



**Arbitration CAS 2017/A/5031 Club Mersin Idman Yurdu Spor Kulübü v. Spas Delev & Fédération Internationale de Football Association (FIFA), award of 13 September 2017**

Panel: Mr Hendrik Willem Kesler (The Netherlands), President; Mr Stuart McInnes (United Kingdom); Mr João Nogueira Da Rocha (Portugal)

*Football*

*Disciplinary proceedings for failure to comply with a previous decision of a FIFA body*

*Standing to be sued of the player*

*Legality of the disciplinary sanction*

*Proportionality of the disciplinary sanction*

1. The test traditionally applied in establishing that a prospective respondent has or stands to be sufficiently affected and/or connected with a matter is whether (a) the prospective respondent has a personal stake in the outcome of the dispute because something is sought against it; and (b) there exists a real, actual and justiciable dispute between the parties that will actually be determined by the prayers and relief sought. In proceedings where a club seeks to have a fine imposed by a FIFA body as a result of a failure to comply with a previous decision annulled or reduced, it does not seek any relief from the player with whom it was in a contractual dispute that led to the previous decision. The prerogative whether to impose disciplinary measures on the club lies entirely with FIFA. Hypothetically, even if the player would agree with the club that the fine should be annulled or reduced, this is of no avail to the club, as the appealed decision is issued in order to protect FIFA's interest, as a consequence of which only FIFA can be called as a respondent.
2. The imposition of a fine on members for failing to comply with a financial decision of FIFA is not *per se* illegal because it diminishes the financial situation of the member. Although it is certainly true that the imposition of a fine for failing to comply with a financial decision of FIFA should not be counterproductive, this does not lead to the conclusion that the imposition of a fine is *per se* impossible, but rather that such fine must be proportionate to the underlying objective of Article 64 (1) FIFA Disciplinary Code.
3. A fine of CHF 30,000 is not disproportionately high and of such significance that it would reasonably prevent a club from complying with its obligation towards a player, to pay him an amount of more than EUR 1 mio plus a significant percentage of interest that has accrued for almost five years.

## I. PARTIES

1. Club Mersin Idman Yurdu Spor Kulübü (the “Appellant” or the “Club”) is a football club with its registered office in Mersin, Turkey. The Club is registered with the Turkish Football Federation (the “TFF”), which in turn is affiliated to the *Fédération Internationale de Football Association*.
2. Mr Spas Delev (the “First Respondent” or the “Player”) is a professional football player of Bulgarian nationality.
3. 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 world governing body of international football. It exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and football players worldwide.

## II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts, as established on the basis of the parties’ written submissions and the evidence examined in the course of the present appeals arbitration proceedings. This background is made 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 analysis.

### A. Proceedings before the FIFA Dispute Resolution Chamber

5. On 21 January 2015, the FIFA Dispute Resolution Chamber (the “FIFA DRC”) issued a decision (the “FIFA DRC Decision”) in a contractual dispute between the Player and the Club, with the following operative part:

- “1. *The claim of the [Player] is partially accepted.*
2. *The [Club] has to pay to the [Player] compensation for breach of contract in the amount of EUR 1,200,000 plus 10% interest p.a. on said amount as from 15 November 2012 until the date of effective payment, within 30 days as from the date of notification of this decision.*
3. *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 the FIFA Disciplinary Committee for consideration and a formal decision.*

[...]”.

6. On 1 July 2015, upon the Club’s request, the grounds of the FIFA DRC Decision were communicated to the parties.

7. On 15 July 2015, the Club lodged an appeal against the FIFA DRC Decision with the Court of Arbitration for Sport (“CAS”).
8. On 27 October 2015, CAS rendered a Termination Order because the Club failed to pay the advance of costs.
9. On the same date, the Player informed the FIFA DRC that, further to the issuance of the Termination Order by CAS, the FIFA DRC Decision became final and binding, but that he had not received any payment from the Club notwithstanding that he had provided the Club his bank details on two occasions. The Player requested the FIFA General Secretariat to forward the present affair to the FIFA Disciplinary Committee for the imposition of disciplinary sanctions on the Club on the basis of Article 64 of the FIFA Disciplinary Code.
10. On 3 December 2015, the FIFA Players’ Status and Governance Department urged the Club to pay the relevant amount to the Player by 13 December 2015, failing which the entire file would be forwarded to the FIFA Disciplinary Committee.
11. On 15 December 2015, the Player informed the FIFA DRC that the Club had not paid the relevant amount within the final deadline and requested the matter to be forwarded to the FIFA Disciplinary Committee.
12. On 8 January 2016, the FIFA Players’ Status and Governance Department informed the Player and the Club that the entire file would be forwarded to the FIFA Disciplinary Committee.

