



**Arbitration CAS 2007/A/1367 FC Metallurg v. Leo Lerinc, award of 14 May 2009**

Panel: Mr Otto de Witt Wijnen (the Netherlands), Sole Arbitrator

*Football*

*Disciplinary sanction against a club*

*Standing to be sued*

*Summoning of the wrong respondent*

- 1. Under Swiss law and according to various other CAS cases, the defending party has standing to be sued (“légitimation passive”) if it is personally obliged by the ‘disputed right’ at stake. In other words, a party has standing to be sued and may thus be summoned before the CAS only if it has some stake in the dispute because something is sought against it.**
- 2. A person or body who gets involved in arbitration is entitled to know, at an appropriate point in time, whether it is formally considered to be a party. As a formal party to the proceedings, it has another position than as a non party – e.g. by participating directly in the composition of the Panel pursuant to Articles R50 and R53 of the CAS Code.**

Football Club Metallurg (“the Appellant” or “the Club”) is a Ukrainian Football club from the city of Donetsk.

Leo Lerinc (“the Respondent” or “the Player”) is a Serbian professional football player born in 30 December 1975.

On 10 August 2007, the FIFA Disciplinary Committee (“the FIFA-DC”) rendered a decision (“the FIFA-DC Decision”) in this matter.

This FIFA-DC Decision was as follows:

- “1. The debtor is pronounced guilty of failing to comply with a decision of a FIFA body in accordance with art. 71 FDC.*
- 2. The debtor is ordered to pay a fine to the amount of CHF 15,000. The fine is to be paid within 30 days of notification of the decision. (...).*
- 3. The debtor is granted a final period of grace of 45 days as from notification of the decision in which to settle its debt to the creditor.*

4. *If payment is not made by this deadline, the creditor may demand in writing of the FIFA Disciplinary Committee that 6 points be deducted from the debtor's first team in the domestic league championship. Once the creditor has made this request, the points are to be deducted mandatory in any case.*
5. *If the debtor still fails to pay the amount due even after deduction of the points in accordance with point 4, the first team will be relegated to the next lower division.*
6. *As a Member of FIFA, the Football Federation of Ukraine is reminded of its duty to implement this decision and, if necessary, to produce proof to FIFA that the points have been deducted or the team has been relegated. If the Football Federation of Ukraine does not comply with this decision despite being ordered to do so by the FIFA Disciplinary Committee, the latter will inflict an appropriate sanction on the Member. This can lead to expulsion from all FIFA competitions.*
7. *The costs of these proceedings amounting to CHF 2,000 are to be borne by the debtor.*
8. *The creditor is directed to notify the Disciplinary Committee of every payment received”.*

By fax letters of 14 August 2007 this Decision was forwarded *inter alia* to the Football Federation of Ukraine, with the request to forward it to the Club.

On 27 August 2007, the Appellant sent, by fax letter, a Notice of Appeal to the CAS against this Decision (“the Notice of Appeal”).

In its response letter confirming this Appeal of 28 August 2007, the CAS, in accordance with Article R48 of the Code, requested further information from the Appellant as follows:

- i.) (...);
- ii.) the name and full address of the Respondent;
- iii.) (...);
- iv.) (...).

On 31 August 2007 the Appellant responded to this letter. It attached the documents requested by the CAS. It gave the name and full address of the Respondent as follows:

*“Player Leo Lerinc  
Novi Sad, Bulevarosvobodenja 9  
Serbia and Montenegro  
  
Represented by  
Law office Milosevic  
Morelova 9  
11000 Belgrade, Serbia and Montenegro  
Fax ++ 381 113 440532”.*

On 3 September 2007, the CAS advised the law firm acting for the Respondent (“the Respondent’s law firm”) and the FIFA of this Appeal.

