



**Arbitration CAS 2013/A/3321 Aris Football Club v. Fédération Internationale de Football Association (FIFA), award of 21 March 2014**

Panel: Mr Lars Hilliger (Denmark), President; Mr Rui Botica Santos (Portugal); Mr Hendrik Willem Kesler (The Netherlands)

*Football*

*Disciplinary sanction imposed on a club for non-compliance with a DRC Decision*

*Entitlement of the FIFA DC to close proceedings if one of the parties involved enters into bankruptcy proceedings*

*Respect of the decisions of the national State Courts and the laws of the States regarding bankruptcy proceedings*

*Suspension of the effect and the execution of the sanctions imposed on a club during the club's rehabilitation procedure*

*Right of the FIFA DC to decide on the deduction of points based on the principle of proportionality*

*Burden of proof according to Swiss law*

*Control of proportionality of the sanctions imposed on a club*

- 1. Article 107(b) of the FIFA Disciplinary Code (FDC) should be considered as an exception to the general application of Article 64, which entitles FIFA Disciplinary Committee (DC) to close proceedings before it if one of the parties involved enters into bankruptcy proceedings. However, in accordance with the jurisprudence of the CAS regarding the word “may” in Article 107(b) FDC, the FIFA DC has a discretion to close the proceedings, but no obligation to do so. The mere fact that a party has been declared subject to insolvency proceedings by a national State Court does therefore not necessarily imply that proceedings must be closed. Accordingly, other factors must also be taken into account in deciding whether or not to close the proceedings.**
- 2. The FIFA DC is obliged to take into consideration and respect the decisions of the national State Courts as well as the laws of the States regarding bankruptcy proceedings, since the said proceedings are within the exclusive jurisdiction of the State Court.**
- 3. The effect and the execution of the sanctions imposed on a club for not complying with a FIFA decision should be suspended for as long as the club's rehabilitation procedure as described in the State Court's decision is pending.**
- 4. According to Article 64 FDC, the FIFA DC has the right to fine the club and to decide on the possible deduction of points from the club's first team as a consequence of the non-fulfilment of the club's obligation towards the player. Article 64.2 FDC further states that if points are deducted, they shall be proportionate to the amount owed. The question whether sanctions imposed on a party must be deemed to be disproportionately high should be determined by a case-by-case analysis.**
- 5. According to the general legal principle of burden of proof, any party claiming a right on the basis of an alleged fact must carry the burden of proof, proving that the alleged**

fact is as claimed. This is in line with Article 8 of the Swiss Civil Code. In CAS arbitration, the party which asserts facts to support its rights has the burden of establishing them. The CAS Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Therefore, the party wishing to establish some facts and persuade the deciding body must substantiate its allegations with convincing evidence.

6. If the sanctions imposed on a club in the appealed decision are not seen to differ substantially from other sanctions imposed in similar cases, the CAS panel solely regards itself as having a marginal discretion to change the imposition of sanctions by FIFA. If the imposed sanctions are not deemed unreasonable after all relevant factors have been taken into account, the sanctions cannot be considered disproportionate.

## 1. THE PARTIES

- 1.1 Aris Football Club (the “Appellant”) is a Greek football club affiliated with the Greek Football Federation (“HFF”), which in turn is affiliated with FIFA.
- 1.2 The Fédération Internationale de Football Association (“FIFA” or the “Respondent”) is the world governing body of Football, whose headquarters are located in Zürich, Switzerland.

## 2. FACTUAL BACKGROUND

- 2.1 The elements set out below are a summary of the main relevant facts as established by the Panel on the basis of the decisions rendered by the FIFA Disciplinary Committee (the “FIFA DC”) on 26 June 2013 (the “Decision”), the written and oral submissions of the Parties and the exhibits filed. Additional facts may be set out, where relevant, in the legal considerations of the present Award.
- 2.2 On 1 March 2012 the FIFA Dispute Resolution Chamber (the “DRC”) decided that the Appellant had to pay to the professional football player R. (the “Player”) the sum of Euro 58,184 within 30 days as from the date of notification of the decision with interest of 5% *p.a.* as of 1 July 2007 (the “DRC Decision”).
- 2.3 Following the request from the Appellant, the grounds of the DRC Decision were notified to the Appellant on 9 October 2012.
- 2.4 Neither the Appellant nor the Player appealed the DRC Decision before the Court of Arbitration for Sport, and the DRC Decision is also not disputed between the Parties in these proceedings.

