



**Arbitration CAS 2017/A/5285 Daniel Angelici v. Confederación Sudamericana de Fútbol (CONMEBOL), consent award of 14 May 2018**

Panel: Mr Efraim Barak (Israel), President; Mr José María Cruz (Spain); Mr José María Alonso Puig (Spain)

*Football*

*Governance*

*Ratification of settlement agreement by a court of arbitration*

Under Swiss Law, a court of arbitration has authority to issue an award embodying the terms of the parties' settlement if the contesting party agrees to a termination of the dispute in this manner. The panel's ratification of a settlement and its incorporation into a consent award serves the purpose of enabling its enforcement. To ratify a settlement agreement, a panel shall verify its *bona fide* nature, to ensure that the will of the parties has not been manipulated by them to commit fraud and to confirm that the terms of the settlement agreement are not contrary to public policy principles or mandatory rules of the law applicable to the dispute.

## **I. PARTIES**

1. Mr Daniel Angelici (the Appellant or "Mr Angelici") is the President of the Argentinean club Club Atlético Boca Juniors ("Boca") and the Vice-president of the Argentine Football Association ("AFA") which, in turn, is a member association of the Confederación Sudamericana de Fútbol and of the Fédération Internationale de Football Association ("FIFA").
2. Confederación Sudamericana de Fútbol ("CONMEBOL") is the governing body of football in South America and a member of FIFA.

## **II. FACTUAL BACKGROUND**

3. On 24 February 2017, the Extraordinary General Meeting of AFA approved the new Statutes of the Argentinean national association.
4. On 1 March 2017, CONMEBOL and FIFA sent a letter to AFA with regard to the latter's new Statutes, informing the Argentinean national association that, regardless of what was envisaged by its Statutes, CONMEBOL had the obligation to perform an eligibility test (*"examen de idoneidad"*) on all the candidates for the different positions within CONMEBOL's bodies and for the position of President of all its association members.

5. On 15 March 2017, CONMEBOL and FIFA sent a letter to AFA acknowledging receipt of the list of candidates for the Executive Committee of AFA that were standing for the association's elections to be held on 29 March 2017. In this letter CONMEBOL and FIFA warned that Mr Angelici, who was one of the candidates standing for the Vice-Presidency of AFA, was at the same time also the Vice-President of the Argentinean Bar Association that, in turn, was the entity appointed by AFA's Statutes to conduct the eligibility test on the candidates for the Vice-Presidency of the association for the first elections after the approval of the new AFA Statutes due to the fact the Ethics Committee (who is the responsible for handling the test under the Statutes) was not yet established. Therefore, in its letter CONMEBOL and FIFA ordered that CONMEBOL will conduct the eligibility test for all the candidates to the Vice-Presidency of AFA in these first elections.
6. On 16 March 2017, the Appellant filed before CONMEBOL a formal statement declaring that he accepted to undergo the eligibility test of CONMEBOL and informing the Respondent that on this same day he had filed before Mrs Graciela Garay ("Mrs Garay"), CONMEBOL's Director of Ethics and Compliance (*"Directora de Ética y Cumplimiento"*) all the documentation requested for the performance of CONMEBOL's eligibility test, so that Mrs Garay could submit this documentation to the Control Subcommittee of the Committee of Governance and Transparency of CONMEBOL (*"Subcomisión de Control de la Comisión de Gobernanza y Transparencia de CONMEBOL"*).
7. On 23 March 2017, Mrs Garay sent by email to AFA's legal advisor the Control Questionnaires ("Cuestionarios de Control") that all candidates had to complete as part of their eligibility test.
8. On 25 March 2017, Mrs Garay sent an email to AFA's legal advisor, reminding him that the deadline for filing the Control Questionnaires by the candidates would expire at 2 p.m. of that same day (25 March 2017).
9. On 25 March 2017, before the expiry of the deadline, the Appellant's counsel sent his Control Questionnaire to Mrs Garay.
10. On 26 March 2017, Mrs Garay forwarded the completed and signed Control Questionnaires to the 3 members of CONMEBOL's Control Subcommittee of the Committee of Governance and Transparency (the "Control Subcommittee").
11. On 29 March 2017, Mrs Garay sent a correspondence to AFA informing that, despite the fact that the candidates' eligibility test had not been yet concluded, CONMEBOL authorized the elections that were called for this same day. In this same correspondence Mrs Garay requested to hold a meeting with all the candidates on 31 March 2017, in order to deliver the results of their eligibility test.
12. On this same day, AFA's elections were held and the Appellant was elected its first Vice-President by the General Assembly.

