

## Decision

of the

## FIFA Appeal Committee

Mr Thomas BODSTROM [SWE], Chairman;  
Mr Victor GARZA [MEX], Member;  
Mr Salman AL ANSARI [QAT], Member;  
Ms Larissa ZAKHAROVA [RUS], Member;

on 6 September 2019,

to discuss the case of:

SC Corinthians Paulista, Brazil

(Decision 180284 APC)

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*regarding:*

Appeal lodged by the club SC Corinthians Paulista against the decision passed by the FIFA Disciplinary Committee on 21 Decembre 2018 (Decision 180284 TMS BRA ZH)

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## I. Inferred from the file

1. On 14 January 2013, the club SC Corinthians Paulista (hereinafter also referred to as "*the Club*" or "*the Appellant*") entered a transfer instruction (ref. no. 62331) in the Transfer Matching System (hereinafter, "*TMS*") to engage the player Renato Soares de Oliveira Augusto (hereinafter, "*the Player*") permanently from the German club Bayer 04 Leverkusen (hereinafter, "*the German club*") for a fixed transfer fee amounting to EUR 3,500,000.
2. In the scope of this transfer instruction, the Appellant uploaded in TMS the transfer agreement concluded with the German club on 20 December 2012 to engage the aforementioned Player. This transfer agreement contained, amongst other, the following clause (art. 3):

*"Due to the remaining financial interest of Bayer 04 in the player Renato Augusto, SC Corinthians shall comply with the following obligation:*

*In case SC Corinthians receives an offer for the transfer of the player to another club, SC Corinthians shall inform Bayer 04 immediately about the offer and its contents. SC Corinthians is obligated to accept the offer to transfer the player, if the transfer sum amounts to EUR 8,000,000, -- or higher.*

*In case the player will be transferred to a third club, Bayer 04 is entitled [to] receive 50% of the transfer sum including all payments related to other transfer, but at least EUR 3,000,000,--. This means, in case the transfer is EUR 3.000.000,-- or lower Bayer 04 will receive the full amount. In case the transfer sum is EUR 6.000.000,-- or higher, Bayer 04 will receive 50%."*

3. Following a preliminary investigation conducted by FIFA's TMS Compliance department, disciplinary proceedings were opened against the Appellant on 26 November 2018 for possible violations of the provisions contained in the Regulations on the Status and Transfer of Players [Ed. 2012] (hereinafter, "*the RSTP*" or "*the Regulations*"). In particular, the disciplinary proceedings concerned alleged violation of the following provisions of the RSTP:
  - Art. 18bis of the RSTP for entering into a contract with the German club which enabled the latter to acquire the ability to influence the Appellant's independence and policies in transfer-related matters in relation to the Player.

- Art. 4 par. 2 of Annex 3 of the RSTP for not disclosing in TMS the following compulsory data:
    - i. Declaration on third-party payments and influence in relation to a future transfer of the Player;
    - ii. The Appellant agent's [intermediary's] name, type and commission as it appears that an agent [intermediary], Mr. Carlos Leite, assisted the Appellant in the transfer of the Player.
4. On 21 December 2018, the Disciplinary Committee passed a decision (hereinafter, "*the Appealed Decision*") against the Appellant. In particular, the Disciplinary Committee decided as follows:
1. *The club SC Corinthians Paulista is declared liable for the violation of art. 18bis of the Regulations on the Status and Transfer of Players [ed. 2012] (RSTP) for entering into a contract which enabled a third-party to acquire the ability to influence the club's independence in employment and transfer-related matters in relation to the transfer of the player Renato Soares de Oliveira Augusto.*
  2. *The club SC Corinthians Paulista is also declared liable for the violation of art. 4 par. 2 of Annex 3 of the Regulations on the Status and Transfer of Players [ed. 2012] as a result of failing to enter correct information in TMS in relation to the transfer of the player Renato Soares de Oliveira Augusto (TMS instruction. no. 62331).*
  3. *The club SC Corinthians Paulista is ordered to pay a fine to the amount of CHF 55,000. This fine is to be paid within 30 days of receipt of the ruling. Payment can be made either in Swiss francs (CHF) to the account no. 0230-325519.70J, UBS AG, Bahnhofstrasse 45, 8098 Zurich, SWIFT: UBSWCHZH80A, IBAN: CH85 0023 0230 3255 1970 J or in US dollars (USD) to the account no. 0230-325519.71U, UBS AG, Bahnhofstrasse 45, 8098 Zurich, SWIFT: UBSWCHZH80A, IBAN: CH95 0023 0230 3255 1971 U, with reference to case no. 180284 bbu.*
  4. *In application of art. 10 a) and art. 13 of the FIFA Disciplinary Code, the club SC Corinthians Paulista is warned on its future conduct. The club SC Corinthians Paulista is ordered to undertake all appropriate measures in order to guarantee that the FIFA regulations, in particular the RSTP and its provisions related to third-party influence, are strictly complied with. Should such infringements occur again*

