

CAS 2020/A/7090 Club Universidad de Guadalajara, Venados FC Yucatán & CF Correcaminos v. Federación Mexicana de Fútbol & Mexican Liga MX/Liga Ascenso MX

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr Roberto **Moreno Rodríguez Alcalá**, Attorney-at-Law, Asunción, Paraguay
Arbitrators: Mr Juan Pablo **Arriagada**, Attorney-at-Law, Santiago, Chile
Mr Jeffrey A. **Mishkin**, Attorney-at-Law, New York, USA

in the arbitration between

Club Universidad de Guadalajara, Guadalajara, México

as First Appellant

Venados FC Yucatán, Yucatán, México

as Second Appellant

and

CF Correcaminos, Ciudad Victoria, México

as Third Appellant

Represented by Mr Juan de Dios Crespo Pérez, Valencia, Spain, Attorney-at-Law, Mr Ariel Reck, Attorney-at-Law, Buenos Aires, Argentina, Mr Martín Campechano Attorney-at-Law and Mr Alfonso León, Attorney-at-Law, Guadalajara, México

and

Federación Mexicana de Fútbol

Represented by Mr Lucas Ferrer, Ms Matilde Dias and Mr Luis Torres, Attorneys-at-Law, Barcelona, Spain

as First Respondent

Mexican Liga MX/Liga Ascenso MX

as Second Respondents

I. PARTIES

1. Club Universidad de Guadalajara (hereinafter: the “First Appellant” or “CU Guadalajara”) is a professional football club competing in the Liga Ascenso MX at the time of this appeal, constituted in accordance to the laws of México and with offices in Guadalajara, México.
2. Venados Fútbol Club Yucatán (hereinafter: the “Second Appellant” or “Venados FC”) is a professional football club competing in the Liga Ascenso MX at the time of this appeal, constituted in accordance to the laws of México and with offices in Yucatán, México.
3. Club de Fútbol Correcaminos (hereinafter: the “Third Appellant” or “Correcaminos FC”) is a professional football club competing in the Liga Ascenso MX at the time of this appeal, constituted in accordance to the laws of México and with offices in Ciudad Victoria, México.
4. The First, Second and Third Appellants are jointly referred hereinafter as the “Appellants”.
5. Federación Mexicana de Fútbol Asociación, A.C., (hereinafter: the “First Respondent” or “FMF”) is a civil association constituted in accordance to the laws of México and with offices in Toluca, México, and is affiliated to the Fédération Internationale de Football Association (“FIFA”).
6. Liga MX/Liga Ascenso MX, (hereinafter: the “Second Respondents”), are both affiliated to the FMF, with offices in México DF, México.
7. The First and Second Respondents are hereinafter jointly referred as the “Respondents” when designated together, and when all parties are designated together they are jointly referred to as the “Parties”.

II. FACTUAL BACKGROUND

8. The elements set out below constitute a summary of the main relevant facts of the case as established by the Panel, based on the Parties’ written and oral submissions and the evidence examined in the course of the proceedings, which is made for the sole purpose of providing a synopsis of the matter in dispute. Additional facts or issues may be set out, where relevant, in the legal considerations of this Award.
9. The Appellants are all Mexican football clubs that were at the time leading to this appeal participating in the Liga Ascenso MX, the second division or tier of the FMF professional competition system.
10. Historically, the FMF instituted and applied a promotion and relegation system between the First Division (Liga MX) and the Second Division (Liga Ascenso MX). The latest system used for determining promotion and delegation established by the Liga MX Competition Regulations (2019-2020) (hereinafter “Liga MX Regulations”) incorporates in its Article 19 a method for calculating coefficients using results from the last three tournaments for relegation, whilst promotion was

reserved pursuant to Article 23 for the champion of the Ascenso season, subject to the following proviso:

as long as it complies with the requirements established by the Affiliation, Name and Venue Regulations, the General Competition Regulations, the Internal Regulations of the Liga MX, as well as the present ordinance, especially in relation to the capacity, infrastructure, information and financial documentation, especially related to the origin and transparency of resources and their economic stability.

11. The Clausura 2020 tournament of the Liga Ascenso MX was underway when, on 15 March 2020, both the Liga MX and Liga Ascenso MX suspended their respective tournaments due to the outbreak of the COVID-19 pandemic. The Liga Ascenso MX season had just completed its eighth week when the determination was taken.
12. On 13 April 2020, the member clubs of the Liga Ascenso MX held an online meeting to consider a “motion to restructure ASCENSO MX Division for the 2020-2021 season”. This meeting was attended by representatives of twelve clubs, including all three Appellants. In their written submissions and oral allegations, the Appellants contended that this meeting only discussed and approved matters regarding (i) the early conclusion of the 2019-2020 season, and (ii) financial support for the Ascenso clubs, including payment of players’ salaries, a net contingency fund, and the potential issuance of guidelines from Liga MX for the institution of a new “development league”. According to the Clubs, Mr. Enrique Bonilla, the Chairperson of Liga MX and Liga Ascenso MX, was authorized to participate in the Liga MX Assembly “exclusively for requesting financial support” since he “had not been empowered to request the suspension of the promotion system for the next six years”. The First Respondent agrees that both (i) and (ii) above were discussed and approved, but also states that a further matter, (iii) “the presentation of a project of the new Division which considered the non-promotion until the year of 2026 subject to approval of Liga MX” was also discussed and approved in this meeting. This issue will be considered *in extenso* by the Panel below (*infra* ¶ 86 *et seq.*).
13. The following day, on 14 April 2020, the member clubs of Liga Ascenso MX convened to hold an Ordinary Assembly, attended by twelve clubs, including all of the Appellants, mentioning “the covid-19 contingency, a situation that has forced the entire world to remain sheltered and keep social distance”, and which had as sole item in the agenda “to review the situation of the Ascenso MX Division, and the solution proposed in the meeting held on April 13, 2020”.
14. According to the Minutes of the meeting, the Executive Chairperson for both Liga MX and Liga Ascenso MX, Mr Bonilla, took the floor and submitted the motion to be approved, which included the following points:
 1. *Bring the 2019-2020 Season to an early conclusion so that the Clubs stop generating additional liabilities and their debts do not increase.*
 2. *Request the economic support of LIGA MX. In order to assist the Clubs during the present crisis, LIGA MX will contribute with \$ 60,000,000.00 (sixty million pesos 00/100), which will be equally divided among the twelve members of the Division, so that these can meet the obligations that they will have to face due to the early conclusion of the 2020 Closing Season.*
 3. *Regarding the Contingency fund, the Executive Chairman of LIGA MX/ASCENSO MX acknowledged the reception of all the requests sent by ASCENSO MX Clubs regarding the Contingency Fund that is paid every month (...).*

4. *Set Operation Rules regarding the operation of the Division for a period of six Seasons that allow the Clubs and players to develop as Mexican talent.*
5. *Elimination of promotions and relegations during the next six Seasons.*
6. *The request to LIGA MX to contribute with \$240,000,000.00 (two hundred forty million pesos 00/100) that will be divided among the twelve Clubs that currently participate in the Division in order to defray expenses, maximum 50% of which may be used for payroll during the next 6 Seasons.*
7. *Implementation of Training and Solidarity Regulations so that the Clubs may continue getting the results derived from the training of young talent.*
8. *Teams must assign fence advertising, TV rights and Uniforms for joint marketing to obtain greater resources, which are limited when doing individual negotiations. This has been discussed for a long time and has been shown to be more profitable when done in a definite and stable manner.*
9. *Economic control, especially regarding the handling of resources to be contributed, of which up to 50% may be used for payroll. No payroll debts nor delays in payments will be permitted under penalty of having their affiliations withdrawn, as this will secure the jobs of all football players.*
10. *Likewise, the restructuring will allow the Division to concentrate its efforts and work in the optimization of its business relationships in the American market, the basis for which has already been set in talks and meetings held in that regard.*

15. After discussion, the motion was submitted to a vote, and it was passed by a majority of votes, approving that *“the Management appear before the Meeting of LIGA MX Clubs in order to seek approval of the planned proposal for rescuing and restructuring the Division”*. According to the Minutes, all three Appellants voted against the motion.
16. Pursuant to this decision, the Liga MX Assembly met on 17 April 2020, which was attended by 18 Liga MX clubs and the Executive Chairperson, Mr Bonilla, and had as main item in the agenda the treatment of the *“2020-2026 Economic and Sports Stabilization Project”*. According to the Minutes, Mr Bonilla subsequently elaborated on the financial and sporting matters related to the Project, including the suspension of promotion and relegation for six years and a financial package for the Liga Ascenso MX. After comments and debate, the motion was submitted for a vote and was approved by a majority of the clubs of Liga MX.
17. Pursuant to this decision, a meeting of the Executive Committee of the FMF was summoned by the Chairperson of the FMF to be held on 24 April 2020 by video conference for the *“discussion and approval, as applicable, of the changes to Liga de Ascenso MX approved by Liga de Ascenso MX Meeting and Liga MX Meeting”*. The Executive Committee of the FMF by unanimous vote approved the following resolutions:
 - *The ASCENSO MX division 2019-2020 Season is closed.*
 - *The resources of Ascenso MX Division Contingency Fund shall be delivered to the clubs in proportion to their contribution to the fund minus any outstanding debts they may have in their bank account.*
 - *Operation rules for the operation of the Division shall be set forth for a period of six seasons that allow the Clubs and players to develop as Mexican talent.*
 - *Training and Solidarity Regulations shall be implemented so that the Clubs can continue getting the results derived from training young talent.*
 - *The teams that integrate the New League must waive fence advertising, TV rights and uniforms to perform a joint marketing in order to obtain greater resources.*
 - *The New League economic control must be established, especially regarding the handling of resources to be contributed, of which up to 50% may be used for payroll. No payroll debts nor delays in payments will be permitted under penalty of having their affiliations withdrawn.*
 - *The Minors Rule of LIGA MX is eliminated as of 2020-2021 Season.*

- *Participants in the New League are (i) those among the 12 Clubs that currently integrate the ASCENSO MX division that decide to participate, (ii) those Liga MX Clubs that are currently not participating in Ascenso and want to voluntarily participate, and (iii) 3 invited Clubs from Liga Premier that will be elected by Liga Premier, at its discretion, provided that they meet the requirements set forth in the corresponding regulations.*
 - *The Liga Premier teams that participate in the New League may be promoted or relegated according to the conditions set forth in the corresponding regulations.*
 - *\$60,000,000 (sixty million Pesos 00/100) shall be equally distributed among the 12 Clubs that currently form part of the ASCENSO MX Division so that they may fulfill their current economic obligations.*
 - *\$240,000,000 (two hundred forty million Pesos 00/100) shall be distributed each year during the following 6 Seasons (\$20,000,000.00 pesos per year for each Club) to support the growth of the Clubs that currently form part of ASCENSO MX and that continue to participate in the New League.*
 - *Such resources will be acquired by imposing fines to LIGA MX Clubs under the following schemes:*
 - *Last place ranking in LIGA MX Coefficient \$120,000,000.00 (one hundred twenty million Pesos 00/100)*
 - *Second-to-last place ranking in LIGA MX Coefficient (\$70,000,000.00 (seventy million Pesos 00/100)*
 - *Third-to-last place ranking in the LIGA MX Coefficient (\$50,000,000.00 fifty million Pesos 00/100)*
 - *Work panels will be integrated in order to define the details, structure and regulations of the new League.*
 - *Rules for the participation of Premier League teams in the New League must be clear and reasonable, understanding that those teams certified to participate in the New League must be certified before the beginning of the corresponding season.*
 - ***These resolutions will subject to the condition that the Extraordinary General Meeting authorizes the temporary suspension of the promotion and relegation system between Liga MX and Ascenso MX or the New League. (emphasis added)***
18. On that same day, 24 April 2020, the FMF convened an Extraordinary General Assembly, which had as its main item of consideration the “*approval of the motion to temporarily suspend (6 seasons) the promotions and relegations in LIGA MX and the so-called Ascenso MX League*”. After the roll call and establishment of the required statutory quorum, which included one Delegate for Ascenso MX, the Chairperson of the FMF stated that “*in accordance with the topic discussed and passed in Meeting CE.01.20 of the Executive Committee of the FMF held on the same day, it is necessary to submit to the approval of this General Meeting the motion to temporarily suspend the promotion and relegation of Liga MX and the so-called Ascenso MX League for the following six seasons*”.
19. After deliberations, the following resolution was approved by unanimous vote:
- The motion to temporarily suspend, for 6 (six) seasons, the promotions and relegations in Liga MX and in the so-called Ascenso MX League, is hereby approved. This approval shall in no way be understood as an amendment to FMF bylaws.*
20. On 15 May 2020, the Appellants filed a Statement of Appeal before the Court of Arbitration for Sport (hereinafter the “CAS”), against the decision of the Executive Committee and the Extraordinary Assembly of the Mexican Football Federation (FMF) passed on 24 April 2020.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT (CAS)

