



**Arbitration CAS 2015/A/4184 Jobson Leandro Pereira de Oliveira v. Fédération Internationale de Football Association (FIFA), award of 25 April 2016 (operative part of 24 March 2016)**

Panel: Mr Hendrik Kesler (the Netherlands), President; Prof. Philippe Sands QC (United Kingdom); Prof. Ulrich Haas (Germany)

*Football*

*Extension of sanction to have worldwide effect under the FIFA DC*

*Two-stage process*

*Purpose and ratio of articles 136 et seq. FIFA DC*

*Scope of review of the underlying decision*

*Proper citation under article 137(a) FIFA DC*

*Compliance of a disciplinary decision with the regulations of FIFA*

*Sanction for second anti-doping rule violation and right to work*

- 1. In extending sanctions to have worldwide effect in accordance with the FIFA Disciplinary Code (FIFA DC), FIFA is required to adopt a two-stage process. First, a doping-related legally binding sanction imposed by another international sports association, national anti-doping organisation or other state body that complies with fundamental legal principles will be automatically adopted by FIFA. Subsequently, as a second and distinct step, FIFA may act to extend the sanction to one that will have a worldwide effect, provided that some requirements of the FIFA DC are met. This second step is not automatic, and will only occur if FIFA explicitly so decides.**
- 2. Articles 136 et seq. FIFA DC must be interpreted in light of their underlying ratio. Those provisions are intended to strike a balance between opposing interests. On the one hand, there is a need to avoid a situation in which a player who has committed a serious offence, such as an anti-doping rule violation, and who has been suspended by a national association, might be able to transfer to another federation and continue to play there. On the other hand, the provisions also seek to protect players by ensuring no automatic extension of a national sanction on a worldwide scale unless certain minimum legal requirements are met. In principle, however, a person who has been found guilty of a serious disciplinary violation should be subject to a global ban; the alternative approach would undermine the effectiveness of a national sanction.**
- 3. In the context of a recognition/extension procedure FIFA's power to review the underlying decision is limited. Accordingly it is not open to FIFA to review the decision *de novo*; put differently FIFA may not review the substance of the decision. It is only to be established whether the procedure leading to the underlying decision, as well as to the legality of its content and of the extension of its effects have been fulfilled.**

4. An athlete who first refuses to accept documents related to anti-doping proceedings opened against him and later on, despite having agreed to a specific location and time where and when to accept the respective documents, does not show up in the agreed upon location at the agreed upon time, cannot in good faith argue that he was not properly cited in the meaning of article 137(a) FIFA DC. This follows from the legal principle of *venire contra factum proprium* which provides that where the conduct of one party has induced legitimate expectations in another party, the first party is estopped from changing its course of action to the detriment of the second party.
5. The operative part of a disciplinary decision needs to comply with the regulations of FIFA for it to be extended to have worldwide effect. An appropriate test appears to be to examine whether the act committed by the person sanctioned also violates the regulations of FIFA and whether the sanction does not exceed the sanctions provided for under the regulations of FIFA. However, notwithstanding whether this first test is complied with, it also needs to be examined whether a blatant violation of the FIFA Statutes or regulations occurred, which should lead to the consequence that the sanction cannot be extended to have worldwide effect; for a blatant violation to occur the violation needs to be of a certain gravity and it needs to be proven that such violation indeed occurred.
6. A four-year period of ineligibility imposed on an athlete for a second anti-doping rule violation is rather lenient when taking into account the greater range of sanctions provided for in the WADA Code for a second anti-doping rule violation. Furthermore whereas an athlete has the freedom to choose an occupation, his profession is subjected to certain generally accepted rules, including anti-doping regulations. It is generally accepted in CAS jurisprudence and by the Swiss Federal Tribunal that professional athletes may be suspended for violating anti-doping regulations. Accordingly a four-year period of ineligibility is not an unacceptable limitation of the fundamental freedom to work.

## I. PARTIES

1. Mr Jobson Leandro Pereira de Oliveira (hereinafter: the “Appellant” or the “Player”) is a professional football player of Brazilian nationality.
2. The Fédération Internationale de Football Association (hereinafter: the “Respondent” or “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 federations, national associations, clubs, officials and football players worldwide.

## **II. FACTUAL BACKGROUND**

### **A. Background Facts**

3. 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 appeals arbitration proceedings and the hearing. 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.
4. On 14 September 2011, by means of an arbitral award in CAS 2010/A/2307, a two-year period of ineligibility was imposed on the Player by the Court of Arbitration for Sport for an anti-doping rule violation.
5. On 21 March 2014, Al Ittihad FC (hereinafter: the "Club"), a football club with its registered office in Jeddah, Saudi Arabia, lodged a claim against the Player before the Dispute Resolution Chamber of FIFA (hereinafter: the "FIFA DRC") because of an employment-related dispute.
6. On 25 March 2014, it was allegedly attempted to subject the Player to an out-of-competition doping control at the premises of the Club, which he allegedly refused. The Saudi Arabian Anti-Doping Committee (hereinafter: the "SAADC"), the Saudi Arabian Football Federation (hereinafter: the "SAFF") and the Club maintain that the Player was approached by Mr Atef Tashkendi, team administrator of the Club, and Mr Maher Hallak, interpreter of the Club, and that they notified the Player of the doping control. The Player denies having been notified of the doping control.

### **B. Proceedings before the Saudi Arabian Anti-Doping Disciplinary Panel**

7. On 31 March 2014, the SAADC provisionally suspended the Player as of 1 April 2014 until a final decision would be taken and invited the Player for a hearing that was set to take place on 8 April 2014 in the office of the General Presidency of Youth Welfare in Jeddah at 11:00 am. This letter was sent to the Club with the request to forward it to the Player.
8. Also on 31 March 2014 (the letter is dated 31 February 2014, however, the Panel understands this to be a typographical error), three Club representatives issued a report whereby they declared that the Player refused to receive the letter dated 31 March 2014.
9. On 3 April 2014, the General Secretary to the SAADC contacted the Player directly by telephone, with the help of an interpreter of the SAFF. The SAADC informed the Player that a hearing/meeting would be held in respect of his alleged anti-doping rule violation in Jeddah, Saudi Arabia, on 8 April 2014 at 11:00 hour. During this phone call, the Player indicated that he had learned about the allegations from the newspapers and confirmed that he would come to the hearing/meeting and that he would pick up the relevant documents at the Club on the same day.

10. On 8 April 2014, the Player did not appear at the hearing in Jeddah, Saudi Arabia at 11:00 hour, and did not pick up the documents from the Club.
11. On 8 April 2014, the SAADC decided to reschedule the hearing to 16 April 2014.
12. Late in the evening of 8 April 2014, Mr Abdulaziz Eid Alsafrani, Doping Control Officer (hereinafter: the “DCO”), attempted to deliver a confidential letter from the SAADC to the Player at the hotel where the Player stayed at the time, by which the Player was cited for a hearing in relation to the alleged anti-doping rule violation on 16 April 2014. The Player was said, however, to have refused to receive such letter, and alleged to have said that he would not receive the letter in his accommodation, but at the premises of the Club at 19:00 hour the next day.
13. On 9 April 2014, the DCO attempted to deliver the letter to the Player at the premises of the Club and waited for the Player from 18:00 until 20:00 hour, but the Player did not show up to receive the letter as per the agreement.
14. On 16 April 2014, the Player did not appear at the hearing. The Saudi Arabian Anti-Doping Disciplinary Panel nevertheless convened and rendered a decision in respect of the Player’s alleged anti-doping rule violation, whereby it was decided to impose a 4-year period of ineligibility on the Player (hereinafter: the “Saudi First Instance Decision”).
15. On 24 April 2014, the SAFF informed FIFA of the period of ineligibility imposed on the Player.
16. On 28 April 2014, the Player, at that time represented by counsel, informed the Club and the SAFF *inter alia* that he understood from the press that he was allegedly involved in a doping dispute and that he allegedly had been banned or would risk being banned. He asserts that he asked the Club to provide him with any and all documents regarding the doping matter in order for the Player to be granted his right to be heard, which request apparently remained unanswered by the Club.

### **C. Proceedings before the Saudi Arabian Anti-Doping Appeal Panel**

17. On 13 May 2014, the SAADC informed the secretariat to the FIFA Disciplinary Committee of its appeal lodged against the Saudi First Instance Decision.
18. On 27 August 2014, the Saudi Arabian Anti-Doping Appeal Panel rendered a decision against the Player (hereinafter: the “Saudi Second Instance Decision”), sanctioning the Player with a period of ineligibility of 8 years, starting as from the date on which the provisional suspension was imposed, *i.e.* 1 April 2014.
19. Also on 2 September 2014, the SAFF provided the secretariat to the FIFA Disciplinary Committee with a copy of the Saudi Second Instance Decision, duly translated into English.

**D. Proceedings before the Chairman of the FIFA Disciplinary Committee (part 1)**

20. On 26 September 2014, the secretariat to the FIFA Disciplinary Committee asked the SAFF to confirm whether the following condition established under article 137 of the FIFA Disciplinary Code had been met, namely whether the Saudi Second Instance Decision had been properly communicated to the Player by providing the secretariat to the FIFA Disciplinary Committee with a copy of the relevant proof demonstrating that the decision in question had duly been communicated to the Player.
21. On 30 September 2014, the SAFF sent to the secretariat to the FIFA Disciplinary Committee a letter of the SAADC, in which the latter stated having sent on 28 August 2014 a copy of the Saudi Second Instance Decision to the SAFF and having informed the World Anti-Doping Agency (hereinafter: “WADA”) on 2 September 2014 of the decision on appeal in question and of the fact that the Player is “*no more with Saudi club*” and that he “*return back to Brazil*”.
22. On 1 October 2014, the secretariat to the FIFA Disciplinary Committee asked the SAFF again to confirm whether the following condition established under article 137 of the FIFA Disciplinary Code had been met, namely whether the Saudi Second Instance Decision had been properly communicated to the Player by providing the secretariat to the FIFA Disciplinary Committee with a copy of the relevant proof demonstrating that the decision in question had duly been communicated to the Player. Furthermore, in case the Saudi Second Instance Decision had been communicated to the Player via the Brazilian Football Confederation (hereinafter: the “CBF”), the secretariat to the FIFA Disciplinary Committee asked the SAFF to be provided with the relevant correspondence sent to the CBF informing it of the decision on appeal in question, as well as with the relevant proof indicating that said correspondence had duly been communicated to the CBF.
23. On 1 October 2014, according to FIFA, the Player sent a letter to the secretariat to the FIFA Disciplinary Committee that arrived on 2 October 2014, claiming that he had never been formally notified of any anti-doping related proceedings in Saudi Arabia against himself.
24. On 5 October 2014, according to FIFA, the SAFF forwarded to the secretariat to the FIFA Disciplinary Committee a correspondence of the SAADC dated 3 October 2014 in which the latter referred to a previous correspondence in which it had already mentioned that WADA had allegedly informed the SAADC that it “*will notify FIFA and the Brazilian NADO*”, enclosing a copy of an e-mail, which was sent by WADA to the FIFA Medical Office.
25. On 20 October 2014, and received on 21 October 2014, the legal representative of the Player informed the secretariat to the FIFA Disciplinary Committee that he was surprised to have been found to be “*ineligible to play in any competitions organised by FIFA or its affiliated members until January 2022*” and because he had “*reasons to believe that a request in the sense provided for by article 136 of the FIFA Disciplinary Code may have been filed by the Saudi Arabian Football Federation (SAFF) to the Disciplinary Committee of FIFA*”. Furthermore, “*in view of the noncompliance with the conditions established in article 137 of FIFA Disciplinary Code*” the legal representative of the Player requested the secretariat to the FIFA Disciplinary Committee “*not to pronounce the* [Saudi Second Instance

Decision] *to have worldwide effect*". The arguments advanced by the Player to corroborate such request were that *"the Player was never formally notified of any anti-doping related proceedings in Saudi Arabia against him"*, that the Player *"did not have the opportunity to state his case"*, that *"the [Saudi Second Instance Decision] was not properly communicated"*, that he did not know *"if the [Saudi Second Instance Decision] complied with the FIFA regulations as its grounds are unknown"* and that the *"proceedings before the Saudi Arabian Football Federation violated the public order and the accepted standards of behaviour as the principles of right to be heard and due process were not respected"*.

26. On 5 November 2014, the secretariat to the FIFA Disciplinary Committee informed the SAFF and the Player that in view of the documents at the disposal of the secretariat to the FIFA Disciplinary Committee at the time, *"it appears that to date the conditions established in art. 137 of the FIFA Disciplinary Code for an extension of the sanction imposed by the Saudi Anti-Doping Appeal panel on 27 August 2014 against the Player so as to have worldwide effect are not fulfilled"*. Furthermore, the secretariat to the FIFA Disciplinary Committee asked the SAFF to be provided by 14 November 2014 at the latest with the following information and documents regarding the proceedings before the first instance, namely with signed affidavit of all the persons who had been involved in the procedure of the first instance and had been able to provide relevant information with regard to the communications and attempted communications made to the Player including the assertions that the Player had refused to receive certain information and documents as well as with all documentary evidence demonstrating that the Saudi First Instance Decision had duly been communicated, or at least had attempted to be communicated to the Player. In this respect, the secretariat to the FIFA Disciplinary Committee additionally emphasised that the documentary evidence should establish in a clear and chronological manner the communication of the Saudi First Instance Decision, whereby all stakeholders involved should be disclosed, such as associations, clubs and the Player. Finally, the secretariat to the FIFA Disciplinary Committee asked the Player to be provided by the same deadline with his preliminary comments on all the different aforementioned steps that had been undertaken in relation to the provisional suspension and the proceedings conducted by the first instance that had led to the imposition of a period of ineligibility of 4 years and informed the Player that upon receipt of the documentation requested from the SAFF he would be provided with the complete file in the secretariat to the FIFA Disciplinary Committee's possession as well as with another deadline in order to enable him to present his statements.
27. On 21 November 2014, counsel for the Player provided the secretariat to the FIFA Disciplinary Committee with certain information in respect of the Player's relationship with the Club and the events that unfolded at the end of the employment relationship.
28. On 3 December 2014, the SAFF provided the secretariat to the FIFA Disciplinary Committee – amongst others – with signed affidavits from the relevant persons of the SAFF, namely: Mr Ahmed A. Al Khamis (General Secretary of the SAFF), Mr Aymen Ahmed Obaid (translator of the SAFF), Mr Atef A-Tashkandi (administrator of the Club), Mr Maher Al-Hallaq (translator of the Club), Mr Abdulaziz Abdulrahman Al-Masaed (General Secretary of the SAADC), Mr Mohammad Nabeel Dobain (translator of the SAADC), Mr Abdul Aziz Al-Safrani (Doping Control Official) and Mr Haider Abdullah Abu Hanash (member of the doping control team). According to FIFA these affidavits supported the allegations made with regard to the out-of-

competition doping control, the provisional suspension of the Player and the proceedings conducted at first instance. Moreover, the SAFF provided the secretariat to the FIFA Disciplinary Committee with a letter addressed to the Club, informing the Club in question of the Saudi First Instance Decision as well as with the relevant fax confirmation according to which the aforementioned letter had apparently been successfully sent to the Club by the SAADC on 17 April 2014.

