



Arbitration CAS 2012/A/2740 Marcelo Carracedo v. Fédération Internationale de Football Association (FIFA), award of 18 April 2013

Panel: Mr Efraim Barak (Israel), Sole Arbitrator

Football

Complementary disciplinary sanction against a players' agent for not complying with a previous sanction

Right to be heard

Claim against a decision final and binding

Proportionality of the complementary sanction

Execution of the bank guarantee or the insurance liability of the agent as alternative sanction

1. The right to be heard is a fundamental right and one of the most important elements of the right to a due process that must be respected in the course of the proceedings in front of any judicial body. A party to any such proceedings has the right of defending itself and shall have the chance to state its case and to provide its position regarding the subject matter in question, as well as to provide evidences that it may deem relevant for the case.
2. A party that has not appealed in a timely manner a decision that, as a consequence, became final and binding, is not entitled to contend within subsequent proceedings that its right to be heard was infringed in the course of the previous proceedings, and try to re-open the case.
3. A complementary sanction consisting of a ban on taking part in any football-related activity as long as the main sanction consisting in the payment of a fine is not complied with can be deemed to be adequate and proportionate to its legitimate aims pursued if the fine is reasonable taking into account the economic and financial capacity of the sanctioned party.
4. The execution of the bank guarantee or the insurance liability that a player's agent is supposed to conclude according to the FIFA Regulations on Players' Agents is not envisaged in the list of potential sanctions that FIFA could impose on players' agents according to the FIFA Disciplinary Code and the FIFA Regulations on Players' Agents. Under no circumstances can therefore such alternative measure be imposed as a sanction.

I. THE PARTIES

1. Mr. Marcelo Carracedo (hereinafter the “Appellant” or the “Agent”) is an Argentinean Players’ Agent licensed by the Argentinean Football Association (hereinafter “AFA”). AFA is affiliated to the Fédération Internationale de Football Association.
2. Fédération Internationale de Football Association (hereinafter “FIFA” or the “Respondent”) is an association submitted to Swiss Law governing the sport of football worldwide, with seat in Zurich, Switzerland.

II. FACTUAL BACKGROUND

3. 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 submitted as part of the submissions. Additional facts may be set out, where relevant, in connection with the legal discussion which follows. The Sole Arbitrator refers in its Award only to the submissions and evidence he considers necessary to explain its reasoning. However, the Sole Arbitrator has considered all the factual allegations, legal arguments and evidence submitted by the parties in the present proceedings.

A. The proceedings before the FIFA Disciplinary Committee

4. On 22 August 2007, the Players’ Status Department of FIFA (hereinafter “PSD”) opened proceedings against the Appellant with regard to his participation in the transfer of the player L. (hereinafter the “Player”) from the club B. to the club C.
5. On 26 October 2007, given that no statement had been received from the Agent within such proceedings, the PSD requested him via AFA to provide his position in respect to the case before 12 November 2007.
6. On 31 October 2007 the AFA informed the PSD that it was not aware of the role of the Appellant in the transfer of the Player.
7. On 5 August 2010, the PSD informed the parties to the referred proceedings that the case was going to be submitted to the consideration of the Single Judge of the FIFA Players’ Status Committee (hereinafter the “FIFA PSC”), and expressly requested AFA to inform the Agent accordingly.
8. The FIFA PSC considered that the Agent committed, in the framework of the transfer mentioned above, an act of double-representation prohibited by Article 14 par. D) of the FIFA Players’ Agents Regulations, and thus on 11 August 2010 passed a decision in the following terms (hereinafter the “PSC Decision”):

1. *Se impone una multa de CHF 30,000 al agente de jugadores, Sr. Marcelo Carracedo.*
2. *La multa adeudada deberá ser abonada por el Sr. Marcelo Carracedo, dentro de los próximos 30 días a partir de la notificación de la presente decisión, mediante depósito en la siguiente cuenta bancaria indicando el número de referencia [mdo 07-00776]:*
3. *Si la cantidad antes mencionada no fuera pagada por el Sr. Marcelo Carracedo dentro del plazo antes establecido, se le aplicará un interés del 5% por año a contarse desde el vencimiento del plazo límite fijado, y además el caso se trasladará a la Comisión Disciplinaria de la FIFA para su consideración y decisión.*

which could be translated into English as follows:

1. *A fine of CHF 30,000 is imposed to the players' agent, Mr. Marcelo Carracedo*
 2. *The fine imposed shall be paid by Mr. Marcelo Carracedo, within 30 days from the notification of this decision, by means of a deposit in the following bank account indicating the reference number [mdo 07-00776]:*
 3. *Should Mr. Marcelo Carracedo fail to pay the abovementioned amount within the time limit set out above, an interest of 5% per year will be applied, counting from the expiry of the time limit given and, in addition, the case will be submitted to the FIFA Disciplinary Committee for its consideration and decision.*
9. On 24 June 2011, the aforementioned decision was sent by FIFA to the AFA, requesting it to immediately notify such decision to the Agent. In the same letter, FIFA stated that, in case no confirmation of the said notification was received in the following 4 days, the decision was to be considered as notified.
 10. On 6 July 2011, upon request of the FIFA PSC, the Manager of the AFA's Registry of Players ("Gerente de Registro de Jugadores") informed FIFA that the decision had been sent to the Agent on the day it was communicated to AFA i.e. on 24 June 2011, and that the corresponding confirmation of receipt was dated 29 June 2011.
 11. On 25 August 2011, the FIFA PSC, via the AFA, urged the Appellant to pay the outstanding fine imposed by the Single Judge's decision of 11 August 2010.
 12. On 15 September 2011, the FIFA PSC notified the AFA (asking it to notify the Agent accordingly) that the file was being passed to the FIFA DC for its consideration. On the same day, 15 September 2011, AFA informed FIFA that it had sent such correspondence to the Agent's registered address (i.e. Montañeses 2564, Ciudad Autónoma de Buenos Aires, CP 1428).
 13. On 31 October 2011, as the decision of the FIFA PSC had been neither appealed before the CAS, nor fulfilled by the Agent, FIFA DC opened disciplinary proceedings against the Agent.
 14. On the same day, 31 October 2011, the AFA sent to the Agent a communication providing him some documentation related with the disciplinary proceedings and, at the same time,

requested him to immediately update the AFA with his current personal data, warning him about the potential sanctions he may incur in case he failed to comply with such request.

15. On 9 November 2011, the secretariat to the FIFA DC informed the Appellant via the AFA that, if no proof of payment was provided before the 21 November 2011 or no position was filed on the matter, the case would be submitted to the FIFA DC for decision.
16. On 18 November 2011, AFA informed FIFA that the Agent changed his address, and provided the new address (Gorostiaga 1765, piso 15, oficina C, Ciudad Autónoma de Buenos Aires, Buenos Aires 1426).
17. On 21 November 2011, the Appellant sent a communication to FIFA DC via the AFA, acknowledging receipt of the above mentioned correspondence and provided his position. However, the position provided by the Agent did not refer to the facts that were being dealt within the disciplinary proceedings (i.e. the non fulfilment of the PSC Decision), but regarding the facts that had already been ruled by the FIFA PSC on 11 August 2010. It is worthwhile to mention that the address supplied by the Agent in this brief is exactly the same that the one provided by AFA to FIFA on 18 November 2011.
18. On 30 November 2011, the FIFA DC passed the following decision (No. 110542 PST ARG ZH) in the above mentioned disciplinary proceedings (hereinafter the “Appealed Decision”):
 - 1) *El deudor es hallado culpable de incumplimiento de la decisión de un órgano de la FIFA de acuerdo con el art. 64 del CDF.*
 - 2) *Se condena al deudor a pagar una multa de 5,000 CHF (francos suizos). La multa deberá abonarse en los treinta (30) días siguientes a la notificación de la presente decisión. La suma puede saldarse en francos suizos (CHF) en el banco [...] bajo la referencia [...].*
 - 3) *El deudor tiene un último plazo de 30 días a partir de la notificación de la decisión para saldar su deuda con FIFA.*
 - 4) *Si el pago no se efectúa dentro de este plazo, se prohibirá al agente de jugadores Marcelo Carracedo de ejercer cualquier actividad relacionada con el fútbol. La prohibición será impuesta automáticamente, sin que la Comisión Disciplinaria de la FIFA tenga que tomar una decisión formal.*
 - 5) *Se recuerda a la Asociación de Fútbol Argentino que está a cargo de la correcta ejecución de la presente decisión y de suministrar a la FIFA los documentos que confirmen que ha procedido al retiro de la licencia en caso de solicitársele el particular. En el caso de que exista una ejecución incorrecta o la omisión de la ejecución por parte de la Asociación de Fútbol Argentino, la Comisión Disciplinaria de la FIFA adoptará las sanciones disciplinarias apropiadas que incluso pueden conllevar la exclusión de toda competición de la FIFA.*
 - 6) *La Comisión decide fijar las costas y gastos en CHF 1,000, mismas que en aplicación de lo establecido en el art. 105, apdo. 1 del CDF quedan a cargo del deudor. Este monto se deberá pagar observando las modalidades de pago establecidos en el punto III./ 2. ut supra.*

This decision could be translated into English as follows:

- 1) *The debtor is found guilty of breaching a decision of a FIFA body, in accordance with art. 64 of CDF.*
 - 2) *The debtor is ordered to pay a fine of 5,000 CHF (Swiss francs). The fine shall be paid within thirty (30) days from the notification of this decision. The sum can be paid off in Swiss francs (CHF) in the bank [...] under reference [...].*
 - 3) *A deadline of 30 days from the notification of the decision is given to pay - the debt to FIFA.*
 - 4) *If the payment is not made within this deadline, the player's agent Marcelo Carracedo will be prevented from exercising any football-related activity. The ban will be imposed automatically, without the need of a formal decision of the FIFA's Disciplinary Committee.*
 - 5) *The Argentinean Football Association is responsible for the proper execution of this decision and is responsible for providing to FIFA the documents confirming that it has withdrawn the license in case it was asked to do so. In the event that there is an incorrect execution or an omission in the execution by the Argentinian Football Association, the FIFA's Disciplinary Committee shall take appropriate disciplinary sanctions which may even lead to the exclusion from all FIFA's competition.*
 - 6) *The Commission decides to set the costs and expenses in CHF 1,000, which in application of the provisions of art. 105, sec. 1 of the CDF, are to be borne by the debtor. This amount shall be paid observing the payment's arrangements settled in the same point III./2 ut supra.*
19. On 18 January 2012, the FIFA DC sent the Appealed Decision by fax to AFA and also to the Appellant. However, the remittance of the Appealed Decision by fax to the Appellant was made by mistake to a wrong fax number.
 20. On 30 January 2012, the Agent personally filed before AFA a letter arguing that he was away from home for business reasons and that he had only returned on the weekend of 28 and 29 January 2012, when he found a notice informing him that he had correspondence in the post office. For this reason, the same day, the Agent personally collected the Appealed Decision from the AFA.
 21. On 1 February 2012, the Appellant filed before the AFA a letter addressed to the CAS titled "*Recurso de Apelación y Nulidad*" in which he expressed his intention to appeal the Decision passed by FIFA DC on 30 November 2011, and requested AFA to send it to the CAS.
 22. On 2 February 2012, AFA erroneously sent the aforementioned letter to the secretariat to the FIFA DC.
 23. On 3 February 2012, the secretariat to the FIFA DC informed AFA that any potential appeal against the Appealed Decision was to be filed directly before the CAS.

III. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT (CAS)

24. On 22 February 2012, the Agent filed a Statement of Appeal before the CAS against the Appealed Decision, asking the CAS to:

- 1) *Acepte la presente declaración de apelación contra la decisión de la Comisión Disciplinaria de la FIFA.*
- 2) *Si no entendiera que cualquier medida se encuentra en suspenso hasta tanto no quede firme la sanción económica, haga lugar a la medida provisional solicitada.*
- 3) *Finalmente, adopte un laudo revocando la decisión recurrida conforme se solicita en el punto B).-*
- 4) *Imponga los costos del presente arbitraje a la FIFA.*

This request for relief may be translated into English as follows:

- 1) *Accept this statement of appeal against the FIFA's Disciplinary Committee decision.*
- 2) *If CAS did not understand that any measure is stayed until the economic sanction becomes definitive grant the interim relief sought.*
- 3) *Finally, adopt an award revoking the appealed decision as requested in point B). –*
- 4) *Impose on FIFA the costs of this arbitration.*

25. The Appellant requested the appointment of a Sole Arbitrator to deal with the dispute, and that Spanish would be the language of the proceedings.

26. On 1 March 2012, the Appellant filed his Appeal Brief, in which he basically argued the following:

- the Agent did not intervene and could not file his position in the previous proceedings before the FIFA PSC;
- taking into account that in the proceedings before FIFA DC the Agent informed that he had not received any of the previous correspondence or requests for information sent to him by the FIFA PSC, giving also his position on the merits of that case, FIFA should have sent the file back to the FIFA PSC to let him pass a new decision;
- since FIFA decided to continue and conclude the disciplinary proceedings without giving the Players' Agent the chance to defend himself on the merits of the case, FIFA has infringed the right of the Appellant to be heard;
- the ancillary sanction imposed by the FIFA DC to the Appellant, consisting of the ban on taking part in any football-related activity, is disproportionate;

and requested the CAS:

- 1) *Que la decisión de la Comisión Disciplinaria de FIFA en el caso de referencia es dejada sin efecto.*
- 2) *Que el procedimiento por el cual se sancionó al Agente MARCELO CARRACEDO violó las garantías esenciales del debido proceso.*
- 3) *Que el procedimiento por el cual se sancionó al Agente MARCELO CARRACEDO debe ser dejado sin efecto así como las resoluciones dictadas en consecuencia.*
- 4) *En subsidio, que la sanción impuesta de prohibición de ejercer toda actividad relacionada con el fútbol resulta desproporcionada y debe ser dejada sin efecto.*
- 5) *Que los costos del procedimiento ante este Tribunal serán a cargo de la FIFA junto a una suma como contribución a los costos del apelante.*

in English (free translation):