21. The Statement of the Appeal was introduced by the Appellants pursuant to Article R47 *et seq.* of the Code of Sports-related Arbitration 2019 edition (hereinafter: the “CAS Code”). The Appellants nominated Mr Jeffrey Mishkin, Attorney-at-Law, New York, United States of America, as arbitrator, requested English as the language for the proceedings and also the implementation of expedited proceedings under Article R44.4 of the CAS Code.
22. On 22 May 2020 the First Respondent requested an extension with regards to the request for the expedited procedure and the consideration that the present proceedings be conducted in Spanish. The request for an extension was granted by the CAS Court Office on 26 May 2020, wherein it also confirmed that English would be the language of this arbitration procedure.
23. The Appellants filed their Appeal Brief on 28 May 2020.
24. On 29 May 2020 the First Respondent appointed Mr Juan Pablo Arriagada, Attorney-at-Law, Santiago, Chile as arbitrator, and also objected to the request for an expedited procedure in this case due to the fact that the Appellants requested these proceedings to be held in English, have exhausted the deadlines to file their statement of appeal and have requested an extension of the deadline to file their appeal brief and have requested a second round of submissions “in complete contradiction with the request of expedited proceedings”.
25. On this occasion, the First Respondent also informed the CAS that in accordance to Chapter III of the Social Statutes of the FMF (hereinafter: “FMF Statutes”) Liga Ascenso MX is “merely an internal body/member of the FMF, with no legal personality or assets, as well as no capacity to be the subject to any rights and obligations” and thus “it cannot be legally represented and shall not participate in the present proceedings”; this position was reiterated on 5 June 2020, adding that the nature of Liga MX is analogous to Liga Ascenso MX and thus it has “no legal personality or assets, as well as no capacity to be the subject of any rights or obligations”.
26. On 9 June 2020 the Appellants requested that both Liga MX and Liga Ascenso MX remain participating as parties in this procedure.
27. On 2 July 2020 the First Respondent filed its answer to the Appeal Brief.
28. On 9 July 2020 the Appellants requested that a hearing be held within the shortest possible deadline and also a final exchange of written submissions before the hearing; the First Respondent replied on 13 July 2020 that it had no objections with regards to the filing of a second round of submissions, but that any directions in connection with the hearing shall be taken by the President of the Panel once the latter was duly constituted.
29. On 16 July 2020, pursuant to Article R54 of the CAS Code and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the Panel appointed to decide the present matter was constituted as follows:

President: Mr Roberto Moreno, Attorney-at-Law, Asunción Paraguay
Arbitrators: Mr Jeffrey Mishkin, Attorney-at-Law, New York, USA
Mr Juan Pablo Arriagada, Attorney-at-Law, Santiago, Chile

30. On 22 July 2020 the Appellants filed their second written submission (*réplica*); the First Respondent filed its second written submission (*dúplica*) on 31 July 2020 after a request for a three-day extension was granted.
31. Upon being invited by the CAS Court Office to indicate their position, both parties informed that they considered necessary holding a hearing, and on 5 August 2020 the Parties were informed that the Panel had decided to hold a hearing, pursuant to Article R57 of the CAS Code, on 26 or 31 August 2020. The CAS Court Office informed the Parties on 7 August 2020 that the hearing would be held via videoconference on 31 August 2020 at 16h00 Swiss time (9h00 Mexican time).
32. On 13 August 2020 the CAS Court Office on behalf of the Panel sent the Order of Procedure to the Parties. The First Respondent returned a duly signed copy on 24 August 2020 with a slight modification on the part regarding the “Mission” of the present proceedings, eliminating the words “Executive Committee of the”, whereas the Appellants returned the duly signed copy on 26 August 2020 without comment. On 28 August 2020 the Appellants sent a communication to the CAS Court Office alleging “*a clerical mistake which remained unnoticed by the underwritten*”, mentioning that section 2 should say “*to the decisionS rendered by the Executive Committee AND the Extraordinary Assembly of the FMF*”, and attached the Order of Procedure duly amended and signed again.
33. On 31 August 2020, a hearing was held in the case as agreed by the Parties and arranged by the CAS Court Office via videoconference. At the outset of the hearing, when asked by the President, all Parties confirmed that they did not have any objections as to the constitution and composition of the Panel and to the manner in which the proceedings had been carried on.
34. In addition to the Panel and Mr Antonio De Quesada, Head of Arbitration to the CAS, the following persons attended the hearing, as previously arranged:
 - a) For the Appellants:
 - a. Mr Juan De Dios Crespo, counsel;
 - b. Mr Ariel Reck, counsel;
 - c. Mr Alfonso León, counsel;
 - d. Mr Martin Campechano, counsel;
 - e. Mr Alberto Castellanos, party representative;
 - f. Mr Ricardo López, party representative
 - b) For the First Respondent:
 - a. Mr Lucas Ferrer, counsel;
 - b. Ms Matilde Costa Días, counsel;
 - c. Mr Luis Torres, counsel;
 - d. Mr Iñigo Riestra, counsel;
 - e. Mr Mario Alberto García Pérez, party representative.

35. As a preliminary question, the President of the Panel asked the Parties for their position with regards to the decision(s) under appeal and their written modifications to the Order of the Procedure in this regard, and also specifically inquired of the Appellants whether their request for damages included in their Statement of Appeal and Appeal Brief had been dropped, which was answered affirmatively.
36. The Parties were subsequently afforded full opportunity to present their case, submit their arguments, and answer the questions posed by the panel. The witness present was heard as well as the First Appellant's party representative. Before the hearing concluded, all Parties expressly stated again that they did not have any objection whatsoever with the procedure and that their right to be heard had been respected. The Panel stated that it intended to give an award in the earliest possible time given the urgency alleged by the Appellants, but also taking into consideration the complexity of the case, the arguments proffered by the parties and the bulk of evidence incorporated to the case file.

IV. SUBMISSIONS OF THE PARTIES

37. The following summarizes the Parties' arguments and submissions and does not necessarily address each point advanced by the Parties. The Panel has nonetheless carefully considered all the submissions made by the Parties in the course of these proceedings, written and/or orally, whether or not there is specific reference to them in the following summary.
38. The submissions put forward by the Appellants in their Appeal Brief may be summarized in accordance to the following lines of factual and legal argument:
 - With regards to the factual background, the Appellants make reference to the historical implementation of the promotion and relegation system in Mexico, including the new system established in 2017-2018 and onwards, with the requisite of the "certification" and a criticism of this system, as well as the possibility of avoiding relegation by paying a fine. The Appellants also mention the collaboration started between Liga MX and the US League "MLS" officialized in March 2018 and make various references to "rumors" that Liga MX would become a closed competition and Ascenso MX would be turned into a sort of "development league".
 - The Appellants also mention the outbreak of the COVID-19 pandemic and the worsening of the financial situation, and that Liga MX informed the availability of financial resources but in exchange for the suspension of the promotion and relegation over the following six seasons. With specific regards to the Assembly of Liga Ascenso MX of 14 April 2020, the Appellants are adamant that they had not been informed that they were being summoned to vote the elimination of the promotion to Liga MX, and that the issues to be discussed involved the termination of the 2019-2020 season, the financial support for payment of players' salaries and contingency fund, and guidelines for the new "development league" from the Liga MX. They insist that Mr. Bonilla participated in the Liga MX assembly "exclusively for requesting financial support" and had not been "empowered to request the suspension of the promotion system for the next six years".
 - With regards to the legal aspects of their argumentation, the Appellants divide the issues to be analyzed bifurcating them in the circumstances of the FMF Extraordinary Assembly and the Executive Meeting of 24 April 2020 and the discussion of the "principle of promotion".
 - The Appellants proceed to an extensive but acritical transcription of several articles of the FMF Statutes (Articles 10, 12 bis, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35.5, 36, 37, 43, 45, 46, 47) stating that upon receiving the requested documents they would add/amend/modify/supplement their submissions.

- With regards to the second issue, the Appellants allege that the decision “blatantly” disregards the promotion and relegation principle as established by FIFA, FMF, Liga MX and Ascenso MX, and make an analysis of Article 9 of the FIFA Regulations Governing the Application of the Statutes (hereinafter: “FIFA RGAS”), referencing to declarations by former President of FIFA Sepp Blatter and former Secretary General Jerome Valcke, as well as the CAS awards 2017/0/5264 & CAS 2017/O/5265 & CAS 2017/O/5266, stating that the CAS has made clear that said article would not have effect on closed competitions (such as MLS) while it shall be mandatory to leagues and clubs already implementing it such as Liga MX and Ascenso MX; thus, the Decision must be annulled insofar as it contravenes Article 9 FIFA RGAS which is mandatory for FMF. The Appellants insist in this point to mention the collaboration between MLS and FMF, stating that a possible “merger” MLS-Liga MX is the background behind the decision, and that the Respondents took advantage of the financial difficulties of some Ascenso MX clubs and decided to abuse its situation by forcing de facto turning it into a closed league by seeking the abolition of the “promotion principle” by promising the distribution of financial resources and that no Ascenso MX club wanted the abolition of the principle of promotion but some of them were “simply forced” to accept in order to survive. Moreover, the Appellants insist that when the principle of promotion would supposedly be reinstated the gap between Liga MX and the rest of Mexican football would “drastically” increase and that it will be completely impossible to reinstate promotion so that Ascenso clubs will be able to be anyhow competitive, with a “dramatically deepened” gap between both, as well as “catastrophic impact” in terms of sponsorships, players’ recruitment and fan base, and they would be irreparably damaged by the decision which would be the starting point for the demolition of the Mexican football pyramidal structure and would destroy years of work and investment.
 - The Appellants then discuss Article 12 bis of the FMF Statutes, which is “aimed to directly implement” the mandatory principle of promotion established by Article 9 FIFA RGAS, and then proceed to discuss the alleged violation of Liga MX internal regulations, citing various articles of the Liga MX 2019/2020 Competition Regulations (with particular emphasis on Articles 22 and 23) that establish the promotion and relegation system for this season, as well as the Ascenso MX 2019-2020 Competition Regulations (particular emphasis on Articles 22 and 23), to the same effect. The Appellant also invoke the theory of own acts or “estoppel”, repeatedly applied by the CAS in relation to the principle of good faith enshrined in Article 2 of the Swiss Civil Code, stating that the FMF has violated said principle with the decision.
 - The Appellants end their Brief reiterating that the decision violates particularly but not exclusively the following: Article 9 of the FIFA RGAS, Article 12 bis of the FMF Statutes, Article 2 of the Liga MX Internal Regulations, arts. 22 and 23 of the Liga MX Competition Regulations and Ascenso MX Competition Regulations and the principle of promotion and integrity of competition.
39. The contentions put forward by the First Respondent whilst replying to the Appellants’ Appeal Brief may be summarized in accordance to the following lines of factual and legal argument:
- The First Respondent expands on the alleged lack of personality of Liga MX and Liga Ascenso MX, citing Articles 26 and 27 of the Mexican Federal Civil Code as well as provisions of Chapter II and III of the FMF Statutes, insisting that they are two internal bodies of the FMF with no legal personality or assets, or capacity to be subject to any rights or obligations, and they cannot be legally represented and shall not be considered a party to the proceedings.
 - With regards to the facts of the case, the First Respondent refers to the very difficult economic situation which several clubs from Ascenso MX had been facing “for quite a long time” and that this situation brought the administration to elaborate a rescue plan, the “Stabilization Project”, and that it was the request of Ascenso MX clubs made on 28 January 2020 due to the problems experienced in the past years, together with the negative impact of the pandemic crisis generated by COVID-19, that led to the approval of several exceptional financial measures taken towards Ascenso MX Clubs and the temporary suspension of the promotion and relegation of clubs. The presentation of a project for the new Division which considered the non-promotion to 2026 subject to the approval of LIGA MX was first discussed on 28 January 2020, but also explicitly in the 13 April 2020 meeting, and that the topics discussed on 14 April 2020 were approved by the majority

of clubs and that none of the Appellants voiced their opposition to the project of a new Division which involved the non-promotion of clubs until the year 2026. The proposals were then discussed and approved by the relevant clubs forming Ascenso MX and Liga MX on 17 April 2020, and then submitted to the Executive Committee of the FMF and the Extraordinary Assembly, approved on 24 April 2020, emphasizing that the temporary suspension for the promotion and relegation “should in no way be understood as an amendment to the FMF’s bylaws”.