On 5 September 2007, the Appellant submitted an Appeal Brief. The Relief requested by the Appellant was the following:

- “1) *To suspend the fulfilment of the FIFA DC Decision dated 10, August 2007 until the CAS will pass the judgment according to the present case, because the given decision has financial character.*
- 2) *To cancel the FIFA DC decision dated 10, August 2007.*
- 3) *To oblige the Creditor to find the compromise with the FC “Metallurg” in the respect of the fulfilment of the Arbitral Court for Sport decision dated 31, January 2007:*
  - *by the payment by cash at the FC “Metallurg” in Donetsk; or*
  - *by the transfer of money on the account of FIFA by the Club, with the following transfer of money to Mr. Leo Lerinc; or*
  - *immediate transfer of money after the receiving of the individual license.*
- 4) *To impose the penalty on the Creditor in the amount of 500 CHF in favour of the FC “Metallurg” for the consideration of the present appeal.*

*FC “Metallurg” is ready immediately to provide any documents which can be necessary for the consideration of the case, on CAS demand”.*

In that letter of 6 September 2007, the Respondent was invited to submit an answer to the CAS.

On 11 September 2007, the Respondent’s law firm advised the CAS as follows:

- “1. (...);
2. *the Respondent objects to the Appellant’s application to stay the execution of the subject FIFA’s decision appealed against because the Appellant failed to set out reasons for such application as required by the Code of Sports. In the present case, there is no need and no legal basis to stay the FIFA’s decision. The Appellant did not make credible case that the facts alleged by him and the rights which he seeks exist. Therefore, Respondent asks the CAS to dismisses (sic) Applicant’s application to stay the execution of the subject FIFA’s decision”.*

On 26 September 2007, the Respondent’s law firm advised that the amount due pursuant to the FIFA DC-Decision had been paid, except for the amount of CHF 500 for the Respondent’s legal and other costs, incurred by the Respondent in the earlier proceedings.

On 27 September 2007, the CAS received a fax letter from the Appellant advising indeed that an amount of USD 99,800 had been paid, pursuant to the CAS decision of 31.08.2007. The Appellant added:

*“We kindly ask CAS to pay attention to the fact of the payment as to the main argument that FC “Metallurg” is not guilty in untimely payment according to the decision of the Arbitral Court for Sport dated 31.01.2007. The present payment is also the confirmation of the fact that FC “Metallurg” did not delay the fulfilment of the decision of CAS, but we had all legal grounds for not-fulfilment of the payment before we would have the decision of CAS in respect of the notice of appeal of FC “Metallurg” against the decision of the FIFA Disciplinary Committee dated 10.08.2007.*

*Taking into account the fact that at the present moment the situation has changed and FC “Metallurg” has fulfilled the decision of CAS, we also make the request to the Respondent to express his opinion according to the fine in amount of 15 000 CHF settled by the decision of FIFA Disciplinary Committee dated 10.08.2007. We hope that the Respondent will support us and confirm about it in CAS”.*

After the constitution of the Panel, further correspondence was exchanged, notably on the question who should be considered to be a party to this arbitration.

On 5 March 2008 the Panel ruled on the Appellants’ request to suspend the FIFA-DC Decision. This request was denied, without costs.

In the absence of any agreement between the Parties regarding the number of arbitrators, the Deputy President of the Appeals Arbitration Division, taking into account the circumstances of the present case, decided to submit the present Appeal for resolution by a Sole Arbitrator, pursuant to Article R50 of the Code of Sports-related Arbitration (“the CAS Code”).

## **LAW**

### **Jurisdiction**

1. The jurisdiction of CAS, which is not disputed, derives from Articles 60 and 61 of the FIFA Statutes and Article R 47 of the CAS Code.
2. The Appeal was lodged, through the Appellant’s Notice of Appeal of 27 August 2007, within the 21 days of notification of the FIFA-DC Decision prescribed by Article 61 para. 1 of the FIFA Statutes. None of the exceptions mentioned in this Article 61 appear to apply.

