



Arbitration CAS 2016/A/4775 Mersin Idman Yurdu Sk v. Club Unité FC d’Obala & Fédération Internationale de Football Association (FIFA), award of 8 May 2017

Panel: Mr José María Alonso Puig (Spain), President; Prof. Petros Mavroidis (Greece); Mr Manfred Nan (The Netherlands)

Football

Disciplinary sanction for failure to comply with a previous FIFA decision

Standing to be sued with respect to disciplinary sanctions

Scope of review at appeal level of a decision rendered by a disciplinary body

Individualization and proportionality of disciplinary sanctions

Proportionality of disciplinary sanctions

1. **Only FIFA, and not another respondent, has standing to be sued (*“légitimation passive”*) with respect to the sporting sanction imposed by FIFA on a player or another club.**
2. **The scope of an appeal against a disciplinary decision cannot extend beyond the limits of a review of the disciplinary sanction imposed by the relevant disciplinary body. As a result, only submissions relating to the sanction imposed by said body, such as its legal basis and quantum, can be heard. A CAS panel cannot consider requests concerning, for instance, the quantum of the underlying debt.**
3. **In disciplinary matters, each situation must be evaluated on a case-by-case basis and interests at stake have to be balanced in respect of the principle of proportionality. Account must be taken of the seriousness of the facts and other related circumstances as well as of the damage that the penalised conduct entails for the parties involved. In the same way, disciplinary bodies may evaluate any aggravating and/or extenuating circumstances that might be related to the infringement. In addition, the purpose of the imposition of disciplinary sanctions is to serve as a deterrent.**
4. **The revision of a disciplinary sanction is only possible provided the sanction under appeal is evidently and grossly disproportionate to the breach.**

I. PARTIES

1. Mersin Idman Yurdu Sk (the “Appellant” or “Mersin”), is a Turkish professional football club, based in Mersin, Turkey. The club participates in the Süper Lig and is affiliated to the Turkish

- Football Federation (the “TFF”), which in turn is affiliated to the *Fédération Internationale de Football Association*.
- 2.
 3. Club Unité FC d'Obala (the “First Respondent” or “Unité”), is a Cameroonian professional football club, based in Obala, Cameroon. The club is affiliated to the *Fédération Camerounaise de Football* (the “FCF”), which in turn is affiliated to the *Fédération Internationale de Football Association*.
 4. The *Fédération Internationale de Football Association* (the “Second Respondent” or “FIFA”), is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the governing body of international football at worldwide level. It exercises regulatory, supervisory and disciplinary functions over continental confederations, national associations, clubs, officials and players worldwide.
 5. Mersin, Unité and FIFA shall be referred collectively as the “Parties”.

II. FACTUAL BACKGROUND

6. This section summarizes the facts that the Panel has identified as most relevant, having examined the Parties’ written submissions as well as the evidence submitted in the course of the present appeal arbitration proceedings. This background is presented for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal issue.

(i) The origin of the dispute

7. Mr. J. (the “Player”) is a Cameroonian professional football player.
8. The FCF confirmed that the Player was registered with its affiliated club, Unité, from 15 April 2005 to 23 October 2009 as an *amateur*.
9. The TFF stated that the Player was registered with its affiliated club, Mersin, as of 16 January 2010 as a *professional*.
10. On 6 October 2011, Unité contacted FIFA claiming the payment of training compensation from Mersin on the grounds that the Player had signed his first professional contract.
11. In this respect, Mersin argued that the amount claimed was disproportional to the amount of salary paid to the Player and, in any case, it was up to the new club to calculate the amount.

