



Arbitration CAS 2013/A/3323 Deportivo Petare FC v. Fédération Internationale de Football Association (FIFA), award of 21 March 2014

Panel: Mr Pedro Tomás Marqués (Spain), President; Mr Fernando Cabrera García (Mexico); Mr João Nogueira Da Rocha (Portugal)

Football

Disciplinary sanction for not complying with a decision of the FIFA DRC

Standard of proof

Discretion of the creditor regarding bank details

Utmost obligation of the debtor

1. In practical terms, the standard of proof of “personal conviction” under Article 97 of the FIFA Disciplinary Code coincides with the “comfortable satisfaction” standard widely applied by CAS panels in disciplinary proceedings. According to this standard of proof, the sanctioning authority must establish the disciplinary violation to the comfortable satisfaction of the judging body bearing in mind the seriousness of the allegation. It is a standard that is higher than the civil standard of “balance of probability” but lower than the criminal standard of “proof beyond a reasonable doubt”.
2. It is to the discretion of the creditor to determine the details and the place of the bank account into which the amount due is to be transferred.
3. The utmost obligation of the debtor is to duly transfer the amount to the bank account provided by the creditor, and, therefore, it is the responsibility of the debtor to do all relevant efforts to comply with its payment obligation in accordance with a FIFA decision and according to the creditor’s wishes. The latter is therefore free not to accept a payment which would not be made on the bank account which details he has been requested to provide, which obligation he met.

I. THE PARTIES

1. The Asociación Civil Deportivo Petare Fútbol Club (the “Appellant” or “Deportivo Petare”) is a professional football club affiliated to the Asociación Venezolana de Fútbol (“FVF”) and a member of the Fédération Internationale de Football Association.
2. The Fédération Internationale de Football Association (“FIFA” or the “Respondent”) is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the governing body of international football.

II. THE FACTS

3. This appeal was filed by Deportivo Petare against the decision rendered by the FIFA Disciplinary Committee on 26 June 2013 (the “Appealed Decision”).
4. A summary of the most relevant facts and the background giving rise to the present dispute will be developed on the basis of the Parties’ submissions and the evidence adduced during the hearing. Additional factual background may also be mentioned in the legal considerations of the present award. In this award, the Panel only refers to the submissions and evidence it considers necessary to explain its reasoning.
5. On 10 May 2012, the Dispute Resolution Chamber of FIFA (the “FIFA DRC”) decided the following:

“(…) 2. El demandado, Club Deportivo Petare, debe pagarle al demandante, E., la cantidad de Bolívars Fuertes 129,454 dentro de los próximos 30 días a partir de la fecha de notificación de la presente decision, más intereses del 5% por año sobre las siguientes cantidades parciales hasta la fecha efectiva de pago:

 - VEF 52,000 a partir del 1 de marzo de 2010;
 - VEF 38,727 a partir del 1 de mayo de 2010;
 - VEF 38,727 a partir del 1 de junio de 2010.

3. En caso de que las cantidades adeudadas no fueran pagadas dentro del plazo establecido, a solicitud del demandante, E., el caso se trasladará a la Comisión Disciplinaria de la FIFA, para su consideración y decision.

4. El demandante deberá comunicar directa e inmediatamente al demandado, Deportivo Petare, el número de cuenta en la que deberá ser depositada la suma adeudada, así como informar al juez de la DRC sobre cualquier pago efectuado”.
6. On 1 June 2012, the findings of the decision were notified to the parties and the FVF. No request for the grounds of such decision was made by any of the parties.
7. On 4 June 2012, the FIFA Player’s Status Department (“FIFA PSD”) received a correspondence from E. (the “Player”), which was also addressed to the Appellant and the FVF, in which the Player provided the bank details for the payment of the amount due by the Appellant.
8. On 11 July 2012, the Player informed the FIFA PSD that the Appellant had not made any payment in his favour.
9. On 16 July 2012, the FIFA PSD urged the Appellant to comply with the decision of the FIFA DRC; otherwise the matter would be transferred for the consideration of the Disciplinary Committee of FIFA. Moreover, the Player was reminded that in order to initiate proceedings in front of the Disciplinary Committee of FIFA, the creditor was obliged to notify the debtor of the bank details into which the amount due was to be paid.

