



Arbitration CAS 2014/A/3762 Fernando Santos v. Fédération Internationale de Football Association (FIFA), award of 23 March 2015

Panel: Prof. Luigi Fumagalli (Italy), President; Mr José Juan Pintó (Spain); Mr Herbert Hübel (Austria)

Football

Disciplinary sanction against a coach for unsporting behavior toward the referee

Interpretation of a rule and principle of the hierarchy of norms

Authorisation to give instructions after being sent off

Personal responsibility of the offender

1. However important circular letters may be as a guidance for the FIFA practice, circulars cannot be considered as a legal source of the same kind and level as one of the FIFA regulations, in this case the FIFA Disciplinary Code (FDC). As a result, although a circular can indeed be used as an instrument for the correct interpretation of a regulation, such regulation cannot be derogated by means of a circular. Of no avail can be the fact that the circular is subsequent (as for the time of the respective issuance) to the provision of the regulation to which the circular intends to derogate, since the principle of the hierarchy of the rules prevails over the principle *lex posterior derogat priori*. In other words, if the intention is that of introducing the rule enshrined in the circular, this has to be done by means of a modification in the wording of the provision of the regulation, for this cannot be achieved by means of a simple circular.
2. With regard to the expulsion of a team official, Article 18, para. 3 FDC expressly allows the official sent off (most of the time, a coach) to instruct the person replacing him on the substitute's bench, before leaving the field. If the scope of the provision had been that of allowing the official sent off to address and instruct anybody he wished, the wording of the same would not have made reference merely "*to the person replacing him on the substitute's bench*", since this kind of expression obviously aims at limiting the discretions enjoyed by the official sent off. From the analysis of the wording of the provision, therefore, it must be concluded that consulting other persons (including players) than the one supposed to take over the functions of the official sent off is clearly not allowed and must be deemed to be in breach of the meaning of the provision examined herein.
3. The FDC implicitly establishes a principle that a sanction imposed on any "natural person" shall be served by him/her (although it is clear that such sanction may indirectly affect the team for which he is providing his services) and that the basis of such imposition is the responsibility of the offender. It is utterly irrelevant, on the contrary, for which team the offender was providing his services when sanctioned, since this element is not related, in any respect whatsoever, to his personal responsibility for which he is sanctioned. Based on that assumption, it is clear that any interpretation of

the provision making the principle of responsibility ineffective would be in contradiction with the rationale of the FDC, which consists, indeed, in the principle that any responsibility entails a consequence (*i.e.*, a sanction) for the offender. The same principle, therefore, must lead to the conclusion that once the responsibility of the offender is ascertained, he must face and cannot escape the consequence of such responsibility and has, thus, to serve the sanction imposed on him. This cannot depend on the team for which he was or is providing his services.

I. THE PARTIES

1. Mr Fernando Manuel Fernandes da Costa Santos (hereinafter also “Mr Santos” or the “Appellant”) is a football coach of Portuguese nationality, who has been the trainer of several high-profile clubs (such as FC Porto, SL Benfica, Sporting Clube de Portugal, FC Panathinaikos and AEK Athens) and national representative teams. Mr Santos, in particular, at the time of the facts discussed in the present proceedings, was the coach of the representative team of the Hellenic Football Federation (hereinafter the “HFF”), and as a coach of the Greek national team he participated in the 2014 FIFA World Cup in Brazil. Mr Santos is currently the coach of the Portuguese representative national team, on the basis of a contract with the Portuguese Football Federation (hereinafter also the “PFF”) signed on 23 September 2014.
2. The Fédération Internationale de Football Association (hereinafter also “FIFA” or the “Respondent”) is an international association of national and international football associations/federations, and is the governing body of football worldwide, dealing with all matters relating thereto and exercising regulatory, supervisory and disciplinary functions over national associations, clubs, officials and players belonging to its affiliated. FIFA is the organizing authority of all football competition for national clubs at world level, among which the “FIFA World Cup” and the “FIFA Club World Cup”. FIFA has its seat in Zurich (Switzerland) and enjoys legal personality under Swiss law.

II. BACKGROUND FACTS

3. The background facts stated herein are a summary of the main relevant facts, as established on the basis of the Parties’ written and oral submissions and of the evidence examined in the course of the proceedings. Additional facts will be set out, where material, in connection with the discussion of the Parties’ factual and legal submissions.
4. On 29 June 2014, a round of 16 match of the final competition of the 2014 FIFA World Cup (hereinafter also the “Match”) took place in Recife (Brazil), between Costa Rica and Greece. The Match was won on penalties by Costa Rica with the result of 5-3.
5. At the end of regular time, at the score of 1-1, the Appellant had a discussion with the assistant

referee, Mr Matthew Cream, who had urged the substitute players and staff of the Greek team to leave the field, about the fact that Costa Rica would be granted a different treatment, since nobody belonging to the latter team was actually leaving the field.

6. At the end of extra time, a substitute player of the Greek team started a discussion with the assistant referee, complaining once more that while the Greek substitute players and staff would have been insistently urged to leave, the whole Costa Rican team (including substitute players and staff) would be allowed to stay on the field undisturbed. The discussion in question became animated and Mr Santos intervened pushing aside his substitute player and continuing the same discussion with the assistant referee. The discussion was immediately joined by the referee, Mr Benjamin Williams, who promptly approached Mr Santos and the assistant referee and resolutely urged the former to leave the field along with his substitute players and staff. Mr Santos, however, kept on talking to the referee, gesticulating (in particular by pointing at the other team with his finger), complaining about an alleged difference of treatment granted to Costa Rica, whose substitute players, staff and coach were still on the field. The referee, thus, indicated to Mr Santos that he had to leave the field. Mr Santos continued speaking to the referee who, then, blew his whistle and indicated again to Mr Santos to leave the field prompting the latter to question the referee about that decision by asking “why”. The referee ordered again Mr Santos to leave the field.
7. Mr Santos left the pitch, went back to the bench and a few seconds later approached the fourth official and talked with the latter about his expulsion. Then, Mr Santos went back to the bench again and started talking to his assistant coach, Mr Leonidas Vokolos, and his players in order to draw the list of players who had to take the penalties. After he had consulted his players and instructed his assistant coach, Mr Santos left the area where his players had gathered and was approached by his team manager, Mr Takis Fyssas, with whom he briefly discussed the reasons of his expulsion. Mr Fyssas then went to the referee to talk about his decision regarding Mr Santos, while the latter waited outside the pitch without talking to anybody. After his discussion with the referee, Mr Fyssas turned to Mr Santos and indicated to him that he had to leave the field, which he did by going to the exit tunnel. After the conclusion of the Match, the FIFA press officer informed the HFF that Mr Santos was expected to attend the post-match press conference.
8. The officials’ match reports, in the relevant part concerning the above-mentioned facts, state the following:

Referee: “Following the 4th official asking the Greek head coach, Mr Fernando Santos, on many occasions to behave appropriately and stop protesting refereeing decision, I had also directed Santos to stop this behavior or he would have to leave the technical area. He continued and at the conclusion of extra time, he stormed onto the field to protest. I directed him to leave. Again he showed no respect and stayed well after he was asked to leave”;

Match commissioner: “At the end of the extra time, the coach of the Greek team Fernando Santos went onto the field of play towards the referee visibly in order to protest. He was sent off by the referee, but instead of going to the locker room, he stayed with his players and his staff for 4-5 minutes. Hence he was able to instruct his players, designate those who were going to shoot the penalties, before under the injunction of the general

coordinator leave the field of play”;

Referee assessor: *“After extra time coach of Greece F. Santos was sent off by referee. However he stayed on bench giving instructions to players before penalty-kicks and left only after 4-5 minutes”.*

9. On 2 July 2014, disciplinary proceedings were opened against Mr Santos. No statement by Mr Santos or the HFF was filed with the FIFA Disciplinary Committee in respect of such proceedings.
10. On 11 July 2014, the FIFA Disciplinary Committee issued its decision concerning the above-reported facts. The operative part of the decision reads as follows:

“1. The official Fernando Manuel Fernandes Da Costa Santos is regarded as having breached art. 49 par. 1 a) of the FIFA Disciplinary Code for displaying several acts of unsporting conducts towards match officials in the scope of the match of the final competition of the 2014 FIFA World Cup Brazil™ played between Costa Rica and Greece played on 29 June 2014.

