CAS 2014/A/3536 Racing Club Asociación Civil v. FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr Lars Hilliger, attorney-at-law in Copenhagen, Denmark

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

Ms Margarita Echeverría Bermúdez, attorney-at-law in San José, Costa Rica

in the arbitration between

Racing Club Asociación Civil, Argentina

Represented by Mr Ariel Reck, Buenos Aires, Argentina

Appellant

and

Fédération Internationale de Football Association (FIFA), Zürich, Switzerland

Represented by Mr Thomas Hug and Mr José Rodriguez, FIFA Disciplinary & Governance Department

Respondent

1. THE PARTIES

1.1 Racing Club Asociación Civil (the "Appellant" or the "Club") is an Argentine football club, whose headquarters are located in Buenos Aires, Argentina. The Appellant is a member of the Asociación del Fútbol Argentino (the "AFA"), which in turn is affiliated with the Fédération Internationale de Football Association.

1.2 The Fédération Internationale de Football Association (the "Respondent" or "FIFA") is the world governing body of Football, whose headquarters are located in Zürich, Switzerland.

2. FACTUAL BACKGROUND

2.1 The elements set out below provide a summary of the main relevant facts as established by the Panel on the basis of the factual findings contained in the decision rendered by the FIFA Disciplinary Committee (the "FIFA DC") on 14 August 2013 (the "Decision") which were not contested at the CAS proceedings, the written and oral submissions of the Parties and the exhibits filed. Additional facts may be set out, where relevant, in the legal considerations of the present Award.

2.2 On 2 August 2010, the Argentine professional football player Fernando Ortiz (the "Player") and the Argentine football club Club Atlético Vélez Sarsfield ("Vélez") entered into an employment contract, valid until 30 June 2012.

2.3 On 11 July 2012, the Player entered into a new employment contract with the Uruguayan football club Institución Atlética Sud América ("Institución"), valid as from the date of the signing until 30 June 2017.

2.4 On 20 July 2012, the Appellant and Institución concluded a contract named *Contrato de cesión de derechos federativos del jugador Fernando Ortiz* (the "Transfer Contract"), under which the Player was transferred definitively from Institución to the Appellant. According to the Transfer Contract, the two clubs agreed on the payment of an amount of USD […] from the Appellant to Institución (the "Transfer Fee"), of which the first instalment of USD […] had to be paid on or before 24 July 2012.

2.5 On the same date, the Appellant and the Player concluded an employment contract (the "Employment Contract"), valid from the date of signing until 30 June 2014.

2.6 On 23 July 2012, the AFA sent to the Uruguayan Football Association (the "AUF") the International Transfer Certificate (the "ITC") for the transfer of the Player to Institución, which transfer was registered on the same date in the FIFA Transfer Matching System (the "TMS").

2.7 On 3 August 2012, the AUF sent to the AFA the ITC for the transfer of the Player from Institución to the Appellant, which transfer was registered on the same date in the TMS and remained in the status "*Closed. Awaiting payments*". No proof of payment was ever uploaded in the TMS with regard to this transfer.

2.8 During August 2012, and in view of the number of similar transfers, the Argentine Tax Authorities and the AFA decided that a number of players involved in these transfers, including the Player, would not be allowed to play for their respective clubs during the national championship until their respective contractual and financial situations had been clarified and, if needed, re-regulated. The Player, among others, was thus precluded from participating in the fourth round of the championship.

2.9 On 28 August 2012, the Appellant, the Player and Institución agreed on a "*definitive and consensual*" rescission (the "Rescission Agreement") of the Transfer Contract. Moreover, and having in mind that by that time no payments had been made under the Transfer Contract, the parties agreed that they had "*nothing to claim from each other*".

2.10 On 23 November 2012, and in view of the fact that the Appellant had failed to upload in the TMS proof of payment of the Transfer Fee agreed on in the Transfer Agreement, FIFA TMS GmbH forwarded a letter to the Appellant informing the latter that such behaviour could constitute an infringement of article 1 paragraph 2 and article 4 paragraph 6 of Annexe 3 of the FIFA Regulations on the Status and Transfer of Players (the "Regulations") and requested the Appellant to upload proof of payment in the TMS.

2.11 On 29 November 2012, the Appellant provided FIFA TMS GmbH with a declaration, in which it particularly asserted that no payments had been made with regard to the transfer in question, as well as with a copy of the Rescission Agreement.

2.12 On 13 December 2012, FIFA TMS GmbH forwarded a letter to the Appellant, *inter alia* informing the Appellant that the mentioned facts could constitute violations of article 2 paragraph 4, article 1 paragraph 2, article 4 paragraph 2, article 8.3 (in particular, paragraph 3) as well as article 9.1 paragraph 2 (erroneously referred to as article 9.2) of Annexe 3 of the Regulations.

Furthermore, FIFA TMS GmbH asked the Appellant to submit any further information it might have regarding the matter.

2.13 On 18 December 2012, the Appellant provided FIFA TMS GmbH with an additional declaration on the matter and once again forwarded a copy of the Rescission Agreement.

2.14 On 7 June 2013, disciplinary proceedings were opened against the Appellant for an apparent violation of article 3 and article 9.1 of Annexe 3 of the Regulations. The Appellant was informed that the case would be presented to the FIFA Disciplinary Commission ("FIFA DC") for its consideration and was asked to present its position on the matter.

2.15 In June 2013, the Appellant presented its position to the secretariat of the FIFA DC. In essence, the Appellant stated as follows: According to the investigation of the Argentine authorities, the only objective that the Player had with regard to the registration with clubs qualified as "sporting fiscal paradises" was to receive through these clubs amounts declared as transfer compensation, which was only for his own personal benefit. The Appellant was alien to this behaviour and the previous operations of the Player. On the contrary, the Appellant stated that it was a victim of such operations, did not benefit from the way the transfer was conducted and actually did have a sporting interest in the transfer of the Player. The Appellant did register seven players during the registration period in question, and only one transfer was conducted in this way. The Appellant had no intention to use the TMS to prevent the Argentine tax authorities from retracing the payments relating to the transfer of the Player. Furthermore, the Appellant made reference to an Argentine criminal case pending before the Argentine court at the time of submitting its position. In this respect, the Appellant indicated that the only accused in the relevant case were the players and not the clubs concerned, that the court had confirmed "*the absence of illicit association that might involve third parties*", in particular stating that "*for the time being, no sufficient circumstances did exist to consider that there was an agreement, arrangement or convention for the commission of the operation that were denounced.*"

2.16 Concerning the short period of registration with "the club of origin", the Appellant argued that it could not (and did not have to) investigate the reasons, which led the Player to register with Institución. At the time the Appellant wanted to recruit the Player, the Appellant had thus verified, in compliance with the applicable regulation, that the Player had a valid contract with Institución, negotiated the transfer and the Employment Contract and proceeded to reflect such negotiations in the TMS. Accordingly, the registration in the TMS of the

Player with the Appellant was not only not forbidden, but expressly referred to as legal and, therefore, could not be considered as illegal. Regarding the rescission of the contract in question, the Appellant informed the FIFA DC that the rescission took place before the beginning of the investigation of the Argentine tax authorities and only after the Player informed that the amounts agreed as transfer compensation effectively corresponded to himself and was subject to payment of income tax, thus confirming the absence of infringement by the Appellant, particularly since the only beneficiary was the Player.