(ii) The Decision of the FIFA Dispute Resolution Chamber

12. As a result, on 27 August 2014, the FIFA Dispute Resolution Chamber issued a decision (the “Original Decision”), which held the following:

- Mersin would have to pay to Unité, within 30 days as from the date of notification of the decision, the amount of EUR 6,774.26, as well as 5 % interest *p.a.* as from 16 February 2010 until the date of the effective payment.
 - Mersin was directed to inform Unité immediately and directly of the account number to which the payment was to be made and to notify the FIFA Dispute Resolution Chamber judge of every payment received.
 - In the event that the aforementioned sum plus interest is not paid within the stated time limit, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.
 - The costs of the proceedings, of a total amount of CHF 3,000, would be paid within 30 days of notification of the decision by Unité.
13. On 18 September 2014, the Original Decision was duly communicated to the Parties.
 14. On 30 January 2015, upon Mersin's request, the grounds of the Original Decision were notified to the Parties.
 15. As no appeal was lodged against the Original Decision within the given time limit before the Court of Arbitration for Sport (the "CAS"), the Original Decision became final and binding.
 16. However, the aforementioned amounts were not paid by Mersin to Unité or to FIFA.
 17. On 17 March 2015, Unité informed the FIFA Player's Status and Governance Department that Mersin had not fulfilled the payment of the amounts due, besides the fact that it had duly provided its bank account details.
 18. On 24 March 2015, the FIFA Player's Status and Governance Department invited Mersin, *inter alia*, to immediately pay the relevant amounts to the creditor, as well as the relevant procedural costs.
 19. On 7 April 2015, Unité once again informed the FIFA Player's Status and Governance Department about the failure of Mersin to comply with the Original Decision.
 20. On 14 April 2015, the case was referred to the Secretariat of the FIFA Disciplinary Committee (the "Secretariat").
- (iii) The Decision of the FIFA Disciplinary Committee**
21. As a consequence of the above, on 15 February 2016, the Secretariat opened disciplinary proceedings against Mersin.

22. The disciplinary proceedings entailed the following succession of events:
- On 7 March 2016, the Secretariat urged Mersin for the final time to pay by 1 April 2016, at the latest, the outstanding amounts.
 - The Secretariat also informed Mersin that the case at hand would be submitted to the FIFA Disciplinary Committee (the “FIFA DC”) on 20 April 2016.
 - In addition, Mersin was informed that the FIFA DC would take a decision based on the documents in its possession, should Mersin fail to submit any statement or pay the outstanding amount by the specified deadline. No position was received within the stipulated deadline.
 - On 12 April 2016, Unité confirmed it had not received the outstanding amount due.
 - Also, no statement was ever received by Mersin. In this sense, Mersin failed to comply with its obligation to pay the outstanding amount.
23. On 20 April 2016, the FIFA DC issued a decision which was notified to the parties on 9 May 2016 (the “Appealed Decision”).
24. The Appealed Decision enclosed the following pronouncements:
- Mersin had failed to comply with the Original Decision, and is therefore, in violation of art. 64 of the FIFA Disciplinary Code.
 - Mersin was ordered to pay a fine of a total amount of CHF 2,000. The fine was to be paid within 30 days of notification of the decision at hand.
 - Mersin was granted a final period of grace of 30 days as from notification of the decision in which to settle its debt to its creditor, Unité, and to FIFA.
 - Mersin must pay within said deadline, if not, the creditor may demand in writing from the Secretariat that three (3) points be deducted from the debtor’s first team in the domestic league championship. As soon as the creditor files this request, the points shall be automatically deducted without a further formal decision having to be taken by the FIFA DC.
 - Mersin’s failure to pay the amounts due, even after the deduction of points, shall open the way for the FIFA DC to decide on a possible relegation of the debtor’s first team to the next lower division.
 - The TFF, as a member of the FIFA, was reminded of its duty to implement the decision.

- Mersin was to pay the costs of the disciplinary proceedings amounting to CHF 500.

25. On 16 August 2016, upon Mersin's request, the grounds of the Appealed Decision were notified to the Parties.
26. This resulted in Mersin's decision to file an appeal before the CAS, within the given time limit, while simultaneously filing an application for the stay of execution of the referred Appealed Decision.

