



TAS / CAS

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

CAS 2023/A/9805 Genoa Cricket and Football Club v. Fédération Internationale de Football Association (FIFA)

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Dr Leanne O’Leary, Solicitor in Liverpool, United Kingdom
Arbitrators: Mr Petros C. Mavroidis, Professor of Law in New York, United States of America
Mr Lars Hilliger, Attorney-at-law in Copenhagen, Denmark

in the arbitration between

Genoa Cricket and Football Club, Genoa, Italy

Represented by Mr Paolo Lombardi and Mr Luca Pastore, Attorneys-at-law, Lombardi Associates Limited in Edinburgh, United Kingdom

Appellant

and

Fédération Internationale de Football Association, Zurich, Switzerland

Represented by Mr Alexander Jacobs, Senior Legal Counsel and Mr Saverio Spera, Legal Counsel, FIFA Litigation Department

Respondent

I. PARTIES

1. The Genoa Cricket and Football Club (the “Club” or the “Appellant”) is professional club situated in Italy, with its registered office in Genoa, Italy. The Club is affiliated to the Federazione Italiana Giuoco Calcio or the Italian Football Federation (“FIGC”), which, in turn, is affiliated to the Fédération Internationale de Football Association (“FIFA”).
2. FIFA (or the “Respondent”) is an association incorporated under Swiss law with its registered office in Zurich, Switzerland. FIFA is the governing body of international football and is recognised as such by the International Olympic Committee. It exercises regulatory, supervisory and disciplinary functions over continental confederations, national associations, clubs, officials and players worldwide; The Appellant and the Respondent are collectively referred to as the “Parties”.

II. INTRODUCTION

3. This is an appeal against a fine of CHF 20,000 that was imposed against the Appellant pursuant to a sanction proposal issued under Article 58 of the FIFA Disciplinary Code (the “FDC”).

III. FACTUAL BACKGROUND

A. Background Facts

4. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions, pleadings and evidence adduced at the hearing on 26 January 2024. Additional facts and allegations found in the Parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.
5. On 27 March 2023, the Court of Arbitration for Sport (the “CAS”) delivered an arbitral award in the arbitral procedure, CAS 2021/O/7877 (the “CAS Award”), between the Club and the Mr Pascual Fernando Lezcano, (the “Intermediary”). The operative part of the CAS Award stated that:

- “1. *The claim filed by Pascual Fernando Lezcano against Genoa Cricket and Football Club S.p.A. is partially accepted.*
2. *Genoa Cricket and Football Club S.p.A. must pay Pascual Fernando Lezcano an amount of EUR 300,000, plus monetary revaluation according to ISTAT indices as from 18 July 2016, plus interest, as from 18 July 2016, on the revaluated amount at the annual range respectively applicable pursuant to Italian law in accordance with Article 1284 of the Italian Civil Code, under the date of effective payment.*

3. *The costs of these arbitration proceedings, to be determined and served to the Parties by the CAS Court Office, shall be shared equally by Pascual Fernando Lezcano and Genoa Cricket and Football Club S.p.A.*
4. *Each Party shall bear its own legal fees and other expenses incurred in connection with this arbitration.*
5. *All other or further request or motions submitted by the Parties are dismissed.”*
6. On 16 May 2023, the Intermediary informed FIFA that the Club had failed to comply with the CAS Award.

B. Proceedings Before the FIFA Disciplinary Committee.

7. On 14 June 2023, FIFA opened disciplinary proceedings against the Club alleging a breach of Article 21 of the FDC and pursuant to Article 58 of the FDC, the FIFA secretariat sent a letter that outlined a proposed sanction against the Club (the “Sanction Proposal”). The Sanction Proposal stated the following:

“[It] appears that Genoa Cricket and F.C.SPA (the Respondent) did not comply in full with a decision passed by a body, a committee, a subsidiary or an instance of FIFA, or by the Court of Arbitration for Sport (the Decision).

In view of the foregoing, please be informed that this would constitute a potential breach of the following provision(s):

Article 21 of the FIFA Disciplinary Code (FDC) - Failure to respect decisions

In this context, in accordance with art. 58 FDC as read in conjunction with Annexe 1 FDC, the secretariat to the FIFA Disciplinary Committee proposes the following sanction on the basis of the existing file:

1. *The Respondent, GENOA CRICKET AND F.C.SPA, SHALL PAY to Mr Pascual Fernando Lezcano (the Creditor) as follows:*
 - *EURO 300,000, plus monetary revaluation according to ISTAT indices as from 18 July 2016, plus interests, as from 18 July 2016, on the revaluated amount at the annual rate respectively applicable pursuant to Italian law in accordance with Article 1284 of the Italian Civil Code, until the date of effective payment.*
2. *The Respondent is granted a final deadline of 30 days as from the present proposal becoming final and binding in which to pay the amount(s) due. Upon expiry of the aforementioned final deadline and in the event of persistent default or failure to comply in full with the Decision within the period stipulated, a ban on registering new players will be issued until the complete amount due is paid.*
3. *The Respondent shall pay a fine to the amount of CHF 20,000.*

In line with art. 58 FDC, the Respondent may reject the proposed sanction and submit its position before the FIFA Disciplinary Committee (along with any document deemed necessary) within five days of the notification of this communication. In such case, regular disciplinary proceedings will be conducted, and the FIFA Disciplinary Committee will decide on the case using the file in its possession.

Should the Respondent accept the proposed sanction, or in the absence of any response within the stipulated deadline, said sanction will become final and binding (cf. art. 58 FDC)."

