



**Arbitration CAS 2015/A/4266 Iván Bolado Palacios v. Fédération Internationale de Football Association (FIFA), award of 7 October 2016**

Panel: Prof. Petros Mavroidis (Greece), President; Prof. Massimo Coccia (Italy); Mr Frans de Weger (The Netherlands)

*Football*

*Request for reasoned decision by FIFA Dispute Resolution Chamber (DRC) and moral damages*

*FIFA letter as appealable decision*

*Claim for moral damages in case of protracted FIFA proceedings*

1. The form of a 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 constitutes a decision subject to appeal. In principle, for a communication to be a decision, it must contain a ruling whereby the body issuing the communication intends to decide on a matter (*“animus decidendi”*) and thereby affect the legal situation of the addressee of the decision or other parties; therefore a decision is a unilateral act, sent to one or more determined recipients and is intended to produce legal effects. A simple information, which does not contain any ‘ruling’, cannot be considered a decision. A letter to a football player issued by FIFA on behalf of the FIFA Dispute Resolution Chamber (DRC) by which FIFA makes clear that it will not consider the player’s various applications for investigatory measures into the alleged late receipt of his request for the grounds of a DRC decision is a ruling materially affecting the legal situation of the player. Provided it is evident from the text of the letter that the DRC intended such communication to be a final decision, binding for the parties, the letter may be considered a decision appealable to CAS.
2. The request of a football player – who despite several requests to FIFA/the DRC for the grounds of a DRC decision, only receives those grounds one year after his initial (timely) request – for an amount to be paid to him *“as compensation for the prejudice caused to him as a consequence of the unnecessary protracted proceedings”* is essentially a claim for compensation for moral damages allegedly suffered as a result of FIFA’s mismanagement of his request for the grounds and FIFA’s failure to perform its duties with due expedition. According to long-standing jurisprudence of the Swiss Federal Tribunal regarding Article 49 of the Swiss Code of Obligations (CO), in order to obtain compensation, the following requirements must be met: (a) the violation of the victim’s personality rights, such as physical, mental or psychological integrity, reputation, esteem in society, respect of privacy; (b) an unlawful act, *i.e.* a behaviour that is not authorized by law or by the consent of the victim; (c) a moral damage, *i.e.* physical or emotional pain, which must be severe and which goes beyond what can be considered as bearable for a normal person in a similar situation; (d) a causal link between the unlawful act and the damage; (e) the damage has not been remedied

otherwise. According to Article 42 para. 1 CO, it is the person claiming damages that must prove that loss or damage occurred. As a general rule, Swiss courts have usually adopted a modest and restrictive approach when it comes to awarding moral damages and awarding that type of damages is usually an exception rather than the rule. In line with this jurisprudence, excessive delays in the management of a player's case are not sufficient to order payment of moral damages if the player neither substantiated in any manner what unlawful act was committed by FIFA nor established a nexus or causal relationship between FIFA's conduct and the alleged moral damages, and also did not prove the specific damages suffered (for example, medical expenses due to the stressful situation or lost work opportunities) because of FIFA's conduct.

## **I. PARTIES**

1. Mr Iván Bolado Palacios (the "Player") is a professional football player of Spanish nationality.
2. The Fédération Internationale de Football Association ("FIFA") is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the governing body of international football at worldwide level. It exercises regulatory, supervisory and disciplinary functions over continental confederations, national associations, clubs, officials and players worldwide.