*in the future, the FIFA Disciplinary Committee may impose harsher sanctions on the club SC Corinthians Paulista.*

*5. The costs and expenses of these proceedings amounting to CHF 3,000 shall be borne by the club SC Corinthians Paulista and be paid according to the modalities stipulated under 3. above.*

5. The terms of the Appealed Decision were notified to the Appellant on 10 January 2019. Upon request of the Appellant, the grounds of the Appealed Decision were notified on 17 April 2019.
6. On 22 April 2019, the Appellant informed the secretariat to the FIFA Appeal Committee (hereinafter, "the Secretariat") about its intention to appeal the aforementioned decision.
7. On 26 April 2019, the Appellant provided a copy of the proof of payment of the appeal fee and submitted its reasons for the appeal which can be summarized as follows<sup>1</sup>.

A) Violation of art. 18bis of the RSTP:

- i. The Appellant considered that the Disciplinary Committee made an inaccurate representation of the facts and a wrong application of the law.
- ii. In this sense, the Appellant recalled that the German club kept 50% of the Player's economic rights since the Appellant did not have the financial conditions to acquire 100% of the Player's economic rights. As a result of the subsequent transfer of the Player from the Appellant to a Chinese club for a total amount of EUR 8,000,000, the German club was entitled to receive the amount of EUR 3,000,000 directly from the Chinese club.
- iii. In particular, the Appellant contested the findings of the Disciplinary Committee, which found that the violation of art. 18bis of the RSTP did not find its essence in the amount distributed to the German club after the transfer but in the wording of clause 3 of the transfer agreement, according to which the Appellant was obliged to transfer the Player whenever the transfer offer reached the amount of EUR 8,000,000<sup>2</sup>. In view of

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<sup>1</sup> For the sake of clarity, this summary does not purport to include every single contention put forth by the Appellant. Nevertheless, the FIFA Appeal Committee has thoroughly considered in its discussion and deliberations any and all evidence and arguments submitted, even if no specific or detailed reference has been made to these arguments in the following outline of their positions and in their ensuing discussion on the merits.

<sup>2</sup> Cf. points 53 and 54 of the Appealed Decision.

this clause 3, the Disciplinary Committee considered that the mere fact of its presence in the transfer agreement represented an infraction of art. 18bis of the RSTP *per se*.

- iv. In this regard, the Appellant pointed out that despite the wording of clause 3 of the transfer agreement, it has never been forced by the German club to transfer the Player nor influenced by the latter.
- v. In addition, the Appellant argued that the German club received an amount of EUR 3,000,000, which is less than the 50% it was entitled to receive in accordance with the transfer agreement. Therefore, the Appellant firmly believed that if the German club had the ability to influence its independence in transfer-related matters, it would never have agreed to receive EUR 1,000,000 less. In other words, the Appellant claimed that the German club simply received its share because it had a financial interest in the Player, which was absolutely legal and extremely common in the football sphere.
- vi. Finally, the Appellant submitted that the wording of clause 3 of the transfer agreement shall not be taken into consideration in determining whether the Appellant committed any infringement since the German club never had any influence on the Appellant's independence in transfer-related matter, which proves that the Appellant has not infringed art. 18bis of the RSTP.