- 2.5 The Appellant did not proceed with any payment towards the Player, which, according to the information received from the Appellant, was caused by the Appellant's financial problems and lack of funds.
- 2.6 Following a letter from the Player dated 15 February 2013, the Appellant was on the same date reminded by letter from the FIFA Players' Status Department of its obligations with regard to the DRC Decision. Furthermore, the Appellant was informed that if it did not provide proper proof of payment, the case would be transferred to the secretariat of the Disciplinary Committee of FIFA.
- 2.7 With no answer from the Appellant, after having reminded it of its obligation with regard to the payment of the outstanding amount due to the Player, and upon request from the Player, the FIFA Status Department transferred the case to the secretariat of the Disciplinary Committee of FIFA on 4 March 2013.
- 2.8 By letter of 3 May 2013 sent by the secretariat to the FIFA Disciplinary Committee, the Appellant was informed that due to its lack of payment according to the DRC Decision, disciplinary proceedings against the Appellant were now opened. The Appellant was furthermore asked again to pay the amount due to the Player.
- 2.9 On 31 May 2013, and still without any reaction from the Appellant, a letter was forwarded to the Appellant informing it that the case would be submitted to the FIFA DC for evaluation on 25 June 2013. The Appellant was further informed that should the Appellant fail to pay the outstanding amount to the Player by 17 June 2013 at the latest, the FIFA DC would then decide the case in accordance with Article 110 para. 4 of the FIFA Disciplinary Code.
- 2.10 By letter of 21 June 2013, the Appellant informed the secretariat of the FIFA DC that it was not in a position to pay the outstanding amount to the Player due to lack of funds.
- 2.11 Furthermore, the Appellant stated the following:

*"Moreover, we would also like to inform your services and draw your attention to the fact that, due to its serious financial problems and the lack of funds, Aris FC has filed a petition pursuant to article 99 and 103ff of the Greek Bankruptcy Code asking to be submitted to the procedure of the said articles which is a restructuring procedure aiming to rescue legal persons that are encountering financial difficulties at a pre-bankruptcy stage.*

*By means of its decision 10334 of 17 May 2013, which we just received in our hands, the Multi-member First Instance Court of Thessaloniki has accepted the petition of Aris FC and has ordered the opening of the restructuring procedure.*

*By means of the same decision, the said Court has suspended any action and all enforcement proceedings against Aris FC for its debts arising from any case until the expiration of the restructuring procedure.*

*Aris FC avers that since the said decision of the Multi-member First Instance Court of Thessaloniki is also binding for FIFA Bodies, the Disciplinary Committee shall refrain from taking any decision on the said matter while the above mentioned restructuring procedure is taking place.*

*Thus, we kindly ask your services to take the present matter out of the agenda of the Disciplinary Committee's next meeting, which is scheduled for Tuesday 25 of June 2013 and to suspend the present proceedings against the Greek club.*

*The decision of the Multi-member First Instance Court of Thessaloniki together with a translation in English are attached hereto for your information (due to the urgency of the matter and the lack of time, we attach only the first page of the said decision and the operative part)".*

2.12 On 26 June 2013, the FIFA DC rendered the Decision and decided, in particular, that:

- "1. The club Aris Thessaloniki FC is pronounced guilty of failing to comply with a decision of a FIFA body in accordance with art. 64 of the FDC.*
- 2. The club Aris Thessaloniki FC is ordered to pay a fine in the amount of CHF 7,500. This fine is to be paid within 30 days of notification of the decision. ....*
- 3. The club Aris Thessaloniki FC is granted a final period of grace of 30 days as from notification of this decision in which to settle its debt to the creditor.*
- 4. If payment is not made by this deadline, the creditor may demand in writing from FIFA that six (6) points be deducted from the debtor's first team in the domestic league championship. Once the creditor has filed this request, the points will be deducted automatically without further formal decision having to be taken by the FIFA Disciplinary Committee. The order to implement the deduction of points will be issued on the association concerned by the secretariat to the FIFA Disciplinary Committee.*
- 5. If the club Aris Thessaloniki FC still fails to pay the amount due even after deduction of the points in accordance with point iii./4, the FIFA Disciplinary Committee will decide on a possible relegation of the debtor's first team to the next lower division.*
- ...*
- 7. The costs and expenses of these proceedings shall not be borne by the club Aris Thessaloniki FC.*
- ...".*

### **3. SUMMARY OF THE ARBITRAL PROCEEDINGS BEFORE THE CAS**

- 3.1 On 13 September 2013, the Appellant filed a Statement of Appeal against the Decision rendered by the FIFA DC on 26 June 2013, notified to the Appellant on 26 August 2013. Included in the Statement of Appeal was a Request for a Stay of Execution of the Decision.
- 3.2 The Appeal was directed against FIFA and the Player.
- 3.3 On 18 September 2013, FIFA informed the CAS Court Office that it did not object to the Appellant's request to stay the Decision.

3.4 By letter of 20 September 2013, the Parties were notified with an Order on Request for a stay rendered on the same date by the Deputy President of the CAS Appeals Arbitration Division.