## **II. FACTUAL BACKGROUND**

### **A. Background facts**

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

### **B. The Proceedings before the FIFA Dispute Resolution Chamber**

4. On 8 August 2012, the Player lodged a claim before the FIFA Dispute Resolution Chamber (the "DRC") against the Bulgarian club, PFC CSKA Sofia, for breach of his employment contract, valid from 28 February 2012 until 30 June 2013, requesting the following:

- i) outstanding remuneration in the amount of EUR 72,000 net corresponding to the monthly salaries of March, April, May, and June 2012;*
- ii) compensation in the amount of EUR 200,000 net corresponding to the remuneration agreed for the 2012-2013 season;*

- iii) *damages caused to the Player as a result of the club's failure to pay the outstanding salaries;*
  - iv) *damages in the amount of EUR 10,000;*
  - v) *to suspend the club from participating in all competitions until payment of the due amount and compensation for damages caused”.*
5. This case was registered under the reference number 12-02936/emo.
6. In the same proceedings, PFC CSKA Sofia lodged a counterclaim against the Player requesting the payment of EUR 300,000 for breach of the employment contract.
7. On 6 November 2014, the DRC decided the following:
- “1. *The claim of [the Player] is inadmissible.*
  - 2. *The claim of [PFC CSKA Sofia] is inadmissible”.*
8. On 17 November 2014, the Player was notified of the findings of the decision issued by the DRC on 6 November 2014 (the “Appealed Decision”). In this notification, the Player’s attention was drawn to the fact that a request *“for the grounds of the decision must be received, in writing, by the FIFA general secretariat **within 10 days** of receipt of the findings of the decision. Failure to do so within the stated deadline will result in the decision becoming final (...)”.*
9. Via facsimile dated 21 November 2014, the Player’s agent, Mr Jokin Bárcena, filed a request for the grounds of the Appealed Decision.
10. In the absence of any reply from FIFA, the Player sent several reminders to its administration, which remained silent until it was contacted by phone by the Player’s representative.
11. On 11 March 2015, and for the first time, the FIFA administration explained to the Player that it had not received Mr Bárcena’s fax of 21 November 2014 and, consequently, would not issue a motivated decision as the Player failed to sufficiently prove the timely submission of his request for the grounds. However, it confirmed the following:
- “ *In this respect, please be informed that according to our records, you have sent two faxes to our services on 21 November 2014:*
  - *an incomplete correspondence consisting of one page regarding the matter mdo/12-02263;*
  - *the complete correspondence consisting of two pages regarding the matter mdo/12-02663 (cf. enclosed documents)”.*
12. The Player made several additional submissions in an attempt to prove his right to obtain the grounds of the Appealed Decision. To this end, he asked to be given access to his file, to obtain copies of some specific documents as well as of the annexes, which were mentioned in FIFA’s letter of 11 March 2015 but which were not attached to it.

13. On 20 April 2015, FIFA accepted that the enclosures of its letter of 11 March 2015 were indeed not remitted to the Player and forwarded these documents to the latter. However, it failed to address all the other submissions and requests filed by the Player's representative.
14. On 24 April, 25 August and 30 September 2015, the Player's representative filed new submissions with FIFA and reiterated his former requests.
15. On 2 October 2015, the DRC acknowledged receipt of the various submissions and queries made on behalf of the Player and gave the following response:

*"In this respect, we wish to reiterate the content of our correspondence dated 21 March 2015 [recte 11 March 2015], by means of which we informed you that we do not appear to have received your correspondence dated 21 November 2014 regarding your request for the grounds of the [Appealed Decision] and, in addition, that the enclosures sent by you on 22 December 2014 and 2 March 2015 do not appear to prove the contrary".*

### III. SUMMARY OF THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

#### A. CAS 2015/A/4266 - Iván Bolado v. FIFA

16. On 23 October 2015, the Player challenged the letter of 2 October 2015. To this effect, he filed a statement of appeal with the Court of Arbitration for Sport ("CAS") in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (the "Code").
17. The same day, the Player completed and returned the Legal Aid Application Form to the CAS Court Office, seeking assistance for CAS arbitration costs and for his own costs as well as for the costs of witnesses, experts and interpreters.
18. On 2 November 2015, the CAS Court Office acknowledged receipt of the Player's statement of appeal and of his payment of the CAS Court Office fee. It noted that he chose English as the language of the arbitration. In this respect, it informed FIFA that unless it objected within three days, the procedure would be conducted in English. The CAS Court Office also invited FIFA to comment within five days on the Player's request to submit the present matter to a sole arbitrator.
19. On 2 November 2015, the Player filed his appeal brief in accordance with Article R51 of the Code.
20. On 9 November 2015, FIFA asked the CAS Court Office that the time limit for the filing of its answer be fixed after the payment by the Player of the advance of costs. It also requested the matter to be referred to a panel of three arbitrators.
21. On 11 November 2015, the CAS Court Office informed the Parties that the President of the CAS Appeals Arbitration Division had decided to submit the case to a panel of three arbitrators. The Parties were therefore invited to nominate an arbitrator by 18 November 2015.