#### B) Violation of art. 4 par. 2 of the Annex 3 of the RSTP

- vii. Concerning the violation of art. 4 par. 2 of the Annex 3 of the RSTP, the Appellant pointed out that the agent, Mr Carlos Leite, assisted the Appellant and the Player in concluding the employment contract and received a commission accordingly. However, the Appellant submitted that it was not mandatory to disclose this information in TMS since Mr Leite was not involved in the conclusion of the transfer agreement between the Appellant and the German club.
- viii. Additionally, the Appellant claimed that there was no reason to declare the third-party influence in TMS since the transfer agreement did not contain any clause enabling the German club to influence the Appellant's independence in employment and transfer-related matters.
- ix. As final remark, the Appellant stressed that the transfer of the Player took place in 2012 and noted that it took almost 6 years for the Disciplinary Committee to initiate proceedings and issue a decision on this matter. Such a long period of time represents

a serious issue of legal certainty, which according to the Appellant, could not be accepted.

C) Disproportionality of the fine imposed by the Disciplinary Committee and request for relief

- x. The Appellant considered that the imposed fine was excessive and that the Disciplinary Committee failed to take into consideration mitigating circumstances such as the fact that the Appellant always collaborated and complied with all FIFA requests.
  - xi. In light of the above explanations, the Appellant requested the Appeal Committee :
    - a) To fully dismiss and annul the Appealed Decision as the Disciplinary Committee incorrectly analysed the facts and misapplied the law;
    - b) To consider the Appellant as successful party and therefore discharge the latter from the payment of all costs and expenses derived from the present proceedings;
  - xii. Alternatively and in case the above is rejected:
    - c) To amend the Appealed Decision by imposing a warning on the Appellant (art. 13 of FDC), or alternatively, a fine of the minimum amount as provided for in art. 15 of FDC; or
    - d) To reduce the fine, which should be calculated on the amount of EUR 1,500,000 representing the Appellant's financial gain in connection with the Player's transfer.
8. On 14 August 2019, the Secretariat acknowledged receipt of the two abovementioned correspondences and confirmed that the payment of the appeal fee had been duly received by FIFA.

## II. and considered

1. In view of the circumstances of the present matter, the FIFA Appeal Committee (hereinafter, "*the Committee*") first decided to address some key procedural aspects (A), before entering into the substance of the case at stake (B).

### A. PROCEDURAL ASPECTS

#### ***a) Competence of the FIFA Appeal Committee and admissibility of the Appeal***

2. Primarily, the Committee recalled that the procedural aspects of the matter at stake are governed by the 2017 edition of the FIFA Disciplinary Code (hereinafter, "*the 2017 FDC*"), in particular considering that the present appeal was lodged by the Appellant on 19 April 2019, *i.e.* while the 2017 FDC was applicable and before the entry into force of the 2019 edition of the FDC.
3. In this context, the Committee underlined that the sanctions imposed by the Disciplinary Committee through the Appealed Decision were a fine amounting to CHF 55,000 and a warning. As such, the Committee pointed out that, in accordance with art. 79 in conjunction with art. 118 of the 2017 FDC, it was competent to hear the appeal presented by the Appellant against the decision rendered by the Disciplinary Committee on 21 December 2018.
4. This having been established, the Committee acknowledged that:
  - i. the grounds of the Appealed Decision were notified on 17 April 2019;
  - ii. the Appellant communicated its intention to appeal on 22 April 2019 and;
  - iii. the latter submitted its reasons for the appeal and provided proof of payment of the appeal fee on 26 April 2019.
5. In view of this, the Committee held that the requirements of art. 120 pars. 1 and 2 and art. 123 par. 1 of the 2017 FDC have been met and therefore declared the present Appeal admissible.