3.5 The Order on Request for a stay stated inter alia:

*“Considering the constant jurisprudence of CAS, only FIFA, and not the Player R., has standing to be sued (“légitimation passive” with respect to the sportive sanction imposed by FIFA on a player or another club (CAS 2009/A/1677, para 92 et seq.; CAS 2009/A/1976-1977);*

*Considering (i) the absence of objection of FIFA to stay the execution of the FIFA Disciplinary Committee’s decision of 26 June 2013 and (ii) the lack of interest of the Player R. to object to such stay;*

*In light of the above, the Deputy President of the CAS Appeal Arbitration Division decided to grant the Appellant’s request for the stay of execution of the decision appealed against.*

#### ORDER

*The Deputy President of the CAS Appeal Arbitration Division rules that:*

1. *The application for the stay of execution filed by ARIS Football Club on 13 September 2013 in the matter CAS 2013/A/3321 ARIS Football Club v. FIFA & R. is granted”.*

3.6 On 23 September 2013, the Appellant filed its Appeal Brief. Furthermore, the Appellant informed the CAS Court Office that it did not wish to maintain the Player as a respondent in the present proceedings, and the appeal with respect to the Player should therefore be deemed withdrawn.

3.7 By letter of 26 September 2013, the CAS Court Office informed the Parties that the Player was no longer a part of the current proceedings.

3.8 On 24 October 2013, the Respondent filed its Answer.

3.9 By letter of 10 December 2013, the Parties were informed by the CAS Court Office that the Panel had been constituted as follows: Mr Lars Hilliger, Attorney-at-law, Copenhagen, Denmark (President of the Panel), Mr Rui Botica Santos, Attorney-at-law, Lisbon, Portugal (appointed by the Appellant), and Mr Hendrik Willem Kesler, Attorney-at-law, Enschede, The Netherlands, (appointed by the Respondent).

3.10 On 4 November 2013, the Appellant informed the CAS Court Office that it preferred a hearing to be held in the matter.

#### **4. HEARING**

- 4.1 A hearing was held on 13 February 2014 in Lausanne, Switzerland. All members of the Panel were present. The Parties confirmed that they did not have any objections to the constitution of the Panel.
- 4.2 The Appellant was represented at the hearing by its counsel, Mr Konstantinos Zemberis.
- 4.3 The Respondent was represented by its counsel, Ms Christine Fariña and Mr Bernardo Palmeiro, FIFA Disciplinary & Governance Department.
- 4.4 The Parties had ample opportunity to present their cases, submit their arguments and answer the questions posed by the Panel. After the Parties' final submissions, the Panel closed the hearing and reserved its final award. The Panel heard carefully and took into account in its discussion and subsequent deliberation all the evidence and arguments presented by the Parties although they have not been expressly summarised in the present Award. Upon closure, the Parties expressly stated that they did not have any objections in respect of their right to be heard and to be treated equally in these arbitration proceedings.

#### **5. CAS JURISDICTION AND ADMISSIBILITY OF THE APPEAL**

- 5.1 Article R47 of the CAS Code states as follows: *“An appeal against the decision of a federation, association or sports-related body may be filed with the CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body”*.
- 5.2 With respect to the Decision, the jurisdiction of the CAS derives from Article 67 of the FIFA Statutes. In addition, neither the Appellant nor the Respondent objected to the jurisdiction of the CAS, and both Parties confirmed the CAS jurisdiction when signing the Order of Procedure.
- 5.3 The Decision with its grounds was notified to the Appellant on 26 August 2013, and the Appellant's Statement of Appeal was lodged on 13 September 2013, i.e. within the statutory time limit set forth by the FIFA Statutes, which is not disputed. Furthermore, the Statement of Appeal and the Appeal Brief complied with all the requirements of Articles R48 and R51 of the CAS Code.
- 5.4 It follows that the CAS has jurisdiction to decide on the appeal of the Decision and that the appeal of the Decision is admissible.
- 5.5 Under Article R57 of the CAS Code, the Panel has full power to review the facts and the law and may issue a de novo decision superseding, entirely or partially, the decision appealed against.

## 6. APPLICABLE LAW

- 6.1 Art. 66 par. 2 of the FIFA Statutes states as follows: *“The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”*.
- 6.2 Article R58 of the CAS Code states 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”*.
- 6.3 The Panel notes that in the present matter the Parties have not agreed on the application of any specific national law. The applicable law in this case will consequently be the regulations of FIFA and, additionally, Swiss law, due to the fact that FIFA, which issued the challenged decision, is domiciled in Switzerland.
- 6.4 The Panel notes that the Appellant submits that, even if not directly applicable, also Greek law must be taken into consideration only with respect to decision 10334 of 17 May 2013 by the Multi-member First Instance Court of Thessaloniki (the Greek Decision”).