- 1) *That the decision of the FIFA's Disciplinary Committee in the referenced case is considered ineffective.*
 - 2) *That the procedure, in which the Agent MARCELO CARRACEDO was sanctioned, infringed the essential guarantees of the due process.*
 - 3) *That the procedure in which the Agent MARCELO CARRACEDO was sanctioned must be considered ineffective, as well as the resolutions taken in consequence.*
 - 4) *Subsidiary, the sanction imposed prohibiting the Agent the exercise of any football related activity is disproportionate and should be considered ineffective.*
 - 5) *That the costs of the proceedings before this court are imposed to the FIFA plus a contribution to the costs of the appellant.*
27. On 19 March 2012, FIFA sent a letter to the CAS in which (i) it informed that it did not agree with the appointment of a sole arbitrator and would prefer a panel of three arbitrators, (ii) it also stated that it wanted the proceedings to be conducted in English, but FIFA would not object that the Appellant could address his correspondence in Spanish, (iii) it did not raise any objection to the stay of the execution of the Appealed Decision and, (iv) it requested the CAS to suspend the deadline given to file its answer to the Appeal Brief, until the matter of the language of the arbitration was decided.
28. On 3 April 2012, the Appellant accepted that the arbitration to be conducted in English and withdrew his request of provisional measures given that FIFA had agreed to the stay of execution of the Appealed Decision.
29. On 11 April 2012, the CAS resumed the deadline for the Respondent to file its answer and confirmed that English would be the language of the proceedings.

30. On 13 April 2012, FIFA requested the CAS to issue a preliminary decision regarding the admissibility of the appeal, since in its opinion the appeal was lodged after the expiry of the deadline of 21 days provided by the FIFA Statutes and the Code of Sports-related Arbitration (the “CAS Code”). In the same submissions, FIFA requested the suspension of the deadline given to file its answer.
31. On 16 April 2012, the Appellant opposed to the request of FIFA to declare the appeal inadmissible.
32. On 19 April 2012, the CAS Court Office informed the parties that (i) the question regarding the admissibility of the appeal would be decided by the Panel, once constituted, for a preliminary decision and (ii) the President of the CAS Appeals Arbitration Division had decided to submit the present dispute to a Sole Arbitrator.
33. On 20 April 2012, Mr. Efraim Barak, attorney-at-law in Tel-Aviv (Israel), was appointed by the CAS as the Sole Arbitrator in the present matter.
34. On 1 June 2012, the CAS invited FIFA to provide a copy of the FIFA file, which was received by the CAS Court Office on 20 June 2012.
35. On 27 August 2012, the Sole Arbitrator invited the parties to file their position on the matter of the admissibility of the appeal, which the parties respectively did on 14 September and 4 October 2012.
36. On 14 November 2012, the CAS Court Office (i) informed the parties that the Sole Arbitrator had decided that the appeal was admissible and that the grounds of this decision would be detailed in the final award and (ii) gave the Respondent twenty days to submit its Answer.
37. On 4 December 2012, the Respondent filed its Answer, requesting CAS:
 - 1) *To reject the Appellant’s request to set aside the decision hereby appealed against.*
 - 2) *Alternatively to Request No 1, in case the CAS decides to partially uphold the present appealed decision, a 12 months suspension shall be imposed on the Appellant in case of non-payment within the specified deadline as follows:*

“si el pago no se efectúa dentro de este plazo, se prohibirá al agente de jugadores Marcelo Carracedo de ejercer cualquier actividad relacionada con fútbol por un periodo de 12 meses”.
 - 3) *To confirm the decision hereby appealed against in its entirety.*
 - 4) *To order the Appellant to bear all costs incurred with the present procedure and to cover all legal expenses of the Respondent related to the present procedure.*
38. After consulting the parties and in accordance with their positions, the Sole Arbitrator decided not to hold a hearing in the present case and to resolve the case on the basis of the written submissions filed by the referred parties.

39. Both parties confirmed that their right to be heard had been respected by signing the Order of Procedure.

IV. SUBMISSIONS OF THE PARTIES

A. The Appellant

40. The Appellant's right to be heard has been disrespected in the proceedings followed before FIFA. The PSC Decision was taken in a procedure where the Players' Agent could not defend himself. Only when the disciplinary proceedings were opened the Appellant was properly notified and only then he could exercise his right of defence.
41. Although the Appellant informed the FIFA DC that he did not receive the notifications from the FIFA PSC, FIFA ignored it considering that, as the Agent did not appeal the decision of the Single Judge, it was final and binding and thus concluded the disciplinary proceedings without giving to the Appellant the possibility to be heard.
42. The PSC Decision cannot be considered as *res indicata*, because in the previous proceedings the right to be heard of the Agent was not respected.
43. The complementary sanction (a ban on taking part in any football-related activity in case the debt is not settled) imposed by the FIFA DC is disproportionate since it is the most severe sanction that can be imposed to a Players' Agent and there are less burdensome measures that can be imposed in this case as, for example, the execution through the AFA of the liability insurance or the bank guarantee envisaged by Articles 9 and 10 of the FIFA Players' Agents Regulations.

