

**Arbitration CAS 2018/A/5898 Football Club “Irtys” v. Bukari Sadat, award of 15 April 2019**

Panel: Mr Hendrik Kesler (The Netherlands), President; Mr Siarhei Ilyich (Belarus); Prof. Ulrich Haas (Germany)

*Football**Admissibility of the appeal**Interpretation of the operative part of an award**Res judicata effect**Standing to be sued**Final and binding decisions*

1. In order to properly understand the scope of the principle of *res judicata* and the effect of the operative part of an award, one also needs to look to the reasoning leading to a panel’s findings.
2. Only decisions deciding on the merits of a dispute are vested with the *res judicata* effect. An award ruling that an appeal is rejected on procedural grounds does not acquire a *res judicata* effect as to the merits of the parties’ contractual dispute since such part of the appellant’s appeal was considered inadmissible.
3. Although a CAS panel found that FIFA wrongly rejected an appellant’s request to receive the grounds of its decision, said panel is not in a position to order FIFA to issue said motivated decision since this appellant did not nominate FIFA as respondent in the appeal proceedings.
4. The dismissal of an appeal against FIFA’s decision not to issue the motivation of a decision results in that FIFA’s decision not to issue said motivated decision becomes final and binding. FIFA’s subsequent erroneous issuance of the motivated version of its decision shall not revive the regulatory time limit to challenge it before CAS and an appeal against said motivated decision is inadmissible. The decision (in its non-motivated version) became final and binding and the parties are being deemed to have waived their rights to file an appeal against it.

**I. PARTIES**

1. Football Club “Irtys” (the “Appellant” or the “Club”) is a professional football club with its registered office in the City of Pavlodar, Republic of Kazakhstan. The Club is registered

with the Football Federation of Kazakhstan (the “FFK”), which in turn is affiliated to the *Fédération Internationale de Football Association* (“FIFA”).

2. Mr Bukari Sadat (the “Respondent” or the “Player”) is a football player of Ghanaian nationality.

## II. FACTUAL BACKGROUND

### A. Background facts

3. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the parties and the evidence examined in the course of the proceedings. This background information is given for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.
4. On 16 January 2016, the Player and the Club concluded a document entitled “*labor contract*” (the “Employment Contract”), valid as from the date of signing until 30 November 2016.
5. On 22 July 2016, the Player lodged a claim before the Dispute Resolution Chamber of FIFA (the “FIFA DRC”) against the Club, ultimately claiming outstanding remuneration and compensation for breach of contract in the total amount of USD 189,000 to be paid by the Club, as well as for sporting sanctions to be imposed on the Club. In particular, the Player claimed the following amounts:
  - USD 18,000 as outstanding salary related to the period between 15 January 2016 and 15 February 2016, plus 5% interest *p.a.* as from 10 March 2016 until the effective date of payment;
  - USD 171,000 as compensation for breach of contract, corresponding to 9,5 monthly salaries of USD 18,000 each, plus 5% interest *p.a.* as from 15 February 2016 until the effective date of payment.
6. The Club contested the Player’s claims and requested them to be dismissed.
7. On 21 September 2017, the FIFA DRC rendered its decision (the “Appealed Decision”) with the following operative part:
  - “1. *The claim of the [Player] is admissible.*
  2. *The claim of the [Player] is partially accepted.*
  3. *The [Club] has to pay to the [Player], **within 30 days** as from the date of notification of this decision, outstanding remuneration in the amount of USD 18,000, plus 5% interest p.a. as from 10 March 2016 until the date of effective payment.*

4. *The [Club] has to pay to the [Player], **within 30 days** as from the date of notification of this decision, compensation for breach of contract in the amount of USD 166,000, plus 5% interest p.a. on said amount as from 22 July 2016 until the date of effective payment.*
5. *In the event that the amounts due to the [Player] in accordance with the above-mentioned numbers 3. and 4. are not paid by the [Club] within the stated time limits, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.*
6. *Any further claim lodged by the [Player] is rejected.*
7. *The [Player] is directed to inform the [Club] immediately and directly of the account number to which the remittances are to be made and to notify the Dispute Resolution Chamber of every payment received" (emphasis in original).*
8. On 27 September 2017, the operative part of the Appealed Decision was notified to the parties.
9. On 11 October 2017, the Club requested the grounds of the Appealed Decision.
10. On 23 October 2017, FIFA informed the Club as follows:

*"We refer to the aforementioned matter and acknowledge receipt of your correspondence dated 11 October 2017, received by our services on 19 October 2017, the content of which has duly been noted.*

*In particular, we understand that you request the grounds of the [Appealed Decision], the findings of which were directly communicated by DHL to you on 27 September 2017 (cf. document enclosed) and which were received by you on 3 October 2017.*

*In this regard, we kindly ask you to take note that in accordance with art. 15 par. 1 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber as well as the note relating to the findings of the decision concerned, the motivated decision will be communicated to the parties, if a request for the grounds of the decision is received by the FIFA general secretariat in writing within ten days as from receipt of the findings of the decision. Failure to do so will result in the decision becoming final and binding and the parties being deemed to have waived their rights to file an appeal.*

*In view of the above, we would like to emphasize that the findings of the relevant decision passed on 21 September 2017 were received by you on 3 October 2017, yet the request to receive the grounds of said decision was received by FIFA on 19 October 2017 only, i.e. sixteen days after the receipt of the findings of the decision by you.*

*As a result, and considering all the above, particularly that the grounds of the decision have not been requested within the stipulated ten day time limit, we regret having to inform you that we are not in a position to provide you with the motivated decision and that, consequently, the decision has become final and binding" (emphasis in original).*

11. On 27 October 2017, the Club again requested the grounds of the Appealed Decision.
12. On 13 November 2017, FIFA informed the Club as follows:

*“We refer to the above-mentioned matter as well as to our previous correspondence dated 23 October 2017 and acknowledge receipt of your correspondence dated 27 October 2017, but received by our services on 6 November 2017, the content of which has been duly noted.*

*In particular, we understand that you again request the grounds of the [Appealed Decision], the findings of which were communicated to [the Club], via DHL, on 27 September 2017 (cf. document enclosed), and which were received by said club on 3 October 2017, as acknowledged by [the Club] in its aforementioned correspondence.*

*In this regard, we kindly ask you to take due note that in accordance with art. 15 par. 1 of the Rules Governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber as well as the note relating to the findings of the decision concerned, the motivated decision will be communicated to the parties, if a request for the grounds of the decision is **received** by the FIFA general secretariat in writing **within ten days as from receipt of the findings of the decision**. Failure to do so will result in the decision becoming final and binding and the parties being deemed to have waived their rights to file an appeal.*

*In view of the above, we would like to emphasize that the findings of the relevant decision passed on 21 September 2017 have been duly notified to [the Club] on 3 October 2016 [sic], yet the request for the grounds of said decision was received by FIFA on 19 October 2017 only, i.e. 16 days after the notification of the findings of the decision.*

*As a result, and considering all the above, particularly that the request for the grounds of the decision has not been received within the stipulated ten days time limit, we regret having to inform you that we are not in a position to provide you with the motivated decision” (emphasis in original).*

13. On 15 December 2017, the Club filed an appeal against the Player with the Court of Arbitration for Sport (“CAS”).
14. On 7 August 2018, CAS issued an arbitral award in the proceedings that were registered as CAS 2017/A/5524 FC Irtysht Pavlodar v. Sadat Bukari, with the following operative part:

*“1. The Court of Arbitration for Sport has jurisdiction to hear the appeal filed by Football Club Irtysht Pavlodar on 15 December 2017 with respect to the decision taken by the Dispute Resolution Chamber of the Fédération Internationale de Football Association on 21 September 2017.*

*2. The appeal filed by Football Club Irtysht Pavlodar on 15 December 2017 with respect to the decision taken by the Dispute Resolution Chamber of the Fédération Internationale de Football Association on 21 September 2017 is admissible.*