29. On 20 January 2015, the secretariat to the FIFA Disciplinary Committee informed the Player that he would be provided with the complete case file and was granted a deadline to provide the secretariat to the FIFA Disciplinary Committee with his comments on the file.
30. On 2 February 2015, the Player informed the secretariat to the FIFA Disciplinary Committee with his comments in respect of the case file received on 20 January 2015.

#### **E. Procedure regarding Cancellation of Saudi Second Instance Decision**

31. On 20 March 2015, WADA sent a letter to the Saudi Arabian Anti-Doping Appeal panel noting that “[i]t has come to the attention of WADA that there are doubts as to whether the First Instance Decision was effectively notified to the Player. Assuming that the First Instance Decision was not effectively notified on the Player, he may not have had the opportunity to appeal against the First Instance Decision and/or participate in the subsequent appeal proceedings. In these circumstances, WADA respectfully requests your esteemed Panel to consider this application for a re-hearing in order to address certain procedural issues. In particular, WADA respectfully requests:

1. That the Appeal Decision be set aside and a re-hearing granted.
2. That FIFA be requested to assist in the (re)notification of the First Instance Decision on the Player and to confirm such (re)notification to the Appeal Panel in writing once it has occurred.
3. That the appeal proceedings be adjourned for such a period as is necessary (not to exceed ninety days) in order for the Player to be notified of his right of appeal against the First Instance Decision and to be given the opportunity to file an appeal against such decision.
4. That the appeal proceedings – i.e. the hearing of the appeal already lodged by the Saudi-Arabian Anti-Doping Committee against the First Instance Decision and any subsequent appeal made by the Player within the relevant deadline – be re-initiated”.

32. On 13 April 2015, the Saudi Arabian Anti-Doping Appeal Panel issued “Resolution of Saudi Arabian Anti-Doping Appeal Panel No. 1/36 dated in 13/14/2015” (hereinafter: the “Cancellation of the Saudi Second Instance Decision”), with the following operative part:

- “1. Cancel the player’s resolution No. 1/35 dated in 27/08/2014 against player/Jobson Leandro Pereira De Oliveira.

2. *Return the whole file of the case to the Saudi Arabian Anti-Doping Panel to take the proper and necessary arrangements to inform the player of its resolution No. 190 dated 16/04/2014 as per the legal procedures”.*
33. On 16 April 2015, the SAADC provided the secretariat to the FIFA Disciplinary Committee with a copy of the Cancellation of the Saudi Second Instance Decision, both the original in Arabic and the translation into English.

#### **F. Proceedings before the Chairman of the FIFA Disciplinary Committee (part 2)**

34. On 20 April 2015, the secretariat to the FIFA Disciplinary Committee provided the Player, Botafogo de Futebol e Regatas (the Player’s club at the time), the CBF, the SAFF and WADA with a copy of the Cancellation of the Saudi Second Instance Decision and informed the Player that the chairman of the FIFA Disciplinary Committee *“will not consider the aforementioned appeal proceedings in the context of the proceedings of extension of the sanction to have worldwide effect”*. The secretariat to the FIFA Disciplinary Committee provided the above-mentioned parties with a copy of the Saudi First Instance Decision. In addition, the secretariat to the FIFA Disciplinary Committee provided the Player with the correspondence of the SAADC dated 16 April 2015, particularly informing the Player of the aforementioned Saudi First Instance Decision and of the deadline to appeal. Finally, the secretariat to the FIFA Disciplinary Committee informed the above-mentioned parties that *“the chairman of the FIFA Disciplinary Committee will evaluate the matter in terms of art. 136 ff. of the FIFA Disciplinary Code and all the parties would be informed about a possible decision on the extension of the sanction imposed on the player in question by means of the [Saudi First Instance Decision]”*.
35. On 21 April 2015, the chairman of the FIFA Disciplinary Committee rendered his decision (hereinafter: the “FIFA First Instance Decision”), with the following operative part:
  1. *The player Jobson Leandro Pereira de Oliveira (date of birth: 15 February 1988) is banned worldwide from taking part in any kind of football-related activity for four (4) years as of the date, on which the provision suspension was imposed, namely 1 April 2014. This ban covers – amongst others – all types of matches, including domestic, international, friendly and official fixtures.*
  2. *This decision will follow the outcome of any possible appeal lodged against the decision passed by the Saudi Arabian Anti-Doping disciplinary panel as long as the decision on appeal complies with the regulations of FIFA.*
  3. *The procedural costs are not to be borne by the player Jobson Leandro Pereira de Oliveira”.*
36. On 24 April 2015, the terms of the FIFA First Instance Decision were communicated to the Player (via his legal representative), to Botafogo de Futebol e Regatas (via the CBF), the CBF, CONMEBOL, SAFF, AFC and WADA.
37. On 4 May 2015, the Player sent a letter to the secretariat to the FIFA Disciplinary Committee, in which he objected to and criticised various aspects of the procedure that had been followed.

Also, the Player requested his letter to be forwarded to the competent Saudi authorities and to provide the Player with a clear framework regarding the procedural rules applicable to the resolutions of the Saudi Arabian Anti-Doping Appeal Panel, particularly concerning the ‘directions for appeal’.

38. On 7 May 2015, the secretariat to the FIFA Disciplinary Committee exceptionally forwarded the aforementioned letter of the Player, amongst others, to the SAFF as well as to the SAADC, asking them to communicate directly with the Player regarding any future correspondence, decisions etc. concerning proceedings taking place in Saudi Arabia. The secretariat to the FIFA Disciplinary Committee also informed the Player that if he wished to file an appeal against the Saudi First Instance Decision, he should file such appeal with the Saudi Arabian Anti-Doping Appeal Panel within a 21 day deadline and respecting any other conditions set out in the Saudi Anti-Doping Rules in Sport.

39. Also on 7 May 2015, the SAADC informed the Player, *inter alia*, as follows:

*“The decision of the Saudi Anti-Doping Disciplinary Panel dated 16 April 2014 is therefore in force and effect. As per our letter of 16 April 2015, you have a right to appeal against the decision of the Saudi-Anti-Doping Disciplinary Panel within 21 days of the notification of our letter dated 16 April 2015 (which we understand was sent by FIFA to your lawyer [...] on 20 April 2015).*

*Any appeal will of course be governed by the Saudi Anti-Doping Rules in Sport and should be sent to the Saudi Arabian Anti-Doping Committee (Saudi Anti-Doping Appeal Panel c/o Saudi Arabian Anti-Doping Committee). [...]”.*

40. On 8 May 2015, the Player acknowledged receipt of the SAADC’s letter dated 7 May 2015 and asked it to “provide us with the WADA letter dated 20/03/2015, which the athlete has never seen, as well as the entire file related to the [Cancellation of the Saudi Second Instance Decision]”, asking it “why, after WADA sent such a letter, the Saudi Anti-Doping Appeal Panel did not grant the player the right to be heard and comment on such a letter before the [Cancellation of the Saudi Second Instance Decision] was taken”, “according to which legal provision WADA was entitled to request the Saudi Anti-Doping Committee to cancel its [Saudi Second Instance Decision]”, “according to which legal provisions the Saudi Appeal Anti-Doping Committee was entitled to cancel such a previous resolution”, and if “it is possible in Saudi Arabia and, if yes, according to which rules, that the same body hears the same case three times”. Finally, the Player requested to “be informed of the composition of the Saudi Appeal Anti-Doping Committee”.

41. On 11 May 2015, the SAADC sent a letter to the Player’s legal representative, to which the WADA letter dated 20 March 2015 was attached. The SAADC informed the Player as follows:

*“There has been no news from Saudi Arabia in the last past months given that the proceedings concerning your client were considered as terminated for what relates to the Saudi Arabian Anti-Doping Committee.*

*Indeed, the first instance, the Saudi Anti-Doping Disciplinary Panel imposed a 4-year ban on your client on 16 April 2014. This decision was then appealed by the Saudi Anti-Doping Committee and the Saudi Anti-*

*Doping Appeal Panel pronounced an 8-year ban by decision dated 27 August 2014. Both these decisions were notified to the player through the Saudi Football federation, with copy to FIFA and WADA.*

*To our knowledge, it is only when FIFA started its own proceedings to extend the Saudi appeal decision at worldwide level that it came up that your client had apparently not been duly notified of the first instance decision and of the subsequent appeals proceedings. We understand that FIFA informed WADA of the situation and that it is the reason why WADA decided to bring this to the attention of the Saudi Anti-Doping Appeals Panel.*

*Given that your client was therefore not in a position to exercise his right of appeal against the first instance decision and to take part in the appeals proceedings, the Saudi Arabian Anti-Doping Appeal Panel considered that the appeals proceedings were to be declared void in order to safeguard Mr. Jobson's procedural rights. For this reason, Mr. Jobson was recently notified of the first instance decision and offered the possibility to appeal the 4-year ban pronounced in first instance".*

#### **G. First proceedings before the Court of Arbitration for Sport**

42. On 11 May 2015, the Player lodged a Statement of Appeal with the Court of Arbitration for Sport, challenging the Saudi First Instance Decision. The Player submits that one of the main jurisdictional arguments was that this case could not be heard by the Saudi Arabian Anti-Doping Appeal Panel, because such body denied the Player's right to be heard and in both occasions ruled against him. The Saudi Arabian Anti-Doping Appeal Panel was thus not impartial and independent and, in such situation, article 75(2) of the FIFA Anti-Doping Regulations (hereinafter: the "FIFA ADR") provide that in the absence of an independent and impartial body at national level, players may appeal to CAS. The Player submitted, *inter alia*, the following requests for relief:

"[...]

- e) *That the CAS set aside the Resolution of the Saudi Arabian Anti-Doping Disciplinary Panel No. 190 on 16/04/2014;*
- f) *That the CAS declares the Appellant not guilty of any anti-doping violation;*
- g) *Subsidiarily, in the event the above is rejected, that the CAS declares that the Appealed Decision has been cancelled by the subsequent appeal proceedings before the Saudi Appeal Anti-Doping Committee;*
- h) *Subsidiarily, in the event the above is rejected, that the CAS declares that the sanction imposed by the Resolution of the Saudi Arabian Anti-Doping Disciplinary Panel No. 190 on 16/04/2014 is excessive and shall therefore be reduced.*

"[...]"

43. On 25 June 2015, the SAFF, the SAADC and the Saudi Arabian Olympic Committee filed their submission on CAS jurisdiction, denying that CAS had jurisdiction because, allegedly, the FIFA

ADR would not be applicable in Saudi Arabia and that the Saudi Arabian Anti-Doping Appeal Panel was impartial and independent.

44. On 4 August 2015, the Player acknowledged the fact that the SAFF, the SAADC and the Saudi Arabian Olympic Committee declared the inapplicability of the FIFA ADR to the present matter and that, thus, CAS indeed did not have jurisdiction to rule on the matter.
45. On 6 August 2015, the Player withdrew his appeal before CAS.
46. On 25 August 2015, CAS issued a termination order in CAS 2015/A/4066 Jobson Leandro Pereira de Oliveira v. Saudi Arabian Football Federation, Saudi Arabian Anti-Doping Committee and Saudi Arabian Olympic. The Saudi First Instance Decision thereby became final and binding.

#### **H. Proceedings before the Chairman of the FIFA Appeal Committee**

47. On 27 April 2015 (*i.e.* before the grounds of the FIFA First Instance Decision were issued), the Player sent to the Chairman of the FIFA Appeal Committee a new statement of appeal, submitting the following requests for relief:

- a) That the Appeal of the [Player] is admissible;*
- b) That a provisional measure is immediately granted in favour of the [Player], granting the stay of the Appealed Decision;*
- c) That the Appealed Decision is set aside, because the conditions under letters a), b), d) and e) article 137 of the FIFA Disciplinary Code, necessary for a sanction to be extended to have worldwide effect, are not met in the present case;*
- d) Open an investigation against SAFF and the SAADC for the clear and ongoing breach of their obligations under the applicable FIFA Statutes, FDC and FIFA ADR, as well as for the severe abuse of power related thereto;*
- e) That the [Player's] appeal fee of CHF 3,000 is reimbursed by FIFA in case the [Player] wins the case; or, alternatively, that the remaining amount is reimbursed to the [Player], all in accordance with Article 123 FDC;*
- f) In any case, order that FIFA or the SAFF reimburse the [Player] for legal expenses to be determined ex aequo et bono by the Chairman, added to any and all FIFA administrative and procedural costs eventually incurred by the [Player].*

[...].”

48. On 30 April 2015, the secretariat to the FIFA Appeal Committee informed the Player that only the motivated decision can be appealed against to the chairman of the FIFA Appeal Committee.