- 2. The official Fernando Manuel Fernandes Da Costa Santos is suspended for eight (8) matches in accordance with art. 19 par. 1 of the FIFA Disciplinary Code. In compliance with art. 19 par. 2 of the FIFA Disciplinary Code, an official who is suspended in application of art. 19 par. 1 of the FIFA Disciplinary Code is automatically banned from the dressing rooms in accordance with art. 20 of the FIFA Disciplinary Code.*

In view of the fact that the representative team of Greece did not qualify for the next round of the final competition of the 2014 FIFA World Cup Brazil™, the eight-match suspension is carried over to the next official matches of the “A” representative team the official Fernando Manuel Fernandes Da Costa Santos is an official of, in accordance with art. 38 par. 2 a) in connection with art. 38 par. 5 of the FIFA Disciplinary Code.

- 3. The official Fernando Manuel Fernandes Da Costa Santos is ordered to pay a fine to the amount of CHF 20,000, in application of art. 49 par. 2 of the FIFA Disciplinary Code (...).”*
11. The grounds of the decision issued by the FIFA Disciplinary Committee were communicated to Mr Santos on 19 August 2014. On 20 August 2014, Mr Santos communicated to the FIFA Appeal Committee his intention to appeal the decision issued by the FIFA Disciplinary Committee. The appeal brief was filed by Mr Santos with the FIFA Appeal Committee on 29 August 2014.
12. On 19 September 2014, at the conclusion of the proceedings on the appeal filed by Mr Santos, the FIFA Appeal Committee rendered its decision, holding as follows:

“the appeal lodged by the official Fernando Manuel Fernandes Da Costa Santos is rejected and the decision of the FIFA Disciplinary Committee rendered on 11 July 2014 is confirmed in its entirety. (...).”

13. The decision issued by the FIFA Appeal Committee with the grounds thereof (hereinafter the

“Appealed Decision”) was communicated to Mr Santos on 24 September 2014.

III. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

14. On 6 October 2014, the Court Office of the Court of Arbitration for Sport (hereinafter the “CAS”) acknowledged receipt of a Statement of Appeal filed by Mr Santos against the Appealed Decision. In his Statement of Appeal, Mr Santos also requested that the proceedings be conducted in an “expedited manner” pursuant to Article R52 of the Code of Sports-related Arbitration and Mediation Rules (hereinafter the “CAS Code”).

15. By the Statement of Appeal Mr Santos further applied to the CAS for provisional measures as follows:

“Mr Santos respectfully requests the Court of Arbitration for Sport to:

(A) stay the execution of the [Appealed Decision] pending the resolution of the present arbitration, before 13 October 2014, in order to allow Mr Santos to take part in the next official matches of the Portuguese “A” Representative team, notably the match between the Portuguese “A” Representative team against Denmark, that will take place on the 14 October 2014. (...).”

16. On 6 October 2014, the CAS Court Office communicated to FIFA that an appeal had been filed by Mr Santos against the Appealed Decision and invited FIFA to inform the CAS whether it agreed that the proceedings be “expedited” pursuant to Article R57 of the CAS Code. By the same communication, furthermore, FIFA was also granted a deadline of three days to file its reply to Mr Santos’ request for provisional measures, pursuant to Article R37 of the CAS Code.

17. On 7 October 2014, FIFA sent a communication to the CAS Court Office, by means of which it informed the CAS of its agreement that the proceedings be “expedited” and proposed a schedule for the proceedings which, in the view of FIFA, if complied with, would have rendered moot the request for provisional measures filed by Mr Santos. FIFA further requested that the deadline for filing its reply on the request for provisional measures be suspended until any decision on the way the proceedings had to be dealt with would be taken.

18. On 8 October 2014, the CAS Court Office provided Mr Santos with a copy of the communication sent by FIFA on the previous day and requested him to state his position on the procedural schedule proposed by FIFA and to inform the CAS on whether he maintained his request for provisional measures. By the same communication the CAS Court Office informed the Parties that the time-limit granted to the Respondent to reply to the Appellant’s request for provisional measures had been suspended until further notice.

19. On the same day, the Appellant communicated to the CAS that the request for provisional measures was maintained, drawing, in this respect, the attention to the possibility that if such request would not be granted by the CAS, the PFF could terminate the contract with the Appellant and, thus, to the “irreparable harm” to which the position of the Appellant was

exposed.

20. On 9 October 2014, the CAS Court Office sent a communication to the Parties acknowledging the Appellant's submission on the request for procedural measures and informed the Respondent that the time limit for the filing of its reply to the request in question had resumed running with immediate effect.
21. On 13 October 2014, the CAS Court Office acknowledged receipt of the Respondent's reply to the request for provisional measures filed by the Appellant, dated 10 October 2014.
22. On 13 October 2013, the CAS Court Office communicated to the Parties that the request for provisional measures filed by the Appellant had been granted by the President of the CAS Appeals Arbitration Division and that the Appealed Decision had been stayed pending a decision on the merits of the proceedings.
23. On 14 October 2014, the CAS Court Office acknowledged receipt of the Appellant's request for production by the Respondent of the complete video footage and copy of the match officials' reports and the footage of the Match, pursuant to Article R44.3 of the CAS Code, and of the suspension of the time-limit for the filing of the Appeal Brief until the production of the mentioned documentation. The Appellant further indicated that the request for suspension would be due to the Respondent's refusal to provide the documentation in question, when requested by the PFF to document the appeal of its national team coach (*i.e.* Mr Santos) and that, considering that those materials were not yet at his disposal, it was not possible for the Appellant to agree with the procedural schedule proposed by the Respondent. The Appellant's communication was forwarded by the CAS Court Office to the Respondent on the same day.
24. On 16 October 2014, the CAS Court Office acknowledged receipt of the Respondent's communication dated 15 October 2014, by means of which the Respondent denied having refused the production of the documentation requested by the Appellant and alleged that such request had never been submitted in the course of these proceedings. The Respondent also drew the CAS' attention to FIFA's reply to the request for documentation submitted by the PFF in which FIFA had asked the PFF to submit the request at issue through the CAS. The Respondent further attached the officials' match report to the communication at stake and declared to be available to provide the Appellant with the requested footage, on the condition that the latter would sign a confidentiality agreement.
25. On 16 October 2014, the CAS Court Office informed the Parties that the President of the Appeal Arbitration Division had dismissed the Appellant's request for suspension of the time-limit for the filing of the Appeal Brief.
26. On 17 October 2014, the CAS Court Office acknowledged receipt of the confidentiality agreement signed by the Appellant.
27. On 20 October 2014, the CAS Court Office acknowledged receipt of the copies of the footage of the Match which were provided to the Appellant on the same day.

