

CAS 2018/A/6040 Club Atlético Boca Juniors v. CONMEBOL & Club Atlético River Plate

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr. Massimo Coccia, Professor and Attorney-at-law, Rome, Italy
Arbitrators: Mr. Juan Pablo Arriagada, Attorney-at-law, Santiago, Chile
Dr. Andrés Gurovits, Attorney-at-law, Zurich, Switzerland
Ad hoc Clerk: Mr. Francisco A. Larios, Attorney-at-law, Miami, Florida, USA

in the arbitration between

Club Atlético Boca Juniors

Represented by Mr. Lucas Ferrer, Attorney-at-law, Pintó Ruiz & Del Valle, Barcelona, Spain
and Mr. Mariano Clariá, Attorney-at-law, Clariá Trevisán, Buenos Aires, Argentina

Appellant

and

Confederación Sudamericana de Fútbol (CONMEBOL)

Represented by Mr. Luca Tarzia and Mr. Jan Kleiner, Attorneys-at-law, Bär & Karrer AG,
Zurich, Switzerland

First Respondent

Club Atlético River Plate

Represented by Messrs. Javier Ferrero and Íñigo de Lacalle, Attorneys-at-law, Senn, Ferrero,
Asociados, Sports & Entertainment, Madrid, Spain, Mr Gonzalo Mayo, Buenos Aires,
Argentina

Second Respondent

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I. INTRODUCTION

1. This appeal is brought by Club Atlético Boca Juniors (hereinafter “Boca Juniors” or the “Appellant”) against the Confederación Sudamericana de Fútbol (hereinafter “CONMEBOL” or the “First Respondent”) and Club Atlético River Plate (hereinafter “River Plate” or the “Second Respondent”) and challenges Decision No. A-21-18 taken by the CONMEBOL Appeals Chamber on 6 December 2018, which confirmed the first instance decision (No. O-212-18) rendered by the CONMEBOL Disciplinary Tribunal on 29 November 2018, rejecting Boca Juniors request to have River Plate disqualified from the 2018 edition of the Copa CONMEBOL Libertadores (“Copa Libertadores”).

II. PARTIES

A. The Appellant

2. The Appellant, Boca Juniors, is a professional football club based in Buenos Aires and affiliated with the Argentinian football federation (the *Asociación del Fútbol Argentino* or “AFA”); in 2018, it competed in the *Primera División*, the top football league in Argentina, as well as in the Copa Libertadores.

B. The Respondents

3. The First Respondent, CONMEBOL, is recognized by FIFA as the continental governing body of football in South America, headquartered in Luque, Paraguay; each year it organizes the Copa Libertadores, the most prestigious transnational club competition in South America.
4. The Second Respondent, River Plate, is a professional football club based in Buenos Aires and affiliated with the AFA; in 2018, it competed in the *Primera División* as well as in the Copa Libertadores.

III. BACKGROUND

5. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations found in the Parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.
6. At the end of October 2018, Boca Juniors and River Plate won the respective semi-finals of the 2018 edition of Copa Libertadores, qualifying for the final to be played in two legs at the respective clubs’ home stadiums in Buenos Aires (hereinafter the “Final”).
7. On 6 November 2018, in view of the upcoming Final and of the historical rivalry between Boca Juniors and River Plate, a meeting was held at the Ministry of Justice and Security in Buenos Aires between the competing clubs, CONMEBOL and various national, regional and local level governmental entities with the purpose of “*coordinating and supervising the proper actions to guarantee the optimal functioning of the security system designed for the matches*” (translated from the Spanish original of the security meeting’s minutes: “*coordinar y supervisar las acciones previstas para garantizar el óptimo funcionamiento del sistema de seguridad diseñado para los partidos*”). At the outset of this meeting, Mr. Gustavo Morelli, CONMEBOL’s Security Officer, reminded the clubs that the “*responsibility for the event lies with the organizing Club, i.e. Boca Juniors for the first leg match, and River Plate for the second leg match*” (translated from the Spanish original of the security meeting’s minutes: “*la*

responsabilidad del evento la tendrá el Club organizador, en el partido de ida, Boca Juniors, y en el de vuelta, River Plate”).

8. On 11 November 2018, Boca Juniors and River Plate played the first leg of the Final, which ended in a 2-2 tie. No incidents occurred on route to the stadium in the first leg.
9. A second security meeting was held on 20 November 2018 (hereinafter the “Security Meeting” and, jointly with the first one, the “Security Meetings”) with the teams scheduled to play the return leg of the Final on 24 November 2018 at 17:00 (hereinafter the “Match”) at the home stadium of River Plate, the Antonio Vespucio Liberti stadium in Buenos Aires (hereinafter the “Stadium”). The Security Meeting aimed “*to establish policies and security and organizational measures to adopt upon the occasion of the football match*” (translated from the Security Meeting’s minutes in Spanish: “*establecer políticas y medidas de seguridad y organización para su adopción en ocasión del encuentro futbolístico*”). In attendance at that Security Meeting were:
 - for River Plate: Mrs. Valentina Pomi Rodríguez (Security Manager), Mr. Gabriel Marcilli (Member of the Board of Directors and in charge of security), Mr. Rubén Dalla Costa (Head of Security of the Stadium), Mr. Juan Pablo López Ciarroca (Security Coordinator), Mr. Rodrigo Pecollo (Infrastructure Manager), Dr. Víctor Vergondo (Health Operations Coordinator) and Mr. Pablo Vásquez (Representative of *TECH Seguridad Privada*);
 - for Boca Juniors: Mr. Claudio Fernandez (Security Manager);
 - for CONMEBOL: Mr. Gustavo Morelli (Security Officer); and
 - various national, regional and local level governmental entities, such as the Undersecretariat of Public Safety of the *Ciudad Autónoma de Buenos Aires* (“CABA”), the Football Security Committee of CABA, the local police, the Public Prosecutor of CABA, the National Directorate of Security of Football Matches, the Ministry of National Security of Argentina, and the General Directorate of Traffic and Transit Control, among others.
10. At the Security Meeting it was agreed *inter alia* that:
 - “*the participating clubs must coordinate with the police the safekeeping of the teams*” (translated from the original Security Meeting’s minutes in Spanish: “*los clubes participantes deberán coordinar con la autoridad policial la custodia de los equipos*”).
 - three “*security rings*” would be set up outside of the Stadium, the third of which would be “*reinforced with Federal Law Enforcement personnel*” (translated from the original Security Meeting’s minutes in Spanish: “*la seguridad del tercer anillo se reforzara con personal de Fuerzas de Seguridad Federales*”).
11. At the Security Meeting, there was no discussion related to the disciplinary rules of CONMEBOL, such as Article 8 of the CONMEBOL Disciplinary Regulation (hereinafter the “CDR”), but only of the operative security and organizational measures to be implemented on the day of the Match, and the different tasks and responsibilities of the various organisations involved (national and local law enforcement authorities, the fire

brigade, the host club, CONMEBOL, etc.), in accordance with Argentinian law and, in particular, with the laws and regulations in force in the city of Buenos Aires in relation to football events.

12. On the day of the Match, a bus drove the Boca Juniors team from the hotel to the Stadium. As evident from video evidence on file, while the bus was approaching the Stadium, at a little more than 700 metres from the Stadium, and just outside of the outer security ring (the third one), a significant number of River Plate supporters, positioned at the intersection of Libertador, Monroe and Quinteros Avenues, launched various things, including rocks, at the Boca Juniors' bus, breaking some bus windows and hurting some players (hereinafter the "Bus Attack"). In addition, some tear gas entered through the bus's broken windows affecting the bus passengers (the Parties dispute whether the tear gas was launched by the police to disperse the rowdy crowd or by the River Plate supporters, and the video evidence is inconclusive in this regard). While the Parties do not dispute that the Bus Attack occurred, they do dispute the type and degree of the resulting injuries and whether further incidents occurred inside the security rings on route to the Stadium.
13. According to a medical report by Dr. Pablo Ortega Gallo (Medical Director of the Appellant) issued the day of the Bus Attack, the Boca Juniors players suffered the following injuries:

"Perez Pablo: corneal abrasion by foreign bodies, more abrasion of the conjunctival cul-de-sac treated with antibiotic occlusion for 24/48 hours

Lamardo Gonzalo: corneal abrasion by foreign bodies treated with antibiotic occlusion for 24/48 hours

Andrada Esteban: cephalaea, nausea and irritative coughing, medicated with paracetamol

Jara Leonardo: cut in the heel with a short sharp glass. The glass was removed but the player continues to feel a foreign body and cannot walk normally.

Gago Fernando: anaphylactic reaction with breathing problems which required treatment with intramuscular corticotherapy

Tevez Carlos: Irritation of the mucosae, breathing difficulty, repeated nausea and vomits which required treatment with Reliveran TM

Bufarini Julio: Cut from injury by impact of a stone on the right hand, after receiving the treatment he continues to feel a foreign object in his hand, he received functional bandage plus NSAID

Almendra Agustín: irritation of the mucosae plus breathing difficulties with bronchospasm that required inhaled bronchodilator.

Olaza Lucas: irritation of the skin and mucosae, especially conjunctival, intense cephalaea and vomits, treated with eyewash with saline solution and paracetamol and metoclopramide VO

Villa Sebastián: dizziness, nausea, vomits and cephalaea treated with paracetamol and metoclopramide VO

The rest of the players, technical staff and auxiliary staff had similar symptoms but with less intensity [...]” (translated from the original medical report in Spanish).

14. Mr. Ortega Gallo confirmed this report in his written and oral testimony. He declared that *“the following problems were detected in several players: corneal abrasion, conjunctival cul-de-sac abrasion, headaches, nausea, irritating cough, vomiting, bronchospasm, respiratory distress, anaphylactic reaction, short puncture wound, skin and mucosae irritation, dizziness”*. In Mr. Ortega Gallo’s view, due to the injuries suffered, some players (in particular Messrs. Pablo Pérez, Gonzalo Lamardo, Fernando Gago and Agustín Almendra) were not in the physical condition to play the Match on 24 November 2018 or the next day.
15. A hand-written report of another member of the Boca Juniors medical staff, Dr. Jorge Batista, listed the following injuries:
 - “Pablo Perez – Mucosal irritation due to irritating gas inhalation. Cutting wound in right forearm*
 - Almendra A – Bronchospasm due to irritant gas inhalation. Bronchodilator*
 - Gago F – Allergic reaction due to inhalation of irritating gas*
 - Bustillo Javier – Cut wound in right knee*
 - Pavón Christian – Inhalation of irritating gas. Dyspnea*
 - Lamardo Gonzalo – Superficial cut to the right eye due to pieces of glass. Foreign body in the eye*
 - Peruzi Gino – Inhalation of irritating gas. Dyspnea*
 - Tevez C – Mucosal irritation. Headache. Dyspnea*
 - Magallan – Mucosal irritation. Headache. Dyspnea*
 - Andrada – Mucosal irritation. Headache. Dyspnea*
 - Olaza – Mucosal irritation. Headache. Dyspnea*
 - Villa S – Mucosal irritation. Headache. Dyspnea”* (translated from the original medical report in Spanish).
16. After arrival to the Stadium, at the request of the Appellant and as facilitated by the CONMEBOL medical team, the players Messrs. Lamardo and Pérez were transferred to the Otamendi Hospital, where Dr. Alejandro Weremzuck (an Ophthalmologist) confirmed Dr. Gallo’s diagnosis that both players suffered corneal abrasions, with Mr. Pérez also appearing to have an abrasion in his conjunctival cul-de-sac. Dr. Weremzuck prescribed antibiotic treatment and a follow-up medical appointment within the next 24 hours. Dr. Weremzuck also declared that the players’ eye injuries prevented them from playing in the Match.
17. Later that same day, Dr. Ivan Tcherkask, a sports psychologist for Boca Juniors (who himself was on the bus during the attack) reported that due to the traumatic experience

suffered by the players, they were not in the psychological or emotional state to compete in a football match, let alone in one the magnitude of the Copa Libertadores Final. The next day, Dr. Ivan Tcherkask further reported that the players “*continue[d] to show symptoms characteristic of post-traumatic situations, such as high level of anxiety, difficulty falling asleep, irritability, difficulty focusing*”, and that the Bus Attack had “*produced in the players lack of concentration, irritability, anguish, leaving them without the emotional response capacity needed for decision-making and for resolving the situations that appear in a competition of such physical and emotional demand*”.