#### **B. Proceedings before the FIFA Disciplinary Committee**

13. On 6 July 2016, the secretariat to the FIFA Disciplinary Committee opened disciplinary proceedings against the Club because it had failed to comply with the FIFA DRC Decision, thereby violating Article 64 FIFA Disciplinary Code. The Club was informed that, if it paid the outstanding amount immediately, the disciplinary proceedings would be closed.
14. On 19 July 2016, the secretariat to the FIFA Disciplinary Committee informed the Club that the case would be submitted to the FIFA Disciplinary Committee for evaluation on 9 August 2016. The Club was also informed that, should it pay the outstanding amounts by 29 July 2016, the proceedings would be closed.
15. The Club did not respond to the letters of the secretariat to the FIFA Disciplinary Committee.
16. On 9 August 2016, the FIFA Disciplinary Committee issued its decision (the “Appealed Decision”), with the following operative part:
  - “1. *The [Club] is pronounced guilty of failing to comply with the [FIFA DRC Decision] and is, therefore, in violation of art. 64 of the FIFA Disciplinary Code.*
  2. *The [Club] is ordered to pay a fine to the amount of CHF 30,000. The fine is to be paid within 120 days of notification of the present decision. [...]*

3. *The [Club] is granted a final period of grace of 120 days as from the notification of the present decision in which to settle its debt to the [Player].*
  4. *If payment is not made by this deadline, the [Player] may demand in writing from the secretariat to the FIFA Disciplinary Committee that six (6) points be deducted from the debtor's first team in the domestic league championship. Once the [Player] had filed this request, the points will be deducted automatically without a further formal decision having to be taken by the FIFA Disciplinary Committee. The order to implement the points deduction will be issued on the association concerned by the secretariat to the FIFA Disciplinary Committee.*
  5. *If the [Club] still fails to pay the amount due even after the deduction of the points in accordance with point 4. above, the FIFA Disciplinary Committee will decide on a possible relegation of the [Club's] first team to the next lower division.*
  6. *As a member of FIFA, the [TFF] is reminded of its duty to implement this decision and, if so requested, provide FIFA with proof that the points have been deducted. If the [TFF] does not comply with this decision despite being ordered to do so, the FIFA Disciplinary Committee will decide on appropriate sanctions on the member. This can lead to expulsion from all FIFA competitions.*
  7. *The costs of these proceedings amounting to CHF 3,000 are to be borne by the [Club] and shall be paid according to the modalities stipulated under point II/2. above”.*
17. On 31 August 2016, the Club requested the grounds of the Appealed Decision.
  18. On 9 January and 13 February 2017 respectively, the Player informed the secretariat to the FIFA Disciplinary Committee that the Club had failed to pay the outstanding amounts and requested that six points be deducted from the Club's first team in its respective domestic league.
  19. On 20 February 2017, the secretariat to the FIFA Disciplinary Committee informed the Player and the Club that the grounds of the Appealed Decision would be issued in due course and that the final period of grace of 120 days granted to the Club had not yet accordingly elapsed.
  20. On 21 February 2017, the grounds of the Appealed Decision were communicated to the parties, which provided, *inter alia*, as follows:
    - *“According to art. 53 par. 2 of the FIFA Statutes, the Disciplinary Committee [...] may pronounce the sanctions described in the Statutes and the FIFA Disciplinary Code [...] on member associations, clubs, officials, players, intermediaries and licensed match agents.*
    - *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 (art. 64 par. 1 of the FDC):*
      - 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;*

- c) *If it is a club, it 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 demotion to a lower division ordered. A transfer ban may also be pronounced.*

*If the club disregards the final time limit, the relevant association shall be requested to implement the sanctions threatened (art. 64 par. 2 of the FDC).*

