



**Arbitration CAS 2016/A/4426 Ramon Castillo Segura v. Fédération Internationale de Football Association (FIFA), award of 26 September 2016**

Panel: Prof. Martin Schimke (Germany), President; Mr Patrick Lafranchi (Switzerland); Mr Bernhard Heusler (Switzerland)

*Football*

*Enforcement of FIFA decisions*

*De novo competence of CAS*

*Determination of the entities/persons entitled to invoke Article 64 FDC (failure to respect decisions)*

*Standing of a player's agent to invoke article 64 FDC despite the temporary loss of his license*

1. Due to the *de novo* competence of CAS, pursuant to Article R57 of the CAS Code, procedural deficiencies may be repaired in the proceedings before CAS. Indeed, there is ample CAS jurisprudence determining that procedural flaws in the proceedings before the previous instance are in principle repaired by CAS in appeal arbitration proceedings at least to the extent such violation did not irreparably impair the appellant's right, by a full appeal to the CAS. Such is the case where the appellant was not irreparably impaired by the violation of his right to be heard by the FIFA Disciplinary Committee and was furnished with a full opportunity to present his case in the appeal arbitration proceedings before CAS.
2. In the absence of any restriction in the group of persons/entities entitled to invoke article 64 of the FIFA Disciplinary Code (FDC) or any proven consistent practice of the FIFA Disciplinary Committee to restrict the standing to invoke this provision to the subjects that took part to the original proceedings and are named as creditor by the relevant decision, besides the preconditions already set out in article 64 (1) FDC itself, an entity/person needs to be an (in)direct member of FIFA and must have an interest worthy of protection in the enforcement of the specific decision in order to have standing to invoke article 64 FDC. Assignments are not *per se* prohibited provided the assignee is also an (in)direct member of FIFA. However, the validity of each and every assignment is to be made on a case-by-case basis.
3. The standing of an entity/person to invoke article 64 FDC is in general to be examined at the moment of lodging the claim, as it concerns a formal prerequisite for the validity of the claim. If the entity/person is not an (in)direct member of FIFA at the moment of invoking article 64 FDC, the person's request may be dismissed. On the contrary, a players' agent who was registered with a national football federation at the moment he requested the FIFA Disciplinary Committee to enforce a decision against a club and who was in any event registered again with that federation when the challenged decision was rendered, has standing to invoke article 64 FDC. The fact that he temporarily lost his FIFA membership cannot be invoked by the FIFA Disciplinary

**Committee to declare the agent's request inadmissible especially where FIFA unilaterally decided to abandon the licensing system for players' agents/intermediaries and therefore unilaterally decided that players' agents/intermediaries were no longer (in)direct members of FIFA.**

## **I. PARTIES**

1. Mr Ramon H. Castillo Segura (hereinafter: the "Appellant" or the "Intermediary") is an intermediary that is/was registered with and licensed by the Royal Spanish Football Federation (*Real Federación Española de Fútbol* – hereinafter: the "RFEF").
2. The *Fédération Internationale de Football Association* (hereinafter: "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.

## **II. PRELIMINARY REMARK TO THE TERMINOLOGY OF ENFORCEMENT**

3. In its decision BGer 4P.240/2006, consideration 4.2, the Swiss Federal Tribunal qualified the FIFA "enforcement" system as a disciplinary sanctioning system of a Swiss association. This due to the fact that an enforcement/"Zwangsvollstreckung" in the Swiss legal terminology is reserved exclusively and only to the State and not to a private association.
4. However, in FIFA and also CAS terminology the notion of enforcement is often used if reference is made to the disciplinary sanctioning system of FIFA. Therefore, in the subsequent considerations, when referred to the enforcement system of FIFA it is always the FIFA disciplinary sanctioning system that is meant.

## **III. FACTUAL BACKGROUND**

### **A. Background facts**

5. Below is a summary of the main relevant facts, as established on the basis of the parties' written and oral submissions and the evidence examined in the course of the present appeal arbitration proceedings. This background is made for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.
6. On 2 July 2001, the FIFA Bureau of the Players' Status Committee (hereinafter: the "Bureau of the FIFA PSC") decided that the Mexican football club FC Puebla had to pay an amount of USD 200,000 to the Montenegrin football club FK Budocnost.

7. Also on 2 July 2001, the Bureau of the FIFA PSC decided that FC Puebla had to pay an amount of USD 400,000 to the Serbian football club FK Rad Beograd (hereinafter: “FK Rad”).
8. Both decisions of the Bureau of the FIFA PSC have become final and binding.
9. On 7 December 1999, FK Budocnost assigned its claim against FC Puebla to Mr Angel Castillo. On 1 October 2009, Mr Angel Castillo further assigned this claim to the Intermediary.
10. On 15 February 2001, FK Rad assigned its claim against FC Puebla to Mr Angel Castillo. On 1 October 2009, Mr Angel Castillo further assigned this claim to the Intermediary.
11. FC Puebla never paid FK Budocnost, FK Rad, Mr Angel Castillo or the Intermediary.