8. On 20 June 2023, the Club replied to the Sanction Proposal, alleging that FIFA had no jurisdiction to enforce the CAS Award and requesting that the FIFA Disciplinary Committee terminate the proceedings as follows:

"We acknowledge receipt of the communication of the secretariat to the FIFA Disciplinary Committee, which Genoa provided to us on 16 June 2023, and the content of which has been duly noted.

However, in this regard, please note that the proposal contained in your communication is not capable of acceptance or rejection, given FIFA has no jurisdiction over this matter.

Specifically, Genoa firmly objects to the competence of the FIFA Disciplinary Committee to apply Article 21 of the FIFA Disciplinary Code in the case at stake, as FIFA has no jurisdiction to sanction the alleged failure to respect an award rendered by CAS in a commercial dispute between an intermediary and a club.

As a result of FIFA's lack of jurisdiction in this matter, please note that this position shall not be regarded as Genoa's rejection of the proposed sanction pursuant to Article 58 of the FIFA Disciplinary Code, but a request that the FIFA Disciplinary Committee terminate these proceedings, as will be explained hereunder.

[...]"

9. On 22 June 2023, the FIFA secretariat confirmed receipt of the Club's letter of 20 June 2023 and communicated that the Sanction Proposal had become a final and binding decision (the "Confirmation Letter"). The Confirmation Letter stated the following:

*"[We refer to] our previous communication from 14 June 2023..., by means of which our services inter alia informed the club Genoa Cricket and FC SPA (**the Respondent**) that it 'may reject the proposed sanction and submit its position before the FIFA Disciplinary Committee (along with any document deemed necessary) within five days of the notification of this communication' (emphasis added).*

In the meantime, we acknowledge receipt of the communication sent on 20 June 2023 via the FIFA legal portal by the legal representative of the club Genoa Cricket and FC SPA.

In this context, and in line with art. 58 of the FIFA Disciplinary Code (FDC), as read in conjunction with art. 38 FDC, we kindly inform the parties that the proposed sanction contained therein is now final and binding.

The Italian Football Association is kindly invited to forward this letter to the Respondent immediately.”

10. Still on 22 June 2023 and in reply to the Confirmation Letter, the Club wrote to FIFA repeating its request for the FIFA Disciplinary Committee to take a formal decision to terminate the proceedings on the grounds of lack of jurisdiction. In particular, the Club requested that:

“[We] request that the single judge of the FIFA Disciplinary Committee issues a formal decision:

- 1. Confirming that FIFA has no jurisdiction to initiate enforcement proceedings against Genoa in relation to the Decision;*
- 2. Declaring that the [Sanction Proposal] issued by FIFA on 14 June 2023 and the Confirmation Letter issued on 22 June 2023 are without effect.”*

11. On 23 June 2023, the FIFA secretariat replied to the Club’s letter of 22 June 2023 through the FIFA Legal Portal chat function as follows:

“Dear Sirs,

We hereby acknowledge receipt of your correspondence and have taken note of the information therein provided.

In this regard, please be advised that our services kindly refer to our previous communication, the content of which is self-explanatory.

...”

12. On 26 June 2023, the Club wrote to FIFA, reiterating its request for a formal decision from the FIFA Disciplinary Committee as follows:

“We respectfully submit that FIFA's previous correspondence does not address matters raised in our letter of 22 June 2023. In fact, FIFA's previous correspondence which you direct us to was uploaded prior to our correspondence on 22 June 2023.

In fact, it is clear that FIFA's correspondence dated 22 June 2023, which you refer to as “self-explanatory” in the comments section, did not address the crucial issue of FIFA's lack of jurisdiction, which was at the basis of Genoa's formal request uploaded later that same day, and which was also raised in Genoa's correspondence of 20 June 2023 and which was, for the avoidance of any doubt, entitled “Objection to Jurisdiction”.

In light of the above, may we ask that you provide an answer to our position on FIFA's lack of jurisdiction to initiate enforcement proceedings against Genoa. We respectfully reiterate our request that you do so by means of a formal decision of the FIFA Disciplinary Committee, failing which by means of an official communication of FIFA."

13. On 24 July 2023, FIFA replied to the Club's correspondence of 22 June 2023 and 26 June 2023, again advising that the content of its letter of 22 June 2023 was "self-explanatory".

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

14. On 13 July 2023, the Appellant filed a Statement of Appeal with the CAS pursuant to Article R48 of the Code of Sports-related Arbitration (the "Code") against the Respondent and with respect to a decision that the Respondent purported to be contained in the Confirmation Letter (the "Appealed Decision"). The Appellant nominated Mr Petros C. Mavroidis, Professor of Law in New York, United States of America as arbitrator, and requested a stay of enforcement of the disciplinary sanction. The Appellant filed an application for a stay of the fine.
15. On 28 July 2023, the CAS Court Office informed the Appellant of the Respondent's position that since the Appealed Decision principally concerned the imposition of a fine, according to CAS and Swiss Federal Tribunal jurisprudence, a decision of a financial nature issued by a private Swiss association is not enforceable while under appeal, and the Appellant's request for a stay was moot. The CAS Court Office invited the Appellant to confirm whether it withdrew the application for a stay, and further granted the Respondent an additional ten days to nominate an arbitrator.
16. On 1 August 2023, the Appellant informed the CAS Court Office that it withdrew its application for a stay of the Appealed Decision.
17. On 9 August 2023, the Respondent nominated Mr Lars Hilliger, Attorney-at-law in Copenhagen, Denmark as arbitrator.
18. On 14 August 2023, in accordance with Article R51 of the Code and within a previously agreed extension of time, the Appellant filed the Appeal Brief.
19. On 12 October 2023, the CAS Court Office informed the Parties that pursuant to Article R54 of the Code, the Panel appointed to consider the procedure was constituted as follows:

President: Dr Leanne O'Leary, Solicitor in Liverpool, United Kingdom

Arbitrators: Mr Petros C. Mavroidis, Professor of Law in New York, United States of America
Mr Lars Hilliger, Attorney-at-law in Copenhagen, Denmark

20. On 16 October 2023, within a previously granted extension of time and in accordance with Article R55 of the Code, the Respondent filed its Answer.
21. Still on 16 October 2023, the CAS Court Office informed the Parties that save for exceptional circumstances, pursuant to Article R56 of the Code, the Parties were not entitled to supplement or amend their requests or their argument, or produce further evidence. The CAS Court Office also invited the Parties to confirm, i) in accordance with Article R56 of the Code, whether a case management conference was required, and ii) whether a hearing was required.
22. On 17 October 2023, the Appellant informed the CAS Court Office of its preference for a hearing to be held.
23. On 20 October 2023, the Respondent notified that a hearing and a case management conference were not required.
24. On 24 October 2023 and following consultation with the Parties, a hearing was confirmed for 26 January 2024 at the CAS Court Office, in Lausanne, Switzerland.
25. On 25 October 2023, the CAS Court Office invited the Parties to sign the Order of Procedure, which was returned in duly signed copy by the Respondent on 25 October 2023 and by the Appellant on 2 November 2023.
26. On 26 January 2024, a hearing was held at the CAS Court Office Headquarters in Lausanne, Switzerland. Besides the Panel and Mr Antonio de Quesada, Head of Arbitration, the following people attended:

For the Appellant:

Mr Paolo Lombardi, Legal Counsel

Mr Luca Pastore, Legal Counsel

For the Respondent:

Mr Alexander Jacobs, Senior Legal Counsel

Mr Saverio Spera, Legal Counsel

27. At the outset of the hearing, the Parties confirmed that they had no objections to the Panel's composition and the Panel's jurisdiction over the present dispute was also confirmed. The Parties were each given the opportunity to present their oral submissions and reiterated the arguments already put forward in their written submissions.
28. Before the hearing concluded, the Parties expressly stated that they did not have any objection to the procedure adopted by the Panel and that their rights to be heard and to be treated equally had been duly respected.

V. SUBMISSIONS OF THE PARTIES

29. The following outline is a summary of the Parties' oral and written submissions which the Panel considers relevant to decide the present dispute and does not necessarily comprise each and every contention put forward by the Parties. The Panel has, nonetheless, carefully considered all the submissions made by the Parties, even if no express reference has been made in the following summary. The Parties' written and oral submissions, documentary evidence and the content of the Appealed Decision were all taken into consideration.

A. The Appellant's Position

30. The Appellant's submissions, in essence, may be summarized as follows:
- The Sanction Proposal was not capable of acceptance or rejection by the Appellant because it was issued in the context of proceedings that FIFA should never have commenced. FIFA lacked jurisdiction, which it should have ascertained and dismissed the matter *ex officio*, and any decision it rendered in relation to the flawed proceedings should be dismissed. The lack of jurisdiction is a flaw of such relevance that it can be raised at any time by any party involved. The Appellant was not limited to raising it within the reply to the Sanction Proposal and could raise it at any time, which it first did on 20 June 2023.
 - The CAS Award was issued on 27 March 2023 and on 16 May 2023 the Intermediary requested that the FIFA Disciplinary Committee act against the Appellant for the alleged non-compliance with the CAS Award. At the time of filing the request, the Intermediary was neither a direct member nor an indirect member of FIFA and was not able to access the FIFA enforcement mechanism under Article 21 of the FDC.
 - As a general principle any matter taken before FIFA's legal bodies, including its judicial bodies, shall meet certain criteria in terms of i) *ratione temporis*, ii) *ratione materiae* and iii) *ratione personae* (cf: FIFA Decision Ref No. FPSD-6804).
 - As to i), the limitation period for cases such as the present one is five years, running from the day on which the CAS decision becomes final and binding. The matter was not time-barred because the CAS Award was issued on 27 March 2023 and the Intermediary informed FIFA of non-compliance on 16 May 2023.
 - As to ii), the matter fell in principle within Article 21 FDC.
 - As to iii), the Respondent as a transnational private entity is required to act within the limits provided by the FIFA regulations. Pursuant to the powers provided in Article 51.2 of the FIFA Statutes, the FIFA Disciplinary Committee may pronounce sanctions described in the Statutes and the FDC against "*member associations, clubs, officials, players, football agents and match agents*". The FDC does not provide an express definition of "football agent", although Article 4 of the Regulations Governing the Application of the Statutes refers to football agents, and

their requirement, amongst others, to have a FIFA licence. The intention of the legislator was to include “football agents” and not “intermediaries”.