## 7. THE PARTIES’ REQUESTS FOR RELIEF AND POSITIONS

- 7.1 The following outline of the Parties’ requests for relief and positions is illustrative only and does not necessarily comprise every contention put forward by the Parties. The Panel, however, has carefully considered all the submissions and evidence filed by the Parties with the CAS, even if there is no specific reference to those submissions or evidence in the following summary.

### 7.2 *The Appellant:*

- 7.2.1 In its Statement of Appeal of 13 September 2013 and in its Appeal Brief filed on 23 September 2013, the Appellant requested the following from the CAS:

1. *to annul the challenged decision;*
2. *to rule that the FIFA Disciplinary Committee had to refrain from taking a decision on the present matter and had to suspend the disciplinary proceedings against the Appellant;*
3. *to condemn the Respondent to the payment in the favour of the Appellant of the legal expenses incurred;*
4. *to establish that the costs of the arbitration procedure, if any, shall be borne by the Respondent.*

*Subsidiarily, and only in the event that the above is rejected;*

1. *to set aside the challenged decision;*
2. *to rule that the sanctions imposed by the FIFA Disciplinary Committee are disproportionate to the amount of the dispute and to reduce them to the appropriate level;*

3. *to suspend the effects and the execution of the sanction for as long as the Appellant's rehabilitation procedure is pending;*
4. *to condemn the Respondent to the payment in the favour of the Appellant of the legal expenses incurred;*
5. *to establish that the costs of the arbitration procedure, if any, shall be borne by the Respondent.*

*Subsidiarily, and only in the event that the above is rejected:*

1. *to set aside the challenged decision;*
2. *to rule that the sanctions imposed by the FIFA Disciplinary Committee are disproportionate to the amount of the dispute and to reduce them to the appropriate level;*
3. *to condemn the Respondent to the payment in the favour of the Appellant of the legal expenses incurred;*
4. *to establish that the costs of the arbitration procedure, if any, shall be borne by the Respondent”.*

7.3 In support of its requests for relief, the Appellant submitted as follows:

- a) The Appellant does not contest its obligation towards the Player as described in the DRC Decision.
- b) The lack of payment to the Player is only caused by the Appellant's serious financial problems and the lack of sufficient cash flow.
- c) Due to these financial problems, the Appellant filed a petition to be submitted to voluntary bankruptcy proceedings and specifically to the rehabilitation procedure of article 99ff of the Greek Bankruptcy Code.
- d) The said rehabilitation procedure aims at the preservation, restructuring and recovery of a company with the creditors' agreement, without disregarding the collective satisfaction of creditors.
- e) The hearing of the petition was originally scheduled for 9 November 2012 and, following deferments, the case was heard on 12 April 2013.
- f) By decision published on 17 May 2013 (the "Greek Decision"), the Multi-member First Instance Court of Thessaloniki accepted the petition of the Appellant and ordered the opening of the rehabilitation procedure and appointed a mediator, who was responsible for completing the said procedure.
- g) By this decision, the Multi-member First Instance Court of Thessaloniki ordered the suspension of any and all outstanding or not compulsory enforcement proceedings against the assets of the Appellant for debts arising from any cause until 20 September 2012, as well as of any injunctive measures against the Appellant until the expiration of the rehabilitation procedure.



- h) Following this decision, the appointed mediator has managed to reach an agreement with the necessary majority of the Appellant's creditors and the said creditors' rehabilitation agreement has been submitted to the court for ratification.
- i) The relevant hearing for the revised petition, including the rehabilitation agreement, is now scheduled for 24 February 2014. The first instalments according to the rehabilitation agreement have already been paid to the creditors who have already voluntarily accepted the said agreement.
- j) As already acknowledged by the Respondent and the CAS in other decisions, the Respondent is obliged to respect the decisions of the national State courts as well as the laws of the States regarding bankruptcy proceedings, since the said proceedings are within the exclusive jurisdiction of the State courts.
- k) The members of FIFA are subject to national law, and FIFA cannot avoid Public law.
- l) It follows that the Greek Decision suspending and forbidding any enforcement against the Appellant and its property for any kinds of debt until the expiration of the rehabilitation procedure is actually binding on the Respondent and its judicial bodies.
- m) Based on these circumstances, the Respondent should have suspended the FIFA DC's disciplinary proceedings for the enforcement of the DRC decision as soon as it became aware of the Greek Decision, for as long as the bankruptcy proceedings of rehabilitations were open.
- n) The reason for the information regarding the rehabilitation procedure and the Greek Decision only being forwarded to the Respondent on 21 June 2013 is that the Appellant was in fact without management for a period of time due to a change of management.
- o) The Respondent is not entitled to enforce the DRC Decision against the Appellant when the Appellant due to the Greek Decision is not entitled to pay the outstanding amount to the Player for as long as the rehabilitation proceedings are pending.
- p) Any such possible enforcement would – apart from being in conflict with the Greek Decision – also lead to an unequal treatment of the Appellant's creditors.
- q) Until 2012, as a general rule the Respondent terminated disciplinary proceedings against clubs that were in bankruptcy proceedings in accordance with its own Statutes.
- r) Based on recent jurisprudence of the CAS, the Respondent should have looked into the case on a case-by-case basis, and at least the proceedings should have been suspended.
- s) In fact, the Respondent never looked into the case in order to decide whether to suspend the proceedings or not, nor did the Respondent have any valid reasons for not taking the case off the agenda for the meeting of the FIFA DC.

