Arbitration CAS 2008/A/1634 Hertha BSC GmbH & Co KgaA v. Football Association of Serbia, award of 17 December 2008

Panel: Mr. José Juan Pintó Sala (Spain), President; Mr. Michele Bernasconi (Switzerland); Mr. Pantelis Dedes (Greece)

Football
Release of Players for the Men's Olympic Football Tournament Beijing 2008
Conditions for the qualification of a decision as an appealable decision before CAS
Purely informative letter not prejudicing any future decision on the matter

1. **The existence of a decision does not depend on the form in which it is issued and thus a communication made in the form of a letter may also constitute a decision subject to appeal before CAS. A communication intending to be considered a decision shall contain a unilateral ruling sent to one or more recipients and tending to affect the legal situation of its addressee or other parties. If a body refuses without reasons to issue a decision or delays the issuance of a decision beyond a reasonable period of time, there can be a denial of justice, opening the way for an appeal against the absence of a decision. A decision from FIFA or one of its juridical bodies not to open a disciplinary procedure – or the mere absence of any reaction – must therefore be considered as a decision which is final within FIFA. It is thus subject to an appeal with CAS. There can also be a decision where the body issues a ruling as to the admissibility or inadmissibility of a request, without addressing the merits of such request.**

2. **It is not considered as a decision appealable before CAS a letter which does not contain any formal decision of a body of FIFA, but only an opinion of the administration of the latter, so long as it has a purely informative character and does not prejudice any decision which could be taken in the future by any deciding body of FIFA in the matter in question or in a similar matter: so long as FIFA is stating in its letters that it is not in a position to intervene in the matter submitted by the Club in the way it has been submitted, but leaves the door open to deal with the case if appropriately filed before its bodies, this does not constitute a situation of strict and final denial of justice eventually challengeable before CAS.**

Hertha BSC GmbH & Co KgaA ("Club" or the "Appellant") is a German football club with seat in Berlin (Germany), affiliated to the German Football Association.

Football Association of Serbia ("FAS" or the "Respondent") is a national football association with its seat in Belgrade (Serbia) and is affiliated to Fédération Internationale de Football Association (FIFA).

The elements set out below are a summary of the main relevant facts, as established by the Panel on the basis of the written submissions of the parties and the exhibits produced. Additional facts may be set out, where relevant, in the legal considerations of the present order.

In July 2008 Gojko Kacar, player of Serbian nationality rendering his services for the Club and at that time aged below 23 years ("Player"), was selected by the national football team of Serbia to play in the Olympic Games to be celebrated in August 2008 in Beijing (OG).

On 23rd July 2008 FIFA issued Circular 1153 which relevant terms read as follows:

> *"Release of Players for the Men's Olympic Football Tournament Beijing 2008.*
>
> *We refer to the above mentioned issue, which has apparently led to a certain amount of confusion as to whether players have to be released for Men's Olympic Football Tournament Beijing 2008. [...]*
>
> *Regarding the release of players under the age of 23, the football family has always agreed that these players shall be released for the Men's Olympic Football Tournament. This principle has always been accepted in the past and never called into question.*
>
> *In this respect, please note that according to article 1 paragraph 2 of the Annexe 1 of the Regulations on the Status and Transfer of Players, the release of players for international duties is mandatory for matches on dates listed in the coordinated international match calendar.*
>
> *However, the Men's Olympic Football Tournament Beijing 2008 was deliberately not officially included in the coordinated international match calendar. This is based on the fact that the introduction of the Men's Olympic Football Tournament would not be congruent with the said calendar. Due to its unique character, the Men's Olympic Football Tournament has always been internationally treated differently. However, this does not mean that there is not release obligation for the relevant clubs.*
>
> *In view of the importance of Men's Olympic Football Tournament for the entire sporting movement in general and football in particular, and given the specific nature of the event, as well as on the basis of customary law, the release of players below the age of 23 has therefore always been mandatory for all clubs. The same principle shall apply for Beijing 2008.*
>
> *In fact, it would appear to be against the spirit of the Olympic regulations to hinder players under the age of 23, who are actually the core of the squads participating in the Men's Olympic Football Tournament, to take part in the final phase of the event.*
>
> *For the avoidance of doubt, please be informed that the release of players over the age of 23 (i.e. the three out-of-quota players who are eligible for the final phase of the Men's Olympic Football Tournament) is not compulsory, but as always, we appeal for solidarity within the football family".*