- FIFA has always adopted a strict approach to assessing the *ratione personae*. CAS 2016/A/4426 confirms that there are limitations to the scope of (then) Article 64 of the FDC. It concluded that “*entities/persons that are not members of FIFA cannot invoke article 64 FDC since they are not subjected to the various regulations of FIFA*” and that “*an (in)direct membership of FIFA is imperative for an entity/person to have standing to invoke article 64*” at “*the moment of lodging the claim*”. The Panel in CAS 2016/A/4426 acknowledged and ruled that “*FIFA unilaterally decided to abandon the licensing system for players’ agents/intermediaries and therefore unilaterally decided that players’ agents/intermediaries are no longer (in)direct members of FIFA*”. Admissibility of a matter before the FIFA Disciplinary Committee is also subject to compliance with Article 3 of the FDC which provides an exhaustive list of persons subject to the FDC which does not include intermediaries; accordingly, the FIFA Disciplinary Committee was never in a position to apply Article 21 of the FDC in the present case.
- The Intermediary was never licensed by FIFA. The available evidence shows that the Intermediary’s registration was issued by the Argentinian Football Association in 2016 and therefore he is an intermediary for the purpose of the present case. He was not subject to the FDC and cannot access and benefit from the enforcement mechanism established by FIFA. This is further supported by the fact that he could not access the FIFA Football Tribunal either (see Article 9.1 of the FIFA Procedural Rules Governing the Football Tribunal and CAS 2015/A/4162, para 74). The definition of creditor, as the term is used in Article 21 of the FDC, is also qualified by the list of those who are subject to the FDC, and an intermediary is not subject to the FDC and therefore not a creditor under Article 21 of the FDC. To enforce the Award the Intermediary must file a request to the competent Italian ordinary court for the CAS Award to be set aside pursuant to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards or the New York Convention.
- The Appellant was compelled to appeal FIFA’s null and void decision to protect its rights, cure the procedural violations committed by FIFA and fix the legal uncertainty under which FIFA placed the Appellant. The Appellant may not have had to appeal had FIFA heard and decided on its objection to jurisdiction. The Appellant, therefore, requests that FIFA is condemned to reimburse the procedural costs it paid in advance as well as its legal fees in the highest amount that the Panel considers appropriate.
- In the Appeal Brief, the Appellant submitted the following requests for relief:

“*The Appellant respectfully requests the Panel:*

 1. *to review the present case as to the facts and to the law, in compliance with article R57 of the CAS Code;*

2. *to confirm that FIFA did not have jurisdiction to initiate disciplinary proceedings against Genoa; and therefore*
3. *to set aside the FIFA Decision;*
4. *to condemn FIFA to bear all procedural costs incurred in relation to these proceedings;*
5. *to order FIFA to cover Genoa's legal costs related to these proceedings, in the highest amount that is deemed appropriate."*

B. The Respondent's Position

31. The Respondent's submissions, in essence, may be summarized as follows:

- The Appellant's appeal is inadmissible because the Appellant has appealed against the Confirmation Letter. The Respondent sent the Confirmation Letter in reply to the Appellant's letter dated 20 June 2023 and the Confirmation Letter was "*purely informative*". It confirmed the final and binding character of the Sanction Proposal.
- If the Panel considers the Appellant's appeal admissible, the Respondent submits that the appeal should be rejected. The relevant legal framework for a sanction proposal issued during disciplinary proceedings is set out in Article 58 of the FDC. In matters reserved for a single judge (of which an alleged breach of Article 21 of the FDC is one), the FIFA secretariat may propose a sanction, the relevant party may reject the proposed sanction within five days of notification of the proposed sanction, and if the relevant party fails to reject it, the sanction becomes final and binding. A sanction proposal in the disciplinary context was introduced by the 2023 edition of the FDC and communicated to national associations and other football stakeholders by FIFA Circular 1833 dated 31 January 2023. FIFA also published a document titled "*Disciplinary Code Overview of the Changes*" which clearly explained the objective and purpose and provided further details of the sanction proposal process in disciplinary proceedings.
- The Appellant was issued with the Sanction Proposal on 14 June 2023, and it failed to object within the prescribed period, with the result that the sanction became final and binding. To permit an appeal to the Sanction Proposal would defeat the purpose of the sanction proposal system and render it ineffective. In the present dispute, the Sanction Proposal clearly communicated the options available to the Appellant: reject the proposed sanction and submit its position to the Disciplinary Committee within five days, following which disciplinary proceedings would continue; or not respond and the sanction would become final and binding after five days. The Appellant's right to reject the Sanction Proposal elapsed on 19 June 2023.
- The present appeal contravenes the principle of *venire contra factum proprium*. Established CAS jurisprudence confirms that where "*the conduct of one party has led to the legitimate expectations on the part of a second party, the first party is estopped from changing its course of action to the detriment of the second party*"

(*cf.* CAS 2006/A/1189, para 8.4; CAS 2006/A/1086, para 8.21; CAS 98/200, para 9; CAS 2008/A/1699). The Appellant is estopped from bringing the present appeal because by failing to object within the prescribed period, it created the legitimate expectation that it had accepted the Sanction Proposal, and the matter was terminated. The Appellant has changed its course of action to the detriment of FIFA and the sanction proposal system. The Appellant's acceptance of the Sanction Proposal leads to its preclusion from challenging the sanction contained in it (*cf.* CAS 2020/A/7252, paras 158 - 159; CAS 2020/A/7516, para 128).