- t) If the Panel decides that the FIFA DC's disciplinary proceedings should not have been suspended, at least the effects of the Decision must be.
- u) In any case, the sanctions imposed on the Appellant by means of the Decision are clearly disproportionate to the amount of the dispute.
- v) The fine of CHF 7,500 and the automatic 6 points deduction with 30 days of grace are disproportionate to the outstanding amount of Euro 58,184, and the sanctions would therefore at least have to be reduced to the appropriate level.

### 7.3 ***The Respondent***

7.3.1 In its Answer filed on 24 October 2013, the Respondent requested the following from the CAS:

- “1. *To reject the Appellant's appeal in its entirety.*
2. *To confirm the decision hereby appealed against.*
3. *To order the Appellant to bear all costs incurred with the present procedure and to cover all the Respondent's legal expenses relating to the present procedure”.*

7.3.2 In support of its requests for relief, the Respondent submitted as follows:

- a) According to the DRC Decision the Appellant is obliged to pay to the Player the outstanding amount in accordance with the said decision.
- b) The Appellant failed to pay the outstanding amount to the Player in accordance with the DRC Decision, which is why the FIFA Player's Status Department on at least two occasions reminded the Appellant of its obligation and urged the Appellant to comply with it.
- c) Thus, the Appellant was duly informed of the risks of non-compliance with the DRC Decision, i.e. opening of disciplinary proceedings.
- d) Nevertheless, the Appellant never contacted the FIFA Player's Status Department in order to provide information about the reason for not fulfilling its obligation towards the Player.
- e) Upon request from the Player and in accordance with its regulations, the Respondent then opened disciplinary proceedings against the Appellant.
- f) The spirit of Article 64 of the FIFA Disciplinary Code is to enforce decisions comparable to judgments that have been rendered by a body, a committee or an instance of FIFA or CAS, which are final and binding. The article provides FIFA with a legal remedy

facilitating, to a certain extent (through the application of sanctions), the enforcement of the rights of the creditor.

- g) The FIFA DC cannot review or modify the substance of a previous decision, which is final and binding and, accordingly, has become enforceable.
- h) If the FIFA DC is not provided with proof that the payment has been executed or the parties agreed upon a payment plan, it will render a decision imposing a fine on the debtor for failing to comply with a decision and will grant the debtor a final period of grace in which to settle its debts.
- i) Since the Appellant had not fulfilled its obligation towards the Player, which is undisputed, the FIFA DC was correct in applying the said article and in issuing the Decision.
- j) It is fundamentally permissible for a private association to stipulate sanctions to safeguard the members' duties provided that the adequate statutory or disciplinary foundations are in place.
- k) The respective actions are to be considered as measures of disciplinary nature taken in the context of relations between subjects of civil law.
- l) The FIFA DC does not have any powers directly to enforce decisions, and decisions of the FIFA DC are not enforcements of financial claims, but rather the imposition of a sanction under the terms of association law.
- m) The sanctions provided for under any association law, as the FIFA regulations, and in particular the ones stipulated under Article 64 of the FIFA Disciplinary Code, do not conflict with the power of the state to legislate and apply the law, more precisely with the state's monopoly on enforcements.
- n) This means that the application of a financial sanction does not collide with the Multi-member First Instance Court of Thessaloniki (the "Greek Decision" to open restructuring procedure for the Appellant.
- o) As long as the Appellant is a member of the HFF, it shall comply with the applicable regulations, including the regulations of FIFA, and the decision and face the consequences for not complying.
- p) The submission of the case to the FIFA DC and the eventual application of a sanction is not an action or an enforcement proceeding against a member for its debt, but simply an action against a member for failure to comply with a decision rendered by a body of FIFA (and only based on the ability to consider it an enforcement proceeding), i.e. a sanction for a breach of the association regulations foreseen within the scope of association.

