



Arbitration CAS 2015/A/4203 Brazilian Football Confederation (CBF) v. Fédération Internationale de Football Association (FIFA) & Confederación Sudamericana de Fútbol (CONMEBOL), award of 1 February 2016 (operative part of 2 October 2015)

Panel: Mr Sofoklis Pilavios (Greece), President; Prof. Philippe Sands QC (United Kingdom); Mr Marco Balmelli (Switzerland)

Football

Disciplinary sanction (match suspension)

Conditions for intervention to the CAS proceedings

De novo review of the facts and the law by the CAS Panel based on Article R57 of the CAS Code

Standing to be sued of a respondent to the CAS proceedings

Definition of decision according to the FIFA Disciplinary Code

Definition of decision according to Article R47 of the CAS Code and CAS jurisprudence

Relationship between FIFA and CONMEBOL disciplinary regulations

1. Any party claiming a legitimate interest to intervene must have a concrete interest in challenging a decision.
2. According to Article R57 of the CAS Code, the Panel has *“full power to review the facts and the law”*. By reference to this provision the CAS appellate arbitration procedure entails a *de novo* review of the merits of the case, and is not confined merely to deciding whether the ruling appealed was correct or not. Accordingly, it is the function of a CAS panel to make an independent determination as to merits.
3. Neither the FIFA Regulations nor the CAS Code contain any specific rule regarding standing to be sued. Under Swiss law, applicable pursuant to Articles 60.2 of the FIFA Statutes and R58 of the CAS Code, the defending party has standing to be sued if it is personally obliged by the *“disputed right”* at stake. A party has standing to be sued only if it has some stake in the dispute because something is sought against it. Additionally, under Article 75 of the Swiss Civil Code, when the sports association is taking a decision in a matter which concerns its relationship to one of its members, it is the association that issued the resolution at stake which has capacity to be sued. Moreover, the members of an association have standing to appeal against a resolution of an association, whereas only the association itself has standing to be sued, except for cases where rights related to the association do not come into play.
4. Neither the FIFA Regulations nor the CAS Code provide any general definition or guidance as to the notion of *“decision”*. Nevertheless, the FIFA Disciplinary Code contains Article 118, which defines the decisions that are subject to appeal before the FIFA Appeal Committee as *“...any decision passed by the Disciplinary Committee...”* and Articles 76-78, which analyse the jurisdiction of the FIFA Disciplinary Committee

to pass decisions. The FIFA Disciplinary Committee's general jurisdiction extends to passing decisions that impose sanctions on the natural and legal persons listed under Article 3 of the FIFA Disciplinary Code, for any breach of FIFA regulations which does not come under the jurisdiction of another body.

5. A decision is a unilateral act, sent to one or more recipients and is intended to produce legal effects. 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. However, 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. Additionally, legal doctrine provides that 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”*.
6. FIFA is the world governing body of association football and there are six continental Confederations recognised by FIFA, which are formed by FIFA-member football associations of the same continent. Article 38 para 2 lit. e) of the FIFA Disciplinary Code is properly to be interpreted as setting forth a clear provision regulating the matter of carrying over match suspensions from a Confederation competition for representative teams to the next competition organised by FIFA. Such provision is deemed to prevail over an inconsistent Confederation rule. Member associations of FIFA cannot be said to be unaware of Article 38 para 2 lit. e) of the FIFA Disciplinary Code, which has formed a part of the FIFA Disciplinary Code since 2005.

I. PARTIES

1. The Brazilian Football Confederation (hereinafter referred to as “CBF” or the “Appellant”) is the national governing body for the sport of football in Brazil with its registered office in Rio de Janeiro. It is affiliated with the Fédération Internationale de Football Association (hereinafter also referred as “FIFA”) since 1923.
2. The Fédération Internationale de Football Association (hereinafter referred to as “FIFA” or the “First Respondent”) is the world governing body of football. It exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and players, worldwide. FIFA is an association under Swiss law and has its headquarters in Zurich, Switzerland.
3. The Confederación Sudamericana de Fútbol (hereinafter referred to as “CONMEBOL” or the “Second Respondent”) is the continental governing body of football in South America with its seat in Luque, Paraguay. CONMEBOL exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and players in South America

and is the organizer of Copa America, an international football competition contested by the men's national teams of CONMEBOL's member associations.

II. FACTUAL BACKGROUND

A. Background Facts

4. Below is a summary of the relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations found in the parties' written submissions, pleadings and evidence are addressed, where relevant, in connection with the legal discussion 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 considers necessary to explain its reasoning.
5. On 17 June 2015, the men's national football team of Brazil played a match against Colombia for the group stage of the 2015 Copa America in Santiago, Chile. After the final whistle, the Brazilian player Neymar da Silva Santos Júnior (hereinafter referred to as the "Player") was given a red card following an incident with a player of the opposing team.
6. On 19 June 2015, the Disciplinary Committee of CONMEBOL sanctioned the Player with a four-match suspension. The grounds of the decision were notified to the Appellant by email on 22 June 2015 giving the interested parties a deadline of 24 hours to appeal.
7. The Player did not appeal against such decision and on 21 June 2015, he began to serve the suspension during the next match of the Brazilian national team in the tournament against Venezuela.
8. On 22 June 2015, Mr Francisco Figueredo, Director of the Disciplinary Committee of CONMEBOL, sent a letter by email to Mr Marc Cavaliero, Secretary to the FIFA Disciplinary Committee, requesting the opinion of FIFA as to whether match suspensions not served during the 2015 Copa America were to be served during the next Copa America competition (as per Article 112 para 2 lit. d) of the CONMEBOL Disciplinary Regulations), alternatively during the relevant representative team's next official match in a FIFA competition (as per Article 38 para 2 lit. e) of the FIFA Disciplinary Code).
9. On 23 June 2015, Mr Cavaliero sent the following reply to Mr Figueredo:

"... In this regard, after analyzing the respective regulations, particularly art. 112.2.d) of CONMEBOL's Disciplinary Regulation and art. 38 paragraph 2 e) of FIFA's Disciplinary Regulation, the President of the FIFA Disciplinary Panel considers that the rule established in FIFA's Disciplinary Regulation shall prevail over the rule of the Confederation.

That is, art. 38 par. 2 e) of FIFA's Disciplinary Code should be applied in the present case and as a consequence the pending suspensions that were not complied in the 2015 Chile Cup of America shall be complied

in the next official competition organized by FIFA, and in this case the classification games for the 2018 FIFA Russia World Cup.

Lastly, we would like to point out that the above is merely informative, based in the documents in our disposal and, therefore, without harm to any decision that might be finally taken..." (Translation from the original Spanish document was provided by the parties).

10. On the same 23 June 2015 at 14:42, CONMEBOL sent an email to its member associations informing them of the FIFA reply in the following terms:

"... Through the present letter we inform you that CONMEBOL received on the present date a communication from FIFA regarding the execution of suspension sanctions of the matches after the end of the Copa America Chile 2015.

Such communication indicates that the suspensions not served during Copa America Chile 2015 must be served in the next official match played by the representative team in a competition organised by FIFA, in this case, in the qualifying matches of the World Cup FIFA Russia 2018.

Attached is a copy of said communication for your appreciation..." (Translation from the original Spanish document was provided by the parties).

11. On 27 June 2015, the Player served the second match suspension during the quarter-final of the 2015 Copa America in the match between the Brazilian national team against Paraguay. Brazil lost to Paraguay 4-3 on penalties after a 1-1 draw and was subsequently eliminated from the competition.

12. On 6 July 2015, the Appellant sent a letter to the FIFA Secretary General requesting FIFA:

"to reconsider its decision of 23 July 2015 and, therefore, allow players who were fielded and suspended during the CA 2015 – such as Neymar – to serve any pending suspensions only in the next edition of the Copa America 2016 USA and by no means in the next competition organized by FIFA, such as the qualifying matches of the WC 2018".

13. On 11 July 2015, Mr Cavaliero replied to the Appellant's letter of 6 July 2015 stating the following:

"We acknowledge receipt of your request dated 6 of July 2015 and have duly taken note of its contents.

Your request was submitted to the Chairman of the FIFA Disciplinary Committee, who reviewed your position as well as all the pertinent regulations, in particular Art. 2 of the FIFA Statutes, Art. 2 and Art. 38 par. 2 lit e) of the FIFA Disciplinary Code, Art. 6 No. 2 and 3 and Art. 26 of the Copa America Chile 2015 Regulations and Art. 112 par. 2 lit d) of the CONMEBOL Disciplinary Regulations.

The Chairman additionally took into consideration that two teams from CONCACAF participated in the mentioned competition.

The Chairman pointed out that FIFA has the objective to control every type of Association Football by taking appropriate steps to prevent infringements of the Statutes, regulations or decisions of FIFA or of the Laws of the Game and to promote integrity, ethics and fair play with a view to preventing all methods or practices, which might jeopardize the integrity of matches, competitions, Players, Officials and Members or give rise to abuse of Association Football.

In the frame of these objectives, FIFA has the responsibility to ensure that the sanctions imposed by the disciplinary bodies of all Confederations are respected equally and in the most effective way worldwide. This means that the sanction has to deploy its effect as soon as possible.

The Chairman is of the opinion that Art. 38 par. 2 lit e) of FIFA Disciplinary Code regulates specifically the way that the pending suspensions from all the Confederations have to be served and therefore a regulation in contradiction to this, from a particular Confederation, would affect the complete system in place.

Consequently, the Chairman confirms his position in the sense that the pending suspensions of the Copa America Chile 2015 have to be served in the next qualifier matches for the 2018 FIFA World Cup Russia.

Finally, we would like to add by way of explanation that the foregoing is of a purely informative nature only and hence without prejudice whatsoever”.

14. On 14 July 2015, the Appellant informed FIFA that it intended to appeal against the aforementioned reply of the secretary to the FIFA Disciplinary Committee and, on 21 July 2015, submitted its reasons for appeal.
15. On 7 August 2015, the FIFA Appeal Committee rejected the appeal passing the following decision:

“1. The request to designate the CONMEBOL as Respondent in the appeal lodged by the Confederação Brasileira de Futebol against the letter sent by the secretariat of the FIFA Disciplinary Committee dated 11 July 2015 is rejected.

2. The appeal lodged by the Confederação Brasileira de Futebol against the letter sent by the secretariat of the FIFA Disciplinary Committee dated 11 July 2015 is declared inadmissible.