2.17 Regarding its behaviour in relation to this case, the Appellant argued that it had at all times complied with the respective orders, in particular the orders of FIFA TMS GmbH. Furthermore, the Appellant stated that FIFA had not proved under art. 99 of the FIFA Disciplinary Code ("FDC") that any violation had been committed.

2.18 By letter of 22 July 2013, the Appellant was informed that the case would be submitted to the FIFA DC at its meeting on 14 August 2013 and was asked to provide a possible additional declaration by 6 August 2013. No further declaration was received from the Appellant.

2.19 The FIFA DC, after having confirmed its competence, first of all analysed the transfers of the Player from Vélez to Institución and, then, from Institución to the Appellant and noted that the two transfers took place within a very short period of time. Based on the facts of the case, the FIFA DC established that it was at no time intended that the Player would effectively play for Institución and, therefore, these transfers had no sporting nature. Even if, from a formal point of view, the first of the two transfers did not involve the Appellant directly, the FIFA DC considered that, taking into account the chronological development of the transfers, the transfer of the Player to Institución would not make sense if his subsequent transfer to another club, in this case the Appellant, was not already planned. Accordingly, the FIFA DC found that the two "parts of the operation" cannot be considered as separate matters with no correlation between them. In this context, it was found that it was clear from the start how the transfers should be developed and, as a logical consequence, this fact was known to all parties involved. Therefore, the FIFA DC concluded that the Appellant was involved in the operations carried out and, from such fact, derives its liability.

2.20 The FIFA DC then went on examining the next step that took place in the context of the transfers, *i.e.*, the termination of the Transfer Contract. The way the rescission took place was found remarkable. In particular, it called for attention that when the involved clubs rescinded the contract, the parties stipulated that they had nothing to claim from each other. In other words, Institución agreed that

the Player would stay with the Appellant and, at the same time, renounced the payment of the Transfer Fee originally agreed. It is found that no logic can be seen in such action and that the only rational and "normal" consequence of the termination of the contracts and the corresponding decision to renounce the payments in question would have been that the Player had returned to Institución. As a consequence, it follows that, from the FIFA DC´s point of view, the way the Transfer Contract was rescinded corroborates the above-mentioned considerations, in particular that it was never intended that the Player would actually play for Institución but only for the Appellant.

2.21 When considering the fact that the operations were conducted through the TMS, the FIFA DC emphasised that the aim of the Regulations is to ensure the transparency in Players' international transfers. The FIFA DC considers the credibility of the TMS as primary objective of the system and stressed that an infringement of the TMS rules may occur regardless of the question whether or not the perpetrator acted with intent to benefit (economically). Recalling the above-mentioned considerations and Annexe 3 of the Regulations, the FIFA DC concluded that the transfer in question was conducted through the TMS without sporting objectives and, therefore, without legitimate purposes in the sense of the Regulations. The Appellant was considered to have known that there were no sporting grounds to transfer the Player via Institución and, nevertheless, participated in it actively. Thereby, the Appellant deliberately participated in conducting a transfer through the TMS, using the system to give a "sporting appearance" to the transfer and, in this manner, used the TMS fraudulently.

2.22 On 14 August 2014, the FIFA DC rendered the Decision and decided, in particular, that:

"*1. Racing Club is declared guilty for violation of art. 9.1 par 2 and art. 3 par. 1 of Annexe 3 of the FIFA Regulations on the Status and Transfer of Players for having participated in the transfer of the player Fernando Ortiz, which was conducted through the FIFA Transfer Matching System (TMS) for illegitimate purposes in terms of the FIFA regulations and for not having acted in good faith in the context of said transfer.*

2. In application of art. 10 lit. c) and art. 15 of the FIFA Disciplinary Code, Racing Club is sanctioned to pay a fine in the amount of CHF 15,000. This amount has to be paid within 30 days as of communication of the present decision. ……

3. In application of art. 10 lit. a) and art. 13 of the FIFA Disciplinary Code, the Racing Club is warned as to its future conduct. The Racing Club is ordered to adopt all measures to guarantee that the FIFA regulations (in particular, the FIFA Regulations on the Status and Transfer of Players) are strictly respected.

In case, such incidents would occur again in the future, the FIFA Disciplinary Committee could impose more severe sanctions on the Racing Club.
4. The costs and expenses of these proceedings in the amount of CHF 2,000 are to be borne by the Racing Club. ....."

3. SUMMARY OF THE ARBITRAL PROCEEDINGS BEFORE THE CAS

3.1 On 26 March 2014, the Appellant filed a Statement of Appeal with the CAS in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the "Code").

3.2 On 7 April 2014, the Appellant filed its Appeal Brief.

3.3 By letter of 14 April 2014, the Parties were informed by the CAS Court Office that, pursuant to Article R50 of the Code, the President of the Division had decided to submit the present procedure to a Panel of three arbitrators.

3.4 On 17 April 2014, FIFA requested that the deadline for submitting its answer be extended until 27 May 2014, to which request the Appellant agreed by letter of 17 April 2014.

3.5 On 27 May 2014, the Respondent filed its Answer to the appeal.

3.6 By letters of 2 June 2014, both Parties informed the CAS that they preferred the Panel to issue an award based on the Parties´ written submissions, unless the Panel considered a hearing necessary.

3.7 On 9 July2014, the Parties were informed by the CAS Court Office that the Panel had been constituted as follows: Mr Lars Hilliger, attorney-at-law, Copenhagen, Denmark (President of the Panel), Mr Efraim Barak, attorney-at-law, Tel Aviv, Israel, (nominated by the Appellant) and Ms Margarita Echeverría Bermúdez, attorney-at-law, San José, Costa Rica (nominated by the Respondent).

3.8 On 24 September 2014, the Parties were informed by the CAS Court Office that the Panel had decided to hold a hearing in the present matter.

3.9 On 15 October 2014, the Parties signed and returned the Order of Procedure.

4. HEARING

4.1 A hearing was held on 27 October 2014 in Lausanne, Switzerland.

4.2 The Appellant was represented at the hearing by its counsel, Mr Ariel Reck.

4.3 The Respondent was represented by Mr Thomas Hug and Mr José Rodriguez, FIFA Disciplinary & Governance Department.

4.4 The Parties confirmed that they did not have any objections to the composition and appointment of the Panel.

4.5 Mr Pablo Mena, member of the Appellant´s Board of Directors, was heard by conference call.

4.6 The Appellant and the Respondent had ample opportunity to present their cases, submit their arguments and answer the questions posed by the Panel. After the Appellant's and the Respondent's final submissions, the Panel closed the hearing and reserved its final award. The Panel listened carefully and took into account in its subsequent deliberations all the evidence and arguments presented by the Parties although they have not been expressly summarised in the present Award. Upon closure, the Appellant and the Respondent expressly confirmed that they did not have any objections in respect of their right to be heard and to be treated equally in these arbitration proceedings.

5. CAS JURISDICTION AND ADMISSIBILITY OF THE APPEAL

5.1 Article R47 of the Code states as follows:
"An appeal against the decision of a federation, association or sports-related body may be filed with the CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body".

5.2 With respect to the Decision, the jurisdiction derives from article 67 of the FIFA Statutes. In addition, neither the Appellant nor the Respondent objected to the jurisdiction of the CAS, and both Parties confirmed the CAS jurisdiction when signing the Order of Procedure.

5.3 The Decision was notified to the Appellant on 5 March 2014, and the Appellant's Statement of Appeal was lodged on 26 March 2014, i.e. within the statutory time limit set forth by the FIFA Statutes, which is not disputed. Furthermore, the Statement of Appeal and the Appeal Brief complied with all the requirements of Articles R48 and R51 of the Code.