- *The Committee emphasises that equal to the competence of any enforcement authority, it cannot review or modify as to the substance of a previous decision, which is final and binding and, thus, has become enforceable.*
- *In the case at stake, the Committee notes that the grounds of the [FIFA DRC Decision] had been duly communicated on 1 July 2015 to the debtor. Moreover, even though an appeal was lodged against such decision before CAS, the latter rendered a Termination Order on 27 October 2015. Therefore, the decision became final and binding.*
- *In view of what has been explained under paragraph II./3. above, the Committee is not allowed to analyse the case decided by the Dispute Resolution Chamber as to the substance, in other words, to check the correctness of the amount ordered to be paid, but has as a sole task to analyse if the [Club] complied with the final and binding decision rendered by the Dispute Resolution Chamber.*
- *As the [Club] did not comply with the [FIFA DRC Decision] and is consequently withholding money from the [Player], it is considered guilty under the terms of art. 64 of the FDC.*
- *The fine to be imposed under the above-referenced art. 64 par. 1 a) of the FDC in combination with art. 15 par. 2 of the FDC shall range between CHF 300 and CHF 1,000,000. The [Club] withheld the amount unlawfully from the [Player]. Even FIFA's attempts to urge the [Club] to fulfil its financial obligations failed to induce it to pay the total amount due. In view of all the circumstances pertaining to the present case and by taking into account the outstanding amount due, the Committee regards a fine amounting to CHF 30,000 as appropriate. This amount complies with the Committee's established practice.*
- *In application of art. 64 par. 1 b) of the FDC, the Committee considers a final deadline of 120 days as appropriate for the amount due to be paid to the [Player].*
- *In accordance with art. 64 par. 1 c) of the FDC, the [Club] will be warned and notified that, in the case of default within the period stipulated, points will be deducted or demotion to a lower division be ordered. A deduction of points will occur if the [Player] informs the secretariat to the FIFA Disciplinary Committee of the non-payment within the stipulated deadline and demands in writing that points be deducted from the [Club's] first team in the national league. Once the [Player] has filed this request, the points will be deducted automatically without a further formal decision having to be taken by the Committee. The order to implement the deduction of points will be issued on the association concerned by the secretariat to the FIFA Disciplinary Committee.*
- *With regard to the amount of points to be deducted, art. 64 par. 3 of the FDC is applicable, whereby the number of points deducted must be proportionate to the amount owed. In the light of the foregoing*

*criteria, regarding the amount of the fine to be imposed and in keeping with the Committee's well-established practice, a deduction of six (6) points is considered appropriate.*

- *The Committee decides based on art. 105 par. 1 of the FDC that the costs and expenses of these proceedings amounting to CHF 3,000 shall be borne by the debtor”.*

### III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

21. On 11 March 2017, the Club lodged a Statement of Appeal against the Appealed Decision, pursuant to Article R48 of the CAS Code of Sports-related Arbitration (edition 2017) (the “CAS Code”), naming both the Player and FIFA as respondents. In this submission, the Club nominated Mr Stuart C. McInnes, Solicitor in London, United Kingdom, as arbitrator. The Club also applied for a stay of execution of the Appealed Decision.
22. On 17 March 2017, the CAS Court Office acknowledged receipt of the Club's Statement of Appeal and enclosed a copy of a decision rendered by CAS where the question of the stay of the execution of a monetary award was decided upon, according to which a decision of a financial nature issued by a private Swiss association is not enforceable while under appeal. The Club was invited to state whether it maintained or withdrew its application for a stay.
23. On 17 March 2017, the Player made reference to CAS jurisprudence in submitting that no real or justiciable dispute existed between the Club and the Player and that accordingly he did not have standing to be sued. The Player thus invited the Club to withdraw the appeal against him for the sake of procedural and financial economy. The Player further indicated that, should the Club maintain its appeal against him, he would take a passive stance in the arbitration.
24. On 18 March 2017, the Club filed its Appeal Brief, pursuant to Article R51 of the CAS Code. This document contained a statement of the facts and legal arguments giving rise to the appeal. The Club challenged the Appealed Decision, submitting the following requests for relief:
  - “1- *To decide that the FIFA DC decision is wrong and must be annulled.*
  - 2- *In case the Panel impossibly reaches the conclusion that the Appellant must be sanctioned, then the fine amounting 30.000 CHF is excessive and must be reduced.*
  - 3- *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”.*
25. On 22 March 2017, the Player submitted that the disciplinary case at stake was of a predominant economic nature and that Article R64 of the CAS Code was therefore applicable, but that because the Appealed Decision is of a disciplinary nature the appeal does not have an automatic suspensive effect. The Player also maintained that the three cumulative requirements for granting provisions measures set out in Article R37 of the CAS Code were not complied with.