- The suspension of the promotion and relegation for a limited period of time allegedly “responds to an extraordinary and unprecedented state of economical need of the Ascenso MX Clubs which has been the subject of prolonged and wide discussions between the relevant parties”.
- The First Respondent then proceeds to the analysis of the mainly legal argumentation of the case, and bifurcates the issues as concerning (i) the validity of the appealed decisions passed by the FMF, and (ii) the autonomy of FMF in managing its affairs and the alleged mandatory nature of the promotion and relation principle established in Article 9 FIFA RGAS and the FMF regulations.
- The First Respondent proceeds to cite the applicable regulations with regards to the requirements and procedural steps to be respected in each decision by the FMF Executive Committee and the Extraordinary General Assembly, mentioning *inter plurimum alia* articles referring to quorum necessary for the assembly, as well as constitution and majority votes required for certain decisions (Articles 21, 28, 30, 35.5., 38, 39, 40, 45, 46), concluding that: the FMF Executive Committee meeting of 24 April 2020 was duly summoned, it respected the quorum established by the FMF Statutes and the proposal was submitted to a vote which resulted in the unanimous approval of the proposal, and that the FMF Extraordinary Assembly was duly summoned and respected the quorum established by the FMF Statutes, and that the proposal of suspending the promotion and relegation was voted with the unanimous approval, in accordance with Article 35.5 FMF Statutes, and thus, the decisions have been rendered in accordance with the applicable regulations.
- The First Respondent goes on to address the argument of the autonomy of FMF in managing its own affairs, stating that the freedom of autonomy of sports association is well established in CAS jurisprudence, and that CAS must act in a moderate manner with certain respect towards its discretion. The principle of freedom of association and autonomy is also recognized by Mexican Law, and that the FMF submission is not that the autonomy of the federation is unlimited but only that in case the decision is a violation of a principle of public policy, arbitrariness, discrimination or breach of its regulations would the CAS be entitled to review the decision. The FMF states that the decisions were approved and passed respecting all requirements foreseen in the regulations and constitute an answer to “an exceptional and unprecedented state of need”, aggravated by the COVID-19 pandemic, and that the measures were duly submitted to discussion, consensus and debate. Moreover, the Appellants ratified the Rescue Fund Agreement signed on 8 May 2020, and thus expressly acknowledged the validity of the agreements reached in the Ascenso MX Assembly. The FMF insists that the decisions do not violate the general principle belonging to public policy, arbitrariness, discrimination nor breach of its own regulations.
- Article 9 of FIFA RGAS does not place an obligation on national associations to maintain the promotion and relegation system at all costs but it primarily bases the promotion and relegation on sporting merit, whilst it opens the door to consideration of other factors that may be taken into account. FIFA’s aim with Article 9 FIFA RGAS was to react to the “Granada case” to confirm the importance of sporting merit as the determining factor for a team being promoted or relegated and that if FIFA had wished to oblige national associations to implement the principle it would have clearly done so by introducing it in Article 14 of the FIFA Statutes. Article 9 RGAS is not a mandatory principle for national associations and in any event if said article would have been breached, in no case the consequence of such violation would be the annulment or invalidity of the decision, but FIFA would have to establish such breach and eventually impose appropriate sanctions. The relegation and promotion in Ascenso MX and Liga MX has not been eliminated but only temporarily suspended, which presents a substantial difference with the case CAS 2017/O/5264 & 5265 & 5266 relied on by the Appellants. The First Respondent also rejects the Appellants’ arguments to the effect that Articles 9 FIFA RGAS is implemented by various federative rules (e.g. Article 12 bis FMF Statutes, Articles 22 and 23 of Liga MX Competitions Regulations and Liga Ascenso Competition Regulations 2019-2020), defending the view that Article 35.5 of the FMF Statutes explicitly calls for the possibility to introduce changes and

amendments in the promotion and relegation system of Mexican football and that there is no link in the FMF regulations where it is established the mandatory nature of neither Article 9 FIFA RGAS or the other provisions mentioned by the Appellants.

- The First Respondent concludes its legal argument by opposing the request for damages stating that no criteria or proof assessment has been put forward nor the legal basis for such damages, adding that the Appellants have already been awarded with a compensation by the FMF in accordance to the Rescue Funds Agreement of 8 May 2020 and thus the Appellants shall under no circumstance be awarded an extra compensation for damages.
40. The arguments contained in the second written submission (*réplica*) by the Appellants may be thus summarized:
- With regards to the capacity of Liga MX and Ascenso MX, the Appellants mention that according to the applicable FMF regulations they have full autonomy, their own constitutive bodies and their own committees, they are also affiliates of the FMF and form part of the General Assembly of the FMF, while also invoking CAS jurisprudence referring the “stand-alone test” for bodies and associations, and that in case the Panel annuls the decision it would have effects on both entities.
 - The Appellants then proceed to develop four basic lines of argumentation to the effect that the decision is null and void: (i) the decision violates the FMF Statutes, (ii) the FMF Extraordinary Assembly acted *ultra vires*, (iii) the decision is arbitrary and (iv) it violates FIFA Statutes.
 - The Appellants recall that the decision explicitly provides that the suspension of the Promotion Principle should not be understood as a modification of the FMF Statutes, and in particular it did not modify, restrict or suspend any rights or obligations of its members, and this inevitably entails that the decision violates the FMF Statutes, and in particular, Articles 12bis(I)(h) and 12bis(II)(i) that provide that AMX clubs have a right to be automatically promoted to the next higher division and that LMX and AMX clubs have the obligation to be automatically relegated to the next lower division. The Appellants contend that if the Decision was to suspend the Promotion Principle then it should have also amended Article 12bis by establishing that the rights and obligations were also suspended, and by not doing so the decision flagrantly violates their statutory rights.
 - In the alternative, the Appellants allege that the decision is null and void due to the fact that the FMF Extraordinary Assembly acted *ultra vires* and that Article 35 of the FMF Statutes gives the General Assembly competence to “modify” the promotion and relegation system, but the words “modify” and “suspend”/“suppress” constitute two completely different actions and by no means can they be understood as synonyms, and thus the power to modify the Promotion Principle can by no means be extended to give the FMF Extraordinary Assembly the power to suspend it. Moreover, if the Extraordinary Assembly wished to suppress the Promotion Principle it first had to amend Article 35 of the FMF Statutes to give it the competence, adding references to CAS jurisprudence regarding the interpretation of regulations of an association in its favor.
 - The Appellants in the further alternative submit that the decision is clearly arbitrary, for any of the following reasons: the decision constitutes a breach of a statutory provision (in this case, Article 12bis and 35 of the FMF Statutes); it infringed the rights of the Appellants as members of the FMF since Mr Victor Guevara, the person appointed as representative of Ascenso MX for the FMF Executive Committee and Assembly is an employee of Liga MX and was chosen by the President of Liga MX without any process of consultation whatsoever, and the Appellants were not properly represented at the Extraordinary Assembly, which entails a serious violation of their rights and gives a reason to conclude the decision is arbitrary; the decision moreover does not pursue a legitimate objective, given that although the main reason for which promotion was suspended was due to the bad financial situation of the AMX Clubs, and yet no explanation was given as to how the suspension of the promotion would lead to a financially healthier division but on the contrary the suspension would have precisely the opposite effect creating a huge gap between LMX and the other clubs, making it less attractive to investors and to players, and that the sole reason is to protect LMX clubs and to facilitate an agreement with the MLS to create a closed league.
 - The Appellants also argue that the decision violates FIFA Statutes and for this reason must be considered null and void, and they take special issue with the fact that from the wording of Article

9 RGAS it does not transpire that it is discretionary, but on the contrary it explicitly states “shall”, and that the sole exception to the general rule is provided by Article 9.2 of the FIFA RGAS is not met in this case. The Appellants also refer to Article 14(1)(a) of the FIFA Statutes which obliges member associations to “comply fully” with the statutes, regulations and directives of FIFA, and that CAS case 2017/O/5266 confirmed that the promotion principle was mandatory for all member associations that already had the system in place before the coming into force of the FIFA RGAS, such as the case of Mexico. The Appellants also mention Article 19 of FIFA Statutes referred to the separation of powers and principles of corporate governance and yet the persons who constituted the FMF Executive Committee and FMF Extraordinary Assembly are exactly the same, and it would be absurd to think that there could be proper checks and balances when the same persons are the ones who should be checking each other. The Appellants also invoke Article 14(1)(f) of FIFA Statutes which provides that member associations must ratify its statutes, and state that if the Panel is to find that the decision goes against FIFA Statutes it would inevitably entail the nullity of the decision, since if it is against FIFA Statutes it would also be against the FMF’s own statutes and its obligation to comply with FIFA.

- The Appellants finally reject the argument put forward by the First Respondent that by accepting the rescue fund, the Appellants somehow have agreed for the promotion principle to be suspended/suppressed, underlining that they always reserved their right to challenge the validity of the decision and that the FMF was perfectly aware of it. Moreover, they allege that the funds were always directly linked to the COVID-19 pandemic and had nothing to do with the suspension of the promotion principle. The Appellants claim that the title of the Rescue Fund Agreements is already a clear indication of the purpose of the parties signing the contracts, i.e., the current emergency situation generated by COVID-19 and not over the six following years, and quote and analyze the “Antecedente Tercero” and “Clausula cuatro” of the Rescue Fund Agreements which wording is “self-explanatory” and specifically relates to the economic aid due to COVID-19. The Rescue Fund Agreements refer only to the economic aid granted for the health emergency and is completely different from the suppression of the Promotion. The Appellants also reject the First Respondent’s claim that they did not voice their opposition to the suspension/suppression of the promotion principle, since “nothing can be further from the truth” as is clearly shown by Exhibit 8 filed by the FMF in which it is established that “all the Appellants voted against the suspension of the Promotion Principle”, whilst pointing out certain irregularities contained in the Minutes of the AMX General Assembly of 14 April 2020, such as: Mr Garcia Perez was never appointed as delegate of the Assembly, the Assembly lasted only 55 minutes and yet the Minutes provided that it lasted for three hours and the Minutes state that there was an agreement to allow the discussions of the suspension of the promotion principle in the Extraordinary Assembly but “that is not what happened in reality” and the “only point that was actually voted was to ratify the mandate given to Mr. Bonilla to discuss with the LMX Clubs the agreements reached the day before” and thus “the facts described in the Minutes drafted by the FMF are simply not true”.
- The Appellants close by reiterating that the decision violates Article 9 of the RGAS, Article 12bis FMF Statutes, Article 2 of the Liga MX Internal Regulations, Articles 22 and 23 of the 2019-2020 Liga MX Competition and Liga Ascenso MX Competition Regulations respectively and the principle of promotion and the related integrity of competition.

41. Finally, the arguments contained in the second written submission (*dúplica*) by the First Respondent may be thus summarized as follows:

- The First Respondent preliminarily notes that from the submission by the Appellants they have limited the appeal only to the decision issued by the FMF Extraordinary General Assembly on 24 April 2020 and that they have restricted their final petition to the declaration that the decision is null and void, having withdrawn their request for damages.
- The First Respondent also confirms its previous arguments with reference to the lack of legal capacity and standing to be sued of Liga MX and Liga Ascenso MX, which are two internal bodies of the FMF with no legal personality or assets, or capacity to be the subject of any rights or obligations, and that neither Liga MX nor Liga Ascenso MX are incorporated as Legal Entities (“Personas Morales”) according to Mexican Law. Given that the scope of the present appeal has been limited to the decision by the FMF Extraordinary Assembly of 24 April 2020 the issue of the legal personality of the Liga MX and Liga Ascenso MX has become moot due to the lack of

standing to be sued, since according to CAS jurisprudence a party has standing to be sued “only if it has some stake in the dispute because something is sought against it”.

- The First Respondent then refers to the alleged violations of FMF Statutes and the purported ultra vires conduct of the FMF Extraordinary Assembly, rejecting the interpretation as biased and tortious, and replying that the decision was adopted unanimously by the supreme body of the FMF and thus given that the necessary majority for said amendment was given there would have been no problem or obstacle, but that this was not necessary since Articles 12bis(I)(h) and 12bis(II)(i) are not contravened by the decision. The FMF contends that the mentioned statutory Articles do not recognize an “unlimited” right of promotion/relegation but establishes a general principle, that is meant to be shaped by the same FMF General Assembly, according to Article 35.5, and that in both cases the right to promotion and the obligation to relegation are limited by the terms, form and manner established in the Competition Regulations of each division. This entails that there can be no violation of the statutes if the decision to modify the promotion/relegation principle in accordance with Article 35.5. since such modification is reflected in the competition regulations of the relevant decision. The First Respondent states that the General Assembly of the FMF legally adopted a resolution that suspended the promotion/relegation principle until 2026 and that this measure has been duly implemented in the Competition Regulations of Liga MX and is in the final stage of implementation in the Competition Regulations of the new Liga Ascenso MX (also known as Liga Expansión MX), and thus no modification of the FMF Statutes was needed, because the changes have been reflected in the relevant competition regulations. With regards to the argument that the Extraordinary Assembly did not have the power to suspend/suppress the Promotion Principle, this is playing with words and distorting the core issue; the FMF Extraordinary Assembly approved the temporary suspension and not suppression, and the promotion and relegation of clubs is “postponed, deferred, adjourned” (synonyms for “suspension”) for the next six seasons, something very different of the elimination or removal (synonyms for “suppression”) of the promotion and relegations of clubs. And, with regards to the powers of the FMF Extraordinary General Assembly the First Respondent highlights that it is the supreme body of the FMF and the only competent body to rule and take decisions related to the promotion and relegation system, and that whatever decision is taken –including the suppression—the FMF General Assembly would be the only one allowed by Statutes to take such action.
- Moreover, the alleged violation of the FMF statutes by the Extraordinary Assembly does not stand since no amendment to Articles 35 or 12bis(I) and (II) is required for the purposes of modifying the promotion and relegation as long as the decision has the approval of at least 80% of the votes, it has never been the FMF’s intention to de facto suppress the promotion and relegation of Clubs but only to temporarily suspend for the next six season and if the goal was to suppress it the FMF would never have issued a decision with a provisional nature and all regulations referring to quorums, notifications and necessary requirements of the statutes of the FMF were duly met.
- With regards to the allegation that the decision is arbitrary the First Respondent refers to decisions by the CAS, including the one cited by the Appellants, and states that given the standards set forth in those decisions there is no justification whatsoever for the Appellants to claim that the decision is arbitrary. Moreover, the decision was absolutely justified, since it was passed by the competent body and respecting all rules and regulations, it gathered the approval of the relevant entities/bodies after the pertinent debate, the FMF is afforded a significant amount of autonomy to regulate itself, its competitions and membership conditions, and the temporary suspension of the promotion and regulation system during six seasons is the consequence of an extraordinary situation caused by an extreme state of financial need of the majority of the Ascenso MX clubs, worsened by the COVID-19 pandemic. The FMF also insists that the decision was discussed at length and duly approved by all Liga Ascenso MX clubs and the Liga Ascenso MX Assembly, and arguing the arbitrariness at this stage can only be interpreted as an attempt to undermine the mandate of the majority and arguing a completely misleading argument regarding a proposal that was validly approved following the applicable rules of the FMF; and given the harsh financial situation of the clubs, the decision is unquestionably justified.
- Finally, with regards to the interpretation of the Rescue Fund Agreements put forward by the Appellants, the FMF states that this is a “distorted description” since it omits that they form an integral part of a whole Rescue and Reform Package addressed to the Liga Ascenso MX clubs where one among a package of ten measures was the suspension of the promotion and relegation system and another the approval of the Rescue Fund Agreements. The pandemic played a

fundamental role to finally implement some of these proposals but the discussions regarding the need to create a more sustainable competition model started way before, making explicit and textual reference to the motion discussed in the 14 April 2020 Assembly. All of these measures were discussed, voted and approved by the Liga Ascenso MX clubs in the Liga Ascenso MX Assembly, and thus it is simply not acceptable that suddenly the Appellants decide to abide only to the measures that they think are favorable to them and not respect the ones they do not like, since such conduct violates the principles against *venire contra factum proprium*, and the Appellants should not have signed and received the money related to one of the measures that comprehended the decision they are appealing today.