On 24th July 2008 the Club sent a letter to the Player confirming its decision not to release him for the OG and warning him about the breach of his employment contract in which he would incur if he joined his national team in Beijing. The mentioned letter reads as follows:

"Dear Mr. Kacar / dear Gojko,

Referring to the previous correspondence with the Football Association of Serbia we would like to inform you again that we are furthermore convinced not to be bound to release you for the Olympic Games. Also the FIFA-circular Nr. 1153 which has been published yesterday will not change our legal opinion.

Once again we confirm that Hertha BCS will definitely not release you for the Olympic Games.

Insofar, we would like to point out that you will break your contractual obligations when not participating in training and matches for Hertha BSC but follow the nomination of the Football Association of Serbia without the approval of Hertha BSC.

Additionally you risk to lose your insurance protection if you should participate in the Olympic Games without our approval.

Finally we herewith inform you that Hertha BSC will reserve the right to claim for compensation against Football Association of Serbia if they will not cancel you from the Olympic Squad List".

In spite of the above mentioned the Player finally left Germany and joined his national team to take part in the OG.

On 29th July 2008 the Emergency Committee of FIFA issued the following statement:

"The Emergency Committee was contacted to deliberate about the obligation of clubs to release their under 23 aged players for the Olympic Football Tournaments, since this issue apparently led to a certain amount of confusion in connection with the Olympic Men Football Tournament Beijing 2008. […]

In addition the FIFA Emergency Committee also confirmed referring to the longstanding and undisputed practice existing since 1988, that the application of customary law is justified.

Finally, the Emergency Committee unanimously concluded that an obligation for clubs to release their players for the Olympic Football Tournament exists. Congruously, the same applies for the Olympic Men Football Tournament Beijing 2008".

On 6th August 2008 the award in the cases CAS 2008/A/1622, 1623 & 1624 FC Schalke 04, Werder Bremen & FC Barcelona v. FIFA concerning the release of certain players (Rafinha, Diego and Lionel Messi) for the OG was issued. In such award it was stated that the three claimant clubs had not legal obligation to release the mentioned players for the OG.

On 7th August 2008 the Club made an offer to the FAS by virtue of which the Club would release the Player to play in the OG in exchange of the payment of certain amounts and the subscription of certain insurances. The FAS did not respond to this offer.

On 11th August 2008 the Club filed a claim before FIFA against the FAS asking for the following pleadings:

*"1. Defendant is prohibited forthwith from engaging, let it be by preparatory training or during tournament matches, Gojko Kacar ("**Player**") as a member of the Serbian Olympic National Football Team during the XXIX Olympic Tournament – Beijing 2008 – ("**Olympic Games**");*

2. Defendant is ordered to release the Player from any call-up or duty to participate as a member of the Serbian Olympic National Football Team during the Olympic Games and to send the Player back to the Claimant immediately;

3. As a sanction, the Defendant has to pay for every calendar day Defendant is engaging, let it be preparatory training or during tournament matches, the Player as a member of the Serbian Olympic National Football Team during the Olympic Games and not releasing the Player from any call-up or duty in violation of the prohibition, a net amount of EURO […] to the charitable foundation Hertha BSC Berlin-Stiftung and impose appropriate further sanctions to discipline the Defendant; and

4. As a sanction, the Defendant has to pay for every calendar day Defendant has engaged, let it be preparatory training or during tournament matches, the Player as a member of the Serbian Olympic National Football Team since July 23, 2008 and until the prohibition as applied for by Claimant under No. 1 has been finally decided, the net amount of EURO […] to the charitable foundation Hertha BSC Berlin-Stiftung and impose appropriate further sanctions to discipline the Defendant".