10. On 25 July 2012, the Appellant informed the FIFA PSD not having received any communication from the Player providing his bank details in Venezuela, explaining that this was the reason why it was not able to comply with the decision of the FIFA DRC.
11. In reply to the above, on 6 August 2012, the Player stated that no amount had been paid by the Appellant and, as he was no longer living in Venezuela and had no bank account there, provided again his current bank details.
12. On 10 August 2012, the FIFA PSD informed the Appellant that in view of the fact that the financial obligation imposed by the FIFA DRC remained unexecuted, the case would be transferred to the secretariat of the Disciplinary Committee of FIFA for consideration.
13. On 8 October 2012, the secretariat of the Disciplinary Committee of FIFA informed the Appellant, the Player and the FVF that disciplinary proceedings have been opened against the Appellant as it failed to comply with the decision of the FIFA DRC.
14. On 18 October 2012, the secretariat of the Disciplinary Committee of FIFA urged the Appellant to pay the outstanding amount to the Player by 2 November 2012 at the latest and informed that the case would be submitted to the Disciplinary Committee on 14 November 2012 in the event that no payment was made. The Appellant was furthermore informed that the Disciplinary Committee would take a decision using the file in its possession should the Appellant fail to take position.
15. On 24 October 2012, the FVF forwarded a letter from the Appellant, by means of which the latter indicated that it was not in a position to make payments abroad in view of the “currency control” existing in Venezuela. It further called the attention of the Committee that the amount imposed by the DRC was established in VEF only, and expressed: “(...) *queremos expresar nuestro sincero disgusto por el hecho de que esa Comisión Disciplinaria ha hecho caso omiso a la comunicación enviada por el Deportivo Petare FC, en fecha 12 de Julio de 2012, donde expusimos que nuestra organización ha puesto a la orden del jugador E., (...) un cheque en moneda nacional VEF a su entera disposición*”.
16. On 25 October 2012, upon request of the Player, the secretariat of the FIFA Disciplinary Committee forwarded to the Appellant the new bank details of the Player and urged the Appellant to pay the outstanding amount by 5 November 2012 at the latest and informed it that the case would be submitted to the Disciplinary Committee on 20 November 2012.
17. On 13 November 2012, the Appellant, *inter alia*, stated that:
 - a) The decision of the FIFA DRC imposed as a relevant currency a payment in VEF.
 - b) Since the date of the FIFA DRC decision, a check in local currency (i.e. VEF) had been deposited at the FVF and was available for the Player who has refused to accept it.
 - c) The club could not provide a payment in USD directly on the Player’s account as this was illegal in Venezuela, due to existing exchange control rules.

18. On 28 November 2012, the secretariat of the FIFA Disciplinary Committee granted a last deadline until 5 December 2012 to the Appellant to pay the outstanding amount to the Player and indicated that, in case of failure, the case will be submitted to the Disciplinary Committee on 12 December 2012.
19. On 30 November 2012, the President of the FVF, Mr Rafael Esquivel, also member of the FIFA Disciplinary Committee, addressed a correspondence to the Chairman of the FIFA Disciplinary Committee, Mr Marcel Mathier, re-stating the argument that the Appellant was not in a position to make any payment in USD due to the existing exchange control.
20. On 14 December 2012, the Player indicated that the Appellant was capable of making and receiving payments in foreign currencies. He attached copy of a loan agreement between the Appellant and a Chilean club, which payments made by the latter were expressed in USD. In addition, the Player provided the details of a bank account in Florida (USA), apparently owned by the Appellant, on which the CONMEBOL might have made payments following the Appellant's participation on the Copa Libertadores 2010.
21. On 13 May 2013, the Player sent a correspondence to the secretariat of FIFA Disciplinary Committee, indicating that no payment had been made by the Appellant and attached copy of an e-mail sent by the "Gerente de Operaciones" of Deportivo Petare dated 13 August 2012 which stated the following: *"(...) Por favor validame si la cuenta anexa corresponde formalmente con los datos tuyos dado lo delicado del caso de ser correcto el club está dispuesto a hacer efectivo el pago de 18.000 dólares americanos (\$) de manera inmediata para poder cerrar el caso (...)".*
22. On 21 May 2013, the secretariat of the FIFA Disciplinary Committee informed the Appellant and the Player that the matter was not presented to the Committee in its meeting of 5 December 2012. The Appellant was provided with the Player's correspondence of 14 December 2012 and 13 May 2013, and was urged to pay the outstanding amount by 11 June 2013 at the latest and was informed that the case would be submitted to the FIFA Disciplinary Committee on 25 June 2013.
23. On 26 June 2013, the FIFA Disciplinary Committee found the following (the "Appealed Decision"):
 - a) The Appellant was pronounced guilty of failing to comply with a decision in accordance with Article 64 of the FIFA Disciplinary Code (the "FDC").
 - b) The Appellant was ordered to pay a fine to the amount of CHF 2'000,- to FIFA either in Swiss francs or US Dollars within 30 days as from the notification of the decision.
 - c) The Appellant was granted a final period of 30 days as from the notification of the decision to settle the debts with the Player in the bank account provided by the latter. The payment of outstanding amount should be performed in the foreign currency indicated by the Player, at the exchange value on the date of the FIFA DRC decision (i.e. 10 May 2012).