- The Appellant's arguments regarding FIFA's lack of jurisdiction are not novel or unique. The same arguments were raised by non-compliant parties in similar proceedings where an intermediary wished to enforce a debt and were dismissed by CAS (*cf.* CAS 2021/A/8527, paras 57 – 68). The sanction in the present dispute is issued against the Appellant and not the Intermediary. The fact that FIFA, from 2015 onwards, decided that it would not deal with contractual disputes or disputes of a horizontal nature involving intermediaries and delegated those powers to member associations is irrelevant because FIFA maintained disciplinary powers over intermediaries or agents. The term intermediary has been replaced by football agents in anticipation of the FIFA Football Agents Regulations. The FIFA Statutes were amended in 2022 and the term "intermediaries" was replaced by "football agents" in Article 54.3 (formerly Article 46.3), Article 51.2 formerly Article 53.2 and Article 56.1 (formerly Article 57.1) of the FIFA Statutes, amongst other sections. The terms "intermediaries" and "football agents" are synonymous and interchangeable in the FIFA Statutes and associated regulations and there is no doubt that intermediaries continue to fall under the applicable FIFA rules and regulations. The Appellant's submissions that intermediaries do not fall within the personal scope of the FDC are misplaced.
- The wording of Article 21 of the FDC is clear; the failure to pay another person results in disciplinary measures being imposed on a non-compliant party. Article 21 of the FDC does not specifically exclude any creditor and it provides a non-exhaustive list of such people e.g. players, coaches, or clubs. Article 3 of the FDC refers to football agents. Football agents/intermediaries fall within the personal scope of the FDC and therefore enjoy the rights and obligations contained in the FDC, including the right to invoke Article 21 of the FDC (*cf.* CAS 2021/A/8527; CAS 2020/A/6884; and CAS 2016/A/4426).
- Three conditions exist for disciplinary proceedings to be opened under Article 21 of the FDC, namely: the person prosecuted must fall within the scope of the FDC; there must be a final and binding decision rendered by a FIFA body, committee or instance or a CAS award with which the person has not complied; and there must be a request from a creditor or other affected party to initiate proceedings for the non-compliance, and in the dispute at hand all of the preceding conditions are satisfied.

- In the Answer, the Respondent submitted the following requests for relief:

“Based on the foregoing, FIFA respectfully requests the Panel to:

- (a) declared the present appeal inadmissible;*
- (b) alternatively, to reject the requests for relief sought by the Appellant and to confirm the Appealed Letter;*
- (c) in any event, to order the Appellant to bear the full costs of these arbitration proceedings.”*

VI. JURISDICTION

32. Article R47 of the Code provides that:

“An appeal against the decision of a federation, association or sports-related body may be filed with 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 it prior to the appeal, in accordance with the statutes or regulations of that body.”

33. Pursuant to Article 57.1 of the FIFA Statutes:

“Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question.”

34. The Appellant relies on Article 57.1 of the FIFA Statutes as conferring jurisdiction on the CAS, and jurisdiction is not contested by the Respondent. The Parties agreed at the outset of the hearing that there were no objections to the jurisdiction of the CAS when requested to offer their views by the Panel, and the jurisdiction is further confirmed by the Parties’ signatures on the Order of Procedure.

35. Accordingly, on the basis of the above, the Panel is satisfied that it has jurisdiction to adjudicate the present dispute.

VII. APPLICABLE LAW

36. Pursuant to Article R58 of the Code, the Panel is required to decide the dispute:

“[According] to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.”

37. Furthermore, Article 56.2 of the FIFA Statutes provides that:

“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.”

38. The Appellant submits that the Panel should primarily apply the “*regulations of FIFA in force at the time of the Disciplinary Proceedings being opened and, subsidiarily, to Swiss law*”. The Respondent submits that the FIFA Statutes and regulations, namely the FDC, constitute the applicable law and, subsidiarily, Swiss law shall be applied should the need arise to fill a possible gap in the regulations of FIFA.
39. The Panel notes that the Confirmation Letter that purportedly contains the Appealed Decision was communicated on 22 June 2023 and that at the time it was issued, the May 2022 edition of the FIFA Statutes was in effect. Furthermore, since the dispute touches on a disciplinary matter, the 2023 edition of the FDC is also relevant.
40. Accordingly, the Panel considers that the FIFA Statutes (May 2022 edition), the FDC (2023 edition) and any other relevant FIFA regulations constitute the applicable law to the matter at hand. Swiss law applies subsidiarily.

VIII. ADMISSIBILITY

41. The Respondent objects to the admissibility of the Appeal. Its submissions on the admissibility of the appeal can be summarised as follows:
- The Confirmation Letter cannot be considered a decision. The Respondent refers in that regard to established CAS jurisprudence which confirms that the mandatory elements for a document or letter to be considered or qualify as a decision are that the communication must contain a ruling whereby the issuing body intends to affect the legal situation of the addressee of the decision or other parties (*cf.* CAS 2004/A/748, para 89; CAS 2005/A/899, para 61; CAS 2008/A/1633, para 31 etc.). A decision is therefore a legal act, sent to one or more recipients and intended to produce legal effects (*cf.* CAS 2004/A/659, para 36; CAS 2004/A/748, para 89; and CAS 2008/A/1633, para 31 etc.). A communication for informative purposes only does not contain a ruling and cannot be considered a decision (*cf.* CAS 2008/A/1633, para 32; CAS 2015/A/4213, para 49; and CAS 2017/A/5200, para 84).
 - The Confirmation Letter did not contain any ruling as evidenced by the plain reading of its content, was not intended to produce any legal effects, did not resolve any issue in a final way, and was purely informative. If the Appellant intended to appeal a decision or communication intended to have legal effect, it should have objected to the Sanction Proposal within the five-day deadline communicated in it. If it had, then disciplinary proceedings would have been conducted and the Appellant could have raised its genuine concerns regarding FIFA’s jurisdiction.