3. The costs and expenses of these proceedings in the amount of CHF 5,000 are to be borne by the Confederação Brasileira de Futebol. [...]”.
16. On 9 September 2015, the FIFA Appeal Committee communicated the grounds of its decision to CBF and CONMEBOL.
17. First, the FIFA Appeal Committee held that CBF’s request to designate CONMEBOL as a Respondent could not be granted, on the grounds that, as a general rule, disciplinary proceedings are directed against a party only, *i.e.* against the potential perpetrator of an infringement to the FIFA regulations and that, additionally, CONMEBOL was not obliged by any disputed right in the matter at stake.

18. Second, the FIFA Appeal Committee held as inadmissible the CBF's appeal lodged against the 11 July 2015 letter, reasoning as follows:

"16. [...] the first requisite that needs to be met to lodge an appeal before the Appeal Committee is the existence of a decision rendered by the Disciplinary Committee.

17. The Committee recalls that in accordance with the well-established CAS jurisprudence, "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".

In accordance with the above, a communication can only be considered as a decision if (i) there is an intention of a body of the association to decide on a matter and (ii) if said communication affects the legal situation of the addressee.

i) No intention to decide on a matter

[...]

19. [...] the Committee observes that the only appealable decision in the present context was the decision of the CONMEBOL suspending the player for 4 matches, which grounds were notified on 22 June 2015. The same were followed by a note in relation to the existing legal action, i.e. an appeal could be lodged within 24 hours. [...]

23. [...] the Committee remarks that the Chairman of the FIFA Disciplinary Committee had no intention to rule, and more importantly, was not in a position to rule, on the matter, which had been decided by CONMEBOL judicial bodies in a final and binding way. On the contrary, the Committee notes that the sole intention of the Chairman of the Disciplinary Committee was to provide the CBF with a reply to its request only, which contents had already been put at disposal of all participating member associations on 23 June 2015.

Thus, the letter dated 11 July 2015 sent by the secretariat to the FIFA Disciplinary Committee had no intention to rule on a matter.

24. What is more, the Committee observes that the FIFA Disciplinary Committee has not opened any disciplinary proceedings against any player or entity. Consequently, no sanction was pronounced by the FIFA judicial body, which could now be subject of an appeal.

[...]

26. Thus, in direct application of art. 118 of the FDC, and in the absence of any decision sanctioning the CBF or the player by the FIFA Disciplinary Committee, the present appeal shall be declared inadmissible.

ii) The letter of the secretariat to the Disciplinary Committee dated 11 July 2015 did not affect the legal situation of the CBF

[...]

31. [...] the Committee unanimously agrees that the letter of the secretariat to the Disciplinary Committee was a purely informative letter without any effect on the legal situation of the CBF, which had already been affected by the decision of CONMEBOL Disciplinary Committee in a final and binding way.

32. As a consequence, the Committee declares the present appeal inadmissible”.

19. Notwithstanding the communication set out above, the FIFA Appeal Committee considered exceptionally the substantive part of the appeal submitted by the CBF. According to the FIFA Appeal Committee:

“43. [...] the CONMEBOL regulations need to comply with the higher ranked regulations, which are the FIFA regulations. In case of a conflict, the FIFA regulations should prevail.

[...] the CBF is a member of FIFA and should be well aware of FIFA’s regulations and its implications. [...] the CBF should have been aware that, in accordance with article 38 par. 2 lit e) of the FIFA Disciplinary Code, any match suspensions not served at the Copa America Chile 2015 would be carried over to the matches of the Brazilian team in the preliminary competition of the 2018 FIFA World Cup Russia.

44. Equally, the Appeal Committee wishes to recall that art. 38 par. 3 lit e) of the FDC is applied uniformly for all confederations. The principle contained herein – the principle of immediacy of the sanction – is of paramount importance. Indeed, it constitutes a sacrosanct principle that disciplinary sanction shall be served as soon as possible at the occasion of the next official match, in order to ensure i) uniformity in the implementation of the sanctions on a worldwide level and ii) the carrying over of the necessary deterrent effect by a disciplinary sanction.

[...]

49. In conclusion, the Appeal Committee agrees with the opinion of the Chairman of the Disciplinary Committee, according to which, in application of article 38 par. 2 lit e) of the FIFA Disciplinary Code, the pending match suspensions from the Copa America Chile 2015 have to be carried to the next official matches of the representative teams in a competition organized by FIFA, which is the preliminary competition of the 2018 FIFA World Cup Russia”.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

20. On 14 September 2015, the Appellant decided to appeal the abovementioned decision of the FIFA Appeal Committee (hereinafter referred to as “the Appealed Decision”) before the CAS and filed its statement of appeal in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (hereinafter referred to as “the Code”).