**B. Proceedings before the FIFA Disciplinary Committee**

12. On 30 November 2009, the Intermediary requested the FIFA Disciplinary Committee to execute three<sup>1</sup> decisions rendered by the Bureau of the FIFA PSC.
13. On 14 February 2011, the secretariat to the FIFA Disciplinary Committee informed the Intermediary *inter alia* as follows:  
*“Having considered the facts, please take note that the jurisdiction of the FIFA Disciplinary Committee called to intervene under art. 64 of the FDC is limited to those legal subjects, which are defined as the “creditors” in the respective decisions to be enforced.*  
*In view of the foregoing, we wish to point out that the only parties entitled to request the execution of the decisions taken by the Bureau of the FIFA Players’ Status Committee in application of art. 64 of the FDC are the clubs FC Budocnost and FK Rad”.*
14. On 25 January 2013, the Intermediary requested that the matter be submitted to the FIFA Disciplinary Committee for a formal decision and arguing that he should be able to invoke article 64 of the FIFA Disciplinary Code (hereinafter: the “FDC”).
15. On 19 February 2013, the secretariat to the FIFA Disciplinary Committee informed the Intermediary that his request would be submitted to the FIFA Disciplinary Committee for evaluation on 10 April 2013 and that the FIFA Disciplinary Committee would only evaluate if it was in a position to deal with the request and hence if it was in a position to start disciplinary proceedings against FC Puebla in application of article 64 FDC.
16. On 8 April 2013, the secretariat to the FIFA Disciplinary Committee asked the RFEF to inform if the Intermediary was still licensed by it and, in the negative, since when he was no longer licensed.

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<sup>1</sup> One of these three decisions is no longer relevant for the proceedings at hand and is therefore not referred to.

17. On 9 April 2013, the RFEF informed the secretariat to the FIFA Disciplinary Committee that the Intermediary was no longer licensed as a players' agent by the RFEF since January 2011.
18. On 10 April 2013, the secretariat to the FIFA Disciplinary Committee informed the Intermediary that the case had not been submitted to the FIFA Disciplinary Committee. The Intermediary was invited to provide his position as regards the fact that he was no longer licensed as a players' agent by the RFEF nor licensed by any other member association.
19. On 24 June 2013, the Intermediary informed the secretariat to the FIFA Disciplinary Committee that he was a licensed players' agent when he initiated the enforcement proceedings on 30 November 2009 and that it was impossible for him to be registered again because the RFEF stopped licensing new players' agents and awaited FIFA's presentation of the new system governing players' agents following the decision rendered by the FIFA Congress in Mauritius in May 2013, according to which the licensing system was to be abandoned.
20. On 15 July 2013, the secretariat to the FIFA Disciplinary Committee informed the Intermediary that his request would be submitted to the FIFA Disciplinary Committee for evaluation on 14 August 2013 and that the FIFA Disciplinary Committee would only evaluate if it is in a position to deal with the request and hence if it is in a position to start disciplinary proceedings against FC Puebla in application of article 64 FDC.
21. On 3 September 2013, the Intermediary informed the secretariat to the FIFA Disciplinary Committee that he had registered to participate in the course/examination of the RFEF for (again) becoming a players' agent on 26 September 2013.
22. On 6 January 2014, the Intermediary informed the secretariat to the FIFA Disciplinary Committee that he had successfully completed the course/examination of the RFEF and that he was therefore again an official players' agent registered with the RFEF.
23. During 2014, the Intermediary allegedly tried to contact the secretariat to the FIFA Disciplinary Committee several times, but was always put off by the secretariat to the FIFA Disciplinary Committee and told that he would soon receive an answer.
24. On 19 March 2015, the Intermediary was informed by the new Deputy Secretary of the FIFA Disciplinary Committee that the FIFA Disciplinary Committee had already decided the case on 24 August 2013. For reasons unknown to the Deputy Secretary, this decision had never been put in writing and/or notified to the Intermediary but the file was nonetheless already archived.
25. On 30 March 2015, the secretariat to the FIFA Disciplinary Committee informed the Intermediary that his request would be resubmitted to the FIFA Disciplinary Committee for re-evaluation on 12 May 2015 and that it would only evaluate if it were in a position to deal with his request and hence if it were in a position to start disciplinary proceedings against FC Puebla in application of article 64 FDC.

26. On 12 May 2015, the FIFA Disciplinary Committee rendered its decision (hereinafter: the “Appealed Decision”), with the following operative part:
- “1. *The request made by [the Intermediary] by means of the correspondence dated 24 June 2013, is herewith declared inadmissible.*
  2. *Based on art. 105 of the FDC, the Committee decides exceptionally that the costs and expenses of these proceedings have not to be paid by [the Intermediary]”.*
27. On 12 January 2016, the grounds of the Appealed Decision were communicated to the Intermediary, determining, *inter alia*, the following:
- *“In the case at stake, the FIFA Disciplinary Committee (hereinafter: the Committee) notes that in accordance with the correspondence of the [RFEF] dated 8 April 2013 and received on 9 April 2013, [the Intermediary] is no longer licensed as a players’ agent by the [RFEF] and therefore no longer subject to the FDC. In this regard, the Committee particularly takes note that the aforementioned affirmation, i.e. that [the Intermediary] is currently not a licensed players’ agent, has not been contested by him. On the contrary, it was [the Intermediary] himself, who, in his correspondence of 24 June 2013, explicitly confirmed that he was not a licensed players’ agent anymore.*
  - *As a result of the foregoing, the Committee concludes that [the Intermediary] does not come under the scope of application of the FDC and, hence, the claim lodged by him has to be declared inadmissible for that reason already. In other words, the Committee considers that [the Intermediary] could not take advantage of the mechanism offered by art. 64 of the FDC, since he is not subject to the FDC.*
  - *In addition, and despite the aforementioned conclusion, the Committee also addresses the argument brought forward by [the Intermediary], according to which the circle of persons entitled to request the enforcement of decisions should be extended to third parties, the Committee argues that art. 64 of the FDC does not contain any specification regarding the entitlement. Notwithstanding the foregoing, it corresponds to recognised practice that only the creditor that is party to the original proceedings is entitled to request the enforcement of decisions in terms of art. 64 of the FDC.*
  - *In addition, for the sake of completeness, it shall be outlined that, if [the Intermediary’s] argumentation was to be followed, the FIFA Disciplinary Committee would have to verify the validity of the transfer of debts. Such can in no case be requested to be done by an enforcement authority.*
  - *Equally, since FIFA implements and grants an enforcement system for debts deriving from decisions passed by its deciding bodies, it is reasonable to state that the system is only available to the parties who participated in the proceedings leading to the decisions to be enforced having as a consequence that FIFA has direct knowledge of their claiming rights”.*