26. On 24 March 2017, FIFA nominated Mr João Nogueira Da Rocha, Attorney-at-Law in Lisbon, Portugal, as arbitrator.
27. On 27 March 2017, the CAS Court Office informed the parties that, in the light of the fact that no information was received, it was understood that the Club maintained its request for a stay of execution of the Appealed Decision and that it maintained the Player as a respondent in the present arbitration.
28. On 28 March 2017, the Player consented to FIFA's nomination of Mr Nogueira Da Rocha as arbitrator.
29. On 31 March 2017, upon being invited by the CAS Court Office to express its opinion in this respect, FIFA indicated that it would refrain from objecting to the Club's request to stay the execution of the Appealed Decision. On 3 April 2017, the Player presented his position and indicated that the Club's request should be dismissed, as to the financial element of the Appealed Decision, as a stay would be impossible because the execution of the monetary fine is unenforceable. As to the non-financial disciplinary elements of the Appealed Decision (possible deduction of points and relegation), the Player argued that the requirements for the grant of provisional measures in accordance with Article R37 of the CAS Code were not complied with and that the request should therefore be rejected.
30. On 7 April 2017, the CAS Court Office informed the parties that the President of the CAS Appeals Arbitration Division emphasised the following:

*“First and foremost, the Division President notes the astonishing position of the First Respondent since, by letter of 17 March 2017, he informed the CAS Court Office that, this matter involving disciplinary sanctions imposed by FIFA, he had no standing to be sued in this matter and that, if maintained as a respondent in this procedure, he would adopt a passive stance. However, by letters of 22 March and 3 April 2017, his Counsel insisted that costs be imposed on the Appellant.*

*This being said, and after a review of the file, the Division President came to the conclusion that, although FIFA imposed a monetary fine as provided by article 10 of the FIFA Disciplinary Code [...], such matter is of purely disciplinary nature and shall consequently fall under the scope of Article R65.2 of the [CAS Code].*

*Furthermore, Article R65.4 of the Code does not grant a party the possibility to request that advance of costs shall be imposed on another party. It is an exclusive prerogative given to the Division President or to the President of the Panel, once constituted. Therefore, the First Respondent has no standing to file such request.*

*In light of the above, and on behalf of the Division President, the First Respondent's request to impose payment of advance of costs by the Appellant is dismissed”.*

31. On 10 April 2017, the Player reiterated his view that he did not have standing to be sued, that the appeal filed by the Club against the Player was to be dismissed, and that, because he had

- to hire a lawyer, requested that the Panel order the Club to pay him a contribution towards his legal fees and other expenses.
32. On 11 April 2017, the CAS Court Office acknowledged receipt of the Player's letter of 10 April 2017 and noted that the Player renounced his right to file an Answer in the procedure.
33. On 12 April 2017, the President of the CAS Appeals Arbitration Division issued an Order on the Request for the Stay, with the following operative part:
- “1. The application for the stay of execution filed by Mersin Idman Yurdu Spor Kulübü on 10 March 2017 is granted.*
  - 2. The costs of the present order shall be determined in the final award or in any other final award or in any other final disposition of this arbitration”.*
34. On 21 April 2017, FIFA filed its Answer, pursuant to Article R55 of the CAS Code. FIFA submitted the following requests for relief:
- “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”.*
35. On 26 and 27 April 2017 respectively, upon being invited to express their position, the Player and FIFA informed the CAS Court Office that they did not consider a hearing necessary. The Club failed to respond.
36. On 14 June 2017, pursuant to Article R54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the parties were informed that the arbitral tribunal appointed to decide the present matter was constituted by:
- Mr Hendrik Willem Kesler, Attorney-at-Law in Enschede, the Netherlands, as President;
  - Mr Stuart C McInnes, Solicitor in London, United Kingdom; and
  - Mr João Nogueira Da Rocha, Attorney-at-Law in Lisbon, Portugal, as arbitrators
37. On 22 June 2017, the CAS Court Office informed the parties that the Panel considered itself sufficiently well-informed to decide the case based on the parties' written submissions, without the need to hold a hearing.
38. On 29, 30 June and 3 July 2017 respectively, the Player, the Club and FIFA returned duly signed copies of the Order of Procedure to the CAS Court Office. By signing the Order of

Procedure, the parties, *inter alia*, confirmed that no hearing would be held, but that their right to be heard had nonetheless been respected.

39. The Panel confirms that it fully reviewed and took into account in its discussion and subsequent deliberations 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.

### III. SUBMISSIONS OF THE PARTIES

40. The Club's submissions read as follows in full:

- *“First of all, the Appellant challenges the findings of FIFA with regard to the imposition of monetary fines. As it was clearly stated in the statements submitted to FIFA, the grounds of the fines were clearly explained. Interestingly, FIFA did not evaluate the reasoning and did not notify the mentioned decisions to the Respondent.*
- *It is important to note that, pursuant to the well-established jurisprudence of FIFA, imposing a fine should be the last resort. As it is clear from the file, the Appellant is suffering financial difficulties to make the payments to its players. By imposing additional fines, FIFA makes the operation of the Club impossible.*
- *In addition to the above-mentioned facts, the fine is extremely excessive. As the esteemed Panel of the CAS can easily comprehend, 30.000 CHF is one of the harshest decisions that FIFA ever handed down. The relevant article of FIFA Disciplinary Regulations give a total discretion to the FIFA DC, but the FIFA DC decided a very harsh fine upon the Appellant.*
- *As a result, in its decision, without getting any response from the Respondent and without entering into the merits of the fine, the fine is extremely excessive.*
- *As a result, the Appellant kindly asks the CAS to cancel the fine and also the FIFA DC decision in total”.*