**b) Applicable law**

6. In continuation, the Committee deemed that it had to determine which edition of the Regulations on the Status and Transfer of Players (RSTP) applied to the substance of the matter at stake and on which edition of the FIFA Disciplinary Code (FDC) the potential sanctions should be based.
7. In these circumstances, the Committee noted from the Appealed Decision that the Appellant was sanctioned for entering into a transfer agreement on 20 December 2012, which enabled a third-party to influence its independence and polices in transfer-related matter. The Commission further observed that the Disciplinary Committee sanctioned the Appellant for the infringement of art. 4 par. 2 of Annex 3 of the RSTP as a result of the incomplete transfer instruction entered in TMS on 14 January 2013 by the Appellant to engage the Player permanently from the German club.
8. Against this background, the Committee first observed that the version of the RSTP in force at the time of the conclusion of the transfer agreement was the 2012 edition<sup>3</sup>. Consequently, the Committee decided that the present matter should be analysed in light of the 2012 edition of the RSTP (hereinafter, "*the 2012 RSTP*") in accordance with art. 26 thereof.
9. Then, the Committee recalled that in accordance with art. 25 of the 2012 RSTP, any violation of the provisions contained therein shall be sanctioned in accordance with the FIFA Disciplinary Code. In this regard, the Committee held that the aforementioned facts occurred in December 2012 and January 2013, while the 2011 edition of the FDC was applicable<sup>4</sup>. Nevertheless, the Committee remarked that the case was decided by the Disciplinary Committee on 21 December 2018, once the 2017 edition of the FDC had already entered into force<sup>5</sup>.
10. With these elements in mind, the Committee pointed out that the 2017 edition of the FDC was applicable to facts that occurred before it entered into force provided that:
  - i. the 2017 edition of the FDC is equally favourable or more favourable for the perpetrator of the facts than the previous edition and;

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<sup>3</sup> The 2012 RSTP edition was in force from 1 December 2012 until 31 July 2014.

<sup>4</sup> The 2011 FDC edition was in force from 1 August 2011 until 31 December 2017 (cf. art. 147 par. 2 of the 2011 FDC in conjunction with art. 147 of the 2017 edition of the FDC).

<sup>5</sup> The 2017 FDC edition was in force from 1 January 2018 until 14 July 2019 (cf. art. 147 of the 2017 FDC in conjunction with art. 72 par. 1 of the 2019 edition of the FDC).



- ii. the judicial bodies of FIFA are deciding on these facts after the 2017 edition of the FDC has come into force<sup>6</sup>.
11. As far as the matter at stake was concerned, it appeared to be clear that:
  - i. the relevant facts occurred prior to the entry into force of the 2017 edition of the FDC;
  - ii. the 2011 and 2017 editions of the FDC are equally favourable insofar as the sanctions applicable to legal persons are identical. In particular, the amount of the fine ranges from CHF 300 to CHF 1,000,000 in both editions;
  - iii. the FIFA Disciplinary Committee decided on these facts after the 2017 FDC had come into force.
12. For the reasons set out above, the Committee considered that any sanction imposed on the Appellant in the present matter had to be based on the 2017 edition of the FDC.
13. This being established, the Committee subsequently went on to analyse the merits of the present case.

## **B. MERITS OF THE CASE**

14. As preliminary remarks, the Committee noted that the Appellant stressed that the transfer agreement was entered into in 2012 and that it took 6 years for the Disciplinary Committee to initiate proceedings and issue a decision. In particular, the Appellant considered that such a long period of time cannot be accepted since it puts legal certainty at stake.
15. In this regard, the Committee drew its attention to art. 42 of the 2017 FDC which provides that the limitation period for prosecution is, as a general rule, ten years. Therefore, the Committee found that the disciplinary proceedings were properly conducted as they took place within the established time limit for prosecution.
16. Then, the Committee recalled that the present proceedings resulted from a decision rendered by the FIFA Disciplinary Committee by means of which the Appellant was sanctioned for entering into an agreement, which enabled a third-party to influence its

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<sup>6</sup> Cf. art. 4 of the 2017 FDC.

independence and policies in employment and transfer-related matters and for not declaring that influence as well as Mr Leite, *i.e.* the Appellant's agent [intermediary] in the relevant transfer instruction in TMS (TMS 62331).

