Arbitration CAS 2019/A/6315 Clube Atlético Mineiro v. FC Spartak Moscow & Fédération Internationale de Football Association (FIFA), award of 19 May 2020

Panel: Mr Alexander McLin (Switzerland/USA)

Football
Sanctions for overdue payables
Predictability of the sanction
Reasoning of the decision
Proportionality of the sanction

1. **Given the consistency and evolution of the FIFA decisions (and the similarity of the sanction), it is extremely difficult to conceptualize that a party that has been found for the seventh time in the last approximately three years to have violated Article 12bis of the FIFA Regulations on the Status and Transfer of Players (RSTP) might not have been able to predict that a further violation of the same provision would yield a similar or harsher sanction. Article 12bis para. 6 RSTP stating that *"a repeated offence will be considered as an aggravating circumstance and lead to a more severe penalty"*, the qualification of such party as a *"repeated offender"* in the decision does not violate the *"principle of predictability"*.**

2. **A decision of a sports organization requires a (short) reasoning that enables the addressee to understand the findings and the reasoning of the association court.**

3. **In the absence of arbitrariness or situations in which sanctions are grossly disproportionate to the offense committed, deference is to be given to decisions of sports governing bodies. A sanction of a suspended ban with a probationary period of one year for a party found to be a "repeated offender" can hardly be considered disproportionate given that it is not the harshest sanction available. In addition the party can avoid the execution of the sanction simply by respecting the financial obligations it committed to.**

I. PARTIES

1. Clube Atletico Mineiro ("CAM" or the "Appellant") is a Brazilian football club affiliated with the Brazilian Football Confederation, itself a member of the Fédération International de Football Association ("FIFA").

2. F.C. Spartak Moscow ("Spartak" or the "First Respondent") is a Russian football club affiliated with the Russian Football Union, itself also a member of FIFA.

3. FIFA (the "Second Respondent") is the international governing body of football, whose headquarters are in Zurich, Switzerland.

II. FACTUAL BACKGROUND

4. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced. 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 Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in his Award only to the submissions and evidence it he considers necessary to explain his reasoning.

5. On 15 July 2015, CAM and Spartak signed a transfer agreement (the "Transfer Agreement") regarding the transfer of the player R. (the "Player") from Spartak to CAM.

6. Pursuant to Article 3 of the Transfer Agreement, CAM undertook to pay to Spartak a fixed transfer fee for the Player's initial transfer to CAM and a variable fee associated with any future transfer of the Player from CAM to a further club.

7. On 18 August 2017, CAM transferred the Player to Club de Fútbol Tigres de la Universidad Autónoma de Nuevo Léon ("FC Tigres"), receiving in exchange a transfer fee of USD 5,000,000.

8. On 28 December 2017, CAM and Spartak concluded an addendum to the Transfer Agreement (the "Additional Agreement"), providing *inter alia* that:

> *"3. In compliance with the clause 3.1 of the Transfer contract parties agreed that CLUBE ATLETICO MINEIRO obliges to pay an additional transfer compensation to FC Spartak-Moscow amounting to 2 250 000 (two million two hundred and fifty thousands) USA Dollars, which is to be paid without any deductions according to the following payment schedule:*
>
> - *1 125 000 USA Dollars till the 30 of January 2018;*
> - *1 125 000 USA Dollars till the 30 of September 2018".*

9. While the first of the instalments due under the Additional Agreement was paid, the second was not. It formed the basis of a claim seeking payment filed on 16 November 2018 by Spartak before FIFA Players' Status Committee ("PSC").

10. On 12 April 2019, the Bureau of the FIFA Players' Status Committee issued the following decision (the "Appealed Decision"), the grounds of which were communicated to the Parties on 9 May 2019:

> *"1. The claim of the Claimant, FC Spartak Moscow, is accepted.*

2. The Respondent, Atlético Mineiro, has to pay the Claimant overdue payables in the amount of USD 1,125,000 within 30 days as from the date of notification of this decision.

