



**Arbitration CAS 2019/A/6278 Cruzeiro EC v. Fédération Internationale de Football Association (FIFA), award of 16 December 2019**

Panel: Mr Lars Hilliger (Denmark), Sole Arbitrator

*Football*

*Disciplinary sanction for failure to comply with a FIFA decision*

*Applicable law*

*Right of associations to impose sanctions*

*Implementation of the principle *nulla poena sine lege**

*Principles of predictability and legality*

*CAS power of review of disciplinary sanctions*

*Legality and proportionality of FIFA's system of enforcement of decisions*

1. Article R58 of the CAS Code does not admit any derogation from applicable sports regulations and imposes a hierarchy of norms in matters of substantive laws, given that the parties are not allowed to oust the relevant applicable sports regulations, but only complement them by choosing a law that will apply subsidiarily to those regulations.
2. According to the principle of the association's autonomy, under Swiss law, the right of associations to impose sanctions or disciplinary measures on clubs is not the exercise of a power delegated by the State, rather it is the expression of the freedom of associations and federations to regulate themselves. Indeed, when passing a decision, the association's or federation's disciplinary proceedings are meant to protect the essential objectives of the association or federation, such as taking all appropriate steps to prevent infringements of the Statutes, regulations or decisions of the association or federation.
3. There is, indeed, general consensus that certain contents of the principle of *nulla poena sine lege* are also applicable to disciplinary provisions and proceedings in the context of sports organisations. The CAS, in particular, has adopted certain contents of this principle with regard to disciplinary proceedings and regulations of sports organisations by establishing a so-called "predictability test". Disciplinary provisions and proceedings of an association or federation must be considered to be in line with the principle of *nulla poena sine lege* if: (i) the relevant regulations and provisions emanate from duly authorised bodies; (ii) the relevant regulations and provisions have been adopted in constitutionally proper ways; (iii) the relevant regulations and provisions are not the product of an obscure process of accretion; (iv) the relevant regulations and provisions are not mutually qualifying or contradictory; (v) the relevant regulations and provisions are not able to be understood only on the basis of the *de facto* practice over the course of many years of a small group of insiders; and (vi) there is a clear connection between the incriminated behavior and the sanction imposed.

4. In order for the principles of predictability and legality to be respected, it is not necessary for the sanctioned stakeholder to know in advance the exact sanction that will be imposed. Such fundamental principles are satisfied whenever the disciplinary rules have been properly adopted, describe the infringement and provide, directly or by reference, for the relevant sanction. The fact that the competent body applying the disciplinary regulations has the discretion to adjust the sanction mentioned in the rules deemed applicable to the individual behavior of a player breaching such rules is not inconsistent with those principles. A decision cannot be required to contain an elaborate list of all deliberations made by the legal body when deciding on sanctions as long as the sanctions fall within an appropriate and predictable framework and it is possible to establish with sufficient certainty the considerations and deliberations providing the basis for the decision and the sanctions imposed.
5. CAS may amend a disciplinary decision of a federation's judicial body only in cases in which it finds that the relevant judicial body exceeded the margin of discretion accorded to it by the principle of association autonomy, i.e. only in cases in which the judicial body concerned must be held to have acted arbitrarily. This is, however, not the case if the CAS 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.
6. CAS has regularly confirmed the legality and proportionality of the enforcement system created by the FIFA and the sanctions related thereto, CAS has also regularly confirmed that the wording of art. 64 of the FIFA Disciplinary Code (FDC) provides for a clear statutory basis and precisely reflects the principle of proportionality. As regards the deduction of points in particular, the imposition of sporting sanctions for violating art. 64 of the FDC is perfectly justified and fully compatible with the principles contained in the FIFA Regulations Governing the Applications of the Statutes, according to which a club's entitlement to take part in a domestic league championship must depend principally on sporting merits. With regard to the potential imposition of a ban from transferring new players, either nationally or internationally, such ban can be imposed in addition to other sanctions in accordance with art. 64 of the FDC. The principle of "*ne bis in idem*" does not prevent the FIFA Disciplinary Committee from imposing a transfer ban in addition to the imposition of a points deduction sanction for the same violation, as there is a valid legal basis for doing so under the provision concerned.