B. The Respondent

44. The object of the appeal cannot go beyond the limits of a review of the disciplinary sanction imposed by the FIFA DC and only the submissions relating to the due process followed before this body can be taken into account. Any request by the Appellant such as to declare the PSC Decision unlawful should have been made in a diligent manner before the appropriate forum.
45. The PSC Decision was notified on 24 June 2011 and the Appellant was duly informed that he had 21 days as from the notification of the decision to lodge an appeal before CAS. Such appeal was never filed by the Appellant and therefore the PSC Decision undoubtedly became final and binding.
46. In any case, the FIFA PSC acted in total respect of the right to be heard of the Appellant and there is clear evidence that he had been receiving the correspondence via the AFA during the proceedings conducted by the FIFA PSC.

47. In his first appearance before the FIFA DC (after being invited to file his position in two occasions), all the arguments brought by the Agent on 21 November 2011 were exclusively related to the substance of the matter and no remarks were made with regard to a possible infringement of his right to be heard during the previous proceedings before the FIFA PSC.
48. Furthermore, it has to be mentioned that notifications sent via the respective association is the standard practice in this field, being the association's obligation to notify the decision to the interested and concerned person. Besides, AFA did not inform about any problem in notifying the Players' Agent.
49. Regarding the proportionality of the sanction, it has to be pointed out that:
- the ban from football related activities is a complementary sanction that will only take place if the Appellant refuses to comply with the obligation of paying the fine imposed by the FIFA PSC within 30 days from its notification;
 - although the FIFA DC usually accepts payment plan proposals requested by its debtors, in the case in question at no point it has been the intention of the Appellant to cancel the existing debt and therefore he has never offered any payment plan;
 - financial sanctions imposed on agents as a result of disciplinary proceedings are not a risk connected with the players' agent occupation and thus are not covered by the liability insurance of Article 9 of the Regulations on the Players' Agents, as contended by the Appellant.
50. Alternatively and in accordance with Article R57 of the CAS Code, if the Sole Arbitrator decides to partially uphold the Appealed Decision, a 12 months suspension shall be imposed on the Appellant in case of non-payment within the given deadline.

V. ADMISSIBILITY

V.1. PARTIES' SUBMISSIONS ON ADMISSIBILITY

A. The Appellant

51. The appeal is admissible as it was sent to the CAS within the time period of 21 days foreseen in Article 63.1 of the FIFA Statutes.
52. In this respect, Article 90 of the FIFA Disciplinary Code establishes that time limits to which other persons shall adhere commence the day after receipt of the document by the association responsible for forwarding it, except when the document is also or solely sent to the person concerned or his legal representative, in which case the time limit commences on the day after receipt of the document in question. Article 102 of the FIFA Statutes provides the same rule.
53. Accordingly, in the case at stake the time limit applicable did not commence on the day after

the AFA received the Appealed Decision but on the day after the Agent received it.

54. Although FIFA had the correct address and even the telephone number of the Agent, it sent the Appealed Decision to the Agent to a wrong fax number. The lack of care of FIFA cannot affect the Appellant's rights.
55. The Appellant proved the reception of the decision by the collection of the document directly from the AFA on 30 January 2012. Besides, the 20 and 21 February 2012 were non-business days in Argentina, and thus the appeal (filed on 22 February 2012) was lodged within the prescribed 21 days term.

B. The Respondent

56. The appeal is inadmissible because it was filed after the expiration of the 21 days time limit.
57. When decisions and other documents intended for players, clubs, players' agents or officials are sent via the concerned association, these are deemed to be properly notified to the addressee four days after the communication of the documents to the association, even in situations in which the relevant documentation is not duly forwarded by the association.
58. In the present case, the Appealed Decision was notified to the AFA on 18 January 2012 so it is deemed to have been notified to the Appellant four days later, on 22 January 2012. According to this, the *dies a quo* to lodge the appeal started at the latest on 23 January 2012 and the time limit ended on 13 February 2012.
59. The Appellant never deemed appropriate to communicate a valid and direct fax number to FIFA and therefore any and all correspondence addressed to the Appellant during the proceedings before the FIFA PSC and the FIFA DC was sent via the AFA.
60. The Appellant argues that he was absent for business reasons but he does not provide any evidence proving that fact. Thus, this allegation cannot be considered as a valid reason to deviate from the regulations and justify the admissibility of an appeal lodged extemporarily. Should problems arise with regard to the communication between the national association concerned and the Appellant, such circumstance cannot be imputable to FIFA and cannot result to FIFA's detriment.
61. The Appellant acted negligently since he already knew that the matter was being considered by the FIFA DC and he did not show any interest in the issue, and did not inform the AFA that he was going to be absent because of the alleged business trip.