49. On 12 May 2015, the grounds of the FIFA First Instance Decision were communicated to the Player via his legal representative, to Botafogo de Futebol e Regatas (via the CBF), the CBF, CONMEBOL, SAFF, AFC and WADA.
50. On 28 May 2015, the chairman of the FIFA Appeal Committee rejected the Player's request for suspensive effect.
51. On 28 May 2015, the chairman of the FIFA Appeal Committee rendered his decision (hereinafter: the "Appealed Decision"), with the following operative part:
- “1. *The appeal lodged by the [Player] is rejected and the decision rendered by the chairman of the FIFA Disciplinary Committee on 21 April 2015 is confirmed in its entirety.*
2. *The costs and expenses of these proceedings in the amount of CHF 3,000 are to be borne by the [Player]. This amount is set off against the appeal fee of CHF 3,000 already paid by the [Player].*”
52. On 27 July 2015, the grounds of the Appealed Decision were communicated to the parties, determining, *inter alia*, the following:

“Substantial part – Legal provisions

*In accordance with art. 141 par. 2 of the FDC, any grounds for complaint may only refer to the terms set out in art. 136 and 137 of the FDC and it is inadmissible to question the substance of the initial decision.*

*In regard to doping decisions taken by member associations, confederations or National Anti-Doping Organisations (hereinafter: NADO), they shall request FIFA to extend the sanction they have imposed so as to have worldwide effect (art. 136 par. 1 of the FDC). Furthermore, in the absence of such a request, the judicial bodies may themselves render a decision regarding the extension of the sanction to have worldwide effect (art. 136 par. 4 of the FDC).*

*According to art. 137 of the FDC, the Chairman makes his decision, in principle, without hearing any of the parties, using only the file.*

*According to art. 137 of the FDC, the sanction will be extended if:*

- a) *the person sanctioned has been cited properly;*
- b) *the person has had the opportunity to state his case (with the exception of provisional measures);*
- c) *the decision has been communicated properly;*
- d) *the decision complies with the regulations of FIFA;*
- e) *extending the sanction does not conflict with public order and accepted standards of behaviour.*

*Pursuant to art. 140 par. 2 of the FDC, if a decision that is not yet final in a legal sense is extended to have worldwide effect, any decision regarding extension shall always be based on the content of the NADO's, the association's or the confederation's current decision.*

*In accordance with art. 121 of the FDC, the appellant may object to inaccurate representation of the facts and/or wrong application of the law.*

[...]

#### Procedural aspects

*With regard to the proceedings before the chairman of the FIFA Disciplinary Committee, the Chairman refers to art. 138 par. 1 of the FDC, according to which the chairman makes his decision, in principle, without negotiations or hearing any of the parties, using only the file. Notwithstanding the foregoing, the Chairman wishes to point out that, upon request, the chairman of the FIFA Disciplinary Committee involved the Appellant in the proceedings.*

#### Application of the law by the chairman of the FIFA Disciplinary Committee

*The Chairman takes note that the Appellant claims that the conditions a), b), d) and e) of art. 137 of the FDC required for the extension of a sanction so as to have worldwide effect were not fulfilled, reason for which, from the Appellant's point of view, the sanction imposed on the Appellant should not have been extended so as to have worldwide effect by the chairman of the FIFA Disciplinary Committee.*

*In this regard, the Chairman recalls the contents of art. 141 par. 2 of the FDC, according to which any grounds for complaint may only refer to the terms set out in art. 136 and 137 of the FDC and it is inadmissible to question the substance of the initial decision. As a result, the Chairman will in the following refrain from analysing any argument related to the substance of the decision taken on national level and exclusively analyse arguments related to the question, whether or not the conditions established in art. 137 of the FDC were fulfilled in the present matter.*

#### **Conditions provided in art. 137 lit. a) and lit. b) of the FDC**

*In its lit. a) and b), art. 137 of the FDC establishes that a sanction will be extended, amongst others, if (a) the person sanctioned has been cited properly and (b) the person has had the opportunity to state his case (with the exception of provisional measures).*

*In this regard, the Chairman takes note that the Appellant claimed in his petition of appeal, amongst others, that, with regard to the 1st instance proceedings before the SAADC, he had not been cited properly and did not have the opportunity to state his case.*

*Having duly analysed the arguments brought forward by the Appellant [...], the Chairman makes the following considerations:*

- *According to the affidavit made by the General Secretary of the SAADC, Mr Abdulaziz Abdulrahman Al-Masaed, the Chairman notes that, on 2 April 2014, the Club sent a signed*

*report claiming that the Appellant was indeed notified of the provisional suspension through a letter, but refused to receive and sign the so-called "hearing form".*

- *Moreover, the Chairman notes that, on 3 April 2014, the Saudi Arabian Football Federation had a phone conversation with the Appellant. In accordance with the recording of the aforementioned phone conversation, the Chairman takes note of the fact that the Saudi Arabian Football Federation introduced itself at the beginning of the call. Furthermore, the Chairman notes that the Appellant claimed during the telephone conversation that he was not informed of a doping control to be conducted. Moreover, the Chairman observes that the Appellant claims not having received a letter informing him of a hearing. In addition, the Chairman notes that the Appellant was requested to sign the relevant hearing form and to be present at the relevant hearing. In addition, the Chairman takes note of the fact that still during the telephone conversation the Saudi Arabian Football Federation duly explained to the Appellant the reason for the out-of-competition test on 25 March 2014 and clarified to the Appellant that the SAADC is a neutral and independent body. Furthermore, the Chairman notes that the Appellant confirmed during the telephone conversation to be present at the hearing scheduled for 8 April 2014. Moreover, the Chairman observes that the Appellant confirmed to sign the hearing form on the same day.*
- *Furthermore, the Chairman notes that the General Secretary of the SAADC, Mr Abdulaziz Abdulrahman Al-Masaed, confirmed that the Appellant neither participated in the training on 3 April 2014 nor on 4 April 2014.*
- *In addition, the Chairman takes note of the affidavit made by the General Secretary of the SAADC, Mr Abdulaziz Abdulrahman Al-Masaed, according to which a Doping Control Officer tried in vain to inform the Appellant by means of a letter of a second hearing scheduled to be held on 15 April 2014. Moreover, the Chairman notes that in compliance with the affidavit made by the Doping Control Officer, Mr Abdul Aziz Al-Safrani, the latter tried in vain to personally deliver the aforementioned letter to the Appellant on 8 April 2014 at the headquarter of the Club. Furthermore, the Doping Control Officer in question tried in vain to personally deliver the letter in question to the Appellant at the hotel he was residing at that time. Finally, the Chairman takes note of the fact that, according to the affidavit of the Doping Control Officer in question, the Appellant - that only arrived at the hotel the next day - refused once again to receive the letter in question and stated towards the Doping Control Officer that, instead, he was going to receive it at the headquarter of the Club at 7 pm of the following day.*
- *In addition and in accordance with the affidavits made by the General Secretary of the SAADC, Mr Abdulaziz Abdulrahman Al-Masaed, and by the Doping Control Officer, Mr Abdul Aziz Al-Safrani, the Chairman notes that on 9 April 2014 - contrary to the statement made by the Appellant the day before - the Appellant did not participate in the training (cf. last sentence of the afore paragraph) and therefore did not receive the aforementioned letter.*
- *Finally, the Chairman addresses the contested "reliability of the Club" and the alleged "conflict of interests". The Chairman deems that the Appellant did not provide evidence, supporting his assertion that the Club's officials involved should not be considered as reliable. Furthermore, the Chairman considers that it was not only the Club's officials who notified the Appellant of the*

*procedure regarding an anti-doping rule violation. The Saudi Arabian Football Federation also directly contacted the Appellant by telephone and the SAADC, which is an organisation independent from the Appellant's Club, confirmed to have made attempts to notify the Appellant in writing and personally. Moreover, the Chairman wishes to underline that doping controls constitute standardised procedures, in which clubs need to be involved. In addition, the Chairman particularly points out that the doping control to which the Appellant had been cited would have anyway been performed by the independent SAADC.*

- *In view of the above, the Chairman deems that - in the context of the 1<sup>st</sup> instance proceedings before the SAADC - condition a) of art. 137 of the FDC was fulfilled and that the Appellant therefore had been cited properly. In view of the fact that condition a) of art. 137 of the FDC deems fulfilled, the Chairman considers that the Appellant also had the opportunity to state his case and therefore deems that condition b) of art. 137 of the FDC was duly respected in the context of the 1<sup>st</sup> instance proceedings before the SAADC.*

#### **Condition provided in art. 137 lit. c) of the FDC**

*Regarding condition c) of art. 137 of the FDC, the Chairman notes that the Appellant did not invoke any reasons, for which this condition would not have been fulfilled. Lit. c) of art. 137 of the FDC is only mentioned in the request of the Intention to Appeal with Request for Provisional Measures. Nevertheless, the Chairman wishes to point out that the Appealed Decision was communicated properly, amongst others, to the Appellant on 20 April 2015 to his legal representative which was not contested by the Appellant.*

#### **Condition provided in art. 137 lit. d) of the FDC**

*According to art. 137 lit. d) of the FDC, a sanction will be extended, amongst others, if the decision complies with the regulations of FIFA. However, art. 139 par. 2 of the FDC stipulates that the chairman may not review the substance of the decision and art. 141 par. 2 of the FDC specifies that it is inadmissible for the Appellant to question the substance of the initial decision.*

*The Chairman is therefore restricted to assess*

- (i) *whether the behaviour for which the Appellant was sanctioned on national level also constitutes a violation of the regulations of FIFA and*
- (ii) *whether the sanction imposed on the Appellant at national level does not exceed the frame of sanction provided in the regulations of FIFA for such violation.*

*The Chairman takes note that the SAADC banned the Appellant on 16 April 2014 for four (4) years for refusing or failing to submit to a doping control. This anti-doping rule violation "Evading, refusing or failing to submit to Sample collection" is also provided in art. 8 of the FIFA ADR 2012 and 2015 and as such complies with the regulations of FIFA.*

*Moreover, the Chairman notes that the sanction imposed on the Appellant, namely a period of ineligibility of four (4) years, does not exceed the frame of sanction provided by the FIFA regulations for such violation, considering that the Appellant was already found guilty of an anti-doping rule violation for the presence of a*

*prohibited substance and consequently was imposed a period of ineligibility of two (2) years (cf. CAS/2010/A/2307).*

*Consequently, the condition of art. 137 lit. d) of the FDC is fulfilled.*

### ***Condition provided in art. 137 lit. e) of the FDC***

*According to art. 137 lit. e) of the FDC, a sanction will be extended, amongst others, if extending the sanction does not conflict with public order and accepted standards of behaviour.*

*In this regard, the Chairman took note of the Appellant's claim that the extension of the sanction imposed by the Saudi Arabian Anti-Doping disciplinary panel on 16 April 2014 would be contradictory to public order. In this context, he alleges that the extension of the sanction would violate the right to privacy and the limit on excessive legal commitments, the right to work, the principle of the proportionality of the sanction as well as the right of a proper defence. Regarding this alleged violation of public order, the Appellant makes particular reference to the so called "Matuzalem-case".*

*Having analysed the arguments brought forward by the Appellant, the Chairman is of the clear opinion that the extension of the sanction by the chairman of the FIFA Disciplinary Committee does not conflict with public order. In this respect, the Chairman deems that the sanction imposed on the Appellant does not conflict with fundamental legal and moral values of the Swiss legal system. It shall particularly be mentioned that the Appellant was not discriminated towards other players. The sanction imposed on the Appellant is in line with the WADA Code, which is a unified and worldwide applicable standard. A possible deviation from the code is in any case only in favour of the Appellant - recalling in this context that, already in 2009, had the Appellant committed an anti-doping rule violation. If at all, a conflict with public order could at the very most be assumed in cases of lifetime bans, etc. In addition, reference shall be made to the International Convention against Doping in Sport, which is in force in Switzerland since 2008.*

*Finally, the Chairman makes particular reference to the "Matuzalem-case", which, in the Chairman's opinion, is not comparable to the matter at stake. On the one hand, the Chairman observes that the "Matuzalem-case" was principally about the payment of a compensation and only secondarily about an unspecified ban on any football-related activity lasting until the relevant liability would have been settled. In this respect, the Chairman wishes to underline that said ban on any football-related activity was only to be imposed on the relevant player in case of non-payment of the relevant compensation and upon explicit written request of the respective other party. Hence, the aforementioned ban on any football-related activity only constitutes a measure of execution, aiming at the payment of a compensation. In contrast, the present matter is about a breach of doping regulations whereupon the imposition of a ban on any football-related activity pursues the aim to penalise a player for his misconduct. In view of the foregoing, the Chairman deems that the sanction imposed on the Appellant cannot be compared to the "Matuzalem-case" and neither violates the fundamental right to privacy and the limit on excessive legal commitments nor the fundamental right to work, reason why the extension of the sanction in question is neither to be considered as a violation of the aforementioned rights.*

*As a result of the foregoing, the Chairman concludes that the condition established in art. 137 lit. e) of the FDC has been respected in the present matter.*

### Conclusion

*On the basis of the above-mentioned facts, the Chairman proceeds to analyse if the chairman of the FIFA Disciplinary Committee applied the law correctly.*

*In this regard, after examining all the documents relating to this matter, the Chairman notes that the conditions in art. 137 of the FDC have been met. Based on the information received from the Saudi Arabian Football Federation as well as on the affidavits the secretariat to the FIFA Disciplinary Committee has been provided with by the association in question, the Chairman considers that the Appellant has been cited properly and has had the opportunity to state his case. Furthermore - bearing in mind that on 20 April 2015 the secretariat to the FIFA Disciplinary Committee successfully communicated the Appealed Decision, amongst others, to the Appellant - the Chairman considers that the aforementioned decision has been communicated properly. Moreover, based on the above-mentioned considerations, the Chairman deems that the Appealed Decision complies with the regulations of FIFA. Finally and in accordance with the abovementioned examinations, the Chairman considers that the extension of the sanction imposed by the Saudi Arabian Anti-Doping disciplinary panel on 16 April 2014 on the Appellant does not conflict with public order and accepted standards of behaviour.*

*Consequently, the conditions of art. 137 of the FDC to extend the sanction in question imposed on the Appellant by the Saudi Arabian Anti-Doping disciplinary panel on 16 April 2014 so as to have worldwide effect are met.*