- q) The FIFA DC was only informed about the financial situation of the Appellant and of the Greek Decision a few days before the hearing of the case.
- r) It was at the discretion of the FIFA DC to decide to close or not the disciplinary proceedings opened against the club.
- s) According to Article 107 lit. b of the Disciplinary Code “Proceedings may be closed if: ...b) a party declares bankruptcy.
- t) The FIFA DC always decides on a case-by-case basis if the particular circumstances of the case would justify or not to close proceedings.
- u) In this context, the Appellant is not in bankruptcy proceedings *per se*, but rather in restructuring proceedings.
- v) In view of that, and in accordance with recent CAS jurisprudence, the FIFA DC correctly considered that no suspension or closure of proceedings was appropriate in the present matter.
- w) The sanctions imposed on the Appellant are not disproportionate and should not be reduced.
- x) The imposed sanction is in line with the longstanding jurisprudence of the FIFA DC.
- y) A less severe sanction would contradict the principle of repression and prevention and would fail to encourage the prompt fulfilment of obligations.

## **8. DISCUSSION ON THE MERITS**

- 8.1 Initially, the Panel notes that the Appellant does not contest its obligation towards the Player as described in the DRC Decision.
- 8.2 Furthermore, the Parties do not contest that, by letter of 21 June 2013, the Appellant informed the secretariat of the FIFA DC for the first time that the Appellant was not in a position to pay the outstanding amount to the Player due to lack of funds. This letter also included a copy of the Greek Decision and a request from the Appellant to have the disciplinary proceedings suspended.
- 8.3 The Panel further notes that the contents of the Greek Decision and the validity of the decision itself are not disputed between the Parties.
- 8.4 Thus, the main issues to be resolved by the Panel are:

- a) Should the Respondent have refrained from taking a decision on the present matter, suspending the disciplinary proceedings against the Appellant, and what is in any case the status of the Decision and the sanction imposed on the Appellant according to it?
  - b) In case the Decision is neither annulled nor set aside, are the sanctions imposed on the Appellant in the Decision to be considered disproportionate, and, if so, should the sanctions be reduced?
- a. Should the Respondent have refrained from taking a decision on the present matter, suspending the disciplinary proceedings against the Appellant, and what is in any case the status of the Decision and the sanction imposed on the Appellant according to it?**

8.5 The Panel notes initially that Article 64.1 of the FIFA Disciplinary Code states as follows:

*“Anyone who fails to pay another person (such as a player or a club) or FIFA a sum of money in full or part, even though instructed to do so by a body, a committee or an instance of FIFA or a subsequent CAS appeal decision (financial decision), or anyone who fails to comply with another decision (non-financial decision) passed by a body, a committee or an instance of FIFA, or by CAS (subsequent appeal decision):*

- a) *will be fined for failing to comply with a decision;*
- b) *will be granted a final deadline by the judicial bodies of FIFA in which to pay the amount due or to comply with the (non-financial) decision;*
- c) *(only for clubs:) will be warned and notified that, in the case of default or failure to comply with a decision within the period stipulated, points will be deducted or relegation to a lower division ordered. A transfer ban may be ordered.*
- d) *...”.*

8.6 The Panel further notes that Article 107 of the FIFA Disciplinary Code states as follows:

*“Baseless proceedings*

*Proceedings may be closed if:*

- a) *the parties reach an agreement;*
- b) *a party declares bankruptcy;*
- c) *they become baseless”*

8.7 The Panel finds that Article 107(b) should be considered as an exception to the general application of Article 64, which entitles the FIFA DC to close proceedings before it if one of the parties involved enters into bankruptcy proceedings.

8.8 However, the Panel finds, in accordance with the jurisprudence of the CAS (2012/A/2750) that the word “may” in Article 107(b) of the FIFA Disciplinary Code implies that the FIFA DC has a discretion to close the proceedings, but no obligation to do so.

8.9 The mere fact that a party has been declared subject to insolvency proceedings by a national State Court does therefore not necessarily imply that proceedings must be closed. Accordingly,

other factors must also be taken into account in deciding whether or not to close the proceedings.

8.10 The Panel notes in this connection that the Respondent has apparently altered its practice after the decision in the case CAS 2012/A/2750 with the effect that there is no automatic termination of disciplinary proceedings, but that the FIFA DC apparently makes a case-by-case evaluation, which is a practice the Panel endorses.

8.11 In that connection, the Panel further agrees that FIFA is obliged to take into consideration and respect the decisions of the national State Courts as well as the laws of the States regarding bankruptcy proceedings, since the said proceedings are within the exclusive jurisdiction of the State Court.

8.12 The Greek Decision issued by the Multi-member First Instance Court of Thessaloniki stipulated, inter alia, as follows:

“...  
*The Court suspends until the end of the rehabilitation process: a) the measures, pending or not, of a compulsory enforcement decision against the property of the claimant company for its obligations that occurred until 20.09.2012, for the satisfaction of its creditors' demands, and b) any injunctive relief against the herein claimant.*  
...”