18. On the other hand, approximately 60 to 90 minutes after the Bus Attack had occurred (as estimated by Dr. Osvaldo Pangrazio, President of the CONMEBOL Medical Commission, in his oral testimony), the CONMEBOL medical team – comprising of Dr. Pangrazio, Dr. Francisco Mateu, Dr. Jorge Pagura and Dr. José Veloso – reported that “*the players of Boca Juniors suffered superficial injuries in the upper limb, lower limb, facial and trunk*”, and that two of them “*suffered corneal injuries, which could not be confirmed by our medical staff*”. The CONMEBOL doctors concluded that “*from the medical point of view [...] there is no reason to suspend the match*” (translated from the original report in Spanish: “*los jugadores del club Boca Juniors sufrieron lesiones de piel superficiales en miembro superior, miembro inferior, facial y tronco, del mismo modo 2 jugadores refirieron lesiones en la córnea, la cual no se pudo confirmar por nuestro cuerpo médico [...] desde punto de vista médico no existe una causal para la suspensión del encuentro*”).
19. Two days later, on 26 November 2018, Dr. Pangrazio wrote a second report in which he *inter alia* declared that the CONMEBOL doctors had ascertained (in the Spanish original “*constatado*”) the injuries from shards of glass on some players, the allergic reactions suffered, and the eye injuries to two players whose transfer to an ophthalmological specialist they facilitated at the request of Boca Juniors’ doctors (Dr. Pangrazio wrote in the Spanish original: “*Hemos asistido al vestuario de Boca en más de 3 oportunidades [...] Hemos constatado de las lesiones por esquirlas de vidrio de algunos jugadores [...] Hemos constatado reacciones alérgicas [...] Hemos constatado lesión de ojo en 2 jugadores y hemos facilitado a pedido del médico de Boca su traslado a un centro Oftalmológico [...]*”).
20. The players Messrs. Lamardo, Pérez, Tevez and Julio Bufarini all testified that they were not in the condition – either physically or psychologically – to play the Match following the Bus Attack.
21. As a consequence of the above circumstances, CONMEBOL decided to postpone the start of the match twice – first until 18:00 and then until 19:15.
22. Thereafter, the presidents of the two clubs (Mr. Daniel Angelici for Boca Juniors and Mr. Rodolfo D’Onofrio for River Plate) and the president of CONMEBOL (Mr. Alejandro Dominguez W.S.) met and agreed to postpone the Match once more until 17:00 of the next day, 25 November 2018 (hereinafter the “Postponement Agreement”). Under this agreement, the presidents declared as follows:

“[...] That the Club Boca Juniors bus, metres away from entering the Club River Plate Stadium security ring, was hit by a rock. That for the purposes of safeguarding the sporting integrity of the FINAL of the CONMEBOL LIBERTADORES, the Presidents have taken the decision to postpone it until the day 25 November 2018 at 17:00 hours, to be played at the Club River Plate stadium. That it is the presidents’ intention for the FINAL to be held tomorrow without violence, to take place under equal conditions and for Argentinian and South American football to be the winners of an event held in peace”.

Translated from the original agreement in Spanish: *“[...] Que el Bus del Club Boca Juniors a metros de ingresar al anillo de seguridad del Estadio del Club River Plate ha sido impactado por una piedra. Que los Presidentes a efectos de salvaguardar la integridad deportiva de la FINAL de la CONMEBOL LIBERTADORES, han tomado la decisión de prorrogarlo al día de 25 de noviembre de 2019, a las 17:00 horas, a ser disputado en el estadio del Club River Plate. Que, es intención de los Presidentes que el día de mañana la FINAL sea llevada a cabo sin hechos de violencia, que sea disputada en igualdad de condiciones y que gane el fútbol argentino y sudamericano en una fiesta llevada a cabo en paz”.*

23. On 25 November 2018, Boca Juniors lodged a complaint against River Plate at the CONMEBOL Disciplinary Unit *“in relation to the incidents that occurred in the vicinity of the Club Atlético River Plate stadium when our club’s first division team arrived to play the [Match]”* (in the original Spanish text: *“con relación a los incidentes ocurridos en las inmediaciones del estadio del Club Atlético River Plate en ocasión de la llegada del primer equipo de nuestro club para la disputa del partido”*). The Appellant complained about the Bus Attack, as well as other incidents that occurred in the context of the Match:

“On the afternoon of 24 November 2018, as the bus carrying the first division team of Club Atlético Boca Juniors approached the Antonio V. Liberti stadium it was attacked by a large group of people dressed in the colours and clothing of Club Atlético River Plate [...]. It is important to mention that also, and as is publicly known, there were multiple incidents in the vicinity of and inside the stadium, so there were neither the conditions nor guarantees to play the scheduled match. The different images, known to the public, are clear and show that incidents which occurred inside and outside the stadium meant that the match could not go ahead under normal conditions. As an example, even after the match was suspended and while River president Rodolfo D’Onofrio was giving an interview to a television channel, running crowds – inside the stadium – meant the interview could not continue”.

Translated from the original complaint in Spanish: *“En la tarde del 24 de noviembre de 2018, al aproximarse al Estadio Antonio V. Liberti, el ómnibus que transportaba al primer equipo del Club Atlético Boca Juniors fue atacado por un nutrido grupo de personas que se identificaban con los colores y la vestimenta del Club Atlético River Plate [...]. Es importante destacar que, asimismo, de y como es de público conocimiento, se produjeron múltiples incidentes en las inmediaciones y dentro del estadio, por lo cual no estaban*

dadas las condiciones ni las garantías para la disputa del partido programado. Las distintas imágenes, de público conocimiento, son evidentes y demuestran que los incidentes ocurridos dentro y fuera del Estadio impedían la disputa del partido en condiciones normales. Como ejemplo, incluso luego de la suspensión del partido, mientras el Presidente de River Rodolfo D’Onofrio realizaba una entrevista para un canal de televisión, se produjeron corridas – dentro del Estadio – que impidieron que el mismo continuara con la entrevista”.

24. Due to all of the aforementioned incidents, the Appellant demanded (i) the immediate suspension of the Match as its players had not yet recovered from the injuries sustained, and (ii) that River Plate be sanctioned with a disqualification from the Copa Libertadores 2018 (i.e., for all practical purposes, from the Final), pursuant to Articles 8, 13.2 and 18 CDR:

“For all of the above, we ask: [...] 2. For the final of the Copa CONMEBOL Libertadores 2018, scheduled for 17:00 hours 25 November 2018 to be suspended as the Boca Juniors players injured in the attacks by the River Plate supporters have not fully recovered... 3. For the disqualification of Club Atlético River Plate from the Copa CONMEBOL Libertadores 2018, under the terms of Articles 8, 13.2 and 18 of the CONMEBOL Disciplinary Regulations, considering the seriousness of the reprimanded behaviour and recidivism on the part of the club [...]”.

Translated from the original complaint in Spanish: *“Por todo lo expuesto, solicitamos: [...] 2. Se disponga la suspensión del encuentro por la final de la Copa CONMEBOL Libertadores 2018, programado para el 25 de noviembre de 2018 a las 17:00 horas, ya que los jugadores de Boca Juniors víctima de las agresiones de los simpatizantes de River Plate no se encuentren íntegramente recuperados [...] 3. Se resuelva la descalificación del Club Atlético River Plate de la Copa CONMEBOL Libertadores 2018, en los términos de los Arts. 8, 13.2 y 18 del Reglamento Disciplinario de CONMEBOL, considerando la gravedad de las conductas reprochadas y el carácter de reincidente de dicha institución [...]”.*

25. On the basis of Boca Juniors’ complaint, the CONMEBOL Disciplinary Unit commenced disciplinary proceeding No. O-212-18 and notified River Plate of its opening. In the letter initiating the proceeding (the “*Apertura de Expediente Disciplinario*”), CONMEBOL indicated the following:

“[...] 2. On 24 November, in response to the incidents that occurred before the start of the aforementioned match, CONMEBOL has resolved to postpone the match for Sunday, November 25, 2018 at 5:00 p.m.

3. On November 25, 2018, the Boca Juniors Athletic Club submitted a complaint to the CONMEBOL Disciplinary Unit for aggressions carried out by supporters of the River Plate Athletic Club.

Consequently, the CONMEBOL Disciplinary Unit, in the exercise of its faculties and in accordance with the provisions of Article 52 of the CONMEBOL

Disciplinary Regulations, initiates disciplinary proceedings against the RIVER PLATE ATHLETIC CLUB [...]”.

Translated from the original letter in Spanish: “[...] 2. *En fecha 24 de noviembre atendiendo a los incidentes ocurridos antes del inicio del partido supra señalado, la CONMEBOL ha resuelto postergar el partido para el domingo 25 de noviembre de 2018 a las 17:00 horas.*

3. *El 25 de noviembre de 2018, el Club Atlético Boca Juniors presentó ante la Unidad Disciplinaria de la CONMEBOL una Denuncia por agresiones provocadas por simpatizantes del Club Atlético River Plate.*

En consecuencia, la Unidad Disciplinaria de la CONMEBOL en el ejercicio de sus facultades y de acuerdo con lo dispuesto en el Art. 52 del Reglamento Disciplinario de la CONMEBOL, inicia procedimiento disciplinario contra el CLUB ATLÉTICO RIVER PLATE [...]”.

26. Later on 25 November 2018, CONMEBOL issued a press release reporting that the president and the board of CONMEBOL had decided to postpone the Match to a new date “with the aim of preserving sporting equality” (in the Spanish original text: “con el objetivo de preservar la igualdad deportiva”). The press release indicated that the new date of the Match would be set at a CONMEBOL meeting to be held on 27 November 2019 with the presidents of the rival clubs.
27. On 26 November 2018, the CONMEBOL Disciplinary Tribunal (in Spanish the “*Tribunal de Disciplina*”) opened *ex officio* disciplinary proceeding no. O-213-18 against River Plate for violations of Articles 8, 7.2(c), (e) and (l) and 13.2(e) and (f). The proceeding was opened on the basis of incidents occurring “inside the Stadium Antonio Vespucio Liberti and in the first security ring” (the letter opening the proceeding, i.e. the “*Apertura de Expediente Disciplinario*”, reads: “*La Unidad Disciplinaria ha tomado conocimiento varios incidentes ocurridos dentro del Estadio Antonio Vespucio Liberti y en el primer anillo de seguridad... En consecuencia... de acuerdo con lo dispuesto en el Art. 52 del Reglamento disciplinario de la CONMEBOL, inicia procedimiento disciplinario contra el CLUB ATLÉTICO RIVER PLATE...*”). Boca Juniors was neither a party nor was formally notified of the decision to open *ex officio* another disciplinary proceeding against River Plate. Boca Juniors also never requested to intervene in such *ex officio* proceeding.
28. On 27 November 2018, Boca Juniors filed an extension to its initial complaint of 25 November, submitting a more detailed account of the facts and further pieces of evidence.
29. Also on 27 November 2018, CONMEBOL sent a letter to the presidents of Boca Juniors and River Plate communicating its decision to play the Match on 8 or 9 December in a place outside of Argentina to be subsequently determined. Two days later, CONMEBOL informed that the Match would be played at the Santiago Bernabeu stadium in Madrid, Spain on 9 December 2018.

30. On 29 November 2018, in relation to the *ex officio* disciplinary proceeding, the CONMEBOL Disciplinary Tribunal issued the operative part of Decision No. O-213-18, sanctioning River Plate with two matches behind closed doors and a fine of USD 400,000. The grounds of the decision were notified to River Plate on 2 December 2018. More than one month later, on 8 January 2019, Boca Juniors also asked CONMEBOL for the grounds of this decision.
31. Also on 29 November 2018, the CONMEBOL Disciplinary Tribunal issued Decision No. O-212-18, rejecting Boca Juniors' request to have River Plate disqualified from the Copa Libertadores 2018. The Disciplinary Tribunal decided as follows in the operative part of this Decision:
 - “1. TO REJECT the petition filed by CLUB ATLÉTICO BOCA JUNIORS on 25 November 2018 and its extension filed on 27 November 2018.
 2. TO ORDER the CONMEBOL Department of Club Competitions to reschedule the return leg of the Final Game of the CONMEBOL Libertadores 2018 between Club Atlético River Plate vs. Club Atlético Boca Juniors.
 3. TO NOTIFY Club Atlético Boca Juniors, Club Atlético River Plate and the CONMEBOL Department of Club Competitions” (translated from the original decision in Spanish).
32. In reaching its decision, the Disciplinary Tribunal reasoned *inter alia* that River Plate was not strictly liable for any supporter misconduct occurring *outside* of the security rings delineated in the Security Meeting; that area fell under the exclusive responsibility of the police. The Disciplinary Tribunal held that “*it would be illogical to think that a football club could substitute the inherent and exclusive powers of the State security organs*” (translated from the original Spanish text).
33. On 30 November 2018, Boca Juniors appealed Decision No. O-212-18 to the CONMEBOL Appeals Chamber (in Spanish the “*Cámara de Apelaciones*”) and challenged the decision of the CONMEBOL Disciplinary Tribunal to divide the dispute into two separate proceedings, i.e. Nos. O-212-18 and O-213-18.
34. On 6 December 2018, River Plate appealed the second and third orders of decision O-212-18, which the Appeals Chamber dismissed on 17 December 2019.
35. Also on 6 December 2018, the Appeals Chamber issued the Decision No. A-21-18 (the decision appealed in the present case), rejecting Boca Juniors' appeal and confirming the Disciplinary Tribunal's Decision No. O-212-18. The Appeals Chamber made the following considerations *inter alia*:
 - Cases No. O-212-18 and O-213-18 may not be consolidated, as the facts on which they are respectively based are distinct and dividable as follows: (i) the Bus Attack, and (ii) the incidents occurring around or inside the Stadium.
 - Boca Juniors cannot deny that the Bus Attack took place outside the security rings, since Boca Juniors attended the Security Meeting and therefore had full knowledge of the security plan.