41. The Player did not file an Answer, but nevertheless argued that he did not have standing to be sued, that the appeal filed by the Club against the Player should be dismissed, and that, because he had to hire a lawyer, the Panel should order the Club to pay him a contribution towards his legal fees and other expenses.

42. FIFA's submissions, in essence, may be summarised as follows:

- FIFA submits that the spirit of Article 64 of the FIFA Disciplinary Code is to ensure to a certain extent that decisions that had been rendered by FIFA (or CAS following an appeal) are respected and that the rights of players or clubs be protected. Proceedings under this provision are to be considered not as enforcement, but rather as the imposition of a sanction for breach of the association's regulations and under the terms of association law. The FIFA Disciplinary Committee, equal the competence

of any “enforcement authority”, cannot review or modify the substance of a previous decision.

- If the FIFA Disciplinary Committee is not provided with proof that the payment has been discharged or that a payment plan was agreed upon, it will render a decision imposing a fine on the debtor for failure to comply with a final and binding decision.
- In the present case it is undisputed that the Club made no payment – not even a partial amount – to the Player in spite of several reminders being sent by the FIFA Players’ Status and Governance Department and the secretariat to the FIFA Disciplinary Committee, to which the Club failed to respond. The Club thereby not only blatantly disrespected a final and binding decision of a FIFA body, but it also decided not to participate in any way in the disciplinary proceedings.
- FIFA maintains that the Club did not in fact challenge the application of Article 64 FIFA Disciplinary Code, but only argues that the fine imposed was disproportionate.
- With reference to CAS jurisprudence, FIFA maintains that the financial problems faced by the Club could not be considered as a relevant argument. Moreover, the Club failed to provide any evidence of its alleged critical financial situation.
- As to the proportionality of the fine, FIFA maintains that CAS shall only amend a disciplinary decision of a FIFA judicial body in cases in which it finds that the relevant body exceeded the margin of discretion accorded to it by the principle of association autonomy, *i.e.* only in cases in which the FIFA judicial body concerned must be held to have acted arbitrarily. This is not the case if the Panel merely disagrees with a specific sanction, but only if the sanction concerned is to be considered as evidently and grossly disproportionate to the offence.
- FIFA submits that the FIFA Disciplinary Committee is prevented from imposing a fine lower than CHF 300 and higher than CHF 1,000,000 and admitted that imposing financial sanctions above a certain limit would be counterproductive. It is not the intention of FIFA or the logic behind Article 64 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.
- FIFA considers a fine in the amount of CHF 30,000 to be appropriate and proportionate in the light of the debt of EUR 1,200,000 plus 10% interest *p.a.* as of 15 November 2012 until the date of effective payment. A fine of CHF 30,000 is actually on the lower end of the scale.
- The Club’s argument that “*imposing a fine should be the last resort*” is not supported by any reasoning and must be disregarded as it is the primary and mandatory sanction provided for in Article 64 FIFA Disciplinary Code, before the application of sporting sanctions (possible deduction of points and relegation).

- FIFA highlights that the fine imposed on the Club is in compliance with the principle of proportionality and in line with the FIFA Disciplinary Committee’s long-standing practice. In this respect, FIFA referred to five other (non-exhaustive) decisions in cases where similar outstanding amounts were due and in which a fine in the amount of CHF 30,000 was imposed and six points were threatened to be deducted. Sporting sanctions will only be imposed if the Club persists in its failure to comply with the FIFA DRC Decision.
- Finally, FIFA maintained that the Club engaged in dilatory conduct in the present proceedings as well as in several other proceedings held before CAS. FIFA indicated that it is of the view that the Club used the proceedings before the judicial bodies of FIFA and before CAS with the sole intention of postponing for as long as possible payment of the amounts due to the relevant creditor, which is corroborated by the fact that its appeals were dismissed after the Club had presented an inconsistent and hasty Appeal Brief or were considered withdrawn, as the Club failed to comply with one or more of the necessary procedural requirements. FIFA referred to four other CAS proceedings in this respect. FIFA also found that in the present case, the Club filed an extremely short and inconsistent submission, in particular by complaining that the FIFA Disciplinary Committee “*did not evaluate [its] reasoning*” in the Appealed Decision. FIFA requested that the Panel take this reproachable behaviour of the Club into account.