## I. PARTIES

1. Cruzeiro Esporte Clube (the "Club" or the "Appellant") is a professional Brazilian football club affiliated with the Confederação Brasileira de Futebol (the "CBF"), which in turn is affiliated with the Fédération Internationale de Football Association.

2. The Fédération Internationale de Football Association (“FIFA” or the “Respondent”) is the world governing body of football, whose headquarters are located in Zürich, Switzerland.

## **II. FACTUAL BACKGROUND**

### **A. Background Facts**

3. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions and evidence adduced. Additional facts and allegations found in the Parties’ written submissions 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 he considers necessary to explain his reasoning.
4. On 4 May 2018, the Single Judge of the sub-committee of the FIFA Dispute Resolution Chamber (the “FIFA DRC”) rendered its decision (the “DRC Decision”) in a solidarity mechanism dispute between the Appellant and the Argentinian football club IAC Cordoba with the following operative part:
  1. *The claim of the Claimant, IAC Cordoba, is partially accepted.*
  2. *The Respondent, Cruzeiro EC, has to pay to the Claimant, within 30 days as from the date of notification of this decision, the amount of USD 100,439.43 plus 5% interest p.a. on the said amount as from 7 February 2017 until the date of effective payment.*
  3. *In the event that the aforementioned sum plus interest is not paid by the Respondent within the stated time limit, the present matter shall be submitted, upon request, to FIFA’s Disciplinary Committee for consideration and a formal decision.*
  4. *Any further claim lodged by the Claimant is rejected.*
  5. *The final costs of the proceedings in the amount of CHF 15,000 are to be paid by the Respondent, within 30 days of notification of the present decision as follows:*
    - 5.1. *The amount of CHF 12,000 has to be paid to FIFA [...]*
    - 5.2. *The amount of CHF 3,000 has to be paid to the Claimant.*
  6. *The Claimant is directed to inform the Respondent immediately and directly of the account number to which the remittance under points 2. And 5.2. above are to be made and to notify the Single Judge of the sub-committee of the DRC of every payment received.*
5. No request for grounds of the DRC Decision was received and, consequently, the decision became final and binding.

6. On 31 October 2018, and without receipt of any payments from the Appellant, the Appellant was informed by FIFA that the file was now being forwarded to the FIFA Disciplinary Committee (the “FIFA DC”) for consideration and a formal decision.

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

7. On 18 February 2019, the Deputy Secretary of the FIFA DC wrote to the CBF to inform the confederation that the Appellant had not acted in accordance with the DRC Decision, stating, *inter alia*, as follows:

*“[...] Should the [Appellant] fail to submit a statement within the stipulated time, the member of the FIFA Disciplinary Committee will decide on the case using the file in its possession (cf. art. 110 par. 4 of the FIFA Disciplinary Code).*

*Having said that, should the [Appellant] pay all outstanding amounts and send us copies of the proof of payment by the aforementioned deadline, and upon confirmation of the creditor that the payment has been received, the case will not be submitted to a member of the Disciplinary Committee and the disciplinary proceedings will be closed. [...].*

*The [CBF] is kindly requested to forward this letter to [the Appellant] immediately”.*

8. By letter of 25 February 2019 to the FIFA DC, the Appellant’s legal representative informed the FIFA DC, *inter alia*, that the Appellant admitted the outstanding amount due to the Creditor and expressed its will to comply with its financial obligation, which, however, was not possible due to its current financial struggle. Furthermore, the FIFA DC was urged to take into consideration the occurrence of certain “exceptional circumstances” in this case, for instance the impossibility to pay within a given deadline due to ongoing exchange or financial restrictions imposed on the country, Finally, in its decision the FIFA DC was urged to take into consideration the principle of proportionality.
9. The members of the FIFA DC, after having confirmed its competence, emphasised that equal to the competence of any enforcement authority, it cannot review or modify as to the substance of the DRC Decision, which is final and binding and, thus, has become enforceable. It was furthermore stated that the Appellant was not found to have provided any evidence of how the political crisis and financial recession in Brazil had affected its capacity to comply with its financial obligations towards the Creditor, and it was stressed that, according to well-established jurisprudence of the CAS, a club’s financial difficulties or lack of financial means cannot be relied on to justify any non-compliance with an obligation. As the Appellant did not comply with the DRC Decision and is consequently withholding money from the Creditor, the Appellant was considered guilty under the terms of art. 64 of the FIFA Disciplinary Code (the “FDC”).
10. On account of its considerations, on 8 March 2019, the FIFA DC rendered its decision (the “Appealed Decision”) and decided, in particular, that:

1. *The [Appellant] is found to have infringed art. 64 of the FIFA Disciplinary Code as it is guilty of failing to comply with the decision passed by the Single Judge of the Sub-committee of the Dispute Resolution Chamber on 4 May 2018 according to which it was ordered to pay to the club LAC Córdoba (hereinafter, the Creditor):*

*USD 100,439.43 within 30 days of notification of the decision plus 5% interest p.a. on the said amount as from 7 February 2017 until the date of effective payment.*

2. *The [Appellant] is ordered to pay a fine to the amount of CHF 15,000. The fine is to be paid within 30 days of notification of the present decision. [...].*
3. *The [Appellant] is granted a final deadline of 30 days as from notification of the present decision in which to settle its debt to the Creditor.*
4. *If payment is not made to the Creditor and proof of payment is not provided to the secretariat to the FIFA Disciplinary Committee and to the [CBF] by this deadline:*
  - a) *six (6) point will be deducted automatically by the [CBF] without a further formal decision having to be taken nor any order to be issued by the FIFA Disciplinary Committee or its secretariat.*

*and*

*b) a ban from registering new players, either nationally or internationally, for one (1) entire registration period will be imposed on the [Appellant] as from the first day of the next registration period following the expiry of the granted deadline. Once the deadline has expired, the transfer ban will be implemented automatically at national and international level by the [CBF] and FIFA respectively, without a further formal decision having to be taken nor any order to be issued by the FIFA Disciplinary Committee or its secretariat. The transfer ban shall cover all men eleven-a-side teams of the [Appellant] – first team and youth categories –. The [Appellant] shall be able to register new players, either nationally or internationally, only from the next registration period following the complete serving of the transfer ban or upon the payment to the Creditor of the total outstanding amount, if this occurs before the full serving of the transfer ban. In particular, the [Appellant] may not make use of the exception and the provisional measures stipulated in article 6 of the Regulations of the Status and Transfer of Players in order to register players at an earlier stage.*

5. *If the [Appellant] still fails to pay the amount due to the Creditor even after the deduction of points in accordance with point 4 above, the FIFA Disciplinary Committee, upon request of the Creditor, will decide on a possible relegation of the Debtor's first team to the next lower division.*
6. *As a member of FIFA, the [CBF] is reminded of its duty to implement this decision and provide FIFA with proof that the points have been deducted in due course. If the [CBF] does not comply with the decision, the FIFA Disciplinary Committee will decide on appropriate sanctions on the member. This can lead to an expulsion from FIFA competitions.*
7. *The [Appellant] is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the [CBF] of every payment made and to provide the relevant proof of payment.*

8. *The Creditor is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the [CBF] of every payment received.*
11. On 17 April 2019, the grounds of the Appealed Decision were communicated to the Parties.

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

12. On 8 May 2019, the Appellant filed its Statement of Appeal in accordance with Articles R47 and R48 of the CAS Code of Sports-related Arbitration (the “CAS Code”) against the Appealed Decision rendered by the FIFA DC on 8 March 2018 and notified to the Appellant on 17 April 2019.
13. On 21 May 2019, the Parties were informed by the CAS Court Office that the President of the CAS Appeals Arbitration Division had decided to submit the present case to a sole arbitrator pursuant to Article R50 of the CAS Code.
14. Furthermore, and in accordance with Article R54 of the CAS Code, the Parties were informed that Mr Lars Hilliger, attorney-at-law in Copenhagen, Denmark, had been appointed as Sole Arbitrator.
15. On 22 May 2019, and following a granted extension of the time limit, the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code.
16. On 15 July 2019, the Respondent filed its Answer in accordance with Article R55 of the CAS Code.
17. By letter of 25 July 2019 from the CAS Court Office, and in line with the preference of the Parties, the Parties were informed that the Sole Arbitrator had decided not to hold a hearing in this matter and to render an award on the sole basis of the Parties’ written submissions.
18. The Parties both duly signed and returned the Order of Procedure, confirming inter alia the jurisdiction of CAS to hear this dispute and that their right to be heard had been fully respected during these proceedings.