*Bearing in mind the foregoing and particularly with regard to the Appellant's request to open an investigation against the Saudi Arabian Football Federation as well as against the SAADC, the Chairman particularly recalls art. 141 par. 2 of the FDC, according to which any grounds for complaint may only refer to the terms set out in art. 136 and 137 of the FDC.*

*The Chairman determined that all further requests made by the Appellant are rejected.*

*In view of all the foregoing, the Chairman concludes that the decision taken by the chairman of the FIFA Disciplinary Committee on 21 April 2015 is to be confirmed in its entirety.*

*Finally, the Chairman decides that in accordance with art. 105 par. 1 of the FDC, the costs and expenses related to these proceedings in the amount of CHF 3,000 are to be borne by the Appellant. In application of art. 123 par. 3 of the FDC, this amount is set off against the appeal fee of CHF 3,000 paid by the Appellant”.*

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

53. On 17 August 2015, the Player filed a combined Statement of Appeal/Application for Provisional Measures, pursuant to Article R48 of the Code of Sports-related Arbitration (hereinafter: the “CAS Code”) with the Court of Arbitration for Sport (hereinafter: the “CAS”). The Player nominated Prof. Philippe Sands QC, Barrister and Professor of law in London, United Kingdom, as arbitrator. By means of this document, the Player applied for the following provisional measure (hereinafter: the “Request for a Stay”):

*“In view of the foregoing, the Appellant respectfully requests the honourable Division President grants a provisional measure, ordering the stay of the worldwide ban imposed to Appellant from any kind of football-related activity for four (4) years”.*

54. On 25 August 2015, the Player requested CAS that FIFA be ordered to produce the transcript of the audio-recording referred to in the Appealed Decision.
55. On 27 August 2015, FIFA provided the CAS Court Office with a transcript of the phone call.
56. On 31 August 2015, FIFA nominated Prof. Dr. Ulrich Haas, Professor of Law in Zurich, Switzerland, as arbitrator.
57. On 1 September 2015, the Player requested the President of the CAS Appeals Arbitration Division to order FIFA to produce a translation of the transcript of the phone call.
58. On 2 September 2015, FIFA provided the CAS Court Office with an English translation of the audio recording.
59. On 3 September 2015, FIFA filed its Answer concerning the Player’s request for provisional measures, concluding as follows:
  1. *“Taking into account that the three cumulative conditions constantly applied by the CAS in its jurisprudence when considering applications to stay the execution of a challenged decision, or to grant provisional measures, are not fulfilled, we respectfully request that the application for provisional and conservatory measures submitted by the Appellant, and, in particular, the request for stay of execution of the decision passed by the Chairman of the FIFA Appeal Committee on 28 May 2015, are rejected in their entirety.*
  2. *Finally, we request that all costs related to the present procedure as well as the legal expenses of the Respondent shall be borne by the Appellant”.*
60. On 10 September 2015, the President of the CAS Appeals Arbitration Division issued an Order on the Player’s Request for a Stay, with the following operative part:
  1. *The application to stay the execution of the appealed decision filed by Mr Jobson Leandro Pereira de Oliveira on 17 August 2015 in the case CAS 2015/A/4184 Jobson Leandro Pereira de Oliveira v. FIFA is rejected.*
  2. *The costs of the present order shall be determined in the final award or in any other final disposition of this arbitration”.*
61. On 14 September 2015, the Player filed his Appeal Brief, pursuant to Article R51 of the CAS Code. This document contained a statement of the facts and legal arguments. The Player challenged the Appealed Decision, submitting the following requests for relief:
  - a) *Ask Respondent to produce an entire copy of the file related to the Appealed Decision;*

- b) *The present appeal shall be upheld in totum;*
  - c) *That the Appealed Decision be set aside;*
  - d) *Alternatively, that the Sanction imposed by the Appealed Decision be reduced;*
  - e) *Order Respondent to reimburse the Appellant for legal expenses in the amount of CHF 50,000.00 (fifty thousand Swiss Francs), added to any and all FIFA and CAS administrative and procedural costs, already incurred or eventually incurred”.*
62. On 30 September 2015, pursuant to Article R54 of the CAS Code, and on behalf of the President of CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the Panel appointed to decide the present matter was constituted by:
- Mr Hendrik Willem Kesler, Attorney-at-law in Enschede, the Netherlands, as President;
  - Prof. Philippe Sands QC, Barrister and Professor of Law, London, United Kingdom; and
  - Prof. Dr. Ulrich Haas, Professor of Law in Zurich, Switzerland, as arbitrators.
63. On 14 October 2015, FIFA filed its Answer, pursuant to Article R55 of the CAS Code, requesting CAS to decide as follows:
- “1. *To reject the Appellant’s appeal in its entirety.*
  - 2. *To confirm the decision passed by the Chairman of the FIFA Appeal Committee on 28 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”.*
64. On 15 and 16 October 2015 respectively, FIFA and the Player informed the CAS Court Office of their preference for a hearing to be held.
65. On 16 October 2015, the Player referred to his Appeal Brief where he had invited FIFA to state whether it agreed with certain statements regarding the telephone call and noted that FIFA declared in its Answer that it does not agree with such statements. As such, the Player deemed it fundamental that the Panel would hear the opinion of an independent expert currently speaking Brazilian Portuguese on the telephone call as a whole and, specifically, on the aspects mentioned in the Appeal Brief.
66. On 10 and 14 December 2015 respectively, FIFA and the Player returned duly signed copies of the Order of Procedure to the CAS Court Office.

67. On 22 January 2016, a hearing was held in Lausanne, Switzerland. At the outset of the hearing both parties confirmed that they had no objection to the constitution and composition of the Panel.
68. In addition to the Panel, Mr William Sternheimer, Deputy Secretary General to the CAS, and Mr Dennis Koolgaard, *Ad hoc* Clerk, the following persons attended the hearing:
- a) For the Player:
    - 1) Mr Bichara Abidão Neto, Counsel;
    - 2) Mr Stefano Malvestio, Counsel;
    - 3) Ms Alessandra Deliberato, Interpreter;
    - 4) Mr Jobson Leandro Pereira de Oliveira, the Player, by video conference
  - b) For FIFA:
    - 1) Mr Marc Cavaliero, FIFA Head of Disciplinary & Regulatory;
    - 2) Mr Martin Vaso, FIFA Head of Medicine & Science;
    - 3) Mr Volker Hesse, Counsel.
69. The Panel heard evidence from Mr Abdulaziz Eid Alsafrani, Doping Control Officer of the SAADC and witness called by FIFA, via video-conference, and from the Player in person.
70. Mr Eid Alsafrani was invited by the President of the Panel to tell the truth subject to the sanctions of perjury. Both parties and the Panel had the opportunity to examine and cross-examine the witness. The parties were then given the opportunity to present their case, submit their arguments and answer the questions posed by the Panel.
71. Before the hearing was concluded, both parties expressly stated that they did not have any objection to the procedure adopted by the Panel and that their right to be heard had been respected.
72. The Panel confirms that it carefully heard and took into account in its discussion 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.

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

73. The submissions of the Player, in essence, may be summarised as follows:
- The Player maintains that the FIFA First Instance Decision and the Appealed Decision are based on the wrong premise that the subject matter is whether the Saudi First Instance Decision shall be extended to have worldwide effect. Rather, the Cancellation of the Saudi Second Instance Decision is the decision having direct effects on the Player, by

means of a reference to, or incorporation of, the Saudi First Instance Decision; the Cancellation of the Saudi Second Instance Decision cancelled the Saudi Second Instance Decision reinstating the consequences (only) of the Saudi First Instance Decision, but not the Saudi First Instance Decision itself, which had already been cancelled by the Saudi Second Instance Decision. It is thus to be verified whether the Cancellation of the Saudi Second Instance Decision complies with the requirements of article 136(2) and article 137 of the FIFA Disciplinary Code. The Player submits that neither the Cancellation of the Saudi Second Instance Decision, nor the Saudi First Instance Decision comply with the afore-mentioned conditions.

- The Player maintains that the Saudi First Instance Decision does not comply with article 115 of the FIFA Disciplinary Code (which is binding at national level in accordance with article 146(3) of the FIFA Disciplinary Code, even if associations are at liberty to choose the means and wording of the provisions), as it does not contain a “summary of the facts”, the “grounds of the decision”, nor a “notice of the channels for appeal”. If this would have been done, the SAADC’s breach of the relevant provisions of the FIFA ADR would be evident. In this respect, the Player contends that during the previous proceedings before CAS in this matter, the SAFF, the SAADC and the Saudi Arabian Olympic Committee argued that the FIFA ADR are not applicable and that this was the reason why he withdraw his appeal before CAS.
- The Player deems it important to contextualise the facts that took place before the alleged anti-doping incident in order to verify whether the Saudi decisions comply with certain aspects of the FIFA Regulations – particularly if the requirement established by article 43(6) of the FIFA ADR, according to which the Sample collection personnel shall not have a conflict of interest in the outcome of the sample collection, was respected or not – as well as whether extending the sanctions would not, given the particular circumstances of the present matter, conflict with public order and accepted standards of behaviour. In particular, the Player maintains that the involvement of Mr Tashkendi and Mr Hallak in the sample collection process was in violation of the regulations.
- The Player contends that neither the Cancellation of the Saudi Second Instance Decision, nor the Saudi First Instance Decision respect any of the five conditions set out in article 137 of the FIFA Disciplinary Code (cf. “*a) the person sanctioned has been cited properly; b) he has had the opportunity to state his case (with the exception of provisional measures); c) the decision has been communicated properly; d) the decision complies with the regulations of FIFA; e) extending the sanction does not conflict with public order*”) and that the sanction imposed on the Player can therefore not be extended by FIFA to have worldwide effect.

74. The submissions of FIFA, in essence, may be summarised as follows:

- FIFA maintains that the Player ignores the fact that the Cancellation of the Saudi Second Instance Decision reinstated the Saudi First Instance Decision and that the letter of the secretariat to the FIFA Disciplinary Committee dated 20 April 2015 is clear and lacks any uncertainty. The Player was provided with the Saudi First Instance Decision and was

informed of the deadline to appeal, which was re-affirmed by the SAADC on 7 May 2015. Regardless of this information, the Player decided to choose another forum and lodged an appeal before CAS. FIFA maintains that the Player decided to withdraw his appeal when he had to recognize that CAS had no jurisdiction in this matter, as the internal channel of appeal had not been exhausted. FIFA submits that the Player, by requesting to set aside the effects of the Saudi First Instance Decision, accepted that the Saudi First Instance Decision was still in force by withdrawing his appeal. As a consequence, FIFA purports that the Player's assertions in his Appeal Brief may not be upheld because the question of whether the Player committed an anti-doping rule violation and which period of ineligibility should be imposed became *res iudicata*.

- FIFA argues that any reference made by the Player to the so-called Cancellation of the Saudi Second Instance Decision shall be totally disregarded, as being irrelevant to the present appeal proceedings with regard to the conditions of article 137 of the FIFA Disciplinary Code. Indeed, said decision merely cancelled a previous decision passed by the Saudi Arabian Anti-Doping Appeal Panel and requested the Saudi First Instance Decision to be notified again.
- FIFA maintains that the ratio of extending a sanction to have worldwide effect is clear and plausible. On the one side, it should be avoided that a player who committed a serious offence, such as an anti-doping rule violation, and who has consequently been suspended by a national association, is transferred to another association and continues to play. If that would be the case, the sanctioning procedure system would be toothless in particular in such a fast-moving world as football. On the other hand, articles 136 *et seq.* of the FIFA Disciplinary Code shall also protect players or other persons to bear a worldwide extension of a sanction for a serious offence imposed on national level should the general principles of law not be respected. FIFA purports that the Player is trying to bring the discussion on the merits of the issue – *i.e.* the Saudi First Instance Decision –, although such arguments should have been brought within appeal proceedings lodged before the correct appeal body against the Saudi First Instance Decision. FIFA argues that CAS is now not in a position to act as a *de facto* appeal body against the aforementioned decision due to the sole issue that the Player had chosen a wrong appeal instance.
- FIFA finally contends that all the conditions mentioned in article 137 of the FIFA Disciplinary Code are fulfilled in the present case and that the Chairman of the FIFA Disciplinary Committee correctly passed the decision of extension, subsequently confirmed by the Chairman of the FIFA Appeal Committee in the Appealed Decision.

## V. JURISDICTION

75. The jurisdiction of CAS, which is not disputed by any party, derives from 67(1) of the FIFA Statutes (2015 edition). This 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 CAS Code.

76. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by the parties.
77. It follows that CAS has jurisdiction to decide on the present dispute.

#### **VI. ADMISSIBILITY**

78. The appeal was filed within the 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. Neither party has objected to the admissibility of the appeal.
79. It follows that the appeal is admissible.

#### **VII. APPLICABLE LAW**

80. Article R58 of the CAS Code provides that:

*“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”.*

81. The Panel notes that article 66(2) of the FIFA Statutes stipulate 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”.*

82. The Panel observes that both parties agreed to the application of the various regulations of FIFA and, subsidiarily, of Swiss law.

#### **VIII. PRELIMINARY ISSUES**

83. At the start of the hearing, the Panel referred the parties to the translation into English of the transcript of the phone call between the General Secretary of the SAADC and the Player on 3 April 2015, whereby the Player was allegedly cited to a hearing/meeting on 8 April 2014 at 11:00 hour in Jeddah, Saudi Arabia.
84. The Panel took note of the Player’s request for an independent interpreter since FIFA objected to the Player’s inferences drawn from the transcript of the audio-recording. The Panel expressed its preliminary interpretation that the inferences drawn by the Player were rather legal inferences than issues related to interpretation and invited the parties to comment in this respect.