21. The Appellant directed its statement of appeal against FIFA and the CONMEBOL. With its statement of appeal, the Appellant also filed a request for a stay of the execution of the Appealed Decision, nominated Mr Philippe Sands Q.C., barrister in London, United Kingdom, as arbitrator and requested for expedited proceedings in accordance with Article R52(3) of the Code, suggesting at the same time an expedited procedural calendar.
22. On 16 September 2015, the Appellant filed its appeal brief submitting the following requests for relief:
 - “(a) That the Appeal of CBF is admissible;*
 - (b) That the Appealed Decision and the FIFA DC Decision are set aside;*
 - (c) That the pending suspensions of the Copa America Chile 2015 – imposed on the Brazilian National Team Player Neymar Jr. – shall be served in the next edition of the Copa America USA 2016;*
 - (d) That FIFA and CONMEBOL be held responsible for the harmonization of its statutes and regulations;*
 - (e) Order FIFA and CONMEBOL to bear any and all legal/ procedural costs and attorneys’ fees incurred by the Appellant in connection with the present proceedings, as well as during the lower instances – and partial – proceedings, in an amount not lower than CHF 30,000.00 (thirty thousand Swiss Francs);*
 - (f) Order FIFA and CONMEBOL to reimburse the administrative fees paid by the Appellant in the lower instance proceedings – fee of CHF 3,000 – in case the present appeals are successful and the Appealed Decision is set aside or partially upheld”.*
23. On 17 September 2015, the First Respondent agreed to the Appellant’s request to proceed in an expedited manner and to the proposed procedural calendar, and nominated Mr Marco Balmelli, attorney-at-law in Basel, Switzerland, as arbitrator. By letter of the same day, the Second Respondent requested to be removed from the proceedings as it was not a party to the proceedings before FIFA but nonetheless agreed to the proceeding being held in an expedited manner.
24. On 18 September 2015, in view of the parties’ agreement to proceed in an expedited manner, the CAS Court Office confirmed the proposed procedural calendar and informed the parties that the Appellant’s application for a stay of the Appealed Decision became without object in view of such agreement. The CAS Court Office further invited the Appellant to provide its position with respect to the Second Respondent’s request to be removed from the proceedings.
25. On the same day, the Appellant objected to the Second Respondent’s request to be removed from the present proceedings claiming that the latter had standing to be sued in the present matter.
26. On 21 September 2015, the Uruguayan Football Association filed a request for intervention in this arbitration in accordance with Article R41.3 of the Code.

27. On 22 September 2015, the Second Respondent informed the CAS Court Office that it did not object to the request for intervention of the Uruguayan Football Association and that it shall not further participate in the present proceedings.
28. On 23 September 2015, the CAS Court Office informed the parties about the constitution of the Panel as follows: Mr Sofoklis P. Pilavios, President, Mr Philippe Sands Q.C., and Mr Marco Balmelli, arbitrators. The CAS Court Office also informed the parties that a hearing was scheduled to be held on 1 October 2015 at the CAS Headquarters in Lausanne, Switzerland, and confirmed that the operative part of the award would be rendered by 2 October 2015.
29. On 23 September 2015, the Appellant and the First Respondent opposed the intervention of the Uruguayan Football Association as party to the arbitration proceedings.
30. On 25 September 2015, the Panel, in accordance with Articles R41.3 and R41.4 of the Code, decided to reject the request for intervention from the Uruguayan Football Association.
31. On 25 September 2015, the First Respondent filed its answer requesting the CAS:
 - i. To reject all the reliefs sought by the Appellant.*
 - ii. To confirm in its entirety the decision of the FIFA Appeal Committee.*
 - iii. To order the Appellant to bear all costs incurred in connection with these proceedings and to cover all legal expenses of the Respondent in connection with these proceedings”.*
32. On 29 September 2015, the Appellant informed the CAS Court Office that its Legal Director, Mr Carlos Eugenio Lopes, would not be able to attend the hearing in person and submitted a witness statement signed by the latter, as already announced in the appeal brief.
33. On 30 September 2015, the CAS Court Office advised the parties that the issue of admissibility of Mr Lopes’ witness statement shall be addressed at the beginning of the hearing.
34. The Second Respondent did not file an answer.
35. On 1 October 2015, a hearing took place at the CAS Headquarters in Lausanne, Switzerland.
36. The Panel sat in the following composition:

President:	Mr Sofoklis P. Pilavios, attorney-at-law in Athens, Greece
Arbitrators:	Mr Philippe Sands Q.C., barrister in London, United Kingdom
	Mr Marco Balmelli, attorney-at-law in Basel, Switzerland
37. The following persons attended the hearing:
 - CBF, as represented by Messrs Marcos Motta and Pedro Fida, Counsel;

- FIFA, as represented by Mr Marc Cavaliero, Head of the Disciplinary and Regulatory Department and Mr Bernardo Palmeiro, Legal Counsel.

38. At the beginning of the hearing, the parties confirmed that they had no objections to the constitution of the Panel. During the hearing the parties made full oral submissions and at the conclusion of the hearing all the parties acknowledged that their right to be heard had been fully respected. The parties further agreed to the admissibility of the statement filed by Mr Carlos Eugenio Lopes.

IV. SUBMISSIONS OF THE PARTIES

39. The following outline of the parties' positions is illustrative and does not purport to address in a comprehensive fashion every submission advanced by the parties. The Panel has nonetheless carefully considered all the submissions made by the parties, whether or not there is specific reference to them in the following summary.