III. PROCEEDINGS BEFORE THE CAS

27. On 2 September 2016, the Appellant lodged a Statement of Appeal with the CAS in accordance with Article R48 of the CAS Code of Sports-related Arbitration (the "CAS Code"), challenging the Appealed Decision.
28. On 2 September 2016, together with its Statement of Appeal, the Appellant filed an application for the stay of execution of the Appealed Decision.
29. On 7 September 2016, the CAS Court Office noted that the Appealed Decision had a financial character and hence informed the parties that, according to the jurisprudence of the CAS, a decision of a financial nature issued by a private Swiss association is not enforceable while under appeal. Also, it invited the Appellant to state whether it maintained or withdrew the request for the stay of the Appealed Decision.
30. On 9 September 2016, the Appellant informed the CAS Court Office that it wished to maintain its request for a stay of the Appealed Decision since it contained a sportive sanction.
31. On 9 September 2016, the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code.
32. On 12 September 2016, the CAS Court Office invited the Respondents to file their comments on the Appellant's request for a stay.
33. On 16 September, the Second Respondent informed CAS that it did not object to the Appellant's request to stay the execution of the Appealed Decision.
34. On 27 September 2016, the Second Respondent requested CAS to extend its deadline to submit its answer until 17 October 2016.
35. On 18 October 2016, the CAS Court Office informed the Parties that in absence of communication from the Appellant and the First Respondent, the Second Respondent's request for an extension of the time limit to file its answer was granted. The CAS Court Office further also invited the Appellant and the First Respondent to comment on the Second Respondent's request for a further 5-day extension of the time limit for the filing of its Answer.

36. On 21 October 2016, the Second Respondent filed its Answer in accordance with Article R55 of the CAS Code.
37. On 4 November 2016, the First Respondent filed its Answer in accordance with Article R55 of the CAS Code.
38. On 7 November, 2016 the Parties were invited to inform the CAS Court Office whether they prefer a hearing to be held.
39. On 9 November 2016, the Second Respondent informed the CAS that it does not deem a hearing necessary.
40. On 10 November 2016, 2016, CAS issued an Order on the Request for a Stay. It established that according to the constant jurisprudence of CAS, only FIFA, and not the First Respondent, has standing to be sued (“légitimation passive”) with respect to the sportive sanction imposed by FIFA on a player or another club. Thus, the President of the CAS Appeal Arbitration Division, ruling in camera, decided, *inter alia*, that:

“1. The request for a stay of the decision issued by the FIFA Disciplinary Committee on 20 April 2016, filed on 2 September 2016 by Mersin Idman Yurdu Sk in the matter CAS 2016/A/4775 Mersin Idman Yurdu Sk v. Club Unité d’obala & FIFA, is granted”.
41. On 11 November 2016, the First Respondent informed the CAS that it does not deem a hearing necessary.
42. On 15 November 2016, the CAS Court Office informed the Parties that in the absence of communication of the Appellant, the Parties were advised that the Panel, once constituted, will decide whether to hold a hearing, pursuant to Article R57 of the CAS Code.
43. On 16 November 2016, pursuant to Article R54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the arbitral tribunal appointed to decide the matter was constituted by:
 - Mr José María Alonso Puig, Attorney-at-Law in Madrid, Spain, as President;
 - Prof. Petros Mavroidis, Professor of Law in Commugny, Switzerland, and
 - Mr Manfred Nan, Attorney-at-Law in Arnhem, the Netherlands, as arbitrators.
44. On 4 January 2017, the CAS Court Office, on behalf of the Panel, invited again the Appellant to state whether it preferred a hearing to be held.
45. On 25 January 2017, CAS informed the Parties that in the absence of a response from the Appellant, the Panel, upon examination of the written submissions, deemed itself to be

sufficiently well informed and decided not to hold a hearing in this case, pursuant to Article R57 of the CAS Code.

46. On 17 March 2017, the CAS Court Office sent the parties an order of procedure which was returned duly signed on 20, 21 and 24 March 2017 by the Second Respondent, the Appellant and the First Respondent, respectively. By the signature of the order of procedure the parties expressly stated that they did not raise any objection to the procedure adopted by the Panel and that their right to be heard had been respected.
47. The Panel confirms that it carefully heard and took into account in its decision all of the submissions, evidence, and arguments presented by the parties, even if they have not been specifically summarised or referred to in the present award.

IV. PARTIES' POSITIONS AND PRAYERS FOR RELIEF

48. The following outline of the parties' positions is illustrative only, and does not necessarily encompass every contention put forward by the parties. However, the Panel has carefully considered all written submissions made by the parties, even if there is no specific reference to those submissions in the following summaries.