85. Upon being invited to comment, the Player confirmed that he had no objection in respect of the interpretation, but rather that he did not understand why FIFA did not agree with the inferences drawn. The Player also informed the Panel that he was ready to withdraw the request if FIFA would explain why it did not agree with the inferences drawn and that he would then submit his comments in this respect.
86. The Panel observes that during the remainder of the hearing, the issue was brought up only in respect of whether the Player was invited to a “hearing” or to a “meeting”. The original word in Portuguese was “audiencia”.
87. The Panel does not deem it necessary to take a final decision as to whether the correct translation is “hearing” or “meeting”, for even if the correct translation would be “meeting”, as submitted by the Player, it would not affect the Panel’s approach or conclusion. Moreover, the Panel finds that the assistance of an independent interpreter would be of no added value in this respect.
88. Consequently, the Panel decided to dismiss the Player’s request for the appointment of an independent interpreter.

## **IX. MERITS**

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

89. In view of the above, the main issues to be resolved by the Panel are:
  1. Which decision is to be taken as the basis for deciding whether the sanction imposed should be extended to have worldwide effect?
  2. What is the scope of review to be applied by FIFA in the context of article 137 of the FIFA Disciplinary Code? In this regard the Panel considers:
    - a) The relevant rules
    - b) The purpose and ratio of the relevant rules
    - c) The scope of review
  3. Should the relevant decision be extended to have worldwide effect? In this regard the Panel addresses whether:
    - a) Has the Player been cited properly?
    - b) Did the Player have the opportunity to state his case?
    - c) Has the relevant decision been communicated properly?
    - d) Does the relevant decision comply with the regulations of FIFA?

- e) Would extending the sanction conflict with public order and accepted standards of behaviour?
- f) Conclusion.

**1. Which decision is to be taken as the basis for deciding whether the sanction imposed should be extended to have worldwide effect?**

- 90. The Player maintains that both the FIFA First Instance Decision as well as the Appealed Decision are wrongly based on the premise that the subject of the present matter is whether the Saudi First Instance Decision shall (or not) be extended to have worldwide effect. Rather, according to the Player, the relevant decision is the Cancellation of the Saudi Second Instance Decision.
- 91. The Player argues that the Saudi First Instance Decision had already been set aside by the Saudi Second Instance Decision and that the Saudi Second Instance Decision was subsequently set aside by the Cancellation of the Saudi Second Instance Decision. The Cancellation of the Saudi Second Instance Decision cancelled the Saudi Second Instance Decision reinstating only the consequences of the Saudi First Instance Decision, but not the Saudi First Instance Decision itself.
- 92. FIFA refers to the operative part of the Cancellation of the Saudi Second Instance Decision and maintains that pursuant thereto the Saudi First Instance Decision was reinstated. In addition, the Player was provided with the Cancellation of the Saudi Second Instance Decision and the newly notified Saudi First Instance Decision and informed of the deadline to appeal such decision. The secretariat to the FIFA Disciplinary Committee also informed the Player that the Chairman of the FIFA Disciplinary Committee would not take into account the Saudi Second Instance Decision and the Cancellation of the Saudi Second Instance Decision, but would solely base his decision whether or not to extend the sanction imposed to have worldwide effect on the Saudi First Instance Decision.
- 93. The Panel observes that the Player was once again provided with a copy of the Saudi First Instance Decision on 20 April 2015, and that he was granted a deadline to appeal such decision.
- 94. The Panel finds that the operative part of the Cancellation of the Saudi Second Instance Decision is clear in the sense that the Saudi Arabian Anti-Doping Disciplinary Panel was required *“to take the proper and necessary arrangements to inform the player of its resolution No. 190 dated 16/04/2014 as per the legal procedures”*.
- 95. In light of the above circumstances, the Panel finds that following the Cancellation of the Saudi Second Instance Decision, the Saudi First Instance Decision came once more into force. Importantly, the Panel finds that the Player’s rights were not impaired by this course of action as the Player was granted a new deadline to appeal the Saudi First Instance Decision. In fact, the Player was better off due to the Cancellation of the Saudi Second Instance Decision, because

on the basis of the Saudi Second Instance Decision the Player was suspended for 8 years, whereas on the basis of the Saudi First Instance Decision he was only suspended for 4 years.

96. Finally, the Panel finds that FIFA's letter dated 20 April 2015 is clear in the sense that the Player was made aware that the chairman of the FIFA Disciplinary Committee would be required to evaluate the matter by reference to article 136 ff. of the FIFA Disciplinary Code and that all the parties would be informed about a possible decision on the extension of the sanction imposed on the Player "by means of the decision taken by the Saudi Arabian Anti-doping disciplinary panel on 16 April 2014", *i.e.* on the basis of the Saudi First Instance Decision.
97. Consequently, the Panel finds that the Saudi First Instance Decision is to be taken as the basis for deciding whether the sanction imposed should be extended to have worldwide effect.

**2. What is the scope of review to be applied by FIFA in the context of article 137 of the FIFA Disciplinary Code?**

a) *The relevant rules*

98. The Panel observes that the procedure related to the extension of sanctions to have worldwide effect is regulated in subsection 3 ("*Extending sanctions to have worldwide effect*") of section 5 ("*Special Procedures*") of chapter II ("*Procedures*") of the Second Title ("*Organisation and Procedure*") of the FIFA Disciplinary Code, namely articles 136 to 141 of the FIFA Disciplinary Code. These provisions provide as follows:

*"136 Request*

- "1. If the infringement is serious, in particular but not limited to doping (cf. art. 63), unlawfully influencing match results (cf. art. 69), misconduct against match officials (cf. art. 49), forgery and falsification (cf. art. 61) or violation of the rules governing age limits (cf. art. 68 a), the associations, confederations, and other organising sports bodies shall request FIFA to extend the sanctions they have imposed so as to have worldwide effect.*
- 2. Any doping-related legally binding sanction imposed by another international sports association, national anti-doping organisation or any other state body that complies with fundamental legal principles shall automatically be adopted by FIFA and, provided that the requirements described hereunder are met, may in principle be extended by FIFA to have worldwide effect.*
- 3. The request shall be submitted in writing and enclose a certified copy matching the decision. It shall show the name and address of the person who has been sanctioned and that of the club and the association concerned.*
- 4. If the judicial bodies of FIFA discover that associations, confederations and other sports organisations have not requested a decision to be extended to have worldwide effect, these bodies may themselves pass a decision.*

137 *Conditions*

*The request for sanctions to be extended will be approved if:*

- a) the person sanctioned has been cited properly;*
- b) he has had the opportunity to state his case (with the exception of provisional measures);*
- c) the decision has been communicated properly;*
- d) the decision complies with the regulations of FIFA;*
- e) extending the sanction does not conflict with public order and accepted standards of behaviour.*

138 *Procedure*

- 1. The chairman makes his decision, in principle, without negotiations or hearing any of the parties, using only the file.*
- 2. He may exceptionally decide to summon the parties concerned.*

139 *Decision*

- 1. The chairman is restricted to ascertaining that the conditions of art. 137 have been fulfilled. He may not review the substance of the decision.*
- 2. He either grants or refuses to grant the request to have the sanction extended.*

140 *Effect*

- 1. A sanction imposed by an association or confederation has the same effect in each member association of FIFA as if the sanction had been imposed by any one of them.*
- 2. If a decision that is not yet final in a legal sense is extended to have worldwide effect, any decision regarding extension shall always be based on the content of the association or confederation's current decision.*

141 *Appeal*

- 1. The provisions of art. 119ff. shall apply, subject to par. 2 of this article, to any appeal lodged against a decision passed in accordance with art. 139.*
- 2. Any grounds for complaint may only refer to the terms set out in art. 136 and 137. It is inadmissible to question the substance of the initial decision".*

99. In view of the wording of articles 136(2) and 137 of the FIFA Disciplinary Code, the Panel observes that FIFA is required to adopt a two-stage process in extending sanctions to have worldwide effect.

100. First, a doping-related legally binding sanction imposed by another international sports association, national anti-doping organisation or other state body that complies with

fundamental legal principles will be automatically adopted by FIFA. The Panel understands “adopted” in the sense that FIFA respects the sanction imposed on the sanctioned person in the jurisdiction concerned without any interference, as long as the decision complies with fundamental legal principles. This “adoption” however does not entail any consequences for the sanctioned person outside the jurisdiction that has taken the measure.

101. Subsequently, as a second and distinct step, FIFA may act to extend the sanction to one that will have a worldwide effect, but only if the requirements of article 137 of the FIFA Disciplinary Code are met. This second step is not automatic, and will only occur if FIFA explicitly so decides.
102. For the purposes of this appeal, the Panel is required to review the second step, and to determine whether the conditions set out in article 137 of the FIFA Disciplinary Code have been complied with.

*b) The purpose and ratio of the relevant rules*

103. The Panel observes that the Player did not put forward any specific theory regarding the scope of review to be exercised by FIFA in the context of article 137 of the FIFA Disciplinary Code. Rather, the Player argued how the individual preconditions listed in article 137 of the FIFA Disciplinary Code were to be assessed, with particular emphasis on article 137(d) and (e).
104. FIFA, however, argues that the articles 136 *et seq.* must be interpreted in light of their underlying ratio. In its view the provisions are intended to strike a balance between opposing interests. On the one hand, there is a need to avoid a situation in which a player who has committed a serious offence, such as an anti-doping rule violation, and who has been suspended by a national association, might be able to transfer to another federation and continue to play there. This would allow the sanctioning procedure to be circumvented. On the other hand, articles 136 *et seq.* of the FIFA Disciplinary Code also seek to protect players by ensuring no automatic extension of a national sanction on a worldwide scale. For such an extension to occur, certain minimum legal requirements must be met.
105. FIFA contends that within the international anti-doping movement (largely based on the World Anti-Doping Code – hereinafter: the “WADA Code”), articles 136 *et seq.* of the FIFA Disciplinary Code are unique provisions that provide for an additional control of a sanction before being recognised and applied on worldwide level.
106. FIFA challenges the Player’s right to obtain a *révision au fond* of the Saudi First Instance Decision. According to FIFA, the Player is barred from discussing the merits of the sanction. This follows from the fact that the Player could have addressed questions pertaining to the merits in the context of appeal proceedings lodged before the correct appeal body against the Saudi First Instance Decision. FIFA argues that CAS is not in a position to act as a *de facto* appeal body against the underlying national decision because the Player has chosen a wrong appeal instance.

107. The Panel is persuaded by the approach argued by FIFA. It considers it important that a person who has been found guilty of a serious disciplinary violation should, in principle, be subject to a global ban. The alternative approach would undermine the effectiveness of a national sanction.

c) *The scope of review*

108. The system is based on mutual trust, namely the recognition of the merits of a national decision. Such mutual trust would be undermined, if FIFA – when deciding on recognition and extension of a national decision – would be required to undertake a complete and *de novo* review of the underlying decision (*révision au fond*). Requiring an in-depth review of the national decision would impose a significant burden on FIFA, and would tend to undermine the rationale of the recognition and extension process. Furthermore, such interpretation would be contrary to the WADA Code. By Article 15.1 of the WADA Code “bearing results or other final adjudications of any Signatory which are consistent with the Code and are within that Signatory’s authority, shall be applicable worldwide and shall be recognized and respected by all other Signatories”. The CAS jurisprudence is clear that in the context of appeals against a decision based on Article 15.1 of the WADA Code (or the equivalent in the rules of an international federation) the scope of review of CAS is limited. In this context reference is made to CAS 2009/A/1820 where the Panel found as follows:

*“Or la Formation considère que le contrôle qu’elle a à exercer sur l’acte de reconnaissance ne doit pas se confondre avec le contrôle de la décision initiale, voire même servir de mécanisme d’appel ou de cassation à l’encontre des décisions juridictionnelles ayant pu opérer un contrôle sur cette décision. Certes, l’exercice n’est pas aisé, car vérifier que la décision initiale a été prise conformément au CMA [WADA Code], pour en valider la reconnaissance et l’extension, oblige bien à apprécier cette décision initiale par rapport au CMA. Dans un tel contexte, il convient donc de préciser le pouvoir d’examen du TAS en matière de conformité avec le CMA, d’acte de reconnaissance. [...]. En d’autres termes, il appartient au TAS, lorsqu’il est saisi d’un appel contre une décision de reconnaissance [...] de s’assurer que les principes ayant conduit une autorité à prendre ladite décision ne soient pas contraires aux exigences fondamentales prévues par le CMA [...].”*

Freely translated into English:

*“The Panel considers that the control which it must exercise over act subject to recognition must be distinguished from the control of the initial decision and should not serve as a mechanism of appeal or cassation against judicial decisions that reviewed the initial decision. Obviously the task is not an easy one, since verifying whether or not the initial decision was taken in conformity with the WADA Code in order to accord recognition and extension presupposes some kind of control and review over the initial decision in relation to the WADA Code. In such circumstances, one must, thus, define the power of review of the TAS when deciding whether or not the act of recognition is in conformity with the WADA Code. [...] In other words, it is up for the CAS, when seized of an appeal against a decision of recognition [...] to ensure that the underlying principles of the authority that issued the initial decision are not contrary to the fundamental requirements provided for under the WADA Code [...].”*

109. In view of all of the above, the Panel concludes that it is not open to it to review *de novo* the underlying decision.