28. On 24 October 2014, the Appellant requested a five-day extension of the time-limit to file the Appeal Brief, in consideration of the fact that the uploading and encryption of the files provided by the Respondent was taking longer than expected, due to the exceptional size of the files. The request was granted, pursuant to Article R32 of the CAS Code, on the same day.
29. On 30 October 2014, the Appellant filed a statement by an IT technician attesting that the problems in the uploading and encryption of the files were still persisting and requested a further extension of one week of the time-limit for the filing of the Appeal Brief. Such request was granted by the CAS on 31 October 2014.
30. On 11 November 2014, the CAS Court Office acknowledged receipt of the Appeal Brief, dated 10 November 2014.
31. On 17 November 2014, the Respondent requested an extension of the time-limit to file its Answer until 15 December 2014. Such request was granted by the CAS on 21 November 2014.
32. On 16 December 2014, the CAS Court Office acknowledged receipt of the Respondent's Answer filed on 12 December 2014 and advised the Parties that, in accordance with Article R56 of the Code, they would in principle not be authorized to supplement their arguments, produce new exhibits or specify further evidence not mentioned in the Appeal brief or in the Answer.
33. On 22 December 2014, the CAS Court Office issued an order of procedure which was duly signed respectively on 5 January 2015, by the Respondent, and 6 January 2015, by the Appellant.
34. A hearing took place in Lausanne on 9 January 2015. The Appellant attended the hearing and was represented and assisted by his counsel Mr David Casserly, Mr Carlos Osório de Castro, Mr Francisco Cortez, Mr João Lima Cluny, Mr Karim Piguet and Mr Dzahmil Oda. The Respondent was represented by its in-house counsel Mr Thomas Hug and Ms Valerie Horyna. In the course of the hearing, the following witnesses were heard by the Panel and examined by the Parties: Mr Benjamin Williams, referee of the Match (phone-conference); Mr Matthew Cream, assistant referee (phone-conference); Mr Leonidas Vokolos, former assistant of the Greek national team; Mr Takis Fyssas, former team manager of the Greek national team; Mr Ricardo Santos, former assistant coach of the Greek national team; Mr Alexandre Maniatoglou, Appellant's interpreter when exercising his function as a coach for the Greek national team; Mr João Carlos, Appellant's personal assistant coach (phone-conference). The hearing was further attended, as an observer (authorized by the Panel also in the view of the express consent of both Parties), by Mr João Leal, head of the legal department of the PFF. The Parties did not raise any procedural objections throughout the hearing and expressly confirmed at the end of the hearing that their right to be heard and to be equally treated had been respected, as they had been given ample opportunity to present their cases, examine the witnesses, submit their arguments and answer the questions posed by the Panel.

IV. OUTLINE OF THE PARTIES' REQUESTS FOR RELIEF AND SUBMISSIONS

35. The following summaries of the parties' positions are illustrative only and do not purport to include every contention put forward by the Parties. However, the Panel has carefully considered and taken into account in its discussion and subsequent deliberation all of the evidence and arguments submitted by the Parties, even if there is no specific reference to those arguments in the following outline of their positions or in the ensuing analysis.

A. The Appellant

36. In the Appeal Brief the Appellant requested the Panel to:

“(i) set aside the decision of the FIFA Appeal Committee dated 19 September 2014,

or

Amend the decision of the FIFA Appeal Committee dated 19 September 2014 to significantly reduce the sanctions imposed upon Mr Fernando Manuel Fernandes da Costa Santos;

(ii) In case any sanction is to be imposed, suspend the implementation of such sanction to the greatest possible extent, pursuant to Article 33 of the FDC.

(iii) Order FIFA to pay a significant contribution towards the legal costs and other related expenses of Mr Fernando Manuel Fernandes da Costa Santos”.

37. The arguments submitted by the Appellant may be summarized as follows.

- (a) The footage provided by the Respondent disproves the findings of the Appealed Decision according to which the Appellant would have repeatedly and inappropriately behaved and protested against the referee's decisions and that he would have been asked to refrain from doing so by the fourth official, who would have warned the Appellant. Throughout the Match, indeed, the Appellant occasionally made gestures that could be interpreted as dissatisfaction with the play and, on one occasion, complained to the fourth official and assistant referee that his players were being repeatedly fouled, but this could not be interpreted as a sign of disrespect. At no point of the Match, in fact, the referee needed to intervene to stop the Appellant's behaviour, which is confirmed also by the fact that neither the referee's nor the commissioner's match report make reference to any specific situation in which the Appellant protested against a referee's decision. On the contrary, the coach of the Costa Rican team acted aggressively towards the referees during the Match, disregarded the instruction of the fourth official urging him to remain in the technical area and displayed unsporting behaviour when attempting to interfere with the play by sticking his leg into the path of a Greek player. The Costa Rican coach, however, was never reprimanded either by the match officials or by the FIFA Disciplinary Committee at a later stage.

- (b) In the interval between regular and extra time, almost all members of the Costa Rican team entered the field. Also the coach of the Costa Rican team was on the field and instructed his players. Both the referee and the fourth official approached then the Costa Rican coach urging him to leave the field, which he did not do. The Appellant was, in turn, urged by the assistant referee to leave the field, along with his staff and substitute players. The Appellant, thus, requested an explanation both to the assistant referee and the referee about the different treatment granted to the Costa Rican team, but he was merely told that “that was the law” and he had to leave the field. The same different treatment was reserved to the teams at the conclusion of extra time. At this point, in particular, the Appellant had to calm down and push aside one of his players, who was discussing about the preferential treatment given to the Costa Rican team. After that, the Appellant started to talk to the assistant referee about the same issue, circumstance which caught the attention of the referee, who ran towards the Appellant and urged him again to leave the field along with his staff and substitute players. The Appellant requested again explanation on the different treatment granted to Costa Rica and was sent off by the referee. Convinced of having been misunderstood by the referee, the Appellant asked him about the reasons of the decision on which the referee remained, nevertheless, firm. The Appellant touched, then, his forehead as an expression of confusion and disbelief. It must be noted that, contrary to the statements made by the match officials on the relevant reports, between the moment in which the Appellant was sent off by the referee and the time when he entered the exit tunnel only three minutes and twenty-one seconds elapsed. This lapse of time is subdivided as follows: one minute and four seconds, between the time the Appellant was sent off and the time he started to give instructions to his assistant coach and his players; one minute and eight seconds for instructing them; one minute and nine seconds between the moment the Appellant stopped giving instructions and the entering of the exit tunnel (upon waiting for his team manager to ask the referee where the Appellant could watch the remaining part of the Match).
- (c) The Appellant’s right to be heard was clearly disregarded in the proceedings before the FIFA bodies. The opening of the disciplinary proceedings against the Appellant before the FIFA Disciplinary Committee, indeed, was not properly notified to the Appellant. The relevant communication, in fact, was sent only to the HFF, which forwarded it to its former team manager (Mr Fyssas) and to the Appellant’s assistant coach (Mr Ricardo Santos). What is more, when the communication was sent to the HFF, the Appellant was no longer an official of that association. It should be also noted that the decision issued by the FIFA Disciplinary Committee was communicated not only to the HFF – as it had occurred for the opening of the proceedings – but also to the PFF, of which the Appellant had become an official. This allowed the Appellant to eventually participate in the proceedings before the FIFA Appeal Committee. Considering that the FIFA Appeal Committee found, in the Appealed Decision, that the lack of participation in the proceedings before the FIFA Disciplinary Committee would demonstrate that the Appellant did not pay the necessary attention to the proceedings at issue, the Appellant considers that such incorrect finding could have had a significant impact on the harsh sanction imposed on him.