- In determining strict liability, there must be a clear distinction between incidents occurring outside the security rings and those occurring inside such rings.
 - It would be “*absurd*” to sanction a club for an incident occurring more than 700 meters away from the Stadium, especially when its responsibilities were previously defined.
 - Clubs are strictly liable for their supporters’ behaviour. However, strict liability must have certain limits. It can only apply to incidents occurring inside and around the Stadium. River Plate is not strictly liable for the Bus Attack because it has occurred at a distance that cannot be imputed on the club.
36. On 7 December 2018, River Plate appealed Decision No. O-213-18 to the Appeals Chamber.
37. On 9 December 2018, the second leg of the Final was finally played at the Bernabeu stadium in Madrid, Spain. River Plate won the match 3-1, becoming champion of the Copa Libertadores by an aggregate score of 5-3.
38. On 29 January 2019, the Appeals Chamber issued Decision A-23-18, dismissing River Plate’s appeal of Decision No. O-213-18. It notified the grounds of this dismissal on 21 February 2019 and River Plate never filed an appeal to the CAS against it.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

39. On 7 December 2018, in accordance with Articles R47 and R48 of the 2017 edition of the Code of Sport-related Arbitration (the “CAS Code”), the Appellant filed a statement of appeal against Decision No. A-21-18 taken by the CONMEBOL Appeals Chamber on 6 December 2018 (the “Appealed Decision”). The Appellant also filed a request for urgent provisional measures, requesting the suspension – until the CAS’s final determination of its appeal – of the second leg of the final of the 2018 Copa Libertadores, which was set to be played two days later in Madrid.
40. In the statement of appeal, the Appellant requested for the proceeding to be conducted in Spanish, to which CONMEBOL objected on 8 December 2018. Therefore, in accordance with Article R29 of the CAS Code, English was set as the language of the present proceeding.
41. On 8 December 2018, the President of the CAS Appeals Arbitration Division rejected the Appellant’s application for provisional measures.
42. On 14 December 2018, the Appellant, acknowledging that the First Respondent had objected to using Spanish as the language of the proceeding, requested that, at minimum, the Parties be allowed to present its exhibits and witnesses in Spanish. However, the First Respondent (i) confirmed its objection to have the proceeding in Spanish, explaining that it preferred English as it would protect its procedural rights and legitimate interest in nominating an arbitrator from the full list and not only from the Spanish-speaking arbitrators, and (ii) objected to allowing that the exhibits and

witnesses be left untranslated, as it would similarly deprive it from its right to select a non-Spanish-speaking arbitrator.

43. Also on 14 December 2018, the Second Respondent requested to suspend the present appeal proceeding until the CONMEBOL Appeals Chamber rendered a final decision in procedure No. O-212-18 in relation to the appeal it had filed on 6 December 2018 (see *supra* at para. 34).
44. On 17 December 2018, the Appellant requested to suspend the present appeal procedure until the CONMEBOL Appeals Chamber rendered a final decision in procedure No. O-213-18.
45. On 27 December 2018, the Deputy President of the CAS Appeals Arbitration Division rejected the requests filed by the Appellant and the Second Respondent to suspend the present appeal proceeding.
46. On 18 January 2019, in accordance with Article R51 of the CAS Code, the Appellant filed its appeal brief.
47. On 28 February 2019, the CAS Court Office notified the Parties that, on behalf of the President of the CAS Appeals Arbitration Division and pursuant to Article R54 of the CAS Code, the Panel appointed to decide the matter would be constituted by Professor Massimo Coccia (Rome, Italy) as chairman, Mr. Juan Pablo Arriagada (Santiago, Chile) designated by the Appellant, and Dr. Andrés Gurovits (Zurich, Switzerland), jointly nominated by the Respondents.
48. On 4 March 2019, the CAS Court Office notified the Parties that Mr. Francisco A. Larios (Miami, FL, USA) had been appointed *ad hoc* clerk.
49. In accordance with Article R55 of the CAS Code, on 23 and 24 April 2019, respectively, the Second and First Respondent filed their answers.
50. On 16 May 2019, 20 May 2019 and 16 May 2019, respectively, the Appellant, First Respondent and Second Respondent submitted the signed Order of Procedure.
51. On 16 and 17 July 2019, a hearing was held at the headquarters of *La Liga de Fútbol Profesional* in Madrid, Spain.
52. In addition to the Panel, the *ad hoc* clerk, and Mr. Antonio de Quesada (CAS Head of Arbitration), the following persons were in attendance at the hearing:
 - For the Appellant: Mr. Lucas Ferrer, Mr. Mariano Clariá, Ms. Matilde Costa Dias, and Ms. Nicole Santiago, as Appellant’s Counsel, as well as Mr. Daniel Angelici (President of Appellant), Mr. Dario Richarte (Vice-President of Appellant) and Ms. Eloísa Moyano (interpreter).
 - For the First Respondent: Mr. Luca Tarzia and Dr. Jan Kleiner, as First Respondent’s Counsel, as well as Ms. Montserrat Jiménez (Deputy Secretary General and Legal Director of First Respondent).

- For the Second Respondent: Mr. Javier Ferrero Muñoz, Mr. Íñigo de Lacalle Baigorri, Mr. Gonzalo Mayo Nader, Mr. Matías Elmo, Mr. Juan Alfonso Prieto Huang, and Ms. Patricia Galán Olleros, as Second Respondent’s Counsel, as well as Mr. Rodolfo D’Onofrio (President of Second Respondent), Mr. Ignacio Villarroel (General Secretary of Second Respondent), and Mr. Raúl Martín (interpreter).
53. The CAS Secretary General, Mr. Matthieu Reeb, was also present for the first portion of the first day of the hearing.
54. The following individuals were initially expected to testify at the hearing:
- For the Appellant: Mr. Daniel Angelici, Mr. Darío Rubén Ebertz (Driver of the Appellant’s team bus), Messrs. Pablo Pérez, Julio Bufarini, Gonzalo Lamardo, and Carlos Tevez (Professional football players for the Appellant), Dr. Pablo Ortega Gallo (Medical Director of the Appellant), Dr. Alejandro Weremzuck (Ophthalmologist from Otamendi Hospital) and Dr. Ivan Tcherkaski (a sports psychologist).
 - For the First Respondent: Dr. Osvaldo Pangrazio (President of the Medical Commission of the First Respondent) and Mr. Federico Nantes (Director of Competitions of the First Respondent).
 - For the Second Respondent: Mr. Rodolfo D’Onofrio, Ms. Valentina Pomi Rodríguez (Security Manager of the Second Respondent), Mr. Rodrigo Pecollo (Infrastructure Manager for the Second Respondent), Mr. Rubén Dalla Costa (Head of Security of the Second Respondent’s Stadium), Mr. Gabriel Marcelli (Member of the Board of Directors and in charge of security), Dr. Carlos Trillo (Former member of Second Respondent’s Medical Department), Mr. Pablo Vásquez (Representative of *TECH Seguridad Privada*), and Mr. Daniel Margelli (member of the Institutional Relations Department of the Second Respondent).
55. However, during the hearing the Parties waived to hear the following witnesses (it being understood that the written statements were not similarly waived): Mr. Lamardo, Mr. Pecollo, Mr. Dalla Costa, Mr. Vásquez, Dr. Weremzuck, Dr. Margelli and Mr. Federico Nantes. The remaining witnesses were heard as programmed, all by videoconference except for the presidents of the concerned clubs, Messrs. Angelici and D’Onofrio, who testified in person.
56. At the beginning of the hearing, two preliminary matters were raised:
- First, the Appellant reiterated its request, already submitted in writing on 12 July 2019, to introduce a new document pursuant to Article R57 of the CAS Code (a letter sent by the Appellant to the First Respondent on 8 January 2019, see *supra* at para. 30). The Second Respondent objected to the document’s introduction, whereas the First Respondent confirmed the authenticity of the letter and did not object to its introduction, provided that the Panel also accept the submission of CONMEBOL’s reply to said letter. The Panel, who had indicated by email of 13 July 2019 that it would resolve this matter at the outset of the hearing, accepted both the new document and the reply communication.

- Second, the Second Respondent requested the Panel to decide as a preliminary matter whether the CAS had the power to review the appeal, due to some preliminary issues which would prevent addressing the merits of the appeal. The Panel rejected this bifurcation request due to its belatedness and indicated that it would address all matters raised by the Parties in a single, final award.

57. At the conclusion of the hearing, the Parties confirmed they were satisfied with the manner in which the Panel conducted the proceeding and raised no objections thereto. The Panel also invited the Parties to submit statements on costs, which they subsequently did by the set time limit of 5 August 2019.

V. SUBMISSIONS OF THE PARTIES

A. The Appellant: Boca Juniors

58. In its motions for relief, the Appellant requests the CAS to:

“a. Set aside the Decision no. A-21-18 issued by the Cámara de Apelaciones in its entirety;

b. Declare that Club Atlético River Plate is strictly liable for its supporters conduct and order the disqualification from the 2018 edition of the Copa CONMEBOL Libertadores in accordance of Art. 18 RD;

c. Alternatively, declare that Club Atlético River Plate is strictly liable for its supporters conduct, and order serious disciplinary sanction(s) that is(are) deemed appropriate in light of the gravity of the facts occurred and contained in Art. 18.1 RD;

d. In any of the aforementioned events, the payment by the Respondents of the costs of these proceedings and a contribution towards the Appellant’s legal fees for a total amount of EUR 25.000”.

59. The Appellant’s submissions, in essence, may be summarized as follows:

- (i) The Appellant does not aim to win the Match off the field by bringing the present appeal. It simply wishes to correct the First Respondent’s mistake of not holding the Second Respondent strictly liable for its fans’ misconduct. If the consequence thereof is the disqualification of the Second Respondent, so be it.
- (ii) CONMEBOL proceedings Nos. O-212-18 and O-213-18 were artificially divided by CONMEBOL. The Appellant’s original complaint which initiated the first proceeding before CONMEBOL (i.e. No. O-212-18) referred to all the events that occurred before the Match, not only the Bus Attack. Therefore, there was no reason for the CONMEBOL Disciplinary Unit to initiate an additional disciplinary proceeding *ex officio* (i.e. No. O-213-18) for matters related to incidents occurring inside and around the Stadium. In any event, the cases should have been consolidated in accordance with Article 50(g) CDR, given that both deal

with the same Parties and derive from the same “*single course of continuous actions*”.

- (iii) The Appealed Decision failed to correctly interpret and apply the strict liability principle foreseen in Article 8 CDR. Strict liability is not to be limited by artificial divisions or “*zones of liability*” (e.g. inside and outside security rings). The concept of “*inmediaciones*” (i.e. “*around the stadium*”) must be interpreted broadly and encompass an incident occurring at about 700 meters from the Stadium. The term is aimed at “*reasonably covering the surroundings of a football stadium before, during and after a match where incidents of any nature may be caused by supporters of the club*”. Strict liability extends even to incidents well outside the stadium which have a direct negative impact on the course of the match, irrespective of whether it occurred inside or outside a security rings for which the host club is responsible. Furthermore, strict liability applies (i) even in the case that the host club is not at fault or negligent and (ii) irrespective of whether the police or any other security organization undertook to provide security measures and is at fault or negligent in that respect. River Plate must therefore be held strictly liable for the Bus Attack. Holding otherwise would undermine the purpose of Article 8 CDR, send the wrong message to the fans, and be detrimental to sport as it would allow hooligans to know exactly from what distance their misbehaviours would not result in any sanctions against their team.
- (iv) The Postponement Agreement is irrelevant and cannot serve (i) to exculpate River Plate for the misbehaviour of its supporters or (ii) as a waiver by Boca Juniors of future complaints against River Plate (e.g. requests for disqualification or other sanctions). This is because the Postponement Agreement (i) is by no means an accurate depiction of the Bus Attack, (ii) was signed in an intense and uncertain environment, at a time impossible for the president of Boca Juniors to understand the full extent of his players’ physical and psychological injuries, and (iii) CONMEBOL decided on its own to postpone the Match past 25 November 2018 so the object and purpose of the Postponement Agreement became moot. With the Postponement Agreement, the president of Boca Juniors only agreed that it would play the Match *on the next day and if equal conditions existed*; thus, the agreement lost effect the next day when the clubs were still not in equal conditions and CONMEBOL postponed the Match to a future date to “*preserv[e] sporting equality*”.
- (v) The appropriate sanction for the Bus Attack is River Plate’s disqualification from the 2018 Copa Libertadores. Only a sanction of that severity would be consistent with CONMEBOL and CAS jurisprudence and have a sufficient preventative and deterrent effect. In the event that the Panel does not disqualify River Plate, then it should apply the most serious sanction deemed appropriate under Article 18.1 CDR.

B. The First Respondent: CONMEBOL

60. In its motions for relief, the First Respondent requests the CAS:

- “a) To dismiss the Appeal in full and to confirm the decision under appeal;
- b) In any event, to charge the costs of the arbitration to the Appellant;
- c) In any event, to order Appellant to pay CHF 40,000 as contribution to the expenses incurred by Second Respondent within the frame of the present CAS proceedings”.