110. The Panel is further comforted in its view that FIFA's power to review the Saudi First Instance Decision is limited by reference to article 139(1) of the FIFA Disciplinary Code. This provides that FIFA "*may not review the substance of the decision*" and that the competent organ shall only establish whether the conditions of article 137 of the FIFA Disciplinary Code have been fulfilled. This limited scope of review not only applies at the first instance level, but also at the internal appeals level in the context of recognition and extension. Article 141(2) of the FIFA Disciplinary Code provides that also at the appeal level it "*is inadmissible to question the substance of the initial decision*". The mandate of FIFA in a recognition/extension procedure thus differs considerably from normal disciplinary proceedings, where the competent FIFA organ must investigate the "*facts and/or the [...] application of the law*". Furthermore, also the procedural rules clearly point towards a limited review of the FIFA organs in the prescribed context. Article 138 of the FIFA Disciplinary Code provides that the competent organ "*makes [...] [its] decision, in principle, without negotiations or hearing any of the parties, using only the file*". Reviewing the sanction *de novo*, *i.e.* without limitations as to the facts and the law, would, however, not be possible on the basis of a procedure based on written documents only.
111. The Panel, however, also finds that even in light of this limited power, it is not entirely clear from the applicable regulatory framework what standard is to be applied in applying the conditions set forth in article 137 of the FIFA Disciplinary Code. This is particularly true in respect of article 137(d) of the FIFA Disciplinary Code (*i.e.* whether the decision complies with the regulations of FIFA) as it is not clarified which particular FIFA regulations are to be taken into account (in other words, whether any (minor) violation of the FIFA regulations would be sufficient, or whether the violation should cross a threshold of a certain gravity).
112. Notwithstanding the above, the Panel finds that a distinction can be made between sub a), b) and c), on the one hand, and e) and f) of article 137 of the FIFA Disciplinary Code, on the other. Whereas the first three conditions relate to the procedure before the hearing body that has issued the sanction (*i.e.* whether the person sanctioned **has been** cited properly, whether the person sanctioned **has had** the opportunity to state his case, whether the decision **has been** communicated properly), the last two relate to the decision itself (*i.e.* whether the decision **complies** with the regulations of FIFA, whether extending the sanction **does not** conflict with public order and accepted standards of behaviour).
113. From the above structure of the provision the Panel concludes that any review of the procedural issues before the national body that has issued the decision are exhaustively dealt with under a), b) and c) and that, therefore, e) and f) of article 137 of the FIFA Disciplinary Code is properly to be interpreted as referring to other matters. The Panel draws from the structure of the provision the conclusion that FIFA is not entitled to review every single aspect of the procedure leading up to the decision. Instead, a), b) and c) of article 137 of the FIFA Disciplinary Code limit FIFA's procedural review to the (basic) question whether or not the right to be heard has been observed by the national hearing body that has issued the sanction (*i.e.* whether the person was informed of the disciplinary procedure, was able to present its case and whether the results of the procedure were communicated to the person so that the latter can exercise its inalienable right of appeal). Only if these three aspects of the right to be heard have been observed will FIFA be entitled to extend the sanction to worldwide effect. From the structure and the

wording of article 137 of the FIFA Disciplinary Code the Panel finds that the requirements of d) and e) are properly to be interpreted as relating to the review of the substance of the sanction by FIFA. Although it may be difficult to distinguish between legal and factual questions in a given case, the Panel considers that d) and e) of article 137 of the FIFA Disciplinary Code are in principle related to a legal review only, and that they should be limited to issues of fundamental importance that raise serious matters of a certain gravity.

114. The Panel is supported in this approach by the considerations of the CAS panel in CAS 2006/A/1155:

*“The Panel considers that the first question to be determined concerns the challenge brought by the Player against the denial by FIFA to review the facts and the law applied in the RFEF Decision. [...] The Panel does not agree with such submission, and finds that the Player cannot challenge in these proceedings the RFEF Decision [...]. Finally, the Panel notes that the power of the competent FIFA body, called to decide on the extension of the effects of sanction imposed by the domestic association, is expressly limited to the examination of the conditions set forth at Article 141 FDC [which corresponds to article 137 of the FIFA Disciplinary Code]: the review of the substance of the domestic decision is specifically excluded by Article 143 para. 1 FDC (“He may not review the substance of the decision”) and by Article 145 para. 3 FDC (“It is inadmissible to question the substance of the initial decision”). The challenge to the portion of the Appealed decision, whereby the review of the sanction adopted on the Player by the RFEF has been denied, has therefore to be dismissed. [...].*

*The Panel notes that the conditions for the extension worldwide of a sanction adopted by a national association are established by Article 141 FDC [which does not materially differ from the present article 137 of the FIFA Disciplinary Code]. Such conditions deal with the procedure leading to the domestic sanction (“the person sanctioned has been cited properly”; “he has had the opportunity to state his case”; “the decision has been notified properly”), as well as to the legality of its content and of the extension of its effects (“the decision complies with the regulations of FIFA”; “extending the sanction does not conflict with public order and accepted standards of behaviour”)” (CAS 2006/A/1155, §70).*

115. The Panel further observes that in CAS 2006/A/1155 no submission was made with respect to the compliance of the national decision with the regulations of FIFA or to any conflict of the extension of the effects of the national decision with public order and accepted standards of behaviour (CAS 2006/A/1155, §71). This CAS award is therefore of limited legal weight in respect of the FIFA’s scope of review in the context of article 137(d) and (e) of the FIFA Disciplinary Code. Nevertheless, it appears to follow from this decision that the mandate of review exercised by CAS in the context of an appeal against a recognition/extension decision must be of a different nature than when called upon in an appeal procedure to review the initial decision.
116. Consequently, the Panel finds that the scope of review to be applied by the Panel is limited to ascertaining whether the conditions of article 137 of the FIFA Disciplinary Code have been complied with. The assessment in respect of article 137(a), (b) and (c) of the FIFA Disciplinary Code is limited to examining whether the right to be heard has been observed, whereas the

Panel will address the specific extent of review in respect of article 137(d) and (e) of the FIFA Disciplinary Code in more detail below.

**3. *Should the relevant decision be extended to have worldwide effect?***

117. In view of the above, the Panel now examines whether each and every of the individual conditions of article 137 of the FIFA Disciplinary Code have been complied with in the Saudi First Instance Decision so that the sanction shall be extended to have worldwide effect.

*a. Has the Player been cited properly?*

118. The Panel observes that article 137(a) of the FIFA Disciplinary Code determines the following:

*“The request for sanctions to be extended will be approved if:*

*a) the person sanctioned has been cited properly”;*

119. The Player submits that he has not been cited properly in the Saudi First Instance Decision proceedings. The Player considers that the signed affidavits provided by the SAADC and the employees of the Club and the transcript of the telephone call are not sufficient evidence that the Player has been cited **properly**. The Player maintains that in the entire FIFA file (as well as in the Appealed Decision) it is not possible to find evidence that a proper notification in writing was sent to the Player – such as could be, for instance – evidence of a registered letter or a fax receipt.

120. The Player argues that, in accordance with article 52(2) and (3) of the FIFA Disciplinary Code, the notification should have been in writing, and that he was never cited in writing. The phone call cannot be interpreted as such and neither can the attempt of the SAADC to notify the Player at his hotel at midnight between 8 and 9 April 2014.

121. FIFA on the other hand purports that on the basis of article 137(a) of the FIFA Disciplinary Code, it only has to be analysed if the Player was cited properly for a hearing leading to the Saudi First Instance Decision.

122. FIFA argues that the SAADC first tried to notify the Player of the provisional suspension, the alleged anti-doping rule violation and the hearing date via the Player’s Club. The Club officials confirmed that they explained the matter to the Player and tried to hand the relevant documents over to him, but that the Player refused to accept them. In a next step, the General Secretary of the SAADC contacted the Player directly by telephone on 3 April 2014, with the assistance of an interpreter of the SAFF speaking the Player’s native language Portuguese. During this phone call, the Player mentioned that he had learned about the issue from the newspapers and confirmed that he would attend the meeting on Tuesday 8 April 2014 at 11:00 in Jeddah, Saudi Arabia. He also confirmed that he would pick up the relevant documents at the Club’s premises on the same day.

123. FIFA maintains that, even assuming, *quod non*, that the officials of the Club did not try to hand over the official information on the failed doping control, a reasonable person would have contacted the SAADC after such telephone call to ask whether the information of the newspaper is correct and whether the phone call was reliable.
124. FIFA further argues that, since the Player did not appear at the meeting on Tuesday 8 April 2014 at 11:00 hour, the SAADC decided to give the Player another chance to defend himself it scheduled a new hearing on 16 April 2014 and notified the Player of this new hearing date personally. The DCO met the Player at his hotel with the intention to hand over the relevant documents to the Player. However, the Player refused to accept the documents and proposed to accept the official letters the next day at 19:00 hour at his Club. However, when the DCO arrived at the Club the next day at the time proposed by the Player, the latter was not at the Club as he had said he would be.
125. FIFA concludes that, as the Player refused on two additional occasions to receive the official documents in writing, the SAADC had no other option than to submit the matter to the Saudi Anti-Doping Disciplinary Panel on 16 April 2014 in order to render a decision. The SAADC claims to have made great efforts to notify the Player and fulfilled the requirements of article 137(1) of the FIFA Disciplinary Code and article 138(3)(b) of the Swiss Code of Civil Procedure (hereinafter: the “SCCP”) pursuant to which a summons is correctly notified if it was notified personally but the addressee refused the receipt.
126. The Panel observes that the main issue in dispute is that the Player is of the view that the receipt of a summons to appear at the hearing needs to be evidenced in writing, whereas FIFA avers that no such documentary evidence is needed, but that it suffices that reasonable efforts are made to notify the Player. The Panel finds on the basis of the evidence before it that the SAADC did attempt to provide the Player with documents on more than one occasion, and in this way sought to comply with its obligations. First, the SAADC attempted to hand over the relevant documents to the Player through the officials of the Club. Second, on 8 April 2014, the DCO attempted to hand over the documents at the Player’s hotel. Third, further to the agreement with the Player, the DCO attempted to hand over the documents at the premises of the Club on 9 April 2015. Leaving the first attempt aside, the Panel has no doubt on the basis of the evidence before it that the Player chose to refuse to accept the documents on the second occasion, and that he did not show up on the third occasion, having said that he would attend. Particularly this last attempt is considered important by the Panel as the Player specifically stated that he would accept the documents at 19:00 hour on 9 April 2015 at the premises of the Club. The Panel finds that, under such circumstances, the Player cannot in good faith argue that he was not properly cited to the hearing, since it is on the basis of his own actions – namely his repeated unwillingness to accept service of the relevant documentation – that he now seeks to make this argument. Moreover, the evidence before the Panel indicates that the Player had learned from the press about the allegations against him: this is evidenced by the fact of the telephone call between the General Secretary of the SAADC and the Player. Having previously been suspended for an anti-doping rule violation, the Player was – or should have been – aware of the serious consequences of not complying with anti-doping regulations.

127. The Panel finds that the Player's approach is governed by the general legal principle of *venire contra factum proprium*, a doctrine recognised by Swiss law that provides that where the conduct of one party has induced legitimate expectations in another party, the first party is estopped from changing its course of action to the detriment of the second party (CAS 2008/O/1455, §16 of abstract published on the CAS website).
128. Consequently, and on the basis of the evidence before it, the Panel finds that it is not open to the Player to assert that he was not properly cited.
- b. *Did the Player have the opportunity to state his case?*
129. The Panel observes that article 137(b) of the FIFA Disciplinary Code determines the following
- “The request for sanctions to be extended will be approved if:*
- b) he has had the opportunity to state his case (with the exception of provisional measures)”;*
130. The Player maintains that he did not have the opportunity to state his case. In particular the Player submits that he was never provided with the entire file related to the matter by the Saudi authorities before the Saudi First Instance Decision was taken.
131. The Player also argues that the hearing was scheduled in a hurry for which there was no justification. The first attempt to cite the Player to a hearing/meeting was made on 2 April 2014, for a hearing on 8 April 2014. The Player therefore had 5 days to find a reliable attorney specialised in doping matters, while 4 and 5 April 2014 were non-working days in Saudi Arabia.
132. FIFA submits that as the Player was cited properly and was invited to attend two hearings in the course of which he would have had the opportunity to state his case, the requirement of article 137(b) of the FIFA Disciplinary Code is fulfilled.
133. FIFA furthermore argues that if the Player did not have the opportunity to state his case, such lack of procedure could have been healed in the context of the procedure in front of the appeal instances. The Player not only had the opportunity to state his case, he exercised such right by appealing the Saudi First Instance Decision to CAS.
134. On the basis of the evidence before it, the Panel finds that the Player was aware of the hearings and appears to have chosen not to attend either. On this basis, having regard to the specific evidence before the Panel, the requirement of article 137(b) of the FIFA Disciplinary Code is fulfilled.
135. Again with reference to the general legal principle of *venire contra factum proprium*, the Panel finds that the Player cannot on the one hand decline to accept documents or attend hearings of which he has been informed, and on the other hand argue that he was not provided with an opportunity to state his case. Should the Player have accepted the documents, he could have requested to postpone the hearing and to be provided with the case file. The Saudi Arabian

Anti-Doping Disciplinary Panel already voluntarily decided to postpone the hearing without such request being made, which shows that it was open to a postponement.

136. Consequently, the Panel finds that the Player had the opportunity to state his case.

*c. Has the relevant decision been communicated properly?*

137. The Panel observes that article 137(c) of the FIFA Disciplinary Code determines the following:

*“The request for sanctions to be extended will be approved if:*

*c) the decision has been communicated properly”;*

138. The Player argues that the Saudi First Instance Decision was not properly communicated as he was only provided with this decision on 20 April 2015, *i.e.* one year after the decision was rendered. The Player relies on article 68(e) of the FIFA ADR in submitting that he was entitled to a timely and reasoned decision. Since the Saudi First Instance Decision was not communicated timely, it was not properly communicated.

139. FIFA maintains that the Player himself confirmed that he was aware of the Saudi First Instance Decision by 1 October 2014. The Saudi First Instance Decision was also part of the complete case file that was communicated to the Player on 20 January 2015.

140. On 20 April 2015, the Player was provided with the Saudi First Instance Decision and granted a deadline to appeal. The Player indeed lodged an appeal against the Saudi First Instance Decision directly with CAS. FIFA maintains that there can, therefore, be no doubt that the Saudi First Instance Decision was properly communicated to the Player.

141. The Panel adheres to the position of FIFA and refers again to the principle of *venire contra factum proprium*. The Player cannot on the one hand lodge an appeal with CAS against the Saudi First Instance Decision and on the other hand argue that the Saudi First Instance Decision was not properly communicated to him.

142. The Panel recognises that the evidence gives rise to doubts as to whether the Saudi First Instance Decision was properly communicated to the Player immediately after it was rendered. However, due to WADA’s intervention in the procedure the decision was in any event communicated to the Player on 20 April 2015, precisely to avoid any doubts as to its proper notification. The Panel finds that the Player was not prejudiced and did not lose any rights as he was also granted a new deadline to appeal upon receipt of the Saudi First Instance Decision.

143. Consequently, the Panel finds that the Saudi First Instance Decision was properly communicated to the Player.

d. Does the relevant decision comply with the regulations of FIFA?