- (d) The literal interpretation of Article 38, par. 2 a) of the FIFA Disciplinary Code (2011 edition) (hereinafter the “FDC”) would lead to the conclusion that the Appellant had to be suspended during the eight official matches of the Greek team, following the Match in which he had been sent-off. The provision at issue, indeed, stipulates that sanctions such as the one imposed on the Appellant are “*carried over to the representative team’s subsequent official match*”. The use of the word “*the*” before “*representative team*” constitutes a clear indication that the team referred to is the one for which the individual sanctioned was providing his service when sent-off. It should also be noted that, if one was to apply the test of the objective interpretation to Article 38, par. 2 of the FDC, it should be clear that the Appellant could not reasonably attribute to such provision the same meaning as it was done in the Appealed Decision. The provision at stake was clearly drafted on the assumption that it had to be applied to players and its application to coaches is due to the extension of the scope of application made in Article 38, par. 5 of the FDC. It must be noted, however, that while players may represent only a single national team during their career, coaches may also provide their services for more than one national team, by switching from one to the other. In any case, when Article 38, par. 5 of the FDC extends the purview of par. 2 of the same provision, one should reasonably expect that the consequent application has to be made to coaches in the same fashion as for players. As a consequence, a coach should serve the suspension imposed for the matches of the team he was representing when sanctioned. However, even if the Panel would not concur with the Appellant’s submission on the objective interpretation of the provision discussed herein, the principle of the interpretation *contra proferentem*, recognized by Swiss law, should be applied, so that the Respondent should not be allowed to benefit from an interpretation most favourable to its position by taking advantage of the unclear wording of a provision it drafted.
- (e) The Respondent had a wide range of sanctions at its disposal to make sure that the Appellant had to serve a suspension also if he had left the Greek national team. Pursuant to Article 22 of the FDC, for instance, the Appellant could have been sanctioned with a ban on taking part on any football-related activity for a specific period of time. Such a sanction would have provided more guarantee for the Appellant, since its length (in terms of time) would have been certain, while a sanction such as the one actually imposed may even preclude the possibility to be engaged by a new team and could, thus, last for an indefinite period of time and even become impossible to serve.
- (f) The provision of Article 49, paras. 1 and 2 of the FDC cannot be applied to the facts involving the Appellant. Such provision, indeed, is based on the assumption that the person to be sanctioned received a red card. The Laws of the Game (in particular Laws 5 and 12) and Article 18, paras. 1 and 2 of the FDC, however, clearly indicate that only players can receive a red card. The Appellant, in fact, was never shown a red card, with the consequence that Article 49, paras. 1 and 2 of the FDC cannot be a valid basis for imposing a sanction on him. This is confirmed also by the FIFA jurisprudence on other cases in which a coach was sent off by the referee, to which Article 57 of the FDC was applied (instead of Article 49 of the FDC).

- (g) Contrary to the findings of the Appealed Decision, the Appellant did not commit “*several acts of unsporting behaviour*”. The presumption of “accuracy” of the match officials’ reports is a rebuttable one, as it can be inferred from the reading of Article 98 of the FDC. In this regard, it must be stressed that the reports of the match are incorrect in the part in which they state that the Appellant repeatedly acted inappropriately and/or protested against the referee’s decision, that the Appellant was advised to stop his behaviour and that the Appellant stayed on the field of play for about five minutes after having been sent off by the referee. The Appellant, in fact, never exceeded the limits of what may be tolerated on the football pitch. Furthermore, at no point during the Match, prior to being sent off, had the Appellant been reprimanded by the referee about his conduct.
- (h) There is no provision in the FDC which may be applied to the Appellant’s conduct. It must be noted that the Appealed Decision qualifies the Appellant’s conduct as a “*dissent by word or action*”. The only provision in which the “*dissent*” is specifically addressed is that of Article 46 of the FDC which, however, is applicable exclusively to the conduct of players, and which considers the dissent a minor infringement, as it can be inferred by the fact that the sanction to be imposed is that of a suspension for one match. However, provided that the Appellant did not insult anyone and did not violate the principle of fair play, the Appellant is willing to accept that the “*dissenting by words or action*” could fall within a broad definition of “*unsporting conduct*” sanctioned by Article 57 of the FDC. The offence envisaged in the latter provision, in any case, is considered to be a minor infringement as it is confirmed by the fact that its author is sanctioned only with a suspension for one match.
- (i) Article 18, par. 3 of the FDC granted the Appellant the right to instruct his players and his team staff on the steps to be taken in the remainder of the Match and, in particular, to designate the players in charge of taking the penalties. What is more, in the time between the end of extra time and the penalty shoot-out there was no flow of play which may have been interrupted, so that it would have been illogical to prevent a coach from instructing his team before leaving the field of play. In light of the principle of hierarchy of the laws, moreover, the Respondent should not be allowed to rely on a circular (issued before the competition at issue) which clearly contradicts the provision of Article 18 of the FDC, where it states that a coach is not allowed to have any contact with his players and staff after being sent off.
- (j) By failing to impose a sanction based on the existence of clear and predictable rules, the Respondent violated the principle of legality. In addition, the sanction imposed on the Appellant clearly fails to respect the principle of proportionality. The Appealed Decision, in fact, does not pay the necessary attention to the concrete consequences deriving from the length of the sanction and, in particular, the actual possibility for the Appellant to serve it. Furthermore, the Appealed Decision does not take into account the Appellant’s degree of culpability and, in particular, the previous records of the Appellant, who is well-known for his fair-play and correctness. Also the comparison with the jurisprudence of the FIFA bodies in cases similar to that of the Appellant clearly shows that the sanction

imposed on the latter is too harsh and disproportionate. Finally, the circumstances referred to above show that in the Appellant's case there is room for the suspension of a part of the sanction which might be imposed on him, in accordance with Article 33 of the FDC.

B. The Respondent

38. In its Answer FIFA requested the Panel :

- “1. *To reject all the prayers for relief sought by the Appellant;*
2. *To confirm in its entirety the decision of the FIFA Appeal Committee;*
3. *To order the Appellant to bear all costs incurred in connection with these proceedings and to cover all legal expenses of the Respondent in connection with these proceedings”.*

39. The arguments submitted by the Respondent may be summarized as follows:

- (a) No procedural right of the Appellant was violated in the proceedings before the FIFA bodies. First of all, it should be noted that the Appellant failed to provide evidence that he was not informed by the HFF of the opening of the disciplinary proceedings against him. It should be also pointed out that the communication was properly made by FIFA to the HFF pursuant to Article 102, par. 2 of the FDC, according to which the decisions concerning the “*officials are addressed to the association on condition that it forwards the documents to the [party] concerned*”. The correctness of the notification made to the HFF is confirmed also by the Circular No. 20, issued on 28 January 2014, which established that the Secretariat of the FIFA Disciplinary Committee would notify the head of the delegation concerned of all sanctions incurred at the FIFA World Cup 2014. It should also be noted that the reason for which the decision issued by the FIFA Disciplinary Committee was communicated to the PFF is that the Appellant enjoys Portuguese nationality, and not because the Appellant had become the coach of the Portuguese representative team. Furthermore, the mention made in the Appealed Decision of the lack of participation by the Appellant in the proceedings before the FIFA Disciplinary Committee did not have any impact on the sanction imposed on the Appellant, since such mention represented a mere reply to the Appellant's allegations concerning the breach of his procedural rights.
- (b) From the literal interpretation of Article 49 of the FDC it can be clearly inferred that such provision is meant to be applied also to coaches and other team officials. When considering the sanction to be imposed on the offender, indeed, such provision refers to any “*person*”. The scope of the provision is not, therefore, limited to players, as the Appellant submits. This is confirmed also by the reference that the provision at stake makes to Article 18 of the FDC, which, in particular, defines the meaning of “*expulsion*” as an order given by the referee to “*someone*”, and thus not only to a player, to leave the field of play and its surroundings, including the substitutes' bench. What is more, if the

Appellant's interpretation was to be followed, an official could never be sanctioned for committing the infringements set forth in Articles 48 and 49 of the FDC.