22. On 18 November 2015, the Player informed the CAS Court Office that he was nominating Prof. Massimo Coccia as arbitrator. The same day, FIFA declared that it was appointing Mr Frans de Weger as arbitrator.
23. On 24 November 2015, the President of the International Council of Arbitration for Sport issued an order granting the Player's request for assistance for CAS arbitration costs in the present dispute as well as an amount limited to CHF 1,000 to cover the Player's own travel and accommodation costs and the costs of counsels, witnesses, experts and interpreters in connection with a CAS hearing.
24. On 24 November 2015, the CAS Court Office invited FIFA to file its answer within 20 days.
25. On 14 December 2015, FIFA informed the CAS Court Office that, while preparing its answer to the appeal, it actually came across the Player's fax dated 21 November 2014, by means of which he requested the grounds of the Appealed Decision. It explained that *"due to an exceptional chain of events, one of the three faxes sent by [the Player] on 21 November 2014 was only completed on 24 November 2014, at 11:34 (...). Therefore, when verifying whether the relevant fax of the [Player] was received on 21 November 2014, [the] records unfortunately only showed receipt of the first two faxes sent by the [Player] on that day"*. As a result, FIFA undertook to provide both, the Player and PFC CSKA Sofia, with the grounds of the Appealed Decision, within the next two months.
26. On 14 December 2015 and in light of FIFA's letter of the same day, the CAS Court Office invited the Player to declare by 18 December 2015, whether he agreed to withdraw his appeal.
27. On 22 December 2015 and given the fact that the Player did not reply to its request of 14 December 2015, the CAS Court Office informed the Parties that the Appeal must be considered as being maintained. It invited the Parties to state on or before 29 December 2015, whether their preference was for a hearing to be held.
28. On 22 December 2015, the CAS Court Office informed the Parties that the Panel to hear the case had been constituted as follows: Prof. Petros C. Mavroidis, President of the Panel, Prof. Massimo Coccia and Mr Frans de Weger, arbitrators.
29. On 23 December 2015, FIFA confirmed to the CAS Court Office that it preferred for the matter to be decided solely on the basis of the Parties' written submissions.
30. On 29 December 2015, the Player expressed his preference for a hearing to be held *"should a termination of the present arbitration by agreement not be possible"*. He also confirmed to the CAS Court Office his intention to pursue his appeal. However, he submitted that he would be ready to accept a consent award, under the following conditions:  
  
    "(...)
  - (i) *a commitment by [FIFA] to notify the grounds of the relevant FIFA DRC decision to the parties at the earliest possible date and in any event no later than 14 January 2016;*
  - (ii) *the reimbursement by [FIFA] of the legal fees and expenses incurred by the [Player] in relation to the present appeal arbitration proceedings (...);*

(iii) *compensation in the amount of EUR 10,000, or higher if the Panel shall so decide, by [FIFA] for the unnecessary protracted proceedings as well as the conduct of the proceedings itself by [FIFA] and the ensuing moral damage suffered by the [Player] in what can be termed a “quest” to secure his right to know the grounds of the FIFA DRC’s decision and, most importantly, to eventually resort to CAS on appeal”.*