61. The First Respondent’s submissions, in essence, may be summarized as follows:

- (i) Football matches must be played and decided on the field and not in the courtroom. If the Appellant truly does not seek to win the Copa Libertadores off the field, then it would have requested a sanction other than the Second Respondent’s disqualification.
- (ii) The two proceedings before CONMEBOL were opened in line with Article 52 CDR. The basis of the Appellant’s complaint which initiated proceeding No. O-212-18 was the Bus Attack. On the other hand, the *ex officio* proceeding, i.e. No. O-213-18, was opened for all incidents that occurred inside and around the Stadium. There was no bifurcation of the proceedings; they were separate from the outset.
- (iii) Boca Juniors does not have a legitimate ground to request a specific sanction on River Plate. Article 52 CDR allows for clubs to file a complaint but not to request that a specific sanction such as disqualification be imposed. CONMEBOL is not bound by any request made by a complainant. Therefore, the appeal is inadmissible or, in any case, must be dismissed for lack of any legal basis.
- (iv) The appeal must be dismissed because:
 - River Plate is not strictly liable for the Bus Attack. Strict liability is not unlimited; a spatial limitation exists. For strict liability to apply, the misbehaviour must occur within the sphere of control of the club, i.e. in the football stadium or in close proximity thereto. This special limitation is found in Article 8 CDR’s reference to “*inmediaciones del estadio*” which can be translated in English to “*immediate surroundings of the stadium*”. In establishing the limits of “*inmediaciones*”, one must take into account local law and predefined security perimeters, which, at the very least, create a strong presumption against strict liability where the incident occurs outside of the club’s area of control. Article 8 CDR is a “*flexible model*” to be applied differently in each country in accordance with the local law. In the present case, since the Bus Attack took place outside of the security perimeter established in the Security Meeting, i.e. in an area exclusively under the responsibility of the police, River Plate cannot be held strictly liable for it.
 - it is barred by *res judicata*. Based on Article 52 CDR, First Respondent initiated proceeding No. O-213-18 *ex officio* for incidents that occurred inside and around the Stadium. It properly sanctioned Second Respondent

in that proceeding (in which the Appellant failed to intervene) and the decision has become *res judicata* with *erga omnes* effect towards all direct and indirect CONMEBOL members. Proceeding No. O-212-18, on the other hand, was based on the Appellant's complaint and dealt only with the Bus Attack. The scope of the Appealed Decision is therefore limited to the Bus Attack.

- upholding the appeal would violate the principle of *venire contra factum proprium*. The Parties agreed in the Postponement Agreement to play the Match on equal conditions and, ultimately, it did so in Madrid. Thus, Boca Juniors cannot now demand River Plate's disqualification, as it would be contradictory to the Postponement Agreement.

C. The Second Respondent: River Plate

62. In its motions for relief, the Second Respondent requests that:

“A.- *The appeal filed by CLUB ATLÉTICO BOCA JUNIORS is fully dismissed and the Decision rendered by the CONMEBOL Appeals Chamber on December 76th, 2018 under the procedure A-21-18 is fully confirmed.*

As an alternative prayer of relief:

B.- *The appeal filed by CLUB ATLÉTICO BOCA JUNIORS is fully dismissed by virtue of the rules and principles of good faith, pacta sunt servanda, and the doctrine of venire contra factum proprium.*

As a second prayer of relief:

C.- *Should this Hon. Panel decide that the principles of good faith, pacta sunt servanda and doctrine of venire contra factum proprium are not infringed, the appeal filed by CLUB ATLÉTICO BOCA JUNIORS is fully dismissed since the strict liability principle is not applicable against CLUB ATLÉTICO RIVER PLATE ASOCIACIÓN CIVIL.*

As a third alternative prayer of relief:

D.- *Should this Hon. Panel consider that the strict liability principle would apply to the present dispute, the appeal filed by CLUB ATLÉTICO BOCA JUNIORS is fully dismissed in application of the principle res iudicata.*

As a fourth alternative prayer of relief:

E.- *Should this Hon. Panel consider that the principle res iudicata does not apply to the present procedure, the appeal filed by CLUB ATLÉTICO BOCA JUNIORS is fully dismissed in application of the principle ne bis in idem.*

As a final alternative prayer of relief:

F.- *Should this Hon. Panel consider that the principle ne bis in idem does not apply to the present procedure, the appeal filed by CLUB ATLÉTICO BOCA JUNIORS is fully dismissed in application of the principle of proportionality.*

In all six cases:

- G.- *CLUB ATLÉTICO BOCA JUNIORS is ordered to bear all procedural costs and other arbitration expenses of this procedure.*
- H.- *CLUB ATLÉTICO BOCA JUNIORS is also ordered to pay the legal fees and other expenses incurred by CLUB ATLÉTICO RIVER PLATE ASOCIACIÓN CIVIL in an amount to be determined at the discretion of this Hon. Panel”.*

63. The Second Respondent’s submissions, in essence, may be summarized as follows:
- (i) Matches should be won and lost on the field. The Appellant here attempts to win the 2018 Copa Libertadores after having lost it on the field.
 - (ii) The Panel’s scope of review is limited exclusively to the Appealed Decision and does not encompass Decision No. A-23-18 which has become final, binding, *res judicata* and is now unappealable. Furthermore, the Panel’s scope of review must respect the principles of *non reformatio in peius* and *ultra/extra petita*.
 - (iii) The Boca Juniors players have acted in bad faith by distorting the truth about their alleged physical and psychological injuries. For example, Mr. Pablo Pérez was seen entering the Stadium without any injury or discomfort to his eyes and the first medical report issued by Boca Juniors’ doctor reported no such injury (“*mucosal irritation by inhalation of irritant gas. Right forearm cut*”, translated from Spanish original). He was even listed on the Match form as a starter for the 19:15 Match start. Mr. Lamardo on the other hand was pictured with his left eye patched up, even though he had been diagnosed with a right eye injury. The players also suffered no psychological injuries, as evident from photographs of the team on the field in a calm and playful state. The CONMEBOL doctors actually concluded in their joint medical report that the injuries sustained did not warrant the cancellation of the Match and said report must be presumed valid.
 - (iv) Boca Juniors agreed to the Postponement Agreement. This Agreement – which is fully valid and effective – clearly evidences that (i) the Bus Attack took place outside of the safety rings, (ii) the clubs sought to safeguard the sporting integrity of the Final, and (iii) the clubs agreed to play the Match. It was in fact Mr. Angelici who requested the postponement of the Match until 25 November 2019. Boca Juniors breached this Agreement by filing the complaint which initiated proceeding No. O-213-18, and in doing so, breached the principles of good faith, *pacta sunt servanda* and *venire contra factum proprium*.
 - (v) The strict liability principle does not apply when there is no fault and/or negligence and lack of responsibility attributable to the host team. Strict liability is inapplicable in the present case because the Bus Attack took place outside of the security rings and thus beyond the club’s responsibility. Public officials have been denounced and have recognized that the Bus Attack was their full

responsibility and attributable exclusively to them. The term “*inmediaciones*” in Article 8.2 CDR is undefined in the CDR and – in analyzing the applicable Argentinian legislation on this matter – must mean the Stadium and its surrounding area delimited by a security perimeter as set by the competent governmental authorities. This area was clearly delineated in the Security Meeting and does not include the area in which the Bus Attack occurred, which fell under the exclusive responsibility of the police.

- (vi) Subsidiarily, in the event that strict liability is applicable (*quod non*), the Appellant’s petitions are barred by *res judicata* since CONMEBOL already took a final and binding decision (i.e. Decision A-23-18) in relation to the incidents occurring *inside* the Stadium and security rings. Further subsidiarily, if not barred by *res judicata*, then the petitions are barred by the principle of *ne bis in idem* since River Plate has already been sanctioned by CONMEBOL in Decision A-23-18 and cannot be punished twice for the same cause of action. Further subsidiarily, if not barred by *ne bis in idem*, the Appellant has already played the Match and cannot now seek the Second Respondent’s disqualification from it. Further subsidiarily, the sanction requested by the Appellant is disproportionate and excessively severe.

VI. JURISDICTION

64. Article R47 of the CAS Code provides as follows:

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

65. Article 81 of the CDR so states (in its English translation):

“1. In disciplinary matters, recourse to ordinary courts is prohibited. In accordance with Article 66 of the Statutes, CONMEBOL recognizes the right to appeal exclusively before the Court of Arbitration for Sport (CAS) based in Lausanne (Switzerland).

Disputes can only be filed with the CAS when all internal channels have been exhausted.

2. The arbitration procedure is governed by the provisions of the CAS Code, except the ones provided in the present chapter.

3. Only the decisions of the Appeals Chamber shall be considered final, being these final and binding for the parties. The appeal against the latter before the CAS is reserved. Any appeal against decisions issued by the latter can only be lodged before the CAS.

[...]”.

66. The Parties do not dispute the jurisdiction of the CAS and, moreover, confirmed it by signing the Order of Procedure (see *supra* at para. 50).
67. In light of the foregoing, the Panel holds that the CAS has jurisdiction to hear the present dispute.

VII. ADMISSIBILITY

68. Article R49 of the CAS Code provides as follows:

“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document”.

69. Article 81, para. 4 CDR states: *Any appeal before the CAS must be filed within a period of ten days counting from the day the appellant has knowledge of the appealed decision”.*
70. The Appealed Decision was issued to the Appellant on 6 December 2018. The Appellant lodged an appeal at CAS the next day on 7 December 2018, i.e. within the ten days allotted under 81, para. 4 CDR. It follows that the Appellant timely filed the appeal.
71. The Panel notes that the present appeal is only directed against the Appealed Decision, given that the Appellant, in its prayers for relief (*supra* at para. 58), only requested that the Appeals Chamber’s Decision No. A-21-18 dated 6 December 2018 be set aside, and not the Appeals Chamber’s Decision No. A-23-18 dated 15 January 2019. As a consequence, the Second Respondent’s arguments related to the Appellant’s lack of standing to appeal Decision No. A-23-18 are correct but are also without object, because the Panel has not been requested to adjudicate an appeal against the latter decision.
72. This said, the Panel also notes that the First Respondent contests the admissibility of the present appeal based on:
 - (i) an alleged *res judicata* effect of Decision A-23-18. However, for the reasons set forth *infra* at para. 89 *et seq.*, the Panel holds that the present case is not barred by *res judicata*.
 - (ii) the Appellant allegedly not having a legitimate ground to request a specific sanction under the CDR against the Second Respondent. However, for the reasons set forth *infra* at para. 94 *et seq.*, the Panel holds that the present case is not inadmissible on that basis.
73. In light of the above, the Panel holds that the present appeal is admissible.

VIII. APPLICABLE LAW

74. 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

75. It is common ground between the Parties, and the Panel concurs, that the present dispute must be decided in accordance with the CONMEBOL Regulations (in particular the CDR and the CONMEBOL Regulations on Copa Libertadores 2018), and, subsidiarily, Paraguayan law.

76. The Panel notes that the Respondents also refers to Argentinian law to interpret “*inmediaciones*” in Art. 8 CDR. In their view, Art. 8 CDR requires that local law be taken into account in establishing the limits of “*inmediaciones*” in each specific case. The extent of applicability of local law under Art. 8 CDR shall be dealt with by the Panel *infra* at para. 127.

IX. MERITS

77. The Appellant argues that the Second Respondent is strictly liable for its fans’ misconduct and must be sanctioned appropriately. The Respondents, on the other hand, in essence seek to (i) dismiss the case on the basis of scope of review, *res judicata* or other preliminary issues and, alternatively, (ii) to uphold the merits of the Appealed Decision as the Second Respondent may not, in their view, be held strictly liable for incidents occurring outside of the area for which it was responsible under local law and predefined security perimeters.

78. In light of the Parties’ differing positions, the Panel must address the following questions:

- A. What is the scope of the Panel’s review?
- B. Is the present case barred by *res judicata*?
- C. Is the present case inadmissible or, alternatively, must it be dismissed, for lack of a legal basis?
- D. Is the Second Respondent strictly liable for the Bus Attack?
- E. What is the effect, if any, of the Postponement Agreement?
- F. Do the principles of *ne bis in idem*, *non reformatio in peius*, and/or *non ultra petita* prevent the imposition of a sanction on the Second Respondent for the Bus Attack?
- G. What is the appropriate sanction, if any?

A. Scope of the Panel’s review

79. In accordance with well-established CAS jurisprudence, the Panel’s power of review is *de novo* but at the same time is limited to the objective and subjective scope of the Appealed Decision (see e.g. TAS 2009/A/1879 and CAS 2014/A/3744 & 3766). Accordingly, the Panel concurs with the Second Respondent that its power of review is limited to the parties, facts and legal issues related to the Appealed Decision. However, it must be properly understood what exactly are those parties, facts and legal issues or, in other terms, what is the subjective and objective scope of the Appealed Decision. In this connection, it is essential to recall that, as already pointed out (*supra* at para. 71), the present CAS proceeding stems from Boca Juniors’ appeal to the CAS against the CONMEBOL Appeal Chamber’s Decision No. A-21-18 dated 6 December 2018 (the Appealed Decision), which in turn was the second instance decision adopted in the disciplinary proceeding No. O-212-18, which was commenced by the CONMEBOL Disciplinary Unit against River Plate on the basis of Boca Juniors’ complaint.
80. Starting with the subjective scope of the Appealed Decision, the Panel observes that it is undisputed between the Parties that both Boca Juniors and River Plate were parties to the CONMEBOL disciplinary proceeding No. O-212-18 and, in particular, were parties to the CONMEBOL appeal proceeding No. A-21-18 that yielded the Appealed Decision. Therefore, there is no disputed issue to be determined as to the subjective scope of the Appealed Decision; it evidently comprises all three parties to the present appeal proceeding.
81. Then, to understand the objective scope of the Appealed Decision, the Panel must first turn to the Appellant’s complaint filed on 25 November 2018 before the CONMEBOL Disciplinary Unit. In that complaint the Appellant requested the disqualification of the Second Respondent based on *all* of the incidents that occurred on the occasion of the Match; the Appellant did not limit its claim to only the Bus Attack. Indeed, the Appellant opened the complaint by unequivocally stating that its submissions were “*in relation to the incidents that occurred in the vicinity of the Club Atlético River Plate stadium when our club’s first division team arrived to play the [Match]*” (see original Spanish text *supra* at para. 23).
82. The Appellant then went on to mention not only the Bus Attack, but also other incidents that allegedly occurred inside the Stadium:

“It is important to mention that also [in addition to the Bus Attack], and as is publicly known, there were multiple incidents in the vicinity of and inside the stadium, so there were neither the conditions nor guarantees to play the scheduled match. The different images, known to the public, are clear and show that incidents which occurred inside and outside the stadium meant that the match could not go ahead under normal conditions. As an example, even after the match was suspended and while River president Rodolfo D’Onofrio was giving an interview to a television channel, running crowds – inside the stadium – meant the interview could not continue” (emphasis added, see original Spanish text *supra* at para. 23).