5.4 It follows that the CAS has jurisdiction to decide on the appeal against the Decision and that the appeal against the Decision is admissible.

6. APPLICABLE LAW

6.1 Article 66 of the FIFA Statutes states as follows:
"*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.*"

6.2 Article R58 of the CAS Code states as follows: "*The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.*"

6.3 The Panel notes that in the present matter, considering its nature as disciplinary proceedings, the Parties have not agreed on the application of any specific national law. The applicable law in this case will consequently be the regulations of FIFA and, additionally, Swiss law due to the fact that FIFA, which issued the challenged decision, is domiciled in Switzerland.

7. THE PARTIES' REQUESTS FOR RELIEF AND POSITIONS

7.1 The following outline of the Parties' requests for relief and positions is illustrative only and does not necessarily comprise every contention put forward by the Parties. The Panel, however, has carefully considered all the submissions and evidence filed by the Parties with the CAS, even if there is no specific reference to those submissions or evidence in the following summary.

7.2 The Appellant

7.2.1 In its Appeal Brief of 7 April 2014, the Appellant requested the CAS to issue an award declaring the following:

1. That FIFA Disciplinary Committee decision be reversed in whole.
2. Particulary, that the warning, record and fine imposed be annulled.

3. Finally and in any case, that FIFA pay the costs of the proceeding and payment of costs provided in FIFA decision (CHF 2,000) against Racing be reversed.

7.2.2 In support of its requests for relief, the Appellant submitted as follows:

a) In order to decide whether the Decision is groundless and therefore must be reversed, the Panel has to decide 1) whether transfers of players made with an economic purpose is a violation of the regulations, and, in case 1) is answered in the affirmative, whether the Appellant took part in the "company" responsible for the transfer in question or whether the Appellant was in fact a "victim" of such operation?

b) The FIFA DC established a regulatory violation as it understood that the Appellant had participated in the transfer of the Player from Institución to the Appellant "*with illegitimate purposes regarding FIFA regulations*" and because "*the club had not acted in good faith in the abovementioned transfer*".

c) However, the Appellant never acted in bad faith and the purpose of the transfer of the Player to the Appellant was never an illegitimate one.

d) The ability to impose sanctions derived from the use of the TMS is included in Annexe 3 of the Regulations, according to which (9.2.1) "The *FIFA Disciplinary Committee is responsible for imposing sanctions in accordance with the FIFA Disciplinary Code*" and (9.4)" *In particular, the following sanctions may be imposed on clubs for violation of the present annexe in accordance with the FIFA Disciplinary Code:*." Neither the Regulations nor the TMS generates a new "substantive" law. Instead they apply to the scope of the provisions existing in the FDC, being part of the "substantive law". In the FDC there is no provision stating that transfers with a purely economic purpose violate any provision. Neither the FIFA Code nor the Statutes include a prohibition to make transfers of players based on purely economic purposes. The lack of regulations sanctioning transfers of players based on a "purely economic interest" precludes any sanction based on such a concept, under penalty of violating the basic principle governing disciplinary issues; *Nulla poena sine lega certa* also known as *Nullum crimen sine lege.*

e) The only limits to transfers are set forth in section 5.3 of the Regulations, according to which: "*Players may be registered with a maximum of three clubs during one season. During this period, the player in only eligible to play official matches for two clubs. ……*". FIFA has no right or capacity to analyse the reasons behind each hiring; therefore, it sets forth regulations

limiting these transfers in the manner it deems appropriate. If those regulations are followed, no sanctions are to be imposed on the parties involved in the transfers.

f) Not only is there no legal basis for the sanction imposed on the Appellant, but the behaviour that FIFA apparently nowadays consider to be a violation of its rules has been followed for years by several clubs all over the world, and FIFA has never manifested against it before. Based on that, the Appellant did, in any case, have a legitimate expectation that such transfers were not in conflict with any regulations issued by FIFA. Furthermore, whenever the CAS has dealt with cases evidentially involving an economic rather than a sporting interest in a transfer, the CAS did not sanction such interest and admitted the legality of such operations as long as they formally complied with requirements and regulatory demands.

g) In any case, a severe sanction as the one imposed on the Appellant for such a wide and vague concept as "good faith" cannot be enforced. Good or bad faith in the use of a system must be verified in relation to the FDC and specific violations of its provisions. Otherwise, any sanction could be imposed on the sole basis of FIFA subjective criteria.

h) The conclusion in the Decision stating that the TMS has been affected wrongfully cannot be accepted. The operation/transfers were clearly and correctly reflected in the TMS, allowing FIFA to conclude that it had in some of its instances a "purely economic" purpose". Moreover, the TMS User Handbook does not include any explanation related to the good faith concept within the TMS: therefore, the use of such concept is completely discretionary and arbitrary and cannot be accepted by the Panel.

i) However, the hiring of the Player and the transfer of the Player from Institución to the Appellant always had a sporting purpose, and the Player joined the Appellant as an important member of the team. The transfer was never concluded based on an exclusively economic purpose, and no sanction must be imposed on the Appellant based on the Player's transfer from Institución to the Appellant.

j) Even in the unlikely case that the Panel should find that transfers with an exclusively economic purpose constitute a regulatory violation, the Panel is reminded that the Appellant had no other alternative than to enter into the Transfer Contract with Institución in order to ensure the transfer of the Player.

With a view to assigning responsibility to the Appellant, the FIFA DC understands and presumes (wrongfully) a series of conclusions lacking the due proof support.

k) It must me underlined that the burden of proof for the alleged violation of the Regulations lies with FIFA. In accordance with recent CAS jurisprudence, the standard of proof shall be to the "the comfortable satisfaction" of the Panel.

l) According to the FIFA DC, the transfer of the Player to Institución was useless if the Player was not subsequently transferred to another club, which in this case was the Appellant. Based on that, the FIFA DC concluded that the Player was meant to play for the Appellant even before his transfer to Institución. Therefore, it was further concluded that since all parties were aware how the transfer was made, the Appellant was involved in the operation and therefore it was part of the "company" responsible for the registration of the Player with Institución for purely economic purposes.

m) However, it is evident, that the FIFA DC cannot prove with the required standard that the Appellant was aware of the manoeuvre and much less that it was a part of it. On the contrary, there are insufficient reasons to presume such scenarios on the basis of the applicable standard of proof. The only element actually in favour of the alleged involvement of the Appellant in the so-called bridge transfer is the fact that the transfers were made within a very short period of time. All other elements are against the alleged involvement, including the fact that the Appellant did not in any way benefit economically from the transfers. Therefore, it is evident that the required standard of proof has not been met and that the Decision must be reversed as there is no evidence proving, or even indicating, that the Appellant was part of the manoeuvre or of the "company" responsible for it.

7.3 ***The Respondent***

7.3.1 In its Answer filed on 27 May 2014, the Respondent requested the following from the CAS:

i. To reject the Appellant´s request to set aside the decision hereby appealed against;
ii. To confirm in its entirety the decision of the FIFA Disciplinary Committee;
iii. To order the Appellant to bear all the costs incurred in connection with these proceedings and to cover all legal expenses of the Respondent in connection with these proceedings.