V. REQUESTS FOR RELIEF

42. The Appellants requests for relief in their Statement of Appeal were:

1. *To annul the Decision to an extent to be specified upon being provided the afore-referred evidentiary requests, particularly E.1 to E.6.*
2. *To award an amount of compensation to be determined along our appeal brief.*
3. *To determine any other relief the Panel may deem appropriate.*
4. *To fix a sum to be paid by the Respondents, in order to contribute to the payment of the Appellant's legal fees and costs in the amount of CHF 20,000.00; and*
5. *To condemn the Respondents to the payment of the whole CAS administration costs and arbitrator fees.*

43. In their Appeal Brief the Appellants submitted the following requests for relief:

1. *To annul the Decision to an extent to be specified upon being provided the afore-referred evidentiary requests, particularly E.1 to E.6.*
2. *To award an amount of compensation to be determined along our second submission.*
3. *To determine any other relief the Panel may deem appropriate.*
4. *To fix a sum to be paid by the Respondents, in order to contribute to the payment of the Appellant's legal fees and costs in the amount of CHF 40,000.00; and*
5. *To condemn the Respondents to the payment of the whole CAS administration costs and arbitrator fees.*

44. As mentioned above (*supra* ¶ 35), the request for damages (3) was later explicitly dropped by the Appellants.

45. The First Respondent submitted the following requests for relief in their reply to the Appeal Brief:

1. *To dismiss the appeal filed by the Appellants against the Decisions issued by the FMF Executive Committee and Extraordinary Assembly on 24 April 2020.*
2. *To fix a minimum sum of 30,000 CHF to be paid by the Appellants as a contribution to the First Respondent's legal fees and costs.*
3. *To condemn the Appellants to pay the entire costs of the present appeal proceedings.*

VI. JURISDICTION

46. No question of the jurisdiction of the CAS has been put forward by either party in these proceedings; neither the Appellants nor the First Respondent have disputed the jurisdiction of the CAS and, on the contrary, they have confirmed it when signing the Order of Procedure.

47. The Appellants rely on Article R47 of the CAS Code, Article 58 of the FIFA Statutes and Article 86 of the FMF Statutes, all of which are also expressly cited and acknowledged by the First Respondent, and which respectively establish:

Art R47 Appeal

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

58 Jurisdiction of CAS

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 notification of the decision in question.

86 Statutes of FMF

The Affiliate, according to the instructions from FIFA, may file an appeal before the TAS, based in Lausanne, Switzerland, as long as all the jurisdictional instances of the Federation have been exhausted. Said appeal must be filed within 21 calendar days after notification of the appealed decision.

48. The Panel thus finds that the CAS has jurisdiction to adjudicate and decide the present case, pursuant to the aforementioned rules of the CAS Code, the FIFA Statutes and the FMF Statutes.

VII. ADMISSIBILITY

49. Both the decision by the Executive Committee of the FMF and the decision by Extraordinary General Assembly of the FMF – irrespective of the matter of whether both decisions are under appeal or only the latter, an issue which will be attended *infra* ¶ 64 *et seq.* – were adopted on 24 April 2020.
50. Considering that Article R49 of the CAS Code, which refers to the time limit for the appeal, is applicable only *in lieu* of an express provision in the pertinent statutes, and that the FMF Statutes expressly establish a limit of 21 calendar days (art. 86), it follows that the appeal against the decision must have been filed within 21 calendar days of 24 April 2020.
51. The Statement of Appeal was filed by the Appellants on 15 May 2020, that is, within the statutory time limit set forth by the FMF Statutes of 21 days, a fact which is not disputed in any event by the First Respondent. Furthermore, the Statement of Appeal and the Appeal Brief complied with all the requirements of Articles R48 and R51 of the CAS Code.
52. Therefore, the Panel finds that the appeal is admissible.
53. Moreover, under Article R57 of the CAS Code, the Panel has full power to review the facts and the law; it may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance.

VII. APPLICABLE LAW

54. The Appellants submit that the law applicable to this dispute shall be the FMF Statutes and all FMF relevant regulations (including Liga MX International

Regulations, Liga MX Competition Regulations, Ascenso MX Competition Regulations, and Affiliation, Name and Headquarters Regulation), wherever these are in line with the FIFA Statutes, rules and regulations, as these shall also apply and prevail over the FMF ones, as provided by the FMF Statutes.

55. Article R58 of the CAS Code provides as follows:

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

56. It is incontrovertible that the “applicable regulations” here are the rules that compose the normative architecture of the FMF, starting with the FMF Statutes¹ at the apex and all other legal regulations emanated in accordance to said rules. It also cannot be disputed that Mexican law is to be applied subsidiarily (“*the law of the country in which the federation... is domiciled*”), as is also expressly foreseen in Article 2 of the FMF Statutes.²

57. The Panel thus finds that in accordance to Article R58 of the CAS Code the provisions of the FMF Statutes and regulations are applicable, and subsidiarily, Mexican law, for adjudicating this case.

58. The Panel notes that the Appellants have also relied in their written submissions and oral allegations on Article 9 of the FIFA RGAS and other rules emanating from FIFA. Albeit there is no doubt that the FMF is affiliated to FIFA³, the precise status and applicability of the explicitly invoked rules to the merits of this case will be analyzed below (*infra* ¶ 96 *et seq.*).

VIII. MERITS

A. Proem: the issues to be analyzed by the Panel

59. This appeal concerns the decision taken in Mexican professional football to suspend the promotion and relegation system in place in the Liga MX and Liga Ascenso MX for six seasons –from 2020 to 2026— and the elucidation of whether this decision was taken in accordance to the applicable formal and substantive legal grounds.

60. The main issues raised before the Panel involve two legal fronts: (i) the correct interpretation, and potential application, of Article 9 FIFA RGAS to this case, and its pertinency to adjudicating this appeal; and (ii) the alleged infringement by the decision to suspend the promotion and relegation of FMF Statutes and internal regulations, and of Mexican law on associations and competition law. In consideration that the damages request mentioned by the Appellants in their Statement of Appeal and Appeal Brief was later expressly dropped, the sole issue to be addressed by the Panel is the (in)validity of the decision taken by the FMF.

¹ In their current version, as approved on 24 April 2015.

² “*In cases which are not foreseen in these Bylaws, the Civil Code for the State of Mexico shall be applied supplementarily*”.

³ Article 9 FMF Statutes.

61. Besides the purely legal discussion of the issues raised by the parties, there is a factual dissonance between them in one major relevant point: the Appellants have alleged in writing and orally that the suspension of the promotion/relegation system for six seasons was not discussed—and consequently, not voted upon—in the events leading to, and in particular in the 13 April 2020 meeting and the Liga Ascenso MX Assembly of 14 April 2020, whereas the First Respondent has contended that the issue was expressly discussed and voted on those occasions, pursuant to which the matter was submitted to the Executive Committee and eventually to the Extraordinary Assembly of the FMF for the adoption of the temporary suspension.
62. There are also two other issues that must be addressed by the Panel before any substantive consideration of the merits: (i) the matter of whether there is *one* decision under appeal—i.e., of the FMF Extraordinary Assembly of 24 April 2020—or *two*—i.e., the Executive Committee decision *and* the FMF Extraordinary Assembly decision, both taken on 24 April 2020—and (ii) the question of whether Liga MX and Liga Ascenso MX have legal standing to be parties to this procedure—as alleged by the Appellants and rejected by the First Respondent—. The issue concerning the factual disagreement mentioned in the previous paragraph may, for analytical purposes, also be (iii) discussed as a preliminary issue.
63. The issues to be elucidated by the Panel may thus be analytically divided as follows:

I) Preliminary issues

- i. *Is this appeal related to both the Executive Committee of the FMF decision and the FMF Extraordinary Assembly of 24 April 2020 or is it limited only to the latter?*
- ii. *Do Liga MX and Liga Ascenso MX have legal standing to be sued and be a party to these arbitral proceedings?*
- iii. *Did the Liga Ascenso MX meeting of 13 April 2020 and the Assembly of 14 April 2020 discuss and vote the matter of suspension for six seasons of the promotion/relegation system?*

II) Substantive issues

- i. *Does the decision violate Article 9 of the FIFA RGAS and what is the relation and pertinency of this rule to this case?*
- ii. *Does the decision violate the FMF Statutes and internal regulations? This issue may in itself be resolved considering the order of arguments put forward by the Appellant:*
 - a. *Is the decision inconsistent with the FMF Statutes?*
 - b. *Did the FMF Extraordinary Assembly act ultra vires?*
 - c. *Is the decision to suspend the promotion/relegation for six seasons arbitrary?*
- iii. *Does the decision violate Mexican law?*

I) Preliminary issues

i. Is this appeal related to both the Executive Committee of the FMF decision and the FMF Extraordinary General Assembly of 24 April 2020 or is it limited only to the latter?

64. Albeit this may appear at first glance a minor issue, it is one without which it is impossible to advance for correctly deciding this case.
65. It is clear from the facts of the case that *two different organs* of the FMF met on 24 April 2020, and that although partially juxtaposed, they did not arrive at two identical decisions. There can be no question that there are two different decisions, and that the FMF Extraordinary General Assembly voted on only one issue—the suspension of the promotion and relegation—which was expressly not considered nor voted by the Executive Committee of the FMF.
66. In their Statement of Appeal the Appellants declare that they appeal “*the decision of the Executive Committee and the Extraordinary Assembly of the (FMF) ... passed on the 24th of April 2020*”, and refers thereafter to it as the “Decision” in singular. This position is maintained in the Appeal Brief. The First Respondent, in its second written submission, after considering the statements in the Appellants’ *réplica*, noted that the “*present appeal relates only to the Decision issued by the FMF Extraordinary General Assembly... and not the Decision issued by the FMF Executive committee*”, limiting the discussion to the temporary suspension of promotion and relegation of clubs from Liga MX and Liga Ascenso MX, excluding any discussion of the decision adopted by the Executive Committee of the FMF.
67. When the First Respondent submitted the Order of Procedure, it concomitantly eliminated from Section 2 “Mission” the phrase “of the Executive Committee of the FMF”; the Appellants, who had previously returned the Order signed with no comments, sent a new version alleging a “clerical mistake” and adding in writing the plural “S”, highlighting that the two decisions were under appeal.
68. Now: there can be no question that the Statement of Appeal limited itself to a “decision”, in singular, and thus, there is no “clerical mistake” in the Order of Procedure insofar as it referred to a single decision. In any event, if there is a clerical mistake to be found here, it must reside on the Appellants, a *lapsus calami* which they intended to correct in their second submission of the Order of Procedure. However, the truth of the matter is that the Appellants referred repeatedly to *one* decision in their previous presentations and only when submitting the Order of Procedure (for the second time) did they transmute to the plural “decision(s)”. Thus, for purposes of clarity, the Panel must determine precisely if there is one decision under appeal or two, and in the latter case, which is going to be adjudicated upon.
69. Reference to the minutes of both internal organs of the FMF is more than sufficient to clear the analytical path.
70. According to the minutes of the FMF Executive Committee meeting of 24 April 2020, when submitting matters to vote the Committee Chair explicitly noted that:

Pursuant to Article 35, paragraph 35.5 of the bylaws, all modifications to the automatic promotion and relegation system of the leagues or professional divisions have to be approved by at least 80% of the votes of the Extraordinary General Meeting, and therefore, the attendees are requested to vote on the rest of the proposal and reserve approval of the modifications to the promotion and relegation system to the Extraordinary General Meeting.

71. Moreover, when all the matters that were specifically approved by the Executive Committee are considered (see *supra* ¶ 17 for full citation), it is clear that the Executive Committee approved the closing of the 2019-2020 season and a series of measures regarding the operation of the next six seasons, particularly economic contributions to the teams of Ascenso MX, *but* it did not consider nor *much less* approve the suspension of the promotion/relegation systems. On the contrary, the motion approved expressly stated that all the resolutions approved were:

subject to the condition that the Extraordinary General Meeting authorizes the temporary suspension of the promotion and relegation system between LIGA MX and Ascenso MX or the New League.