- (c) The conduct held by the Appellant falls within the scope of Article 49 of the FDC. The footage of the Match shows several occasions on which the Appellant can be seen manifestly disapproving the referee's decisions and protesting at them. Furthermore, in the course of the Match, the Appellant left his technical area many times without any authorization by the match officials. It should also be noted that the reports issued by the match officials state that the same officials had to "*try to control the Appellant*" during the Match. In this regard, in particular, the report issued by the first assistant states that he personally witnessed the Appellant "*demonstrably dissenting against the decisions of the match officials regularly and repeatedly*" and that the Appellant was warned by the fourth official for his conduct. In the time immediately prior to the expulsion of the Appellant, the latter can be seen visibly upset, gesticulating with his arms, emphatically complaining, and repeatedly protesting, so that the referee had to send the Appellant off. It cannot be disputed, therefore, that the Appellant displayed several acts of unsporting conduct towards a match official and that he had to be sanctioned pursuant to Article 49, par. 1 lit. (a) of the FDC.
- (d) The Appellant's argument according to which the basis for his sanction, if any, should be represented by Article 57 of the FDC, instead of Article 49 of the FDC, is groundless. First of all, it should be noted that the provision of Article 57 of the FDC is meant to apply primarily to cases of insulting or offensive gestures by the offender. This, however, did not happen in the Appellant's case, circumstance which justifies also the different treatment granted by the FIFA bodies to other subjects in cases which the Appellant wrongly considers to be similar to his own. Also, a possible application of Article 57 of the FDC in the part in which it refers to an "*unsporting behaviour*" should be excluded. In this regard, in fact, Article 49, par. 1 lit. (a) of the FDC must be considered to be the *lex specialis* in relation to Article 57 of the FDC, considering that Article 49 further specifies that the unsporting conduct sanctioned is that which was addressed against match officials.
- (e) As for the conduct exhibited by the Appellant after having been sent off, it must be excluded that any justification to his avail could be found in the wording of Article 18 of the FDC. First of all, it must be noted that the Appellant did not merely instruct other persons about the steps to be taken for the next phases of the Match, but also protested against the referee's decision of sending him off and showed disapproval in this regard. Furthermore, the Appellant did not only revert to other officials of his team for instructing them, but also talked to his players and drafted the list of those among them who had to take the penalties, while the wording of the provision at issue refers only to "*a person*" to which the instructions may be given. In any case, and contrarily to what the Appellant submits, it should also be excluded that the Appellant would have been allowed to give instructions even to just one of the other team officials, since, if that would be the case, this would have the absurd consequence that an official who would be sent off at the same stage of the Match as the Appellant would barely serve his sanction. It cannot

be concurred with the Appellant, moreover, when he states that his conduct after the expulsion did not disrupt the flow of play for the Appellant's behaviour caught the attention of everyone in his surroundings, such as match officials, players and public. Circular No. 21, issued on 5 March 2014, finally, clearly indicated that an official who would be sent off would not be allowed to contact any person involved in the Match, including players and technical staff, after the expulsion.

- (f) The Appellant's argument, according to which Article 38 of the FDC should be interpreted so that a coach should serve the sanction imposed on him only with the team of which he was an official of when the sanctioned conduct occurred is clearly wrong. In this regard, it should be noted that the extension of the scope of Article 38, par. 2 of the FDC made by par. 5 of the same provision does not concern the wording of par. 2, but the system and the logic underlying it. This is confirmed by the fact that such extension was made by means of a separate provision whereas, if it the intention was that of extending the same wording of par. 2 also to other "*persons*", it would have been logical to include the reference directly in par. 2.
- (g) Moreover, the Appellant's interpretation of Article 38 of the FDC would lead to unfair consequences. Contrary to players, coaches are indeed not subject to any limitation as regards the number of national teams for which they can be an official in the course of their career. As a consequence, if the Appellant's interpretation were to be followed, coaches would serve no sanction at all whenever they would switch for a different national team than the one they were official of when the conduct for which they are sanctioned occurred. This would not only lead to an unjustified different treatment between players (who necessarily have to serve the sanction) and coaches, but could also cause termination of contracts between coaches and national associations with the aim of circumventing the obligation to serve a sanction by the coach.
- (h) The Appellant's allegations on the possibility for the FIFA bodies to impose on him a different sanction than the one actually imposed, and in particular a ban on taking part in any football-related activity for a specific period of time, are inconsistent. In this respect, suffice is to note that while the Appellant is maintaining the non-proportionality of the imposed match suspension, he is pleading for the imposition of a sanction (*i.e.* the ban on taking part in any football activity for a specific period of time) which would be much harsher than the match suspension. While the latter sanction, in fact, prevents the Appellant from exercising his coaching activity during the matches played by his team, a ban on taking part in any football-related activity would prevent him from working with his team also in the course of the training sessions and on any other occasion.
- (i) The sanction imposed on the Appellant is proportionate to the infringement committed. In any case, it should be stressed that within the framework of the FDC the principle of "*individual guilt*" represents a specific form of the principle of proportionality, with the consequence that there is no room left for any assessment based on the latter, and more general, principle. What is more, the principle of the autonomy of association, recognized in Swiss law, provides for ample discretion when deciding on the sanction to be imposed

in a specific case. The Panel, therefore, may amend a sanction only if it finds that the relevant association exceeded the margin of discretion enjoyed, *i.e.* only in cases in which the association acted arbitrarily in establishing the extent of the sanction. In any case, it must be pointed out that the Appellant's behaviour was highly reproachable and does not allow the conclusion that the minimum sanction provided for in Article 49, par. 1 lit. (a) of the FDC may be applied. The Appellant, indeed, disregarded the referee's decision to send him off – by keeping on carrying out his duties of a coach – which is indicative of an unsporting conduct towards a match official. In addition to that, the Appellant's behaviour and actions during the Match were clearly arrogant and, sometimes, (verbally) aggressive. Furthermore, the absence of any disciplinary record was correctly not considered when assessing the sanction to be imposed. Such a circumstance, indeed, should be considered as the standard situation and cannot represent a mitigating factor. As for the comparison to other cases proposed by the Appellant, it must be emphasized that any case is characterized by its peculiarities, which have to be adequately assessed by the adjudicating body and that the present case is not, therefore, comparable to the cases referred to by the Appellant in his submission. Furthermore, judicial bodies are not bound by precedents and jurisprudence may “evolve” when such an evolution is justified by concrete reasons.

- (j) In any case, the discretion of the FIFA bodies when establishing the kind of sanction to be imposed in a specific case cannot be questioned, so that the Appellant's allegations on the opportunity of imposing a sanction of a different kind than the one indicated in the Appealed Decision is clearly groundless. In this regard, it must be noted that the Appellant was able to conclude a contract with a prestigious football association (the PFF) currently positioned on the 7th place of the FIFA ranking, circumstance which represents a significant step forward in the Appellant's professional career, considering that his previous association (the HFF) currently holds the 25th place in such ranking. Any speculation made by the Appellant about possible prejudice he may suffer from a professional point of view lacks, therefore, any meaning.

V. JURISDICTION OF THE CAS

- 40. Article R47, par. 1 of the CAS Code reads as follows:

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

- 41. Pursuant to Article R47 of the CAS Code, therefore, the first prerequisite to be met for the jurisdiction of the Panel is that the decision appealed against has to be a “decision” of a federation, association or another sports-related body. This condition is clearly fulfilled in the present proceedings, since the Appealed Decision must be considered as a “*decision of an association*” within the meaning of Article R47 of the CAS Code. As set out above, in fact, FIFA

is an international association of national and international football associations/federation, and is the governing body of football worldwide.