On 12th August 2008 FIFA sent to the Club a letter signed by FIFA's Head of Legal Affairs and FIFA's Head of Player Status in which it was stated that FIFA was not in a position to intervene in the matter submitted by the Club:

"(…) Considering the contests of your correspondence, it appears that the request made by the club Hertha BSC against the Football Association of Serbia are without exception based on the presumption that the Serbian player Gojko Kacar, by staying with the Serbian U23-Association team at the Men´s Olympic Football Tournament in Beijing, is in breach of his employment related duties towards the club Hertha BSC.

However, neither is such a breach of contract established by a final and binding decision of any possible competent deciding body, nor do you seem to be intending to lodge a claim against the player in question for breach of contract by means of your current correspondence.

Consequently, and as an employment contract may create rights and obligations only inter partes, as a general rule, a claim based on the alleged breach of an employment contract cannot be made against a third party that is not party to the employment contract concerned. Such third-party effect is not vindicable.

Furthermore, we understand that you base your claim also on provisions of the Regulations on the Status and Transfer of Players related to the late return of a player after a rightful release for international duties. The relevant provisions are not meant to be applied in cases where an obligation to release the player does not exist.

In view thereof, we do not appear to be in a position to intervene on behalf of Hertha BSC in the present matter.

We thank you for taking note of the above and trust in your understanding of the situation".

In light of the above mentioned, on 12th August 2008 the Club filed an appeal before CAS against the mentioned letter of FIFA (which the Club considered and called a "decision"), requesting the CAS to set it aside and to grant to the Club the pleadings made before FIFA the day before, which were reproduced *mutatis mutandis* before CAS.

On 14th August 2008 the Club filed its appeal brief in which it requested CAS to render an award in the following terms:

I. The decision of FIFA PSC not to render a decision is set aside.

II. By engaging, let it be preparatory training or during tournament matches, Gojko Kacar ("Player") as a member of the Serbian Olympic National Football Team during the XXIX Olympic Tournament – Beijing 2008 – ("Olympic Games") Respondent violated FIFA Rules and Regulations.

III. As sanction for the violation of FIFA Rules and Regulations the Respondent is ordered to pay for every calendar day since July 21, 2008 and until the date on which the player resumes service with Appellant an amount in EURO´s to be determinated by CAS and payable to the charitable trust – Hertha BSC Berlin-Stiftung, Berlin, Deutschland – due upon expiry of the third day since the decision in this matter was announced to the parties.

IV. As compensation the Respondent is ordered to pay for every calendar day since July 21, 2008 and until the date on which the Player resumes service with Appellant to Appellant the amount of EURO […] plus travelling expenses of the Player in the amount of EURO […] due upon expiry of the third day since the decision in this matter was announced to the parties.

V. The costs of the proceedings shall be born by the Respondent.

VI. The legal and other costs incurred in connection with this arbitration shall be born by the Respondent.

Also on 14th August 2008 the FAS sent a letter to CAS opposing to the appeal filed by the Club in the following terms:

"Further to your letter of yesterday and appeal we received from the club Hertha BSC, by this we state that the appeal stated by the German club Hertha BSC against our Association is not legally grounded.

Therefore, we would like to emphasise that in the above-mentioned case our Association has not broken any of the FIFA and CAS decisions, as well as of the FIFA Regulations Governing Status and Transfer of Players.

Also, it is an undisputable fact that our Association and Hertha BSC have no contractual relationship from which a dispute could arise.

Considering the player Gojko Kacar, he will be at disposal of the German club Hertha BSC already today, till 20:00 hs.

We also want to remind Hertha BSC that, FIFA Regulations Governing Status and Transfer of Players, Annex 1, art. 2 state that the club releasing a player has no right to financial compensation.

Due to all above stated, we are kindly asking you to reject the appeal of the German club Hertha BSC as unfounded".

On 8th September 2008 the FAS filed its answer to the appeal.

On 9th September 2008 the Club filed before CAS new written submissions aiming to modify Section IV of the *petitum* made in its Appeal Brief, as the Club had not considered in the calculation of the compensation mentioned therein certain documents ruling the relationship between the Club and the Player.

On 4th November 2008 FIFA declared not to be interested in intervening in the present procedure. Notwithstanding this, FIFA pointed out that the letter in which the Club grounded its appeal was not a decision of the FIFA bodies but a mere letter of the administration of FIFA of informative nature, which implies that the appeal is inadmissible according to article R47 of the CAS Code of Sports-related Arbitration (the CAS Code).