### **Applicable Law and Rules**

3. Pursuant to Article 60 para. 2 of the FIFA Statutes, the provisions of the CAS Code shall apply to these proceedings. The CAS shall primarily apply the various regulations of the FIFA and, additionally, Swiss law.
4. The Parties have not chosen any rules of law as applicable to this dispute. Therefore, pursuant to Article R58 of the CAS Code, the FIFA Rules and Regulations shall in the first place be applicable to this dispute and further Swiss law as the law of the country in which the FIFA, i.e. the body that has issued the challenged decision is domiciled.
5. Article 71 of the FIFA Disciplinary Code provides the basis for disciplinary sanctions as in the case at hand.

- “1. *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 CAS (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 CAS:*
  - a) *will be fined at least CHF 5,000 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 demotion to a lower division ordered. A transfer ban may also be pronounced.*
2. *If the club disregards the final time limit, the relevant association shall be requested to implement the sanctions threatened.*
3. *If points are deducted, they shall be proportionate to the amount owed.*
4. *A ban on any football-related activity may also be imposed against natural persons.*
5. *Any appeal against a decision passed in accordance with this article shall immediately be lodged with CAS”.*

### **Admissibility of the Claim**

6. In a number of similar cases, the question has arisen who can be considered to be a party to the arbitration besides the Appellant, e.g. in the orders to stay in CAS/A/850 and CAS 2007/A/1369, in the awards CAS 2007/A/1329 & 1330 and recently in CAS 2008/A/1620.
7. In all those case, it has been held that, if the Appeal was directed against the Player, it was inadmissible because the Player had no standing to be sued. This question obviously arises in the present case as well.
8. As been held in CAS 2008/A/1620, with reference to a number of other CAS cases, under Swiss law, applicable pursuant to Articles 60 para. 2 of the FIFA Statutes and R58 of the CAS Code and according to various other CAS cases, the defending party has standing to be sued (“*légitimation passive*”) if it is personally obliged by the ‘disputed right’ at stake. In other words, a party has standing to be sued and may thus be summoned before the CAS only if it has some stake in the dispute because something is sought against it.
9. The Appellant’s Notice of Appeal in the present case read as follows:

*“Notice of appeal on the decision of the FIFA Arbitral Court for Sport dated 10 August 2007*

*Football club “Metallurg” has received the decision (received by the fax dated 14.08.2007) of the FIFA Disciplinary Committee in respect of non-fulfilment of the decision of the Arbitral Court for Sport dated 31 January 2007.*

*Under this decision the FIFA Disciplinary Committee obliged FC “Metallurg” to pay the fine amount of 15.000 CHF during 30 days for the non-fulfilment of the decision and to pay the total sum to the creditor.*

*FC "Metallurg" can not agree with this decision and officially claims about the sending of appeal in a set time.*

*More than that, we regret that such a respectable body of FIFA as Disciplinary Committee follows interests of such "Player" as Leo Lerinc and the firm, which represents his interests. Furthermore our Club did not deny the payment of the total sum according to the decision of the Arbitral Court for Sports and proposed different ways of the payment which were not taken by the creditor without good reasons.*

*Besides, we ask You to send us bank details in Euro and in USD for the payment of the court contribution for the administration of appeal complaints".*