- d) If the aforementioned sums were not paid within the stipulated deadline, the Player might demand in writing from FIFA that three (3) points be deducted from the Appellant's first team in the domestic league championship.
- e) If the Appellant still failed to pay the amount due even after deduction of points, the Committee would decide on a possible relegation of the Appellant's first team to the next lower division.

III. THE ARBITRAL PROCEEDINGS

- 24. On 11 September 2013, the Appellant filed its Statement of Appeal before the CAS Court Office in English, and requested that the proceedings be conducted in Spanish. The Appellant further requested a stay of the execution of the Appealed Decision. Finally, it suggested that the case be submitted to a sole arbitrator but nominated Mr. Fernando J. Cabrera Garcia as arbitrator should the case be submitted to a Panel of three arbitrators.
- 25. On 23 September 2013, the Respondent objected to the appointment of a sole arbitrator and nominated Mr João Nogueira da Rocha as arbitrator. Furthermore, it requested that English be the language of the procedure but agreed that the Appellant continued to address its submissions in Spanish and that the exhibits to the parties' submissions not be translated in English. Finally, the Respondent did not object to the Appellant's request to stay the execution of the Appealed Decision and, therefore, on behalf of the Deputy President of the CAS Appeals Arbitration Division, the decision rendered by the Disciplinary Committee of FIFA on 26 June 2013 was stayed.
- 26. In view of the fact that the present procedure is exclusively of a disciplinary nature rendered by an international body ruled in appeal and shall be subject to the provisions of Article R65 of the Code of Sports-related Arbitration (the "Code"), the Appellant was invited to state if it maintained its request for the appointment of a sole arbitrator or finally agreed for the constitution of a Panel composed of three arbitrators.
- 27. On 26 September 2013, the Appellant filed its Appeal Brief. It further agreed to a Panel of three arbitrators and insisted on its request to conduct the arbitration proceedings in Spanish.
- 28. On 1 October 2013, the CAS Court Office confirmed to the Parties that English should be the language of the procedure and that the Appellant was allowed to address its correspondences and submissions in Spanish, and that the exhibits to the parties' submissions should not be translated in English, pursuant to Article R29 of the Code and the position of FIFA.
- 29. On 31 October 2013, the Parties were informed, on behalf of the President of the CAS Appeals Arbitration Division, that the Panel appointed to decide the case was constituted as follows:
 - Mr Pedro Tomás Marqués, attorney-at-law in Barcelona, Spain.
 - Mr Fernando J. Cabrera García, attorney-at-law in México DF, México.