LAW

Applicable law

1. Article R58 of the CAS Code states the following:

   "The Panel shall 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".

2. Article 62.2 of the FIFA Statutes states the following:

   "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".

3. According to the mentioned provisions, FIFA rules and additionally Swiss Law are applicable to this case.

4. Therefore the Panel considers that the present dispute shall be resolved according to FIFA rules and additionally to Swiss Law.

5. In the present case the Panel deems necessary to primarily decide on the admissibility of the appeal, specially as regards of the letter of FIFA dated 4 November 2008, which relevant part reads as follows:

   "In this respect, we would like to underline that contrary to the wording of your aforementioned correspondence, the subject of the present appeal in question is not to be considered as a decision of a body of FIFA, but as a letter of the administration of FIFA, which has purely informative and non-prejudicing content. As a matter of fact, the letter at stake does not contain any formal decision of a body of FIFA, but only an opinion of the administration of the latter, and its contents have a purely informative character that do not prejudice any decision which could be taken in the future by any deciding body of FIFA in this or in a similar matter. Consequently, and considering art. R47 par. 1 of the Code, according to which "An appeal against the decision of a federation, association or sports-related body may be filed with the CAS" (emphasis added), the

present appeal cannot be considered as admissible and therefore must be rejected, as it is not directed against a formal decision of FIFA".

6. The admissibility of an appeal before CAS shall be examined in light of article R47 of the CAS Code, which reads as follows:

"An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as 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. [Emphasis added]

An appeal may be filed with the CAS against an award rendered by the CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules applicable to the procedure of first instance".

7. This article clearly stipulates that the appeals before CAS shall be lodged against a decision of a federation, association or sports-related body.

8. The same general principle is gathered in article 63.1 of the FIFA Statutes, which states that:

"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question". [Emphasis added]

9. In view of the above mentioned the Panel shall determine if the letter of FIFA dated 12 August 2008 shall be considered an appealable or not.

10. For such purpose the Panel deems convenient to firstly recall the jurisprudence of CAS regarding the concept of "decision".

The general principles that can be extracted from CAS jurisprudence in this respect are mainly the following:

a) The existence of a decision does not depend on the form in which it is issued. For instance, in the awards of the cases CAS 2005/A/899 & 2007/A/1251 it is stated that:

"[…] the form of a communication has no relevance to determine whether there exists a decision or not. In particular, the fact that the communication is made in the form of a letter does not rule out the possibility that it constitutes a decision subject to appeal". [Emphasis added]

b) A communication intending to be considered a decision shall contain a ruling tending to affect the legal situation of its addressee or other parties. This position is held, among others, in the following awards:

- CAS 2005/A/899 & 2007/A/1251:

"In principle, for a communication to be a decision, this communication must contain ruling, whereby the body issuing the decision intends to affect the legal situation of the addressee of the decision or other parties". [Emphasis added]

- CAS 2004/A/659:

  "35. The Panel has thus to consider if the letter of 5 July 2005 constitutes a decision in the sense of the code, susceptible to an appeal to the CAS, which is a necessary condition to the jurisdiction of the CAS to rule in the present matter.

  36. According to the definition of the Federal Tribunal, "the decision is an act of individual sovereignty addressed to an individual, by which a relation of concrete administrative law, forming or stating a legal situation, is resolved in an obligatory and constraining manner. The effects must be directly binding both with respect to the authority as to the party who receives the decision". (cf. ATF 101 Ia 73).

  A decision is thus an unilateral act, sent to one or more determined recipients and is intended to produce legal effects". [Emphasis added]

- CAS 2004/A/748:

  "In light of the above CAS precedents, the Panel finds that the IOC President's letter of 23 September 2004 contained in fact a clear statement of the resolution of the disciplinary procedure against Mr Hamilton. That statement had the additional effect of resolving the matter in respect of all interested parties: "the Disciplinary Commission [...] is being dissolved, and the IOC will not be pursuing sanctions regarding this matter". As a consequence of this ruling, the anti-doping case against Mr Hamilton was closed and Mr Hamilton could retain his gold medal; at the same time the other competitors (and in particular Mr Ekimov and Mr Rogers) could not benefit from the possible disqualification of Mr Hamilton. In other words, the legal situations of the addressee and of the other concerned athletes were materially affected. [Emphasis added]

  It seems also evident from the text of the letter (the "IOC hereby informs you" and "the IOC will not be pursuing sanctions") that the IOC President intended such communication to be a decision issued on behalf of the IOC.