17. The aforementioned decision was then challenged by the Appellant who requested the Committee to set aside the Appealed Decision, or alternatively to reduce the fine imposed by the Disciplinary Committee.
18. In these circumstances, the Committee noted that a number of issues have been raised by the Appellant. In essence, the latter considered that it has never been forced by the German club to sell the Player to the Chinese club and that the German club received a share of this transfer since it had a financial interest in the player. In addition, the Appellant submitted that it was not mandatory to disclose the participation of Mr Leite in TMS since the latter was not involved in the conclusion of the transfer agreement between the Appellant and the German club. Finally, the Appellant claimed that there was no reason to declare the third-party influence in TMS since the transfer agreement did not contain any clause enabling the German club to influence its independence in employment and transfer-related matters.
19. As a result of the foregoing, the Committee considered that four questions needed to be answered in order to decide on this appeal:
  - a) What is the prohibition foreseen in art. 18bis of the RSTP?
  - b) Does the transfer agreement contain clauses contrary to art. 18bis of the RSTP?
  - c) Did the Appellant fail to enter correct information in TMS and breach art. 4 par. 2 of Annexe 3 of the RSTP?
  - d) If so, are the sanctions imposed by the Disciplinary Committee proportionate?

**a) What is the prohibition foreseen in art. 18bis of the RSTP?**

20. First of all, the Committee would like to recall the content of art. 18bis of the RSTP [ed. 2012] which reads as follows:

*"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."*

21. In this respect, the Committee pointed out that this provision primarily aimed at protecting the clubs' independence from third parties or other clubs that may have a

different interest other than the clubs' sporting activity. In particular, this provision was intended to ensure that clubs' freedom and independence in relation to recruitment and transfer-related matters were not put at stake as well as to avoid situations of conflict of interest which could lead to match manipulation and match fixing practices. In light of the above, the Committee emphasised that the overall objective of this provision was to ensure that the integrity of the game of football and its most essential values were safeguarded.

22. Bearing in mind the foregoing, the Committee noted that the Appellant considered that the Disciplinary Committee made an inaccurate representation of the facts and a wrong application of the law.
23. In this respect, the Committee wished to stress that a correct interpretation of the FIFA regulations in general, and of art. 18bis of the RSTP in particular, must show their true meaning. This is possible only through the analysis of the purpose sought, of the interest protected as well as of the legislator's intent<sup>7</sup>.
24. In this context, the Committee first pointed out that according to the wording of art. 18bis of the RSTP – *"No club shall enter into a contract which enables any other party to that contract or any third-party to acquire the ability [...]"* –, there is a passive stance: a club must not empower another entity to influence it by means of a contractual obligation, meaning that a club is in violation of article 18bis if it allows a third-party or another club to acquire the ability to exercise influence over its own decision-making process on employment or transfer-related matters
25. Secondly, the Committee referred to the jurisprudence of the Court of Arbitration for Sport (CAS) which has shed some light on the notion of "influence"<sup>8</sup>. In this regard, CAS ruled that the prohibition contained in art. 18bis of the RSTP applied whenever any other party to that contract or any third-party was granted the real ability to effect on, determine or impact the behaviour or conduct of the concerned club in relation to employment and transfer-related matters in such a way as to restrict the club's independence or autonomy in such matters.
26. Consequently, the Committee considered that a club is breaching art. 18bis of the RSTP every time it enters into an agreement that enables a third-party – natural or legal person – to have a real ability to effect on, determine or impact the behaviour or conduct of the

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<sup>7</sup> CAS 2008/A/1673; CAS 2009/A/1810; CAS 2009/A/1811; CAS 2017/A/5173.