- Mr João Nogueira Da Rocha, attorney-at-law in Lisbon, Portugal

30. On 1 November 2013, the Respondent filed its Answer.
31. On 13 December 2013, after having consulted the Parties, the Panel deemed that a hearing was necessary and that it would be held on 23 January 2014 in Lausanne.
32. On 20 January 2014, the Order of Procedure was sent to the Parties, which was signed by them without any remarks.
33. On the same date, the Appellant renounced to call the witnesses proposed in the Appeal Brief.
34. On 23 January 2014, the hearing was held at the Hotel Lausanne Palace in Lausanne, Switzerland. The Panel was assisted by Mr William Sternheimer, Managing Counsel & Head of Arbitration at CAS, and Mr Antonio de Quesada, Counsel to the CAS. The Appellant was represented by Mr Rafael J. Chavero Gazdik. The Respondent was represented by Mr José Rodríguez and Mrs Valerie Horyna. The Respondent objected to the request of the Appellant to conduct the hearing in Spanish and, therefore, it was dealt in English.
35. At the conclusion of the hearing, the Parties confirmed that they had no objection in respect to the manner in which the hearing had been conducted, in particular the principles of the right to be heard and to be treated equally in the arbitration proceedings.

IV. OVERVIEW OF THE PARTIES' POSITIONS

36. The following is a brief summary of the Parties' submissions and do not purport to include every contention put forth by the Parties. However, the Panel has thoroughly considered in its discussion and deliberation all of the evidence and arguments submitted by the Parties, even if no specific or detailed reference has been made to those arguments in the following outline of their positions and in the ensuing discussion.

IV.1 The Appellant's position and requests for relief

37. The Appealed Decision has modified the contents of the FIFA DRC decision. The FIFA DRC had ordered the Appellant to pay the Player an amount in VEF and not in USD, and had not ordered the Appellant to take the responsibility for the conversion of VEF in USD. It simply accepted the demand of the Player to be paid in the national currency, i.e. VEF, since the contractual relationship was agreed in that currency and developed exclusively inside the Bolivarian Republic of Venezuela.
38. Due the fact that the Player never appealed against the above-mentioned decision, it became final and binding.

39. Furthermore, in the Appellant's opinion, when it comes to a sentence to pay a sum of money in VEF, the bank account indicated by the Player must be situated in Venezuela. The Appealed Decision obviated the fact that the Player never gave the Appellant a bank account in Venezuela on which the latter could proceed with the payment. Instead, the Player, who refused a payment in VEF, requested the Appellant to execute an obligation which it could not meet as a payment in USD was illegal.
40. The Appellant fully complied with the FIFA DRC decision when it provided the Player, through the FVF, with a payment by check in VEF.
41. Moreover, the Appealed Decision does not take into consideration the fact that, according to the foreign exchange law in force in Venezuela, the Appellant cannot convert or change the amount to which it was sentenced into USD or other foreign currency, since this lead to the imposition of heavy fines or even imprisonment. The Appellant enclosed several documents to sustain the impossibility for a Venezuelan entity to execute a payment to foreign bank accounts.
42. The Player, however, using the check the Appellant deposited at the FVF, could have made such conversion from VEF into USD, through the Venezuelan government authorities, in accordance with the current legislation.
43. The Appellant requests to annul the Appealed Decision and, consequently, (i) to relieve or exonerate the Appellant of the obligation to pay the amount ordered in the FIFA DRC decision in USD, and (ii) to consider that the Appellant has satisfactorily complied with the decision of the FIFA DRC by making available to the Player the imposed amount in VEF.

IV.2 The Respondent's position and requests for relief

44. The Appealed Decision was issued pursuant to Article 64 FDC, which spirit is aimed at enforcing final and binding decisions issued by FIFA or the CAS so that FIFA can protect creditors and force debtors to pay their debts.
45. The FIFA Disciplinary Committee proceedings should be compared to enforcement proceedings pursuant to Swiss law, and the FIFA Disciplinary Committee be regarded as an enforcement authority. In the present case, the FIFA Disciplinary Committee is not executing a financial debt but sanctioning a party for a disciplinary infringement.
46. The FIFA Disciplinary Committee is obliged to consider only the facts arising after the date of the FIFA DRC decision in deciding whether the debtor complied with the final and binding decision of the relevant body.
47. The internationalisation of football is one of the main characteristics of the sport and one of the reasons of the system put into place for the resolution of international disputes in football. Therefore, it is completely to the discretion of the creditor to determine the details and the place of the bank account into which the amount due is to be transferred.