72. This entails that although the decisions approved by the FMF Executive Committee were intimately linked to the suspension of the promotion/relegation system by the FMF Extraordinary General Assembly –which was a condition precedent to the validity of all of the other decisions— the FMF Executive Committee simply did not consider, nor vote, the suspension of the promotion/relegation system.

73. This particular matter, to reiterate, was only treated and discussed by the FMF General Extraordinary Assembly, as is also clear from the minutes of 24 April 2020:

The motion to temporarily suspend, for 6 (six) seasons, the promotions and relegations in Liga MX and in so-called Ascenso MX League, is hereby approved. This approval shall in no way be understood as an amendment to FMF bylaws (...)

74. Immediately after the voting, the FMF Secretary General noted that “there was no further business to attend”, which confirms that the Extraordinary General Assembly did not consider any of the other matters that were approved by the Executive Committee (i.e., closing of the current tournament, economic compensation for Ascenso clubs, etc.). Thus, it is undoubted that there are two different and distinct decisions, and not one, as the Statement of Appeal indicates.

75. From a strictly logical point of view, if the decision by the FMF Extraordinary General Assembly is considered first by the Panel, whatever the decision arrived, it will have an intrinsic impact on the resolutions taken by the Executive Committee of the FMF: if the conclusion is that the decision must be annulled, then the resolutions approved by the Executive Committee will be of no effect, since they were subject to the approval by the Extraordinary General Assembly; whilst if the conclusion is that the decision of the Extraordinary General Assembly must be upheld, then there would be no impediment for the full force of the resolutions taken by the Executive Committee. On the other hand, it is also clear from the written and oral presentations made by the Appellants that the thrust of their legal and factual arguments as presented is addressed explicitly to the question of the suspension of the promotion/relegation system and its annulment. Consequently, even in the case that the decision of the Panel is to annul the Extraordinary General Assembly decision, then the need to refer to the decision taken by the Executive Committee of the FMF simply becomes moot, it loses its legal interest, since the effects of the

latter were subject to the condition of the approval of the suspension by the Extraordinary General Assembly, i.e., subject to the validity of the decision of the Extraordinary General Assembly.

76. The Panel will thus proceed subsequently to focus exclusively on the 24 April 2020 FMF Extraordinary General Assembly decision (hereinafter: the “Decision”).
 - ii. ***Do Liga MX and Liga Ascenso MX have legal standing to be sued and be a party to these arbitral proceedings?***
77. The Appellants included both Liga MX and Liga Ascenso MX –jointly— as respondents in their Statement of Appeal, and during the proceedings held steadfastly to this position. The First Respondent, from even before the formation of the Panel, held that Liga MX and Liga Ascenso MX are not, according to Mexican law, legal persons (“*personas morales*”), have no legal personality and are thus not capable of being sued as respondents in these proceedings.
78. There is no dispute on the one hand that the determination of whether Liga MX and Liga Ascenso MX have legal capacity is a matter to be resolved in accordance to Mexican law and in consideration to the FMF Statutes and regulations. On the other hand, it is clear that neither the Liga MX nor the Liga Ascenso MX issued either of the decisions mentioned in these proceedings, as they were adopted by the Executive Committee and General Extraordinary Assembly of the FMF. In fact, both Liga and Liga Ascenso MX are affiliates of the FMF (art. 10.1 FMF Statutes), and both Liga MX and Liga Ascenso participate in the General Assemblies of the FMF (Ordinary and Extraordinary, art. 21 et seq. FMF Statutes) as *members*. And both Liga MX and Ascenso MX also have one representative each in the Executive Committee (Article 39 FMF Statutes). Thus, Liga MX and Liga Ascenso MX are *members* of both organs that cannot be confused with the organ itself (i.e., with either the Assembly or the Executive Committee).
79. In this sense, it is not clear why Liga MX and Liga Ascenso MX, neither of which adopted –in the technical sense of the word— any of the two decisions discussed should be sued in this case. If the scope of the arbitration before the CAS is the validity of a decision, then the person that is sued *should be the person that issued the decision*. In this case, and irrespective of whether the decision analyzed is the one issued by the Executive Committee or the Extraordinary General Assembly, the legal person who issued the decision is one and the same: the FMF. To this it must be added that both Liga MX and Liga Ascenso MX, independently of whether they do or do not have their own legal capacity, intervened in both the Executive Committee and the General Assembly as *voting members* pursuant to the FMF Statutes provisions, and their particular vote or position cannot be confused with the decision of the organ itself. This is of course a basic legal principle. Apagogically, the reasoning of the Appellant should lead, in purity, to the conclusion that all the voting members of the FMF’s Assembly and Executive Committee could be sued, something that cannot withstand superficial scrutiny.
80. Furthermore, if the reasoning of the Appellants is conceded merely *ad arguendo*, and Liga MX and Liga Ascenso MX are considered as having independent legal personality, separate and distinct from the FMF, it is clear that then they would be *strictu sensu* a third party –*rectius*, and technically, they would be *two distinct legal*

entities, two parties, and not one as the Appellants argue— given that the decision itself was taken by the FMF (*via* its Extraordinary General Assembly). Thus, if the reasoning of the Appellants is to be taken at face value, then not only should there be *two* more parties and not one, but the arbitral clause which would permit both Liga and MX Ascenso to appear before the CAS in this particular case would be found wanting.⁴

81. The Appellants have justified their decision to sue the Liga MX and Liga Ascenso MX stating *inter alia* that if the Panel annuls the decision, thereby reinstating the principle of promotion in Mexican football, “both LMX and AMX will be directly affected”. But surely this is a confusion. The fact that Liga MX and Liga Ascenso MX will be affected by the decision cannot *per se* be a criterion to consider that they have standing to be sued; many other organs of the FMF and *all clubs* belonging to both leagues will also be affected by the decision, and yet this does not entail that they should have standing to be sued.
82. On the other hand, the fact that Liga MX and Liga Ascenso MX have autonomy with regards to their administration and internal regime, their own constitutive bodies and their own committees, as the Appellants adduce in their *réplica* submission, is not a conclusive argument for granting them legal personality; the same can be said with regards to the fact that they are affiliates that form part of the General Assembly of the FMF. In this sense, Articles 25, 26 and 27 of the Mexican Federal Civil Code establish the basic framework for considering a legal entity as a “legal person” *strictu sensu*, and these are simply not met by either Liga MX or Liga Ascenso MX.
83. However, it can be granted that the issue is not one without its own obscurities, and that Liga MX and Liga Ascenso have a peculiar or *sui generis* status, since they are considered as “affiliates” of the FMF by its Statutes, something which is further made confusing by the fact that Article 12 of the FMF Statutes defines “direct affiliates” as “private legal entities, constituted in accordance with Mexican law” but limits this definition to “clubs” and “state associations” (art. 12.1.1) whereas “derivative affiliates” are necessarily natural persons. Therefore, in this state of affairs, Liga MX and Liga Ascenso MX are “affiliates” but of a very particular kind, since they are not either “direct” or “derivative” affiliates. The Panel acknowledges that this situation is conceptually fuzzy, so to speak, but at the end of the day does not consider this to be a sufficient reason to disregard the relevant provisions of Mexican law.
84. Thus, although the Panel is inclined to hold that (i) Liga MX and Liga Ascenso MX are not according to Mexican law legal persons (“*personas morales*”) and consequently may not be sued independently; and that, as mentioned above (ii) neither Liga MX nor Liga Ascenso adopted the decisions that are discussed in these proceedings, but were members of those organs and only intervened to cast their vote and position, and the appeal must be against the association that adopted the decision (in this case, the FMF); and that (iii) in any event if the argument that Liga MX and Liga Ascenso have legal personality distinctly from FMF is conceded *ad*

⁴ The rule invoked for jurisdiction of the CAS in this case, article 86 of the FMF Statutes, applies only to a decision issued by the *Federation* itself, and cannot be extended in principle to Liga MX and Liga Ascenso MX, even if the argument that they are distinct legal persons is conceded.

arguendo, it follows that they would be not one but two different legal persons and their position in these proceedings would be at best as third parties, it does not consider necessary adjudicating this issue in this case. For: given that it cannot be disputed that the question of the standing to be sued in the CAS is one related to the merits⁵, and need not be resolved first in relation to the other substantive questions at stake.

85. Therefore, in consideration of the judgment arrived by the Panel with regards to the validity of the Decision itself, this issue may be regarded in the last analysis as moot for this particular case.

iii. ***Did the Liga Ascenso meeting of 13 April 2020 and the 14 April 2020 Assembly discuss and vote the matter of suspension for six seasons of the promotion/relegation system?***

86. The Appellants have contended that the Liga Ascenso MX meeting of 13 April 2020 was convened to discuss the issue of the termination of the 2019-2020 season due to the COVID-19 pandemic, and the consequent financial matters including the payment by the Liga MX of funds to Liga Ascenso clubs for addressing this situation, but not the suspension of the promotion and relegation system for six seasons. The Appellants also submitted that Mr Bonilla was not empowered to request the suspension of the promotion/relegation system before the Liga MX assembly. This position was also defended in the hearing, where the party representative of one of the appealing clubs –Mr Castellanos— stated that he was present in the meeting and that the matter was not discussed nor approved.

87. The evidence produced and incorporated to these arbitral proceedings however clearly indicates otherwise.

88. Thus, the Minutes to the Ascenso MX club meeting of 28 January 2020 –not questioned or impugned by the Appellants— already has a discussion of the formation of a new development league by Ascenso clubs, and expressly mentions the formation of a “self-sustaining” league, and a “project to 2026, without promotions and relegations”. When the Chairperson of Liga MX/Ascenso MX read the conclusions and asked the agreement for authorization to submit to Liga MX to obtain the proposed resources, the representatives of the Clubs expressed their agreement “unanimously”. All three appealing clubs were present in this meeting, including Mr Castellanos representing his club.

89. Reference must also be made to the 7 February 2020 meeting of Ascenso MX clubs and its Minutes, which were also not impugned by the Appellants, and which had the participation of all three appealing clubs. In this meeting, the “motion to restructure ASCENSO MX Division for the 2020-2021 Season” was discussed and voted upon. Once again, the project included a “self-sustaining League” and clear reference was made that “*this proposal is a project to 2026, without promotions and relegations, a period in which the Division is expected to be self-sustaining, without jeopardizing the existence of the institutions or their financial stability*”.

⁵ This according to both CAS jurisprudence (e.g. CAS 2010/A/2056 or 2011/A/2474) and holdings of the Swiss Federal Tribunal (e.g. ATF 126 III 59 December 1999 or ATF 125 III 82 11 February 1999); for complete references see MAVROMATI/REEB, *The Code of the Court of Arbitration for Sport*, Wolters Kluwer, 2015, p. 411, n. 32.

The meeting ended with a vote on the proposal of the Management of Liga MX/Ascenso MX to submit the restructuring for the approval of the Liga MX clubs meeting, which was “approved unanimously”. Mr Castellanos was also present in this meeting representing his club.

90. This means that in at least two of the meetings leading to the 13 April 2020 meeting the matter of the suspension of the promotion and relegation for six seasons was one which all Ascenso MX Clubs, including the Appellants, had full knowledge and even voted favorably upon.
91. The Minutes to the 13 April 2020 meeting of clubs of Ascenso MX division note that representatives of the three Appellants were present, including Mr Castellanos, and that the meeting had as “only” subject the “restructure of Ascenso MX Division and the Management’s proposal”. These Minutes, it must be added, were also not formally impugned by the Appellants in this procedure or in its prelude. The proposal included the payment of 240 million pesos for “6 seasons” by Liga MX to Ascenso MX clubs, which can only make sense with the suspension of the promotion and relegation. The subsequent discussion, which included participation by representatives of all of the Appellants, makes it clear that what was discussed was not only the termination of the 2019-2020 season and payment of contingency funds for this season due to the pandemic, but also, the “future” of the Division. The representative of the Third Appellant, for example, expressly made reference to the system of the “USA” where there is no promotion, whilst the representative for the Second Appellant expressly mentioned the “new format of the League” and mentioned that “we want to find a way to LIGA MX”, while the representative of the First Appellant, i.e., Mr Castellanos, repeatedly requested not to rush the decision (e.g., “can you buy time for us to analyze and build the proposal?”, “for a day nothing happens”, etc.), whilst also asking for example if the aid was “lined to the Development League proposal”. All three Appellants, it must be also mentioned, voted against the proposal presented by management, but *lost*. That they were aware of the consequences of the proposal and decision is clear from the discussion after the vote, in which Mr Castellanos insisted on the “obligation to reach a consensus”, while the representative of the Third Appellant expressly stated that “what they are doing is erasing Liga de Ascenso all at once”, and the “stakes are high” and “you are accepting everything”, and the representative for the Second Appellant said that “we do not know the way to get to LIGA MX”.
92. It is also important to note that the Minutes to the Liga Ascenso MX ordinary clubs meeting of 14 April 2020 –also not impugned formally by the Appellants—, which has been notarized by a *Notario Público* of Mexico, states that the “sole item” in the agenda was to vote on the “solution proposed in the meeting held on April 13, 2020”. The Chairperson stated clearly that the objective was to “*rescue all of the Clubs in this Division and to create a proper league in the future, preferably before the proposed 6 seasons*”, something which makes sense only in the context of the suspension for six years of the promotion/relegation. Moreover, the stated purpose of the motion was to “ratify the vote taken in the meeting of April 13, 2020”; i.e., the vote was explicitly linked without reservations to the discussion of the previous day. And item 5 of the proposal explicitly mentioned the “elimination of promotions and relegations during the next six Seasons”. All three Appellants were present in this meeting via their representatives, which included Mr Castellanos, and there is

no mention whatsoever of any objection to the proposal to suspend the promotion and relegation system. If indeed this issue was not discussed in the previous meeting, it seems natural that such an important matter would have been objected to by Mr Castellanos, or any of the other Appellants. However, no such mention is found in the Minutes, nor any explanation for this contradiction is found in the written submissions of the Appellants. The Third Appellant even intervened before the vote but did not mention any objection to the voting on the suspension of the promotion and relegation for six seasons. And Mr Castellanos spoke after the vote and did not voice any objection to the motion or the matters voted upon, including the question of the suspension of the promotion and relegation system.