#### IV. JURISDICTION

43. The jurisdiction of CAS, which is not disputed, derives from Article 58(1) of the FIFA Statutes (2016 edition), providing that “[*a*]ppeals against final decisions passed by FIFA’s legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question” and Article R47 of the CAS Code.
44. Article 64(5) of the FIFA Disciplinary Code (2011 edition) determines as follows:

*“Any appeal against a decision passed in accordance with this article shall be lodged with CAS directly”.*
45. In view of Article 64(5) of the FIFA Disciplinary Code and because the Appealed Decision was based on the application of Article 64 FIFA Disciplinary Code, the Club was not required to file an appeal with the FIFA Appeals Committee before challenging the decision of the FIFA Disciplinary Committee before CAS. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by all parties.
46. It follows that CAS has jurisdiction to decide on the present dispute.

## V. ADMISSIBILITY

47. 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, including the payment of the CAS Court Office fees.
48. It follows that the appeal is admissible.

## VI. APPLICABLE LAW

49. The Club and the Player did not make any submissions in respect of the applicable law.
50. FIFA argued that, according to Article 57(2) of the FIFA Statutes, the provisions of the CAS Code should apply to the proceedings. Pursuant to the same article, CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law. FIFA therefore submits that the applicable law should consequently be the FIFA regulations and additionally Swiss law.
51. Article R58 of the CAS Code provides the following:

*“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 application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*

52. 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”.*

53. The Panel is satisfied that primarily the various regulations of FIFA are applicable to the substance of the case, in particular the FIFA Disciplinary Code (2011 edition), and subsidiarily, Swiss law, should the need arise to fill a possible gap in the various regulations of FIFA.

## VII. MERITS

### A. The Main Issues

54. The main issues to be resolved by the Panel are:
- i. Does the Player have standing to be sued in the matter at hand?
  - ii. Is there a legal basis for the FIFA Disciplinary Committee to impose a disciplinary sanction on the Club?

- iii. If there is a legal basis, is the disciplinary sanction imposed on the Club by the FIFA Disciplinary Committee disproportionate?

***i. Does the Player have standing to be sued in the matter at hand?***

55. The Panel observes that, pursuant to the requests for relief of the Club, it primarily seeks to have the fine imposed on it by the FIFA Disciplinary Committee annulled, or subsidiarily, to have the fine reduced.
56. Although it remained undisputed that the fine is imposed as a consequence of the Club's failure to comply with a final and binding decision that was issued following a contractual dispute between the Club and the Player, the present arbitration before CAS is solely related to the disciplinary measures taken against the Club by the FIFA Disciplinary Committee.
57. The Panel observes that CAS jurisprudence determines the following in respect of a party's standing to be sued:

*"The test traditionally applied in establishing that a prospective respondent has or stands to be sufficiently affected and/or connected with a matter is whether:*

- a) *The prospective respondent has a personal stake in the outcome of the dispute because something is sought against it; and*
- b) *There exists a real, actual and justiciable dispute between the parties that will actually be determined by the prayers and relief sought.*

*Indeed, the above principles and in particular principle (a) above has been established and settled at the CAS, which has long held that "[u]nder Swiss law, applicable pursuant to Articles 60.2 of the FIFA Statutes and R58 of the CAS Code, the defending party has standing to be sued (legitimation passive) if it is personally obliged by the "disputed right" at stake (see CAS 2006/A/1206 Milan Zivadinovic vs. Iraqi Football Association). In other words, a party has standing to be sued and may thus be summoned before the CAS only if it has some stake in the dispute because something is sought against it (cf. CAS 2006/A/1189 IFK Norrköping vs. Trinité Sports FC & Fédération Française de Football; CAS 2006/A/1192 Chelsea FC v. Adrian Mutu)" (cf. CAS 2007/A/1329 & 1330).*

*Looking at the facts, it is undisputed that the Appealed Decision was rendered as a result of Mersin's failure to pay CSKA the amount ordered in the FIFA PSC Decision. This in itself does not give rise to any right personally obliging CSKA to be named and take part in these proceedings as a respondent.*

*This is because in opening enforcement disciplinary proceedings, FIFA does so ex officio (cf. Article 108.1 of the FIFA Disciplinary Code), or at the creditor's request, in order to "protect an essential interest of FIFA, i.e. full compliance with the decisions rendered by its bodies" (cf. CAS 2007/A/1329 & 1330), in casu the enforcement of the FIFA PSC Decision" (CAS 2014/A/3831, para. 6.9-6.12).*

58. The Panel fully endorses this view and, applying this principle to the current procedure, the Panel finds that the Club does not seek any relief from the Player in the present arbitration.