<sup>8</sup> CAS 2017/A/5463.

club in employment and transfer-related matters or the performance of its team, and therefore influence the club's independence and policies in these matters. Furthermore, the Committee emphasised that the mere fact that such a clause is included in an agreement is an infringement *per se* and it is therefore irrelevant whether any influence has actually been exercised or not.

27. The regulatory content of art. 18bis of the RSTP being established, the Committee analysed then whether the Disciplinary Committee had properly applied the above outlined principles to the case at hand.

***b) Does the transfer agreement contain clauses contrary to art. 18bis of the RSTP?***

28. As starting point, the Committee recalled that following an appeal against a decision initially decided by the Disciplinary Committee, the Committee has the power to review the Appealed Decision but is prevented from amending it to the detriment of the Appellant<sup>9</sup>. Consequently, the Committee held that only clauses for which the Appellant was found by the Disciplinary Committee in violation of art. 18bis of the RSTP can be analysed.
29. In this respect, the Committee took note from the Appealed Decision that clause 3 of the transfer agreement was considered by the Disciplinary Committee to be contrary to art. 18bis of the RSTP since it entitled the German club to influence the Appellant. In particular, the Disciplinary Committee pointed out that should the Appellant receive a transfer offer amounting to EUR 8,000,000 (or more), the latter had not only to inform the German club immediately, but it was obliged to transfer the Player irrespective of its sporting interest in keeping the Player. As a result, the Disciplinary Committee unanimously found that a fully independent club would not be subject to such an obligation, which directly impacted the transfer-related matters, the independence, the policy, and in general, its functioning as a football club.
30. In continuation, the Committee acknowledged that the Appellant contested the aforementioned conclusion of the Disciplinary Committee and considered that this clause did not breach art. 18bis of the RSTP. In particular, the Appellant submitted that the German club received the amount of EUR 3,000,000 because it had a financial interest in the Player, which was absolutely legal and extremely common in the football sphere. In addition, the Appellant argued that it has never been forced to sell the Player and that

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<sup>9</sup> Cf. art. 124 par 1 of the 2017 FDC in conjunction with art. 125 par. 2 of the 2017 FDC.

the German club received less than the amount it was entitled to receive in accordance with the transfer agreement.

31. In this context, the Committee observed that clause 3 of the transfer agreement clearly indicated, amongst other, that the Appellant had to accept the offer of a club wishing to engage the Player when the offer amounted to EUR 8,000,000, -- or more.
32. Against this background, the Committee referred to the aforementioned clarifications concerning the regulatory content of art. 18bis of the RSPT and recalled that a club is in breach of art. 18bis of the RSPT whenever it enters into an agreement that allows a third-party to have a real ability to effect on, determine or impact the behaviour or conduct of the club in employment and transfer-related matters or the performance of its team. The Committee further reiterated that the inclusion of such a clause in an agreement constitutes an offence in itself, and that it is therefore irrelevant whether or not influence was actually exercised.
33. In light of the foregoing, the Committee rejected the arguments of the Appellant and confirmed that clause 3 of the transfer agreement contravenes art. 18bis of the RSTP since it was evident that this clause not only impacted on the Appellant's conduct but also determined the behaviour the latter had to adopt when facing a transfer offer exceeding EUR 8,000,000.

***c) Did the Appellant fail to enter correct information in TMS and breached art. 4 par. 2 of Annexe 3 of the RSTP?***

34. In this context, the Committee first stressed that the objective of the creation of TMS was to enable a better safeguard of the FIFA values and to improve the credibility and transparency of the entire transfer system.
35. The Committee then recalled that a club wishing to internationally transfer a player had to enter a transfer instruction in TMS and to provide several information. In particular, the Committee noted that art. 4 par. 2 of Annex of the RSTP clearly indicated that "*Clubs must provide the following compulsory data when creating instructions, as applicable:*
  - *Club agent's name, type and commission*
  - *[...]*
  - *Player intermediary's name*
  - *[...]*
  - *Declaration on third-party payments and influence [...]*".