#### IV. PROCEEDING BEFORE THE COURT OF ARBITRATION FOR SPORT

28. On 1 February 2016, the Intermediary lodged a Statement of Appeal with the Court of Arbitration for Sport (hereinafter: the “CAS”) in accordance with Article R48 of the CAS Code of Sports-related Arbitration (edition 2016) (hereinafter: the “CAS Code”), challenging the Appealed Decision and requesting the matter to be submitted to a sole arbitrator.

29. On 8 February 2016, FIFA informed the CAS Court Office that it preferred the matter to be referred to a panel of three arbitrators and nominated Mr Bernhard Heusler, Attorney-at-Law in Basel, Switzerland, as arbitrator.
30. On 11 February 2016, the Intermediary filed his Appeal Brief in accordance with Article R51 of the CAS Code. This document contained a statement of the facts and legal arguments and included the following requests for relief:
  - “1. *To lift the decision no. 130093 PSTESP ZH of the FIFA Disciplinary Committee, issued against the Appellant on 12 May 2015 and communicated on 12 January 2016.*
  2. *To remand the matter to FIFA and the FIFA Disciplinary Committee.*
  3. *To order FIFA and the FIFA Disciplinary Committee with regard to*
    - *the claim of the Appellant against the Mexican club FC Puebla in the amount of USD 200,000 (claim concerning the player Dejan Pekovic, decided by decision of the FIFA Bureau of the Players’ Status Committee dated 18 July 2011), and*
    - *the claim of the Appellant against the Mexican club FC Puebla in the amount of USD 400,000 (claim concerning the players A. Janjic and M. Knezevic, decided by decision of the FIFA Bureau of the Players’ Status Committee dated 18 July 2001)**to conduct in favour of the Appellant the enforcement proceedings as stipulated in the FIFA Disciplinary Code – in particular in article 64 of the 2011 edition of the FIFA Disciplinary Code (or the respective provisions of any other edition of the FIFA Disciplinary Code) – and to undertake all available steps against the Mexican football club FC Puebla in order to prompt the club to pay the above-mentioned amounts of USD 200,000 and USD 400,000 to the Appellant; in particular by setting FC Puebla a short term to pay such amounts to the Appellant, under the threat of sanctions in case of non-compliance.*
  4. *To declare that these proceedings are free of cost.*  
*Alternatively, to order FIFA to pay all costs of these proceedings.*
  5. *To order FIFA to pay to the Appellant a contribution to be fixed by the Tribunal, but no less than CHF 10,000, towards his legal fees and other expenses incurred in connection with these proceedings and the foregoing FIFA proceedings, including the attorney’s fees incurred by the Appellant, the costs of hearings for witnesses, translator’s fees, and such other costs as the Appellant will specify in due course”.*
31. On 16 February 2016, the CAS Court Office informed the parties that the President of the CAS Appeals Arbitration Division decided to submit the present case to a panel of three arbitrators.
32. On 23 February 2016, the Appellant nominated Mr Patrick Lafranchi, Attorney-at-Law in Bern, Switzerland, as arbitrator.
33. On 17 March 2016, pursuant to Article R54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the arbitral tribunal appointed to decide the matter was constituted by:

- Prof. Dr. Martin Schimke, Attorney-at-Law in Dusseldorf, Germany, as President;
  - Mr Patrick Lafranchi, Attorney-at-Law in Bern, Switzerland; and
  - Mr Bernhard Heusler, Attorney-at-Law in Basel, Switzerland, as arbitrators
34. On 18 March 2016, FIFA filed its Answer in accordance with Article R55 of the CAS Code, submitting the following requests for relief:
- “1. To reject the Appellant’s appeal in its entirety.*
  - 2. To confirm the decision taken by the FIFA Disciplinary Committee on 12 May 2015.*
  - 3. To order the Appellant to bear all costs incurred with the present procedure and to cover all legal expenses of the Respondent related to the present procedure”.*
35. On 28 and 29 March 2016 respectively, the Intermediary informed the CAS Court Office that he preferred the Panel to issue an award based on the parties’ written submissions, whereas FIFA considered it appropriate for a hearing to be held.
36. On 14 April 2016, the CAS Court Office informed the parties that the Panel had decided to hold a hearing and would be available on 28 April 2016. The parties were invited to advise the CAS Court Office whether they would be available on this date.
37. Also on 14 April 2016, FIFA informed the CAS Court Office that it would be available for a hearing on 28 April 2016.
38. On 16 April 2016, the Intermediary informed the CAS Court Office that he would not be available for a hearing on 28 April 2016 as his financial situation would not allow him to travel to Lausanne for the hearing.
39. On 18 April 2016, the CAS Court Office informed the parties that the Panel had decided that the Intermediary would be allowed to attend the hearing on 28 April 2016 by video-conference and invited him to inform the CAS Court Office whether he would be available on such date.
40. On 19 April 2016, the Intermediary confirmed to the CAS Court Office that he would be available to attend the hearing scheduled for 28 April 2016 by video-conference.
41. On 22 April, both parties returned duly signed copies of the Order of Procedure to the CAS Court Office.
42. Also on 22 April 2016, the Intermediary informed the CAS Court Office that he would not be able to attend the hearing on 28 April 2016 by video-conference *“for recent health reasons”* and that he *“would truly appreciate if all the documentation and case could be revised and an award taken in my absence”*.
43. On 28 April 2016, a hearing was held in Lausanne, Switzerland. At the outset of the hearing FIFA confirmed that it had no objection to the constitution and composition of the Panel.