7.3.2 In support of its requests for relief, the Respondent submitted as follows:

a) First and foremost, the factual elements of the case as outlined in the Decision have not been contested by the Appellant and are, thus, not in dispute.

b) The case concerns a so-called "bridge transfer" which concept the Appellant´s legal representative describes as follows in an article in the "World Sports Law Report – April 2014":

"*Key elements in identifying a bridge transfer are an unusual pattern of movement and a transfer for no apparent sporting reason. This means – in practice – a transfer for a short period, with no playing time at the bridge club, and a lack of balance between the level the player is at and the level the club is at. The most common situation is a high level player being transferred to a low level club just to bounce back to a bigger club later; however a bridge transfer is also possible using a high level club to register a player with insufficient sporting quality to be fielded there, just to loan or transfer him immediately to a lower level club. While extreme cases are easy to identify, in other situations the revelation of the non-sporting purpose of the transfer is hard to identify or can only be discovered after years of a continuous pattern of successive loans.*"

c) FIFA is a private association registered under Swiss law and thus has the right to impose sanctions on persons subject to their jurisdiction. This right does not constitute an exercise of penal powers, but rather shall be considered as measures of a disciplinary nature taken in the context of relations between subjects of civil law. These relations, as well as the disciplinary measures concerned, are not governed by criminal law but by civil law. In this respect, the application of the standard of proof, i.e. the "comfortable satisfaction" of the Panel, appears not to be contested by the Appellant and is therefore not in dispute between the Parties. Furthermore, and since FIFA is the worldwide football organisation, the principles and objectives stipulated under art. 2 of the FIFA Statutes have to be applied uniformly on a worldwide basis, but also the sanctions for any breach of FIFA regulations have to be similar irrespective of where it would occur and irrespective of whether national criminal authorities would sanction the behaviour in question or not.

d) According to Article 76 of the FDC, the FIFA DC is authorised to sanction any breach of FIFA regulations which does not come under the jurisdiction of another legal body. In view of the fact that the sanctioning of a breach of the Regulations does not come under the competence of any other body, the FIFA DC is clearly competent to decide on infringements of the Regulations. This

is, *inter alia*, corroborated by the contents of art. 62 of the FIFA Statutes and article 25 paragraph 3 of the Regulations, the latter stipulating that disciplinary proceedings for violation of these regulations shall, unless otherwise stipulated herein, be in accordance with the FDC. Bearing this in mind, it is obvious that the FIFA DC is competent to sanction infringements of the Regulations and, accordingly, was competent to decide on the present matter, *i.e.* an infringement of article 9.1 paragraph 2 and article 3 paragraph 1 of Annexe 3 of the Regulations.

e) The Appellant has submitted that an absence of a literal prohibition of the "bridge transfers" in the FIFA regulations should prevent the FIFA DC from rendering a decision in this respect. This is not correct.

f) First of all, this would disregard the freedom of interpretation of the norm by the FIFA DC. In general, all FIFA regulations establish the freedom of the relevant body to act in cases of omissions or unforeseen contingencies. Thus, giving the respective committees the possibility to decide in accordance with the association´s usual practice or, even in the absence of usual practice, in accordance with rules they would lay down if they were acting as legislators. It is an element inherent in any legal system that its laws and regulations cannot provide an *ex ante* solution for every possible factual situation that might occur. Therefore, when determining if the "bridge transfers" have to be considered as an infringement established in the FIFA regulations, the Panel should weight the room for interpretation granted to the FIFA bodies within its regulations, *in casu*, the FIFA DC. The FIFA DC, when interpreting the applicable provisions, acted objectively looking at the language used and the appropriate grammar and syntax of the provisions. Also the intentions of the association which drafted the rule as well as any historical background and regulatory context in which the regulations were located were taken into consideration. Therefore, and in accordance with Article 8 of the Swiss Criminal Code, the Appellant, which pretends to allege a different analysis, bears the burden of proof to demonstrate the accuracy of this different result, which burden the Appellant has not discharged.

g) The fact that the FIFA DC has not sanctioned any "bridge transfer" previously did not prevent it from imposing sanctions on the Appellant in the present matter, and the principle of "estoppel" is not relevant to the present case. The compliance programme to ensure that all international transfers of professional football player are conducted through the TMS in accordance with the regulations was only established in 2010. At no point are there any indications that FIFA TMS GmbH has conducted the system in a determined

manner and currently is trying to modify said pattern, even less can it be presumed from the FIFA DC. It has to be remembered that FIFA and FIFA TMS GmbH are different legal entities and the latter acts as an independent body, in particular in regard to issues concerning the powers of stakeholders participating and using the TMS. However, the Respondent is nevertheless of the clear opinion that neither the Respondent nor FIFA TMS GmbH did in any manner whatsoever confirm and/or insinuate that the conducting of transfers for non-sporting reasons (through the TMS) would be considered as legitimate in terms of the relevant FIFA regulations and/or not sanctionable by the FIFA DC.

h) The principle of equal treatment was never breached. However, in any case it is generally recognized that the principle of equal treatment used in different legal systems and types of law does in no way include a claim for "equality in illegality".

i) The TMS is designed to ensure that football authorities have more details available to them on international transfers of players in order to improve the transparency of the system. In fact, the investigations of violations in respect to Annexe 3 of the Regulations are literally conceived in the text of the Regulations, so as to the use of the information uploaded in the system. Annexe 3 of the Regulations clearly establishes that the violation of any provision of the Annexe is subject to sanctions and that the FIFA DC is the competent body to act in this respect. The FIFA DC is competent to analyze the prevailing sporting nature of any transfer and sanction any violation of the provisions of the Regulations, in particular those that tarnish the transparency of the system.

j) The Appellant has submitted that the nature of a transfer is irrelevant when determining the possible violation of the Regulations. This is not correct. The TMS is intended to put into place a platform to facilitate the transfer of players in a transparent, fair and coherent manner, having ultimately the improvement of the game as a main objective.

k) In this sense, a number of provisions of the FIFA regulations make reference to the sporting integrity. These provisions, although not applicable to the present matter as such, present an unambiguous view of what falls within the scope of the Regulations in general terms. According to these regulations, in general, due consideration must be given to the sporting integrity of the competitions. These provisions set out the framework within which the registration (and thus the transfer) of players must take place. Therefore, the objective that needs to be safeguarded when registering players is the sporting

integrity of the competition. In this respect, the sporting integrity has to be interpreted even more broadly than a mere "sporting reason" of the transfer.

l) The Respondent is fully aware of the financial implications of the transfer of players, nonetheless it is also clear that, in the case in question, the conduct of the Appellant took place in a context in which the sporting nature of the transfers was set aside and prevailed over the utilization of the system as a mechanism to make a profit, which in the Respondent´s opinion is a complete contradiction of the principle contained in the FIFA Statutes as well as its relevant provision. It is not correct that article 5 paragraph 3 of the Regulations confirms the assumption that transfers conducted for mere economic reasons are even expressly permitted by FIFA regulations. From the regulations of FIFA it is clear that transfers for reasons that are not of a sporting nature are not permitted and must be considered illegitimate in terms of the Regulations.

m) The fact that the Player was effectively registered with the Appellant for sporting reasons, meaning that it was planned from the beginning that the player would play for the Appellant, does not in any way exclude the fact that the way the transfer was conducted as well as its reasons were not of sporting nature and, above that, illegitimate from different perspectives.