83. Further, in the complaint's motions for relief, the Appellant requested the immediate suspension of the Match and the Second Respondent's disqualification from the competition based on all of the incidents, not just the Bus Attack: "*For all of the above, we ask: [...] For the disqualification of Club Atlético River Plate from the Copa CONMEBOL Libertadores 2018*" (emphasis added; see original Spanish text *supra* at 24).
84. The Panel observes that it was on the basis of this Appellant's complaint of 25 November 2018 that the CONMEBOL Disciplinary Unit commenced disciplinary proceeding No. O-212-18 later that same day. Indeed, the letter which opened the proceedings indicated that "*the Boca Juniors Athletic Club submitted a complaint to the CONMEBOL Disciplinary Unit [...]. Consequently, the CONMEBOL Disciplinary Unit [...] initiates disciplinary proceedings against the RIVER PLATE ATHLETIC CLUB*" (see Spanish text *supra* at para. 25). Therefore, the objective scope of that proceeding and all appeals stemming therefrom – i.e. Decision No. A-21-18 of the CONMEBOL Appeal Chamber and the present CAS appeal – extends in principle to *all* of the incidents that occurred in relation to the Match.
85. The Panel finds that the scope of proceeding No. O-212-18 is not limited by the second proceeding initiated *ex officio* by the CONMEBOL Disciplinary Unit on 26 November 2018, No. O-213-18, which dealt with the incidents occurring "*inside the Stadium Antonio Vespucio Liberti and in the first security ring*" (see the original Spanish text *supra* at para. 27). Even though the First Respondent had the discretion under Article 52 CDR to open *ex officio* disciplinary proceedings against its members, the Panel is of the view that, by opening disciplinary proceeding No. O-213-18, the disciplinary bodies of the First Respondent artificially split the matter in disregard of the doctrine of *lis pendens*. Disciplinary proceeding No. O-213-18 was an unnecessary duplicate that should not have been opened given the all-inclusive scope of the previously opened disciplinary proceeding No. O-212-18. This would remain true even if the First Respondent had established an internal practice of splitting proceedings in this way (an internal practice of which, in any case, there is no reliable evidence on file, as the First Respondent could only orally cite at the hearing one other alleged instance of parallel proceedings of this nature).
86. At any rate, the CONMEBOL Disciplinary Unit (improperly) proceeded separately with disciplinary proceeding No. O-213-18 and ultimately issued a decision. Despite CONMEBOL Disciplinary Unit's error in opening *ex officio* that second proceeding, the issued decision became final and binding (i) towards the Second Respondent when it was upheld by the CONMEBOL Appeal Chamber in Decision No. A-23-18 on 29 January 2019 and not appealed by the Second Respondent to the CAS (see *supra* at para. 38), and (ii) towards the Appellant because it failed to intervene as an interested party in the underlying disciplinary proceeding, as it was entitled to do under Article 33 CDR. However, said Decision No. A-23-18 – which the Appellant did not even try to appeal to the CAS (and if it had tried, it would have lacked standing to appeal because it had chosen not to be a party in the underlying proceeding) – is only final and binding in relation to all incidents *other* than the Bus Attack. This is because the objective scope

of disciplinary proceeding No. O-213-18 did not include the Bus Attack and, thus, did not deal with that incident and its consequences.

87. In light of the above, the Panel holds that, in principle, the Panel's objective scope of review extends to all the incidents related to the Match. However, as Decision No. A-23-18 has already become final and binding and has already imposed sanctions on the Second Respondent for all incidents other than the Bus Attack, the Panel, in order to avoid a violation of the double jeopardy principle (also known as *ne bis in idem*), may and will deal only with the Bus Attack in the present appeal proceeding.
88. As a corollary to the above conclusion, the Panel need not address in detail the Respondents' arguments related to this Panel's lack of power to review Decision No. A-23-18 issued by the CONMEBOL Appeals Chamber because, as a matter of course, this Panel is only concerned with reviewing the Appealed Decision, within the limits mentioned in the previous paragraph, and not the final and binding Decision No. A-23-18.

B. No *res judicata*

89. The Respondents maintain that the present case is barred by *res judicata*.
90. According to the principle of *res judicata*, which is well-established in the CAS jurisprudence (see e.g. CAS 2010/A/2091), a disputed matter that has already been adjudicated by a competent body with a decision that is final and binding on the parties thereto may not be pursued further and re-litigated in subsequent proceedings before the same or other adjudicating body. In order to establish *res judicata*, the so-called "triple identity test" must be satisfied. That test requires that the following cumulative elements be the same in the previous decision and subsequent proceeding: the same parties, the same subject matter and the same cause of action (*ibidem*).
91. With this in mind, the Panel finds that Decision No. A-23-18 (which confirmed Decision No. O-213-18) does not have a *res judicata* effect on the present appeal because the triple identity test is not satisfied. First of all, the parties are different, as the Appellant was not a party to Decision No. A-23-18. Second, the subject matter is different, as Decision No. A-23-18 did not deal with the Bus Attack and its possible disciplinary consequences. Third, the cause of action is different, as the Appellant's complaint was not addressed in Decision No. A-23-18.
92. The Panel also rejects the Respondents' position that if the Second Respondent were held strictly liable in the present proceeding, then the Appellant's petitions would violate *res judicata*, since Decision No. A-23-18 already adjudicated in a final and binding manner all the incidents which took place inside the Stadium and the first ring of the security perimeter. The Panel rejects this Respondents' position because, as is common ground between the Parties (and the Panel confirms), the Bus Attack occurred outside the three-ringed security perimeter. Therefore, the Bus Attack does not fall within the scope of Decision No. A-23-18, which explicitly limited its scope to incidents occurring "*inside the Stadium Antonio Vespucio Liberti and in the first security ring*". The Panel dismisses this Respondents' argument also because it is

clearly based on an assumption they make: that under the CDR a club can be held strictly liable only for fans' misbehaviour occurring inside the security area attributed to the club's responsibility by governmental authorities; however, the Panel finds this assumption to be misplaced and does not concur with it (see *infra* at paras. 118 to 131).

93. In consideration of the foregoing, the Panel holds that the present appeal is not barred by *res judicata*.

C. No lack of a legal basis to request a specific sanction

94. The First Respondent argues that the appeal is inadmissible or, alternatively, must be dismissed for lack of a legal basis, because the Appellant did not have a legitimate ground to request a specific sanction against the Second Respondent.

95. Preliminarily, the Panel observes that it is undisputed that the Appellant has standing to appeal against the Appealed Decision (within the limits indicated *supra* at para. 87) and, thus, to ask that Boca Juniors be sanctioned. In fact, differently than the situation under the rules of other sports governing bodies, the CONMEBOL rules expressly allow parties who have filed a complaint and thus prompted the initiation of disciplinary proceedings – as is the case of Boca Juniors here – to be considered as “*interested parties*” and, in that capacity, take part in disciplinary proceedings to try and obtain a sanction against the prosecuted party. Indeed, Article 33 CDR provides that those “*who promote or are directly affected by a disciplinary case, as well as all those who may be affected by the procedure if they have appeared and there has been no resolution, are considered interested parties*” and, under Articles 35 and 36 CDR, interested parties have the same procedural rights of the prosecuted parties throughout the disciplinary proceedings, including of course the right to take part, be heard and “*be legally represented and assisted in the different phases of the procedure*”.

96. Then, with regard to the First Respondent's argument that the Appellant has no right to request that a specific sanction be imposed, the Panel notes that, pursuant to Article 52 CDR, the Appellant had a right to submit a complaint before the CONMEBOL Disciplinary Unit against the Second Respondent. That article provides in the relevant part: “*The disciplinary procedure shall be initiated: [...] b) By complaint or claim, if so estimated by the Disciplinary Unit*”. Then, as observed in the previous paragraph, the CONMEBOL rules permit the complainant to enjoy full procedural rights within the disciplinary proceedings and to appeal the last instance decision to the CAS. The Panel further notes that neither Article 52 CDR nor any other provision of the CONMEBOL regulations specifies or limits what sanction(s) a complainant may request. Therefore, the Appellant was at liberty to request any sanction that it deemed fit. This, of course, does not mean that the adjudicating bodies of the First Respondent became obliged to impose the requested sanction; they were at liberty (as is the CAS) to impose that sanction, any other applicable sanction, or even no sanction at all, depending on their assessment of the facts and legal aspects of the case.

97. Moreover, besides its primary prayer for relief, where it requested the CAS to “*order the disqualification from the 2018 edition of the Copa CONMEBOL Libertadores*” (see *supra* at para. 58), the Appellant submitted an alternative prayer for relief where it did

not request a specific sanction, as it merely requested the CAS to “*order serious disciplinary sanction(s) that is(are) deemed appropriate in light of the gravity of the facts occurred*” (*ibidem*), thus leaving the choice of an appropriate sanction (if any) in the hands of the CAS.

98. In light of the above, while agreeing with the First Respondent that CONMEBOL disciplinary bodies (and the CAS) are not bound by any request or suggestion put forward by a complaining party, the Panel rejects the First Respondent’s argument that a request for a certain sanction renders the complaint or the subsequent appeal inadmissible or without a legal basis.

D. Effect of the Postponement Agreement

99. The Respondents argue that the Appellant, by submitting a complaint before CONMEBOL requesting the Second Respondent’s disqualification, has breached the principles of good faith, *pacta sunt servanda* and *venire contra factum proprium*, all of which are recognized under Paraguayan law, because the Parties had agreed to play the Match under the Postponement Agreement. The Respondents thus conclude that the appeal must be dismissed on these grounds.
100. In analysing the Postponement Agreement, the Panel observes that the core and spirit of the agreement reached between the clubs and CONMEBOL was to postpone the Match to the following day and to play it under normal and equal conditions. Indeed, the Postponement Agreement unequivocally stated that its purpose was to “*safeguard the sporting integrity of the Final*” by ensuring that it be played “*without any violence*” and under “*equal conditions*” (see *supra* at para. 22 for the full agreement and original Spanish text). This was confirmed in the complaint filed by the Appellant in which it stated that the Postponement Agreement “*shows the presidents’ intention for the final to take place on a level playing field*” (in the original Spanish text: “*Surge de dicha acta la intención de los Presidentes de que la final de la Copa se dispute en igualdad de condiciones*”).
101. In the Panel’s opinion, the Postponement Agreement was a valid and effective agreement between the Parties; indeed, the Panel finds unpersuasive the Appellant’s attempt to void of meaning the agreement by asserting that it was signed by its president hastily, under pressure and without knowing yet the extent of the Appellant’s players’ injuries. In fact, it was signed by an experienced executive, who is also – in his own words – a good lawyer and who, at the moment of signature, had already had enough time to check the situation of his players.
102. However, the Panel is also of the view that the Postponement Agreement said what it said and its binding effects cannot be extended beyond its text. The Postponement Agreement did not exculpate the Second Respondent for the Bus Attack and/or preclude the Appellant from filing a complaint and requesting sanctions against the Second Respondent. There is in fact no explicit language to that effect. Article 52 CDR grants a club participating in a CONMEBOL competition the right to introduce a complaint asking for sanctions against another club; the Panel is of the opinion that a waiver of

such right must be explicitly stipulated in writing and, as said, the Postponement Agreement clearly does not embody such a waiver.

103. Then, in the Panel’s view, the fact that the Appellant eventually played the postponed match in Madrid on 9 December 2018 cannot be considered as a case of bad faith, *venire contra factum proprium* or breach of the Postponement Agreement, because the Appellant:

- (i) made abundantly clear since 25 November 2018 that it was pursuing sanctions against the Second Respondent;
- (ii) was ordered by CONMEBOL to play the return leg of the Final on 9 December 2019 in Madrid and it could not contravene such order without facing (probably harsh) disciplinary consequences under the CDR, which so provides:
 - Article 7.2 CDR: “*The following are, inter alia, conducts attributable to and sanctionable infringements of the aforementioned principles: [...] h) Not appearing at a match [...]*” (in the original Spanish text: “*Constituyen, entre otros, comportamientos imputables e infracciones sancionables a los referidos principios: [...] h) No comparecer a un partido [...]*”); and
 - Article 22.1 CDR: “*Failure to appear to a match may be sanctioned with the determination of the result by judicial bodies pursuant to the terms of Article 19, and to the imposition of ancillary fines at the discretion of the competent judicial body*” (in the original Spanish text: “*La incomparecencia a un partido puede conllevar como sanción la determinación del resultado por los órganos judiciales en los términos del Artículo 19, además de la imposición de multas accesorias a discreción del órgano judicial competente*”);
- (iii) attempted to suspend the Madrid match by exerting its right under the CAS Code to request interim measures, which the CAS rejected; and
- (iv) did not breach the Postponement Agreement because the second postponement of the Match was decided by the CONMEBOL president and board “*with the aim of preserving sporting equality*” (in the Spanish original of the First Respondent’s press release of 25 November 2018: “*con el objetivo de preservar la igualdad deportiva*”) and, as mentioned, the Postponement Agreement said nothing about the possibility, or not, of pursuing disciplinary sanctions against the Second Respondent.