3. In the event that the amount due to the Claimant is not paid by the Respondent within the stated time limit, interest at the rate of 5% p.a. *will fall due as of expiry of the aforementioned time limit and the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.*

4. The final amount of costs of the proceedings in the amount of CHF 20,000 is to be paid by the Respondent, ***within 30 days*** *as from the notification of the present decision, as follows:*

a) The amount of CHF 5,000 has to be paid to the Claimant.

b) The amount of CHF 15,000 has to be paid to FIFA […].

5. The Claimant is directed to inform the Respondent immediately and directly of the account number to which the remittances under point 2. and 4.a) are to be made and to notify the Bureau of every payment received.

6. The Respondent shall be banned from registering any new players, either nationally or internationally, for one entire registration period. The execution of this registration ban is suspended during a probation period of one year following the notification of the present decision. If the Respondent commits another infringement during the probationary period, the suspension is automatically revoked and the registration ban executed" (emphasis in original).

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

11. On 30 May 2019, the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport (the "CAS") against the Appealed Decision, in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (2019 edition) (the "Code"). In its Statement of Appeal, the Appellant requested that a sole arbitrator be appointed by the CAS.

12. On 6 June 2019, the CAS Court Office acknowledged receipt of the Appellant's Statement of Appeal and notified the Appellant that CAS had not received the CAS Court Office fee required under Article R48 of the Code, which apparently had been mistakenly sent to FIFA according to the proof of payment the Appellant submitted with its Statement of Appeal.

13. In a letter dated 10 June 2019, the Appellant provided proof of payment of the CAS Court Office fee within the deadline set by CAS.

14. On 12 June 2019, the CAS Court Office provided a copy of the Statement of Appeal to the Parties, inviting the Respondents to comment, *inter alia*, on whether the arbitral tribunal should be composed of a sole arbitrator or a panel of three arbitrators.

15. On 17 June 2019, Spartak responded that it wished for the case to be submitted to a panel of three arbitrators, citing the Transfer Agreement, and FIFA indicated that it did not object to the appointment of a sole arbitrator provided he or she was selected from the football list.

16. On 18 June 2019, the CAS Court Office indicated that the number of arbitrators would be decided by the President of the CAS Appeals Arbitration Division, or her Deputy, in accordance with Article R50 of the Code, and confirmed the Parties' agreement that the language of the arbitration be English.

17. On 20 June 2019, the CAS Court Office invited Spartak to inform it as to whether it intended to pay its share of the advance of costs. The same day, Spartak responded that it did not intend to do so and reiterated its request for the case to be submitted to a three-arbitrator panel.

18. On 25 June 2019 and in accordance with Article R51 of the Code, the Appellant filed its Appeal Brief.

19. On 1 July 2019, FIFA requested that, in accordance with Article R55 of the Code, the deadline to file its Answer be fixed after receipt of the payment of the remaining share of the advance of costs by the Appellant in accordance with Article R64 of the Code. The CAS Court office assented the same day.

20. On 16 July 2019, Spartak requested that, in accordance with Article R55 of the Code, the deadline to file its Answer be fixed after receipt of the payment of the remaining share of the advance of costs by the Appellant in accordance with Article R64 of the Code. The CAS Court office assented on 17 July 2019.

21. On 2 August 2019, the CAS Court Office acknowledged the Appellant's payment of the total of the advance on costs and set a deadline for the filing of the Respondents' respective Answers. It also informed the Parties that pursuant to Article R54 of the Code, the President of the CAS Appeals Arbitration Division had decided to submit the dispute to a sole arbitrator, and that the arbitral tribunal appointed to decide the present matter was constituted as follows:

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22. On 27 August 2019, the CAS Court Office acknowledged receipt of the First and Second Respondent's Answers, dated 8 August 2019 and 22 August 2019 respectively, in accordance with Article R55 of the Code, and invited the Parties to indicate whether they preferred for a hearing to be held.

23. On 4 September 2019, the CAS Court Office acknowledged receipt of the Parties' positions on the matter of whether a hearing should be held, namely that the Appellant and the First Respondent preferred for a hearing to be held, while the Second Respondent preferred for the matter to be decided on the basis of the Parties' written submissions.