  Accordingly, the Panel has no hesitation in finding that the IOC President's letter dated 23 September 2004 – without taking position on whether this Presidential action was within his powers or not – is a true "decision" of the IOC (hereinafter referred to as the "Decision of 23 September 2004") and, thus, can be appealed under Art. R47 of the Code".

c) A ruling issued by a sports-related body refusing to deal with a request can be considered a decision under certain circumstances. This principle has been recognised, among others, in the following awards:

- CAS 2007/A/1251:

  "The Panel finds that by responding in such manner to ARIS' request for relief, FIFA clearly manifested it would not entertain the request, thereby making a ruling on the admissibility of the request and directly affecting ARIS' legal situation. Thus, despite being formulated in a letter, FIFA's refusal to entertain ARIS' request was, in substance, a decision". [Emphasis added]

- CAS 2005/A/994:

  "As this Panel already stated in its decision of 15 July 2005, if a body refuses without reasons to issue a decision or delays the issuance of a decision beyond a reasonable period of time, there can be a denial of justice, opening the way for an appeal against the absence of a decision

(CAS/A/899; see also CAS award of 15 May 1997, published in Digest of CAS Awards 1986-1998, p. 539; see also Jan Paulsson, Denial of justice in international law, Cambridge University Press, New York 2005, pp. 176-178). […] [Emphasis added]

A decision from FIFA or one of its juridical bodies not to open a disciplinary procedure – or the mere absence of any reaction – must therefore be considered as a decision which is final within FIFA. It is thus subject to an appeal with CAS. […] [Emphasis added]

According to Swiss case law, there can be a denial of justice (so-called "substantive" denial of justice - déni de justice matériel") even after a decision has been issued, if such decision is arbitrary, i.e. constitutes a very serious breach of a statutory provision or of a clear and undisputable legal principle, or when it seriously offends the sense of justice and equity". [Emphasis added]

- CAS 2005/A/899:

  "In principle, for a communication to be a decision, this communication must contain ruling, whereby the body issuing the decision intends to affect the legal situation of the addressee of the decision or other parties. However, there can also be a decision where the body issues a ruling as to the admissibility or inadmissibility of a request, without addressing the merits of such request". [Emphasis added]

11. Based on the above, the Panel believes that an appealable decision of a sport association or federation *"is normally a communication of the association directed to a party and based on an* 'animus decidendi'*, i.e. an intention of a body of the association to decide on a matter […]. A simple information, which does not contain any 'ruling', cannot be considered a decision"*. (BERNASCONI M., When is a 'decision' an *appealable* decision?, in: RIGOZZI/BERNASCONI (eds.), The Proceedings before the CAS, Bern 2007, p. 273).

12. The Panel shall therefore consider these general principles and apply them to the present case.

13. In the referred task the Panel deems important to check the content of the following exhibits produced to the CAS file:

A) The letter of FIFA dated 12 August 2008 itself, which relevant part reads as follows:

"Considering the contents of your correspondence, it appears that the requests made by the club Hertha BSC against the Football Association of Serbia are without exception based on the presumption that the Serbian player Gojko Kacar, by staying with the Serbian U23-Association team at the Men´s Olympic Football Tournament in Beijing, is in breach of his employment related duties towards the club Hertha BSC.

However, neither is such a breach of contract established by a final and binding decision of any possible competent deciding body, nor do you seem to be intending to lodge a claim against the player in question for breach of contract by means of your current correspondence.

Consequently, and as an employment contract may create rights and obligations only inter partes, as a general rule, a claim based on the alleged breach of an employment contract cannot be made against a third party that is not party to the employment contract concerned. Such third-party effect is not vindicable.

Furthermore, we understand that you base your claim also on provisions of the Regulations on the Status and Transfer of Players related to the late return of a player after a rightful release for international duties. The relevant provisions are not meant to be applied in cases where an obligation to release the player does not exist.