104. The Panel thus holds that the Postponement Agreement, albeit binding and effective (and relevant for other purposes, see *infra* at paras. 133 and 147), did not and does not prevent the Appellant from seeking sanctions against the Second Respondent under the CDR.

E. Strict liability

a. No exception for lack of fault or negligence

105. Article 8 CDR (“*Objective Responsibility of Member Clubs and Associations*”) provides as follows:

“1. The Member Associations and clubs are responsible for the behavior of their players, officials, members, spectators, fans as well as any other person who exercises or could exercise on their behalf any function on the occasion of the preparations, organization or celebration of a football match, whether it is official or friendly.

2. The Member Associations and clubs are responsible for the security and order both inside and in the immediate surroundings of the stadium, before, during and after the match of which they are hosts or organizers. This responsibility extends to all incidents of any nature that may occur, being therefore subject to disciplinary sanctions and in compliance with the orders and instructions that may be adopted by the judicial bodies” (from the translation provided by the First Respondent).

106. As the official languages of CONMEBOL are Spanish and Portuguese, the above English translation provided by the First Respondent is unofficial. The official Spanish version of the provision, entitled “*Responsabilidad Objetiva de los Clubes y Asociaciones Miembro*”, reads as follows:

“1. Las Asociaciones Miembro y los clubes son responsables del comportamiento de sus jugadores, oficiales, miembros, público asistente, aficionados así como de cualquier otra persona que ejerza o pudiera ejercer en su nombre cualquier función con ocasión de los preparativos, organización o de la celebración de un partido de futbol, sea de carácter oficial o amistoso.

2. Las Asociaciones Miembro y clubes son responsables de la seguridad y del orden tanto en el interior como en las inmediaciones del estadio, antes, durante y después del partido del cual sean anfitriones u organizadores. Esta responsabilidad se extiende a todos los incidentes que de cualquier naturaleza pudieran suceder, encontrándose por ello expuestos a la imposición de las sanciones disciplinarias y cumplimiento de las ordenes e instrucciones que pudieran adoptarse por los órganos judiciales”.

107. According to the Second Respondent, Articles 8.1 and 8.2 CDR must be read separately. In its view, Article 8.1 establishes strict liability for the actions of a club’s supporters, whereas Article 8.2 sets forth the host club’s responsibility for the order and security of the inside and surroundings of the Stadium, for which a club is allegedly not strictly liable, but rather only liable if its duty of care and diligence is violated. The Second Respondent points to three CAS precedents to support its interpretation of Article 8 CDR: TAS 2002/A/423, CAS 2007/A/1217 and CAS 2014/A/3578. The Second Respondent further argues that, in any case, the strict liability principle is subject to the exception of no fault or negligence.
108. The Panel disagrees with the Second Respondent’s interpretation of Article 8 CDR and of the liability regime set forth in this provision.
109. First, both provisions form part of the same Article 8 CDR which is indicatively entitled “*Objective Responsibility of Member Clubs and Associations*” or – as could be more accurately translated in English legal terminology – “*Strict Liability of Member Clubs and Associations*”, and must thus be construed in connection with each other. The Panel

finds comfort in the fact that the First Respondent also reads Articles 8.1 and 8.2 CDR together, as confirmed by the following excerpt from its Answer: “[...] the basic principle established in Art. 8 (1) CDR is concretized in Art. 8 (2) CDR, where its scope of application is spatially limited for accidents of any nature (including fan riots) that occur inside the stadium and within the stadium surroundings” (emphasis added).

110. Second, under a separate reading of Article 8.1 CDR, one could argue that clubs are always responsible for the behavior of their supporters on the occasion of a football match, regardless of those supporters’ proximity or not to the stadium. Indeed, Article 8.1 does not mention at all the requirement that incidents occur inside the stadium or in its surroundings. On the other hand, Article 8.1 CDR does not mention at all that the clubs’ responsibility yields “*disciplinary sanctions*”, so one could argue that only facts caught by Article 8.2 CDR could be subject to sanctions. The incongruity of those arguments leads inevitably to the conclusion that the two paragraphs of Article 8 CDR must be read together.
111. Third, the comparisons made by the Respondents between the case at hand and the CAS precedents applying the provisions of the UEFA Disciplinary Regulation or the FIFA Disciplinary Code corresponding to Article 8 CDR are not conclusive because, while not dissimilar in language, they present some evident discrepancies.
112. Indeed, the case at hand is clearly distinguishable from TAS 2002/A/423, a case concerning the application of (the French version of) Article 6 of the UEFA Disciplinary Regulation (“UDR”) of that time, whose paragraph 2 so provided in its relevant part: “*L’association organisatrice ou le club organisateur [...] pourront être rendus responsables de tout incident et sont passibles de mesures disciplinaires [...]*” (emphasis added; translated in English: “*The host association or club [...] can be made liable for incidents of any kind and can be rendered subject to disciplinary measures [...]*”). In that case, the panel clearly stated that Article 6.2 UDR, under a literal interpretation, did not establish a strict liability regime and rendered the imposition of a sanction only possible depending on the circumstances of the case:

“Il ressort d’une interprétation purement littérale de cette règle que l’on n’est plus ici en présence d’une responsabilité objective. [...] la simple survenance d’incidents ne conduit pas automatiquement à sanctionner l’association organisatrice ou le club organisateur. L’autorité appelée à connaître de tels cas d’incidents aura la latitude de sanctionner, selon les circonstances, l’association nationale ou le club” (translated into English “*A purely literal interpretation of this rule suggests that this is no longer a question of strict liability. [...] the simple fact that an incident occurs does not automatically mean that the host association or club should be penalized. The body responsible for dealing with such incidents is given a free hand to penalize the national association or club concerned in accordance with the circumstances*”, para. 6.1.1.3 of TAS 2002/A/423).

113. Therefore, Article 6.2 UDR of that time gave leeway to the panel of TAS 2002/A/423 to apply a fault-based liability regime to the exclusion of a strict liability regime.

114. By contrast, Article 8.2 CDR clearly establishes a strict liability regime, declaring unequivocally that the club’s “*responsibility extends to all incidents of any nature that may occur, being therefore subject to disciplinary sanctions [...]*” (in the original Spanish text: “*Esta responsabilidad [del club] se extiende a todos los incidentes que de cualquier naturaleza pudieran suceder, encontrándose por ello expuestos a la imposición de las sanciones disciplinarias [...]*”). In other words, unlike the 2002 version of Article 6.2 UDR, Article 8.2 CDR provides that the club’s liability for incidents caused by its fans is not a mere possibility but an automatic consequence.
115. Then, unlike the provisions under interpretation in CAS 2007/A/1217 and CAS 2014/A/3578, the CDR does not cite the absence of fault or negligence as an exceptional factor to be taken into account in establishing the club’s responsibility under Article 8 CDR. The Panel observes that the UDR at the heart of CAS 2007/A/1217 included Article 17.1, which stated that “*Subject to Article 6, paragraph 1 of the present regulations [on the strict liability for fan misconduct], no disciplinary measures may be imposed in cases where the party charged bears no fault or negligence*”. In other words Article 17.1 UDR provided an exception – not available in the CDR – to Article 6.2 UDR for incidents in the stadium or its surroundings. In the present case, no such exception is provided in the CDR. Similarly, in CAS 2014/A/3578, the panel – in ruling that the host association did not have to be sanctioned for certain fan misconduct because it “*did everything possible [...] and fulfilled its obligations pursuant to the FDC and the applicable safety rules*” – relied on the fact that Article 67.1 of the FIFA Disciplinary Code, by including the words “*depending on the situation*” and “*may be fined*”, left it to the discretion of the FIFA Disciplinary Committee to sanction or not sanction an association depending on the particular facts and elements of each case.
116. The Panel observes that in the present case no such discretion is afforded under the CDR.
117. To sum up, the Panel is of the view that paragraphs 1 and 2 of Article 8 CDR must be read together. Therefore, bearing in mind that Article 8 CDR does not make any implicit or explicit exception for no fault or negligence, the Panel must follow the well-established CAS jurisprudence confirming that a club is strictly liable for the misconduct of its supporters regardless of whether or not the club is negligent or at fault (see e.g. CAS 2007/A/1217). On the other hand, the Panel is of the view that the degree of fault or negligence can and should have an impact on the measure of the sanction (see *infra* at para. 147).

b. Interpretation of “inmediaciones” (“surroundings”)

118. Preliminarily, the Panel must concur with the Respondents that strict liability is not unlimited and may be subject to spatial limitations. In this particular case, strict liability is limited under Article 8 CDR to the inside of the stadium and its “*inmediaciones*” (“*surroundings*” in English, according to the translation used by the Second Respondent and deemed the most appropriate by the Panel), before, during or after a match. However, the Parties disagree as to the meaning of this term. Therefore, the Panel must determine what constitutes “*inmediaciones*” (or “*surroundings*”) of a stadium under

Article 8 CDR and whether the Bus Attack occurred within an area comprised by such term.

119. The Respondents contend that “*inmediaciones*” should be interpreted differently in each country based on the local law. At the hearing, the First Respondent explained that in the present case, the CONMEBOL adjudicatory bodies (and now the Panel) were “*lucky*” in that the security perimeters were predefined by the governmental authorities in the Security Meeting in accordance with local law, thus creating clear and defined boundaries for what constitutes “*inmediaciones*”. In response to the Panel’s question on the application of Article 8 CDR, the First Respondent confirmed that, in its view and as an example, “*inmediaciones*” would be limited to 500 meters (or 200 metres) from the stadium in a CONMEBOL match in Paraguay, based on Article 2 of *Paraguayan Law No. 1866* (“*Surrounding Areas: public places that are within a radius of 500 meters from the sports stadiums of the capital and metropolitan area, and 200 meters from the sports stadiums of the interior of the Republic*”; in the original Spanish text: “*Zonas Aledañas: los lugares públicos que se encuentran dentro de un radio de 500 metros de los estadios deportivos de la capital y área metropolitana, de 200 metros de los estadios deportivos del interior de la Republica*”), while in Buenos Aires it would be established for each event by the competent governmental authorities but in no case it would go farther than 1,000 meters from the Stadium, based on Article 19 of Law No. 5.847 of 13 July 2017 of the Autonomous City of Buenos Aires (“*SAFETY PERIMETER: The area around the stadiums defined by the competent authority for each football event according to its level of risk is determined as a Safety Perimeter, and it can comprise up to a maximum distance of one thousand meters measured in a straight line from the outer perimeter of the stadium. In this area, for safety reasons there are special rules for circulation or stationing of individuals and objects*”; in the original Spanish text: “*PERIMETRO DE SEGURIDAD: Se determina como Perímetro de Seguridad al área alrededor de los estadios delimitada por la autoridad competente para cada evento futbolístico según su nivel de riesgo, y que puede comprender hasta una distancia máxima de mil metros medidos en línea recta desde el perímetro exterior del estadio. En el mismo, por razones de seguridad rigen normas especiales de circulación y permanencia de personas y cosas*”).
120. The Panel is of the opinion that the Respondents’ interpretation of “*inmediaciones*” must not be upheld.
121. Preliminarily, the Panel notes that the term is left undefined in the CDR and, as such, it is left up for interpretation. With this in mind, the Panel is of the view that the interpretation of the strict liability rules targeting supporters’ misconduct and of the related term “*inmediaciones*” must be defined using a functional approach. Indeed, a functional approach eschews mechanical standards and, instead, articulates the criteria that must be considered to interpret a rule and apply it to a given set of facts, taking into account the function of the rule.
122. With regard to the function of the rule, CAS panels have already stated that a rule that provides strict liability for the behaviour of supporters “*is a fundamental element of the current football regulatory framework. It is also one of the few legal tools available to football authorities to deter hooliganism and other improper conduct on the part of*

supporters (the Panel notes that strict liability is widely used by many legal systems to deter activity that is seen as being particularly harmful to social values and interests in circumstances in which it would be very difficult to prove the negligence of the responsible party)” (CAS 2015/A/3874, at para. 187).

123. In the already quoted CAS award 2002/A/423, the panel stated as follows:

“By penalising a club for the behaviour of its supporters, it is in fact the latter who are targeted and who, as supporters, will be liable to pay the penalty imposed on their club. This is the only way in which the UEFA rule has any chance of achieving its objective. Without such an indirect sanction, UEFA would be literally powerless to deal with supporters’ misconduct, when a club has nothing to be blamed for in relation to such occurrence. [The rule] under which clubs assume strict liability for their supporters’ actions, has a preventive and deterrent function. Its objective is not to punish the club as such, which may have done nothing wrong, but to ensure that the club assumes responsibility for offences committed by its supporters” (para. 6.1.1.3, translated from the French original: “En dirigeant la sanction contre le club pour les faits de ses supporters, ce sont en réalité ces derniers qui sont visés et ce sont eux qui seront exposés à subir, en leur qualité de supporters, la condamnation prononcée à l’encontre de leur club. C’est par ce seul biais que le but de la norme de l’UEFA a une chance d’être atteint. Sans cette sanction indirecte, l’UEFA serait littéralement démunie face aux agissements fautifs de supporters, lorsqu’un club ne peut se voir reprocher une faute en relation avec ces agissements. [La règle] faisant endosser une responsabilité objective par les clubs pour les faits de leurs supporters, remplit donc une fonction préventive et dissuasive. Son objet n’est pas de punir le club en tant que tel, qui peut ne rien avoir à se reprocher, mais de faire supporter par le club la responsabilité des actes, fautifs eux, de son public”).