- The Confirmation Letter also does not have the required “*animus decidendi*”. It was not intended to decide on a matter; it was only an informative communication that was not directed at addressing the Appellant’s non-compliance with the CAS Award. It was also not an implementation letter or a reminder (*cf.* CAS 2020/A/6732, paras 87 - 89). The only FIFA communication that expressed a will aimed at producing legal effects was the Sanction Proposal, not the Confirmation Letter. A letter that simply referred to the Appellant’s failure to object, following the Sanction Proposal assuming a final and binding legal effect, cannot be considered a decision (*cf.* CAS 2019/A/6406).
42. The Appellant submits that the Confirmation Letter is an appealable decision and the appeal is admissible for the following reasons:
- The Appellant’s legal position was not affected by the Sanction Proposal because the Sanction Proposal is not capable of being final and binding until a confirmation letter is issued. The FIFA Disciplinary Committee is required to assess its own jurisdiction before commencing proceedings at the time that the claim is lodged. There was no time limit or process for challenging FIFA’s jurisdiction outlined in the Sanction Proposal. The letter provided a time frame for the Appellant to accept or reject the sanction and not to challenge jurisdiction and it was only when the Confirmation Letter was issued that the Appellant’s legal position was affected (*cf.* CAS 2021/A/8290). The third paragraph of the Confirmation Letter stated that the Sanction Proposal was “*now final and binding*” and officially notified the Italian Football Association, which up until that point had not been involved in proceedings.
 - The five-day period prescribed in Article 58 of the FDC for accepting or rejecting the Sanction Proposal does not apply to jurisdictional challenges, which are not time constrained and can be raised at any time. The first time the Appellant engaged with the Respondent on the issue of jurisdiction was its letter of 20 June 2023. The Respondent’s reply was the Confirmation Letter which had legal effect and the time to appeal of 21 days started from the date of the Confirmation Letter.
43. The Panel recalls that pursuant to Article R47 of the Code an appeal may be made against a *decision* of a federation, association, or sports-related body to the CAS if the statutes of a federation so provide. It further recalls that FIFA provides for appeals against a final decision passed by its legal bodies, amongst others, in Article 57.1 of the FIFA Statutes, and that pursuant to Article 52 of the FDC, appeals against decisions passed by FIFA’s Disciplinary and Appeals Committees may be appealed to CAS.
44. However, the Panel, is not dealing with an appeal against a decision following disciplinary proceedings before the FIFA Disciplinary Committee or FIFA Appeals Committee but with an appeal against the Confirmation Letter that was sent to the Appellant following the issue of a Sanction Proposal pursuant to Article 58 of the FDC. The issue for the Panel to decide is whether the Confirmation Letter has the characteristics and qualities of a decision within the meaning of Article R47 of the Code to be appealable and thus admissible.

45. The Panel observes that neither the FIFA Statutes nor the FDC define the term “decision”, nevertheless, established CAS jurisprudence has considered the definition. The principles have generally developed in a linear manner and are helpfully outlined in MAVROMATI/REEB, *The Code of Sports-related Arbitration: Commentary, Cases and Materials*, Wouters Kluwer 2014, pp 382 – 386. The Panel recalls that the form of the communication is irrelevant to a determination as to whether the substance of the communication is a decision (*cf.* CAS 2020/A/7590 & 7591, para 71; CAS 2019/A/6330, para 55; and CAS 2018/A/5933, para 64, and the cases cited therein), and that under certain circumstances, a ruling issued by a sports-related body refusing to deal with a request may be considered a decision (*cf.* CAS 2008/A/1633, para 10 and CAS 2005/A/899, paras 10-14).
46. Perhaps most importantly, however, the Panel recalls that a decision is based on the *animus decidendi*, or an intention to decide a particular matter, and that it changes a party’s legal position (*cf.* CAS 2019/A/6253, para 98; CAS 2018/A/5933, paras 64-67, and cases cited therein). The *animus decidendi* is a civil law term meaning ‘intent to decide’. The Panel must consider, therefore, the context in which the Confirmation Letter arose and its content to ascertain whether the requisite intent to decide the disciplinary matter at hand is present and whether the Confirmation Letter affects the Appellant’s legal position. Before considering these points, the Panel considers it helpful to outline the regulatory context in which the Confirmation Letter came into existence.
47. The Panel observes that the CAS Award directed the Appellant to pay EUR 300,000 plus monetary revaluation according to ISTAT indices and interest to the Intermediary. The Appellant failed to pay the amount due whereupon the Intermediary requested the Respondent to enforce the decision against the Appellant, which it duly did, opening disciplinary proceedings on 14 June 2023 and issuing the Sanction Proposal pursuant to Article R58 of the FDC.
48. Article R58 of the FDC provides:
- “In matters reserved for the single judge, the secretariat may propose a sanction on the basis of the existing file. The party concerned may reject the proposed sanction and submit its position before the relevant judicial body within five days of notification of the proposed sanction, in the absence of which the proposed sanction will become final and binding.”*
49. The Panel recalls that time limits provided in the FDC are calculated according to Article R38 of the FDC, which states:
- “1. Time limits shall commence the day after the notification of the relevant documents. Time limits are deemed to have been complied with if the relevant action has been completed by midnight (Central European Time) at the latest on the last day of the stipulated deadline.*

...