8.13 The Panel is of the opinion that, based on the exact wording of the Greek Decision, the decision by the Multi-member First Instance Court of Thessaloniki is only limited in time *“until the end of the rehabilitation process”*.

8.14 The purpose of entering into a voluntary rehabilitation procedure like the one presented here is to try to ensure the continued operations of the debtor, possibly by concluding a – maybe reduced – installment payment agreement with all or a majority of the debtor's creditors.

8.15 The Greek Decision thus does not finally regulate the Appellant's payment obligations to its creditors, and the Panel further notes that the Appellant should be regarded as an ongoing company notwithstanding the pending rehabilitation procedure.

8.16 Against the background of these circumstances, and with reference to Article 64.1 of the FIFA Disciplinary Code, the Panel does not find that the disciplinary proceedings before the FIFA DRC had become baseless or that the Appellant can be deemed to have declared bankruptcy.

8.17 Given these circumstances, the Panel finds that the FIFA DC was correct in not terminating the disciplinary proceedings on the basis of the Greek Decision.

8.18 The question is, however, whether the FIFA DC, after having received the Appellant's letter of 21 June 2013 containing information about the contents of the Greek Decision, should have suspended the disciplinary proceedings before it.

8.19 The Panel notes that the DRC Decision with its grounds was notified to the Appellant on 9 October 2012 and that the Appellant, by letter dated 15 February 2013 from the Respondent's

Players' Status Department, was informed that disciplinary proceedings would be initiated if the outstanding amount was not paid to the Player.

- 8.20 These disciplinary proceedings were initiated on 4 March 2013, of which the Appellant was reminded several times during the following months.
- 8.21 Nevertheless, only on 21 June 2013 – less than one week before the scheduled hearing of the case – the Appellant did inform the FIFA DC of its current financial situation.
- 8.22 On account of this very late submission of information to the FIFA DC, combined with the Appellant's previous failure to react to the Respondent's correspondence, the Panel finds that the FIFA DC cannot be expected on purely practical grounds to make a decision on the suspension of the disciplinary proceedings pending before it.
- 8.23 The Panel is aware that the Appellant has stated as grounds for its late submission of information to the FIFA DC that this was because the Appellant, as a result of a change of management, was actually without management during that part of the period concerned.
- 8.24 However, it is only the Appellant who in such case must bear the risk hereof, and it has therefore no impact on the Panel's evaluation of whether the FIFA DC, in the specific case, should have suspended the disciplinary proceedings.
- 8.25 The Panel thus already finds, for practical reasons, that there are no grounds for concluding that the Respondent should have refrained from taking the Decision and instead suspended the matter.
- 8.26 Given these circumstances, the Panel further finds that there are no grounds for either annulling or setting aside the Decision.
- 8.27 However, notwithstanding that the Respondent was therefore entitled to make the Decision, and notwithstanding that there seems to be no grounds for annulling or setting aside the Decision, the Panel recognizes, as mentioned in para 8.11 above that FIFA is obliged to take into consideration and respect the decisions of the national State courts regarding bankruptcy proceedings.
- 8.28 According to the Greek Decision all "*measures, pending or not, of a compulsory enforcement decision against the property of the claimant company for its obligations that occurred until 20.09.2012, for the satisfaction of its creditors' demands*" are suspended until the end of the rehabilitation process.
- 8.29 Moreover, the Appellant is no longer capable of managing its own finances and, consequently, the Appellant will not be in position, without violating the conditions set out in the Greek Decision – even if adequate financial funds might be assumed to be available for this purpose – to pay either the fine imposed by the Decision or the outstanding amount due to the Player.
- 8.30 As the Appellant, in accordance with a valid decision rendered by a Greek State Court which is solely competent with regard to such bankruptcy proceedings, will therefore not legally be capable of complying with the DRC Decision, the Panel finds that there are no grounds for

upholding and enforcing the sanction imposed on the Appellant in the Decision for as long as the rehabilitation proceedings in question are still pending.

- 8.31 Against this background, the Panel therefore finds that the effect and the execution of the sanctions imposed on the Appellant in the Decision shall be suspended for as long as the Appellant's rehabilitation procedure as described in the Decision issued by the Multi-member First Instance Court of Thessaloniki on 17 May 2013 is pending.
- 8.32 The period of grace as described in the Decision will recommence on the day after the rehabilitation procedure of the Multi-member First Instance Court of Thessaloniki has been concluded.
- 8.33 The Panel notes in this connection that 24 days of the period of grace granted in the Decision had already passed from the notification of the Decision until the rendering of the Order on Request for a stay by the Deputy President of the CAS Appeals Arbitration Division.