44. In addition to the Panel and Mr Daniele Boccucci, Counsel to the CAS, and Mr Dennis Koolaard, *Ad hoc* Clerk, the following persons attended the hearing:

For FIFA:

- Mr Jaime Cambreleng, Counsel;
- Mr Jacques Blondin, Counsel

45. No witnesses or experts were heard. FIFA was afforded ample opportunity to present its case, submit its arguments and answer the questions posed by the Panel.
46. Before the hearing was concluded, FIFA expressly stated that it did not raise any objection to the procedure adopted by the Panel and that its right to be heard had been respected.
47. The Panel confirms that it carefully heard and took into account in its discussions and subsequent deliberations all of the submissions, evidence, and arguments presented by the parties, even if they have not been specifically summarised or referred to in the present award.

## **V. SUBMISSIONS OF THE PARTIES**

48. The Intermediary's submissions, in essence, may be summarised as follows:
- The Intermediary maintains that the FIFA Disciplinary Committee accepted to re-evaluate the "phantom decision" of 24 August 2013 because such "decision" had never been notified and relevant new facts had occurred in the meantime. Despite of this, in the Appealed Decision of 12 May 2015, the FIFA Disciplinary Committee abstained from taking into account or considering the new facts which occurred during August 2013 and January 2014, *i.e.* that the Intermediary became again a players' agent licensed with the RFEF.
  - The Intermediary suspects that, due to the repeated changes of the responsible persons in the FIFA Disciplinary Committee, the respective communication after August 2013 was simply not added to the file but was somehow lost, and that the Appealed Decision was then made only based on the documents already in the file until August 2013. The Appealed Decision therefore fundamentally breaches the Intermediary's right to be heard and is based on the assumption of clearly wrong facts.
  - The Intermediary argues that it cannot be decisive that he temporarily stopped being a registered players' agent since the relevant moment is the time when the Appealed Decision was rendered on 12 May 2015 or, possibly, when the first brief was filed on 30 November 2009. The Intermediary concludes that he therefore had standing to request the initiation of enforcement proceedings by the FIFA Disciplinary Committee against FC Puebla.
  - The Intermediary maintains that FIFA's alleged "recognised practice" that only the creditor that is party to the original proceedings is entitled to request the enforcement of decisions on the basis of article 64 FDC is contrary to Swiss law. Article 170 (1) of



the Swiss Code of Obligations (hereinafter: the “SCO”) provides that in the case of assignment, preferential or ancillary rights pass together with the main claim to the assignee, except those which are inseparably connected with the person of the assignor.

- The Intermediary submits that there is no reason why the ancillary rights of the two clubs FK Budocnost and FK Rad should be qualified as inseparably connected with the clubs. The view of the FIFA Disciplinary Committee can neither be based on the wording of article 64 FDC. This provision only refers to the defaulting debtor without laying down any requirements for the creditor. Article 64 FDC only contains an exemplary list of potential applicants.
- In the Appealed Decision it was held that the FIFA Disciplinary Committee would have to verify the validity of the transfer of debts and that this *“can in no case be requested to be done by an enforcement authority”*. The Intermediary however considers this to be unconvincing based on a reference to a decision of the Swiss Federal Tribunal, where it was allegedly held that a state court decision is, after an assignment of the underlying claim, in the same way subject to enforcement as if no assignment had occurred. The only difference is that the enforcement judge, in addition to his “normal” verification process, also has to verify whether there is an assignment of the rights.

49. FIFA’s submissions, in essence, may be summarised as follows:

- FIFA maintains that the spirit of article 64 FDC is to enforce decisions comparable to judgments that have been rendered by a body, a committee, an instance of FIFA or a subsequent CAS appeal decision, which are final and binding. Taking into account the obvious impossibility for FIFA to conduct enforcement proceedings using the instruments of the ordinary judicial authorities (such as distress, seizure or attachment), the possible sanctions – of disciplinary nature – foreseen in this provision and threatened to be imposed are designed to put the debtor under pressure to finally comply with the decision. In proceedings conducted according to article 64 FDC, the FIFA Disciplinary Committee, like any enforcement authority, cannot review or modify the substance of a previous decision or resolution of FIFA’s deciding bodies. The scope of the proceedings is to ensure that the debtor (named in the decision) pays the amount owed to the creditor (named in the decision) and, eventually, impose a sanction against the debtor for failure to comply with a final and binding decision.
- FIFA argues that if the Intermediary was to be considered entitled to request the opening of disciplinary proceedings against FC Puebla, the FIFA Disciplinary Committee would have to conduct a preliminary examination regarding the validity of the assignments of credit by the club FK Budocnost and the club FK Rad to Mr Angel Castillo on 7 December 1999 and 15 February 2001. In this respect, FIFA argues that these assignments occurred even before the relevant FIFA decisions were rendered, but that these decisions were still passed in favour of the clubs. Subsequently, the second set of assignments from Mr Angel Castillo to the Intermediary would also have to be examined.
- FIFA maintains that it established the enforcement mechanism under article 64 FDC voluntarily and that the validity of the system has been ratified by the Swiss Federal

Tribunal. The general provision of article 108 (2) FDC regarding entitlement to initiate proceedings under the FDC is not applicable in relation to proceedings under article 64 FDC. FIFA is entitled to limit the circle of beneficiaries of the mechanism provided by article 64 FDC to the subjects that took part to the original proceedings and are named as creditor by the relevant decision.