31. On 31 December 2015 and on behalf of the Panel, the CAS Court Office invited FIFA to state by 6 January 2016 a) whether it agreed to pay to the Player *“the amount requested as compensation (i.e. EUR 10,000)”* and b) when it intended to deliver the grounds of the Appealed Decision.
32. On 6 January 2016, FIFA informed the CAS Court Office that it did not agree to pay the requested compensation and confirmed that the grounds of the Appealed Decision would be notified by the end of January 2016.
33. On 22 January 2016, the Player and PFC CSKA Sofia were notified of the grounds to the Appealed Decision.
34. On 4 February 2016 and on behalf of the Panel, the CAS Court Office advised the Parties that they were granted a second round of submissions in accordance with Article R56 para. 1 of the Code.
35. On 24 February 2016 and within the granted deadline, the Player filed his reply.
36. On 21 March 2016 and within the granted deadline, FIFA filed its rejoinder.
37. On 27 April 2016, the CAS Court Office informed the Parties that the Panel had decided not to hold a hearing.
38. On 6 May 2016, the Player’s representative as well as FIFA signed and returned the Order of Procedure in these appeal proceedings.

#### **B. CAS 2016/A/4450 Iván Bolado v. PFC CSKA Sofia**

39. On 12 February 2016, the Player filed a statement of appeal against the fully motivated Appealed Decision with the CAS in accordance with Article R47 *et seq.* of the Code.
40. The case was registered in the CAS roll under the reference numbers CAS 2016/A/4450.

### **IV. SUBMISSIONS OF THE PARTIES**

#### **(i) The Appeal**

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

*“For all of the reasons given in this Appeal Brief and those that may be added at a later stage, the [Player] respectfully requests CAS:*

1. *to declare that the communication of the FIFA DRC administration of 2 October 2015 constitutes a decision unfairly preventing the Appellant from having access to CAS on appeal; and*
  2. *to annul such decision and order [FIFA] to issue the grounds of the Decision within a month from the notification of copy of the award by fax to the Parties.*
  3. *to order [FIFA] to pay*
    - (a) the entire costs of the present appeal arbitration proceedings;*
    - (b) the legal fees and expenses of the [Player] in relation to the present appeal arbitration proceedings, to be determined at a later stage; and*
    - (c) EUR 10,000 as compensation for the prejudice caused to the [Player] as a consequence of the unnecessary protracted proceedings”.*
42. The Player’s submissions, in essence, may be summarized as follows:
- The letter sent by FIFA on 2 October 2015 has the attributes of a decision and can be challenged before the CAS.
  - It has been established that the Player’s request for the grounds of the Appealed Decision was made in a timely fashion.
  - FIFA did not respect the Player’s right to be heard. It failed to give the latter the opportunity a) to explain his actions before it issued its letter of 2 October 2015, b) to produce evidence likely to influence the content of this letter, c) to access the file and d) to obtain a motivated decision.
  - FIFA’s justifications to explain the reasons behind its inability to find the Player’s request for the grounds in its own files are unconvincing and certainly do not excuse the unnecessary delays and frustration.
  - The Player’s claim for compensation is justified. He *“may accept that [FIFA] did not intend to cause him any prejudice. However, [FIFA’s] actions, or rather its inactions - as it ignored the [Player’s] repeated requests to access the file or to provide the faxes received over the relevant period -, have in any event resulted in harm to the [Player]. As a matter of fact, [FIFA’s] breach of the Rules Governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber (“FIFA Procedural Rules”) has translated into (i) prolonged uncertainty as to the Reasons underlying the dismissal of the claim, (ii) the perceived inability to seize the appellate instance, i.e. CAS, (iii) an unnecessary delay, and (iv), ultimately, additional expenses for a party already in financial difficulty.*
- All the above-mentioned factors have, as a consequence, contributed to the worsening of the [Player’s] state, who, after years awaiting a decision, was in sufferance and distress as he found himself in a procedural limbo. All this has been exacerbated by the deteriorating financial situation of PFC CSKA Sofia (the respondent at the first instance and now in proceeding CAS 2016/A/4450), which the [Player], as a creditor, followed as closely as possible through his agent at the time”.*