42. The second prerequisite stipulated by Article R47 of the CAS Code for the jurisdiction of the Panel is the exhaustion of all internal remedies available to the parties for contesting the Appealed Decision. The subsistence of this prerequisite can be inferred by the following provisions of the FIFA Regulations. A first reference has to be made to Article 126 of the FDC, according to which “[t]he Appeal Committee rules, in principle [as it is in the present case], as a body in the last instance”. Furthermore, par. 2 of the provision at issue stipulates that “[t]he right is reserved for an appeal to be made to the Court of Arbitration for Sport in Lausanne (CAS)” by making reference also to Article 128 of the FDC, pursuant to which “[t]he FIFA Statutes stipulates which decision passed by the judicial bodies of FIFA may be taken before the Court of Arbitration for Sport”. Article 66 of the FIFA Statutes, indeed, provides that “FIFA recognises the independent Court of Arbitration for Sport (...) to resolve disputes between FIFA, Members, Confederations, Leagues, Clubs Players, Official and licensed match agents and players’ agents”. The prerequisite at issue is, therefore, met.
43. The third, and last, prerequisite stipulated by Article R47 of the CAS Code is the submission by the Parties to the competence of the CAS. Such submission, in the present case, follows from the acceptance by the Appellant of the FIFA Regulations – through his affiliation with the HFF which is, in turn, a member of FIFA – that includes an the arbitration clause in favour of the CAS, provided in the mentioned FIFA Statutes and by-laws. Furthermore, the jurisdiction of the CAS to rule on the present dispute can be also inferred from the content of the Order of Procedure, duly signed by the Parties. It must be finally noted that the jurisdiction of the Panel has not been contested by any party to this proceeding and was explicitly recognised by the Parties in their written submissions. In light of the above, the third prerequisite set forth by Article R47 of the CAS Code is also met.
44. It must be concluded, therefore, that the CAS enjoys jurisdiction over the present arbitration proceedings.

VI. MISSION OF THE PANEL

45. According to Article R57 of the CAS Code, the Panel has full power to review the facts and the law of the case. Furthermore, the Panel may issue a new decision which replaces the decision challenged, or may annul the decision and refer the case back to the previous instance.

VII. ADMISSIBILITY

46. Article R49 of the CAS Code reads, *inter alia*, as follows:

“[i]n the absence of a time limit set in the statutes or regulation of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against”.

47. The above-reported provision of the CAS Code, therefore, allows that the time-limit of twenty-one days for the filing of the appeal may be derogated by the statutes or regulation of the association concerned. In this regard, it must be noted that Article 67, par. 1 of the FIFA Statutes confirms the referred time-limit by providing that:

“[a]ppeals against final decisions passed by the FIFA legal bodies (...) shall be lodged with CAS within 21 days of notification of the decision in question”.

48. The Appealed Decision, reporting the grounds on which it is based, was communicated to the Appellant on 24 September 2014.
49. On 6 October 2014 the Appellant filed with the CAS Court Office his Statement of Appeal against the Appealed Decision.
50. On 10 November 2014, the Appellant filed its Appeal Brief (in accordance with the extension of the corresponding time-limit granted by the CAS).
51. The Appellant complied with the time-limits prescribed by the FIFA Statutes (edition 2012) and by the CAS Code. The appeal is, therefore, admissible.

VIII. APPLICABLE LAW

52. Article R58 of the CAS Code reads as follows:

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

53. The matter discussed in the present proceedings concerns a contested breach by the Appellant of the provisions of the FDC. For the resolution of the disputes between the Parties, therefore, the rules enshrined in the FDC and in the further FIFA regulations and by-laws in general must be primarily applied by the Panel.
54. In this regard it must be noted that Article 66, par. 2 of the FIFA Statutes stipulates that the *“CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”*. Swiss law shall, therefore, subsidiarily apply to the facts discussed in the present proceedings.

IX. THE MERITS OF THE DISPUTE

55. At the outset of the analysis on the merits of the dispute, the Panel wishes to remark that in the present proceedings the case was examined *de novo*, in accordance with the power bestowed on

the Panel by Article R57 of the CAS Code. The Parties, therefore, were able to bring forward their arguments extensively both on the facts and on the legal consequence deriving therefrom. As for the facts, in particular, the Panel was provided with the whole footage of the Match (from different angles and camera-feeds) and was shown several parts of it in the course of the hearing. Furthermore, the Panel observes that it is not its task to re-assess the correctness of the referee's decision to send the Appellant off, but rather to review the facts occurred on occasion of the Match in order to establish whether the Appellant committed any offence, which may be sanctioned pursuant to the provisions of the FDC.

56. That said, it must be noted that the Parties disagree on the conduct exhibited by the Appellant prior to his expulsion. In particular, while it is not contested that the Appellant left his technical area without permission on various occasions during the Match, the Appellant submits that he did never exceed the limits of what should be considered perfectly admissible for a coach in the course of a match, bearing in mind the kind of tension which agonistic competitions unavoidably put on the protagonists. The Respondent maintains, on the contrary, that the Appellant had repeatedly exceeded those limits before he was sent off.
57. In the Panel's opinion, the conduct held by the Appellant in the course of the Match does not represent any serious infringement. In this regard, it must be observed that during the hearing the Appellant drew the Panel's attention to some of the phases of the Match, which in the Respondent's view had to be considered particularly significant for demonstrating an offensive behaviour of the Appellant towards the referee. The Panel finds, however, that the footage of the Match rather showed that the expressions used by the Appellant on the relevant occasions were directed to his players for instructing them or to spur them on to remain focused.
58. The Parties disagree also with regard to the weight to be given to the Appellant's conduct when he was sent off by the referee. According to the Appellant, he was indeed misunderstood when he tried to ask the referee about the reasons why the Appellant, his substitutes players and his staff had been urged to leave the field between the extra time and the penalties. The Respondent, on the contrary, alleges that the Appellant's conduct should be considered as an aggressive way of protesting and that the referee was, therefore, right in deciding to send the Appellant off.
59. The footage of the Match shows that the Appellant initially entered the field to push aside one of his players, who was animatedly protesting against the assistant referee about the different treatment allegedly granted to the Costa Rican team, whose coach, substitutes players and staff were allowed to stay on the field while discussing strategies for the upcoming penalties. After having pushed his player aside, however, the Appellant started to vividly protest, first, against the fourth official and, then, the referee. The Panel holds that the footage further shows that the Appellant was then urged by the referee to stop protesting, which he did not, by continuing questioning the referee's decision. Therefore, it cannot be questioned that the conduct held by the Appellant at that point towards the referee was not appropriate.
60. As for the conduct shown by the Appellant from the moment he was sent off by the referee to the moment he actually entered the exit tunnel, the Panel notes that the Parties strongly disagree

as to whether the Appellant committed a (further) breach of the rules or not. The Appellant, indeed, submits that he was clearly allowed of giving instructions to his staff and players and to consult them for deciding who had to take the penalties. The Respondent, on the contrary, alleges that the Appellant should have immediately left the field of play through the exit tunnel, without instructing or consulting anyone.

61. The analysis of the conduct in question shall be based on the provision of Article 18, par. 3 of the FDC, which reads as follows:

“[a]n official who has been sent off may give instructions to the person replacing him on the substitute’s bench. He shall, however, ensure that he does not disturb the spectators or disrupt the flow of play”.

62. The Respondent submits that this provision should be “interpreted” in the light of the Circular No. 21, issued on 5 March 2014, signed by the FIFA General Secretary, which, with regard to the expulsion of a team official, states, *inter alia*, what follows:

“[i]n order to respect the ‘ratio legis’ of the sanction imposed on the official, an official who has been sent off (...) is not allowed to contact any person involved in the match – players or technical staff – by any means whatsoever immediately after he has been sent off (...). The official cannot have any influence – be it direct or indirect – for the rest of the match during which he has been sent off...”.

63. The Respondent’s argument on the weight to be attributed to the Circular No. 21 cannot be shared. However important circular letters may be as a guidance for the FIFA practice, circulars cannot be considered as a legal source of the same kind and level as the FDC. With respect to Circular No. 21 this point is made clear also by the fact that it was not adopted by the bodies empowered to issue the FIFA Regulations and specifically the FDC. As a result, the FDC could not be derogated by means of Circular No. 21.
64. The Panel notes that this point is somehow conceded by the Respondent, which in fact alleges that such Circular did not intend to amend the FDC, but should actually be used as an instrument for the correct interpretation of the provision of Article 18, par. 3 of the FDC. Indeed, such purpose would be indicated also by the fact that the same Circular refers to the *ratio legis* of the provisions on the expulsion of a team official.
65. However, the text of the Circular at stake makes clear that if one were to apply the “rule” established therein, the provision of Article 18, par. 3 of the FDC would undergo an obvious modification, rather than a simple “interpretation”. In no way, in fact, the actual wording of Article 18, par. 3 of the FDC, as above recalled, could be interpreted in a fashion which would prevent any kind of contact between the official sent off and any other member of his team. Of no avail to the Respondent’s position can, of course, be the fact that the Circular No. 21 is subsequent (as for the time of the respective issuance) to the provision of Article 18, par. 3 of the FDC, since the principle of the hierarchy of the rules prevails over the principle *lex posterior derogat priori*. In other words, if the Respondent’s intention was that of introducing the rule enshrined in the Circular No. 21, it had to introduce such rules by means of a modification in the wording of Article 18, par. 3 of the FDC, for this could not be achieved by means of a

simple circular.