- A narrow approach with regard to the entitlement to initiate proceedings under article 64 FDC is perfectly justified also considering the practical consequences that an extensive interpretation would lead to. In particular, the FIFA Disciplinary Committee would be compelled to conduct, in circumstances like the one at stake, most extensive assessments and reviews, with regard to the facts as well as to the law. It would require an assessment of which law would be applicable to the issue of the validity of the assignment and the relevant provisions of the foreign law concerned would have to be applied. Such evaluations and examinations concern matters of private international law and of international civil procedure and would entail severe and considerably extensive efforts which would be clearly disproportionate and unreasonable for the FIFA Disciplinary Committee to be compelled to deal with in addition to go beyond its competences.
- Certain situations may even be unmanageable. For instance, if a club that is a party in the context of the decision goes bankrupt and the relevant claim is subsequently acquired by a third party out of the bankruptcy assets, if such party would be entitled to initiate proceedings under article 64 FDC, the FIFA Disciplinary Committee would have to assess whether the relevant claim has been validly acquired and, as a consequence, whether the third party concerned is actually entitled to initiate proceedings under article 64 FDC.
- A broad application of article 64 FDC would also imply an uncontrolled flow of credits which would give rise to situations such as money laundering and growth of the opacity of transactions due to a constant flux of money inside and outside football, which would seriously undermine the entire system of football both from a sport and from a financial point of view.
- With reference to a specific provision in the assignment of credit signed by Mr Angel Castillo and the club FK Rad, determining that “[t]he assignee is obliged to return the ownership of the credit here transferred to the assignor, in the event that the assignor totally settle the debts of USD 400,000 [...]. In this case, the ownership of credit here transferred will return to the assignor”. FIFA maintains that, in this specific case, the assignee could claim the enforcement of the decision although he had received the amounts due, without FIFA being made aware of it. This practice would be undesirable.
- FIFA further argues that admitting the assignment of a credit in favour of a players’ agent who should then be entitled to receive a part of a transfer compensation would also constitute a breach of article 29 of the Players’ Agents Regulations, according to which any payment and/or assignment of rights and claims made in favour of a players’ agent/intermediary are explicitly forbidden. In this sense, article 7.4 of the FIFA Regulations on Working with Intermediaries expressly provides that “[t]he assignment of claims is also prohibited”. An assignment of credit could also give rise to a breach of article

18ter(1) of the Regulations on the Status and Transfer of Players (hereinafter: the “FIFA Regulations”), according to which no club shall enter into an agreement with a third party whereby a third party is being assigned any rights in relation to a transfer compensation.

- Finally, FIFA maintains that the Intermediary remained licensed by the RFEF until 31 March 2015, but that, to date, the Intermediary has not been registered with the RFEF as an intermediary. The Intermediary was therefore not licensed as a players’ agent or intermediary by the RFEF either on the date initially fixed for the FIFA Disciplinary Committee to evaluate if it was in a position to start disciplinary proceedings (*i.e.* 14 August 2013) or on the date on which the Appealed Decision was passed (*i.e.* 15 May 2015). Should the Intermediary’s arguments in this respect be accepted, the Panel would be opening the possibility for any person or legal entity – even falling outside the scope of any of FIFA’s regulations – to request the enforcement of decisions.

## **VI. JURISDICTION**

- 50. The jurisdiction of CAS, which is not disputed, derives from article 67 (1) of the FIFA Statutes (2015 edition) as it determines that “[a]ppeals 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” and Article R47 of the CAS Code.
- 51. Article 64 (5) FDC (2011 edition) states that:  
  
*“Any appeal against a decision passed in accordance with this article shall be lodged with CAS directly”.*
- 52. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by both parties.
- 53. It follows that CAS has jurisdiction to decide on the present dispute.

## **VII. ADMISSIBILITY**

- 54. The appeal was filed within the deadline of 21 days set by article 67 (1) of the FIFA Statutes. The appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fees.
- 55. It follows that the appeal is admissible.

## **VIII. APPLICABLE LAW**

- 56. The Intermediary did not put forward any specific position on the law to be applied to the merits of the case.

57. FIFA submits that in accordance with article 66 (2) of the FIFA Statutes, CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law.
58. 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”.*
59. The Panel notes that article 66 (2) of the FIFA Statutes stipulates the following:  
*“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”.*
60. The Panel, therefore, shall primarily apply the various regulations of FIFA and is satisfied to accept the subsidiary application of Swiss law should the need arise to fill a possible gap in such regulations.

