capacity as appellate body, enjoys the same jurisdiction as the previous instance.

121. With regard to the specific case at issue, the present appeal concerns a decision on jurisdiction, whereby FIFA denied having authority to adjudicate on the dispute between the Player and the Club, due to the fact that the Club is no longer affiliated with the relevant national Association and as a consequence, it is no more subject to statutes, regulations, decisions and directives of FIFA bodies, since clubs are no direct member of FIFA.

122. More precisely, FIFA informed the Player that, according to the relevant correspondence from the AFFA, the Club appeared to be no longer affiliated to the latter and moreover, that

the youth team of the Club (who had been granted the right to participate in the U-17 championship) also appears not to be a member of the AFFA. In these circumstances, FIFA stated that it cannot deal with cases involving clubs which are not affiliated to their association any longer, and as a consequence, that it was not in the position to proceed with the case where the Club was involved.

123. On the other side, the Appellant did not object to the disaffiliation of the Club, nor did it oppose any argument against the alleged lack of jurisdiction of FIFA over the present dispute.
124. In this context, the Panel observes that according to the applicable FIFA Statutes, football clubs (as well as athletes) are not direct members of FIFA, as their relationship with FIFA depends on their affiliation to football associations which in turn are members of FIFA. Based on such affiliation, football clubs are subject and bound to FIFA rules and regulations as well as to the relevant decisions of the competent FIFA bodies. In fact, in accordance with the provision of Article 14 of the FIFA Statutes, member associations shall not only comply with the Statutes, regulations, directives and decisions of FIFA bodies (as well as the decisions of the CAS in appeal proceedings), but they shall also cause their own members to comply with the same regulations and decisions. On the contrary, whenever the affiliation of a club to the association of reference is lacking, there is no precondition to the club's subjection to FIFA's legal system.
125. In this regard, the Panel observes that, as an association under Swiss law, FIFA has broad autonomy in determining its own jurisdiction over disputes as well as the rules about membership which solely lie within the competence of FIFA and, therefore, the Appealed Decision was rendered within FIFA's discretionary power granted to it by Swiss law and by the rules of FIFA.
126. The Panel concludes that FIFA was correct, in general terms, in declining jurisdiction over this dispute, as it is clear from the application of the FIFA Statutes and regulations that clubs which are no longer affiliated with members associations are not subject to FIFA's authority. Therefore, the Disciplinary Committee lacked jurisdiction to proceed against the Club.

X. CONCLUSIONS

127. In view of all the foregoing, the Panel holds that the FIFA letter dated 14 March 2018 constitutes a decision within the terms of Article R47 of the CAS Code and is therefore appealable.
128. Since the Appealed Decision was notified to the Appellant on 14 March 2018 and the appeal was filed with the CAS on 4 April 2018, i.e. within the deadline prescribed under Article 67 para 1 of the FIFA Statutes and Article R49 of the CAS Code, the appeal filed by the Player is admissible.

129. However, the decision of FIFA that it had no jurisdiction over this dispute, due to the disaffiliation of the Club from the AFFA, the appeal lodged by the Player should not succeed and shall therefore be dismissed.
130. All other motions or requests for relief are rejected.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr Deyvid Franck Silva Sacconi against FIFA is dismissed.
2. The decision rendered by the Deputy Secretary on behalf of the Chairman of the FIFA Disciplinary Committee on 14 March 2018 is upheld.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.