93. In light of the evidence validly produced, and the conduct of the Parties leading up to and including this arbitral proceeding, it seems clear that discussion of the changes to the Liga Ascenso MX included not only financial support but also the suspension of the promotion and relegation system for six seasons, and the Appellants were aware of this at least since January 2020. The meetings preceding the 13 April 2020 meeting were not contested, formally impugned, or controverted by the Appellants and they make unequivocal reference to this. The meeting of 14 April 2020 included explicitly a vote on the matter of the suspension, and also mentioned that it was a ratification of issues discussed at the meeting of 13 April 2020, and no objection whatsoever was made by the Appellants, including Mr Castellanos who spoke according to the Minutes but made no objection. Surely, such a crucial and important matter could not have passed without comment.
94. Finally, it must be stated that the Appellants have failed to produce any evidence whatsoever contradicting the unequivocal and concordant written evidence on file. Mere allegations of course do not suffice as evidence. The words by Mr Castellanos in the hearing were offered as a statement by a party, not as formal evidence and, in any case, are contradicted by all the written evidence produced and his own conduct in the meetings according to this evidence. Mexican law follows the universal legal principle of *onus probandi incumbit actori* (see Article 81 of Mexican Federal Code of Civil Procedure, also received by Swiss law), and also establishes detailed rules to be followed when a party impugns a private or public document (Article 202 *et seq.* of the Mexican Federal Code of Civil Procedure), none of which was invoked, even purportedly, by the Appellants.
95. The Panel must arrive to its conclusion with the evidence that has been validly produced by the parties, and in this case, the evidence is manifest and concordant that the meetings leading to the 14 April 2020 meeting, including the 13 April 2020 meeting whose decisions the 14 April 2020 meeting *expressly ratified*, included full discussion and knowledge of the issue of the suspension of the promotion and relegation for six seasons. The fact that the Appellants voted against it, or find it an unjust or rushed decision is, of course, absolutely another matter.

II) Substantive issues

i. Does the appealed decision violate Article 9 of the FIFA RGAS and what is the relation and pertinency of this rule to this case?

96. The Appeal Brief has basically two substantive legal arguments for requesting the setting aside of the Decision. The first one regards the circumstances related to the

Decision from the internal rules of the Mexican federation, but in purity it limits itself to a long and repetitive citation of different Articles of the FMF Statutes and internal regulations, without any legal argumentation or chain of reasoning; it is only in the second written submission that this argument is unpacked by the Appellants, and thus it will be analyzed in detail below (*infra* ¶ 121 *et seq.*).

97. The second argument deployed is that the Decision violates the principle of promotion and integrity, as set forth in the FIFA RGAS and the FMF Statutes and internal regulations, including the Liga MX and Liga Ascenso MX competition regulations. Given that the latter internal regulations will also be considered in detail below (*infra* ¶ 121 *et seq.*), this section will limit itself to an analysis of the argument relating to Article 9 FIFA RGAS, its interpretation, and its relevancy to this case.
98. The Appellants consider that the promotion and relegation principle is one of the milestones of organized football, and it was guaranteed by FIFA following the commonly known “Granada case” with the adoption of “clear and unequivocal provisions”, citing specifically Article 9 of FIFA RGAS. The Appellants also mention remarks made by the former President and Secretary General of FIFA – particularly, the letter by Mr Valcke sent to the Football Federation of Australia (hereinafter “FFA”) in which he stated that the promotion principle is “of fundamental importance to FIFA and is a mandatory principle binding on all FIFA Member Associations”— and expressly invokes the CAS award issued in the cases CAS 2017/O/5264 & 5265 & 5266 (hereinafter the “Miami FC & Kingston Stockade case”) as “rightfully confirm(ing)” that the principle of promotion “is mandatory for those Member Associations (i.e. such as the FMF), which had implemented it before the publication of the [FIFA] RGAS”. The Appellants specifically quote paragraphs 236⁶ and 244 of this award to the effect that the CAS has made clear that Article 9 FIFA RGAS would not have effect in closed competitions, while it shall be mandatory for federations and indirectly leagues and clubs already implementing it.
99. This Panel however (a) disagrees with the interpretation of the holding of the Miami FC & Kingston Stockade case furthered by the Appellants, on the one hand, and on the other, (b) finds that even granting *ad arguendo* that the interpretation is correct, this would not *per se* lead to the nullity of the decision under appeal and is thus totally ineffectual.
 - a. *The correct interpretation of the holding of the Panel in the Miami FC & Kingston Stockade case*
100. The CAS Panel in the Miami FC & Kingston Stockade case carried out an exceptionally thorough and detailed analysis of the legislative and factual history of Article 9 FIFA RGAS, its immediate antecedents and its subsequent travails, and this Panel will not repeat that discussion here. In its place, it will limit itself to the interpretation of this case given by the Appellants.

⁶ This is a clerical mistake; the correct citation is to paragraph 239.

101. The Panel in the Miami FC & Kingston Stockade case, faced with the challenge regarding the closed nature (i.e. non-existence of a promotion principle) in the United States professional football association, concluded that:

Neither Article 9 RGAS nor any other provision incorporated in the rules and regulations of FIFA, CONCACAF and/or [U.S. Soccer Federation] requires that the principle of promotion and relegation be implemented in professional soccer in the United States.

102. This conclusion was arrived after a careful analysis of the “historical/purposive interpretation” of Article 9 FIFA RGAS, whereupon it emerged *inter alia* that:

- in all discussions leading to the adoption of this rule in the internal organs of FIFA the concrete causal factor was the so-called “Granada case”, which, it must be said, did not deal with a factual situation similar either to the one under discussion in the Miami FC & Kingston Stockade case, or to this current case, but with a situation in which a club ascended two divisions by acquiring another club; and that,
- during discussions in the inside of the FIFA Executive Committee the cases of the United States and Australia –which historically had closed leagues, a factual antecedent that was held in high consideration by the Panel in that case— were expressly considered and that from the different minutes, e.g., of 29 October 2007 and 15 December 2007, it emerged that the members involved in those discussions did not consider that historically closed leagues would be covered by the new regulation.

103. Although it is incontrovertible that the Panel in the Miami FC & Kingston Stockade case found that Article 9 FIFA RGAS did not require that the principle of promotion and relegation be applied in professional soccer in the United States given these historical antecedents and the wording of the rule, and that it did apply to other associations, however, it also seems quite clear to this Panel that the Panel in the Miami FC & Kingston Stockade case *did not* hold that Article 9 is of a mandatory nature –i.e., it did not reach the conclusion that it was mandatory albeit not applicable in the United States—, on the one hand, nor did it hold that in the case that it were to be understood as a mandatory rule then it would cover any and all factual situations, unqualifiedly or *tout court*, including the mere suspension –in contradistinction to perpetual suppression— of promotion and relegation. One holding does not entail, neither logically nor axiologically, the other.

104. Indeed, when the Panel considered the letter by Mr Valcke to the FFA it explicitly stated that it was the *only* evidence supporting the Claimants’ interpretation of Article 9 FIFA RGAS as a “mandatory” provision, but rejected that this interpretation could take precedence “over the entire legislative process that preceded the implementation of Article 9 RGAS”, and noted that, moreover, despite Mr Valcke’s suggestion –later qualified as “an attempt to exercise certain (undue) pressure on the FFA”— FIFA *never* undertook any action against the FFA once it was clear it would not implement the promotion and relegation system. The conduct of FIFA, in other words, cannot be interpreted as confirming the hypothesis that it is a mandatory rule; in reality, it leads to the contrary conclusion, at least if the specific Australian case is taken as indication.

105. It may be argued that this Panel is misreading the award of the Miami FC & Kingston Stockade case, since it specifically contains a reference to the mandatory nature of Article 9 RGAS in paragraph 236, cited as an “unequivocal” statement by the Appellants. However, it is clear that once this paragraph is situated in its context, and in the systematic reading of the award as a whole, it cannot lead to the interpretation that the Panel held the rule to be “mandatory”. Indeed, the phrase included in paragraph 239 does mention that the principle “*was only mandatory for those member associations that had already implemented the principle*”, but this statement is made following the quote made by Mr Chuck Blazer in the 29 October 2007 FIFA Executive Meeting, as an indicative of the “historical intention” of the FIFA legislator, and not as an express hermeneutical exegesis and holding made by the Panel of Article 9 FIFA RGAS’ real meaning. The context is key for understanding this statement, which is not a holding in itself but an interpretation of words expressed in a FIFA Executive Committee discussion which led to the adoption of the rule; moreover, this contextual interpretation of this statement is confirmed when read with the rest of the award, where not only no further indication that the Panel interpreted the rule as “mandatory” can be found, but in fact, the Panel noted that given the FIFA gave no further warning or sanctions to the FFA after it failed to implement and promotion/relegation, this can only be interpreted as that up to this moment at least FIFA did not consider the rule to be mandatory.
106. True, paragraph 244 of the Miami FC & Kingston Stockade case, also quoted by the Appellants, states that the Panel held that Article 9 RGAS was “*only intended to apply to member associations that had already traditionally and consistently implemented the principle of promotion and relegation*”. However, this does not entail that the Panel held the rule to be “mandatory”, since a rule may apply to a subject and yet not be mandatory (e.g., it may be indicative, dispositive, etc.), and moreover, even if it is thus interpreted it does not imply that it must be applied to this particular case where a temporary suspension as opposed to permanent elimination was decided. It is one thing to say that Article 9 FIFA RGAS is mandatory and quite another to determine how this rule is to be interpreted, applied and qualified in practice.⁷ In fact, paragraph 2 of Article 9 FIFA RGAS *explicitly* provides for other criteria other than purely sporting grounds. And, in fact, not even the system in place in the FMF before the Decision was taken –and which, to the knowledge of this Panel, was never objected by the Appellant clubs— was based on purely sporting grounds, since article 23 of the Liga MX Regulations established that to be champion was a necessary, *but not sufficient*, condition for promotion, since the club had to comply with other requirements such as infrastructure, capacity, and economic stability, etc., very distant from the purely sportive.
107. Finally, a key argument of the Panel in the Miami FC & Kingston Stockade case that cannot be downplayed was that “the United States has a different tradition of sport and is not accustomed to promotion and relegation in sports in general”, and thus, the “sudden implementation” of a promotion principle would put the multiple and significant investments made by MLS clubs in risk, causing a cascade of lawsuits, emphasizing that this kind of “sudden change of course of action” would be “contrary to the principle of estoppel”, recognized by Swiss law. This is why that Panel emphasized that in any event FIFA could be “more precise in drafting its

⁷ For example, the following questions only begin to indicate the plethora of possible issues: Is promotion an “annual right”? Or is promotion every two seasons enough? Or every three seasons – as the coefficient system in place before the Decision in the FMF seems to imply? And so on.

rules”; if it considers that the principle *must necessarily be implemented, unqualifiedly or tout court*, then it must expressly use this language, which, it is clear, is not to be found in the current drafting of Article 9 FIFA RGAS.

108. In other words, the Panel in the Miami FC & Kingston Stockade case, as was made clear in the hearing by the arbitrator sitting in both cases, *simply had a completely different factual background and thus different legal issue to decide*, and any holding found in the award cannot be, without further development and elucidation, applied or transported automatically to other cases with different circumstances.

109. Thus, once read in its context and entirety, it seems clear that the Miami FC & Stockade case:

- Does not hold that Article 9 RGAS is of a “mandatory” nature, but only that it is not applicable—at least not without due warning, discussion and consideration—to the particular cases of the United States and Australia;
- Even if it is read in this sense, its immediate historical context clearly indicates that it was intended to specifically block “Granada”-like situations, with which the current case has no relation whatsoever; thus, even in this reading, the holding of the Miami FC & Kingston Stockade case must in any event be distinguished from this case, and further argument is needed; and
- Even if it is read as mandatory, moreover, there is an important logical and legal gap between holding the rule to be mandatory and affirming that *only* sporting merit suffices (a reading that is expressly contradicted by the text of the Article itself—paragraph 2—, and by the system of promotion/relegation in force in the FMF before the Decision; *supra* ¶ 106); or affirming that an association cannot temporarily suspend the rules of promotion and relegation; or that any qualification, modification or suspension of the promotion principle automatically leads to a violation of the rule; thus, in this reading, the holding of the Miami FC & Kingston Stockade case must in any event be distinguished from this case, and further argument is needed.