#### **IX. PRELIMINARY ISSUE**

##### **The alleged violation of the Intermediary’s right to be heard before the FIFA Disciplinary Committee**

61. The Intermediary maintains that his right to be heard was violated by the FIFA Disciplinary Committee because he submitted new evidence after the “phantom decision” of 24 August 2013 was rendered, but that such evidence was not taken into account by the FIFA Disciplinary Committee in its Appealed Decision.
62. The Panel finds that the case management of the FIFA Disciplinary Committee in the matter is not praiseworthy as the proceedings lasted more than six years. Also, a decision was apparently rendered by the FIFA Disciplinary Committee on 24 August 2013, but such decision was never notified to the Intermediary. Finally, from the content of the Appealed Decision, more specifically from the section *“inferred from the file”*, it appears that the FIFA Disciplinary Committee presented an overview of the submissions and correspondence on the basis of which the Appealed Decision was rendered. However, it does not appear from such overview that the Intermediary’s correspondence of 3 September 2013 and 6 January 2014 was taken into account.
63. In any case, the Panel finds that due to the *de novo* competence of CAS, pursuant to Article R57 of the CAS Code, such procedural deficiencies may be repaired in the proceedings before CAS.
64. Indeed, the Panel observes that there is ample CAS jurisprudence determining that procedural flaws in the proceedings before the previous instance are in principle repaired by CAS in

appeal arbitration proceedings. The Panel fully adheres to the considerations of the CAS panel in CAS 2012/A/2913 in this respect, determining that:

*“[...] Therefore even if a violation of the principle of due process, or of the right to be heard, occurred in the proceedings in respect of which the appeal is brought, it is cured, at least to the extent such violation did not irreparably impair the First Appellant’s rights, by a full appeal to the CAS (CAS 94/129; CAS 98/211; CAS 2000/A/274; CAS 2000/A/281; CAS 2000/A/317; CAS 2002/A/378). In fact, the virtue of an appeal system which allows for a full rehearing before an appellate body is that issues relating to the fairness of the hearing before the tribunal of first instance ‘fade to the periphery’ (CAS 98/211, citing Swiss doctrine and jurisprudence)” (CAS 2012/A/2913, § 87).*

65. The Panel finds that the Intermediary was not irreparably impaired by the violation of his right to be heard by the FIFA Disciplinary Committee and was furnished with a full opportunity to present his case in the present appeal arbitration proceedings before CAS.

## **X. MERITS**

### **A. The Main Issues**

66. As a result of the above, the main issues to be resolved by the Panel are:

- a) Who may invoke article 64 FDC in general?
- b) Did the Intermediary have standing to invoke article 64 FDC?

#### **a) Who may invoke article 64 FDC in general?**

67. The Panel observes that article 64 FDC reads as follows:

- “1. Anyone who fails to pay another person (such as a player, a coach or a club) or FIFA a sum of money in full or in part, even though instructed to do so by a body, a committee or an instance of FIFA or a subsequent CAS appeal decision (financial decision), or anyone who fails to comply with another decision (non-financial decision) passed by a body, a committee or an instance of FIFA, or by CAS (subsequent appeal decision):*
- a) will be fined for failing to comply with a decision;*
  - b) will be granted a final deadline by the judicial bodies of FIFA in which to pay the amount due or to comply with the (non-financial) decision;*
  - c) (only for clubs:) will be warned and notified that, in the case of default or failure to comply with a decision within the period stipulated, points will be deducted or relegation to a lower division ordered. A transfer ban may also be pronounced;*
  - d) (only for associations) will be warned and notified that, in the case of default or failure to comply with a decision within the period stipulated, further disciplinary measures will be imposed. An expulsion from a FIFA competition may also be pronounced.*

2. *If a club disregards the final time limit, the relevant association shall be requested to implement the sanctions threatened.*
  3. *If points are deducted, they shall be proportionate to the amount owed.*
  4. *A ban on any football-related activity may also be imposed against natural persons.*
  5. *Any appeal against a decision passed in accordance with this article shall be lodged with CAS directly.*
  6. *Any financial or non-financial decision that has been pronounced against a club by a court of arbitration with the relevant association or National Dispute Resolution Chamber (NDRC), both duly recognised by FIFA, shall be enforced by the association of the deciding body that has pronounced the decision in accordance with the principles established in this article and in compliance with the applicable disciplinary regulations.*
  7. *Any financial or non-financial decision that has been pronounced against a natural person by a court of arbitration within the relevant association or NDRC, both duly recognised by FIFA, shall be enforced by the association of the deciding body that has pronounced the decision or by the natural person's new association if the natural person has in the meantime registered (or otherwise signed a contract in the case of a coach) with a club affiliated to another association, in accordance with the principles established in this article and in compliance with the applicable disciplinary regulations".*
68. The Panel recalls that it is undisputed that the two decisions of the Bureau of the FIFA PSC dated 2 July 2001 became final and binding and can in principle be enforced by the FIFA Disciplinary Committee, however, the positions of the parties differ in respect of which entities/persons may invoke article 64 FDC in order to urge the FIFA Disciplinary Committee to enforce such final and binding decisions.
69. Whereas the Intermediary claims that he is perfectly entitled to invoke article 64 FDC, FIFA maintains that a narrow approach is to be applied with regard to the entities/persons entitled to initiate proceedings under article 64 FDC, more specifically that *"by way of complementary interpretation of art. 64 FDC through its uniform and constant jurisprudence [FIFA] considered that parties in the original decision only are entitled to initiate proceedings under art. 64 FDC"* and that *"[...] FIFA is entitled to limit the circle of beneficiaries of the mechanisms provided by art. 64 of the FDC to the subjects that took part to the original proceedings and are named as creditor by the relevant decision"* and that the Intermediary falls outside the scope of such narrow approach.
70. FIFA admitted at the occasion of the hearing that the wording of article 64 (1) FDC does not impose any limitation on the entities/persons that are entitled to invoke such provision.
71. The Panel observes that the provision only imposes certain restrictions in respect of the kind of debt (*i.e.* a debt based on an instruction of a body, a committee or an instance of FIFA or a subsequent CAS appeal decision) and the kind of debtor (*i.e.* debtors such as a player, a coach or a club), although such list is not exhaustive.
72. The Panel is therefore put to the task of examining whether, despite the clear wording of the provision, limitations are to be inferred in the scope of article 64 (1) FDC based on the alleged uniform and constant jurisprudence of FIFA.