144. The Panel observes that article 137(d) of the FIFA Disciplinary Code determines the following:

*“The request for sanctions to be extended will be approved if:*

*d) the decision complies with the regulations of FIFA”;*

### 1. The positions of the parties

145. The Player maintains that many provisions of the FIFA ADR and the FIFA Disciplinary Code have been violated and that article 137(d) of the FIFA Disciplinary Code is therefore not complied with.

146. The Player argues that the Saudi First Instance Decision does not comply with the requirements of a decision as set out in article 115 of the FIFA Disciplinary Code as it does not contain a “summary of the facts”, the “grounds of the decision” nor a “notice of the channels for appeal”.

147. The Player avers that the main obligation for the SAFF pursuant to article 1 and 2 of the FIFA ADR was to incorporate the FIFA ADR into its rules, but it applied a different set of rules – the Saudi Anti-Doping Rules in Sport. Since it was confirmed by the SAFF in the proceedings in CAS 2015/A/4066 that the FIFA ADR were not applicable, the Player maintains that he had to withdraw his appeal as the appeal was entirely based on the premise of the applicability to the matter of the FIFA ADR. The SAFF even argued that certain provisions under the FIFA ADR intended to protect the player’s rights, were not included in the Saudi Anti-Doping Rules in Sport. Furthermore, the Player asserts that the SAADC could not act “under its own responsibility and authority” as, pursuant to article 2(5) of the FIFA ADR, associations are attributed certain responsibilities, part of which they may delegate or assign to a national anti-doping organization (hereinafter: “NADO”) such as the SAADC. The Player argues that this is required in order to guarantee that the local NADO respects the (global and binding in football) provision of the FIFA ADR. The SAFF completely ignored the existence of the FIFA ADR, under which it had specific obligations.

148. As to the scope of review in examining whether article 137(d) of the FIFA Disciplinary Code has been complied with, FIFA maintains that this assessment is limited to an assessment of:

- i) whether the behaviour for which the Player was sanctioned at national level also constitutes a violation of the regulations of FIFA; and
- ii) whether the sanction imposed on the Player at national level does not exceed the frame of sanction provided in the regulations of FIFA for such violation.

149. The Player however submits that FIFA is wrong in this respect and that the decision should comply with “*the regulations of FIFA*”. The Player refers to CAS jurisprudence in maintaining that the provisions regarding the extension of a sanction to have worldwide effect in the FIFA Disciplinary Regulations are contradictory. On the one hand, FIFA has no power to review the

decision, but on the other hand, if the decision at stake concerns a serious infringement and violates fundamental principles of law, FIFA may interfere and issue a sanction. The Player maintains that under such circumstances a *contra proferentem* interpretation is justified.

150. However, even if a strict approach is adopted, the anti-doping rule violation of which the Player is accused is article 9 of the FIFA ADR. The Player maintains that such violation only occurred if the following two cumulative requirements are complied with:
- i. Notification as authorised in the applicable anti-doping rules;
  - ii. Refusal or failure without compelling justification to submit to Sample collection.
151. The Player contends that notification is thus a requirement that cannot be waived or deviated from in order to qualify the Player's behaviour as a refusal to undergo a doping test. This because the behaviour of the Player is intrinsically linked to the failure of the DCO. It must be taken into consideration that here the failure of the DCO was the *condition sine qua non* for the inaction of the Player. Based on article 3(9) of Annex D to the FIFA ADR, the Player asserts that the DCO was required to notify the Player and this shows that the obligations deriving from such provision could not be delegated to the Club's team administrator or team officials. The witness statements of the Club officials involved in the notification confirm that they approached the Player and not the DCO. In view of this, the Player draws the conclusion that the requirements for out-of-competition testing were not respected. Furthermore, the Saudi First Instance Decision was based on unreliable evidence because the Club officials had an interest in the outcome of the sample collection and that this was in contradiction with article 72(1) of the FIFA ADR, which requires that facts related to anti-doping rule violations may be established by any reliable means. This is because, well before such sample collection, the Player and the Club were involved in a contractual dispute, due to the Club's failure to pay the Player's salaries, which led the Club seeking to get rid of the Player by filing a misconceived claim before the FIFA DRC on 21 March 2015, 4 days before the alleged out-of-competition test.
152. Furthermore, the Player argues that there was no team doctor or other representative present (article 3(a) of FIFA ADR), that he was not fully informed and asked for additional information about the sample collection process (article 3(b) of the FIFA ADR), that he was not informed by the DCO of the consequences of a possible failure (article 52(2)(a) of the FIFA ADR), that he was not informed by the Anti-Doping Unit of the possible failure to comply in writing and granted an opportunity to respond (article 52(3)(a) of the FIFA ADR), and that he was not promptly notified in writing of the possible consequences of a potential failure to comply (article 52(4)(a) of the FIFA ADR).
153. The Player submits that the most severe breach was however the violation of article 43(6) of the FIFA ADR determining the following:

*"All other Sample collection personnel, in addition to the FIFA Doping Control Officer, shall have been trained for their assigned responsibilities, shall not have a conflict of interest in the outcome of the Sample collection for which they are appointed and shall not be Minors".*

154. FIFA maintains that, at this stage of the procedure, it cannot be reviewed anymore whether the Player was properly notified on 25 March 2014 of his obligation to submit to a doping control as this has been decided in a final and binding manner by the authorities in Saudi Arabia. FIFA therefore considers the Player's arguments in this respect to be irrelevant. Nevertheless, FIFA argues that, based on the statements of the DCO and Club officials, the Player was indeed notified about the doping control on 25 March 2014. The Player had the possibility to appeal the substance of the matter and to contest that he had been notified about the doping control, but did not do so by appealing the Saudi First Instance Decision directly to CAS and to subsequently withdraw this appeal.
155. FIFA contends that the ratio of article 137(d) of the FIFA Disciplinary Code is to ensure that a sanction imposed on a player at national level does not have worldwide effect if the provision the player was sanctioned for is not enshrined in the FIFA regulations and if the sanction imposed at national level is disproportionately high. FIFA finds that the discretion to assess whether the Saudi First Instance Decision complies with the regulations of FIFA is limited to the interpretation set out in §148 of this arbitral award *supra*.
156. In view of this interpretation, FIFA argues that the violation "evading, refusing or failing to submit to Sample collection" is also enshrined in article 8 of the FIFA ADR and as such complies with the regulations of FIFA. FIFA moreover contends that a suspension of 4 years does not exceed the frame of sanctions provided by article 20(1) in conjunction with article 24(1) of the FIFA ADR, considering that the Player had already been found guilty of an anti-doping rule violation for the presence of a prohibited substance. As such, FIFA considers that the Saudi First Instance Decision complies with article 137(d) of the FIFA Disciplinary Code.
157. FIFA further maintains that it is recognised that in some countries the anti-doping responsibilities may be delegated or assigned to a NADO and that this is the situation in Saudi Arabia. The Player seems to argue that each NADO has to apply the international federation's rule depending on which sport discipline is concerned. This interpretation would not only be impracticable but it is also contrary to the WADA Code itself, which aims at harmonisation of anti-doping regulations worldwide.
158. In addition, FIFA argues that the Saudi First Instance Decision complies with the requirements of article 115 of the FIFA Disciplinary Code as it contains all elements enumerated.

## 2. The findings of the Panel

159. As to the scope of review in examining whether article 137(d) of the FIFA Disciplinary Code has been complied with, the Panel observes that a previous CAS panel held as follows:

*"The 'prohibition' for the Chairman of the FIFA Appeal Committee to review the merits of a national decision aims at preventing that a procedure of enforcement of a decision by extending its effects world-wide, may be used to review the whole merits of a single case. However, this limitation of the powers of the Chairman of the FIFA Appeal Committee cannot lead to a situation where FIFA is requested to enforce a national decision in a*

*manner which is blatantly in violation of FIFA Statutes and FIFA rules” (CAS 2008/A/1590, §30 of abstract published on the CAS website).*

160. The Panel also took note of a previous decision of the chairman of the FIFA Appeal Committee where the compliance of a national decision with article 137(d) of the FIFA Disciplinary Code was discussed. This FIFA decision was subsequently appealed before CAS in CAS 2008/A/1625 and the reasoning of the chairman of the FIFA Appeal Committee can be found in §19 of the arbitral award:

*“The chairman then analyzed whether the decision of CONMEBOL suspending Souto for two years complies with the regulations of FIFA. In this regard, the chairman firstly analyzed the FIFA Regulations Doping Control, art. 6.1 of which states that the analysis of the samples shall be carried out in a laboratory accredited by WADA. The official report filed by CONMEBOL upon request shows, that the analysis of the sample A was performed in the “Laboratorio de Control de Dopaje en Montevideo, Uruguay” which is not accredited by WADA. The chairman establishes that the proper analysis of doping samples is a precondition in each doping case. Only laboratories accredited by WADA assure that the analysis has been performed according to reliable scientific standards of testing. The wording of art. 6.1 of the FIFA Regulations Doping Control establish clearly that the analysis of both the A and the B-sample has to be performed compulsorily in a laboratory accredited by WADA. Consequently the chairman states that the decision of CONMEBOL does not comply with the regulations of FIFA”.*

161. The Panel, first of all, finds that on the basis of the evidence before it the SAADC sought to conduct the national proceedings on the basis of the Saudi Anti-Doping Rules in Sport. If FIFA does not consider the Saudi Anti-Doping Rules in Sport to be in compliance with the FIFA ADR this may lead to the intervention of FIFA, but the provisions of the FIFA ADR are not directly applicable in proceedings conducted on the basis of the Saudi Anti-Doping Rules in Sport. On this basis the FIFA ADR are only relevant in respect of determining whether the national sanction should be extended to have worldwide effect.
162. Having duly considered the available jurisprudence and the positions of the parties, the Panel finds that, first of all, the operative part of a disciplinary decision needs to comply with the regulations of FIFA for it to be extended to have worldwide effect. Indeed, as argued by FIFA, an appropriate test appears to be to examine whether the act committed by the person sanctioned also violates the regulations of FIFA and whether the sanction does not exceed the sanctions provided for under the regulations of FIFA. However, different from FIFA’s position and notwithstanding whether this first test is complied with, it also needs to be examined whether a blatant violation of the FIFA Statutes or regulations occurred, which should lead to the consequence that the sanction cannot be extended to have worldwide effect.
163. Applying these tests to the matter at hand, the Panel observes that pursuant to the Saudi First Instance Decision, the Player was sanctioned for *“Refusing or failing without compelling justification to submit to sample collection after notification as authorized in the Saudi Arabian Anti-Doping Rules, or otherwise evading Sample Collection”*.
164. The Panel observes that article 9 of the FIFA ADR determines the following:

*“Refusing or failing without compelling justification to submit to Sample collection after notification as authorised in the applicable anti-doping rules, or otherwise evading Sample collection, constitutes an anti-doping rule violation”.*

165. The Panel finds that the infringement allegedly committed by the Player is one that also gives rise to a violation of the FIFA ADR. Whether the preconditions necessary to find such a violation were complied with (*e.g.* whether the Player was properly notified for the anti-doping control) is a matter of substance and falls, in principle, outside the scope of the assessment to be made by the Panel in the present proceedings.
166. As to the sanction imposed, the Panel finds that, in view of the fact that the Player was already convicted for a first anti-doping rule violation, a four-year period of ineligibility does not exceed the range of sanctions provided for under the regulations of FIFA. The Panel observes that the first anti-doping rule violation was a so-called “standard sanction” and that the second anti-doping rule violation is a “filing failure or missed test” in the context of article 24(3) of the FIFA ADR. Article 24(3) of the FIFA ADR provides that the period of ineligibility to be imposed in such combination is between 6 and 8 years. The period of ineligibility imposed on the Player by means of the Saudi First Instance Decision therefore might be said to fall outside the range of sanctions provided in the FIFA ADR, to the benefit of the Player.
167. Consequently, the Panel finds that it only needs to examine whether a blatant violation of the FIFA Statutes or regulations has occurred, such as would mean that the sanction should not be extended to have worldwide effect. In this respect, for a blatant violation to occur, the Panel finds that the violation of the FIFA regulations needs to be of a certain gravity, and that it must be proven that such violation indeed occurred.
168. The Panel finds that the only argument of the Player that might lead to the conclusion that there was a blatant violation of the FIFA regulations is the Player’s argument that he was not notified at all that he was required to submit to a sample collection. The Panel finds that the other alleged violations of the FIFA regulations as put forward by the Player cannot be said to be of equal significance such as to constitute a blatant violation of the FIFA regulations, assuming that they occurred.
169. As to the Player’s notification to submit to sample collection, the Panel considers this to be a matter of substance that would normally have to be dealt with in the proceedings on the merits of the case. As such, in principle it should no longer be capable of being examined once a final and binding decision on the merits has been rendered, subject only to exceptional circumstances pertaining.
170. In the matter at hand, the Panel observes that it is disputed between the parties whether or not the Player was notified of the requirement that he provide a sample. The Player maintains that no such notification occurred, whereas FIFA submits that the Player was notified by Club officials. It is uncontested that the notification was not performed by a DCO. The Panel notes that the evidence before it includes witness statements tendered by FIFA that are said to offer

confirmation that the Player was notified of the requirement to submit to sample collection on 25 March 2014.