48. In the present case, the FIFA Disciplinary Committee has considered that in repeated occasions the Player had submitted bank accounts details to the Appellant for it to proceed with the payment.
49. The Respondent considers that as far as the obligation imposed on the debtor is concerned, the currency stated is purely the reflection of the currency used in the contract giving rise to the dispute, and that this currency does not have a significant weight when determining the compliance or not to the decision.
50. The FIFA Disciplinary Committee would not have found that there had been a violation of Article 64 FDC if two conditions had been respected: (i) that the amount paid (no matter the currency used) equals the amount indicated by the FIFA DRC decision, and (ii) that the amount due had been paid in the account specified by the Player.
51. The Appellant failed to explicitly establish a link between its impossibility to make payments abroad in foreign currency and the content of the national Courts' decisions it submitted in this respect and, as a consequence, the Respondent considers that such evidence should be disregarded.
52. The Respondent concerns the assumption that the Player should be forced to carry out an administrative procedure in front of a local authority in a country in which he does not reside; this would imply a significant burden to the Player and is to be deemed directly against the intention of the FIFA system to resolve international disputes in football.
53. According to the information and data pertaining to the Appellant uploaded in the Transfer Matching System ("TMS"), the Respondent considers that it is clear that Deportivo Petare was not barred from transferring and acquiring foreign currency. In this respect, evidence was presented that the Appellant had agreed to make payments outside Venezuela as a result of players' transfers; in four instructions it had provided bank details of a bank outside Venezuela, and in one case the Appellant indicated that it would be make a payment to a player in USD.
54. Furthermore, the Respondent provided the Panel with copy of an e-mail dated 13 August 2012 sent by Mr Carlos Benezra, "Gerente de Operaciones" of the Appellant, as per which the Player was told *"(...) de ser correcto el Club está dispuesto a hacer efectivo el pago de 18,000 dólares americanos (\$) de manera inmediata para poder cerrar el caso"*.
55. In view of the above, the Respondent considers that, by manifestly attempting to use the limitations for acquiring a foreign currency existing in the country in its benefit, the Appellant has been acting in the proceedings concerning its dispute with the Player with seemingly bad faith.
56. The Respondent therefore requests that the Appellant's appeal be rejected and that the Appealed Decision be confirmed in its entirety.

V. LEGAL ANALYSIS

V.1 Jurisdiction

57. The Panel notes that the jurisdiction of the CAS in the matter at hand, which is not contested by the Parties, derives from Article R47 of the Code, and Article 67 of the FIFA Statutes.

V.2 Admissibility

58. In accordance with Article 67.1 of the FIFA Statutes, *“appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question”*.
59. The Appealed Decision was notified to the Appellant on 22 August 2013 and the Statement of Appeal filed on 11 September 2013, i.e. within the required twenty one days.
60. It follows that the appeal is admissible. Furthermore, no objection has been raised by the Respondent in this respect.

V.3 Applicable law

61. Article R58 of the Code provides the following:
“The Panel shall decide the dispute according to the applicable regulations and 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 application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.
62. Article 66.2 of the FIFA Statutes provides:
“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”.
63. The Panel remarks that the *“applicable regulations”* are indeed the FIFA rules and regulations material to the dispute at stake, and in particular the FDC. Additionally, if necessary, Swiss law shall apply.

V.4 Discussion

64. It is undisputed that Deportivo Petare does not contest owing the Player some money. The Appellant does not question either FIFA’s discretion to impose sanctions under Article 64 FDC for failing to comply with the FIFA DRC decision dated 10 May 2012, or the proportionality of the sanctions imposed in the Appealed Decision. The Appellant merely contests the fact that it has been sanctioned pursuant to Article 64 FDC as it considers not having breached the obligation of payment imposed by the FIFA DRC decision.