**(ii) The Answer**

43. FIFA submitted the following requests for relief:

*“[We] respectfully argue that the [Player’s] appeal should, under the given circumstances, be declared inadmissible since his appeal has, in the meantime, lost its object and CAS has therefore no jurisdiction when it comes to the [Player’s] request for moral damages. As an alternative request, we respectfully argue that the Panel rejects the [Player’s] request for moral damages since he has failed to properly substantiate such request”.*

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

- *“(…) one must also question whether FIFA’s letter dated 2 October 2015 can at all be considered as a “challengeable decision”. Indeed, whereas FIFA’s letter dated 11 March 2015 contained a clear indication that FIFA was “not in a position to provide [the Player] with the motivated decision”, FIFA’s letter dated 2 October 2015 merely informed the [Player] that the relevant FIFA services did not appear to have received [his] letter of 21 November 2014 (...). It needs to be recalled that FIFA has at no moment admitted that its letter of 2 October 2015 could be considered a “challengeable decision”.*
- The Player’s appeal in the present arbitral proceedings has lost its object as the grounds of the Appealed Decision were provided on 22 January 2016.
- *“[The Player’s] request for compensation added in the Appeal Brief should not be considered. Indeed, in view of the particular circumstances of this affair, one can hardly consider the [Player’s] request for compensation as an appeal against the challenged “decision”, i.e. FIFA’s letter dated 2 October 2015”.*
- The Player’s claim based on moral damages must be dismissed as it is not substantiated by any convincing evidence. The unfortunate delays, which occurred in the proceedings before FIFA were caused by an exceptional chain of events and there was no intention on the side of FIFA to obstruct the Player’s right to be heard or to file an appeal before the CAS.

**V. JURISDICTION AND ADMISSIBILITY**

45. The CAS is competent to determine its own jurisdiction and whether it may adjudicate the merits of the appeal. The so-called “*Kompetenz-Kompetenz*” of an international arbitral tribunal sitting in Switzerland is recognized by Article 186 para. 1 of the Swiss Law on Private International Law, which is applicable to CAS arbitration proceedings (CAS 2009/A/1910; CAS 2005/A/952; CAS 2004/A/748; RIGOZZI/HASLER/NOTH, Introduction to the CAS Code; in: ARROYO M. (ed), Arbitration in Switzerland: The Practitioner’s Guide, 2013, ad. Article R27, n°4, page 909).

46. As this is an appeal arbitration procedure, the Panel must address any jurisdictional issue, first by considering Article R47 para. 1 of the Code, which reads as follows:

*“An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration*



*agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body”.*

47. The legal basis for an appeal against a FIFA decision is set out in Article 67 para. 1 of the FIFA Statutes, edition 2012 (when the case was submitted to the DRC) and edition 2015 (when the case was submitted to the CAS), according to which “*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*”.
48. The Panel observes that, in accordance with the above provisions, the CAS has the power to adjudicate appeals against a sports organization (*i.e.* a federation, association or sports-related body) provided notably that an actual “*decision*” has been issued, that it is final (*i.e.* all other available stages of appeal have been exhausted) and that it is challenged in a timely manner.
49. In the present case, FIFA claims that the appeal must be dismissed as it is lodged against its letter of 2 October 2015, which cannot be considered a decision within the meaning of Article 47 of the Code and of the FIFA Statutes.