A. Appellant

49. Firstly, regarding the payment of training compensation of the Player, Mersin argues the following:
 - The amount claimed by Unité is disproportional to the amount of salary paid to the Player;
 - The new football club has the authority to calculate the amount of the training compensation;
 - Mersin has entered into financial difficulties due to the following circumstances:
 - In July 2011, due to a match fixing scandal in Turkey, Mersin is one of the various creditors of an amount that is due from the TFF. As a result of delays in payment from the TFF, it still owes amounts to Mersin.
 - In 2012-2013 season, Mersin was relegated to a lower division, which in turn caused a cutback on the club's revenues and loss of employees due to resignations.
 - In 2014-2015 season, Mersin arose to a higher division, which brought a substantial increase in the club's transfer expenses.
 - Mersin has a clear intention to fulfil its responsibilities and has shown its willingness to enter into negotiations with regard to different possibilities of negotiation and payment, in

order to maintain the relationship with Unité. However, the opposing party dismissed them all. These initiative taken by Mersin constituted the following:

- On 15 June 2015, Mersin proposed a first timetable of payments to Unité in order to pay EUR 6,774.26 + CHF 3,500 as remaining balance and interest.
- On 25 June 2015, Mersin proposed a second timetable of payments to Unité in order to pay the same amount EUR 6,774.25 + CHF 3,500 as remaining balance and interest.
- On 13 August 2016, Mersin proposed a third timetable of payments to Unité in order to pay EUR 8,274.26 + CHF 3,500 as remaining balance and interest.

50. Secondly, with regards to the application for the stay of execution of the Appealed Decision, which was granted, the Appellant argued the following:

- As mentioned previously, Mersin has no intention to disregard its commitments and its target is to pay the remaining debt.
- The possible implementation of a point deduction and/or a relegation of the club to a lower division are disproportionate sanctions.
- In the event that these sanctions are implemented, it will cause irreparable damages to Mersin's future.

51. As a result, overall, Mersin's Appeal Brief included the following requests for relief:

"1. A stay of execution for the decision of the FIFA Disciplinary Committee, until the final verdict of CAS.

2. Annulment of the decision given by the FIFA Disciplinary Committee. (Mersin Idman Yurdu SK/Turkey v. Unite FC d'Obala / Cameroon v. FIFA DC REF. NO.160110 PST TUR ZH)".

B. Respondents

B.1 First Respondent

52. Regarding the payment of training compensation of the Player, Unité states the following:

- The Appellant simply focuses on the merits of the Original Decision. It fails to provide facts or allegations in order to challenge the Appealed Decision. There is no factual evidence or reasoning for the annulment of the Appealed Decision.
- Mersin focuses simply on the financial difficulties it has been facing. However, these difficulties cannot be held as "just cause" in order to justify non-payment of its debts.

- In any case, the merits of the contractual dispute are not a matter to be discussed in the present proceedings since it is not under the scope of an appeal before the CAS. The Appealed Decision is one of a disciplinary nature, it is not the Original Decision.
- Unité limits its Answer to the Original Decision, which is final and binding. In this sense, the Appellant has never challenged the legal status of the Original Decision and the initiation of a disciplinary process falls under the rules of the FIFA.
- By presenting an unfounded appeal, Mersin aims to gain more time for the payment.
- All amicable solutions and payment plans have already been previously discussed and, in any case, the CAS has no authority to impose these to the Parties.

53. As a consequence of the above, Unité submitted the following requests for relief:

“1. To dismiss the Appeal in total and confirm the decision of FIFA Disciplinary Committee.

2. To fix a sum of CHF 15.000.- (Fifteen Thousand Swiss Francs Only) to be paid by the Respondent to the Appellant, to help the payment of its legal fees and costs”.