n) The description of a "bridge transfer" given by the Appellant´s legal representative (see para b above) clearly reflects the situation of the matter at stake. The Player was transferred from one club playing in the first division of Argentina to another club equally playing in the first division of Argentina via a club, at the time, playing in the second division of Uruguay. The latter club, for which the Player effectively never played in the present matter, has to be considered as the "bridge club" and, furthermore, in view of the aforementioned facts, the lack of balance between the Player and the "bridge club" is evident. According to the Appellant´s legal representative, in bridge transfers, the amount declared as transfer compensation is generally paid to the "bridge club", of which amount the largest part is then forwarded to the Player. According to the Appeal Brief, such artificial payment of transfer compensation was payable by the Appellant to Institución acting as the "bridge club". Already the fact that remuneration due to the Player was disguised as transfer compensation payment clearly contravenes the most basic principles inherent in the Regulations and has to be considered as illegitimate in terms of article 9.1 paragraph 2 of Annexe 3.

o) Another reason why, according to the Appellant´s legal representative, the "bridge transfers" take place is that anonymity as to the final beneficiary of the amounts received by these clubs through the transfer price helps the real recipients of the transfer amounts to evade taxes or to circumvent the FIFA rule that prohibits player agents from owning the economic rights to a player. Furthermore, a "bridge transfer" can be used to reduce the cost of training compensation or payments otherwise to be made under FIFA´s solidarity mechanism, or to give a national dispute an international level for the purposes of how the dispute is regulated. Such attempts are without any room for doubt comprised by the concept of illegitimate purposes such as that established by the Regulations.

p) The Appellant never rejected its participation in the transfer at stake and never rejected that is was conducted as a "bridge transfer" within a very short period of time.

q) The transfer of the Player to the Appellant was originally represented in the TMS in the sense that the Player was transferred in exchange for an amount of USD […] to be paid to Institución by the Appellant. When the Transfer Contract was subsequently dissolved (apparently due to the measures taken by the Argentine tax authorities), in view of the non-payment of the amount due, the logical consequence would have been that the Player returned to Institución, which had then not received any transfer compensation. However, the way both clubs involved acted can be considered as consistent, and the behaviour of Institución can be retraced if the payment agreed by the clubs involved was never meant to be a transfer compensation, but actually a payment due to the Player – and possibly third parties.

r) Based on the above-mentioned circumstances, it can be concluded that the reasons for and the way in which the transfer in question was conducted have to be considered as illegitimate in terms of the applicable FIFA regulations. Thus, it has been established that the transfer conducted through the TMS took place for illegitimate purposes in terms of article 9.1 paragraph 2 of Annexe 3 of the Regulations.

s) Based on the facts of the case, the Respondent is of the firm belief that the Appellant was fully aware of the way in which the transfer in question was conducted as well as its reasons and objectives. This is, *inter alia*, supported by the timing of the transfer, of which the Appellant was fully aware. Furthermore, it must be stressed that obtaining an economic benefit from a transfer is not a constitutive element for considering a transfer as illegitimate in terms of article 9.1 paragraph 2 of Annexe 3 of the Regulations. However,

in this case, the Appellant did in fact benefit economically due to the rescission of the Transfer Contract and the fact that the Player subsequently stayed with the Appellant.

t) According to article 3 paragraph 1 of Annexe 3 of the Regulations, all users of the TMS shall act in good faith. In this regard, the Appellant, a club affiliated with a member association of FIFA and acting in the TMS, has to be considered as user. It follows from the FIFA TMS User Handbook, and the advice contained therein with regard to "good faith", that "User activity will be measured against high standards".

u) A person is considered in bad faith if (a) he knew, had to know or could know of the existence of (b) a legally incorrect situation. It is clear from the foregoing that a legally incorrect situation existed. It is then decisive whether or not the Appellant knew, had to know or could know that the TMS was used for illegitimate purposes in the context of the transfer of the Player. It has clearly been established that the Appellant was aware of the way and reasons in/for which the transfer took place. Generally speaking, the transfer of the Player to the Appellant cannot be seen only as a passage from Institución to the Appellant; it has to be seen in its entirety, observing also the transfer to Institución. Moreover, the Appellant was aware or at least was supposed to be aware of the standards of the conduct demanded to all stakeholders using the TMS. Even being aware of the implications of the transfer the Appellant went on to conduct the transfer and the registration of the transfer in the TMS.

v) According to art. 7 par. 1 of the FDC, infringements are punishable regardless of whether they have been committed deliberately or negligently. Based on the fact that the Appellant was fully aware of the way in which the transfer was conducted and of its – illegitimate – reasons, the Respondent finds that the Appellant committed a deliberate infringement of article 3 paragraph 1 as well as article 9.1 of Annexe 3 of the Regulations. In any case, the Appellant acted in a – highly – negligent way. In that connection, it must be pointed out that the Appellant never took any further steps in order to assure that the way in which the transfer was conducted was in line with the relevant FIFA regulations.

w) Taking into consideration all the facts, the legal arguments and conclusions drawn by the Respondent, the Appellant was rightfully declared in breach of article 9.1 paragraph 3 and article 3 paragraph 1 of Annexe 3 of the Regulations for having participated in the transfer of the Player, which was conducted through the TMS for illegitimate purposes in terms of FIFA

regulations and for not having acted in good faith in the context of said transfer.

8. RELEVANT PROVISIONS

A) FIFA STATUTES

8.1 2 OBJECTIVES

THE OBJECTIVES OF FIFA ARE:

A) TO IMPROVE THE GAME OF FOOTBALL CONSTANTLY AND PROMOTE IT GLOBALLY IN THE LIGHT OF ITS UNIFYING, EDUCATIONAL, CULTURAL AND HUMANITARIAN VALUES, PARTICULARLY THROUGH YOUTH AND DEVELOPMENT PROGRAMMES;

B) TO ORGANISE ITS OWN INTERNATIONAL COMPETITIONS

C) TO DRAW UP REGULATIONS AND PROVISIONS AND ENSURE THEIR ENFORCEMENT;

D) TO CONTROL EVERY TYPE OF ASSOCIATION FOOTBALL BY TAKING APPROPRIATE STEPS TO PREVENT INFRINGEMENTS OF THE STATUTES, REGULATIONS OR DECISIONS OF FIFA OR OF THE LAWS OF THE GAME;

E) TO PROMOTE INTEGRITY, ETHICS AND FAIR PLAY WITH A VIEW TO PREVENTING ALL METHODS OR PRACTICES, SUCH AS CORRUPTION, DOPING OR MATCH MANIPULATION, WHICH MIGHT JEOPARDISE THE INTEGRITY OF MATCHES, COMPETITIONS, PLAYERS, OFFICIALS AND MEMBERS OR GIVE RISE TO ABUSE OF ASSOCIATION FOOTBALL.

8.2 62 DISCIPLINARY COMMITTEE

1. THE FUNCTION OF THE DISCIPLINARY COMMITTEE SHALL BE GOVERNED BY THE FIFA DISCIPLINARY CODE. THE COMMITTEE SHALL PASS DECISIONS ONLY WHEN AT LEAST THREE MEMBERS ARE PRESENT. IN CERTAIN CASES, THE CHAIRMAN MAY RULE ALONE.

2. THE DISCIPLINARY COMMITTEE MAY PRONOUNCE THE SANCTIONS DESCRIBED IN THESE STATUTES AND THE FIFA DISCIPLINARY CODE ON MEMBERS, CLUBS, OFFICIALS, PLAYERS AND MATCH AND PLAYER'S AGENTS.

……

B) FIFA DISCIPLINARY CODE

8.3 7 CULPABILITY

1. UNLESS OTHERWISE SPECIFIED, INFRINGEMENTS ARE PUNISHABLE REGARDLESS OF WHETHER THEY HAVE BEEN COMMITTED DELIBERATELY OR NEGLIGENTLY.