V.2. CONSIDERATIONS ON THE ADMISSIBILITY OF THE APPEAL

62. The starting point in order to determine if the present appeal is admissible or not are the relevant CAS and FIFA provisions which deals with time limits for filing appeals before the CAS.

63. Pursuant to Article R49 of the CAS Code, the appeal of a decision before the CAS shall be lodged within the following time limit:

In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.

64. Article 63.1 of the FIFA Statutes (2011 Edition) provides that:

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.

Therefore, appeals against decisions of FIFA must be filed before the CAS within 21 days of the notification of the appealed decision.

65. With regard to the calculation of the 21 days, Article 90 par. 2 of the FIFA Disciplinary Code (2011 Edition) establishes the following:

Time limits to which other persons shall adhere commence four days after receipt of the document by the association responsible for forwarding it, except when the document is not also or solely sent to the person concerned or his legal representative. If the document was also or solely sent to the parties or their legal representatives, the time limit commences on the day after receipt of the document in question.

66. In the Sole Arbitrator's opinion, Article 102.2 of the FIFA Disciplinary Code, which has been invoked by the parties in their submissions, is not relevant in this case since it is only applicable to assumptions where the notification is intended for "players, clubs and officials". In the present case, the notification was addressed to a players' agent who, according to Articles 3 and 5 of the FIFA Disciplinary Code, is not considered an "official". Obviously, a players' agent is neither a "Player" nor a "Club". Therefore, Article 102.2 of the FIFA Disciplinary Code is not applicable in the present case and shall not be taken into consideration in order to decide the issue of admissibility in the present case.

67. The Sole Arbitrator notes that in the case at stake, FIFA tried to notify the Appealed Decision to both the AFA (through its fax number) and to the Appellant (to a wrong fax number though). Even if the AFA duly received the Appealed Decision on 18 January 2012, the Appellant did not receive the fax sent by FIFA due to FIFA's mistake, and thus he was only notified of the Appealed Decision when he took it directly from the AFA, on 30 January 2012, as it is proven by the correspondence sent by AFA to the CAS Court Office on 29 March 2012.

68. In the Sole Arbitrator's view, the fact that FIFA tried to notify the Appealed Decision to the Appellant not *only* via the AFA, but also directly to him, implies that the provision set out in the second part of Article 90 par. 2 of the FIFA Disciplinary Code shall apply. Consequently, the relevant time limit did not commence on the fourth day after the receipt of the decision by the AFA (18 January 2012) but on the day after the Appellant actually received the Appealed Decision (on 30 January 2012, i.e. the day he collected it from the AFA).
69. Bearing in mind the proven fact that the Appellant collected the Appealed Decision from the AFA on 30 January 2012, and that 20 and 21 February 2012 were non-business days in Argentina, and pursuant to Article R32 of the CAS Code, the Sole Arbitrator considers that the Statement of Appeal was submitted by the Appellant within the prescribed time limit of 21 days.
70. Therefore, on the basis of these grounds, the Sole Arbitrator decides that the present appeal is admissible.

VI. JURISDICTION

71. The jurisdiction of the CAS (which has not been disputed by either of the parties) arises out of Articles 62 and 63 of the FIFA Statutes (2011 Edition), Article 64 of the Disciplinary Code (2011 Edition) and Article R47 of the CAS Code. It has been confirmed by the signature of the Order of Procedure by both parties.
72. Therefore, the Sole Arbitrator considers that the CAS is competent to rule on this case.

VII. APPLICABLE LAW

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

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.

74. Article 62.2 of the FIFA Statutes states the following:

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.

75. Accordingly, FIFA Regulations and additionally Swiss Law are applicable to this case.

VIII. MERITS

76. In consideration of the parties' respective submissions on the merits, the Sole Arbitrator notes that the parties' discussion is focussed on two main issues: (i) whether the Appellant's right to be heard has been infringed in the proceedings finally giving rise to the present appeal and, (ii) if in any case, the complementary sanction imposed by the FIFA DC is disproportionate and thus has to be set aside.