36. In this regard, the Committee observed that the Disciplinary Committee found the Appellant in breach of art. 4 par. 2 of Annex 3 of the RSTP since the latter:
- i. Omitted to declare in TMS the involvement of Mr. Leite as agent/intermediary of the Appellant and/or of the Player and;
  - ii. Falsely declared that there was no third-party influence in the scope of the transfer of the player Renato Soares de Oliveira Augusto.
37. In what concerned the failure to upload the declaration on third-party payments and influence, the Committee took note that the Appellant considered that there was no reason to declare that influence in TMS since the transfer agreement did not contain any clause conflicting with art. 18bis of the RSTP.
38. In this respect, the Committee would like to point out that it has already been demonstrated that the Appellant infringed art. 18bis of the RSTP by entering into a contract that enabled a third-party to influence its independence and policies in employment and transfer-related matters. Consequently, the Committee held that the Appellant had to disclose this third-party influence in TMS, which in light of the Appealed Decision and the Appellant's submission, has not been done.
39. In light of the foregoing, the Committee could at this stage already confirm that the Appellant failed to upload the declaration on third-party payments and influence in TMS and, as a result breached art. 4 par. 2 of Annex 3 of the RSTP.
40. Nevertheless, the Committee also addressed the Appellant's failure to declare in TMS the involvement of Mr. Leite as agent/intermediary of the Appellant and/or of the Player.
41. In this respect, the Committee acknowledged that the Appellant admitted that Mr Leite assisted the Appellant and the Player in concluding the employment contract and received a commission accordingly. However, the Appellant submitted that it was not mandatory to disclose this information in TMS since Mr Leite was not involved in the conclusion of the transfer agreement between the Appellant and the German club.
42. In these circumstances, the Committee first observed that the wording of art. 4 par. 2 of Annex 3 of the RSTP does not indicate in which context the information related to agents/intermediaries have to be disclosed in TMS. Nevertheless, the Committee considered that the context in which an agent/intermediary assists the parties – either in the conclusion of the employment contract or in the signature of the transfer agreement

– is irrelevant as long as this person was the agent/intermediary of the player or the club. In particular, the Committee found that it was only in this way that the credibility and transparency of the entire transfer system could be improved.

43. Referring to the case at hand, the Committee noticed that Mr Leite played a major role in the conclusion of the transfer in scrutiny and even received a commission from the Appellant for his services. As a result, the Committee found that Mr Leite was *de facto* the Appellant's agent/intermediary and that this information should have been disclosed in TMS, which the Appellant failed to do, thereby breaching art. 4 par. 2 of the Annex 3 of the RSTP.
44. In light of all the foregoing, the Committee confirmed the Disciplinary Committee's conclusions with respect to the violation by the Appellant of art. 4 par. 2 of Annex 3 of the RSTP.

***d) If so, are the sanctions imposed by the FIFA Disciplinary Committee proportionate?***

45. Having established that the Appellant breached the aforementioned provisions, the Committee subsequently noted that the Appellant considered that the sanctions imposed in the Appealed Decision were disproportionate and that mitigating circumstances, such as the fact that it always collaborated and complied with all FIFA requests, had not been taken into account.
46. Against such background, the Committee went on to analyse whether the sanctions imposed by the Disciplinary Committee, namely a fine of CHF 55,000 and a warning, were proportionate to the offences committed.
47. In this respect, the Committee recalled the jurisprudence of CAS according to which a decision-making body fixing the level of pecuniary sanctions should, amongst others, take into consideration the following elements: (a) the nature of the offence; (b) the seriousness of the loss or damage caused; (c) the level of culpability; (d) the offender's previous and subsequent conduct in terms of rectifying and/or preventing similar situation; (f) the applicable case law and (g) other relevant circumstances<sup>10</sup>.
48. In light of the foregoing, the Committee observed that the Appellant infringed multiple provisions of the RSTP which aim at protecting i) clubs' freedom and independence in