65. Therefore, the first issue to be taken into consideration by the Panel is the following: did the Appealed Decision err in finding that the Appellant had to pay the outstanding amount to the Player in the currency and at the bank account as indicated by the latter?
66. That brings the Panel to examine the relevant FIFA rules.
67. Article 64 par. 1 FDC reads the following:

“Anyone who fails to pay another person (such as a player, a coach or a club) or FIFA a sum of money in full or part, even though instructed to do so by a body, a committee or an instance of FIFA or a subsequent CAS appeal decision (financial decision), or anyone who fails to comply with another decision (non-financial decision) passed by a body, a committee or an instance of FIFA, or by CAS (subsequent appeal decision):

 - a) will be fined for failing to comply with a decision;*
 - b) will be granted a final deadline by the judicial bodies of FIFA in which to pay the amount due or to comply with the (non-financial) decision;*
 - c) (only for clubs) will be warned and notified that, in the case of default or failure to comply with a decision within the period stipulated, points will be deducted or relegation to a lower division ordered. A transfer ban may also be pronounced”.*
68. With regard to burden of proof, Article 99 par.1 FDC provides as follows: *“[t]he burden of proof regarding disciplinary infringements rests on FIFA”.*
69. With regard to standard and evaluation of proof, Article 97 FDC provides as follows:
 - “1. The bodies will have absolute discretion regarding proof.*
 - 2. They may, in particular, take account of the parties’ attitudes during proceedings, especially the manner in which they cooperate with the judicial bodies and the secretariat (cf. art. 110).*
 - 3. They decide on the basis of their personal convictions”.*
70. The Panel notes that, under Article 97 FDC, it has a wide margin of appreciation and may freely form its opinion after examining all the available evidence. The applicable standard of proof is the *“personal conviction”* of the Panel.
71. The Panel is of the view that, in practical terms, this standard of proof of personal conviction coincides with the “comfortable satisfaction” standard widely applied by CAS panels in disciplinary proceedings. According to this standard of proof, the sanctioning authority must establish the disciplinary violation to the comfortable satisfaction of the judging body bearing in mind the seriousness of the allegation. It is a standard that is higher than the civil standard of “balance of probability” but lower than the criminal standard of “proof beyond a reasonable doubt” (cf. CAS 2010/A/2172, par. 53; CAS 2009/A/1920, par. 85). The Panel will thus give such a meaning to the applicable standard of proof of personal conviction.

72. In the present case, the Panel finds that the FIFA Disciplinary Committee was limited to determine if the outstanding amount, as defined by the FIFA DRC decision, had been paid to the creditor, i.e. the Player, or if for whatever reason the above mentioned amount was still due.
73. As stated by the Respondent, it has been the longstanding practice of the FIFA Disciplinary Committee to consider that a decision has been respected as long as the payment has been made in accordance with the indications of such decision.
74. In the present case, following the FIFA DRC decision, the Appellant had to pay to the Player a certain amount of money, expressed in VEF, and the latter had to provide the former with his bank account details.
75. The Panel is satisfied that, on numerous occasions, the Appellant was informed by the Player of his bank account details, even if outside Venezuela. The Appellant was also informed by the Player that he was not living in Venezuela since more than two years before the FIFA DRC decision of 10 May 2012 was rendered.
76. The fact that there is no provision in the FIFA regulations about the currency in which a financial obligation has to be paid, obliges the Panel to interpret the relevant rules taking in consideration all possible facts arising after the date on which the FIFA DRC decision had been rendered.
77. The Panel is aware that the VEF currency is not of legal tender outside Venezuela.
78. However, according to the common practice in football, as the Player was already outside Venezuela when the FIFA DRC decision was issued, the Panel considers that it should be his discretion to determine the details and place of the bank account into which the amount due should be transferred.
79. Furthermore, the Panel notes that FIFA always requested the payment to be made to the Player's bank account without any reference to any specific currency or that the Player needed to provide the Appellant with a bank account in Venezuela.
80. In support of its defence, the Panel notes that the Appellant argues that it had left a check of VEF 135.927,- in favour of the Player with the FVF on 12 July 2012. As a consequence, and in order to obtain the money in a legal currency in the living state of the player, i.e. Argentina, the latter should be subjected to an administrative procedure in front the local administration of Venezuela, by starting with a new claim of legal residence.
81. It is worth noting that at this time, the Player had no more labour contract in Venezuela and, therefore, the Panel cannot share the Appellant's argument in this respect. After reviewing the domestic exchange regulations referred by the Appellant, the Panel observes that as the Player was not domiciled in Venezuela at the time when the FIFA DRC decision was rendered, it seems unlikely that he could have obtained foreign currency on his own in Venezuela. The mentioned regulations only apply to citizens or entities legally domiciled in Venezuela.