10. Thus, the Notice of Appeal was clearly directed against the FIFA-DC Decision. That implies that the appeal was directed against the FIFA, of which the Disciplinary Committee, which issued the challenged Decision, is an organ, not against the Player.
11. However, when the Appellant supplemented its Notice of Appeal, in response to the CAS' letter of 28 August 2007 (stating: "*As your letter indicates that you wish to file an appeal against a decision of FIFA ...*" and requesting further information inter alia on "*the name and full address of the Respondent*", ...) the Appellant specifically identified the Player and not the FIFA as the Respondent.
12. In the cases referred to at para. 6 above, the reasons why the Player was deemed to have no standing were mainly:
  - The Respondent was not party to the FIFA disciplinary proceedings leading to the Appealed Decision and is not affected by the Appealed Decision;
  - The Appellant – the Club – is not claiming anything against the Respondent – the Player – nor seeking anything from him (cf. CAS 2008/A/1620 at para. 4.5; CAS 2007/A/1329 & 1330 at para. 29).
13. It was also held in those other cases that the FIFA disciplinary proceedings, in the Panel's view, are primarily meant to protect an essential interest of FIFA and FIFA's members, i.e. the full compliance with the decisions rendered by the bodies of FIFA and/or by CAS.
14. In the present case, it can be questioned whether the Player was a party to the FIFA disciplinary proceedings and/or was or was not involved in those proceedings. It could be derived from the FIFA DC Decision that this was the case. The cover page of that Decision indicates that the proceedings were "*... to discuss the case of Player Leo Lerinc and FC Metallurg Donetsk*". And there are various indications in the body of the Decision that the Player had been involved in the proceedings. However, it is common knowledge that FIFA Disciplinary Proceedings are to be distinguished from proceedings before the FIFA Dispute Resolution Chamber. In the first proceedings, the Player is not personally involved and he cannot be affected by a decision of the Committee. Even if, in the case at hand, the FIFA would have found that the Club had a legitimate reason not to pay the amount due – e.g., as the Club had argued, because there was not sufficient time to acquire the necessary license from the National Bank of Ukraine, the Player would still have been able to enforce the decision of the FIFA Dispute Resolution Chamber that the amount(s) due to him be paid. And, as in the other CAS cases, the Appellant

is not claiming anything from Mr. Lerinc in the present proceedings, nor seeking anything from him.

15. Consequently, also in the present case the conclusion is that the Player has no standing to be sued.
16. In a CAS' letter of 7 December 2007 the question was raised, on behalf of the Panel, whether not the FIFA should be deemed to be a (Co) Respondent to this dispute.
17. In response thereto the Appellant said in a letter of 20 December 2007:  
*"In our application for appeal, dated 05 of September 2007, FC Metallurg really named Mr. Leo Lerinc as the Respondent. At the same time demands were submitted only to the FIFA's body-Disciplinary Committee. In connection with this FC Metallurg want to indicate its position as for the Respondent of the present case – it is FIFA Disciplinary Committee".*
18. The FIFA, on 20 December 2007, responded as follows:  
*"(...) On 3 September 2007, the Court of Arbitration for Sport (CAS) informed us, that the appeal lodged by FC Metallurg was not directed against FIFA and we were asked in the same letter whether FIFA wanted to participate as a party in this arbitration. (...)*  
*As to the contents of this issue, we refer to CAS' own jurisprudence in similar cases. As such, CAS 2005/A/850 and CAS 2007/A/1369 state that "CAS does not have the power to include on its own a third party in an arbitration procedure. It is the responsibility [...] of the Appellant to identify the proper Respondent at the beginning of the procedure according to the general principles of procedural law and to art. R 48 of the Code". This jurisprudence was recently confirmed by the awards CAS 2007/A/1329 & 1330 rendered only on 5 December 2007. It is worth emphasising that these decisions have been taken by a Panel of three arbitrators and not by a Sole Arbitrator. (...)*  
*Given the above and on account of the longstanding practice of CAS, we consider and underline that FIFA is not and does not wish to become co-respondent in this arbitration. (...)"*
19. In all the decisions referred to at para. 6 above, it was held – in essence – that, if the Appellant failed to indicate the FIFA formally as the Respondent in its Statement of Appeal or in its Completed Statement of Appeal pursuant to Article R48 of the CAS Code, the FIFA cannot be considered as a party to the arbitration proceedings. This was considered explicitly in the first two cases and implicitly in the last two cases.
20. This Panel agrees. The present case may be different in that, as mentioned above, the Notice of Appeal was lodged clearly against the FIFA-DC Decision. However, the Notice of Appeal did not conform to the requirements of Article R48 of the CAS Code, including the requirement to (clearly) indicate the name and full address of that "Respondent". And when requested to complete this Notice of Appeal, the Appellant indeed designated the Player as the Respondent, not the FIFA. It would be against proper procedure if nevertheless the FIFA would be considered as a formal party to the arbitration, even if, materially, the FIFA could be considered as a relevant party, and even if it can be argued also from a formal point that the Appeal initially