3. *The appeal filed by Football Club Irtysb Pavlodar on 15 December 2017 with respect to the decision taken by the Dispute Resolution Chamber of the Fédération Internationale de Football Association on 21 September 2017 is dismissed.*
  4. *The costs of the arbitration, to be determined and served to the parties by the CAS Court Office, shall be borne by Football Club Irtysb Pavlodar.*
  5. *Football Club Irtysb Pavlodar shall pay to Mr Sadat Bukari an amount of CHF 3,000.00 (three thousand Swiss Francs) towards the legal costs and expenses incurred in connection with the present proceedings.*
  6. *All other motions or prayers for relief are dismissed”.*
15. On 9 August 2018, the Club sent a letter to FIFA with the following content:
- “07 august 2018 was made decision by CAS for the CAS 2018/A/5524 Football Club Irtysb Pavlodar v. Sadat Bukari which Irtysb football club received on the 7<sup>th</sup> of august 2018 via email.*
- From the content of the CAS decision, paragraph 118 indicated by court – the sole arbitrator considers that FIFA’s refusal to provide the grounds for the decision was unjustified.*
- Taking into account the conclusion of the court of 07.08.2018 and in accordance with the rules and regulations of FIFA which establish a 10-day deadline for filing a respective application to FIFA for the full (expanded) decision of the legal body of FIFA related to the proceedings, we ask you to provide the full text of the decision FIFA PRS of 21<sup>st</sup> of September 2018 within the period established by law sending to the email address of Irtysb football club”.*
16. On 31 August 2018, FIFA provided the Club with the motivated Appealed Decision and informed it as follows:
- “Please find attached, as requested by [the Club] (cf. its correspondence dated 9 August 2018), the grounds of the decision passed in the aforementioned matter by the Dispute Resolution Chamber in the meeting held in Zurich, Switzerland, on 21 September 2017, as well as a copy of the directives of the CAS regarding its appeal procedure”.*

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

17. On 8 September 2018, the Club filed a Statement of Appeal with CAS against the Appealed Decision in accordance with Articles R47 and R48 of the 2017 edition of the CAS Code of Sports-related Arbitration (the “CAS Code”). The Club named Mr Bukari Sadat and FIFA as respondents. The Club nominated Mr Siarhei Ilyich, Attorney-at-Law in Minsk, Belarus, as arbitrator.
18. On 13 September 2018, the Player requested to appoint Mr Luigi Fumagalli, Professor and Attorney-at-Law in Milan, Italy, as sole arbitrator.

19. On 17 September 2018, FIFA informed the CAS Court Office, *inter alia*, as follows:

*“[W]e would like to emphasise that the present proceedings relate to a dispute between the [Club] and [the Player] in connection with the execution of a contract signed by the [Club] and the [Player] and does not concern FIFA. In particular, we have to stress that FIFA, more precisely the Dispute Resolution Chamber, acted in the matter at stake in its role as the competent deciding body of the first instance and was not a party to the dispute. Moreover, we would like to emphasise that the [Appealed Decision] is not one of disciplinary nature. Equally, it should be noted that the appeal in question does not appear to contain any substantial request against FIFA.*

*Therefore, we deem that FIFA cannot be considered as a Respondent in the present affair, and, in consequence, we request that FIFA shall be excluded from the procedure at stake. If this should not be the case, we reserve our right to claim against the Appellant for the legal costs incurred by FIFA as a consequence of the unnecessary involvement in the present procedure”.*

20. On 18 September 2018, the Club objected against the appointment of Mr Fumagalli as sole arbitrator and requested a Panel composed of three arbitrators to be appointed.
21. On 21 September 2018, the Player informed the CAS Court Office that, should his request for a sole arbitrator be dismissed, he nominated Prof. Ulrich Haas, Professor of Law in Zurich, Switzerland, as arbitrator.
22. On 21 September 2018, the Club informed the CAS Court Office that it requested FIFA to be excluded as a respondent.
23. On 28 September 2018, the Club filed its Appeal Brief, in accordance with Article R51 CAS Code. This document contained a statement of facts and legal arguments giving rise to the appeal.
24. On 1 October 2018, the CAS Court Office informed the parties that the President of the CAS Appeals Arbitration Division had decided to submit the present procedure to a Panel composed of three arbitrators.
25. On 25 October 2018, in accordance with Article R54 CAS Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the arbitral tribunal appointed to decide the present matter was constituted as follows:
- Mr Hendrik Willem Kesler, Attorney-at-Law in Enschede, the Netherlands, as President;
  - Mr Siarhei Ilyich, Attorney-at-Law in Minsk, Belarus; and
  - Prof. Ulrich Haas, Professor of Law in Zurich, Switzerland, as arbitrators.