59. Although the Appealed Decision provides in paragraph 3 of the operative part that “*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 the FIFA Disciplinary Committee for consideration and a formal decision*” and that the Player was thus entitled to ask FIFA to refer the matter to the FIFA Disciplinary Committee, the prerogative whether to impose disciplinary measures on the Club lies entirely with FIFA. Hypothetically, even if the Player would agree with the Club that the fine should be annulled or reduced, this is of no avail to the Club, as the Appealed Decision is issued in order to protect FIFA’s interest, as a consequence of which only FIFA can be called as a respondent.

60. Consequently, the Panel finds that the Player does not have standing to be sued in the current procedure.

**ii. *Is there a legal basis for the FIFA Disciplinary Committee to impose a disciplinary sanction on the Club?***

61. The Panel observes that Article 64(1) FIFA Disciplinary Code provides as follows:

*“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):*

- 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;*

*[...]”.*

62. The Panel observes that the Club’s primary request for relief is for CAS “*to decide that the FIFA DC decision is wrong and must be annulled*”.

63. Insofar as the Club submits that “*FIFA did not evaluate the reasoning*” of the Club, this argument must be dismissed as the Club failed to prove what reasoning was advanced to the FIFA Disciplinary Committee and based on what evidence it comes to the conclusion that the FIFA Disciplinary Committee failed to take account of this reasoning.

64. In any event, even if FIFA did not evaluate the Club’s reasoning, such alleged violation of the Club’s right to be heard can be cured by the *de novo* competence of CAS.

65. The Panel feels itself comforted in this conclusion by consistent CAS jurisprudence:

*“Amongst the procedural violations in a first instance decision that can be cured by a de novo CAS proceeding is the ‘right to be heard’, and this has been consistently established in CAS jurisprudence [See for example, CAS 2012/A/2913, CAS 2012/A/2754, CAS 2011/A/2357 and TAS 2004/A/549]. The Swiss Federal Tribunal (“SFT”) has also confirmed the legality of the curing effect of the CAS de novo review. Accordingly, infringements on the parties’ right to be heard can generally be cured when the procedurally flawed decision is followed by a new decision, rendered by an appeal body which had the same power to review the facts and the law as the tribunal in the first instance and in front of which the right to be heard had been properly exercised [See ATF 124 II 132 of 20 March 1998]” (CAS 2016/A/4387, para. 148 of the abstract published on the CAS website).*

66. The Club also maintains that *“pursuant to the well-established jurisprudence of FIFA”* the imposition of a fine should be the last resort. The Panel notes firstly that the Club failed to submit any evidence corroborating the proposition that this argument is indeed well-established jurisprudence of FIFA. Secondly, the wording of Article 64(1)(a) and (c) FIFA Disciplinary Code provides that the imposition of a fine is mandatory, whereas there is discretion in respect of the imposition of sporting sanctions (possible deduction of points and relegation). The Panel has no doubt that a sporting sanction such as relegation is certainly more severe than a fine of CHF 30,000. As such, the allegation that a fine can only be imposed as a last resort must be dismissed. Indeed, the imposition of a fine is only the first mandatory measure to be taken before more severe measures can be effectuated.
67. Insofar as the Club argues that the imposition of a fine on members for failing to comply with a financial decision of FIFA is *per se* illegal as it diminishes the financial situation of the member, the Panel also finds that this argument must be dismissed. Although it is certainly true that the imposition of a fine for failing to comply with a financial decision of FIFA should not be counterproductive – as is indeed confirmed by FIFA itself – the Panel finds that this does not lead to the conclusion that the imposition of a fine is *per se* impossible, but rather that such fine must be proportionate to the underlying objective of Article 64 (1) FIFA Disciplinary Code. Whether the fine of CHF 30,000 is disproportionate, will be examined in greater detail below, but for now the Panel concludes that it is not *per se* illegal to impose a fine for failing to comply with a financial decision of FIFA.
68. Since it remained undisputed that the Club failed to comply with the contents of the FIFA DRC Decision, the Panel finds that the Club clearly violated Article 64(1) of the FIFA Disciplinary Code and that the disciplinary measures contemplated in such provision could be imposed on the Club, including the fine.
69. Consequently, the Panel finds that there was a legal basis for the FIFA Disciplinary Committee to impose a disciplinary sanction on the Club.