was clearly directed against FIFA. A person or body who gets involved in arbitration is entitled to know, at an appropriate point in time, whether it is formally considered to be a party. As a formal party to the proceedings, it has another position than as a non party – e.g. by participating directly in the composition of the Panel pursuant to Articles R50 and R53 of the CAS Code.

21. Could the Appellant correct this, as it tried to do, by its letter of 20 December 2007? In CAS 2007/A/1329 and 1330, when a similar situation occurred, this question was answered negatively. It was found that the correction, made more or less 10 days after the termination of the appeal period, was too late. In the present case, the correction was made almost 4 months after the termination of the appeal period. That certainly can be considered as (far) too late. But, in addition, one could argue that, by not nominating a proper party as respondent at the right time, the Appellant could be deemed to have waived the right to draw that respondent into the proceedings as a party at a later point in time.
22. On these grounds, this arbitration cannot extend to the FIFA as a party.
23. Accordingly, the Panel finds that the Appellant erred in filing the present appeal against Mr. Lerinc as Respondent, because the Respondent lacks standing to be sued in connection with this case. Consequently, the panel holds that the appeal from the Appellant must be rejected already for that reason. However, the appeal should also be rejected on substantive grounds.

### Considerations on the merits

24. The FIFA-DC's Decision was based on the following facts.
  - “1. On 23 November 2005, the Dispute Resolution Chamber (DRC) decided that the dub F.C. Metallurg Donetsk (hereinafter: the debtor) shall pay USD 48,266 to the player Leo Lerinc (hereinafter: the creditor) plus 5% interests p.a.
  2. On 31 January 2007, the Court of Arbitration for Sport (CAS) decided that the debtor shall pay USD 99,800 to the creditor. The CAS-award was notified on 14 February 2007.
  3. On 8 June 2007, the secretariat to the Disciplinary Committee opened disciplinary proceedings against the debtor as the club failed to pay the amount ordered by CAS.
  4. In a fax sent on 7 March 2007 to CAS, the debtor stressed that the CAS award can not be fulfilled during that month, as a “confirming license” is necessary for the transfer in a foreign currency and that the debtor had already sent the appropriate documents to the National Bank of Ukraine, which is responsible to issue this “confirming license”. According to the debtor, the procedure to receive the license would take about 40 days (a period of mail delivery included).
  5. On 27 June 2007, the debtor sent a “letter of Guaranty” to FIFA and stressed that the club were ready to pay the amount as ordered by CAS but that the club needed a “confirming license” issued by the National Bank of Ukraine. The debtor pointed further out that he would send a delegate to the National Bank of Ukraine in order to solve this problem. The debtor guaranteed the payment of the complete sum after the solution of the problem with the “confirming license”. Enclosed to this fax, the debtor submitted



*a translated copy of a document issued by the “Misto Bank of Donetsk” confirming that the payment of USD 99,800 could not be made to the creditor, as a “confirming license” would therefore be required.*

6. *On 16 July 2007, the secretariat to the Disciplinary Committee urged the debtor to pay the outstanding amount and informed the club that the case would be submitted to the Disciplinary Committee on 10 August 2007.*
7. *On 27 July 2007, the debtor informed FIFA that the club respected decisions taken by FIFA and CAS, but that the payment is still not possible due to the restrictions in the Ukrainian legislation. The debtor further mentioned in the same fax, that they invited the creditor to Donetsk and guaranteed immediate payment once the creditor came to the Ukraine. Additionally, the debtor stressed that the creditor would receive “reasonably” less money as taxes still have to be deducted.*
8. *On 30 July 2007, the creditor informed FIFA that he did not agree with the unusual proposal by the debtor and that the transfer should be made via bank transfer to the nominated account”.*