A) The agent's right to be heard

77. First of all, the Sole Arbitrator would like to emphasize that as rightly submitted by FIFA, the subject matter of this appeal is only the Appealed Decision and thus, the object of the appeal cannot go beyond the limits of a review of the disciplinary sanction imposed by the FIFA DC. It follows that only the submissions of the Appellant related to the due process in front of the FIFA DC can be taken into account. Any request by the Appellant such as to declare the PSC Decision unlawful should have been made in a diligent manner before the appropriate forum.
78. Indeed, the right to be heard is a fundamental right and one of the most important elements of the right to a due process that must be respected in the course of the proceedings in front of any judicial body. A party to any such proceedings has the right of defending itself and shall have the chance to state its case and to provide its position regarding the subject matter in question, as well as to provide evidences that it may deem relevant for the case.
79. In the present proceedings, the Sole Arbitrator notes that the Appellant claims that the nullity of the disciplinary proceedings, for which he claims that the Appealed Decision should be set aside, derives from what he considered to be the nullity of the previous proceedings held before the FIFA PSC, in particular on the alleged basis that the Agent's right to be heard was violated as he was not aware of the existence of such proceedings. For this reason, the Appellant alleges that the first opportunity he had to file his position with regard to the merits of the case was only when he was informed about the opening of a disciplinary case against him, proceedings that were a direct result of his non compliance with the PSC Decision. According to the Appellant, the FIFA DC should have referred the case back to the FIFA PSC instead of issuing a disciplinary decision. The Sole Arbitrator finds that such allegations are not founded and should be denied for the following reasons.
80. With regard to the alleged possible nullity of the PSC Decision invoked by the Appellant, due consideration should be given to the fact that all the communications to the Agent related with the proceedings held before the FIFA PSC were done through the AFA, as is the usual and long-standing practice of FIFA, based on the existence of such possible way of notification within the framework of the FIFA regulations. However, even if one should consider the notification to be legitimate and to be considered as legally adequate only upon the actual proven notification to the Appellant, the Agent disregards the undisputed fact that ultimately the PSC Decision was duly notified to him on 29 June 2011. This is evidenced by the correspondence of the Manager of the AFA's Registry of Players (*"Gerente de Registro de*

Jugadores”) sent to FIFA on 6 July 2011 where it was stated that the confirmation of receipt of the Appealed Decision by the Agent was dated 29 June 2011.

81. This means that if any of the alleged infringements of the Appellant’s right to be heard within such proceedings really existed or if any due process violation occurred, the Appellant could and should have appealed the decision itself on these grounds in front of CAS within 21 days from its notification (29 June 2011), in order to request CAS to review the previous proceedings and to remedy any potential infringement of this kind.
82. However, the Appellant did not submit an appeal before the CAS and thus the PSC Decision became final and binding. The Agent could have appealed this decision but decided not to do so, and thus shall bear the consequences of his decision not to appeal in a timely manner. As the period of time to submit the appeal elapsed, the Agent is not entitled to contend now, within these proceedings, that his right to be heard was infringed, and try to re-open the case that was dealt by the FIFA PSC.
83. In turn, the Sole Arbitrator also finds it relevant to take into account that when the Agent firstly submitted his position before the FIFA DC on 21 November 2011, he limited his submissions to allege and plead on the merits of the case that had been already decided by FIFA PSC (a decision that was already final and binding), without making any statement or complaint with regard to any of the alleged infringements of his right to be heard as is done by him now in front of CAS.
84. Considering all these facts, the Sole Arbitrator comes to the conclusion that the right of the Appellant to be heard was not infringed within the FIFA disciplinary proceedings and that, as the PSC Decision was final and binding, contrary to what the Appellant intends, the FIFA DC could not review or modify under any circumstances the aforesaid decision. Therefore, the petitions made by the Appellant under requests number 1, 2 and 3 of the Appeal Brief are denied.

B) Proportionality of the complementary sanction

85. Regarding the proportionality of the complementary sanction (a ban on taking part in any football-related activity as long as the debt is not settled), it is of paramount importance to remind that this measure only takes place if the main sanction (the payment of the fine) is not complied with. Such kind of measure is expressly foreseen both in the Article 33 of the FIFA Regulations on Players’ Agents and in the Article 64 par. 4 of the FIFA Disciplinary Code.
86. In this respect, it shall be taken into account that even the same European jurisprudence invoked by the Appellant in his Appeal Brief to support his petitions (Judgment of the Court of First Instance -Fourth Chamber- of 26 January 2005 passed in case T-193/02 Laurent Piau v. Commission of the European Communities and Fédération Internationale de Football Association) confirms, as a general rule, the proportionality of these kind of measures. Indeed, and among other declarations, the aforesaid Court stated that:

“61. The amended regulations are proportionate to the objectives set out and take into account the specific nature of sport. [...] The rules of professional conduct, which can be justified by the general interest, are proportionate and compatible with Community competition law. Lastly, the binding nature of the regulations and the sanctions provided for therein are inherent in the existence of rules.[...]”

94. Third, the sanctions system, summarised in paragraph 16 above, in so far as it can affect the rules on competition, does not appear to be open to criticism. The amended regulations provide that the sanctions applicable to agents, players and clubs are caution, censure, warning, suspension or withdrawal of licence for agents, suspension of up to 12 months for players and suspension measures or bans on transfers for at least three months for clubs, which cannot be regarded as manifestly excessive for a system of professional sanctions. Furthermore, the amounts of the fines for players and clubs were reduced from those in the original regulations. In addition, Mr Piau has not produced any evidence to show that this mechanism is applied in an arbitrary and discriminatory manner, thereby interfering with competition”.