24. On 19 September, the CAS Court Office informed the Parties of the Sole Arbitrator's decision to hold a hearing.

25. The Parties indicated that their respective attendees at the hearing would consist of the following:

- For the Appellant, as per its letter of 7 October 2019:
  - Mr. Breno Costa Ramos Tannuri (Counsel);
  - Mr. André Oliveira de Meira Ribeiro (Counsel); and
  - Mr. Lucas Thadeu Aguiar Ottoni (Witness).
- For the First Respondent, as per its letter of 8 October 2019:
  - Mr. Ivan Bykovskiy (Counsel); and
  - Mr. Aleksandr Tsomaya (Counsel).
- For the Second Respondent, as per its letters of 7 and 16 October 2019:
  - Mr. Jaime Cambreleng Contreras (FIFA Legal Department);
  - Mr. Miguel Liétard Fernández-Palacios (FIFA Legal Department);
  - Mr. Alexander Klotz (FIFA Legal Department); and
  - Mr. Andreas Roffler (FIFA Observer).

26. On 15, 17 and 21 October 2019 respectively, the CAS Court office acknowledged receipt of the Orders of Procedure duly signed by the First Respondent, the Second Respondent, and the Appellant.

27. On 1 November 2019, a hearing was held in Lausanne, Switzerland. The Respondents' respective representatives and attendees corresponded to those listed above. The Appellant's counsel, citing health-related reasons in a letter dated 31 October 2019 which was received by the other Party and the Sole Arbitrator on the morning of the hearing, did not attend. The Appellant was represented at the hearing by Mr Ciro Apua Araujo Tavares (Counsel). The Sole Arbitrator and the Respondents were informed at the hearing by the Appellant's counsel present that the Appellant would not be calling its witnesses.

28. The Parties then had full opportunity to present their cases, submit their arguments and answer the questions posed by the Sole Arbitrator. At the end of the hearing, the Parties confirmed that they were satisfied with the hearing and that their right to be heard had been respected.

IV. SUBMISSIONS OF THE PARTIES

29. The Appellant's submissions, in essence, may be summarized as follows:

- The Appellant does not contest that it owes the amount of 1,125,000 to the First Respondent further to the Transfer Agreement and the Additional Agreement.

- The fact that it has not made the payment thus far is attributable to the recent economic crisis in Brazil. It has had to reach an agreement with the Brazilian tax authorities to pay its outstanding debt to various suppliers, which it has been in the process of doing.

- The Appellant is dependent on the revenue associated with the transfer of football players to meet its payment obligations.

- The Appealed Decision is flawed in that it is inadequate, unnecessary and disproportionate. In particular, the fact that the FIFA PSC Bureau considered the Appellant's history of not meeting its payment obligations as an aggravating factor is inappropriate, as is the fact that it did not consider the Appellant's recent and substantial payment of its debts (to other creditors) as a mitigating factor.

- The FIFA PSC did not provide *"the correct findings of the decision rendered"* and thus violated Article 14, para. 4f) of the FIFA Procedural Rules.

- FIFA's qualification of the Appellant as a *"repeated offender"* is inappropriate in that it violates the *"principle of predictability"*, seeing as certain of the late payments it refers to are too old to be considered for purposes of determining what should constitute a repeat offense.

- The Appellant makes the following requests for relief:

  "FIRST — To confirm that the sanction imposed by the FIFA PSC on the Appellant is arbitrary and as such, shall be in full dismissed by the Panel;

  SECOND — To order the First Respondent to pay all arbitration costs and be ordered to reimburse the Appellant the minimum CAS court office fee of CHF 1,000 and any other advance of costs paid to the CAS; and

  THIRD — To order the First Respondent to pay to the Appellant any contribution towards the legal and other costs incurred and regarding the ongoing proceedings in an amount to be duly established at discretion of the Panel.