- 5 *If a time limit is not observed, the defaulter loses the procedural right in question.*
6. *Time limits laid down by this Code may not be extended.”*
50. The Panel also recalls that matters reserved for a single judge are prescribed in Article R57.1 of the FDC and include in Article 57.1(h) cases involving matters under Article 21 of the FDC, which, in turn provides for the disciplinary offence of failing to respect a decision, and is the disciplinary offence that the Appellant faced. The Panel considers that the Respondent was therefore entitled to use the sanction proposal process provided by Article 58 of the FDC to resolve the disciplinary matter.
51. The sanction proposal process under the FDC provides a mechanism for the Respondent to expedite certain disciplinary proceedings. The Panel recalls that FIFA Circular no. 1833 dated 31 January 2023, which notified members of the introduction of the 2023 edition of the FDC, listed the sanction proposal process as one of several amendments to the FDC that aim to, “reinforce the smooth and efficient handling of proceedings before FIFA’s judicial bodies” in order to “further simplify and speed up the proceedings before FIFA’s judicial bodies”. The Panel notes that the sanction proposal process under the 2023 edition of the FDC is not a new process because Article 57.3 of the 2019 edition of the FDC provided for a sanction proposal to be issued in respect of the same disciplinary offence. A key difference under the 2023 edition of the FDC is that the process is reserved to the FIFA secretariat and not the chairperson of the Disciplinary Committee or their nominee as it was under the 2019 edition of the FDC. The objective and purpose of the amendment was explained in the Overview Document that accompanied the introduction of the 2023 edition of the FDC as being:
- “[To speed] up the decision- making process, the secretariat should be allowed to make proposals during the procedure. Similar to the procedure used by the FIFA general secretariat in solidarity and training compensation cases, the secretariat may propose a sanction on the basis of the existing file. Only cases that would otherwise be submitted to a single judge may be subject to a proposal”* (FIFA Disciplinary Code Overview of the Changes, p18).
52. The Panel recalls that the FIFA secretariat issued the Sanction Proposal on 14 June 2023, notifying the Appellant through the FIFA Legal Portal which the Panel understands is the usual method of communication used by FIFA in these types of proceedings. The Appellant does not deny that it received the Sanction Proposal on 14 June 2023.
53. The Panel observes that the Sanction Proposal clearly directed the Appellant to pay the Intermediary the amount due under the CAS Award within a final deadline of 30 days and to pay a fine of CHF 20,000 in respect of the failure to comply with the CAS Award. The Panel also finds that the Sanction Proposal very clearly informed the Appellant that in accordance with Article R58 of the FDC, the Respondent was entitled to reject the proposed sanction and submit its position to the FIFA Disciplinary Committee, together with any supporting documentation, within five days of notification of the Sanction Proposal, following which regular disciplinary proceedings would be conducted and the FIFA Disciplinary Committee would adjudicate the case on the basis of the file before

- it. The Sanction Proposal also explained the consequences of not accepting, or not responding, to the Sanction Proposal, namely that the Sanction Proposal would become a final and binding decision in accordance with Article 58 of the FDC.
54. The Panel observes that the deadline for responding to the Sanction Proposal, calculated in accordance with R38 of the FDC, was 19 June 2023. It further notes that the Appellant did not respond at all to the Sanction Proposal before the deadline. In fact, the Panel finds that the Appellant's first communication with the Respondent occurred on 20 June 2023, the day after the deadline in the Sanction Proposal expired, and that the Appellant did not accept or reject the Sanction Proposal, but requested that the FIFA Disciplinary Committee terminate the disciplinary proceedings opened against it. It was in this context that the Confirmation Letter was drafted and sent to the Appellant.
55. The Panel notes the subject heading or title of the Confirmation Letter as "*Proposal by the Secretariat – confirmation letter*" but considers that turns on the title in the case at hand. It observes that the Confirmation Letter commenced by referring to the Sanction Proposal and acknowledged receipt of the Appellant's letter of 20 June 2023, before referencing Article 58 of the FDC and informing the Appellant that the Sanction Proposal is "*now final and binding*". The Confirmation Letter concluded by inviting the FIGC to forward the letter to the Respondent. Although the Confirmation Letter referred to Article 58 of the FDC, the Panel observes that it did not contain any legal analysis or conclusion that would be consistent with reading the Confirmation Letter as a decision; nor did it contain any new information that was not already provided in the Sanction Proposal. The Panel considers that in the context of the exchange of communication between the Appellant and Respondent in June 2023, there was no *animus decidendi* or intent to decide the disciplinary matter recorded in the Confirmation Letter. It considers that the Confirmation Letter was simply a letter of reply to the Appellant's Letter of 20 June 2023, which communicated or informed of information already outlined in the Sanction Proposal.
56. The Appellant submits that the Confirmation Letter changed its legal position. It asserts that the Sanction Proposal was not capable of being final and binding until the Confirmation Letter was issued, because the Confirmation Letter expressly stated that the Sanction Proposal was "*now final and binding*" and it requested that the FIGC be informed, which, up until that point, had not been involved in proceedings.
57. To support its position, the Appellant drew an analogy between the sanction proposal process under FDC and the proposal process outlined in the Procedural Rules Governing the Football Tribunal (the "Procedural Rules"), specifically Article 20 of the Procedural Rules which permits the FIFA secretariat to make a proposal to settle disputes without a decision being issued by the Players' Status Chamber, Dispute Resolution Chamber or Agents' Chamber, submitting that the Sanction Proposal was incapable of being final and binding until the Confirmation Letter was issued, and that it was the Confirmation Letter that affected the Appellant's legal position. The Appellant also referred the Panel to CAS 2021/A/8290, a case involving a dispute in which the FIFA secretariat issued a proposal and confirmation letter under the proposal process outlined in the then named Rules Governing the Procedures of the Players' Status Committee and the Dispute

Resolution Chamber. In that particular case, the Sole Arbitrator held at paragraph 69 that the proposal and the confirmation letter were decisions that:

“[Each] contained the necessary elements to be considered decisions for the purposes of any potential appeal, containing as they do final and binding decisions on the amount to be paid by the Appellant to the First Respondent, the interest rate applicable, the fine to be applied (in respect of the FIFA DC Decision) and the further consequences for any non-compliance. In that regard, both the Confirmation Letter and the FIFA DC Decision definitely affect the legal position of the Appellant and the First Respondent”.