B.2 Second Respondent

54. Regarding the payment of training compensation of the Player, FIFA presented the following arguments under three main pillars:

a) The breach of Article 64 of the FIFA Disciplinary Code:

- The spirit of Article 64 of the FIFA Disciplinary Code is to enforce decisions that have been rendered by a FIFA body (or the CAS in a subsequent appeal decision), which are final and binding. It is a legal tool designed in order to ensure that decisions passed by the relevant authority are respected and the rights of players or clubs are guarded.
- The scope of the disciplinary proceedings carried out by the FIFA DC is limited to analysing whether the debtor has complied with the final and binding decision of the relevant authority. In fact, the CAS should only address the question of whether the Appellant respected and fulfilled the decision, but not the content of said decision.
- In the present case, this involves that the FIFA DC take a decision based on whether it has been provided with proof that the payment has been executed or that a payment plan was agreed upon. In order to assess this issue, it can only take into consideration facts arising after the date on which the decision has been rendered.

- Therefore, the statement of the Appellant, alleging lack of proportionality between the amounts due and the salary of the player is not only incorrect, but irrelevant at this stage of the proceedings.
- In this sense, the following must be noted with regard to the Appellant's position:
 - The Appellant has been ordered to payment by means of a final and binding decision of a FIFA body, the Original Decision;
 - Said decision was not appealed before the CAS by any of the Parties;
 - The facts are not disputed, in fact, in its Appeal Brief, the Appellant states that "*without any doubt Mersin IY has an intention to fulfil its responsibilities related to the agreement in good faith*" and "*Mersin IY has an intention to pay the remaining debt*".
 - No payment, not even a partial amount, in favour of any of the Respondents has been executed;
 - The Appellant never replied to any FIFA correspondence and continued disrespecting the decision;
 - The Appellant was duly informed of the risks of non-compliance with the decision, namely the opening of the disciplinary proceedings;
 - Once the disciplinary proceedings had begun, the Appellant was reminded of its obligations and invited to pay the full amount due;
 - The Appellant decided not to participate at all in the disciplinary proceedings;
 - The Appellant at no time during the proceedings before the FIFA bodies made an effort to settle its debt towards the Respondents, or even part of it;
 - The alleged financial problems faced by the Appellant in its Appeal Brief cannot be considered as a relevant argument. In any case, the Appellant failed to provide any consistent evidence of its alleged critical financial situation.
- Thus, the FIFA Disciplinary Code was correctly applied by the FIFA DC to the facts at its disposal in the case at hand since the conditions set out in Article 64 par. 1 were given. In other words, failure to pay another person a sum of money despite being instructed to do so by a body, a committee or an instance of FIFA.

b) The sanctions imposed are proportionate:

- The Panel, notwithstanding its power to review a case *de novo* (Article R57 of the CAS Code), shall amend a disciplinary decision of a FIFA judicial body only in cases in which it

finds that the relevant FIFA judicial body exceeded the margin of discretion accorded to it by the principle of association autonomy. In other words, only in cases in which the FIFA judicial body concerned must be held to have acted arbitrarily and if the sanction concerned is to be considered as evidently and grossly disproportionate to the offence. This is equivalent to proceedings under Article 75 of the Swiss Civil Code before the ordinary courts.

- The FIFA DC always deals with its cases on a case-by-case analysis and taking into account all the specific circumstances of each case, as foreseen under Article 39 par. 4 of the FIFA Disciplinary Code.
- Regarding the fine imposed:
 - According to Article 15 of the FIFA Disciplinary Code, the FIFA DC is refrained from imposing a fine lower than CHF 300 and higher than CHF 1,000,000;
 - It is not the intention of the FIFA DC or the idea behind Article 64 of the FIFA Disciplinary Code to impose sanctions that create additional financial difficulties to the debtor that might compromise the payment of the outstanding amount due to another football stakeholder subject to enforcement;
 - The FIFA DC considered that in the present case a fine in the amount of CHF 2,000 is appropriate and proportionate in the light of the amount of the outstanding debt;
 - A higher fine may not be proportionate and could contradict the longstanding jurisprudence of the FIFA DC while a low fine would contradict the principle of repression and prevention and would fail to encourage the prompt fulfilment of obligations;
 - The Appellant has, at no point, contested the fine's proportionality.
- With regards to the further sanctions that may be imposed such as deduction of points, relegation to a lower division and transfer bans:
 - The Appellant states that the possible implementation of the deduction of points and/or the relegation to a lower division would be disproportionate sanctions. However, it has failed to provide any justification or evidence that may support it.
 - In fact, Mersin has based its argument on its alleged attempts to find an amicable agreement in order to settle the debt, but it never made FIFA aware of said attempts.
 - The further sanctions imposed on the Appellant are in compliance with the principle of proportionality and in line with the FIFA DC's longstanding practice.