40. The Appellant's submissions, in essence, may be summarized as follows:

- CONMEBOL, being an autonomous association, is the sole organizer of Copa America and, consequently, its Disciplinary Regulation and Copa America 2015 competition regulations should apply independently from the FIFA regulatory framework.
- Pursuant to Article 112 para 2 lit. d) of the CONMEBOL Disciplinary Regulation, which stipulates that "*A suspension that was not complied during a Copa America, shall be extended automatically to the next Copa America*" (translation provided by the Appellant), the remaining sanction to be served by the Player should be served during the subsequent Copa America competition. Article 112 para 2 lit. d) of the CONMEBOL Disciplinary Regulation is sufficiently clear and should prevail over the FIFA Disciplinary Code on the basis of the legal principle *lex specialis derogat legi generali*. In addition, FIFA has no right to change the competition rules, particularly while Copa America is ongoing, as this damages legal certainty. Lastly, consultation and clarifications regarding the interpretation of the CONMEBOL's rules were to be sought by the CONMEBOL Executive Committee and not by FIFA.
- The FIFA Appeal Committee was wrong to reject the CBF's appeal as inadmissible by arguing that the FIFA letter of 11 July 2015 was not a decision.
- The FIFA letter of 11 July 2015 did in fact constitute an appealable decision since it ruled on a controversial matter and clearly affected the Appellant's legal situation by ruling on its right to field the Player in the qualifying matches for the FIFA World Cup.
- The Appellant received CONMEBOL's decision to suspend the Player on 22 June 2015 at 14:59 (Brazilian time) and was given a deadline of 24 hours to appeal. However, the FIFA letter of 23 June 2015 with respect to the scope of application of the sanctions imposed during the Copa America competition was notified by CONMEBOL to its

member associations on 23 June 2015 at 14:42, leaving to the Appellant only 17 minutes to file an appeal against the CONMEBOL decision.

- The Appellant was immediately affected by the Appealed Decision and, consequently, has standing to sue.
- The Second Respondent has standing to be sued as it has a stake in the dispute, not least because something is sought against it and it is personally obliged by the disputed right at stake.
- The Appealed Decision violates the principle of the autonomy of the football associations-FIFA members, which is established in Article 13 of the FIFA Statutes.
- The Appellant had no other way to challenge the decision of the FIFA Disciplinary Committee.

41. The First Respondent submitted the following in response:

- The Appellant did not prove the Second Respondent's link with the disputed object and did not present any specific claim against the latter. Moreover, in principle there are no respondents in disciplinary proceedings before the FIFA Appeal Committee. As a result, the Second Respondent has no standing to be sued in the current proceedings.
- The appeal lodged by the Appellant before the FIFA Appeal Committee is inadmissible as it does not fulfil the requirements set out in Article 118 of the FIFA Disciplinary Code (2011 edition) because the letter of the FIFA secretariat dated 11 July 2015 did not contain any ruling and it certainly did not constitute a decision imposing any disciplinary measure.
- In particular, said letter did not sanction any behaviour of the Player and does not fall within the scope of jurisdiction of the Chairman of the FIFA Disciplinary Committee acting alone, as defined under Article 78 of the FIFA Disciplinary Committee, which makes sense considering that the Disciplinary Committee of the Second Respondent has the exclusive competence to sanction any misconduct during the 2015 Copa America. The letter was purely informative and did not have any effect on the legal situation of the Appellant. Tellingly, the letter makes explicit reference to the fact that it corresponds to an opinion, which was given in reply to the CONMEBOL request of 22 June 2015 and communicated to the Appellant on the following day.
- The FIFA letter does not exclude the possibility for the FIFA Disciplinary Committee of dealing with the matter of the Player in the future, as it is the Appellant's responsibility to field the players it deems eligible in the qualifying matches for the 2018 FIFA World Cup in Russia.
- As to the grounds of appeal, the First Respondent notes that there are limits to the autonomy of the sports associations in the sense that the Second Respondent needs to respect at all times the FIFA Statutes and regulations (Article 20 para 3 lit a) of the FIFA

Statutes). Moreover, the FIFA regulations, such as the FIFA Disciplinary Code and in particular its Article 38 para 2 lit. e), which provides that remaining match suspensions from confederation competitions for representative teams are served during the relevant representative team's next official match in a FIFA competition, prevail over the Confederations regulations.

- Member associations, including the Appellant and Confederations, are well aware of this principle, which has been included in the FIFA Disciplinary Code since 2005. In fact, the First Respondent had informed the Appellant of the direct application of Article 38 of the FIFA Disciplinary Code on the occasion of the carried over match suspensions of the Brazilian player L. after the 2011 Copa America and in view of the 2014 FIFA World Cup in Brazil.
- The “collision of norms” situation in the case at hand has to be resolved by way of interpretation. The *lex specialis* principle is not applicable to this particular case since the legal provisions at issue are not of identical legal nature. The FIFA regulations being of higher rank, the legal principle applicable in the situation at stake is *lex superior derogate legi inferiori*.

V. JURISDICTION

42. The jurisdiction of the CAS, which is not disputed, derives from Article 67 para 1 of the FIFA Statutes (2015 edition), which provides 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 Code.
43. It follows that CAS has jurisdiction to decide on the present dispute.

VI. ADMISSIBILITY

44. The appeal was filed within the 21 days set by Article 67 para 1 of the FIFA Statutes (2015 edition). The appeal complied with all other requirements of Article R48 of the Code, including the payment of the CAS Court Office fee.
45. It follows that the appeal is admissible.