8.4 76 GENERAL JURISDICTION

THE FIFA DISCIPLINARY COMMITTEE IS AUTHORISED TO SANCTION ANY BREACH OF FIFA REGULATIONS WHICH DOES NOT COME UNDER THE JURISDICTION OF ANOTHER BODY.

8.5 97 EVALUATION OF PROOF

1. THE BODIES WILL HAVE ABSOLUTE DISCRETION REGARDING PROOF.

2. THEY MAY, IN PARTICULAR, TAKE ACCOUNT OF THE PARTIES' ATTITUDES DURING PROCEEDINGS, ESPECIALLY THE MANNER IN WHICH THEY COOPERATE WITH THE JUDICIAL BODIES AND THE SECRETARIAT (CF. ART. 110)

3. THEY DECIDE ON THE BASIS OF THEIR PERSONAL CONVICTIONS.

C) FIFA REGULATIONS ON THE STATUS AND TRANSFER OF PLAYERS

8.6 ARTICLE 5 PARAGRAPH 3 AND 4 - REGISTRATION

3. PLAYERS MAY BE REGISTERED WITH A MAXIMUM OF THREE CLUBS DURING ONE SEASON. DURING THIS PERIOD, THE PLAYER IS ONLY ELIGIBLE TO PLAY OFFICIAL MATCHES FOR TWO CLUBS. AS AN EXCEPTION TO THIS RULE, A PLAYER MOVING BETWEEN TWO CLUBS BELONGING TO ASSOCIATIONS WITH OVERLAPPING SEASONS (I.E. START OF THE SEASON IN SUMMER/AUTUMN AS OPPOSED TO WINTER/SPRING) MAY BE ELIGIBLE TO PLAY IN OFFICIAL MATCHES FOR A THIRD CLUB DURING THE RELEVANT SEASON, PROVIDED HE HAS FULLY COMPLIED WITH HIS CONTRACTUAL OBLIGATIONS TOWARDS HIS PREVIOUS CLUBS. EQUALLY, THE PROVISIONS RELATING TO THE REGISTRATION PERIODS (ARTICLE 6) AS WELL AS TO THE MINIMUM LENGTH OF A CONTRACT (ARTICLE 18 PARAGRAPH 2) MUST BE RESPECTED.

4. UNDER ALL CIRCUMSTANCES, DUE CONSIDERATION MUST BE GIVEN TO THE SPORTING INTEGRITY OF THE COMPETITION, IN PARTICULAR, A PLAYER MAY NOT PLAY OFFICIAL MATCHES FOR MORE THAN TWO CLUBS, COMPETING IN THE SAME NATIONAL CHAMPIONSHIP OR CUP DURING THE SAME SEASON, SUBJECT TO STRICTER INDIVIDUAL COMPETITION REGULATIONS OF MEMBER ASSOCIATIONS.

8.7 ARTICLE 6 PARAGRAPHS 1 AND 4 – REGISTRATION PERIODS

1. PLAYERS MAY ONLY BE REGISTERED DURING ONE OF THE TWO ANNUAL REGISTRATION PERIODS FIXED BY THE RELEVANT ASSOCIATION. AS AN EXCEPTION TO THIS RULE, A PROFESSIONAL WHOSE CONTRACT HAS EXPIRED PRIOR TO THE END OF A REGISTRATION PERIOD MAY BE REGISTERED OUTSIDE THAT REGISTRATION PERIOD. ASSOCIATIONS ARE AUTHORISED TO REGISTER SUCH PROFESSIONALS PROVIDED DUE CONSIDERATION IS GIVEN TO THE SPORTING INTEGRITY OF THE RELEVANT COMPETITION. WHERE A CONTRACT HAS BEEN TERMINATED WITH JUST CAUSE, FIFA MAY TAKE PROVISIONAL MEASURES IN ORDER TO AVOID ABUSE, SUBJECT TO ARTICLE 22.

..

4. THE PROVISIONS CONCERNING REGISTRATION PERIODS DO NOT APPLY TO COMPETITIONS IN WHICH ONLY AMATEURS PARTICIPATE. THE RELEVANT ASSOCIATION SHALL SPECIFY THE PERIODS WHEN PLAYERS MAY BE REGISTERED FOR SUCH

COMPETITIONS PROVIDED THAT DUE CONSIDERATION IS GIVEN TO THE SPORTING INTEGRITY OF THE RELEVANT COMPETITION.

8.8 ARTICLE 18BIS – THIRD-PARTY INFLUENCE ON CLUBS

1. NO CLUB SHALL ENTER INTO A CONTRACT WHICH ENABLES ANY OTHER PARTY TO THAT CONTRACT OR ANY THIRD PARTY TO ACQUIRE THE ABILITY TO INFLUENCE IN EMPLOYMENT AND TRANSFER-RELATED MATTERS ITS INDEPENDENCE, ITS POLICIES OR THE PERFORMANCE OF ITS TEAMS.

2. THE FIFA DISCIPLINARY COMMITTEE MAY IMPOSE DISCIPLINARY MEASURES ON CLUBS THAT DO NOT OBSERVE THE OBLIGATIONS SET OUT IN THIS ARTICLE.

8.9 ARTICLE 20– TRAINING COMPENSATION

TRAINING COMPENSATION SHALL BE PAID TO A PLAYER'S TRAINING CLUB(S): (1) WHEN A PLAYER SIGNS HIS FIRST CONTRACT AS A PROFESSIONAL, AND (2) EACH TOME A PROFESSIONAL IS TRANSFERRED UNTIL THE END OF THE SEASON OF HIS 23RD BIRTHDAY. THE OBLIGATION TO PAY TRAINING COMPENSATION ARISES WHETHER THE TRANSFER TAKES PLACE DURING OR AT THE END OF THE PLAYER'S CONTRACT. THE PROVISIONS CONCERNING TRAINING COMPENSATION ARE SET OUT IN ANNEXE 4 OF THESE REGULATIONS.

8.10 ARTICLE 21– SOLIDARITY MECHANISM

IF A PROFESSIONAL IS TRANSFERRED BEFORE THE EXPIRY OF HIS CONTRACT, ANY CLUB THAT HAS CONTRIBUTED TO HIS EDUCATION AND TRAINING SHALL RECEIVE A PROPORTION OF THE COMPENSATION PAID TO HIS FORMER CLUB (SOLIDARITY CONTRIBUTION). THE PROVISIONS CONCERNING SOLIDARITY CONTRIBUTIONS ARE SET OUT IN ANNEXE 5 OF THESE REGULATIONS.

8.11 ARTICLE 25 PARAGRAPH 3– PROCEDURAL GUIDELINES

3. DISCIPLINARY PROCEEDINGS FOR VIOLATION OF THESE REGULATIONS SHALL, UNLESS OTHERWISE STIPULATED HEREIN, BE IN ACCORDANCE WITH THE FIFA DISCIPLINARY CODE.