- Neither the fine nor the further sanctions are oppressive since they are justified by the Appellant's attitude and consistent with CAS awards and judgements of the Swiss Federal Tribunal.
- c) The constant dilatory conduct:
- The Second Respondent wishes to bring to the attention of the Panel the dilatory conduct of the Appellant in several other procedures before the CAS.
 - It is believed that in other situations the Appellant has used the proceedings before the judicial bodies of FIFA and the CAS with the sole intention of postponing as much as possible the payment of the amounts due to the creditor concerned.
 - The Appellant has a record of proceedings before the CAS, during which the appeal filed was either dismissed after an unfounded appeal or withdrawn for failure to meet a procedural requirement.
 - In the aforementioned cases, the Appellant finally paid its debts or signed a payment plan agreement with the creditor in concern.
55. As a result, FIFA requests 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 legal expenses of the Second Respondent related to the present procedure”.*

V. JURISDICTION

56. Pursuant to Article R47 of the CAS Code :
- “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”.*
56. The jurisdiction of CAS, which is not disputed, derives from Article 58(1) of the FIFA Statutes (2016 edition) as it determines that “[a]ppeals 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” and Article R47 of the CAS Code.
57. Article 64(1) and (5) of the FIFA Disciplinary Code (2011 edition) determine respectively that:

“Anyone who fails to pay another person (such as a player, a coach 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 (nonfinancial decision) passed by a body, a committee or an instance of FIFA, or by CAS (subsequent appeal decision): (...).”

“Any appeal against a decision passed in accordance with this article shall be lodged with CAS directly”.

58. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by the Parties.
59. It follows that CAS has jurisdiction to decide on the present dispute.

VI. ADMISSIBILITY

60. The appeal was filed within the deadline of 21 days set by Article 58(1) of the FIFA Statutes. The appeal complied with all other requirements of Article R48 of the CAS Code.
61. It follows that the appeal is admissible.

VII. APPLICABLE LAW

62. Pursuant to Article R58 of the CAS Code:

“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”.

63. The Panel notes that Article 57(2) of the FIFA Statutes stipulates the following:

“The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”.

64. The Panel observes that Mersin submits that *“Swiss law shall be applied”* and that FIFA maintains that CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law. Unité did not provide its position regarding the applicable law.
65. Consequently and in accordance with Article R58 of the CAS Code and Article 57(2) of the FIFA Statutes, the Panel will apply the various regulations of FIFA, in particular the FIFA Disciplinary Code and, subsidiarily, Swiss law should the need arise to fill a possible gap in the regulations of FIFA.

VIII. MERITS OF THE DISPUTE

66. As previously stated, on 27 August 2014, the FIFA Dispute Resolution Chamber issued the Original Decision ordering the Appellant to pay to the First Respondent an amount of EUR 6,774.26 with 5% interest from 16 February 2010. Additionally, the Original Decision ordered Mersin to pay CHF 3,000 to FIFA. The findings of this decision were notified on 18 September 2014 to the Parties. The grounds of the decision were requested by Mersin and notified to the parties on 30 January 2015. The Appellant did not appeal the Original Decision before the CAS.

67. As such, the Panel notes that it is undisputed that the Original Decision became final and binding before the opening of the disciplinary proceedings against Mersin and that Mersin failed to comply with the Original Decision.

68. The Panel observes that the Appealed Decision is based on Article 64 of FIFA Disciplinary Code, which provides, *inter alia*, as follows:

“1. Anyone who fails to pay another person (such as a player, a coach 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 also be pronounced;*
- (...)”.*

69. In continuation, the Panel considers that, since the Original Decision became final and binding, the sole task of the FIFA DC was to analyse whether Mersin complied with the final and binding Original Decision.

70. The Panel observes that this practice has been confirmed in CAS jurisprudence dealing with this issue:

“[T]he Panel finds that the FIFA Disciplinary Committee was limited to determine if the outstanding amount, as defined by the FIFA DRC decision, had been paid to the creditor, i.e. the Player, or if for whatever reason the above mentioned amount was still due” (CAS 2013/A/3323, para. 72).