66. As indicated, Article 18, par. 3 of the FDC expressly allows the official sent off (most of the time, as in the present case, a coach) to instruct the person replacing him (*i.e.* taking over the coach's functions) on the substitute's bench. It must be concluded, therefore, that the Appellant would have been clearly entitled to instruct his assistant coach before leaving the field. The contrary view expressed by the Respondent cannot find any support in the Respondent's submission that the sending-off would be deprived of its disciplinary effect if the Appellant were allowed to give instructions to other team officials. This argument is not only irrelevant, when confronted with the clear wording of Article 18, par. 3 of the FDC, but also fails to account for the fact that the case to which it refers is obviously not the only one in which the consequence of an expulsion could be "limited" in the sense the Respondent suggests. It cannot be questioned that, according to Law of the Game 12, even a substitute player can be sent off at any stage of the match or that, even when the match is over, the referee can send off any player, as established by Law of the Game 5. The consequences in these cases would be, thus, even "milder" than in the present case. The Respondent's argument, therefore, does not find sufficient support against the background of the overall construction of its Regulations.
67. The Panel observes, however, that the Appellant did not restrict himself to instruct his assistant coach, but also addressed several of his players to ask them about their conditions and as to whether they were prepared to take the penalties. It was, indeed, on the basis of those consultations that the Appellant admittedly drew the list of the players who had to take the penalties. From the analysis of the wording of Article 18, par. 3 of the FDC, however, it must be concluded that consulting other persons (including, of course, players) than the one supposed to take over the functions of the official sent off is clearly not allowed and must be deemed to be in breach of the meaning of the provision examined herein.
68. Indeed, it cannot be contested that if the scope of the provision had been that of allowing the official sent off to address and instruct anybody he wished, the wording of the same would not have made reference merely "*to the person replacing him on the substitute's bench*", since this kind of expression obviously aims at limiting the discretions enjoyed by the official sent off. For this reason, the Panel cannot concur with the Appellant's argument that Article 18, par. 3 of the FDC granted him the right to instruct his players and his team staff for the steps to be taken in the remainder of the Match. On the contrary, it must be concluded that in addressing and instructing his players after having been sent off, the Appellant clearly exceeded the right granted by the provision at issue.
69. The Respondent submits that the Appellant's conduct should be deemed, in any case, to exceed the limits set by Article 18, par. 3 of the FDC, since, in addressing and instructing his assistant coach and players, the Appellant would have disrupted the flow of play and disturbed the spectators, for the Appellant's behaviour would have caught the attention of everyone in his surroundings, such as match officials, players and public. The Panel observes, however, that no evidence has been brought by the Respondent to show that the Appellant's conduct disrupted the flow of the Match (circumstance which appears to be quite difficult, considering that it occurred during the interval between the extra time and the penalty shoot-out) or that it

disturbed the spectators by catching their attention and that of the players and the match officials.

70. As for the public, no part of the footage seems to allow the conclusion that it was actually disturbed by the Appellant's conduct or that such conduct even caught the public's attention. It should also be noted, moreover, that the fact that the Appellant exceeded the right granted to him by Article 18, par. 3 of the FDC, as ascertained by the Panel, cannot be considered to necessarily entail that the flow of play was disrupted or that the spectators were disturbed. As for the match officials and the players, it must be pointed out that Article 18, par. 3 of the FDC does not make any reference to them, contrary to the spectators, where it provides that the conduct of the official sent off should not disturb them. In any case, the footage of the Match shows that the Costa Rican team did apparently not pay any attention whatsoever to what happened on the other side of the field, while the match officials did not go to the Appellant in order to prevent him from talking to his team or to urge him to leave the field without further delays.
71. Having ascertained that the Appellant improperly behaved when he was sent off by the referee and that he also abused his right granted to him by Article 18, par. 3 of the FDC (*i.e.* the right to give instruction to the person replacing him on the substitutes' bench), the Panel notes that the Appellant's overall conduct could theoretically fall within either the scope of Article 49, par. 1 lit (a) of the FDC or Article 57 of the FDC. The first of the mentioned provisions, in particular, stipulates that "*including the automatic suspension [from the subsequent match] incurred [because of an expulsion], the overall suspension imposed on any person receiving a direct red card shall be for: (a) at least four matches for unsporting conduct towards a match official...*" (emphasis added). Article 57 of the FDC, on the other hand, stipulates that "*anyone who insults in some way, especially by using offensive gestures or language, or who violates the principle of fair play or whose behaviour is unsporting in any other way may be subject to sanctions in accordance with art. 10 ff. [of the FDC]*" (emphasis added).
72. It must be noted that while the Appellant submitted that his conduct (at least that which led to his expulsion) could be considered a "*dissenting by words or action*" and that he would, thus, be willing to accept that such conduct could fall within a broad definition of "*unsporting conduct*" sanctioned by Article 57 of the FDC, the Respondent firmly maintains that the provision applicable to the facts of the case is Article 49, par. 1 lit (a) of the FDC, since it must be considered to be the *lex specialis* in relation to Article 57 of the FDC. Article 49 of the FDC further specifies that the unsporting conduct sanctioned is that which was addressed "*against match officials*". A possible application of Article 49 of the FDC is, in turn, contested by the Appellant, based on the assumption that Article 49 would require as a prerequisite of its application that the person to be sanctioned received a red card, whereas the Appellant did (and could) not receive such red card.
73. As mentioned, Article 49, par. 1 lit. (a) of the FDC stipulates that the sanction to be imposed because of an "*unsporting conduct towards a match official*" is at least a suspension of four matches, including the match of automatic suspension incurred because of an expulsion, plus a possible fine pursuant to par. 2 of the provision at issue. On the other hand, Article 57 of the FDC makes reference to the sanctions listed in Article 10 ff. of the FDC. Namely, a warning, a

reprimand, a fine, a caution, a match suspension (better specified by a reference to Article 19, par. 2 and Article 20 of the FDC as for the team officials), a ban from entering a stadium or a ban from taking part in any football-related activity (see Articles 10 and 11 of the FDC).