25. And on the following considerations:

- “1. *According to art. 57 par. 3 of the FIFA Statutes, the Disciplinary Committee may pronounce the sanctions described in the Statutes and the FIFA Disciplinary Code (hereafter: FDC) on Members, clubs, Officials, Players and match and players’ agents.*
2. *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 CAS (art. 71 par. 1 FDC):*
  - a) *will be fined at least CHF 5,000 for failing to comply with a decision;*
  - b) *will be granted a final deadline by the judicial bodies of FIFA in which in which to pay the amount due;*
  - c) *if it is a club, it 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 demotion to a lower division ordered. A transfer ban may also be pronounced.*

*If the club disregards the final time limit, the relevant association shall be requested to implement the sanctions threatened (art. 71 par. 2 FDC).*

3. *The debtor underlined several times his readiness to pay the outstanding amount but stressed that the transfer could not be performed due to restrictions in the Ukrainian legislation which requires a “confirming licence” issued by the National Bank of Ukraine for these kind of transfers. The Committee acknowledges that the procedure of money transfers is in some countries more difficult than in others and takes this into account when passing a decision. The debtor is playing in the highest division in the Ukraine with many foreign players in his team. The debtor made several player transfers in the last years where international money transfers were required. The debtor consequently knows the requirements for international money transfers in his country and should be familiar with the procedure in obtaining all necessary documents therefore.*
4. *In the case at stake, the CAS-award was communicated to the debtor on 14 February 2007. The debtor had consequently almost 6 months to organize the necessary steps in order to perform the money transfer. The Committee considers that this is enough time to pay the amount ordered by CAS to the creditor. The Committee is even more confirmed in its conviction, as the debtor himself maintained in a fax sent to the*

*Court of Arbitration for Sport on 7 March 2007 that the procedure to obtain a “confirming license” is about 40 days. The debtor never explained why the procedure to receive the permission of the National Bank of Ukraine took so much longer than he considered before. In this regard, the Committee doubts the debtors intentions to proceed with the payment. The debtors’ submissions to send a delegate to the National Bank of Ukraine to solve the problem and to guarantee the payment when the creditor comes to Donetsk may not change the Committee’s opinion. The creditor is entitled to get his money without conditions to be set by the debtor. The debtor never sent any proof to substantiate that this delegate was sent to the National Bank of Ukraine or even that he had applied for the “confirming licence”. In the light of the foregoing, the debtor failed to convince the Committee that he was not able to proceed with the money transfer within almost 6 months.*

5. *The Committee furthermore states that the amounts to be paid as ordered by the DRC or CAS are net and have to be paid without deduction of any taxes or fees unless otherwise specified in the decision.*
  6. *As the debtor failed to comply with the decision passed by CAS on 31 January 2007 without valid reason and is withholding money from the other party, he is considered guilty under the terms of art. 71 FDC.*
  7. *The fine to be imposed is at least CHF 5,000. Consequently, the fine to be imposed shall be between CHF 5,000 and CHF 1,000,000 (cf. art. 15 par. 2 FDC). The fine has been increased because the amount of money due is substantial. Non-payment of such amounts can cause a player financial difficulty. The debtor withheld the amount unlawfully from the creditor. Even FIFA’s attempts to urge the debtor to fulfil its financial obligations failed to induce him to pay. In the circumstances, the Disciplinary Committee regards a fine amounting to CHF 15,000 as appropriate. This amount complies with the Disciplinary Committee’s established practice.*
  8. *In application of art. 71 par. 1 b) FDC, the Disciplinary Committee considers a final deadline of 45 days as appropriate for the amount to be paid.*
  9. *In accordance with art. 71 par. 1 c) FDC, the debtor will be warned and notified that, in the case of default within the period stipulated, points will be deducted or demotion to the a lower division be ordered. This will occur if the creditor informs the FIFA Disciplinary Committee of non-payment within the stipulated deadline and demands in writing that points be deducted from the debtor’s first team in the national league. Once this request has been made, the points have to be deducted mandatory in any case.*
  10. *With regard to the amount of points to be deducted, art 71 par, 3 FDC is applicable, whereby the number of points deducted must be proportionate to the amount owed. in the light of the foregoing criteria regarding the amount of the fine to be imposed and in keeping with the Disciplinary Committee’s established practice, a deduction of 6 points is considered appropriate.*
  11. *Art. 113 par. 1 FDC states that costs and expenses are to be borne by the unsuccessful party. The Chairman stipulates that the costs of the proceedings amount to CHF 2,000.*
  12. *As a Member of FIFA, the Football Federation of Ukraine is responsible for implementing this decision, if necessary, and is obliged to deduct the points. If the Member fails to fulfil this obligation, the FIFA Disciplinary Committee will pronounce an appropriate sanction against it. This can lead to expulsion from all FIFA competitions”.*
26. On these grounds, the FIFA-DC came to the Decision quoted above.