“[T]he Panel underlines that the object of this appeal cannot extend beyond the limits of a review of the disciplinary sanction imposed by the DC. As a result, only submissions relating to the fine imposed by the DC, such as its legal basis and quantum, can be heard. The Panel cannot consider requests concerning the debt owed by the Appellant to the Brazilian Club, the issues relating thereto having been decided by the PSC Decision (...)” (CAS 2006/A/1008, para. 14).

71. The Panel observes that it remained undisputed between the parties that Mersin failed to pay the amounts awarded to Unité and FIFA in the Original Decision. As such, the Panel finds that the FIFA DC correctly held that Mersin failed to comply with the Original Decision and that the criteria of Article 64(1) of the FIFA Disciplinary Code for imposing disciplinary sanctions on Mersin were complied with.
72. As a result, the main issue to resolve by the Panel is whether the fine imposed on Mersin by the FIFA DC is disproportionate. All arguments submitted by Mersin related to the allegedly disproportional Original Decision, its financial difficulties and its rejected proposals for a new payment schedule fall outside the scope of these disciplinary proceedings.
73. Mersin failed to comply with the Original Decision, despite having been reminded and urged to do so by FIFA on several occasions. As a consequence, the FIFA DC finally imposed a fine of CHF 2,000 on Mersin by means of the Appealed Decision, while granting it a final period of grace of 30 days to pay the amounts due, failing which, three points be deducted from Mersin's first team in the domestic championship, but only on request of Unité.
74. The Panel concurs with another CAS Panel (CAS 2013/A/3358) that *"in disciplinary matters, each situation must be evaluated on a case-by-case basis and interests at stake have to be balanced in respect of the principle of proportionality. Account must be taken of the seriousness of the facts and other related circumstances as well as of the damage that the penalised conduct entails for the parties involved, for the federation in question and for its sport. In the same way, disciplinary bodies may evaluate any aggravating and/or extenuating circumstances that might be related to the infringement"*. In addition, the Panel acknowledges that the purpose of the imposition of sanctions is to serve as a deterrent to parties who do not wish to comply with decisions of FIFA bodies.
75. The Panel observes that Mersin does not contest the proportionality of the fine, but submits that the deduction of points is disproportionate, whereas FIFA maintains that the imposed sanctions are justified.
76. As set out above, Mersin argues that the possible implementation of the deduction of points and/or the relegation to a lower division would be disproportionate because it would cause irreparable damages to Mersin's future. The Panel observes that Mersin's allegations are not substantiated with any evidence why this would eventually be the case.
77. The Panel considers the fine set at CHF 2,000 (in a scale ranging from CHF 300 to CHF 1,000,000 pursuant to Article 15 of the FIFA Disciplinary Code) not oppressive or evidently and grossly disproportionate to the offence, but indeed fully justified by the behavior of Mersin.
78. In continuation, the Panel concurs with FIFA that the possible deduction of points and/or relegation to a lower division is also proper and consistent with long-standing jurisprudence (CAS 2005/A/944, CAS 2011/A/2646, CAS 2012/A/3032, CAS 2013/A/3358, SWT 4P.240/2006 of 5 January 2007). In this respect see, for example, CAS 2005/A/944:

“The Panel also finds that the Respondent, by issuing decisions threatening the deduction of points, then expressly requesting the HFF to enforce the deduction of points, and then sanctioning the HFF for its failure to implement FIFA’s decisions, complied with the FIFA Statutes and the Disciplinary Code”.

79. As a consequence of the above, the Appeal filed by the Appellant shall be dismissed and the Appealed Decision shall be confirmed.
80. Any other and further claims or requests for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The Appeal filed on 2 September 2016 by Mersin Idman Yurdu Sk against the decision issued on 20 April 2016 by the Disciplinary Committee of the *Fédération Internationale de Football Association* is dismissed.
2. The decision issued on 20 April 2016 by the Disciplinary Committee of the *Fédération Internationale de Football Association* is confirmed.
- (...).
5. All other and further motions or prayers for relief are dismissed.