  Alternatively, and only in the event that the above is rejected:

  FOURTH — To set aside the sanction imposed by the FIFA PSC in the Appealed Decision;

  FIFTH — To confirm that the sanction imposed by the FIFA PSC on the Appellant is disproportional and, consequently, reverted at the most to a warning or a reprimand;

SIXTH — To order the First Respondent to pay all arbitration costs and be ordered to reimburse the Appellant the minimum CAS court office fee of CHF 1,000 and any other advance of costs paid to the CAS; and;

SEVENTH — To order the First Respondent to pay to the Appellant any contribution towards the legal and other costs incurred and regarding the ongoing proceedings in an amount to be duly established at discretion of the panel.

Alternatively, and only in the event that the above is rejected:

EIGHTH — To set aside the sanction imposed by the FIFA PSC in the Appealed Decision;

NINTH — To confirm that the sanction imposed by the FIFA PSC on the Appellant in the Appealed Decision is excessive and, consequently, the probationary period shall be changed from 1 year to 6 months;

TENTH — To revert the case back to the Second Respondent to issue proportionate measure on the Appellant; and

ELEVENTH — To order the First Respondent to pay all arbitration costs and be ordered to reimburse the Appellant the minimum CAS court office fee of CHF 1,000 and any other advance of costs paid to the CAS; and

TWELFTH — To order the First Respondent to pay to the Appellant any contribution towards the legal and other costs incurred and regarding the ongoing proceedings in an amount to be duly established at discretion of the panel".

30. The First Respondent's submissions, in essence, may be summarized as follows:

- As the Appellant does not contest that it owes the amount of USD 1,125,000, it appears that the Appellant is seeking to delay payment by means of this appeal.

- As provided in Article 12bis(1) of the 2015 FIFA Regulations on the Status and Transfer of Players ("RSTP"), *"Clubs are required to comply with their financial obligations towards players and other clubs as per the terms stipulated in the contracts signed with their professional players and in the transfer agreements…"*. As per Clause 3 of the Additional Agreement, the Appellant's deadline for payment expired on 30 September 2018, and the payment was not made.

- CAS case law has consistently held that the existence of financial difficulties is not a valid defense to not meeting one's payment obligations. In any event, the difficult financial circumstances relied on by CAM predate the conclusion of the Transfer Agreement, meaning that they were known at the time CAM made its financial commitments to Spartak. CAM's production of proof of payment to other clubs during the period 2015-2018 is proof that such payments were indeed possible.

- Spartak's good faith in its relations with CAM is supported by the fact that it tolerated a number of late payments of contractual sums due to it.

- CAS case law holds that where disciplinary sanctions are imposed by FIFA, CAS does not review them unless they were arbitrarily imposed. One such case, *CAS 2016/A/4719,* involved the Appellant and states at para. 86:

  "Notwithstanding the Panel's power to review a case de novo according to Article R57 of the CAS Code, the Panel finds that the review and the power to amend a disciplinary decision of a FIFA judiciary body should only take place in cases, in which the Panel finds that the relevant FIFA judiciary body has exceeded the margin of discretion accorded to it by the principle of association authority, i.e. only in cases, in which the FIFA judiciary body concerned must be held to have acted arbitrarily. However, this assumption is not present, if the Panel merely disagrees with a specific sanction. Only if the sanction concerned must be considered as evidently and grossly disproportionate to the offence, will the Panel have the authority to amend or set aside the decision.

  This scope of a CAS Panel's review in disciplinary cases has been established through a substantial number of CAS cases, cf. CAS 2014/A/3562, par. 199; CAS 2009/A/1817 and CAS 2009/A/1844, par. 174; CAS 2004/A/690, par. 86; CAS 2005/A/830, par. 10.26; CAS 2006/A/1175, par. 90; CAS 2007/A/1217, par 12.4; CAS 2009/A/1870, par 125 and the advisory opinion CAS 2005/C/976 & 986, par 143)".