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<sup>10</sup> CAS award 2014/A/3813.

relation to recruitment and transfer-related matters ii) and the credibility and transparency of the entire transfer system. In other words, these provisions intend to protect one of the FIFA objectives which is to *“to promote integrity, ethics and fair play with a view to preventing all methods and 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”<sup>11</sup>.*”

49. In this regard, the Committee wished to endorse the developments of the Appealed Decision in the sense that any possible situation where a third-party acquired a possibility to directly influence a club in its employment and transfer-related matters should not be tolerated and is absolutely forbidden. In particular, the Committee reiterated that clubs are responsible to assure that the provisions contained in the RSTP are duly respected and to ensure that no third-party acquires a possibility to directly influence them in such areas. Likewise, the Committee found that a failure to upload correct information in TMS is also a serious breach of the RSTP as it jeopardizes the transparency and credibility of international transfers and hinders the possibility of the football authorities to have a more effective monitoring of international transfers.
50. As a result and bearing in mind the seriousness of the provisions infringed, the Committee unanimously found that the fine imposed is not disproportionate and is a deterrent sanction to avoid unacceptable conducts such as the one at hand. Additionally, the Committee emphasized that contrary to the Appellant’s view, there were not mitigating circumstances which could justify a lower sanction. In particular, the Committee noted that the Appellant claimed that it always collaborated and replied to FIFA’s requests. In this respect, the Committee found that the Appellant simply exercised its right to be heard by submitting its position. Nonetheless, the Committee held that this could not be regarded as a mitigating circumstance.
51. Consequently, the Committee deemed that the Disciplinary Committee properly took into consideration the facts and circumstances of the case and correctly applied the principle of proportionality when deciding on the sanctions to be imposed.

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<sup>11</sup> Cf. art. 2 lit g) of the FIFA Statutes.



### **C. CONCLUSION**

52. Bearing in mind all the foregoing, the FIFA Appeal Committee concluded that the decision taken by the FIFA Disciplinary Committee on 21 December 2018 is to be confirmed in its entirety, namely the fine amounting to CHF 55,000, the warning and the costs of the proceedings to the amount of CHF 3,000.

### **D. COSTS**

53. The Committee decided based on art. 105 par. 1 of the 2017 FDC that the costs and expenses of these proceedings amounting to CHF 3,000 shall be borne by the Appellant.
54. In this sense, the Committee noted that the Appellant had already paid the appeal fee of CHF 3,000 and decided that the aforementioned costs and expenses of the proceedings are set off against this amount.

### **III. has therefore decided**

1. The FIFA Appeal Committee found the club SC Corinthians Paulista responsible for the infringement of the relevant provisions of the Regulations on the Status and Transfer of Players related to third-party influence on clubs (art. 18bis) and to the obligations of clubs with respect to the TMS (art. 4 par. 2 of Annex 3).
2. The appeal lodged by the club SC Corinthians Paulista is rejected and the decision of the FIFA Disciplinary Committee passed on 21 December 2018 is confirmed in its entirety.
3. The costs and expenses of the proceedings amounting to CHF 3,000 are to be borne by the club SC Corinthians Paulista. This amount is set off against the appeal fee of CHF 3,000 already paid by the club SC Corinthians Paulista.

FÉDÉRATION INTERNATIONALE  
DE FOOTBALL ASSOCIATION



Thomas Bodstrom  
Chairman of the FIFA Appeal Committee

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## **LEGAL ACTION**

According to art. 58 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision. Within another 10 days following the expiry of the time limit for filing the statement of appeal, the appellant shall file a brief stating the facts and legal arguments giving rise to the appeal with the CAS.

The full address and contact numbers of the CAS are the following:

Avenue de Beaumont 2  
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