124. In CAS 2013/A/3094, the panel stated that the “*underlying idea of the disciplinary measure, thus, is to influence the behaviour of the fans via the entity that is supported by them in order to ensure that violations of the rules in the context of the participation of this entity in further competitions are excluded. Such type of measures – in the view of the Panel – unlike typical disciplinary sanctions directed at penalising a past behaviour do not require that the addressee of said measure is at fault*”.

125. In light of the above CAS jurisprudence, the Panel is of the view that a functional approach requires, in order to determine whether an incident falls within the stadium’s “*surroundings*” (“*inmediaciones*”) and thus triggers strict liability for the concerned club or association under Article 8 CDR, that the judging body assess the situation on a case-by-case basis and cumulatively consider the following three criteria that can be extracted from CAS jurisprudence (taking into account that each of them is relevant, but any of them may be decisive on the facts of a particular case):

- (i) whether an incident occurred in reasonable geographic proximity to the stadium;
- (ii) whether it was directly linked to the match; and

- (iii) whether it had a direct negative impact on the match.
126. Under said functional approach, the term “*inmediaciones*” should not, as the Respondents submit, be limited in a mechanical manner to topographical boundaries only, i.e. to a specific number of meters from, or a predefined security perimeter around, the stadium. Such a mechanical interpretation would undermine the function of Article 8 CDR (see *supra* at paras. 122-124), as hooligans would know at what exact distance from the stadium or in what specific areas their wrongdoings would escape the reach of the CDR and, thus, would be able to avoid consequences for their respective clubs by simply taking their misconducts just a few meters outside of the predetermined zone of club’s liability. In other words, the only way to ensure the preventive and deterrent function of Article 8 CDR is to avoid any predetermination of the meaning of “*inmediaciones*” and of the triggering of strict liability, at the same time allowing some predictability to sanctions, by developing and applying some reasonable criteria to assess the circumstances of each case. Indeed, even forsaking a mere topographical approach, under those reasonable criteria, the supporters’ misconduct must occur reasonably close to the stadium and must also have some direct link to and impact on a given match.
127. Furthermore, a functional approach allows to interpret “*inmediaciones*” in a transnational way. In the Panel’s view, a “transnational interpretation” of Article 8 CDR is opportune and even necessary, considering that CONMEBOL is a continental body that has ten members, each with its own specific national, regional, and municipal laws and regulations, as well as with its own governmental authorities’ determinations and measures. Noting that there is no language to the contrary in the CDR, the Panel is of the view that the meaning of the term should not change depending on the local law of the relevant match as this would create confusion and inequities in the application of Article 8 CDR. The Respondents’ approach – to define “*inmediaciones*” based simply on local laws and regulations as well as determinations and measures locally adopted by governmental authorities – is far too mechanical and would open the doors for abuse by those clubs and associations able to obtain some form of benevolent posture by the local authorities. Indeed, if the Respondents’ approach were accepted, there is a risk that local laws, regulations or measures might be purposefully enacted in a way to unreasonably limit the liability of the home clubs in CONMEBOL matches to the detriment of foreign clubs, making a mockery of Article 8 CDR.
128. Moreover, such a localized interpretation of a CONMEBOL rule, wholly dependent on the exogenous and mutable determinations of the political authorities of the different countries, regions and cities, seems hardly compatible with the fundamental principle of independence from political interference, enshrined both in the FIFA statutes and in the First Respondent’s own statutes. Indeed, Article 23.c of the FIFA Statutes provides that Confederations (exactly as national federations) must “*be independent and avoid any form of political interference*”. By the same token, Article 4 of the CONMEBOL statutes provides that, among the objectives of such confederation is “*to ensure that the principle of non-interference by third parties and the principle of independence be applied to CONMEBOL*” (in the original Spanish text: “*Asegurar que el principio de no injerencia de terceros y el principio de independencia sea aplicado a la*

CONMEBOL”). This is reiterated in Article 12 of the CONMEBOL statutes, providing that “*the principle of non-interference by third parties and of independence applies also to CONMEBOL*” (in the original Spanish text: “*El principio de no injerencia de terceros e independencia también se aplica a la CONMEBOL*”).

129. The Panel also disagrees with the First Respondent’s position that local law should, at minimum, establish the extent of “*inmediaciones*” on a rebuttable presumptive basis, as such an approach poses the same risks of rigidity and abuse alluded to in the preceding paragraphs.
130. The Panel takes note of the Second Respondent’s point that CONMEBOL, as a private association under Paraguayan Law, has no authority to enact regulations which would contravene local laws. However, the First Respondent would not violate local law by applying its own disciplinary rules. Here a distinction must be made between the purpose of sporting disciplinary regulations and local criminal, administrative or civil laws with respect to sporting events. The purpose of the former is *inter alia* to protect the integrity of football competitions and ensure the safety of athletes, clubs and other members by providing the channel to impose sanctions on all those, and only those, individuals or entities that fall under the relevant sport association’s jurisdiction. On the other hand, the purpose of the criminal, administrative or civil laws concerning safety at sporting events is to prevent and penalize crimes and administrative or civil wrongdoings. Thus, the fact that local authorities establish criminal, administrative and civil laws in relation to sporting events does not preclude a sports association from imposing sporting disciplinary sanctions on its own members in relation to those events. Nor does the sport association’s power to impose such sanctions encroach on the local authorities’ power to apply their own criminal, administrative and civil laws related to sporting events. Both sets of rules and proceedings can coexist as they pursue different goals and are applied in different contexts.
131. Notwithstanding the above, the Panel finds that local law is not totally irrelevant. Local law may be taken into account in assessing the proportionality of the sanction (in particular, one may consider whether and to what extent the club had influence on setting and policing the security perimeter – see *infra* at para. 146).
132. Furthermore, lest it be thought that the Panel encourages CONMEBOL, its members and clubs to disregard governmental authorities in the organization of football events, the Panel would wish to make it clear that all football stakeholders must certainly cooperate to the utmost extent with those authorities and must comply with any laws, regulations or directives that those authorities issue with a view to enhancing everybody’s safety and to facilitating the smooth organization of sporting events. However, this does not and cannot imply that the outcome of sporting disciplinary proceedings depends on the varying resolves of governmental authorities and the way they enact and apply their laws and regulations.

c. Application of strict liability for the Bus Attack

133. With the above legal framework in mind, the Panel finds that the Bus Attack occurred within the “*inmediaciones*” (“*surroundings*”) of the stadium under Article 8 CDR, given that:

(i) The Bus Attack occurred within reasonable geographic proximity to the stadium:

The River Plate supporters that attacked the bus transporting the Boca Juniors players were placed at a corner located only five blocks away from the Stadium, at a distance of a little more than 700 meters. It takes only a few minutes to reach the Stadium from the intersection at which the Bus Attack occurred. Furthermore, as is undisputed by the Parties, the Bus Attack occurred just a few meters from the entrance of the security rings delineated in the Security Meeting. The Panel is of the view that any reasonable and objective observer would conclude that the Bus Attack occurred within reasonable geographic proximity to the stadium.

(ii) The Bus Attack had a direct link with the Match:

The host team supporters’ attack occurred on the occasion of the Match and targeted the bus of the guest team while going to the stadium a few hours before kick-off. The Bus Attack thus put at risk the health and safety of the guest team players, and there is no need to remind that players are the most fundamental and indispensable component of a match and that their safety and protection is paramount in any football event. Accordingly, the Panel is of the view that any reasonable and objective observer would conclude that the Bus Attack had a direct link with the Match.

(iii) The Bus Attack had a direct negative impact on the Match:

Due to the physical and psychological injuries suffered by the players as a result of the Bus Attack, the Match could not be played and was postponed for another day (see *supra* at paras. 21, 22 and 26). The Panel recognizes that the Parties dispute the existence and extent of some of the injuries reported and that the CONMEBOL doctors believed they were not severe enough to warrant the suspension of the Match (see CONMEBOL doctors’ joint report of 24 November 2018 *supra* at para. 18). However, the Panel is comfortably satisfied that:

- a certain number of injuries did occur as a result of the Bus Attack. Drs. Ortega Gallo and Jorge Batista reported a number of injuries to the players (see *supra* at para. 13 to 15). A number of the reported injuries were confirmed by the CONMEBOL doctors in their joint report. Indeed, the CONMEBOL doctors confirmed that the players had suffered superficial cuts on their faces and bodies, and reported that they had apparently suffered corneal injuries, which the CONMEBOL doctors could not confirm, as it required their transfer to an Ophthalmologist for proper diagnosis and care (see *supra* at para. 18). Dr. Pangrazio (of CONMEBOL) further confirmed a number of the reported injuries in his detailed report of 26 November 2018, in which he declared that the CONMEBOL doctors had “*ascertained*” (“*constadado*” in Spanish) the injuries from shards of glass

on some players, allergic reactions, and the eye injuries to two players (see *supra* at para. 19). The Panel takes note of the Parties' disagreement as to whether Messrs. Pérez and Lamardo actually suffered eye injuries; however, even ignoring the eye injuries, it has been established that the players, including Mr. Pérez, suffered other injuries.

- the Bus Attack had negative psychological effect on the players. In the Panel's view, it is undeniable that an attack of the magnitude that occurred, in which some windows of the team bus were broken by objects thrown by rival supporters and the players were exposed to shards of glass and tear gas, can produce a state of shock that would prevent the players from being able to focus on the football match ahead of them. Dr. Tcherkask diagnosed the players with post-traumatic symptoms including high levels of anxiety, anguish, lack of concentration, and difficulty sleeping (see *supra* at para. 17), and there is no evidence to suggest a misdiagnosis. The fact that some Appellant's players were photographed on the pitch, calm and smiling after the Match was postponed to the following day, is anecdotal and inconclusive as it does not and cannot disprove a qualified doctor's report.
- Irrespective of the CONMEBOL doctor's assessment that the Match should not have been suspended, both Respondents acknowledged in writing that the Match had to be postponed due to the impact of the Bus Attack on the players. Indeed, the Parties acknowledged on 24 November 2018 that the Match had to be postponed to the following day in order to ensure that it be played in "*equal conditions*" (see the Postponement Agreement, *supra* at para. 22), while the First Respondent acknowledged on 25 November that the Match had to be deferred to a later date so that "*sporting equality*" be "*preserved*" (see CONMEBOL's press release dated 25 November 2018, *supra* at para. 26), thereby confirming that the Bus Attack created an imbalance in the players' conditions sufficient to warrant the postponement of the Match.
- the direct negative impact on the Match is comparable with that of the drone in CAS 2015/A/3874 and of the parachute flares in CAS 2013/A/3139. In those cases, in assessing whether the home teams were strictly liable for the misbehaviors of their respective supporters, the panels had to decide whether the incidents occurred "*at a match*" under Article 6.1 of the UDR (2012 edition). In deciding this, the panels were not concerned with where the incidents originated – i.e. that the drone was controlled, and the parachute flares launched, at a distance from the stadium – but rather, they were concerned with whether the incidents "*influenced the smooth running on the match involved*". In the present case, the Panel is similarly concerned with whether the attack on the players had a negative impact on the game. Like with the drone and the parachute flares which ended up inside of the stadium, the impact of the Bus Attack was felt inside the stadium as the Appellant's team was unable to play the Match on that day in equality of conditions.

Hence, the Panel is of the view that any reasonable and objective observer would conclude that the Bus Attack had a direct negative impact on the Match.

134. The Panel is also not persuaded by the Respondents' contention that strict liability must be limited as a club cannot, for example, be expected to face consequences for (i) one of its fans beating a family member for wearing a rival's jersey, (ii) riots and looting occurring in the city center far away from the stadium, or (iii) supporters fighting each other at a bar far away from the stadium. As previously mentioned, the Panel agrees that a limit must exist to strict liability (see *supra* at para. 118); however, it finds that the situations of the aforementioned examples are markedly different than that of the Bus Attack. Those situations would fail to meet the three cumulative requirements necessary to fall within "*inmediaciones*" under Article 8 CDR and, thus, would not trigger a club's strict liability because, even if they occurred on the occasion of a match, they anyways would (i) be too far removed geographically from the stadium and (ii) have no direct impact on the match.
135. In light of the above, the Panel holds that the Second Respondent is strictly liable for the Bus Attack.

F. No violation of the principles of *ne bis in idem*, *non reformatio in peius* or *ultra petita*

a. No violation of *ne bis in idem*

136. The Second Respondent submits that it cannot be sanctioned again under Article 8 CDR because it would violate the principle of *ne bis in idem* guaranteed under Article 17.4 of the Paraguayan Constitution, which reads: "*In the criminal process, or in any other process that could result in a penalty or sanction, everyone has the right to: [...] 4. Not be judged more than once for the same fact [...]*" (in the original Spanish text: "*En el proceso penal, o en cualquier otro del cual pudiera derivarse pena o sanción, toda persona tiene derecho a: [...] que no se le juzgue más de una vez por el mismo hecho [...]*").
137. The Panel, however, does not consider that imposing a sanction on the Second Respondent for the Bus Attack would result in a violation of the principle of *ne bis in idem*. This is because Decision No. O-213-18 did not deal with, and thus did not impose a sanction for, the Bus Attack. As explained *supra* at para. 86, the First Respondent artificially divided the incidents related to the Match into (i) those occurring inside and immediately around the stadium, which it dealt with in the *ex officio* proceeding No. O-213-18, and (ii) the Bus Attack, which it dealt with in proceeding No. O-212-18. The Panel is therefore free to impose a sanction for the Bus Attack. The *ne bis in idem* principle only prevents the Panel from imposing sanctions for the facts already judged and penalized in a final manner by the Decision No. A-23-18, which undisputedly did not include the Bus Attack.

b. No violation of *non reformatio in peius* or *ultra petita*

138. The Panel also rejects the argument that imposing a sanction on the Second Respondent for the Bus Attack would violate the principle of *non reformatio in peius*. That principle serves to protect an appellant from receiving a higher sanction on appeal than that which it received in the proceeding below. It does not prevent the adjudicating body from imposing a sanction on a respondent that was acquitted of liability by the previous adjudicative body. Furthermore, it is a principle that can be applied only if provided by the rules, and this is not the case here. Therefore, the Panel does have the power of holding the Second Respondent liable and impose a sanction on it.
139. Imposing a sanction for the Bus Attack would also not violate the principle of *ultra petita*, as the Appellant specifically made that request in its motions for relief *b* and *c* (see *supra* at para. 58).
140. The fact that the Second Respondent has received sanctions for other incidents related to the Match under Decision No. O-213-18 is irrelevant in assessing whether a violation of *non reformatio in peius* or *ultra petita* occurred.