13. On 23 May 2017, all the candidates (including the Appellant) held a personal meeting in Buenos Aires with the Subcommittee of Control Subcommittee in which, after an individual interview, the Appellant was given a letter dated 19 May 2017, in which some additional documentation and information to be filed within a 10-day term was requested by the Control Subcommittee in order to complete the eligibility test.
14. On 6 June 2017, AFA's legal advisor sent the additional information requested by CONMEBOL's Control Subcommittee with regard to all the candidates except for the Appellant.
15. On 10 July 2017<sup>1</sup>, the Control Subcommittee of CONMEBOL informed the Appellant that, due to the non-receipt in due time of the additional information requested within the eligibility test procedure with regard to those aspects that needed to be clarified by Mr Angelici, the Control Subcommittee had decided not to declare him eligible to perform any potential position within CONMEBOL ("*no habilitarlo para desempeñar eventuales funciones ante CONMEBOL*", in its original Spanish version).
16. On 18 July 2017 the Appellant submitted to the Control Subcommittee the additional information requested by the latter during the meeting of 23 May 2017, arguing that despite the fact that this information was supposed to be sent on 29 May 2017, due to an involuntarily mistake the remittance was not done ("*Esta nota de respuesta debió enviarse el 29 de mayo pasado, pero por un error involuntario se omitió el envío*").
17. On 26 July 2017, upon request of the Appellant, the Control Subcommittee informed Mr Angelici that it had agreed to set a personal interview with him on 7 August 2017 in Asunción, Paraguay, to hear about the reasons why he did not file the additional information requested within the deadline given. In this correspondence, the Control Subcommittee also stated that this meeting did not imply any change in the decision already taken and that the sole purpose of the meeting was to hear his version of the facts. Finally, in this correspondence the Control Subcommittee informed the Appellant that, in its view, his term for filling an appeal before the Court of Arbitration for Sport against its previous decision was to expire on 8 August 2017.
18. On 1 August 2017, the Appellant sent a correspondence to the Control Subcommittee requesting some procedural clarifications regarding the meeting of 7 August 2017 and, in particular, if this meeting implied the re-opening of the eligibility test.
19. On 2 August 2017, the President of AFA sent a letter to CONMEBOL stating, *inter alia*, its opinion in relation to the decision adopted by the Control Subcommittee.
20. On 7 August 2017, the Appellant held the meeting with the Control Subcommittee, in which he explained that he did not submit the documents within the term given due to a mistake of his lawyers.

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<sup>1</sup> Allegedly received by the Appellant by email dated 18 July 2017.

21. On this same day, the Control Subcommittee issued a letter to the Appellant stating the following:

*“Cabe recalcar el hecho que la Sub comisión de Control, en vista de la no entrega de la información solicitada, en este caso particular no ha puesto en tela de juicio su calidad personal, así como tampoco su trayectoria dirigencial.*

*Por consiguiente, la Sub comisión de Control no pudo pronunciarse sobre el fondo del asunto en materia, dado que el incumplimiento de un término técnico-jurídico impide el análisis respectivo. Esto conlleva a la consecuente inhabilitación de su persona para ejercer funciones ante Conmebol.*

*Finalmente, le recordamos que según los Estatutos de FIFA y Conmebol usted podrá realizar otro examen de idoneidad en el plazo de un año”.*

which can be freely translated into English as follows:

*“It can be underlined the fact that the Control Subcommittee, in light of the non-filling of the requested information, in this particular case did not challenge your personal quality, neither your professional trajectory.*

*As a consequence, the Control Subcommittee could not reach a decision on the merits of the case at stake, given the fact that the breach of a technical-juridical term prevented it from doing the corresponding analysis. This entails the consequential ineligibility of your person to exercise functions before Conmebol.*

*Finally, we remind you that in accordance with the Statutes of FIFA and Conmebol you will be able to conduct a new eligibility test in the term of one year”.*

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

22. On 8 August 2017, Mr Angelici filed a statement of appeal before the Court of Arbitration for Sport (“CAS”) against the decisions passed by the Control Subcommittee of CONMEBOL on 7 August 2017 and on 10 July 2017 (the “Appealed Decisions”).
23. On 18 August 2017, the Respondent sent a correspondence to the CAS stating, *inter alia*, that it did not recognize the jurisdiction of CAS to hear the present case and that it reserved its rights to challenge CAS jurisdiction upon receipt of the Appeal Brief.
24. On 4 September 2017, the Appellant filed his appeal brief, with the following requests for relief:

*“As a consequence, we request from the Panel to issue an award:*

*1.- Annulling the decisions of the Control Subcommittee of Conmebol in the present case, issuing the award no later than December 30, 2017.*

*2.- Annulling the ineligibility imposed by Conmebol against Mr Angelici to occupy any position at Conmebol.*

*3.- Imposing the appellant the costs of the procedures alongside with an amount as a contribution towards the legal costs of the appellant, that we estimate in CHF 10.000.-”.*

25. On 3 November 2017, the CAS Court Office informed the parties that the Panel appointed to settle the present dispute was constituted by:

President: Mr Efraim Barak, attorney-at-law in Tel-Aviv, Israel

Arbitrators: Mr José María Cruz, attorney-at-law in Sevilla, Spain

Mr José María Alonso Puig, attorney-at-law in Madrid, Spain

26. On 20 November 2017, the Respondent filed his answer to the appeal, requesting the Panel to:

***“a) Declare the Appeal inadmissible.***

*Or in alternative to:*

***b) Dismiss the Appeal and confirm the decision under appeal.***

*In any case to:*

***c) Order that Appellant shall bear the costs of these arbitration proceedings in its entirety and reimburse Respondent for any such costs.***

***d) Order Appellant to reimburse CONMEBOL legal fees and other expenses related to the present arbitration”.***

27. On 10 January 2018, the CAS Court office sent to the parties the procedural instructions given by the Panel by which, *inter alia*, each party was given a consecutive 14-day deadline to file second written submissions.
28. On 29 January 2018, the Appellant filed his second written submissions.
29. On 13 February 2018, the Respondent filed its second written submissions.
30. On 14 March 2018, the CAS Court office sent the Order of Procedure to the parties for its signature, that was later countersigned by both parties.
31. The hearing took place in Lima, Perú, on 27 April 2018. At the hearing the Appellant was represented by his counsels, Mr Ariel Reck and Mr Mariano Clariá. The Respondent was represented by their counsels, Mr Luca Tarzia and Mr Lukas Stocker. In addition, Mr Antonio de Quesada, counsel to the CAS and Mr Yago Vázquez Moraga, *ad hoc* clerk, assisted the Panel at the hearing.