73. The Panel finds that certain restrictions in the group of entities/persons entitled to invoke article 64 FDC may indeed be inferred.
74. First of all, the Panel finds that entities/persons that are not members of FIFA cannot invoke article 64 FDC since they are not subjected to the various regulations of FIFA. This is reinforced by the exhaustive list of entities/persons enumerated in article 3 FDC that are subjected to the FDC. The Panel therefore finds that the (in)direct membership of FIFA is imperative for an entity/person to have standing to invoke article 64 FDC.
75. Furthermore, an entity/person invoking article 64 FDC requires an interest worthy of protection in the enforcement of the specific FIFA decision. (In)direct FIFA members can in principle not invoke article 64 FDC to urge the FIFA Disciplinary Committee to enforce a decision against another member if it concerns a decision in which it does not have a direct and personal interest.
76. Therefore, the Panel finds that, as a general rule, the FIFA Disciplinary Committee may well dismiss requests to enforce FIFA decisions from entities/persons that were not party in the FIFA decision that is being enforced based on the FDC.
77. However, the Panel finds that this is different in case of assignment of credits, as the assignee obtains a direct interest in enforcement upon having been assigned the credit from the assignor although he was not a party in the original proceedings. If such assignee is also an (in)direct member of FIFA (*e.g.* through the affiliation to a national federation), nothing in principle prevents such entity/person from invoking article 64 FDC.
78. Although the Panel has sympathy for FIFA's position that it would be burdensome for the FIFA Disciplinary Committee to examine the validity of assignments of credit, that assignments may under certain circumstances be used for abusive purposes and that FIFA has the freedom to restrict the group of entities/persons entitled to use its private enforcement mechanism by means of invoking article 64 FDC, the Panel finds that a categorical restriction to prohibit entities/persons from invoking article 64 FDC after having obtained a direct interest due to an assignment requires a clear regulatory basis. A categorical restriction of the prohibition of assignments cannot merely be inferred from FIFA's alleged uniform and constant jurisprudence, particularly in the absence of any evidence having been provided by FIFA showing that it indeed has such uniform and constant jurisprudence.
79. The Panel is aware that FIFA has taken measures to protect its Disciplinary Committee from having to deal with the – admittedly – sometimes complicated questions that may follow from assessing the validity of assignments of credits by, for example, specifically prohibiting the assignment of credits in article 7.4 of the newly implemented FIFA Regulations on Working with Intermediaries in 2015 and the revised article 18ter (1) of the Regulations on the Status and Transfer of Players. However, this has no influence on the issue at stake: first, article 18ter (1) of the Regulations on the Status and Transfer of Players refers to future transfers and future transfer compensations, whereas the relevant assignments (concluded on 7 December 1999 and 1 October 2009 in respect of the matter related to FK Budocnost and on 15 February 2001 and 1 October 2009 in respect of the matter related to FK Rad) in the proceedings at

hand were concluded after the transfers (22 July 1998). Second, none of said prohibitions were in force at the time of conclusion of the assignments in the matter at hand and are therefore of no avail in these proceedings.

80. The Panel finds that the present prohibition on assignments adopted in the regulations of FIFA is in fact a confirmation that no such prohibition existed before and FIFA's argument that this amendment in its regulations was a codification of its already existing practice was not sufficiently substantiated.
81. Finally, CAS case law (*e.g.* CAS 2007/A/1437 para. 8.1.8) has held that inconsistencies in the rules of a federation will be construed against the federation (*contra proferentem* principle).
82. The Panel finds that the FIFA Disciplinary Committee should have assessed the validity of the assignments as an ordinary court of justice would have done. The FIFA Disciplinary Committee should therefore have assessed the validity of the assignments on the basis of the applicable law, rather than categorically rejecting the validity of assignments.
83. Consequently, in view of the clear wording of article 64 (1) FDC, in the absence of any restriction in the group of persons/entities entitled to invoke article 64 FDC or any proven consistent practice of the FIFA Disciplinary Committee to restrict the standing to invoke this provision to "*the subjects that took part to the original proceedings and are named as creditor by the relevant decision*", the Panel finds that, besides the preconditions already set out in article 64 (1) FDC itself, in order for an entity/person to have standing to invoke article 64 FDC this entity/person needs to be an (in)direct member of FIFA in and of itself and requires an interest worthy of protection in the enforcement of the specific decision. The Panel finds that assignments are not *per se* prohibited, but that the validity of each and every assignment is to be made on a case-by-case basis.

***b) Did the Intermediary have standing to invoke article 64 FDC?***

84. Applying the above general interpretation of the regulatory framework to the specific matter at hand, the Panel observes that the Intermediary was a players' agent/intermediary registered with the RFEF at the moment he requested the FIFA Disciplinary Committee to apply article 64 FDC in respect of FC Puebla.
85. As such, since the Intermediary was an (in)direct member of FIFA, the Panel finds that the Intermediary was in principle entitled to invoke article 64 FDC and that the FIFA Disciplinary Committee should not have dismissed his request for the mere reason that the Intermediary did not take part in the proceedings before FIFA with respect to FC Puebla and was not named as creditor by the relevant decisions.
86. The Panel however observes that the FIFA Disciplinary Committee not only dismissed the Intermediary's request because he did not take part in the proceedings before FIFA and was not named as creditor by the relevant decisions, but also because the Intermediary was not registered/licensed as a players' agent/intermediary with the RFEF for a certain period of time during the proceedings before the FIFA Disciplinary Committee.