58. The Panel is not persuaded by the Appellant’s submission that a statement confirming that the Sanction Proposal had become a final and binding decision and a request for the FIGC to forward the letter to the Appellant added the requisite *animus decidendi* to the Confirmation Letter.
59. The Panel also rejects the Appellant’s submission that the Confirmation Letter changed its legal position. It observes that at the time the Confirmation Letter was drafted, Article 58 of the FDC had already taken effect, and the Confirmation Letter simply confirmed that fact. The Panel considers that if any communication affected the Appellant’s legal position, it was the Sanction Proposal, which is not the object of the present appeal. To conclude, in the counterfactual where no letter had been issued, the position of the Appellant would have still remained the same; it would have had to implement the Sanction Proposal.
60. Furthermore, the Panel considers that the Confirmation Letter issued under Article 58 of the FDC as part of the FIFA disciplinary process is not the same species as a confirmation letter issued by the FIFA secretariat under the Procedural Rules. First, it observes that the processes resolve different types of disputes and consequently have different names. Article 20 of the Procedural Rules refers to “proposals” that are issued to resolve a civil dispute whereas Article 58 of the FDC provides for “sanctions proposals” in disciplinary matters. Secondly, the Panel observes that Article 20.4 of the Procedural Rules provides that if a party accepts the proposal or fails to respond within a prescribed period, it is deemed under the Procedural Rules to have accepted the proposal, and the FIFA secretariat will issue a confirmation letter, which is considered in itself to be a “*final and binding decision*”. The sanction process provided in Article 58 of the FDC does not expressly refer to a confirmation letter or state that a confirmation letter is “*a final and binding decision*” so the confirmation letter in the context of Article 20 of the Procedural Rules has a specific legal status ascribed to it in the Procedural Rules. Thirdly, the elements that were present in the confirmation letter in CAS 2021/A/8290 are not present in the Confirmation Letter with which this dispute is concerned. In the present dispute, the Confirmation Letter does not disclose a final and binding decision regarding the amount to be paid by the Appellant, and there are no references to an applicable interest rate, fine or further consequences of non-compliance. In short, the proposal process outlined in the Procedural Rules is different to the sanction process provided in Article 58 of the FDC and no analogy can be drawn to assist the Appellant in the present dispute; accordingly, the Panel rejects the Appellant’s submission that the Confirmation Letter changed its legal position.

61. The Appellant submitted that the time limit provided in the Sanction Proposal did not apply to challenges brought on the basis of FIFA's lack of jurisdiction or competence to issue the Sanction Proposal. The Panel considers that such an argument is relevant to the merits of the appeal and not the admissibility of the appeal, and it does not offer a view on whether or not Article R58 of the FDC provides a different time period for jurisdictional challenges, save to note that it was the Appellant's responsibility to respond to the Sanction Proposal in a timely manner, and if it had genuinely objected to the Respondent's competence to issue the Sanction Proposal, then it would have been prudent to do so within the prescribed period out of an abundance of caution.
62. In conclusion, and for the reasons set out above, the Panel finds that the Confirmation Letter does not contain the qualities and characteristics of a decision for the purposes of Article R47 of the Code and is not appealable, and determines, therefore, that the Appellant's appeal is inadmissible.
63. Since the appeal is inadmissible, the Panel is not required to address the merits of the appeal.
64. All other and further motions or prayers for relief are also dismissed.

IX. COSTS

65. Article R64.4 of the Code provides that:

"At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include:

- the CAS Court Office fee,*
- the administrative costs of the CAS calculated in accordance with the CAS scale,*
- the costs and fees of the arbitrators,*
- the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale,*
- a contribution towards the expenses of the CAS, and*
- the costs of witnesses, experts and interpreters.*

The final account of the arbitration costs may either be included in the award or communicated separately to the parties. It shall contain a detailed breakdown of each arbitrator's costs and fees and of the administrative costs and shall be notified to the parties within a reasonable period of time. The advance of costs already paid by the parties are not reimbursed by the CAS with the exception of the portion which exceeds the total amount of the arbitration costs."

66. In addition to the payment of the arbitration costs, the prevailing party or parties may also be granted a contribution towards their legal fees and other expenses incurred in connection with the proceedings. Article R64.5 of the CAS Code provides that:

"In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule and without

any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties.”.

67. Taking into account the procedural behaviour of the Parties and also considering that the Club’s appeal is dismissed in its entirety, the Panel is of the view that the costs of this appeal shall be borne entirely by the Appellant.
68. The Panel recalls that Article R64.5 of the Code outlines the factors to take into account when deciding which party bears the legal costs and the quantum of the contribution. These factors are: the complexity and outcome of proceedings; the conduct of proceedings; and the financial resources of the parties.
69. After an overall appreciation of the matter, the complexity and outcome of the case, a consideration of the Parties’ conduct, the legal issues and the lack of merit of the appeal, and considering that the matter was decided following a hearing at the CAS Court Office in Lausanne, the Panel determines that the Appellant shall pay to the Respondent a contribution of CHF 3,000 (three thousand Swiss Francs) towards the legal fees and other expenses incurred by the latter in relation to these proceedings.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by *Genoa Cricket and Football Club* on 13 July 2023 is inadmissible.
2. The costs of the arbitration, to be determined and served to the parties by the CAS Court Office, shall be borne by *Genoa Cricket and Football Club*.
3. *Genoa Cricket and Football Club* is ordered to pay FIFA a total amount of CHF 3,000 (three thousand Swiss francs) as contribution towards the expenses incurred in connection with these arbitration proceedings.
4. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 26 April 2024

THE COURT OF ARBITRATION FOR SPORT

Leanne O’Leary
President of the Panel

Petros Mavroudis
Arbitrator

Lars Hilliger
Arbitrator