D) ANNEXE 3 OF THE FIFA REGULATIONS ON THE STATUS AND TRANSFER OF PLAYERS

8.12 ARTICLE 3 PARAGRAPH 1 – USERS

1. ALL USERS SHALL ACT IN GOOD FAITH,

8.13 *ARTICLE 3.1. PARAGRAPH 2 – CLUBS*

2. CLUBS ARE RESPONSIBLE FOR ENSURING THAT THEY HAVE THE NECESSARY TRAINING AND KNOW-HOW IN ORDER TO FULFIL THEIR OBLIGATIONS. IN THIS REGARD, CLUBS

SHALL APPOINT TMS MANAGERS WHO ARE TRAINED TO OPERATE TMS, AND SHALL BE RESPONSIBLE FOR THE TRAINING OF A REPLACEMENT TMS MANAGER IF REQUIRED, SO THAT CLUBS ARE AT ALL TIMES IN A POSITION TO FULFIL THEIR OBLIGATIONS IN TMS. THE TMS ADMINISTRATORS AND THE RELEVANT HOTLINE MAY ASSIST THEM IN RESPECT WITH ALL TECHNICAL-RELATED ISSUES, IF NEED BE. FURTHERMORE, ARTICLE 5.3 OF THIS ANNEXE APPLIES IN CONNECTION WITH THIS MATTER.

8.14 ARTICLE 9.1. PARAGRAPH 2 – SANCTIONS, GENERAL PROVISION

2. SANCTIONS MAY ALSO BE IMPOSED ON ANY ASSOCIATION OR CLUB FOUND TO HAVE ENTERED UNTRUE OR FALSE DATA INTO THE SYSTEM OR FOR HAVING MISUSED TMS FOR ILLEGITIMATE PURPOSES.

8.15 ARTICLE 9.2 – SANCTIONS, COMPETENCE

1. THE FIFA DISCIPLINARY COMMITTEE IS RESPONSIBLE FOR IMPOSING SANCTIONS IN ACCORDANCE WITH THE FIFA DISCIPLINARY CODE.

2. SANCTION PROCEEDINGS MAY BE INITIATED BY FIFA, EITHER ON ITS OWN INITIATIVE OR AT THE REQUEST OF ANY PARTY CONCERNED, INCLUDING FIFA TMS GMBH.

3. FIFA TMS GMBH MAY ALSO INITIATE SANCTION PROCEEDINGS ON ITS OWN INITIATIVE FOR NON-COMPLIANCE WITH THE OBLIGATIONS UNDER ITS JURISDICTION WHEN AUTHORISED TO SO BY THE FIFA DISCIPLINARY COMMITTEE FOR EXPLICITLY SPECIFIED VIOLATIONS.

8.16 *IN PARTICULAR, THE FOLLOWING SANCTIONS MAY BE IMPOSED ON CLUBS FOR VIOLATION OF THE PRESENT ANNEXE IN ACCORDANCE WITH THE FIFA DISCIPLINARY CODE:*

- *A REPRIMAND OR A WARNING;*
- *A FINE;*
- *ANNULMENT OF THE RESULT OF THE MATCH;*
- *DEFEAT BY FORFEIT;*
- *EXCLUSION FROM A COMPETITION;*
- *A DEDUCTION OF POINTS;*
- *DEMOTION TO A LOWER DIVISION;*
- *A TRANSFER BAN;*
- *RETURN OF AWARDS.*

THESE SANCTIONS MAY BE IMPOSED SEPARATELY OR IN COMBINATION.

9. DISCUSSION ON THE MERITS

9.1 The Panel notes initially that the factual elements of the case as outlined in the Decision are not disputed by the Parties and will therefore be taken into consideration below.

9.2 Furthermore, the Panel adheres to the principle established by CAS jurisprudence that "*in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue, In other words, the party which asserts facts to support its rights has the burden of establishing them (..) The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some fact and persuade the deciding body, it must actively substantiate its allegations with convincing evidence*" (e.g. CAS 2003/A/506, para. 54; CAS 2009/A/1810&1811, para. 46 and CAS 2009/A/1975, para. 71ff).

9.3 It is undisputed by the Parties that the standard of proof applicable in this case shall be the "comfortable satisfaction" of the Panel. Still, as this is the first case in which a decision imposing on a club sanctions due to violations committed in the framework of a "Bridge Transfer" is appealed to CAS, the Panel had considered the question of the standard of proof to be applied in this case, regardless of the fact that both parties agree on this point. As a consequence and following the well-established CAS jurisprudence in respect of the standard of proof in disciplinary matters, (e.g. CAS 2009/A/ 1920 & CAS 2011/A/2426) the Panel considers that the applicable standard of proof in such cases is the "comfortable satisfaction" and thus, FIFA, acting as the sanctioning authority, must establish any possible disciplinary violation to the comfortable satisfaction of the Panel, bearing in mind the seriousness of the allegations.

9.4 In the Decision, the FIFA DC concluded:

"*…that the transfer in question was carried out through TMS without sporting objectives, and therefore without legitimate purposes in the sense ()the FIFA Regulations. (para 43)*

Furthermore, the Committee particular assesses the actuation of the Club. Having through the above consideration clearly established the reasons, for which the transfer to place, the Committee considers that the Club at any time was aware of them. More precisely, the Club knew that there was no sporting reason to transfer the Player through the club Institución Atlética Sud América and, nevertheless, participated in it actively. In particular, knowing that there was no reason for the Club´s participation in the transfer, it deliberately participated in conducting the transfer through TMS. Thus, the Club used TMS to give a "sporting appearance" to the manner, in which the transaction was conducted. By acting this way, the Club used the system fraudulently. As a result

of the foregoing, the Committee finds that the Club did not act in good faith when it participated in the transfer in questions, carried out through TMS."

9.5 Against the background of the wording of the Decision, the Panel thus adheres to the view that the Appellant was basically sanctioned for having violated the provisions of Annexe 3 of the Regulations by having entered untrue or false data in the TMS (Art. 9.1 (2)) in bad faith (Art. 3 (1)) and/or for having misused the TMS for illegitimate purposes.

9.6 Accordingly, the Appellant is apparently not sanctioned for its role in the actual transfers of the Player, but solely for its role in connection with the TMS registration of the Player's transfer from Institución to the Appellant.

9.7 Given these circumstances, combined with the submissions filed by the parties, it is up to the Panel to decide whether it was comfortably satisfied that the necessary findings exist to establish the violations and thus that there are sufficient legal grounds for imposing the appealed sanction on the Appellant.

9.8 The Appellant generally asserts that the FIFA DC would in any case only be competent to sanction infringements committed for violation of substantive rules set out in the FDC and that neither the Regulations "nor the TMS" has created new substantive law. The Appellant concludes that the FIFA DC was therefore not competent to sanction the Appellant for an alleged infringement of the Regulations.

9.9 With reference to, *inter alia*, art. 76 of the FDC, art. 62 of the FIFA Statutes and the provisions of the Regulations, the Panel finds, however, that the FIFA DC was competent to render the Decision. Therefore, the Appellant's allegation of lack of competence of the FIFA DC is consequently dismissed.

9.10 Accordingly, the question is whether a "bridge transfer" must be assumed to exist, whether the Appellant can be assumed to have been aware thereof and, if so, from what time and, in affirmative cases, whether this and/or the Appellant´s registration in the TMS must involve a sanction on the Appellant?

9.11 Based on the information and evidence presented during these proceedings, including the oral statement provided by Mr Pablo Mena, the Panel finds it undisputed that the present case involves a transfer structure which, for instance, according to the description made by the Appellant´s legal representative, is to be considered as a "bridge transfer". This bridge transfer has apparently been initiated by the Player with a view to obtaining a personal economic benefit,

including a profit related to foreign exchange rates as it should be noted that the agreed transfer amount was payable in US dollars, currency which was subject to national restrictions in Argentina at the time of the transaction.