26. On 6 November 2018, the Player raised an objection of *res judicata*, challenged the jurisdiction of CAS to hear this matter and requested that the proceedings be bifurcated so that the Panel would decide the issue of jurisdiction and/or *res judicata* as a threshold matter.
27. On 8 November 2018, the CAS Court Office informed the parties that Mr Dennis Koolaard, Attorney-at-Law in Arnhem, the Netherlands, had been appointed as *Ad hoc* Clerk.
28. On 13 November 2018, following an invitation from the CAS Court Office in this respect, the Club filed its comments on the issues of jurisdiction and *res judicata* and on the Player’s request to bifurcate the proceedings.
29. On 7 December 2018, the CAS Court Office informed the parties that the Panel had decided to bifurcate the proceedings and to decide on the Respondent’s request for relief to “*declare the appeal inadmissible on jurisdictional grounds*” as a threshold matter in a preliminary award.
30. On 12 and 13 December 2018 respectively, following a request from the CAS Court Office to indicate their preference in this regard, the Player indicated that he did not deem it necessary for a hearing to be held, whereas the Club indicated to prefer a hearing to be held. The Club also made additional comments to the issues of jurisdiction and *res judicata*.
31. On 14 December 2018, the CAS Court Office informed the parties on behalf of the Panel that any hearing at this stage would only be dedicated to the Player’s request for relief to “*declare the appeal inadmissible on jurisdictional grounds*” and that the merits of the case would thus not be addressed during such hearing, if any. The parties were also informed that the Panel found the comments of the Club in its letter dated 13 December 2018 about the merits of the case to be inadmissible at this stage.
32. On 17 December 2018, the Player insisted on his preference for a decision to be issued on the basis of the documents on file, because the discussion on the admissibility is purely of legal nature and because the Player lacks the financial means to travel to Switzerland.
33. On 20 December 2018, following an invitation from the CAS Court Office to specify why it wishes to hold a hearing, the Club indicated that it requests to hold a hearing “*to protect his rights and interests which were in the previous letter of the Appellant (dated from December 13, 2018)*”.
34. On 21 December 2018, the CAS Court Office informed the parties that the Panel had decided to hold a hearing.
35. On 24 and 28 January 2019 respectively, the Player and the Club returned duly signed copies of the Order of Procedure to the CAS Court Office.
36. On 5 February 2019, a hearing was held in Lausanne, Switzerland. At the outset of the hearing, both parties confirmed not to have any objection as to the constitution and composition of the arbitral tribunal.

37. In addition to the Panel, Mr Daniele Boccucci, Counsel to the CAS, and the *Ad hoc* Clerk, the following persons attended the hearing:
- a) For the Club:
    - 1) Mr Kuanysh Datkayev, Counsel;
    - 2) Mr Sergazin Khazhibay, Counsel;
    - 3) Mr Gleb Dayerbayev, Interpreter.
  - b) For the Player:
    - 1) Mr Josep Francesc Vandellos Alamilla, Counsel.
38. No witnesses or experts were heard. The parties had full opportunity to present their case, submit their arguments and answer the questions posed by the members of the Panel.
39. Before the hearing was concluded, both parties expressly stated that they did not have any objection with the procedure adopted by the Panel and that their right to be heard had been respected.
40. Upon the joint request of the parties and in order to facilitate discussions between the parties to come to an amicable agreement to resolve their dispute, the Panel indicated that it would not issue any decision within one month from the hearing.
41. On 25 February 2019, the Club presented the Player certain conditions for an amicable agreement.
42. On 4 March 2019, the Player informed the CAS Court Office that he declined the offer made by the Club and requested the Panel to continue with the procedure.
43. Also on 4 March 2019, the CAS Court Office informed the parties that the Panel would render an arbitral award in due time.
44. The Panel confirms that it carefully heard and took into account in its decision all of the submissions, evidence, and arguments presented by the parties, even if they have not been specifically summarised or referred to in the present arbitral award.