82. Furthermore, and notwithstanding the above, requesting the Player to file administrative claims in Venezuela would be too burdensome and contrary to the spirit of the resolution of international disputes in football.
83. The Panel fully adheres to the fact that it is to the discretion of the creditor to determine the details and the place of the bank account into which the amount due is to be transferred.
84. The Panel is of the view that the utmost obligation of the debtor is to duly transfer the amount to the bank account provided by the creditor, and, therefore, it is the responsibility of the debtor to do all relevant efforts to comply with its payment obligation in accordance with a FIFA decision and according to the creditor's wishes. The latter is therefore free not to accept a payment which would not be made on the bank account which details he has been requested to provide, which obligation he met.
85. In the present case, the Appellant has never demonstrated to have actually made an attempt to deposit its check to any account provided by the Player at a banking institution, nor received a formal denial from such institution to prove its intention.
86. The Panel further makes reference to the Swiss Code of Obligations. With respect to the location of payment of an obligation, Article 74 provides as follows:
Art. 74. ¹ Le lieu où l'obligation doit être exécutée est déterminé par la volonté expresse ou présumée des parties.
² A défaut de stipulation contraire, les dispositions suivantes sont applicables:
1. Lorsque qu'il s'agit d'une somme d'argent, le paiement s'opère dans le lieu où le créancier est domicilié à l'époque du paiement. (When it is a sum of money, the payment occurs at the place where the creditor is domiciled at the time of payment – free translation by the Panel) (emphasis added).
87. The question which arises now is whether it was totally impossible for the Appellant to proceed with any payment in a foreign currency, i.e. in the currency of the bank account which details were provided by the Player, and/or outside of Venezuela.
88. According to the evidence presented by the Respondent, the Appellant had in two cases agreed to make payments outside Venezuela, as a result of a player's transfer, even though the currency of the payment was identified in VEF in the transfer contract. Furthermore, in four other instructions, the Appellant had provided bank details of a bank outside Venezuela, namely in USA, Argentina and Columbia, as a result of a player's transfer. In one other case, the Appellant indicated that it would make a payment to a player in USD. Finally and more importantly, Mr Carlos Benézra, "Gerente de Operaciones" of the Appellant expressly proposed to make a payment in USD to the Player to settle the case.
89. The Panel also noted that the Appellant has managed to pay the CAS Court Office fee in CHF.

90. The Panel would also like to refer to article I.3 of the United Nations Convention on the recognition and enforcement of foreign arbitral awards of 1958, of which Venezuela is a signatory, according to which: “[w]hen signing, ratifying or acceding to this Convention (...) any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another contracting State (...)”. Taking for granted the supposition of the Appellant about the limitation to make payments in other currencies except of the local one in Venezuela or to make payments on bank accounts situated outside Venezuela, it would simply impede the enforcement of any arbitral award rendered in commercial matters which would affect entities located in Venezuela. This situation cannot be accepted by the Panel.

V.5 Conclusion

91. The Panel considers that the Appealed Decision cannot be considered as having modified the FIFA DRC decision when it indicated that the Appellant shall pay the amount decided by the FIFA in the foreign currency indicated by the Player, at the exchange value on the date of the FIFA DRC decision (i.e. 10 May 2012). The payment obligation by the Appellant is not modified in any manner.
92. The Appellant is therefore not exonerated from paying the amount as indicated in the Appealed Decision.
93. As a consequence, the Appealed Decision must be confirmed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Deportivo Petare FC against the decision of the FIFA Disciplinary Committee dated 26 June 2013 is dismissed.
 2. The decision of the FIFA Disciplinary Committee dated 26 June 2013 is confirmed.
- (...)
5. Any other or further claims are dismissed.