- The sanction imposed on CAM clearly complies with Article 12bis RSTP which establishes the following possible sanctions for breach of contract:

  "4. Within the scope of their respective jurisdiction (cf. article 22 in conjunction with articles 23 and 24), the Players' Status Committee, the Dispute Resolution Chamber, the single judge or the DRC judge may impose the following sanctions:

  a) a warning;

  b) a reprimand;

  c) a fine;

  d) a ban from registering any new players, either nationally or internationally, for one or two entire and consecutive registration periods.

  5. The sanctions provided for in paragraph 4 above may be applied cumulatively.

  6. A repeated offence will be considered as an aggravating circumstance and lead to a more severe penalty".

- The fact that the Appellant's track record of infringements takes place over several years only supports FIFA's qualification of CAM as a repeat offender as its conduct was not isolated, but rather repeated over time.

- As the sanctions applied by FIFA fall squarely within the parameters of Article 12bis RSTP, there is no manifest error in the application of the article. It is therefore irrelevant to consider whether the sanction is proportional or adequate. Moreover, one need not be a repeat offender to be subjected to a transfer ban according to the applicable rule.

- The First Respondent makes the following requests for relief:

  "1. To dismiss the appeal of Clube Atlético Mineiro completely, in view of the several reasons pointed out in the present Statement of Defense. In other words, to deny all the requests of the Appellant, considering that all of them are groundless.

  2. To uphold the decision of FIFA Bureau of the PSC dated 12 April 2019 in full and state the Clube Atlético Mineiro has to pay to F.C. Spartak Moscow the amount of USD 1.125.000 (One Million One Hundred Twenty-Five Thousand US Dollars) plus 5% interest p.a. which started to accrue after 30 days have passed since the notification of said decision (i.e. the interests started to accrue since 08 of June 2019) until the effective date of payment;

  3. To confirm the obligation of the Appellant to reimburse to the First Respondent the costs of the procedure in front of the FIF PSC in amount CHF 5.000 (par.4.a) of the Appealed decision);

  4. To fix a sum of CHF 25,000 to be paid by the Appellant to FC Spartak Moscow, to help the payment of its legal fees and costs.

  5. To condemn the Appellant to the payment of the whole CAS administration costs and the Arbitrators fees".

31. The Second Respondent's submissions, in essence, may be summarized as follows:

- The facts the (i) that Appellant has already been sanctioned six times under Article 12bis RSTP, (ii) that this is the sixth arbitral proceeding which it has initiated against FIFA in this respect and (iii) that FIFA PSC's other decisions have been confirmed in their entirety, coupled with the fact (iv) that the recent award in *CAS 2018/A/5838* concerned similar circumstances and that the Appellant is nevertheless bringing the same (invalid) arguments in this case, indicates that CAM is doing so in bad faith and is seeking to further delay payment that is uncontestably owed to the First Respondent.

- In order for a club to be in violation of Article 12bis RSTP, the following conditions must be fulfilled: (i) the club must have delayed a due payment for more than 30 days without a *prima facie* contractual basis; and (ii) the creditor must have put the debtor club in default in writing and granting a deadline of at least 10 days in order to remedy the default. The fact that both these conditions are met in the present case is not disputed.

- Financial difficulties do not excuse the failure to make a contractually required payment (*CAS 2018/A/5838* at para. 95, *CAS 2016/A/4402* and *CAS 2006/A/1008*).

- Article 12bis para. 6 RSTP could not be clearer and needs no further explanation as to what constitutes a *"repeated offence"*. It is simply an offence that happens recurrently, more than once. CAS has routinely confirmed the imposition of more severe sanctions on repeated offenders, including on the Appellant (*CAS 2016/A/4675, CAS 2016/A/4718, 2016/A/4719* and *CAS 2018/A/5838*). Given the clarity of the regulations and as confirmed by CAS (*CAS 2018/A/5838*), the *"principle of legality"* is satisfied.

- The sanction associated with a repeated offence is predictable, as it is clearly provided for in the RSTP and meets the requirement of a clear connection between the offence (having overdue payables) and the sanction. Moreover, given the existence of numerous previous sanctions against the Appellant of escalating severity (including registration bans with embargoes), the sanctions in the Appealed Decision were entirely predictable.