#### IV. REQUESTS FOR RELIEF

45. The Player submits the following requests for relief in his “*Objection to the Jurisdiction of the Court of Arbitration for Sport*”:

*“The Respondent requests the Panel to declare the appeal inadmissible on jurisdictional grounds based on the arguments presented above and to fix a sum, to be paid by the Appellant to the Respondent, in order to pay its defence fees in the amount to be determined at the full discretion of the Panel”.*



46. The Club submits the following conclusion in its response to the Player’s *“Objection to the Jurisdiction of the Court of Arbitration for Sport”*:

*“In view of the above, the Applicant would like to request the Panel to dismiss the above-mentioned claims in the context of res judicata and to consider the merits of the dispute”.*

## V. SUBMISSIONS OF THE PARTIES

47. The submissions of the Player underpinning his request to *“declare the appeal inadmissible on jurisdictional grounds”*, in essence, may be summarised as follows:

- The Player submits that the Appealed Decision was already decided upon by CAS in the CAS Award *CAS 2018/A/5524 Football Club Irtys Pavlodar v. Sadat Bukari*, in which award the sole arbitrator rejected the appeal in its entirety and as a consequence of which the Appealed Decision remained final and binding pursuant to Article R59 CAS Code, benefitting from the *res judicata* effect for all purposes, and protecting the Player from having to go through new proceedings that are directed against the very same Appealed Decision.
- The Player argues that, in general, the principle of *res judicata* implies that once a cause of action has been litigated it may not be relitigated and refers to CAS jurisprudence in this respect.
- The Player submits in particular that the present arbitration concerns the same parties as in *CAS 2018/A/5524 Football Club Irtys Pavlodar v. Sadat Bukari*, the same identical object and the same cause. It is to be noted that the object of the Club’s request in *CAS 2018/A/5524 Football Club Irtys Pavlodar v. Sadat Bukari* was the annulment of the Appealed Decision.
- The Player further maintains that by issuing the grounds after the CAS Award in *CAS 2018/A/5524 Football Club Irtys Pavlodar v. Sadat Bukari* (where FIFA explicitly refused to intervene as a party after being asked by CAS), the FIFA administration acted arbitrarily and in blatant violation of its own regulations and the principle of *res judicata*.

48. The submissions of the Club on the Player’s request to *“declare the appeal inadmissible on jurisdictional grounds”*, in essence, may be summarised as follows:

- The Club submits that no issue of *res judicata* arises.
- The CAS award issued in *CAS 2018/A/5524 Football Club Irtys Pavlodar v. Sadat Bukari* does not address the merits of the dispute. A subject matter of such case was FIFA’s denial to issue the full and motivated part of the Appealed Decision. Consideration of the merits of the case was impossible in the absence of a full and motivated Appealed Decision.

- Following a request for interpretation filed by the Club in *CAS 2018/A/5524 Football Club Irtys Pavlodar v. Sadat Bukari*, the President of the CAS Appeals Arbitration Division explained that the merits of the case could not be examined.
- The Club also argues that “according to art. 186 (1-bis) PLIS and in conjunction with article R55, para. 4, the Arbitration court takes decision on its jurisdiction regardless of actions on the same matter between the same parties that are pending before the state court or another arbitration court, if there are no serious grounds for continuing the proceedings”.

## VI. JURISDICTION

49. The Panel observes that FIFA issued the operative part of the Appealed Decision to the parties on 27 September 2017.
50. On 23 October 2017, following a request from the Club to be provided with the grounds of the Appealed Decision, FIFA informed the Club, *inter alia*, as follows:

*“As a result, and considering all the above, particularly that the grounds of the decision have not been requested within the stipulated ten day time limit, we regret having to inform you that we are not in a position to provide you with the motivated decision and that, consequently, the decision has become final and binding”.*

51. On 13 November 2017, following repeated requests of the Club to be provided with the grounds of the Appealed Decision, FIFA informed the Club, *inter alia*, as follows:

*“As a result, and considering all the above, particularly that the request for the grounds of the decision has not been received within the stipulated ten days time limit, we regret having to inform you that we are not in a position to provide you with the motivated decision”.*

52. On 7 August 2018, following an appeal filed by the Club against the Appealed Decision, CAS issued an arbitral award ruling, *inter alia*, as follows:

*“3. The appeal filed by Football Club Irtys Pavlodar on 15 December 2017 with respect to the decision taken by the Dispute Resolution Chamber of the Fédération Internationale de Football Association on 21 September 2017 is dismissed”.*

53. The Panel notes that the sole arbitrator reasoned as follows in para. 118 of the award in *CAS 2018/A/5524 Football Club Irtys Pavlodar v. Sadat Bukari*:

*“[T]he Sole Arbitrator finds that FIFA’s denial to issue the grounds of the Decision was not justified”.*

54. As to the Player’s reliance on the principle of *res judicata* in arguing that CAS does not have jurisdiction to deal with the Club’s appeal, the Panel finds that one needs to interpret the operative part of an arbitral award in light of the underlying reasoning. It is true that authority

of *res judicata* is, in principle, attached only to the operative part of the award. However, in order to properly understand the scope of the principle and the effect of the award’s operative part, one needs also to look to the reasoning leading to the findings (NOTH/HAAS, Article R46 CAS Code, in: ARROYO M., *Arbitration in Switzerland – The Practitioner’s Guide*, 2018, p. 1567).