**b. In case the Decision is neither annulled nor set aside, are the sanctions imposed on the Appellant in the Decision to be considered disproportionate, and, if so, should the sanctions be reduced?**

- 8.34 Since the Decision is neither annulled nor set aside, the question remains whether the sanctions imposed must be deemed to be disproportionately high and, as such, should be reduced as requested by the Appellant.
- 8.35 The Panel notes that the Appellant does not dispute that, according to Article 64 of the FIFA Disciplinary Code, the Respondent has the right to fine the Appellant and to decide on the possible deduction of points from the Appellant's first team as a consequence of the non-fulfilment of the Appellant's obligation towards the Player.
- 8.36 The Panel further notes that Article 64.2 of the FIFA Disciplinary Code states that: "*if points are deducted, they shall be proportionate to the amount owed*".
- 8.37 Initially, the Panel states that the question whether sanctions imposed on a party must be deemed to be disproportionately high should be determined by a case-by-case analysis.
- 8.38 The Panel refers to the general legal principle of burden of proof, according to which any party claiming a right on the basis of an alleged fact must carry the burden of proof, proving that the alleged fact is as claimed.
- 8.39 The Panel notes that this is in line with Article 8 of the Swiss Civil Code ("Swiss CC"), which stipulates as follows:

*"Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact".*



- 8.40 As a result, the Panel reaffirms the principle established by CAS jurisprudence that *“in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them . . . . The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some facts and persuade the deciding body, it must actively substantiate its allegations with convincing evidence”* (cf. CAS 2003/A/506, para. 54; CAS 2009/A/1810&1811, para. 46 and CAS 2009/A/1975, para. 71 ff).
- 8.41 Based on that, the Panel confirms that the burden of convincing the Panel of the sanctions being disproportionate, especially to the amount owed, lies with the Appellant.
- 8.42 The Panel concludes on the basis of its review hereof that no unambiguous or clear line seems to appear in the Respondent’s use of sanctions in similar cases pertaining to due amounts of different sizes.
- 8.43 However, as the sanctions imposed on the Appellant in the Decision are not seen to differ substantially from other sanctions imposed in similar cases, as the Panel solely regards itself as having a marginal discretion to change the imposition of sanctions by the Respondent, and as the imposed sanctions are not deemed unreasonable, all relevant factors taken into account, the Panel therefore finds that the sanctions imposed on the Appellant in the Decision cannot be considered disproportionate. With regard to the sanctions imposed in CAS 2012/A/2750, the Panel notes that the amount of the fine imposed in that case was substantially higher than the fine imposed in the Decision. Furthermore, the Panel notes that the imposition of sanctions is subject to the discretionary authority of FIFA to take into account other facts and circumstances, such as, the behavior of the debtor and the relevance of the payment to the creditor’s financial status.
- 8.44 Since the Panel does not find the sanctions imposed on the Appellant in the Decision to be disproportionate, the request for reduction is denied.
- 8.45 In conclusion, the Panel states that, in the Panel’s view, it will be appropriate if the Respondent in its future decisions could shed more light on the criteria used to determine the size of this type of sanctions and not only to restrict making reference to their longstanding jurisprudence in this area.

## 9. SUMMARY

- 9.1 Based on the foregoing and after taking into consideration all evidence produced and all arguments made, the Panel finds that there are no grounds for concluding that the Respondent should have refrained from making the Decision and instead suspended the matter.
- 9.2 Moreover, the Panel finds that there are no grounds for either annulling or setting aside the Decision.

- 9.3 With reference to the contents of the Decision by the Multi-member First Instance Court of Thessaloniki on 17 May 2013, the Panel finds, however, that there are no grounds for upholding and enforcing the sanctions imposed on the Appellant in the Decision for so long as the rehabilitation proceedings in question are still pending.
- 9.4 Against this background, the Panel therefore finds that the effect and the execution of the sanctions imposed on the Appellant in the Decision shall be suspended for as long as the Appellant's rehabilitation procedure as described in the Decision issued by the Multi-member First Instance Court of Thessaloniki on 17 May 2013 is pending.
- 9.5 The Panel further finds that the sanctions imposed on the Appellant in the Decision cannot properly be considered disproportionate and, consequently, cannot be reduced.
- 9.6 The Appeal filed against the Decision is therefore partially upheld.

## **ON THESE GROUNDS**

### **The Court of Arbitration for Sport rules:**

1. The appeal filed on 13 September 2013 by ARIS Football Club against the decision rendered by the FIFA Disciplinary Committee on 26 June 2013 is partially upheld.
2. The effects and the execution of the sanctions imposed on ARIS Football Club in the decision rendered by the FIFA Disciplinary Committee on 26 June 2013 are suspended for as long as the rehabilitation proceedings in accordance with the decision by the Multi-member First Instance Court of Thessaloniki on 17 May 2013 are still pending.
3. (...)
4. (...)
5. All further and other requests for relief are dismissed.