- CAS has confirmed, in view of the five precedents existing at the time, that *"the Appellant is indeed a repeated offender and that there is no breach of the principles of legality or predictability"* (*CAS 2018/A/5838* para. 88).

- Regarding the Appellant's contention that the Appealed Decision is not compliant with Article 14 para. 4f) of the Procedural Rules, which provides that *"[w]ritten decisions shall contain at least the following:* […] *f) the reasons for the findings"*, CAS has already confirmed that the similar decision in *CAS 2018/A/5838 "is in line with Article (4) (f) of the FIFA Procedural Rules as it established sufficient reasons for the reached findings"* and that *"the Bureau of the Players' Status Committee clearly stated that the Appellant was sanctioned because the debt with Huachipato was the sixth time where CAM had failed to comply with its obligations"* (para. 82).

- The sanction imposed in the Appealed Decision is not disproportionate. A suspended ban with a probationary period of one year is not the most severe sanction available under Article 12bis RSTP (which allow for a ban from registering any new players for two entire and consecutive registration periods). Moreover, to the extent sanctions can be applied cumulatively, they may be even harsher. In addition, the Appellant can avoid the sporting sanction altogether by respecting its existing financial obligations, considering that it will only become effective if the Appellant commits an additional infringement during the probationary period.

- CAS has recently confirmed that *"regarding the proportionality of the sanction, the consistent jurisprudence of CAS has stated that CAS panels shall give a degree of deference to decisions of sports governing bodies in respect of proportionality of sanctions and shall only review the decision if it is considered evidently and grossly disproportionate to the committed offence"* (*CAS 2018/A/5838* para. 90). In the Appealed Decision, the Bureau of the PSC did not

impose the most severe sanction available despite determining that it was the seventh time that the Appellant had violated Art 12bis RSTP. Moreover, CAS noted in the same award that *"it has become evident that the sanction imposed on the Appellant in previous FIFA decisions have not prevented it from registering new players and agreeing new payments which it cannot comply with in due time"*. (*CAS 2018/A/5838* para. 92).

- The fact that the Appellant has ultimately paid its debts following decisions of judicial bodies compelling it to do so does not do away with its track record of violations; such an approach would undermine the purpose of Article 12bis RSTP, which is to ensure compliance with the principle of *pacta sunt servanda*.

- The Appellant's arguments concerning its sincere efforts to pay its debts cannot be taken seriously in light of its record in preceding cases, and the fact that it did not use the proceeds of the Player's transfer to FC Tigres to pay off its debt to Spartak, which demonstrates its bad faith.

- The Second Respondent makes the following requests for relief:

  "a. To reject the Appellant's appeal in its entirety.

  b. To confirm the decision rendered by the Bureau of the Players' Status Committee on 12 April 2019.

  c. To order the Appellant to bear all costs incurred with the present procedure an to cover all legal expenses of FIFA related to the present procedure".

V. JURISDICTION

32. Article R47 of the Code provides as follows:

"An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or 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".

33. In its Statement of Appeal, CAM relied on Article 58.1 of the FIFA Statutes and Article 23 paragraph 4 of the FIFA RSTP, which grant a right of appeal to the CAS.

34. The jurisdiction of the CAS was not contested by the Respondents and the Order of Procedure was signed by both Parties without any objections.

35. Accordingly, the CAS has jurisdiction to decide this appeal.

VI. ADMISSIBILITY

36. Article R49 of the 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 of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late".

37. Article 58.1 of the FIFA Statutes (2018) states:

"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of notification of the decision in question".

38. Article 58.2 of the FIFA Statutes (2018) states:

"Recourse may only be made to CAS after all other internal channels have been exhausted".

39. The Parties received the grounds of the Single Judge's First Decision from FIFA on 9 May 2019.

40. The Appellant submitted its Statement of Appeal on 30 May 2019. While the requisite CAS Court Office fee was initially mistakenly sent to FIFA, it was resent to CAS within the deadline provided pursuant to Article R48 of the Code, and filing was thus perfected.