VII. APPLICABLE LAW

46. Article R58 of the Code provides as follows:

“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”.

47. In this respect, Article 66 para 2 of the FIFA Statutes stipulates that:

“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”.

48. As a result, the Panel will, subject to the primacy of the applicable regulations of FIFA, subsidiarily apply Swiss law in case of a lacuna.

VIII. PRELIMINARY ISSUE: THE REQUEST FOR INTERVENTION FROM THE URUGUAYAN FOOTBALL ASSOCIATION

49. According to CAS jurisprudence, any party claiming a legitimate interest to intervene must have a concrete interest in challenging a decision (CAS 2009/A/1880 & 1881; CAS 2007/A/1329 & 1330; CAS 2006/A/1206).
50. The Appealed Decision rules on the admissibility of the appeal filed by the Appellant against the FIFA letter of 11 July 2015. Whether or not such letter is or not a decision which can be appealed against (see below) is not relevant to the issue of the existence of the Uruguayan Football Association’s interest to intervene. In this respect, the Panel considers that the Uruguayan Football Association cannot have any interest in intervening against such a decision on admissibility from FIFA.
51. Furthermore, even if the object of the appeal is the resolution of an alleged controversy regarding the carrying over of pending match suspensions from the Copa America to the next competitions, the Panel notes that the Uruguayan Football Association failed to file an appeal against the FIFA letter of 11 July 2015 or to request clarification with respect to the issue of the carrying over of sanctions. Therefore, the Panel deems that the Uruguayan Football Association’s request for intervention at the level of the CAS proceedings is to be rejected.

IX. MERITS

52. According to Article R57 of the Code, the Panel has *“full power to review the facts and the law”*. As repeatedly stated in CAS jurisprudence, by reference to this provision the CAS appellate arbitration procedure entails a *de novo* review of the merits of the case, and is not confined merely to deciding whether the ruling appealed was correct or not. Accordingly, it is the function of this Panel to make an independent determination as to merits (CAS 2007/A/1394).
53. In light of the facts of the case and the arguments of the parties, the Panel has to take a decision on the following main issues:

- A. whether the Second Respondent has standing to be sued;
- B. whether the FIFA letter of 11 July 2015 contains an appealable decision; and
- C. in the event that the existence of an appealable decision is established, whether Article 38 para 2 lit. e) of the FIFA Disciplinary Code should prevail over Article 112 para 2 lit. d) of the CONMEBOL Disciplinary Regulation.

A. Standing to be sued of the Second Respondent

- 54. The first issue to be resolved is whether the Second Respondent has standing to be sued in the current proceedings.
- 55. Both FIFA and CONMEBOL dispute the Appellant's designation of CONMEBOL as a Respondent in this arbitration.
- 56. The Panel notes that neither the FIFA Regulations nor the Code contain any specific rule regarding standing to be sued.
- 57. The Panel consequently refers to the definition given to the term by the CAS jurisprudence. In this respect, the CAS Panel in the case CAS 2007/A/1329 & 1330 ruled that *"(u)nder Swiss law, applicable pursuant to Articles 60.2 of the FIFA Statutes and R58 of the CAS Code, the defending party has standing to be sued (légitimation passive) if it personally obliged by the "disputed right" at stake (see CAS 2006/A/1206). In other words, a party has standing to be sued and may thus be summoned before the CAS only if it has some stake in the dispute because something is sought against it (cf. CAS 2006/A/1189; CAS 2006/A/1192)".*
- 58. Additionally, in the absence of any explicit rules in the FIFA Regulations, the Panel should subsidiarily apply Swiss law and, more specifically, Article 75 of the Swiss Civil Code ("Swiss CC") which regulates the possibility of a member of an association to challenge resolutions made by the association. That Article has consistently been interpreted by Swiss legal doctrine and jurisprudence to mean that when the sports association is taking a decision in a matter which concerns its relationship to one of its members, it is the association that issued the resolution at stake which has capacity to be sued (HEINI/SCHERRER, *Basler Kommentar*, 2nd edition, 2002, no 20 ad Art. 75 Swiss Civil Code; RIEMER H.M, *op. cit.*, no 60 ff. ad Art. 75 Swiss Civil Code; cf. BGE 122 III 283). Moreover, according to Article 75 of the Swiss CC, the members of an association have standing to appeal against a resolution of an association, whereas only the association itself has standing to be sued, except for cases where rights related to the association do not come into play (see MAVROMATI/REEB, *The Code of the Court of Arbitration for Sport. Commentary, Cases and Materials*, p. 412).
- 59. Lastly, the Panel also notes that CONMEBOL was not a party in the FIFA proceedings and that no relief is sought by the Appellant against it.

60. In this respect, the Panel also wishes to highlight that the Appellant opted not to challenge by any legal means available to it the CONMEBOL communication of 23 June 2015, by means of which CONMEBOL informed its member associations that the remaining match suspensions were to be served during the next official FIFA competition.
61. In light of the foregoing, the Panel rules that CONMEBOL has no standing to be sued in the current proceedings.