32. At the outset of the hearing, before giving the floor to the parties to present their opening statements, the Panel invited the Parties to assess the possibility of reaching a settlement agreement in this case. The parties accepted the invitation of the Panel and the hearing was suspended. After holding the corresponding negotiations, the parties informed the Panel that they had reached a settlement agreement and that they request to embody such agreement in a consent award. Then the parties signed the settlement agreement before the Panel and then the hearing was concluded and closed, informing the parties that the consent award will be notified by no later than end of the following week.
33. On 30 April 2018, the Appellant sent a correspondence to the CAS informing the Panel that he considered that the Respondent had breached the settlement agreement and that, even though the settlement agreement shall remain in force, there were several appropriate measures that the Panel could take in order to sanction the Respondent's behaviour.
34. On 1 May 2018, the CAS forwarded the Appellant's correspondence to the Respondent and invited it to file its comments by 3 May 2018.
35. On 3 May 2018, the Respondent sent its comments on the Appellant's last correspondence, sustaining that CONMEBOL's media release did not infringe the spirit or the content of the settlement agreement and that they also considered that the settlement agreement remained valid and that the arbitral procedure shall be closed.
36. On 4 May 2018, the CAS informed the parties that, taking into account that in his last correspondence the Appellant did not file any specific request to be decided by the Panel, but he merely proposed several options that in the Appellant's view the Panel could adopt, it was not necessary for the Panel to pass any decision in this regard. In addition, in this same correspondence the CAS informed the parties that, considering that both parties agreed that the settlement agreement remained valid and with full effect, the Panel was going to embody and ratify their agreement in an arbitral consent award.

#### **IV. JURISDICTION**

37. The jurisdiction of the CAS, that has been tacitly confirmed by the parties through the execution of the settlement agreement, arises out of Articles 52.5, 52.6 and 66 of the Statutes of CONMEBOL and Article R47 of the CAS Code of Sports-related Arbitration (the "CAS Code").
38. Therefore, the Panel finds that it has jurisdiction to issue this Consent Award.

#### **V. THE SETTLEMENT AGREEMENT**

39. On 27 April 2018, the Parties reached the following Settlement Agreement:

\*\*\* Quote \*\*\*

**“SETTLEMENT AGREEMENT**

*On the one side, **MR DANIEL ANGELICI**, Vicepresident of the Asociación del Fútbol Argentino (AFA) and provided with Argentinean DNI 16.823.686.*

*And, on the other side, the **CONFEDERACIÓN SUDAMERICANA DE FÚTBOL** (“CONMEBOL”), represented by Mr Luca Tarzia and Mr Lukas Stocker, by virtue of a power of attorney signed by CONMEBOL.*

**WHEREAS**

- I. *A dispute arose between the parties in respect of an integrity check conducted by the “Subcomisión de Control” of the “Comisión de Gobernanza y Transparencia” of CONMEBOL (hereinafter the “Subcommittee”).*
- II. *As a result of this dispute, Mr Angelici filed an appeal before the Court of Arbitration for Sport (CAS) against the decisions issued by the Subcommittee on 10 July 2017 and on 7 August 2017 (case CAS 2017/A/5285).*
- III. *On 27 April 2018, the hearing of the CAS case took place in the city of Lima (Perú).*
- IV. *At the outset of the hearing, and following the recommendation of the Panel, the parties, in the interest of the South-American football, negotiated and reached a settlement agreement as following:*

**A. Declarations of the parties:**

- *Mr Angelici acknowledges that he missed one deadline within the procedure conducted by CONMEBOL.*
- *The Subcommittee considered that this failure entailed an impossibility to complete the procedure, which had been conducted in a transparent manner.*
- *As a result, the Subcommittee could not undergo the exam on the merits and thus the Subcommittee did not challenge the personal qualities of Mr Angelici, neither his professional career, as stated in the letter from CONMEBOL of 7<sup>th</sup> August 2017.*