41. Accordingly, the appeal is admissible.

VII. APPLICABLE LAW

42. Article 187(1) of the Swiss Private International Law Act ("PILA") provides as follows:

"The arbitral tribunal shall decide on the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to the rules of law with which the case has the closest connection".

43. The Appellant states that the Code, the FIFA Statutes and the various FIFA regulations apply to the dispute and alternatively, Swiss law.

44. The First Respondent states that the applicable regulations are the FIFA regulations. Swiss law shall apply subsidiarily.

45. The Second Respondent states that the Code and the various regulations of FIFA and, additionally, Swiss law, shall apply.

46. Article R58 of the Code provides more specifically as follows:

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

47. Article 57 para. 2 of the FIFA Statutes provides 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".

48. As a result, the Sole Arbitrator finds that the applicable FIFA regulations and statutes will be applied primarily, and Swiss law shall apply subsidiarily.

VIII. MERITS

49. As it is undisputed that the amount of USD 1,125,000 is owed by the Appellant to the First Respondent, the remaining questions to consider are:

a. Whether the qualification of the Appellant as a *"repeated offender"* in the Appealed Decision is inappropriate in that it violates the *"principle of predictability"*.

b. Whether the Appealed Decision contained sufficient reasons to comply with Article 14, para. 4f) of the FIFA Procedural Rules; and

c. Whether the Appealed Decision can be reviewed for adequacy, necessity and proportionality, and, if so, whether it is inadequate, unnecessary and/or disproportionate;

50. The Sole Arbitrator observes that whatever flaws may be contained in the Appealed Decision are cured by the *de novo* nature of the proceedings before CAS. As such, these questions are considered anew as part of the present analysis. This said, the extent to which the Appealed Decision can or should be reviewed with respect to each of the questions raised must first be considered.

51. While the Sole Arbitrator gives due consideration to each of the arguments raised by the Parties in this case, which is of course unique and distinct from those that have come before the CAS as a result of appeals brought by the Appellant against FIFA decisions applying Article 12bis RSTP, he nonetheless finds it relevant that some of these cases involve very similar fact patterns that could be considered to be reasonably indicative of the outcome in this case. Without in any way prejudicing the consideration of the facts and legal analysis specific to the instant case, the Sole Arbitrator nevertheless refers, as he does to any pertinent legal precedent, to the most relevant of these cases to determine whether the analysis should be any different where the legal questions raised are virtually identical.

A. Does the qualification of the Appellant as a *"repeated offender"* in the Appealed Decision violate the *"principle of predictability"*?

52. This question was dealt with recently in *CAS 2018/A/5838*, in which the same Appellant apparently made the same argument regarding a decision of the Bureau of the FIFA PSC that was similar in nature. Apart from payment of the amount owed contractually, the sanction appealed in *CAS 2018/A/5838* provided for a ban from registering new players for an entire registration period in the event the payment was not made by the applicable deadline. In the Appealed Decision the effect of the sanction is essentially similar even if it is expressed slightly differently. The ban, also for an entire registration period, is not immediately effective: it is suspended unless the Appellant commits another infringement. Presumably this phrasing was meant not only to ensure that the payment at issue in the present case would be made, but also to deter the Appellant from delaying any other payments, given its track record.

53. In *CAS 2018/A/5838*, FIFA brought evidence of five previous cases in which Appellant was deemed by the revelant FIFA instances to have violated Article 12bis RSTP:

- Decision of the Single Judge of the FIFA PSC of 2 February 2016; *Wolfsburg v. Atletico Mineiro*.
- Decision of the Single Judge of the FIFA PSC of 14 March 2016; *Udinese Calcio v. Clube Atlético Mineiro*.
- Decision of the Single Judge of the FIFA PSC of 13 June 2016; *Udinese Calcio v. Clube Atlético Mineiro*.
- Decision of the Bureau of the FIFA PSC of 12 May 2017; *Udinese Calcio v. Clube Atlético Mineiro*.
- Decision of the Bureau of the FIFA PSC of 28 August 2017; *Udinese Calcio v. Clube Atlético Mineiro*.