B. Nature of the FIFA letter of 11 July 2015

62. The First Respondent challenges the admissibility of the Appellant's appeal before the FIFA Appeal Committee on the basis of considering that the FIFA letter of 11 July 2015 did not contain any appealable decision; on the contrary it claims that said letter was of a purely informative nature.
63. In turn, the Appellant argues that such letter constituted or reflected a decision of the FIFA Disciplinary Committee, since it ruled on a controversial matter and affected the legal situation of the Appellant, and for that reason was subject to appeal.
64. The Panel shall therefore examine whether the letter of FIFA of 11 July 2015 contains any decision of the FIFA Disciplinary Committee (or its President acting alone) that could have been subject to appeal before the FIFA Appeal Committee.
65. In this context, the Panel finds that neither the FIFA Regulations nor the Code provide any general definition or guidance as to the notion of "decision". Nevertheless, the Panel notes that the FIFA Disciplinary Code contains some provisions which may be of relevance, namely Article 118, which defines the decisions that are subject to appeal before the FIFA Appeal Committee ("*...any decision passed by the Disciplinary Committee...*") and Articles 76-78, which analyse the jurisdiction of the FIFA Disciplinary Committee to pass decisions in the following terms:

"Article 76. General jurisdiction"

The FIFA Disciplinary Committee is authorised to sanction any breach of FIFA regulations which does not come under the jurisdiction of another body.

Article 77. Specific jurisdiction

The Disciplinary Committee is responsible for:

- a) sanctioning serious infringements which have escaped the match officials' attention;*
- b) rectifying obvious errors in the referee's disciplinary decisions;*
- c) extending the duration of a match suspension incurred automatically by an expulsion (cf. art 18, par. 4);*

d) pronouncing additional sanctions, such as a fine.

Article 78. Jurisdiction of the chairman ruling alone

1. The chairman of the Disciplinary Committee may take the following decisions alone:

a) suspend a person for up to three matches or for up to two months;

b) pronounce a fine of up to CHF 50,000;

c) rule on extending a sanction (art. 136);

d) settle disputes arising from objections to members of the Disciplinary Committee;

e) pronounce, alter and annul provisional measures (cf. art. 129).

[...]”.

66. It follows from the above that the FIFA Disciplinary Committee’s general jurisdiction extends to passing decisions that impose sanctions on the natural and legal persons listed under Article 3 of the FIFA Disciplinary Code, for any breach of FIFA regulations which does not come under the jurisdiction of another body.
67. At the same time, CAS panels have interpreted and attempted to define the term “decision” within the meaning of Article R47 of the Code on numerous occasions, as follows:
 - *“A decision is thus a unilateral act, sent to one or more recipients and is intended to produce legal effects”* (CAS 2004/A/659 para 36; CAS 2004/A/748, para 89);
 - *“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. However, there can also be a decision where the body issues a ruling as to the admissibility or inadmissibility or a request, without addressing the merits of such request”* (CAS 2008/A/1705, para 5.2.1; CAS 2005/A/899, para 61; CAS 2004/A/748, para 89).
68. Additionally, legal doctrine provides that 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”* (BERNASCONI M., *When is a „decision” an appealable decision?*, in: RIGOZZI/BERNASCONI (eds.), *The Proceedings before the CAS*, Bern 2007, p. 273).
69. In its attempt to define the notion of “decision”, the Panel also refers to Swiss law which applies subsidiarily and notes that Swiss administrative law contains a definition of “decision” in Article 5 para 1 of the Administrative Procedure Act as follows:

“Rulings are decisions of the authorities in individual cases that are based on the public law of the Confederation and have as their subject matter the following:

a. the establishment, amendment or withdrawal of rights or obligations;

b. a finding of the existence, non-existence or extent of rights or obligations;

c. the rejection of applications for the establishment, amendment, withdrawal or finding of rights or obligations, or the dismissal of such applications without entering into the substance of the case”.

70. Furthermore, according to a definition of “decision” given in the jurisprudence of the Swiss Federal Tribunal, *“the decision is an act of individual sovereignty addressed to an individual, by which a relation of concrete administrative law, forming or stating a legal situation, is resolved in an obligatory and constraining manner. The effects must be directly binding both with respect to the authority as to the party who receives the decision”* (cf. ATF 101 Ia 73).
71. In this context, the Panel notes the wording used by the secretariat to the FIFA Disciplinary Committee in its letter of 11 July 2015 February 2012, in particular the statements: *“[t]he Chairman is of the opinion that Art. 38 par. 2 lit e) of FIFA Disciplinary Code regulates specifically...”* and *“[f]inally we would like to add by way of explanation that the foregoing is of a purely informative nature only and hence without prejudice whatsoever”* (emphasis added).
72. In addition, the Panel observes that the FIFA Disciplinary Committee or its President acting alone have no general or specific jurisdiction as per Articles 76-78 of the FIFA Disciplinary Code to pass “decisions” affecting the legal status of the Appellant and/or its right to field the Player, for a breach of regulations other than FIFA’s.
73. Eventually, the FIFA letter at issue in principle leaves room for the matter to be decided before the competent FIFA body, if the need arises (*“the foregoing is of a purely informative nature only and hence without prejudice whatsoever”*).
74. That said the FIFA letter at issue also sets out the clear “position” of the Chairman that “the pending suspensions of the Copa America Chile 2015 have to be served in the next qualifier matches for the 2018 FIFA World Cup Russia”. However it was characterized, that expression of “position” on behalf of the Chairman was bound in practice to have a certain dispositive effect with respect to CONMEBOL.
75. The Panel considers that it is necessary to look at the substance of an act, not its formal (or informal) characterisation (see CAS 2005/A/899, para 63).
76. Based on the above, the Panel concludes that the FIFA letter of 11 July 2015 cannot properly be said to have been exclusively informative in character: it also reflected an authoritative view by a significant FIFA person acting in a formal capacity, and it constituted an expression of view that was bound to alter the prospects of any final decision that might be taken. Both the doctrine and jurisprudence confirm that, generally, *“a communication is qualified as a decision if it contains a ruling intending to affect the legal state of the addressee of the decision or other parties”*