87. The Panel is therefore called to address at what moment in time an entity/person needs to be a member of FIFA in order to have standing to invoke article 64 FDC, *e.g.* at the moment a creditor invokes article 64 FDC or at the moment the FIFA Disciplinary Committee renders its decision, and whether a creditor loses his standing if he loses his (in)direct membership of FIFA at a certain moment during the proceedings.
88. The Panel finds that the standing of an entity/person to invoke article 64 FDC is in general to be examined at the moment of lodging the claim, as it concerns a formal prerequisite for the validity of the claim. If the Intermediary was not an (in)direct member of FIFA at the moment of invoking article 64 FDC, the Intermediary's request may have been dismissed straight away. The relevant question is therefore rather whether losing the (in)direct membership of FIFA throughout the proceedings entails the losing of standing.
89. The Panel finds that the Intermediary did not lose his standing upon having temporarily lost his (in)direct membership of FIFA, as he in any event reacquired his registration with the RFEF before the Appealed Decision was rendered.
90. The Panel finds that the (temporary) loss of the Intermediary's license can in any event not be decisive because FIFA unilaterally decided to abandon the licensing system for players' agents/intermediaries and therefore unilaterally decided that players' agents/intermediaries are no longer (in)direct members of FIFA.
91. Determining otherwise would for example imply that a football player, despite a final and binding favourable decision of a FIFA body, would lose his standing if he retired from professional football during proceedings on the basis of article 64 FDC. The Panel adheres with the Intermediary that such reasoning would enable the adjudicating body to stall proceedings until a party finally loses its standing.
92. Hence, since it is undisputed that the Intermediary was a players' agent/intermediary registered with the RFEF at the moment he requested the FIFA Disciplinary Committee to enforce the two decisions dated 2 July 2001 against FC Puebla and because he was in any event registered again with the RFEF when the Appealed Decision was rendered, the Panel finds that the Intermediary had standing to invoke article 64 FDC and that the fact that he (temporarily) lost his FIFA membership could not be invoked by the FIFA Disciplinary Committee to declare the Intermediary's request inadmissible.
93. The Panel finds that this view is reinforced by considering article 30(3) of the currently abandoned FIFA Players' Agents Regulations (hereinafter: the "FIFA PAR"), determining that "[t]he Players' Status Committee or single judge (as the case may be) shall not hear any case subject to these regulations if more than two years have elapsed from the event giving rise to the dispute or more than six months have elapsed since the players' agent concerned has terminated his activity. [...]" [emphasis added by the Panel]. Although these regulations are not directly applicable to the matter at hand, the Panel considers it relevant that FIFA is not unknown to the practice of determining the admissibility of a claim at the moment of its filing. Pursuant to the above-mentioned provision, the claim of a players' agent is not heard by the FIFA Players' Status Committee if he terminated his activity more than six months before the filing of his claim, which implies that

a termination of his activity during such procedure would apparently not bar his claim from being heard.

94. In view of the fact that the FIFA Disciplinary Committee declared the Intermediary's request to apply article 64 FDC in respect of FC Puebla inadmissible and that the FIFA Disciplinary Committee therefore did not yet consider the validity of the assignments, the Panel finds it appropriate to grant the FIFA Disciplinary Committee such opportunity and therefore opts to use its discretion under Article R57 of the CAS Code to refer the case back to the previous instance, *i.e.* the FIFA Disciplinary Committee.
95. Consequently, the Panel finds that the Intermediary had standing to invoke article 64 FDC and that the present case is to be referred back to the FIFA Disciplinary Committee, which shall adjudicate and decide the case taking into account the considerations of the Panel in the present arbitral award.

## **B. Conclusion**

96. Based on the foregoing and after taking into due consideration all the evidence produced and all arguments made, the Panel finds that:
- i. Besides the preconditions already set out in article 64 (1) FDC itself, in order for an entity/person to have standing to invoke article 64 FDC this entity/person needs to be an (in)direct member of FIFA and requires an interest worthy of protection in the enforcement of the specific decision.
  - ii. The Panel finds that assignments are not *per se* prohibited, but that the validity of each and every assignment is to be made on a case-by-case basis.
  - iv. The present case is to be referred back to the FIFA Disciplinary Committee, which shall adjudicate and decide the case taking into account the considerations of the Panel in the present arbitral award.
97. Any further claims or requests for relief are dismissed.

## ON THESE GROUNDS

### The Court of Arbitration for Sport rules that:

1. The appeal filed on 1 February 2016 by Mr Ramon H. Castillo Segura against the decision issued on 12 May 2015 by the Disciplinary Committee of the *Fédération Internationale de Football Association* is partially upheld.
2. The decision of the Disciplinary Committee of the *Fédération Internationale de Football Association* issued on 12 May 2015 is set aside.
3. The case at hand is remitted back to the FIFA Disciplinary Committee, whereby the FIFA Disciplinary Committee is ordered to conduct enforcement proceedings on the basis of article 64 of the FIFA Disciplinary Code in favour of Mr Ramon H. Castillo Segura.
4. (...)
5. All other motions or prayers for relief are dismissed.