27. The crucial consideration in this Decision is para. 4:

*“The debtor had consequently almost 6 months to organize the necessary steps in order to perform the money transfer. The Committee considers that this is enough time to pay the amount ordered by CAS to the creditor. The Committee is even more confirmed in its conviction, as the debtor himself maintained in a fax sent to the Court of Arbitration for Sport on 7 March 2007 that the procedure to obtain a “confirming license” is about 40 days. The debtor never explained why the procedure to receive the permission of the National Bank of Ukraine took so much longer than he considered before. In this regard, the Committee doubts the debtor’s intentions to proceed with the payment. The debtor’s submissions to send a delegate to the National Bank of Ukraine to solve the problem and to guarantee the payment when the creditor comes to Donetsk may not change the Committee’s opinion. The creditor is entitled to get his money without conditions to be set by the debtor. The debtor never sent any proof to substantiate that this delegate was sent to the National Bank of Ukraine or even that he had applied for the “confirming licence”. In the light of the foregoing, the debtor failed to convince the Committee that he was not able to proceed with the money transfer within almost 6 months”.*

28. The arguments raised against the FIFA-DC Decision and this consideration in particular, in the Appellant’s Brief, are not substantiated. In essence, the Appellant invokes force majeure – the lack of the License from the National Bank of Ukraine (NBU) and the impossibility to receive such Licence in time. However:

- a) The Appellant has not explained why the process to obtain the License took almost 6 months, at the time of the FIFA-DC’s Decision or, until the License was finally received and the payment made, almost 7 ½ months after the notification of the CAS award instead of the 40 days which is, in the words of the Appellant, “... *the guiding line* ...”. If the Appellant states that the FIFA-DC did not take into account why the NBU had not given the License earlier, the Panel can only consider that it is up to the Appellant to explain – with evidence – what the reason therefore was. Such (concrete) explanation was apparently not given before the DC. It is, in any event, not given in the Appellant’s Appellate Brief.
- b) Equally, when the FIFA-DC concluded that the Appellant never sent any proof to substantiate what it did to get the License from the NBU, the Appellant failed in these arbitration proceedings to demonstrate why this conclusion is wrong. In the light of the FIFA-DC’s considerations, it could certainly have been expected that the Appellant would prove this. The Panel can only note that such substantiation, was not given in the Appeal proceedings either.
- c) The Panel agrees with the FIFA-DC that the creditor is entitled to get what is due to him without conditions set by the debtor.

29. Therefore, the Appeal should be dismissed also on substantive grounds.

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

1. The Appeal as filed by FC Metallurg against the Decision of the FIFA Disciplinary Committee of 10 August 2007 is dismissed.
2. The decision rendered by the FIFA Disciplinary Committee dated 10 August 2007 is confirmed.
3. All other prayers for relief are dismissed.

(...)