**a) The notion of decision**

50. The applicable FIFA regulations, in particular the FIFA Statutes, do not provide any definition for the term “*decision*”. The possible characterisation of a letter as a decision was considered in several previous CAS cases (CAS 2008/A/1633; CAS 2007/A/1251; CAS 2005/A/899; CAS 2004/A/748; CAS 2004/A/659).
51. The Panel endorses the definition of “*decision*” and the characteristic features of a “*decision*” stated in those CAS precedents:
  - “*the form of the communication has no relevance to determine whether there exists a decision or not. In particular, the fact that the communication is made in the form of a letter does not rule out the possibility that it constitutes a decision subject to appeal*” (CAS 2008/A/1633 para. 31; CAS 2007/A/1251 para. 30; CAS 2005/A/899 para. 63; CAS 2004/A/748 para. 90).
  - “*In principle, for a communication to be a decision, this communication must contain a ruling, whereby the body issuing the decision intends to affect the legal situation of the addressee of the decision or other parties*” (CAS 2008/A/1633 para. 31; CAS 2007/A/1251 para. 30; CAS 2005/A/899 para. 61; CAS 2004/A/748 para. 89).
  - “*A decision is thus a unilateral act, sent to one or more determined recipients and is intended to produce legal effects*” (CAS 2008/A/1633 para. 31; CAS 2004/A/748 para. 89; CAS 2004/A/659 para. 36).
  - “*an appealable decision of a sport association or federation “is normally a communication of the association directed to a party and based on an ‘animus decidendi’, i.e. an intention of a body of the association to decide on a matter [...]. A simple information, which does not contain any ‘ruling’, cannot be considered a decision*”. (CAS 2008/A/1633 para. 32; BERNASCONI M., “When is a

‘decision’ an appealable decision?” in: RIGOZZI/BERNASCONI (eds), *The Proceedings before the CAS*, Bern 2007, p. 273).

**b) In the present case**

52. In order to assess the situation, it seems necessary to take into consideration the sequence of events:

- On 17 November 2014, the Player was notified of the findings of the Appealed Decision issued by the DRC.
- On 21 November 2014, the Player’s agent filed a request for the grounds of the Appealed Decision.
- In the absence of any reply from FIFA, the Player sent several reminders to its administration.
- On 11 March 2015, and for the first time, the FIFA administration explained to the Player that it had not received the Player’s request of 21 November 2014 and, consequently, would not issue a reasoned decision as the Player had failed to sufficiently prove the timely submission of his request for the grounds.
- The Player made several additional submissions in an attempt to prove his right to obtain the grounds of the Appealed Decision. To this end, he asked to be given access to his file, to obtain copies of some specific documents as well as of the annexes, which were mentioned in FIFA’s letter of 11 March 2015 but which were not attached to it.
- On 20 April 2015, FIFA accepted that the enclosures of its letter of 11 March 2015 were indeed not remitted to the Player and forwarded these documents to the latter.
- On 24 April, 25 August and 30 September 2015, the Player’s representative filed new submissions with FIFA and reiterated his former requests.
- On 2 October 2015, the DRC acknowledged receipt of the various submissions and queries made on behalf of the Player and gave the following response:

*“In this respect, we wish to reiterate the content of our correspondence dated 21 March 2015 [recte 11 March 2015], by means of which we informed you that we do not appear to have received your correspondence dated 21 November 2014 regarding your request for the grounds of the [Appealed Decision] and, in addition, that the enclosures sent by you on 22 December 2014 and 2 March 2015 do not appear to prove the contrary”.*

53. Under these circumstances, the Panel finds that with the letter of 2 October 2015, issued on behalf of the DRC, it was made clear to the Player that FIFA would not consider the Player’s various applications for investigatory measures. In light of the above, the Panel holds that FIFA’s letter of 2 October 2015 is a ruling materially affecting the legal situation of the Player

and that it also seems evident from the text of the letter that the DRC intended such communication to be a final decision, binding for the Parties.

54. For all the above reasons, the Panel considers that the letter of 2 October 2015 is a decision, which can be challenged before the CAS.
55. The appeal is admissible as the Player submitted it within the 21-day deadline provided by Article R49 of the Code, as well as by Article 67 para. 1 of the applicable FIFA Statutes. It complies with all the other requirements set forth by Article R48 of the Code.

## VI. APPLICABLE LAW

56. Article R58 of the 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*

57. Pursuant to Article 66 para. 2 of the applicable FIFA Statutes, “[t]he 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”.
58. As a result and in light of the foregoing, subject to the primacy of applicable FIFA’s regulations, Swiss Law shall apply complementarily, whenever warranted.