### **IV. SUBMISSIONS OF THE PARTIES**

19. In its Appeal Brief, the Appellant requested the following relief:

*FIRST – To set aside the Appealed Decision;*

*SECOND – To refer the case back to the FIFA Disciplinary Committee for a new decision, in light of the grounds of the Appealed Decision;*

*THIRD – To order FIFA 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*

FOURTH – To order FIFA 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 the above is rejected:

FIFTH – To confirm that the double sanctions imposed on the Appellant in relation to the transfer ban and deduction of points and of fine are set aside;

SIXTH – To confirm that paragraph 2 of item III of the Appealed Decision shall be amended as follows:

“2. The Debtor is ordered to pay a fine of the amount of CHF 2,000. The fine is to be paid within 90 days of notification of the present decision. Payment can be made either in Swiss francs (CHF) to account no. [...].”

SEVENTH – To confirm that paragraph 4 of item III of the Appealed Decision shall be amended and be limited to the following:

“5. If payment is not made to the Creditor and proof of such payment is not provided to the secretariat to the FIFA Disciplinary Committee and to the Brazilian Football Association by this deadline two (2) points will be deducted automatically by the Brazilian Football association without a further formal decision having to be taken nor any order to be issued by the FIFA Disciplinary Committee or its secretariat”.

EIGHT – To order FIFA 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

NINTH – To order FIFA 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 for the Panel.

20. The Appellant's submissions, in essence, may be summarised as follows:

- FIFA is under a legal obligation to comply with its own Statutes and is not entitled to render decisions which eventually disrespect its own regulations.
- It follows from art. 94 of the FDC, *inter alia*, that the Parties to a case before FIFA are entitled to “*obtain a reasoned decision*”, which, pursuant to art. 115 par. 1 of the same Code, *inter alia*, means that the decision must contain “*the grounds of the decision*” and “*the provisions on which the decision was based*”.
- FIFA cannot impose sanctions without a proper legal regulatory basis, which also includes the need of predictability of the sanction imposed.
- Furthermore, FIFA is committed to respect all international recognised human rights and must strive to promote the protection of these rights and to promote good governance.
- Art. 64 of the FIFA Disciplinary Code contains a very wide range of sanctions to be imposed on a party found guilty of failing to fulfil its payment obligations, and the

Appellant accepts the discretion of the Disciplinary Committee to decide within this range.

- It is undisputed that the rules and regulations of FIFA do not establish within a clear manner the criteria to be taken into account by the members of, e.g., the Disciplinary Committee when imposing a fine on a party.
- In the Appealed Decision, the main criteria referred to in order to decide on the sanctions were (i) the circumstances of the matter at hand, (ii) the amount owed by the Appellant and (iii) the Committee's so-called established practice.
- However, it is not possible to affirm beyond a reasonable doubt whether the elements used by the FIFA DC as the main basis for the imposition of the sanctions on the Appellant are in accordance with the rules.
- For example, the Appealed Decision does not include information regarding any specific circumstance which was taken into consideration by the FIFA DC.
- Furthermore, it seems as if the FIFA DC aimed at creating a proportionality principle based on the amount owed. However, there are no rules for the basis of such comparison, and it must therefore be assumed that the Committee used a criterion which was never mentioned in the Appealed Decision.
- In any case, there is no proportionality in imposing a fine of CHF 15,000 in the case at stake.
- By not rendering a decision on the necessary grounds and within a predictable manner, the FIFA DC violated mandatory rules set out in the FIFA Statutes and the FIFA Disciplinary Code, as well as principles of Swiss law.
- Furthermore, it follows from art. 64 par. 3 of the FDC that "*if points are deducted, they shall be proportionate to the amount owed*".
- According to the Appealed Decision, the deduction of points was based on the "*Committee's well-established practice*", but the FIFA DC failed to provide any clear definition of such practice.
- Furthermore, the general practice of the FIFA DC is not available to the public.
- With reference to other available decisions of the FIFA DC, the deduction of six points in this case clearly ignores any premise of proportionality and has no legal grounds whatsoever.
- Furthermore, the deduction of points based on the Appealed Decision rendered by the FIFA DC will also breach the termed principle of "sporting merit", which theoretically should be the only factor considered whenever establishing the promotion or relegation of a football club at the end of a football season.