54. In the instant case, FIFA brings an additional one with was the subject of the appeal in *CAS 2018/A/5838*:

- Decision of the Bureau of the FIFA PSC of 4 July 2018; *Huachipato SADP v. Clube Atlético Mineiro*.

55. As a result, the Appealed Decision constitutes the seventh time in the last approximately three years that the Appellant was found to have violated Article 12bis FIFA RSTP.

56. Given the consistency and evolution of these FIFA decisions (and the similarity of the sanction that resulted from the latest one), it is extremely difficult to conceptualize that the Appellant might not have been able to predict that a further violation of the same provision would yield a similar or harsher sanction. In *CAS 2016/A/4719*, it was found

that CAM was indeed a *"repeated offender"* given that it *"in bad faith has neglected to meet its financial obligation more than three times"*. The panel in *CAS 2018/A/5838* found that after five such violations, one could not logically consider that the Appellant was any less of a *"repeated offender"*. In the Sole Arbitrator's judgment, it is difficult to imagine how Article 12bis para. 6 could be any clearer when it states that *"a repeated offence will be considered as an aggravating circumstance and lead to a more severe penalty"*.

57. Therefore, the Sole Arbitrator finds that the qualification of the Appellant as a *"repeated offender"* in the Appealed Decision does not violate the *"principle of predictability"*.

B. Does the Appealed Decision contain sufficient reasons to comply with Article 14, para. 4f) of the FIFA Procedural Rules?

58. Article 14. para. 4 of the FIFA Procedural Rules provides as follows:

"Written decisions shall contain at least the following:

a) The date of the decision […];

b) The names of the parties and any representatives;

c) The names of the members participating in the decision taken by the decision-making body;

d) The claims and/or motions submitted by the parties;

e) A brief description of the case;

f) The reasons for the findings;

g) The outcome of the evaluation of evidence;

h) The findings of the decision".

59. As noted in *CAS 2018/A/5838* and *CAS 2015/A/3879*, a decision of a sports organization *"*[…] *requires a (short) reasoning that enables the addressee to understand the findings and the reasoning of the association court"*.

60. In the Appealed Decision, the Bureau of the FIFA PSC indicated the reasons why the Appellant was being sanctioned (namely its infringement of Article 12bis RSTP) clearly in sufficient detail.

61. As a result, the Sole Arbitrator (like the panel in *CAS 2018/A/5838*) finds that the Appealed Decision is fully compliant with Article 4f) of the FIFA Procedural Rules.

C. Can the Appealed Decision be reviewed for adequacy, necessity and proportionality, and, if so, is it inadequate, unnecessary and/or disproportionate?

62. On this issue, it is appropriate to first note that in the absence of arbitrariness or situations in which sanctions are grossly disproportionate to the offense committed, CAS jurisprudence is consistent in its determination that deference is to be given to decisions of sports governing bodies (see *CAS 2018/A/5838, CAS 2016/A/4595, CAS 2009/A/1817 & 1844*).

63. Given the finding at para. 51 *et seq. supra*, namely that the Appellant is clearly a "repeated offender", the sanction provided for in the Appealed Decision, namely a suspended ban with a probationary period of one year, can hardly be considered disproportionate given that it was not the harshest sanction available. As pointed out by the Second Respondent, the Appellant can avoid the execution of the sporting sanction simply by respecting the financial obligations it committed to.

64. As a result of the foregoing, the Sole Arbitrator does not see a basis upon which to change the Appealed Decision.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Club Atlético Mineiro on 30 May 2019 against the decision issued by the Bureau of the FIFA Players' Status Committee on 12 April 2019 is dismissed.

2. The decision issued the Bureau of the FIFA Players' Status Committee on 12 April 2019 is confirmed.

3. (…).

4. (…).

5. (…).

6. All other motions or prayers for relief are dismissed.