55. Although the sole arbitrator in *CAS 2018/A/5524 Football Club Irtys Pavlodar v. Sadat Bukari* dismissed the Club’s appeal, it becomes apparent from the reasoning of the award that the sole arbitrator did not address the merits of the Appealed Decision. In fact, the sole arbitrator considered the Club’s request for relief to set aside the Appealed Decision to be inadmissible because i) it was filed late; ii) because the Player did not agree to allow the Club to amend its requests for relief; and iii) because no exceptional circumstances were present that would justify a late amendment of the requests for relief. Indeed, the sole arbitrator clarified that the “*appeal against the Decision was expressly and unequivocally limited to the fact that FIFA had not issued the grounds supporting it, even though timely requested*”. Consequently, the sole arbitrator in the case CAS 2018/A/5524 did not “dismiss” the appeal against the Appealed Decision, but instead rejected the claim directed against the Appealed Decision on procedural grounds.
56. The Panel finds that, under such circumstances, the award issued in *CAS 2018/A/5524 Football Club Irtys Pavlodar v. Sadat Bukari* did not acquire a *res judicata* effect as to the merits of the contractual dispute, as the Sole Arbitrator concluded that this part of the Club’s appeal was inadmissible. The Panel is comforted in this view by the jurisprudence of the Swiss Federal Tribunal (“SFT”). The latter repeatedly held that only decisions deciding on the merits of the dispute are vested with the *res judicata* effect (SFT 5A\_82/2009, E. 2.1; SFT 4P.6/2005, E. 1: “*Nichteintretensentscheid erwächst nicht in materieller Rechtskraft*”). Accordingly, no situation of *res judicata* arises in the matter at hand.
57. Consequently, the Panel finds that it is competent to look at the Club’s renewed appeal regarding the merits of the contractual dispute decided upon in the Appealed Decision.

## VII. ADMISSIBILITY

58. Turning its attention to the admissibility of the Club’s renewed appeal, while the sole arbitrator in *CAS 2018/A/5524 Football Club Irtys Pavlodar v. Sadat Bukari* could indeed argue that FIFA’s decision not to issue the grounds of the Appealed Decision was not justified, he was however prevented from ruling in the operative part of the arbitral award that FIFA should issue the grounds of the Appealed Decision, because the Club failed to name FIFA as a respondent. This point was also specifically raised by FIFA when it was asked whether it wanted to intervene in the arbitration *CAS 2018/A/5524 Football Club Irtys Pavlodar v. Sadat Bukari*. FIFA indicated the following:

“[D]espite renouncing to intervene in the present matter, we hereby would like to clarify that [the Club] did not designate FIFA as a Respondent in the present procedure, and only indicated [the Player] as a Respondent, whereas one of the [Recte. Club’s] main contentions is related to its request to be provided by FIFA with the motivation of the [Appealed Decision]. In this respect, any question related to the [Recte. Club’s] request to oblige FIFA to provide it with the motivation of the aforementioned decision,

*may not be taken into consideration by the CAS and the specific Panel, as a different interpretation would per se constitute a violation of FIFA’s right to be heard” (cf. para. 52 of the CAS award in CAS 2018/A/5524 Football Club Irtysb Pavlodar v. Sadat Bukari).*

59. The sole arbitrator in *CAS 2018/A/5524 Football Club Irtysb Pavlodar v. Sadat Bukari* also clarified this point in para. 126 of his award:

*“With respect to such petition the Respondent has no standing. In fact, the Player has no role in the issuance of the grounds of a decision rendered by a body of FIFA: in other words it is not personally obliged by the “disputed right” at stake, i.e. by the Club’s right to obtain, and FIFA’s obligation to issue, the grounds of the Decision”.*