(MAVROMATI/REEB, The Code of the Court of Arbitration for Sport. Commentary, Cases and Materials, p. 384). The same principle has been recognised, among others, in CAS 2004/A/659 (see paras 35, 36 with reference to the definition of “decision” of the Swiss Federal Tribunal).

77. The fact that the FIFA Appeal Committee also considered the substantive part of the appeal submitted by the CBF, and set out a view (however it is characterized) that confirmed the conclusion of the FIFA letter of 11 July 2015, serves only to confirm the Panel’s findings. In the face of such views, the prospects of CONMEBOL reaching a different conclusion were severely limited if not actually non-existent. If FIFA Disciplinary Committee and the the FIFA Appeal Committee had not expressed a view on the merits, the Panel’s conclusion might be different, but they having done so the Panel is unable to conclude that the views expressed did not affect the legal rights of the Appellant, not least by limiting its expectation as to the prospects of a further challenge to CONMEBOL.
78. In view of the above, the Panel considers that the Appealed Decision was not correct in determining that the appeal filed by the Appellant against the FIFA letter of 11 July 2015 was inadmissible.
79. Having regard to the particular facts of the case, as set forth in the record before it, the Panel concludes that the FIFA letter dated 11 July 20 constituted a decision that is capable of being challenged because it affected the legal rights of the Appellant.

C. The relationship between FIFA and CONMEBOL disciplinary regulations

80. The Panel notes that FIFA is the world governing body of association football and CONMEBOL is one of the six continental Confederations recognised by FIFA, which are formed by FIFA-member football associations of the same continent.
81. The Panel further notes that Article 38 of the applicable FIFA Disciplinary Code (edition 2011), which addresses the carrying over of match suspensions, stipulates that:

“1. As a general rule, every match suspension (of players and other persons) is carried over from one round to the next in the same competition.

2. Match suspensions in relation to an expulsion [...] not served during the competition for which they were intended (elimination or last match in the competition) are carried over as follows: [...] e) confederation competitions for representative teams: carried over to the representative team’s next official match in a competition organised by FIFA; [...]” (emphasis added).
82. Regarding the relationship between the legal frameworks of FIFA and the Confederations, Article 20 para 3 lit. a) of the FIFA Statutes provides that each Confederation is bound *“to comply with and enforce compliance with the Statutes, regulations and decisions of FIFA”* (emphasis added). The terms of this provision are clear.

83. In addition, according to Article 20 para 5 of the FIFA Statutes “[t]he Confederations’ statutes and regulations shall be submitted to FIFA for approval”.
84. In this context, the Panel notes that Article 3 para 2 of the CONMEBOL Statutes (edition 2014, available in the CONMEBOL website) under the title “Relationship of CONMEBOL with FIFA” provides that “*La CONMEBOL cumplirá con las obligaciones dispuestas en los Estatutos de la FIFA y ejercerá los derechos que como Confederación se le reconocen en los mismos*” (which informally translates as “CONMEBOL shall comply with the obligations provided under the FIFA Statutes and shall exercise the rights that are recognised for it as a Confederation therein”).
85. The Panel notes that it has not been provided with any evidence that CONMEBOL has submitted its own disciplinary regulations at issue to FIFA for approval.
86. In view of the above and considering the superior position of FIFA, as the global governing body of football, in relation to CONMEBOL, the Panel concludes that Article 38 para 2 lit. e) of FIFA Disciplinary Code is properly to be interpreted as setting forth a clear provision regulating the matter of carrying over match suspensions from a Confederation competition for representative teams to the next competition organised by FIFA. In addition, that provision being of a higher rank than Article 112 para 2 lit. d) of the CONMEBOL Disciplinary Regulation, the Panel concludes that it prevails over an inconsistent CONMEBOL rule.
87. Finally, the Panel notes that member associations, including the Appellant, cannot be said to be unaware of Article 38 para 2 lit. e) of FIFA Disciplinary Code, which has formed a part of the FIFA Disciplinary Code since 2005. In fact, the First Respondent itself informed the Appellant of the direct application of Article 38 of the FIFA Disciplinary Code on the occasion of match suspensions in respect of the Brazilian player L., which were carried over from the 2011 Copa America into the 2014 FIFA World Cup in Brazil. In such circumstances, the Panel is unable to conclude that CONMEBOL was unaware of the rule or had previously expressed any objection to it.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed on 14 September 2015 by the Brazilian Football Confederation (CBF) against the decision rendered by the FIFA Appeal Committee on 7 August 2015 is dismissed.
2. The decision rendered by the FIFA Appeal Committee on 7 August 2015 is confirmed.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.