171. Although the Panel has certain doubts about the credibility of these witness statements, particularly in light of the contractual dispute between the Player and the Club that was already pending at the time, the Panel concludes on the basis of the evidence before it that the Player was notified about the requirement to submit to sample collection. The sample collection procedure was under the authority of the Saudi Arabian Anti-Doping Committee. The latter alone ordered and conducted the sample collection. No dispute was pending at the time between the Saudi Arabian Anti-Doping Committee and the Player. There is nothing on the record before the Panel to indicate that the Saudi Arabian Anti-Doping Committee staged or tried to trick the Player at the time of the sample collection. The Panel finds that the mere fact that the Player was notified to submit to sample collection by persons that are not DCOs is not a failure of such a nature as to constitute a blatant violation of the FIFA regulations of the kind that would allow a review by this Panel. As indicated *supra*, for a blatant violation to occur the violation needs to be of a certain gravity and it needs to be proven that such violation indeed occurred. In the matter at hand, the Panel does not have sufficient evidence at its disposal to conclude that the Player was not notified to submit to sample collection. The burden of proving that no notification occurred is one that lies with the Player, and it is not one that he has met. The Panel is not sufficiently persuaded to follow the Player's account of facts.
172. The Panel finds that the situation in the matter at hand can be distinguished from CAS 2008/A/1625 because in such case there was apparently conclusive evidence that the laboratory that examined the relevant samples was not a WADA-accredited laboratory. This, in conjunction with the severity of the violation, would indeed constitute a blatant violation of the FIFA regulations. However, in the present case no comparable conclusive evidence has been presented.
173. Regardless of the above, the Panel has sympathy for the difficult position of the Player to prove that he was not notified at all about the obligation to submit to sample collection. However, the Panel finds that the least that could have been expected from the Player is that he should have sought to have exhausted the legal remedies available to him by challenging the Saudi First Instance Decision. Given that he was already by then represented by legal counsel, that failure weighs heavily on these proceedings.
174. Consequently, the Panel finds that the Saudi First Instance Decision complies with the regulations of FIFA.
- e. *Would extending the sanction conflict with public order and accepted standards of behaviour?*
175. The Panel observes that article 137(e) of the FIFA Disciplinary Code determines the following:

*“The request for sanctions to be extended will be approved if:*

e) *extending the sanction does not conflict with public order and accepted standards of behaviour*".

## 1. The positions of the parties

176. The Player maintains that the sanction would conflict with public order. Suspending the Player on a worldwide basis for four years for a violation which is absolutely questionable and under circumstances, which are, to say the least, confused would violate the following seven principles of Swiss public order.

1) *The fundamental right to privacy and the limit on excessive legal commitments*

177. With reference to CAS jurisprudence and Swiss law, the Player maintains that excessive legal commitments of a person are null and void. The Player argues that it would undoubtedly constitute an excessive legal commitment and an unacceptable limitation of the fundamental freedom to work and of the fundamental right of everyone to look for its own employment, if, because of an indirect contractual acceptance of the FIFA Statutes and Regulations by the Player, he could be condemned to be excluded to exercise his profession for a period of four years in any country in the world under circumstances such as those of the present case. The Player also makes a comparison between the present case and SFT 4A\_558/2011 (the *Matuzalem*-case). The Player argues that the infringement of his economic rights is unjustified as a consequence of an infringement of the relevant anti-doping regulations, given that the relevant rules regarding notification were not respected by the relevant authority.

2) *The fundamental right to work*

178. With reference to the European Social Charter, the Charter of Fundamental Rights of the European Union, the Universal Declaration of Human Rights and the Federal Constitution of the Swiss Confederation, the Player argues that the alleged infringement committed by the Player, for the several circumstances, in fact and in law, as already explained, do not justify a restriction for a period of four years of the Player's fundamental right to exercise the profession of his own choice.

3) *The fundamental principle of the proportionality of the sanction*

179. With reference to CAS jurisprudence, the Player argues that there must be a reasonable balance between the kind of misconduct and the sanction. Mistakes made in the doping test procedure can never lead to a situation in which the Player is banned for behaviour that is not attributable to him and the ban being extended on the basis that such a ban would in theory be possible for the alleged behaviour. A period of ineligibility of four years does not seem necessary to achieve any goal. With reference to CAS jurisprudence, the Player argues that there must be an appropriate balance between the rights of the athlete – that the procedure for sample collection is respected – and the legitimate interest in preventing athletes from escaping punishment for doping violations on the basis of inconsequential or minor technical infractions. The Player maintains that improper notification (if at all) must be seen as fundamental and finds that it

needs to be assessed whether a departure from the FIFA ADR could have caused the Player missing the scheduled doping test. If such test is applied, the Player concludes that the worldwide sanction imposed is disproportionate.

4) *The fundamental principle of equal treatment*

180. With reference to the Swiss Constitution and CAS jurisprudence the Player argues that persons in equal situations shall be treated in the same way and persons in different situations shall be treated differently. With reference to the standard sanctions applied in case of certain violations enumerated in the FIFA Disciplinary Code, the Player maintains that the sanction imposed on him is disproportionate. The Player avers that he did not commit the same offence as another anti-doping offence perpetrator, he does not have the same degree of fault and, therefore, shall not receive the same sanction, let alone a lengthier one.

5) *The fundamental right of defence*

181. The Player argues that the Saudi Arabian authorities have constantly violated his right of defence. Extending the sanction to have worldwide effect would thus mean a breach of this principle.

6) *The fundamental principle of legal certainty*

182. The Player contends that since the Saudi First Instance Decision had already been cancelled, this must lead to the conclusion that it is not possible to have the case back at the first instance just for repairing the procedural errors, because this would violate legal certainty. If the SAADC would be allowed to send the case back and forth between the Saudi Arabian Anti-Doping Disciplinary Panel and the Saudi Arabian Anti-Doping Appeal Panel, and it be allowed to cancel whatever is finally found to be lacking in the procedure and repair it only when an institution, such as WADA, states that the procedure is lacking with regard to due process, such process will have no end.

7) *The fundamental procedural principle of ne bis in idem*

183. The Player argues that the fundamental procedural principle of *ne bis in idem* would be violated because the Saudi Arabian Anti-Doping Appeal Panel would have ruled twice on the same matter.
184. More generally, the Player explains that his position is not that the rules and principles set forth in the WADA Code are, in abstract, a violation of human and fundamental rights. Rather, the Player argues that it is clear from article 136(2) of the FIFA Disciplinary Regulations that doping-related legally binding sanctions imposed by a national anti-doping organisation may in principle be extended to have worldwide effect provided they comply with fundamental legal principles.

185. Additionally, the Player argues that exceptions exist and that there is CAS jurisprudence which, in specific circumstances, found a sanction imposed pursuant to the WADA Code to be against general legal principles such as, for instance, that of proportionality of sanctions. Under exceptional circumstances, the deciding body may depart from the sanctions established by the relevant anti-doping rules. The present case is, for all the circumstances described, unique.
186. FIFA submits that the “principles” enumerated by the Player do not fall within the principles considered by the Swiss Federal Tribunal as being part of the public policy and must therefore be rejected.
187. FIFA further maintains that, if the Panel would find that such “principles” do form part of public policy, these principles have not been infringed.
188. With reference to CAS jurisprudence and academic articles, FIFA argues that legal scholars, CAS panels and the Swiss Federal Tribunal seem to concur that the current sanctioning system based on the WADA Code does not conflict with fundamental human rights. Also with reference to CAS jurisprudence, FIFA maintains that infringement of personality rights of athletes is generally justified by the overriding interest of the sport community in its fight against doping.
189. As to the Player’s argument in respect of the excessive legal commitment, FIFA avers that the Player freely decided to become a professional football player and to consequently submit himself to the anti-doping regulations in force, which entails to be sanctioned for a proven anti-doping offence.
190. FIFA finds that the Player’s reference to the *Matuzalem*-case is not comparable to the matter at stake.
191. As to the proportionality of the sanction, FIFA maintains that this should have been brought up by the Player in the proceedings before the Saudi Arabian bodies. Admitting such arguments in the present proceedings would be a violation of the principle of *res iudicata*. FIFA furthermore considers a sanction of four years to be rather lenient for a second anti-doping rule violation, particularly in light of the fact that under the 2015 version of the WADA Code an athlete can already be suspended for four years for a first anti-doping rule violation.
192. As to the Player’s argument in respect of equal treatment, FIFA refers to CAS jurisprudence showing that eight year periods of ineligibility and lifetime bans have been imposed on players for second anti-doping rule violations. The Player therefore failed to establish that the right to equal treatment was violated.
193. Finally, FIFA argues that the Saudi Arabian Anti-Doping Appeal Panel’s decision to refer the case back to the Saudi Arabian Anti-Doping Disciplinary Panel does not lack legal certainty. FIFA maintains that such order is not only legitimate and enshrined in many legal systems, it is even applied by CAS as provided for in Article R57 of the CAS Code. Moreover, such order was only in the best interest of the Player because as such the 8 year suspension was annulled

and the 4 year suspension revived together with receiving the possibility to appeal such 4 year suspension.

## 2. The findings of the Panel

194. The Panel finds that the assessment to be conducted in respect of article 137(e) of the FIFA Disciplinary Code should be equivalent to one that might be carried out by the Swiss Federal Tribunal on the basis of article 190(2)(e) of Switzerland's Private International Law Act, *i.e.* to examine whether an award is compatible with public policy.
195. Regardless of whether all of the seven principles referred to by the Player indeed form part of public policy, the Panel will proceed to address each of the seven principles mentioned, even while certain principles and certain arguments corroborating the alleged violation of the principles appear to be overlapping.
196. First, in respect of the "*fundamental right to privacy and the limit on excessive legal commitments*", the Panel finds that there is no excessive commitment from the side of the Player and that a four year period of ineligibility is not an unacceptable limitation of the fundamental freedom to work, as argued by the Player. The Player's reference to SFT 4A\_558 (the *Matuzalem*-case) does not hold, as the Player is not suspended for an indefinite period, but "only" for four years based on a second anti-doping rule violation. Contrary to the Player's argument, the Panel finds that the interests of FIFA justify an infringement in the Player's privacy. The anti-doping policy of FIFA is a crucial part of its governance and prevails over the Player's right to work. Indeed, the four-year period of ineligibility imposed on the Player is in fact rather lenient if one takes into account the greater range of sanctions provided for in the WADA Code for a second anti-doping rule violation.
197. Second, in respect of the "*fundamental right to work*", the Panel finds that the Player's arguments are similar to the arguments advanced in respect of the "*fundamental right to privacy and the limit on excessive legal commitments*". The Panel does not deny that the Player has the freedom to choose an occupation, however, the Player's profession is subjected to certain generally accepted rules, including anti-doping regulations. It is generally accepted in CAS jurisprudence and by the Swiss Federal Tribunal that professional athletes may be suspended for violating anti-doping regulations. In fact, lifelong suspensions have been pronounced for second anti-doping rule violations. Against this background, the Panel does not consider that the Player's fundamental right to work is infringed to such an extent as to constitute a violation of substantive public policy.
198. Third, in respect of the "*fundamental principle of the proportionality of the sanction*", again, the Panel finds that the Player's arguments are similar to the ones already addressed above. The Panel does not deny that there must be a reasonable balance between the kind of misconduct and the sanction, however, in the light of the fact that this is the second anti-doping rule violation of the Player, the Panel does not consider a period of ineligibility of four years to be disproportionate, but rather mild. Furthermore, the Panel observes that it does not have the discretion to amend the period of ineligibility imposed, but only to decide whether the sanction

should be extended to have worldwide effect or not. Against this background, the Panel finds that the sanction shall be extended to have worldwide effect, as failing to do so would render the sanction ineffective as the Player would only be suspended in Saudi Arabia. The other arguments advanced by the Player in this respect have already been dismissed *supra* and concern the merits of the case, which cannot be addressed by the Panel at this stage.

199. Fourth, in respect of the “*fundamental principle of equal treatment*”, the Panel is not convinced by the Player’s argument that a four year period of ineligibility is disproportionate in comparison to other violations of the FIFA Disciplinary Code (*e.g.* racism, forgery, etc.). The Panel notes that the WADA Code is broadly adopted in the sports community and that the sanctioning system has been applied consistently. The Player failed to prove that more lenient sanctions were imposed on other athletes in situations similar to his. The Panel is not convinced by the Player’s argument that his situation must be distinguished from those of other anti-doping rule perpetrators. In fact, the Panel finds that it must be taken into account that this is the second anti-doping rule violation committed by the Player.
200. Fifth, in respect of the “*fundamental right of defence*”, the Panel finds that this argument of the Player has already been addressed in respect of the analysis regarding article 137(b) of the FIFA Disciplinary Code *supra*.
201. Sixth, in respect of the “*fundamental principle of legal certainty*”, the Panel finds that this argument of the Player has already been addressed at §93-97 *supra*. The Panel finds that there was no uncertainty for the Player. When the Saudi First Instance Decision was notified to the Player for the second time, the Player was clearly granted another opportunity to appeal such decision. Importantly, the Panel finds that the Player’s rights were not prejudiced by this course of events. Also, there were no second proceedings before the Saudi Arabian Anti-Doping Disciplinary Panel, this decision was only reinstated and the proceedings before the Saudi Arabian Anti-Doping Appeal Panel were annulled and the Player was granted another opportunity to lodge an appeal against the Saudi First Instance Decision.
202. Seventh, in respect of the “*fundamental principle of ne bis in idem*”, the Panel finds that this principle is not violated. Contrary to the Player’s position, the Saudi Arabian Anti-Doping Disciplinary Panel did not rule twice in the same matter, but the Saudi First Instance Decision was reinstated.
203. Consequently, the Panel finds that extending the sanction pronounced in the Saudi First Instance Decision does not conflict with public order and accepted standards of behaviour.

*f. Conclusion*

204. In view of all the above, the Panel finds that the Saudi First Instance Decision shall be extended to have worldwide effect.

**B. Conclusion**

205. Based on the foregoing, and after having taken into due consideration both the regulations applicable and all the evidence produced and all arguments submitted, the Panel finds that:
- i. The Saudi First Instance Decision is to be taken as the basis for deciding whether the sanction imposed should be extended to have worldwide effect.
  - ii. The scope of review to be applied by the Panel is limited to ascertaining that the conditions of article 137 of the FIFA Disciplinary Code have been complied.
  - iii. The Saudi First Instance Decision shall be extended to have worldwide effect.
206. Any other prayers or requests for relief are dismissed.

**ON THESE GROUNDS**

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

1. The appeal filed by Mr Jobson Leandro Pereira de Oliveira on 17 August 2015 against the decision issued on 28 May 2015 by the Chairman of the FIFA Appeal Committee is dismissed.
  2. The decision issued on 28 May 2015 by the Chairman of the FIFA Appeal Committee is confirmed.
- (...)
5. All other motions or prayers for relief are dismissed.