**iii. If there is a legal basis, is the disciplinary sanction imposed on the Club by the FIFA Disciplinary Committee disproportionate?**

70. The Panel observes that, pursuant to Article 15(2) FIFA Disciplinary Code, a fine imposed by the FIFA Disciplinary Committee shall not be less than CHF 300 and not more than CHF 1,000,000. The fine of CHF 30,000 imposed on the Club therefore falls within the regulatory parameters set by the FIFA Disciplinary Code, just like the possible imposition of points deduction and relegation in case of continued non-compliance.
71. Notwithstanding the above, fines within these parameters may be disproportionate subject to the particular circumstances of the case.
72. The Panel observes that consistent CAS jurisprudence determines the following:  
*“Established CAS jurisprudence [...] holds that the principle of proportionality requires an assessment of whether a sanction is appropriate to the violation committed in the case at stake. Excessive sanctions are prohibited (see e.g. CAS 2005/A/830, at paras. 10.21 – 10.31; 2005/C/976 & 986, at paras. 139, 140, 143, 145 – 158; 2006/A/1025, at paras 75 – 103; TAS 2007/A/1252, at paras. 33 – 40, CAS 2010/A/2268 at paras. 141 f, all of them referring to and analysing previous awards and doctrine)”* (CAS anti-doping Division OG AD 16/011, para. 38 of the abstract published on the CAS website).
73. The Panel will therefore examine whether it considers the fine of CHF 30,000 to be disproportionate.
74. In light of the fact that the Club failed to comply with the FIFA DRC Decision whereby it was ordered to pay the Player an amount of EUR 1,200,000, plus 10% interest *p.a.* as of 15 November 2012 until the date of effective payment, the Panel does not find a fine of CHF 30,000 to be disproportionately high. The Panel finds that a fine of CHF 30,000 is not of such significance that it would reasonably prevent the Club from complying with its obligation towards the Player, to pay him an amount of EUR 1,200,000, plus a significant percentage of interest that has accrued for almost five years already. Indeed, the fine only amounts to 2,5% of the Club’s debt vis-à-vis the Player.
75. Furthermore, the Panel notes that the Club’s statement that it is in a difficult financial situation remained entirely unsubstantiated by any evidence. This argument can therefore not be taken into account.
76. However, even if the Club would have been able to prove that it is in a difficult financial situation, *quod non*, the Panel finds that in view of the fact that the Club already has debts in an amount of at least EUR 1,200,000, a further debt of CHF 30,000 does not significantly aggravate or prejudice the Club’s financial situation.
77. Insofar as the Club submits that the fine of CHF 30,000 is one of the harshest decisions FIFA ever handed down, the Panel notes that also this allegation remained unsubstantiated by any evidence.

78. Although FIFA did not prove that it ever imposed higher fines than CHF 30,000, it did prove that the FIFA Disciplinary Committee imposed fines of CHF 30,000 in at least five other decisions. Of the five decisions exhibited to the FIFA Answer four comprise only the operative part which does not allow the Panel to examine whether the outstanding debts in those cases were comparable to the debt of EUR 1,200,000 in the matter at hand, however one decision contained grounds that illustrated that the club in question had a debt of USD 1,650,000.
79. In view of this evidence, the Panel does not consider the fine of CHF 30,000 to be disproportionate in comparison with past decisions of the FIFA Disciplinary Committee.
80. Insofar as the Club intends to challenge the possible imposition of a points deduction and relegation in case of continued non-compliance with the FIFA DRC Decision, the Panel observes that the Club did not submit any specific argument or evidence in this respect. In any event, the Panel finds that the possible imposition of such sporting sanctions in case of continued non-compliance is not disproportionate.
81. Consequently, the Panel finds that the disciplinary sanction imposed on the Club by the FIFA Disciplinary Committee is not disproportionate.

**B. Conclusion**

82. Based on the foregoing, the Panel holds that:
- i. The Player has no standing to be sued in the matter at hand.
  - ii. There is a legal basis for the FIFA Disciplinary Committee to impose a disciplinary sanction on the Club.
  - iii. The disciplinary sanction imposed on the Club by the FIFA Disciplinary Committee is not disproportionate.
83. All other and further motions or prayers for relief are dismissed.

## ON THESE GROUNDS

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

1. The appeal filed on 11 March 2017 by Club Mersin Idman Yurdu Spor Kulübü against the decision issued on 9 August 2016 by the Disciplinary Committee of the *Fédération Internationale de Football Association* is dismissed.
2. The decision issued on 9 August 2016 by the Disciplinary Committee of the *Fédération Internationale de Football Association* is confirmed.
3. (...).
4. (...).
5. (...).
6. All other and further motions or prayers for relief are dismissed.