74. Both Article 49, par. 1 lit. (a) and Article 57 (in relation to Article 10 ff.) of the FDC, therefore, provide that the person committing a breach of the relevant rule may be sanctioned with a match suspension and, additionally, with a fine (see also Article 19, par. 6 of the FDC). What is more, the length of a suspension on the basis of Article 57 of the FDC is further specified by Article 19, par. 3 of the FDC, from the content of which it can be inferred that such suspension could be set between a single match suspension and a twenty-four-match suspension.
75. In the Panel's view, the most appropriate sanction to be imposed on the Appellant because of his conduct – irrespective of whether the sanctions set forth in Article 49 or those listed in Article 10 ff. of the FDC (and the ample discretion provided by Article 39 of the FDC) are considered –, is that of an overall four-match suspension, pursuant to Article 19 of the FDC, plus a fine of CHF 10,000.
76. In reaching this conclusion, the Panel takes into account all of the circumstances of the case (indicative also of the Appellant's degree of guilt), such as the fact that the Appellant did not merely protest against the referee's decision, but also cast doubts on his impartiality. As a result, the sanction could not, in any case, be limited to the single match of automatic suspension deriving from his expulsion. In addition, the Appellant abused the right to instruct the person who had to replace him on the substitutes' bench in accordance with Article 18 of the FDC. On the other hand, the Panel cannot concur with the Respondent's position that under Article 18 of the FDC he was prevented from giving any instruction whatsoever. In addition, the Panel notes that some of the episodes which, according to the Respondent, had to demonstrate that the Appellant had held an improper conduct also during the Match were not actually supporting the Respondent's allegations, since on those occasions the Appellant was not contesting the referee's decisions, but rather addressing his players for instructing them. Finally, attention is paid (although this should not be considered, in the Panel's view, a crucial issue) to the fact that during a significant part of the time the Appellant spent on the field before entering the exit tunnel (*i.e.* one minute and nine seconds) the Appellant stayed by his own on the side of the pitch because he had been instructed by his team manager to wait until the latter had asked the referee as to where the Appellant could watch the remaining part of the Match. In view of all the above, the sanction of an eight-match suspension must be considered to be excessive and must be reduced to that of a four match suspension, plus a fine as indicated. The same considerations apply to the financial sanction of CHF 20,000 originally imposed on the Appellant with the Appealed Decision. Once ascertained, indeed, the reasons for which the part of the sanction concerning the match suspension has to be considered excessive and, thus, be reduced to the half of its length, and that the financial sanction was imposed for the very same conduct, the Panel considers that also the financial sanction has to be correspondently reduced following the same principle, and thus be set at CHF 10,000.
77. Having established that the sanction to be imposed is that of a four-match suspension plus a fine and that such sanction could be imposed both as a consequence of a breach of Article 49,

par. 1 lit. (a) or of Article 57 of the FDC, the issue of which of the two provisions at stake should be concretely applied clearly loses its relevance. It must be considered, indeed, that, as said, the Appellant submitted to be willing to accept that his conduct could fall within the scope of Article 57 of the FDC, while the Respondent maintained the applicability of Article 49, par. 1 lit. (a) of the FDC as *lex specialis* in relation to Article 57 of the FDC. Once ascertained, however, that the Appellant's conduct must fall, "at least", within the scope of Article 57 of the FDC and that the sanction to be imposed on him would be, in any case (*i.e.*, irrespective of whether Article 49, par. 1 lit. (a) or Article 57 of the FDC would find application), a four-match suspension (as it can be imposed on the basis of both of the provisions at stake), it appears to be unnecessary to further dwell on the possible existence of the element of "peculiarity" of the fact that the conduct "*against the referee*" which, in the Respondent's view, would lead to the application of Article 49, par. 1 lit. (a) of the FDC. This issue, therefore, is not material for the decision of the case and, thus, can be left open.

78. The Panel notes that the Parties disagree also on the interpretation to be given to Article 38 of the FDC. In this regard, the Appellant argues that the suspension could not follow the offender once he leaves the team of which he was an official when sanctioned. The Respondent, on the contrary, firmly maintains that the sanction should be served by the offender for its whole length/extent irrespective of any change of team. The Panel concurs with the latter interpretation. It must be noted, indeed, that the structure of Article 10 ff. of the FDC is clearly fashioned to make a distinction between the sanctions to be imposed on "natural persons" and those imposed on "legal persons" (the former case being, notably, that of a match suspension), which appears to be clearly based on the assumption of the personal responsibility of the offender. In so doing, therefore, the FDC implicitly establishes a principle that a sanction imposed on any "natural person" shall be served by him/her (although it is clear that such sanction may indirectly affect the team for which he is providing his services) and that the basis of such imposition is the responsibility of the offender.
79. It is utterly irrelevant, on the contrary, for which team the offender was providing his services when sanctioned, since this element is not related, in any respect whatsoever, to his personal responsibility for which he is sanctioned. Based on that assumption, it is clear that any interpretation of the provision making the principle of responsibility ineffective would be in contradiction with the rationale of the FDC, which consists, indeed, in the principle that any responsibility entails a consequence (*i.e.*, a sanction) for the offender. The same principle, therefore, must lead to the conclusion that once the responsibility of the offender is ascertained, he must face and cannot escape the consequence of such responsibility and has, thus, to serve the sanction imposed on him. This cannot depend on the team for which he was or is providing his services. When applying these conclusions to the matter at stake, therefore, it is clear that the sanction imposed on the Appellant has to be served by him notwithstanding the fact that the team of which he is currently an official of is not the same as it used to be when he committed the above ascertained breach of the FDC.
80. It must be finally observed that Article 33, par. 1 of the FDC stipulates that "*the body that pronounces a match suspension (...) may examine whether it is possible to suspend the implementation of the sanction partially*". The content of this provision is further specified at par. 3 which stipulates that

the body pronouncing a sanction has to decide which part of it may be suspended, provided that at least half of the sanction has to be actually served. Par. 4 of Article 33 further stipulates that when suspending the implementation of (a part of) the sanction, the offender must be subjected to a probationary period from six months to two years. Finally, par. 2 of Article 33 of the FDC sets forth two prerequisites which must be met in order to grant a partial suspension of the sanction, namely (i) that the sanction does not exceed six matches or six months and (ii) that *“the relevant circumstances allow it”*.

81. The first of the above-mentioned prerequisites is met, for, as it was established, the suspension to be imposed on the Appellant is that of four matches (plus a fine). As for the second prerequisite, the Panel observes that, when setting it forth, the provision at issue contains a specific reference by stating that in carrying out the relevant assessment attention should be paid *“in particular [to] the previous record of the person sanctioned”*. The outcome of the evidentiary proceedings unquestionably showed that the Appellant’s previous record is that of a person committed to respect and teach sporting and moral values, as it is confirmed by the absence of any previous disciplinary records and by the witness statements given to the Panel by the players of which the Appellant was a coach and by the people who had professional contacts with him. It should also be underlined that the Appellant’s personal values appear to be generally acknowledged also in his country, in which he was selected to be the ambassador for the Portuguese National Plan for Ethics and Sport. On this basis, also the second of the prerequisites set forth by Article 33, par. 2 of the FDC must be considered to be met. In view of the above-considerations, therefore, the Panel deems that half of the sanction of the four-match suspension imposed on the Appellant must be suspended (*i.e.*, two matches) with a probationary period of six months starting on the day following the date of the second match served on the suspension.

X. ORDER ON REQUEST FOR STAY

82. The suspensive effect of the Order to stay the execution of the Appealed Decision issued by the President of the CAS Appeals Arbitration Division on 13 November 2014 is lifted with notification of this arbitral award.

XI. FINAL FINDINGS

83. In view of the foregoing, the appeal filed by Mr Santos is partially upheld.
84. The Appellant is sanctioned with a suspension of four matches, two of which suspended for a probationary period of six months, and a fine in the amount of CHF 10,000.
85. Any other or further motion or prayers for relief of the Parties are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules as follows:

1. The appeal filed by Mr Fernando Manuel Fernandes da Costa Santos on 6 October 2014 against the decision issued by the FIFA Appeals Committee on 19 September 2014 is partially upheld.
2. The decision issued by the FIFA Appeals Committee on 19 September 2014 is set aside and replaced with the following:
 - i) Mr Fernando Manuel Fernandes da Costa Santos is sanctioned with a suspension of four (4) matches, two (2) of which are suspended for a probationary period of six (6) months starting on the day following second match served on the suspension.
 - ii) Such suspension is carried over to the next official matches of the “A” representative team that Mr Fernando Manuel Fernandes Da Costa Santos is an official of.
 - iii) Mr Fernando Manuel Fernandes da Costa Santos is ordered to pay a fine in the amount of CHF 10,000 (ten-thousand Swiss francs).
3. (...).
4. (...).
5. All further prayers for relief are dismissed.