***B. The terms of the settlement agreement:***

1. *Mr Angelici acknowledges that the Subcommittee is the competent body to perform the eligibility test for his potential position within CONMEBOL.*
2. *The Subcommittee will examine the eligibility of Mr Angelici according to the terms and conditions set forth:*
  - 2.1. *As part of this agreement, Mr Angelici signs the Control Questionnaire (“Cuestionario de Control”) of CONMEBOL, and accepts that the procedure will be conducted according to Annex 1 of the FIFA Governance Regulations. A copy of this Questionnaire is enclosed to this settlement agreement as **Enclosure n° 1**.*
  - 2.2. *All the communications shall be send from and to the following emails:*
    - ***Mr Angelici:*** [...]
    - ***CONMEBOL:*** [...]
  - 2.3. *The Subcommittee will have a 21-day term as from the notification of the consent award to take a decision on the eligibility of Mr Angelici.*
  - 2.4. *Within this 21-day term, Mr Angelici shall comply with any deadline given by the Subcommittee in a reasonable prior notice.*
3. *Each party shall bear their own costs.*
4. *The cost of the arbitration procedure, as determined by the CAS Court Office, shall be borne by both parties in equal shares.*
5. *The decision with regard to the costs of the procedure will be confidential.*
6. *The parties agree and undertake to publish a press release in the exact following wording:*



*En el día de hoy, el Tribunal Arbitral del Deporte ha celebrado la audiencia del caso CAS 2017/A/5285 Daniel Angelici c. CONMEBOL. Tras el estudio del caso, el Tribunal ha invitado a las partes a intentar alcanzar un acuerdo respecto de la controversia existente entre ellas. Las partes, siguiendo el consejo del Tribunal Arbitral y en interés del fútbol sudamericano, han alcanzado un acuerdo en virtud del cual el Sr. Angelici reconoce la competencia de la Subcomisión de Control de CONMEBOL para llevar a cabo los exámenes de idoneidad a los candidatos que puedan ocupar cargos en el Consejo de la CONMEBOL, tal y como establecen sus Estatutos. En este caso, al incumplir el Sr. Angelici uno de los plazos que se le confirieron al efecto por la Subcomisión, ésta no pudo pronunciarse sobre la idoneidad del candidato, sin haber puesto en tela de juicio la calidad personal del Sr. Angelici ni tampoco su trayectoria dirigencial. En consecuencia, la Subcomisión procederá a realizar el examen en breve.*

*And, IN WITNESS WHEREOF the Parties acknowledge their mutual consent by signing the present Settlement Agreement”.*

## **VI. ENDORSEMENT OF THE SETTLEMENT AGREEMENT**

40. Under Swiss Law, a court of arbitration has authority to issue an award embodying the terms of the parties’ settlement if the contesting party agree to a termination of their dispute in this manner. In addition, the Panel’s ratification of their settlement and its incorporation into this consent award serves the purpose of enabling the enforcement of their agreement.
41. In addition, in accordance with Article R56 of the CAS Code, within an appeal procedure “*Any settlement may be embodied in an arbitral award rendered by consent of the parties*”. In the present case, the parties have requested that the Panel ratifies and incorporates the Settlement Agreement reproduced in paragraph 39 above into a Consent Award. To do so, the Panel shall verify the *bona fide* nature of the Settlement Agreement, to ensure that the will of the Parties has not been manipulated by them to commit fraud and to confirm that the terms of the Settlement Agreement are not contrary to public policy principles or mandatory rules of the law applicable to the dispute.
42. After reviewing the terms of the Settlement Agreement, the Panel finds no ground to object or to disapprove of the terms of the Settlement Agreement and is satisfied that the Settlement Agreement constitutes a *bona fide* settlement of the present dispute.
43. In view of the above, the present Consent Award puts an end to the arbitration procedure CAS 2017/A/5285 Daniel Angelici v. CONMEBOL in the terms established in the Settlement Agreement and those detailed below.
44. The above conclusion, finally, makes it unnecessary for the Panel to consider any other requests submitted by the parties within this procedure. Therefore, all other prayers for relief are rejected.

## ON THESE GROUNDS

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

1. The Settlement Agreement executed by Mr Daniel Angelici and Confederación Sudamericana de Fútbol on 27 April 2018, is hereby ratified by the CAS with the consent of the Parties, and its terms are incorporated into this arbitral award.
2. The terms of the Settlement Agreement dated 27 April 2018 replace the Decisions of the Subcomisión de Control de la Comisión de Gobernanza y Transparencia de Confederación Sudamericana de Fútbol of 10 July 2017 and 7 August 2017, which are left without effect.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.