G. Applicable sanction

141. Article 13.2 CDR (“Offenses”) provides as follows:

“The disciplinary sanctions in Articles 18 and 20 of this Regulation may be imposed on Member Associations and clubs in the event of incorrect or inappropriate behaviors by their supporters, including the following: [...] b) throwing objects [...] e) Cause damages. f) Any other lack of order or discipline that could be committed in or around the proximity of the stadium before, during and at the end of the match”.

In the original Spanish text: *“Las sanciones disciplinarias previstas en los Artículos 18 y 20 del presente Reglamento podrán imponerse a las Asociaciones Miembro y a los clubes en supuestos comportamientos incorrectos o inapropiados de sus aficionados entre los que se señalan: [...] b) El lanzamiento de objetos [...] e) Causar daños. f) Cualquier otra falta de orden o disciplina que se pudiera cometer en el estadio o en sus cercanías antes, durante y a la finalización de un encuentro”.*

142. The Panel finds that the Bus Attack is a clear violation of Articles 13.2(b), (e) and (f) CDR and that, consequently, the Second Appellant is subject to discipline for that incident pursuant Article 8 CDR.
143. Accordingly, the Panel turns to Article 18.1 CDR which establishes the sanctions that may be imposed on a club for violating the CDR. That provision so reads:

“The following sanctions may be imposed, individually or jointly for the same infringement, on national associations and clubs, in accordance with Article 64 of the CONMEBOL Statutes:

- a) Warning.*
- b) Reprimand, caution, or warning.*

- c) *An economic fine, which shall never be less than One-Hundred American Dollars (USD 100) or more than Four Hundred Thousand American Dollars (USD 400,000).*
- d) *Cancellation of the result of a match.*
- e) *Repetition of a match.*
- f) *Deduction of points.*
- g) *Determination of the result of a match.*
- h) *Obligation to play a match behind closed doors.*
- i) *Complete or partial stadium closure.*
- j) *Prohibition to play a match in a specific stadium.*
- k) *Obligation to play a match in a third country.*
- l) *Disqualification from ongoing competitions and/or exclusion from future competitions.*
- m) *Withdrawal of a title or prize.*
- n) *Withdrawal of license.*
- o) *Prohibition of sale and/or purchase of tickets” (translated from the original Spanish text).*

144. The Panel observes that the Appellant not only requested the Second Respondent’s disqualification from the Copa Libertadores 2018 in its motion for relief *b*; it also requested in its alternative motion for relief *c* to “*order serious disciplinary sanction(s) that is(are) deemed appropriate in light of the gravity of the facts occurred and contained in Art. 18.1 [CDR]*” (see *supra* at para. 58). In other words, it has requested the Panel to impose any of the above-listed sanctions under Article 18.1 CDR deemed appropriate for the committed offense.
145. According to well-established CAS jurisprudence, “*a sanction must comply with the principle of proportionality in the sense that there must be a reasonable balance between the kind of misconduct and the sanction. This principle is recognised in CAS jurisprudence and provides that the severity of a sanction must be proportionate to the offence committed. To be proportionate, the sanction must not exceed that which is reasonably required in the search of the justifiable aim*” (see *ex multis*: CAS 2017/A/5015 & 5110, CAS 2013/A/3297, CAS 2010/A/2268, CAS 2005/C/976 & 986).
146. With the above in mind, the Panel finds that the sanction proportionate to the offense committed is the obligation for the Second Respondent to play two matches behind closed doors, pursuant to Article 18.1(h) CDR, in the next edition of the Copa Libertadores in which it will participate.
147. In reaching its conclusion, the Panel makes the following considerations:
- (i) Supporters’ misconduct of this magnitude, which poses a threat to the security and safety of the players, cannot be taken lightly. An act of violence against the players is an infringement of the most serious kind which must be met with a sanction which could directly affect the supporters and, thus, be adequate enough to prevent and deter recurrence.

- (ii) Two additional matches behind closed doors would accomplish the justifiable aim or envisaged goal of preventing and deterring recurrence; given the importance of the matches of the Copa Libertadores, obligating the Second Respondent to play two matches behind closed doors would have a significant impact on the club’s supporters.
- (iii) Any lesser kind of sanction – such as a reprimand, warning, or fine – would not be sufficiently meaningful or impactful to achieve the envisaged goal of dissuading the supporters from repeating their misconduct in the future, also taking into account the sanctions already imposed on the Appellant under Decision No. O-213-18 for the other offenses committed in relation to the Match.
- (iv) Any sanction more serious than playing two matches behind closed doors – in particular, a sanction that would affect the result obtained on the pitch, such as the cancellation of the Match result (Article 18.1(d) CDR), determination of the Match result (Article 18.1(g) CDR), the disqualification from the Copa Libertadores 2018 (Article 18.1(l) CDR) or withdrawal of a title or prize money (Article 18.1(m) CDR) – would be excessive and inappropriate because:
 - the Second Respondent has already suffered severe consequences for the (other) incidents related to the Match. Not only was the Second Respondent already sanctioned under Decision No. O-213-18 with two matches behind closed doors and a fine of USD 400,000 (which is the maximum fine allowable under Article 18.1(c) CDR), but it also lost the opportunity to play a home match in its own stadium (with all the sporting and financial consequences that naturally flow therefrom) when First Respondent ordered the return leg of the Final to be played in Madrid, Spain (see *supra* at para. 28).
 - the Second Respondent lacked any real control over the area in which the Bus Attack occurred, i.e. just outside of the security rings delineated at the Security Meeting. As Mr. D’Onofrio and Ms. Valentina Pomi Rodríguez testified at the hearing, the Second Respondent had neither the power to police outside of the security rings nor to modify the security plan established at the Security Meeting. As already mentioned, this factor does not exonerate the Second Respondent from strict liability but it is certainly relevant in assessing the proportionality of the sanction (see *supra* at para. 117).
 - A sanction affecting the result of a competition, as the Appellant primarily requests, is never to be taken lightly and must be imposed only in the most serious cases (being particularly warranted in all those cases involving cheating of some kind, such as in doping or match fixing matters). Moreover, in the case at hand, right after the incidents the Parties agreed in the Postponement Agreement to play the Match in the future under equal conditions, as they eventually did on 9 December 2018 in the Bernabeu stadium, and they did it expressly “*in view of safeguarding the sporting integrity of the Final*” (in the original Spanish text: “*a efectos de salvaguardar la integridad deportiva de la Final*”, *supra* at para. 22). Thus,

any sanction affecting *a posteriori* the result of that Match, even if legally possible and admissible (see *supra* at paras. 103-104), could be deemed disproportionate for being contrary to the spirit of that agreement.

148. The Appellant argues that not ordering the Second Respondent's disqualification from the Copa Libertadores 2018 would contradict CONMEBOL and CAS jurisprudence, namely the CONMEBOL's *Boca tear gas* case, CAS 2007/A/1217, CAS 2015/A/3874 and CAS 2015/A/3875.
149. The Panel, however, is of the view that imposing the sanction provided by Article 18.1(h) CDR would not contradict said jurisprudence. The present case has two distinguishing features that were not present in the aforementioned CONMEBOL and CAS precedents. First, the Second Respondent in the present case had no possibility of control over the area in which the Bus Attack occurred. This distinguishes the present case from the *Boca tear gas* case and CAS 2007/A/1217, in which the Second Respondent and a European club were disqualified from the Copa Libertadores 2015 and the UEFA Cup 2006-2007, respectively, for acts of hooliganism occurring inside the stadium within the area over which the home team had the power to police. Likewise, it distinguishes the case from CAS 2015/A/3874 and CAS 2015/A/3875, in which the acts of violence against the visiting team's players, which the panel considered would in principle justify disqualification from the UEFA competition, occurred on the pitch due to some serious security deficiencies within the area of control of the home team. Moreover, in the case at hand the Parties signed the Postponement Agreement with the intent of preserving the sporting integrity of the Final and playing the Match under equal conditions, which they eventually did at the Bernabeu stadium on 9 December 2018. No such agreement was in play in the aforementioned cases and, as said, such an agreement affects the assessment of the proportionality of the sanction (see *supra* at para. 147).
150. In light of the foregoing, the Panel holds that the Second Respondent must be sanctioned for the Bus Attack with two matches behind closed doors under Article 18.1(h) CDR. This sanction shall apply to the Second Respondent's two next home matches in the Copa Libertadores, and shall be implemented by the Second Respondent under the control of CONMEBOL in the same manner (particularly in terms of the people that will be allowed to access the stadium) as already done for the sanction of two home matches behind closed doors imposed by Decision O-213-18 (see *supra* at para. 30) and confirmed by Decision A-23-18 (see *supra* at para. 38).

H. Further or different motions

151. All further or different motions or requests of the Parties are rejected.

X. COSTS

152. Preliminarily, the Panel notes that, on 7 January 2019, the President of the CAS Appeals Arbitration Division advised the Parties that Article 64 of the CAS Code applied to the present appeal as the Appellant was not subject to any disciplinary sanction under the

Appealed Decision. As explained in the CAS Court Office’s letter of 24 January 2019, the decision of the Division President on this matter is final and not subject to the Panel’s review.

153. With that said, Article R64.5 of the CAS Code so provides:

“In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties”.

154. In exercising its discretion under Article 64.5 of the CAS Code, the Panel finds it reasonable, considering that the Appellant was only partially successful in its appeal, that the Parties all bear the same share of the procedural costs, as will be notified to the Parties by the CAS Court Office. The Panel thus holds that the Parties must bear the procedural costs in equal shares of one third each.

155. With regard to the Parties’ costs, in exerting its discretion in accordance with the above quoted Article R64.5 of the CAS Code, the Panel finds that each of the two clubs must be deemed (at least partially) as a “*prevailing party*” vis-à-vis the First Respondent, due to the following considerations. On the one hand, the First Respondent’s only substantive motion for relief (“*To dismiss the Appeal in full and to confirm the decision under appeal*”, *supra* at para. 60) has been rejected and the Appealed Decision set aside because the First Respondent’s disciplinary bodies erred in mechanically limiting the scope of application of the strict liability rule. On the other hand, both clubs can be considered as partially successful in this arbitration – the Appellant because its alternative motion for relief (“*Alternatively, declare that Club Atlético River Plate is strictly liable for its supporters conduct, and order serious disciplinary sanction(s) that is(are) deemed appropriate in light of the gravity of the facts occurred and contained in Art. 18.1 RD, supra* at para. 58) has been upheld, and the Second Respondent because it obtained the rejection of the Appellant’s principal motion for relief, thus retaining the Copa Libertadores 2018 title that it won on the pitch. As a consequence, considering that Article 64.5 of the CAS Code provides that “*the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters*” (emphasis added), in exerting its discretion the Panel deems it fair that, while each Party should bear its own legal fees and other expenses, the First Respondent should partially contribute towards the Appellant’s and Second Respondent’s significant translation costs (due to the large amount of written and oral evidence that needed being translated from Spanish into English). Accordingly, having considered the translation costs incurred by the Parties, the First Respondent is ordered to pay a contribution of CHF 6,000 (which is roughly 50% of the average translation costs of the two clubs) both to the Appellant and to the Second Respondent.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Club Atlético Boca Juniors on 7 December 2018 is partially upheld.
2. The CONMEBOL Appeals Chamber's Decision No. A-21-18 of 6 December 2018 is set aside and replaced by the present arbitral award as follows:
 - Club Atlético River Plate violated Articles 8 and 13.2 of the CONMEBOL Disciplinary Regulations.
 - Club Atlético River Plate is sanctioned pursuant to Article 18.1(h) of the CONMEBOL Disciplinary Regulations with two matches behind closed doors, to be applied on Club Atlético River Plate's next home matches of the Copa Libertadores in which it will participate.
3. The costs of the arbitration, to be determined and served to the Parties by the CAS Court Office, shall be borne in equal shares of one third each by Club Atlético Boca Juniors, Club Atlético River Plate and CONMEBOL.
4. Each party shall bear its own legal fees and other expenses incurred in connection with this arbitration, except that CONMEBOL shall pay CHF 6,000 (six thousand) to Club Atlético Boca Juniors and CHF 6,000 (six thousand) to Club Atlético River Plate, as contribution towards their translation costs.
5. All further or different motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 4 February 2020

THE COURT OF ARBITRATION FOR SPORT



Massimo Coccia
President of the Panel