60. Accordingly, the Panel finds that the sole arbitrator’s remark in para. 118 of the award in *CAS 2018/A/5524 Football Club Irtysb Pavlodar v. Sadat Bukari* cannot be taken out of its context and cannot be considered as an order to FIFA to issue the grounds of the Appealed Decision. Indeed, FIFA was not ordered to issue the grounds. FIFA is not even bound by the CAS award in *CAS 2018/A/5524 Football Club Irtysb Pavlodar v. Sadat Bukari* because it was not a party to the proceedings.
61. As a result, FIFA’s decision of 23 October 2017 not to issue the grounds of the Appealed Decision remained fully in force and became final and binding upon the parties and FIFA.
62. This should have been the end of the matter. The situation was however complicated because FIFA considered it necessary, upon the Club’s application, to notify the grounds of the Appealed Decision to the parties on 31 August 2018 and to revive the 21-day deadline to challenge the Appealed Decision.
63. The Panel finds that FIFA was wrong to do so and that the Club’s request dated 9 August 2018 to be provided with the grounds was unjustified, because, as indicated above, FIFA’s decision of 23 October 2017 not to notify the grounds of the Appealed Decision became final and binding upon FIFA and the parties involved in *CAS 2018/A/5524 Football Club Irtysb Pavlodar v. Sadat Bukari*.
64. The situation would have been different if the Club had lodged an appeal with CAS against the Appealed Decision, requesting CAS to order FIFA (thus calling FIFA as a respondent) to notify the grounds of the Appealed Decision and if CAS would indeed have ordered FIFA to notify the grounds. This was however not the case.
65. The Panel notes that there are no other legal grounds for FIFA that would justify a reconsideration of its decision not to issue the grounds of the Appealed Decision and to issue such grounds more than 11 months after its adoption.
66. Moreover, taking into account the principle universally applied in arbitration proceedings that parties exercise their rights independently, the Panel notes that the Club, due to its own decisions (not calling FIFA as a respondent in the appeal proceedings against FIFA’s

decision not to issue the grounds of the Appealed Decision), is responsible for the situation as it is under the Panel’s review.

67. For the reasons above, the Panel finds that FIFA could not revive the 21-day time limit to lodge an appeal against the Appealed Decision. Allowing FIFA to revive the time limit to appeal a decision without good reason would endanger the legal certainty pursued with a statutory time limit to appeal and would, thus, go against the very purpose of deadlines for appeal. Such time limit to appeal is there in the interest of all stakeholders and is not at the free disposal of FIFA. The latter has no autonomy to alter or change the deadlines for appeal to the detriment of other stakeholders. Indeed, in the matter at hand, the Player would be particularly unjustly prejudiced, because he was of the legitimate understanding that FIFA’s decision of 23 October 2017 not to notify the grounds of the Appealed Decision became final and binding.
68. Article 15(1) and (2) of the FIFA Rules Governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber (the “FIFA Procedural Rules”) determine as follows:
  - “1. The Players’ Status Committee, the DRC, the single judge and the DRC judge may decide not to communicate the grounds of a decision and instead communicate only the findings of the decision. At the same time, the parties shall be informed that they have ten days from receipt of the findings of the decision to request, in writing, the grounds of the decision, and that failure to do so will result in the decision becoming final and binding and the parties being deemed to have waived their rights to file an appeal.*
  - 2. If a party requests the grounds of a decision, the motivated decision will be communicated to the parties in full, written form. The time limit to lodge an appeal begins upon receipt of this motivated decision”.*
69. Because the Club’s appeal with CAS to obtain the grounds of the Appealed Decision was dismissed (because the Club failed to name FIFA as a respondent), FIFA’s decision to deny the Club’s request to issue the grounds of the Appealed Decision became final and binding. Accordingly, the Club failed to lawfully obtain the grounds of the Appealed Decision, as a result of which, according to Article 15(1) FIFA Procedural Rules, the Appealed Decision became final and binding and the parties are being deemed to have waived their rights to file an appeal.
70. Consequently, the Panel finds that the Club’s appeal is inadmissible and that this puts an end to the present appeal arbitration proceedings.
71. All other and further motions or prayers for relief are dismissed.

## ON THESE GROUNDS

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

1. The appeal filed on 8 September 2018 by Football Club “Irtys”, against the decision issued on 21 September 2017 by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* is inadmissible.
2. (...).
3. (...).
4. All other and further motions or prayers for relief are dismissed.