110. In sum: the Panel in the Miami FC & Kingston Stockade case did not hold that the rule was mandatory nor that it was applicable *tout court* to any and all cases, including one of a temporary suspension such as the current case; *a fortiori*, it did not consider nor rule on the conditions to be met for considering the rule to be violated (i.e. is the sporting merit requirement unconditional, or may it be subject to exceptions, or merely suspended? etc.) nor much less on the purported effects of a violation of the rule. Mere mention of the Miami FC & Kingston Stockade case without profound further elaboration and argument is insufficient for deciding this case.

111. However, this negative conclusion does not of course solve the whole matter of the relation of the rule of Article 9 FIFA RGAS for this particular appeal.

b. The nature and (im)pertinency of Article 9 FIFA RGAS for deciding this case

112. At this point a key underlying point must be directly confronted: the fact that even if Article 9 FIFA RGAS were to be interpreted differently, that is, as mandatory and applicable without qualification or *tout court* –e.g., without consideration of whether there is a total elimination, or a temporary suspension, and the like— this would not *eo ipso* lead to the annulment of the decision of the FMF Extraordinary General Assembly.

113. In effect, *if* there is a sanction to be deduced by Article 9 FIFA RGAS –an important issue that has not been discussed in this case and which merits profound analysis— this sanction must be handed down in any case by FIFA. As Article 14 of the FIFA Statutes states:

1. Member associations have the following obligations:

a) to comply fully with the Statutes, regulations, directives and decisions of FIFA bodies at any time

(...)

*2. Violation of the above-mentioned obligations by any member association **may** lead to sanctions provided for in **these Statutes** (emphasis added).*

114. It seems clear from this provisions that member associations –in this case, the FMF— have the obligation to comply with rules emanating from FIFA, including “regulations” such as the FIFA RGAS. It is also clear that violations of these rules *may* lead to sanctions provided by the statutes, i.e., sanctions to be imposed *by FIFA itself*. This entails that even if Article 9 FIFA RGAS is interpreted as mandatory and unqualifiedly applicable –both *prima facie* controvertible propositions— it follows that the obligated party is the member association and it is up to FIFA to sanction this conduct. Moreover, it is not a minor issue that the text of Article 12 of the FIFA Statutes uses the word “may”, which means that the sanction even in the most serious cases is not even mandatory, but merely facultative. And it is also not a minor issue that the pertinent sanctions are to be “provided in the Statutes”, and a superficial reading of the FIFA Statutes finds no specific sanction of annulment for a decision such as this one.

115. To this it must be added that section 4 of Article 9 FIFA RGAS expressly states that:

Each member association is responsible for deciding national issues, which may not be delegated to the leagues. Each confederation is responsible for deciding issues involving more than one association concerning its own territory. FIFA is responsible for deciding international issues involving more than one confederation.

116. While the wording of this text is not entirely clear, it seems to imply that only in cases where more than one confederation is involved would FIFA have any competence in applying Article 9 FIFA RGAS, and that in national cases the last word is reserved for the association itself. If this reading prevails, of course, the highest authority of the Mexican federation itself would be in charge of applying the rule. The implications of this interpretation for this case are obvious. However, even if this interpretation is rejected, and it is accepted that FIFA has competence in all cases, then, once again: only FIFA could impose a sanction, which would be in any event facultative, and would have to determine the sanction which, at least on the face of the text of the FIFA Statutes, is not the nullity of the decision.

117. All of this, of course, is not a minor matter for this case. On the contrary. It fatally leads to the disregard of any and all of the arguments invoking Article 9 FIFA RGAS considering the facts of this particular appeal. Moreover, it must be noted that the Appellants could have requested FIFA to participate in these proceeding to said effect, or at least to have an official position of the Federation on this issue, and have failed to do so.
118. Thus, the Panel finds that in the last analysis it is not necessary to produce its own interpretation of the nature of the rule contained in Article 9 FIFA RGAS, or of the extent to which it must be applied –i.e., absolutely or unqualifiedly— questions that remain to this date open. This rule is simply not directly applicable to this case. The only possibility of application of the rule and principle is *indirectly*, in other words, insofar the principle is crystallized or developed in the statutes and regulations of the FMF, an issue which will be considered by the Panel subsequently.
119. The same conclusion must apply, even before considering the substance of the argument itself put forward by the Appellants in their *réplica* submission, to the claim that the Decision also infringes Article 19 of the FIFA Statutes that establishes the principle of separation of powers and checks and balances in the associations. And, in any case, this argument is also totally ineffectual, given that the Executive Committee and the Extraordinary General Assembly of the FMF, as already has been explained *in extenso* above (*supra* ¶ 64 *et seq.*) decided totally different matters; in other words, one issue was competence of the Extraordinary General Assembly and all the other issues were competence of the Executive Committee.
120. All these considerations do not imply, as mentioned above, that the suspension of the promotion and relegation system adopted by the FMF Extraordinary General Assembly does not violate its own statutes or regulations, as was further argued by the Appellants. To these arguments we must now turn, respecting the order of considerations proposed by the Appellants.

ii. Does the appealed decision violate the FMF Statutes and internal regulations?

a. Is the decision inconsistent with the FMF Statutes?

121. The Appellants contend that the Decision violates the FMF Statutes directly; in the discussion in their submissions they indicate that the Decision directly flouts Articles 12bis(I)(h) and 12bis(II)(i) of the FMF Statutes. According to the Appellants, if the decision was to suspend the promotion principle, the Extraordinary General Assembly of the FMF should have amended Articles 12bis(I)(h) and 12bis(II)(i) by establishing that the rights and obligations provided therein were also suspended.
122. These articles establish that:

Article 12bis

The rights of direct Affiliates are:

(...)

h) in the case of Ascenso MX, Second Professional Division and Third Professional Division, to be automatically promoted to the next highest Division in the number and manner determined in the Competition Regulations of the relevant Divisions.

(...)

The obligations of the direct Affiliates are:

(...)

(i) In the case of Liga MX, Ascenso MX and Second and Third Professional Division Clubs, they will be automatically relegated to the next lower Division in the terms determined in the Competition Regulations of each Division.

123. The interpretation submitted by the Appellants, it must be said, has *prima facie* some force, since the first part of each section seems to grant an unlimited right/obligation for promotion/relegation in each case.
124. However, this interpretation must concede in the first place that this right/obligation, even in the own terms of this article, is *not* absolute, since it is immediately *qualified* with the phrase “*in the terms determined in the Competition Regulations of each Division*”. This means that there is no absolute or unqualified right/obligation to promotion/relegation in the FMF Statutes, given that the invoked article expressly contains a rule referring its development and elaboration to the Competition Regulations of each Division, which are the legal instruments that in practice implement and qualify this right/obligation. Moreover, nothing in this article entails that the promotion/relegation is an “annual right/obligation”, so to speak. The referral to the Competitions Regulations for the mode of developing this right/obligation gives considerable regulatory room, and it is not unreasonable to suppose that the regulations allow for promotion/relegation after a short tournament, for example, or after two tournaments; and, in fact, not even the system in practice before the Decision was adopted established an “annual right/obligation”, given that the coefficient system accumulated three tournaments.
125. Even more importantly, not only is the right/obligation not absolute, but facts show that internally it has not been considered in Mexican football historically as inextricable linked to purely sportive considerations. As has been seen above (*supra* ¶ 106), the system in effect just before the suspension for promotion to Liga MX was *not based purely on sporting merit*, since Article 23 of the Liga MX Competition Regulations *qualified* the right and subjected it to non-sporting requirements, such as capacity, infrastructure, financial stability, etc. In other words, the historical understanding of the promotion idea in Mexican football itself was not absolute and was in fact qualified by the Competitions Regulations such as the one in force at the time of the appeal to conditions other than purely sportive.
126. This literal and isolated interpretation of Article 12bis, taken on its own terms, is however confirmed absolutely when a systemic hermeneutic of the FMF Statutes is undertaken, since it is complemented by another key statutory provision: Article 35.5 of the FMF Statutes. Leaving aside for a moment the discussion of whether this article only allows for modification but not the suspension of the promotion and relegation idea –an argument that will be addressed below (*infra* ¶ 129 *et seq.*)— Article 35.5. establishes that the General Assembly has the formal power to decide:

any modification to the automatic promotion and relegation system in the Professional Leagues or Divisions and its corresponding competition.

127. It is clear that if the Assembly (in this case, the Extraordinary Assembly) is formally and expressly empowered by the FMF Statutes to discuss and decide on the “modification” of “the automatic promotion and relegation system”, then it simply would make no sense whatsoever to modify Article 12bis every time there is a modification in the system. In other words, in the systematic context of the whole of the FMF Statutes, the right/obligation for promotion/relegation is not only not absolute, since it is qualified by Article 12bis itself, but also is not absolute for it can be modified by the General Assembly itself. And if the General Assembly has the power to modify the promotion/relegation system, insofar as it is a modification, then it would be utterly illogical to require a modification of Article 12bis every time the General Assembly decides on a modification. The systematic interpretation in this case forbids the apagogic interpretation of both norms.
128. Of course, if the conclusion to the question of whether a suspension of 6 seasons is not a mere modification but a *de facto* suppression—as further contended by the Appellants—then this conclusion would wither away; *rectius*, it would not be sustainable. Thus, this further argument of the Appellants must be analyzed immediately to determine if this interpretation is to be confirmed.

b. Did the FMF Extraordinary Assembly act ultra vires?

129. In effect: the Appellants argue that the FMF Extraordinary General Assembly of 24 April 2020 acted *ultra vires*, since it was empowered by the Statutes—specifically, by Article 35.5—only to “modify” but not to “suppress” the promotion/relegation system. Thus, by suspending promotion for six seasons, the Extraordinary General Assembly acted beyond the powers conferred by the FMF Statutes and the Decision must be annulled. To this it must be added that if this is the correct interpretation of the rules to the concrete facts of this case, the Decision also violates Article 12bis of the FMF Statutes, for the aforementioned reasons.
130. The Appellants submit that the verbs “modify” and “suspend/suppress” “constitute two completely different actions and by no means can they be understood as synonyms”. They go on to cite the definitions of the Dictionary of the *Real Academia de la Lengua Española* to “*modificar*” and “*suspender/suprimir*”.
131. When the Decision itself is read, there can be no discussion that the FMF Extraordinary General Assembly decided to “temporarily suspended” the right/obligation to promotion/relegation. Leaving aside for the moment the allegation of the Appellants that the Decision is also a *de facto* suppression—an issue that will be considered below—it seems quite clear that if the Decision is considered a “suspension”, even on the terms offered by the Appellants themselves, it can be subsumed under the concept of “modification”.
132. Indeed. In any plausible reading, at least three of the five different meanings of “*modificar*” quoted by the Appellants can apply to the Decision without unduly stretching the meaning of the pertinent words, *videre licet*:

- *Definition 1: Transform or change something by amending some of its characteristics;*

- *Definition 2: To give a new way of existence to the material substance;*
- *Definition 4: To limit, determine or restrict something to a certain state in which it is singular and distinct from other things.*

133. Suspending temporarily the promotion/relegation system is to “transform or change something (i.e. the current system) by amending some of its characteristics”, but also to “give a new way of existence to the material substance (i.e. the current system)” and it also “limits, determines or restricts something (i.e. the current system)”. None of these interpretations, it is repeated, is arbitrary or manifestly unsound – quite the contrary.
134. Thus, even on the Appellants own terms the linguistic interpretation does not lead to the conclusion that to “modify” cannot encompass to “suspend”. This, it must be added, is in line with the clear meaning of both terms in ordinary usage: if there is something in place that is temporarily suspended it cannot be doubted in ordinary language that it has suffered a “modification”.⁸ But perhaps the main confirmation of this (eminently reasonable) reading of the terms is the fact that the Appellants add the word “suppression” to their analysis. Undoubtedly, the “suppression” (or “elimination”⁹) of something cannot be considered –at least without unduly stretching the meaning of the words— as a mere “modification”. It follows that if the Decision can be interpreted as a “suppression” of promotion and relegation, then the interpretation of the Appellants must be upheld.
135. To repeat: from the wording of the Minutes to the Extraordinary General Assembly it is clear that the Decision adopted was to “temporarily suspend, for 6 (six) seasons, the promotions and relegations in Liga MX” (sic). There is no question that, literally, there is no suppression of promotion and relegation, but only a temporary suspension.
136. This may explain why the Appellants devises and introduces the argument of a “*de facto*” suppression:

Considering the “suspension for six years” of the promotion as ruled by the Appealed Decision, particularly but not limited to the duration of the “suspension”, its real consequences will make it a de facto hidden suppression of it by the Respondent, as it will not be feasible in six years to eventually reinstate it if it ever had been the purpose of the Respondent – quod non.

137. At this point, the Panel must refer to the express and unequivocal statements of the FMF in its written and oral submissions that there is no surreptitious or hidden intent to permanently eliminate promotion and relegation via a mere language game; the words of a federation affirmed in arbitral proceedings before the CAS no doubt are binding in this sense and must be taken at face value:

In any case, and for the sake of completeness, the First Respondent wishes to be sufficiently clear by underlying that, under no circumstances the FMF is maneuvering under the shadows to cancel

⁸ It may be added that when the matter is considered from the English language point of view, the word “modification” is exceptionally broad in this language (see e.g. the definition in <https://www.merriam-webster.com/dictionary/modification>, *inter alia*) and would also quite easily encompass the 6-year suspension of the principle of promotion.