## VII. MERITS

59. In his appeal brief, the Player’s main relief was for an order directing FIFA *“to issue the grounds of the [Appealed Decision] within a month from the notification of copy of the award by fax to the Parties”*.
60. In view of the outcome of the present arbitration, in particular considering that the Player was notified of the fully reasoned Appealed Decision on 22 January 2016, his main request lost its object and therefore became moot. It requires no further consideration.
61. Additionally, the Player asked the CAS to order FIFA to pay in his favour *“EUR 10,000 as compensation for the prejudice caused to [him] as a consequence of the unnecessary protracted proceedings”*. In light of his submissions, it appears that the Player is actually claiming compensation for moral damages, which he suffered as a result of FIFA’s poor management of his request for the grounds of the Appealed Decision.
62. Pursuant to Article 49 of the Swiss Code of Obligations (CO), *“Any person whose personality rights are unlawfully infringed is entitled to a sum of money by way of satisfaction provided this is justified by the seriousness of the infringement and no other amends have been made”*.

63. In order to obtain compensation, the following requirements must be met (Decision of the Swiss Federal Tribunal, 5A\_170/2013, 3 October 2013, consid. 6.2.1; ATF 131 III 26, consid. 12.1):
- the violation of the victim's personality rights, such as physical, mental or psychological integrity, reputation, esteem in society, respect of privacy;
  - an unlawful act, *i.e.* a behaviour that is not authorized by law or by the consent of the victim;
  - a moral damage, *i.e.* a physical or emotional pain, which must be severe and which goes beyond what can be considered as bearable for a normal person in a similar situation;
  - a causal link between the unlawful act and the damage;
  - the damage has not been remedied otherwise.
64. It must be noted that, as a general rule, the awarding of moral damages is usually an exception rather than the rule and Swiss courts have usually adopted a modest and restrictive approach when it comes to awarding moral damages (CAS 2013/A/3260, para. 127).
65. Article 42 para. 1 CO states that "*A person claiming damages must prove that loss or damage occurred*".
66. In the present case, the Panel agrees with the Player when he claims that FIFA failed to perform its duties with due expedition and mismanaged his request for the grounds of the Appealed Decision. This is reflected by FIFA's inability to find the Player's fax of 21 November 2014 but also by the fact that some of the Player's inquiries received no response before several months or were simply ignored. FIFA itself acknowledged an unfortunate chain of events. Although the excessive delays in the management of this case and the lack of reaction from FIFA generally until the grounds of the FIFA DRC decision have been issued in January 2016 are questionable, such regrettable incidents are not sufficient to order the payment of moral damages in favour of the Appellant.
67. The Panel observes that the Player limited himself to claim an amount of EUR 10,000 without explaining the particulars and/or criteria he has used to reach this amount. He has also not substantiated in any manner what unlawful act was committed by FIFA and has failed to establish a nexus or causal relationship between FIFA's conduct and the alleged moral damages, in particular he has not proven the specific damages that he suffered because of FIFA's conduct. Indeed, the amount of EUR 10,000 seems to have been chosen as a sort of "punitive" amount with no relation whatsoever to actual damages (for example, medical expenses due to the stressful situation or lost work opportunities). Under these circumstances, the Panel comes to the conclusion that the Player has failed to discharge his burden of proof and, therefore, is not entitled to the payment of any compensation for moral damages.
68. The above findings make it unnecessary for the Panel to consider the other requests submitted by the Parties. Accordingly, all other prayers for relief are rejected.

## ON THESE GROUNDS

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

1. Mr Iván Bolado Palacios's request to "*order [FIFA] to issue the grounds of the Decision within a month from the notification of copy of the award by fax to the Parties*" has become without object in the course of the present arbitration proceedings.
  2. All other motions or prayers for relief are dismissed.
- (...)