87. In addition, in the Sole Arbitrator’s view, the case at stake does not call for the application of the doctrine established by the Swiss Federal Tribunal in its judgment of 27 March 2012 regarding the case 4A_558/2011. Contrary to that precedent, in the present case the complementary sanction consisting of a ban on taking part in any football-related activity as long as the debt was not paid is deemed to be adequate and proportionate to its legitimate aims pursued, consisting not only in promoting the willingness of the Agent to pay a reasonable fine, but also to the general purpose to assure the enforceability of the decisions passed by the bodies, committees or instances of FIFA or even by the CAS. This is not an analogous case to the one ruled by the Swiss Federal Tribunal, where it was notorious that the debtor was not going to be able to pay the significant amount he was ordered to pay (more than EUR 11 million plus an interest at 5% – i.e. 550.000 €/year – from mid 2007), and the complementary sanction would be applied in any case, which according to the opinion of the Swiss Federal Tribunal, demonstrated its inadequacy for that case. On the contrary, in the case at stake it is up to the Appellant to prevent the application of such complementary sanction, by simply paying the amounts due, which the Sole Arbitrator finds to be reasonable, within the time limit given (30 days).
88. Taking into account the economic and financial capacity of the Appellant, who is a Players’ Agent (who, for example, in the transfer that led to the opening of the proceedings before the FIFA PSC, together with the lawyer who was representing the Player apparently was supposed to be paid a fee of USD 900.000), the complementary sanction seems adequate and proportionate to its purposes and to the Agent’s specific circumstances. Therefore, the Sole Arbitrator finds that no violation of the principle of proportionality exists.
89. As a result of the above mentioned conclusion, the Sole Arbitrator also denies the alternative request of the Appellant in respect of alternative complementary sanctions (request for execution of the bank guarantee or the insurance liability that the Agent is supposed to have according to Articles 9 and 10 of the FIFA Regulations on Players’ Agents – Edition 2008). However, for the completeness of the grounds of denying this alternative request, the Sole Arbitrator finds that such request should be dismissed on the following grounds.
90. First, as it is stated in the Annex 2 of the FIFA Regulations on Players’ Agents, *“The aim of the*

insurance is to cover any claims for compensation from a player, a club or another players' agent arising from the players' agent's activity which, in the opinion of the association and/or FIFA, contravenes the principles of these regulations and/or the relevant association's regulations". Therefore, the case at stake is not covered by these insurances as the amounts prescribed in the Appealed Decision shall not be paid "in favour of a player, a club or another players' agent who has suffered damages as a result of the players' agent's activity", as is stipulated by Article 10 of the aforesaid Regulations, but instead to the FIFA.

91. Second, this alternative measure is not envisaged in the list of potential sanctions that FIFA could impose on players' agents according to Article 64 par. 4 of the FIFA's Disciplinary Code and Article 33 of the FIFA Regulations on Players' Agents, and thus it is clear that under no circumstances this alternative measure could be imposed by FIFA DC as a sanction.
92. On these grounds, the Sole Arbitrator finds that the complementary sanction is deemed proportionate and adequate to the case at stake, and thus the petition raised by the Appellant under number 4 of the Appeal Brief is dismissed. However, the ban shall not be imposed against the Appellant before the exhaustion of a time limit of 30 days starting from the communication of the present award in order to allow the Appellant to pay the amounts ordered in the Appealed Decision.

C) Decision

93. On the basis of the foregoing, the Sole Arbitrator considers that the present appeal should be dismissed and the Appealed Decision shall be confirmed. This means that the Appellant shall pay the fine of CHF 5,000 (five thousand Swiss francs) and the debt of CHF 30'000 (thirty thousand Swiss francs) within a time limit of 30 days from the notification of the present award, failing which the ban will apply automatically.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by Mr. Marcelo Carracedo against the Decision of the FIFA Disciplinary Committee dated 30 November 2011 is admissible.
2. The appeal filed by Mr. Marcelo Carracedo against the Decision of the FIFA Disciplinary Committee dated 30 November 2011 is dismissed and the aforesaid Decision is confirmed.
3. Mr. Marcelo Carracedo shall pay the fine of CHF 5,000 (five thousand Swiss francs) to FIFA within a deadline of 30 days from the notification of the present award.
4. Mr. Marcelo Carracedo shall pay the debt of CHF 30'000 (thirty thousand Swiss francs) to FIFA within a deadline of 30 days from the notification of the present award.

(...)

7. All other or further petitions and claims are dismissed.