⁹ The Panel wishes to highlight at this point that the Appellants use the word “suppression” in their written presentations; however, given the context and intended meaning, the more pertinent or precise word in English would be “elimination”, as included above parenthetically. In what follows, the word used by the Appellants will be retained but with this *caveat* in consideration.

promotion and relegation in Mexican football, as the Appellants attempt the Panel to believe by misleading information published on the press, which even they qualify as “rumors”. Such assertion is not only false and unfounded, but completely rejected by the Respondent (emphasis in the original).

138. And also:

***Indeed, this Party cannot stress this enough: the relegation and promotion in Ascenso MX and Liga MX HAS NOT BEEN ELIMINATED, but it has only been temporarily suspended** in order to rework the whole division and find a way to ensure the economic viability of Ascenso MX’s clubs (emphasis in the original).*

139. To reiterate, these expressions, which it must be said confirm the literal meaning of the Decision taken by the FMF Extraordinary General Assembly, should and *must* be taken as the official position of the FMF with regards to this matter. In other words, the Federation is officially declaring in arbitral proceedings before the CAS that it is not using this mechanism as a way to implement a suppression in practice, that is, to eliminate the promotion/relegation system for good in Mexican football, but by using other –simulated— means. Of course, if this were the case, it would be for the relevant organisms (e.g., FIFA) to eventually intervene and analyze this type of conduct. But this Panel can only take these statements as the faithful and true position of the FMF, and thus confirm the literal meaning of the Decision, that it is not a permanent suppression or termination of the promotion/delegation but only a temporary suspension which responds to specific reasons – i.e., the antecedent economic problems and the COVID-19 pandemic.

140. Thus, if the Decision cannot be interpreted as a “suppression” but only as a “temporary suspension”, the Panel finds that the proceeding of the Extraordinary General Assembly of the FMF is not unreasonable, in the sense that it understood that it was not necessary to modify the FMF Statutes to implement such limited Decision, pursuant to a systemic and harmonious interpretation of Articles 12bis and 35.5. of the FMF Statutes.

c. Is the decision to suspend the promotion/relegation for six seasons arbitrary?

141. The Appellants also contend that the Decision is “arbitrary”, and invoke the holding of the case CAS 2005/A/944 for the definition of when a decision is to be considered as “arbitrary”:

[when it] 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.

142. This Panel finds no reason to depart from this conception of “arbitrariness”, which is in line with other CAS jurisprudence and was in fact accepted by both parties given that they analyzed it and centered their arguments around it.

143. With regards to a very serious breach of a statutory provision, as has been established above with particular reference to Articles 12bis(I)(h) and (II)(i) and 35 of the FMF Statutes, no such serious breach in the lines argued by the Appellants has been found by the Panel.

144. The Appellants also argue that the Decision infringed their rights as members of the FMF, since pursuant to Article 12bis(I)(a) of the FIFA the direct affiliates have rights to “have representation in the General Assembly of LA FEDERACIÓN”, and they had no say whatsoever in the appointment of the representative of Ascenso MX, Mr Victor Guevara, who is according to the Appellants an employee of Liga MX (holding the position Director of Operations), and was not designated *per* Article 39, that establishes that Ascenso MX will be represented by the Secretary General of the aforementioned Division appointed by the President of Liga MX.
145. However, this argument is not sustainable. Firstly, 12bis(I)(a) invoked by the Appellants establishes a right for “direct Affiliates”, and the notion of direct Affiliates is defined by Article 12.1.1. of the FMF Statutes and includes “professional clubs” and “public associations of the amateur sectors”. Thus, neither Liga MX nor Liga Ascenso MX are considered as “direct Affiliates” in the FMF Statutes, due to their *sui generis* status already discussed above (*supra* ¶ 83). Secondly, and more importantly, Article 39 of the FMF Statutes refers exclusively to the designation of the representative of Liga Ascenso MX *before the Executive Committee* of the FMF, and not before the Extraordinary General Assembly, whose Decision is under examination. Thirdly, even if this article is *ad arguendo* hypothetically applied, the representative is appointed by the President of the Liga MX, and no reference whatsoever is made to consultation to other parties, which is the prejudice alleged by the Appellants. Fourthly, the matter of whether or not the representative was validly appointed is a matter that should be impugned by the Appellants internally in the FMF, and not before this Panel. Fifthly, even if there is a violation of a representation rule, the “arbitrariness” asserted here surely is not applicable to this violation, since the relevant arbitrariness standard refers to basic principles of equity and justice of the adopted decision, and not to a manner of election of a representative; and even if the Liga Ascenso MX representative had voted against the motion, it would still have passed the minimum statutory requirements.¹⁰ And finally, in any event, the matter was not discussed in the Appeal Brief by the Appellants and as such cannot be introduced at the stage of second written submissions as is well known CAS practice and jurisprudence.¹¹
146. The Appellants also contend that the Decision is arbitrary since it does not pursue a legitimate objective, and “there is no explanation whatsoever as to how the suspension of the Promotion Principle would lead to a financially healthier decision”, which is the main reason invoked by the First Respondent, and moreover the suspension will have precisely the “opposite effect” widening the gap between Liga MX and Ascenso MX. The Appellants also argue that the sole reason for the decision is to “protect LMX clubs and to facilitate an agreement with the MLS in order to create a closed league among LMX and MLS clubs”.
147. As can be easily inferred, the Appellants’ argument presupposes and involves a strong value judgment with regards to the substantive grounds of the decision adopted by the FMF to suspend promotion/relegation for six seasons. There is no question that the Decision itself was validly taken from the procedural standpoint:

¹⁰ According to article 21 of the FMF Statutes, Ascenso MX has 5% of the total votes in any General Assembly, which is way short of the more than 20% required (voting against) the decision which was adopted (80% established in article 35.5.).

¹¹ Full references in MAVROMATI/REEB, *The Code of the Court of Arbitration for Sport*, Wolters Kluwer, 2015, pp. 327 and 497.

the decision was adopted by the pertinent organ, the FMF Extraordinary General Assembly¹², and with the requirements of summoning, quorum and statutory majorities respected¹³, and invoking the relevant provisions of the FMF Statutes¹⁴. What the Appellants are asking the Panel is to second-guess, or better, to directly judge in place of the Extraordinary General Assembly of the FMF and consider whether the substantive grounds and objectives of the highest authority of Mexican football, i.e., the General Assembly of FMF, are legitimate or not. This, however, exceeds the powers of the CAS as it would involve an undue intervention in the internal affairs of a federation and a *de facto* directing of the future of Mexican football. It is up to the legitimate organs and actors of Mexican football to decide this matter, not to the CAS; however grievous the Decision may seem to the particular interests of the Appellants, it was taken pursuant to the procedures and organs that the FMF and in line with the provisions of the FMF Statutes. There is no question that a judgment on the legitimacy of the objectives of the measure, or of the consideration of who the real beneficiaries of the suspension are, is clearly outside the scope of review of this Panel. The Appellants in any case have the appropriate internal federative mechanisms and channels (e.g., a campaign to reform the system, new assembly, etc.), or eventually before the applicable organs of FIFA who, it must be reiterated, the Appellants failed to summon or cite in these proceedings.

148. In this sense, the many CAS precedents mentioned by the First Respondent –e.g., CAS 2017/O/5264 & 5265 & 5266, TAS 2007/A/1424, CAS 2018/A/5888, CAS 2016/A/4722 and CAS 2014/A/3523— do in fact confirm the soundness of the idea expressed above; that is, that the power of a Panel such as this one does not extend to an evaluation of the merits or the substantive value of a decision, and that deference and respect to the autonomy of sporting federations, which is also undoubtedly a principle of Mexican law regarding civil associations¹⁵, is of paramount importance in sports law.
149. Deference to the autonomy and freedom of the association and the decisions its main bodies freely adopt should thus be considered a basic principle of sports law.
150. However, it is also true that this principle of deference and respect to the autonomy of the associations is not absolute –as no legal principle in fact is— and has indeed been qualified by the CAS panels in the cases cited above. As the Panel in CAS 2018/A/5888, to mention one example, held, this principle may yield when there are “exceptional circumstances”, such as “arbitrariness”, a “misuse of its discretionary power”, or “discrimination” or “breaches any relevant mandatory legal principle”.
151. There is no doubt in the opinion of this Panel that the bar for determining these “exceptional circumstances” must be set very high, lest it converts itself into a Trojan horse that subverts the principle itself. The arbitrariness, discrimination or breach must be blatant and manifest, and offend a basic sense of justice.

¹² See Articles 20 and 26 of the FMF Statutes.

¹³ See Article 28 (summon), Articles 21 and 30 (composition and quorum), Article 35 (minimum vote necessary for the decision) of the FMF Statutes.

¹⁴ The Decision was taken invoking Article 35.5 of the FMF Statutes, as explained above.

¹⁵ See for example Articles 28 and 2674 of the Mexican Federal Civil Code.

152. The Decision adopted by the supreme body of Mexican football to suspend the promotion/relegation for six seasons may be considered a drastic or extreme measure, but it is no less true that the explanation given by the FMF before the Panel, regarding the background circumstances of the Decision –i.e., that it was due to precedent financial difficulties that were further aggrieved by the COVID-19 pandemic and the insistence and highlighting that the measures are of a temporary measure and not taken as a subterfuge to eliminate *sine die* the system and thus flout its own statutory provisions— does not seem manifestly or blatantly unreasonable, and moreover, it was discussed and adopted by all relevant organs and channels of the federation, including the Liga Ascenso MX Assembly –where the Appellants opposed it but lost— and the FMF Extraordinary General Assembly, where it was adopted (and this is not a minor point) *unanimously* by all sectors and members of the federation. To this it must be added that and that the Appellants have not adduced further convincing reasons¹⁶ to overcome the high bar of seriousness and gravity that must be met for *substantively* annulling a decision freely and validly adopted by the supreme authority of an association.¹⁷
153. It is needless to add that the preceding remarks do not entail a position of this Panel with regards to the suspension of the promotion/relegation principle itself, or of its relevance or fundamentality as a principle of sports law; the value, relevance and place of this principle, as has already been hinted above, is a matter that has to be determined in any event by the different associations and in the last analysis by FIFA itself (see also *supra* ¶ 114 *et seq.*).

iii. Does the decision violate Mexican law as alleged by the Appellants?

154. Finally, the Appellants maintained (without further elaboration) in their Appeal Brief that the Decision also violates “Mexican law on associations and Mexican competition law”, citing Articles 1 to 4 of the Constitution of Mexico, Articles 43, 36, 50, 51, 52 and 53 of the General Law of Physical Culture and Article 7892¹⁸ of the Mexican Federal Civil Code.
155. However, the mere citation of articles cannot amount to legal argument; in any case, the Appellants had to expound a reasoned explanation of those articles and why they were purportedly violated by the Decision – and yet, no such argument is to be found. In fact, no further mention of these articles was made in the second submission nor emphasis displayed in the oral hearing. As such, the appeal on these grounds simply cannot be sustained.

¹⁶ To use the harsher words of the Panel of the case quoted by the Appellants themselves (CAS 2016/A/4722) the mere criticisms against the merits of the decision simply “are irrelevant” (paragraph 114).

¹⁷ Besides the provision of FMF’s own Statutes, article 2674 of the Mexican Federal Civil Code expressly confirms the rule that the “supreme power of an association resides in the general assembly”.

¹⁸ The Mexican Federal Civil Code has only 3074 articles, and thus it is impossible to note which article was (according to the Appellants) violated.

156. Moreover, even the superficial and cursory consideration of the mentioned legal norms is sufficient to discard this line of reasoning¹⁹, and perhaps helps to explain why it was abandoned by the Appellants themselves.

VII. CONCLUSION

157. Based on the foregoing, and taking into consideration all the legal arguments and evidence produced by the parties in these proceedings, the Panel concludes that:

The Decision adopted by the 24 April 2020 FMF Extraordinary General Assembly to “temporarily suspend” the promotion and relegation system in Liga MX and Liga Ascenso MX due to the financial and economic considerations, including the COVID-19 pandemic, must be upheld.

158. All other further motions or prayers for relief are dismissed.

IX. COSTS

(...).

¹⁹ In fact, some of the articles mention by the Appellants themselves –such as article 50 of the *Ley General de Cultura Física*—underline the principle of autonomy and self-regulation of Mexican sporting federations, confirming the line of reasoning elaborated by the Panel above.

ON THESE GROUNDS

The Court of Arbitration for Sports rules as follows:

1. The appeal filed by Club Universidad de Guadalajara, Venados Fútbol Club Yucatán and Club de Fútbol Correcaminos against the decision of 24 April 2020 of the Extraordinary General Assembly of the Federación Mexicana de Fútbol Asociación (FMF) is *in totum* dismissed.
2. The decision of 24 April 2020 of the Extraordinary General Assembly of the Federación Mexicana de Fútbol Asociación (FMF) is confirmed.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
19 November 2020

THE COURT OF ARBITRATION FOR SPORT

Roberto Moreno Rodríguez Alcalá
President of the Panel

Juan Pablo Arriagada Aljaro
Arbitrator

Jeffrey A. Mishkin
Arbitrator