9.12 Mr Pablo Mena stated, *inter alia*, that the Appellant had already paid attention to this aspect at the time of the conclusion of the Transfer Contract and that the Appellant agreed that the intention behind the structure was to attend to the Player's economic interests, while the Appellant itself gained no economic/tax benefits from participating in such structure. Thus, the only difference for the Appellant between paying the agreed Transfer Compensation to Institución/the Player and paying such amount as a signing fee to the Player was that the Transfer Compensation, contrary to salary signing fee payment, would not require the Appellant to withhold the tax amount, whereas the Player would have to pay this amount himself. Furthermore, this difference was also irrelevant and created no tax benefits to the Appellant since under the tax regime in Argentina the amount of withholding tax on signing fees paid to players is very low (2%). Thus the amount paid by the Appellant in both possibilities was the same amount, and the Appellant´s only interest was to ensure that the Player would join the Appellant´s team.

9.13 The Panel considers that the Respondent is found not to have discharged the burden of proof to show that the Appellant would have gained any economic benefit from participating in the bridge transfer. Likewise, it is found that it has not been disputed that the Appellant under all circumstances (also) had a sporting interest in the transfer of the Player to its team.

9.14 Nonetheless, the Panel finds that sufficient evidence is available to prove that the Appellant was aware of the reason why the Player was not transferred directly to the Appellant, but preferred to be transferred via Institución. The Panel considers that the Appellant, being aware of these circumstances, did not act in good faith and cannot allege that the transfer via Institución was conducted exclusively on the basis of sporting interests as this venue of transfer actually involved an economic interest of a third party. However, this does not imply that the Appellant *per se* likewise did not act in good faith in relation to the TMS registration of the Player´s transfer from Institución to the Appellant.

9.15 The Respondent has submitted that transfers conducted for no apparent sporting reason are in violation of the regulations in force at the time of the transfer and, besides the risk of being used for other illegitimate purposes, contribute to bringing the integrity of sport in danger. This is disputed by the Appellant, which submits that there is nothing in the FIFA regulations to indicate that this would

be the case, and - moreover - the Appellant actually also had a genuine sporting interest in acquiring the Player's services. Given these circumstances, the Panel finds that insufficient evidence is available to prove that the Appellant must be assumed not to have acted in good faith in connection with Player's transfer registration in the TMS. For instance, it has not been proven that the Appellant has registered misleading or false information in the TMS.

9.16 It follows from the TMS rules that the system is designed "*to ensure that specific football authorities have more details available to them on international transfer. This will increase the transparency of individual transactions, which will in turn improve the credibility and standing of the entire transfer system.*" It is further laid down that "*All users shall act in good faith.*"

9.17 The Panel would like to highlight that it essentially has a deep understanding and sympathy for the ratio behind the TMS, and the Panel likewise emphasises that it concurs entirely with the Respondent that measures should be applied against bridge transfers when such transfers are conducted for the purpose of engaging in unlawful practices, such as tax evasion, or to circumvent the rules concerning, for instance, the payment of training compensation or solidarity contributions, or to assure third party's anonymity in relation to the relevant authorities.

9.18 Accordingly, the Panel in view of the paramount importance of preventing and fighting the above mentioned conducts in the football world, adheres to the view that FIFA is responsible for preparing a set of rules which, in a clear and transparent manner, regulate these matters and the consequences derived from committing such unlawful practices. The Panel considers that the parties involved, not least the players, in conformity with the principle of legality, shall be provided with specific guidelines in order to know how to act when international transfers of players take place. The lack of such clear and specific set of rules does not justify, in the eyes of the Panel, the "secondary use" of the TMS rules for these purposes.

9.19 The Panel finds that the current TMS rules do not satisfy these needs. Hence, the Panel is of the opinion that the current TMS rules represent neither an appropriate nor an effective tool for combating and/or sanctioning bridge transfers. This is for instance seen in the present case in which the FIFA DC grounded the imposed sanction on the fact that the Appellant had allegedly failed to meet its obligation to disclose the identity of the ultimate recipient of the agreed "transfer compensation", whereas no legal grounds apparently exist for sanctioning the Appellant for its "direct" participation in the bridge transfer, which - according to the Respondent´s submission - is incidentally also a serious violation of the

applicable rules. Moreover, professional football players are not covered by the concept of "Users" in relation to the TMS, and within the scope of the current set of TMS rules it is therefore not possible to impose sanctions on players for participating in bridge transfers and/or for the resulting improper registration in the TMS, even in a situation like the present one where it cannot at least be denied that it was the Player who initiated the bridge transfer for personal gain.

9.20 The Panel has taken note of the Respondent's arguments concerning the potential harmful effects of conducting transfers of player without any apparent sporting reasons, and the Panel essentially agrees with the Respondent on this issue. The Panel finds, however, that there are no sufficient grounds for concluding that these are the facts and circumstances on which the FIFA DC has based its decision. On the contrary and as explained above, the FIFA DC lends weight to the fact that the sanctioned violation in respect of the Appellant is for having, in bad faith, entered untrue or false data in the TMS and/or misused the TMS for illegitimate purposes.

9.21 The Panel yet finds that the only violation of the TMS rules that was established and proven to its comfortable satisfaction was the mere fact that the Appellant did not amend the data in the TMS once that agreement between the clubs was cancelled and did not upload to the TMS the information that the transfer fee was not paid to Institución. By this the Appellant violated Art 9.1 (2) of Annex 3 of the Regulations as the data that remained in the system was untrue.

9.22 Taking into account that it is found not to have been proven that the Appellant acted in bad faith in relation to its obligation to register data in the TMS except the violation mentioned in supra § 9.21, the Panel finds that the sanction imposed by the FIFA DC is too severe, and in accordance with the principle of proportionality and in compliance with Article 9.2 paragraph 3 and Article 10 lit b), the sanction is therefore reduced to a reprimand.

10. SUMMARY

10.1 Based on the foregoing and after taking into consideration all evidence produced and all arguments made, the Panel finds that the present case involves a bridge transfer, of which the Appellant was already aware at the time of the conclusion of the Transfer Contract concerning the Player's transfer from Institución to the Appellant.

10.2 The Panel does not find, however, that the Respondent has adequately discharged the burden of proof to establish that the Appellant acted in bad faith in relation to

its obligation to register data in the TMS. Therefore no violation of Art. 3 (1) of Annex 3 of the rules was established by the Respondent.

10.3 The Panel yet finds that the Appellant did violate Art. 9.1 (2) of the TMS rules by not amending the information in the TMS once the agreement between the clubs was cancelled and did not upload to the TMS the information that the transfer fee was not paid to Institución.

10.3 Given these circumstances, the Panel finds that the sanction imposed by the FIFA DC is too severe. Therefore, the Panel reduces the sanction to a reprimand.

11. COSTS

11.1 (…).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 26 March 2014 by Racing Club Asociación Civil against the decision rendered by the FIFA Disciplinary Committee on 14 August 2013 is partially upheld.

2. The decision rendered by the FIFA Disciplinary Committee on 14 August 2013 is set aside.

3. The sanctions imposed on Racing Club Asociación Civil in the decision rendered by the FIFA Disciplinary Committee on 14 August 2013 are reduced to a reprimand.

4. (…)

5. (…).

6. All other motions or prayers for relief are dismissed.

Lausanne, 5 May 2015

THE COURT OF ARBITRATION FOR SPORT

Lars Hilliger
President of the Panel

Efraim Barak
Arbitrator

Margarita Echeverría Bermúdez
Arbitrator