In view thereof, we do not appear to be in a position to intervene on behalf of Hertha BSC in the present matter".

B) The letter of FIFA to CAS dated 4 November 2008 intending to justify the inadmissibility of the present appeal, which pertinent part reads as follows:

"[…] the subject of the present appeal in question is not to be considered as a decision of a body of FIFA, but as a letter of the administration of FIFA, which has purely informative and non-prejudicing content. The letter at stake does not contain any formal decision of a body of FIFA, but only an opinion of the administration of the latter, and that its contents have a purely informative character that do not prejudice any decision which could be taken in the future by any deciding body of FIFA in this or in a similar matter. Consequently, and considering art. R47 par. 1 of the Code, according to which "An appeal against the decision of a federation, association or sports-related body may be filed with the CAS" (emphasis added), the present appeal cannot be considered as admissible and therefore must be rejected, as it is not directed against a formal decision of FIFA".

14. It appears from the letter of 12 August 2008 that FIFA indeed declares that it is not in a position to intervene in the case, which *prima facie* and in abstract could be understood as an absence of decision (or as a refusal to deal with a request) likely to be appealed before CAS according to the above examined CAS jurisprudence.

15. However the Panel understands that such a simplistic position cannot be held in the present case if a careful and accurate interpretation of the entire contents and considerations of the mentioned letter (and of the letter of 4 November 2008) is made.

16. The Panel is of the opinion that in the referred letters of 12 August and 4 November 2008, FIFA does not close the possibility of dealing with the case concerning the departure of the Player from the Club's discipline to take part in the OG with his national team. To the contrary, FIFA expressly recognises in its letter of 4 November 2008 that the contents of the letter of 12 August *"do not prejudice any decision which could be taken in the future by any deciding body of FIFA in this or in a similar matter".*

17. In other words, the Panel understands that in the mentioned letters, FIFA is not stating that there is no other recourse for the Club within FIFA to deal with the consequences derived from the Player having left his Club to join his national team in Beijing, or that the Club must submit its claims and petitions arising from it before another body or institution. If this were the case, it could be possibly contended that a ruling affecting the legal situation of the Club (i.e. a decision, or rather a "non-decision") exists. In the Panel's opinion, what FIFA is actually stating in these letters is that it is not in a position to intervene in the matter submitted by the Club in the way it has been submitted, but leaves the door open to deal with the case if appropriately filed before its bodies. And this, in the Panel's view, makes the

difference with a situation of strict and final denial of justice eventually challengeable before CAS.

18. The above mentioned grounds lead the Panel to consider that the letter of FIFA dated 12 August 2008:

    i) is not a ruling materially affecting the legal situation of the parties (i.e. a decision), and

    ii) does not constitute an absence of ruling where there should have been a ruling (i.e. denial of justice).

19. It is true that FIFA declares in the referred letter that it is not in a position to intervene on behalf of the Club in the matter as submitted by it, but in the Panel's view, and as expressly acknowledged by FIFA, the Club is not at all prevented from instituting the appropriate legal proceedings before FIFA to exercise any rights and actions derived from the fact of the Player having left the Club to join his national team to take part in the OG. Rather, the letter of FIFA dated 12 August 2008 does simply *inform* the Appellant that FIFA seems not to be in position to intervene yet, but may be in such a position once Appellant has followed the procedure available to it.

20. Therefore the letter of FIFA dated 12 August 2008 is not a decision. Based on article R47 of the CAS Code and on article 63.1 of the FIFA Statutes, the present appeal shall be declared inadmissible.

21. This conclusion, finally, makes it not necessary for the Panel to consider the other requests submitted by the parties to the Panel. Furthermore, all other prayers for relief are rejected.

The Court of Arbitration for Sport rules:

1. The appeal filed by Hertha BSC GmbH & Co KgaA with regard to the letter of FIFA dated 12 August 2008 is inadmissible.

2. All other prayers for relief are dismissed.

3. The arbitration procedure CAS 2008/A/1634 Hertha BSC GmbH & Co KgaA v. Football Association of Serbia is removed from the CAS roll.

(…)