- In addition, the decision to impose two sanctions for the very same breach clearly violates the fundamental legal principle of *ne bis in idem*. For the sake of clarification, the fine imposed on the Appellant takes into account the fact that the Appellant failed to comply with the decision rendered by the FIFA DRC, while the deduction of six (6) points, as well as the transfer ban comes into effect only if the Appellant fails to pay the referenced outstanding amount after expiry of the 30-day grace period. Hence it seems quite obvious that the Appellant will be sanctioned twice because of the same breach, i.e. by a sort of second procedure within the FIFA DC.
- Furthermore, it is obvious that the intention of the FIFA legislator was not to grant the FIFA DC authority to impose a transfer ban together with other sanctions, but as an alternative. The provisions of FIFA must in any case be interpreted in accordance with the principle of *contra proferentem*.
- Finally, and with regard to the period of grace, the FIFA DC failed to provide any commentary and grounds in the Appealed Decision with regard to setting the period of grace to only 30 days, and the Committee furthermore failed to take into consideration the “exceptional circumstances” caused by the financial difficulties of the Appellant.

21. In its Answer, the Respondent requested the following relief:

- a. *To reject the Appellant's appeal in its entirety;*
- b. *To confirm the decision 190094 PST BRA ZH rendered by the FIFA Disciplinary Committee on 8 March 2019;*
- c. *To order the Appellant to bear all costs incurred with the present procedure and to cover all the legal expenses of FIFA related to the present procedure.*

22. The Respondent's submissions, in essence, may be summarised as follows:

- With regard to the Appellant's submission regarding the alleged non-compliance with the “predictable test” in the procedure, it must be noted that the CAS considers disciplinary provisions and proceedings of sports organisations to be in line with the principle of *nulla poena sine lege* if:
  - a) The relevant regulations and provisions emanate from duly authorised bodies;
  - b) The relevant regulations and provisions have been adopted in constitutionally proper ways;
  - c) The relevant regulations and provisions are not the product of an obscure process of accretion;
  - d) The relevant regulations and provisions are not mutually qualifying or contradictory;

- e) The relevant regulations and provisions are not able to be understood only on the basis of the de facto practice over the course of any years of a small group of insiders; and
- f) There is a clear connection between the incriminated behaviour and the sanction imposed.
- As points a-d above were never disputed by the Appellant, and since it must be considered that it was clear to the Appellant that failure to fulfil its financial obligations towards IAC Cordoba was wrong, that it was breaching the disciplinary regulations and that a sanction would therefore be imposed, all the points set out above have been met in the present case.
- Furthermore, it must be stressed that in order for the principles of predictability and legality to be respected, it is not necessary for the sanctioned stakeholder to know in advance the exact sanction that will be imposed.
- In a recent CAS award, it was deemed that the publications of decisions is not per se required in order for the FIFA DC to lawfully impose sanctions on clubs for violating art. 64 of the FDC.
- With regard to the alleged violation of good governance, no such violation was committed and the Appellant never demonstrated the existence of its allegation.
- The Appellant's right to be heard was always respected during the proceedings before FIFA.
- With regard to the Appellant's submissions regarding the legality of the points deduction threatened to be imposed, it must be noted that the result of a match or competition is not a value blindly protected by the *lex sportiva*, but is protected within the framework of applicable sports regulations. It is clear that the imposition of sporting sanctions on the Appellant for violating art. 64 FDC is perfectly justified and is fully compatible with the principles contained in the FIFA Regulations Governing the Application of the Statutes.
- In view of the above, it is clear that the FIFA DC did not violate the FIFA Statutes, the FDC nor any provisions of Swiss law since the system and procedure concerning the application of art. 64 of the FDC are solid and lawful.
- With regard to the sanction imposed on the Appellant, it must be recalled that anyone who fails to pay another person or a club or FIFA a sum of money in full or part, even though instructed to do so, will be sanctioned in accordance with art. 64, par. 1 of the FDC.
- The spirit of the said article is to enforce decisions comparable to judgments that have been rendered by a body of FIFA or by the CAS, and the possible sanctions stipulated in the article are designed to put the debtor under pressure to finally comply with the decision. Nonetheless, proceedings under art. 64 par. 1 are to be considered not as

enforcement but rather as the imposition of a sanction for breach of an association's regulations and under the terms of association law.

- Furthermore, it must be stressed that the FIFA DC is not allowed to analyse a case decided by the relevant body as to substance, but has been assigned with the sole task of analysing whether the debtor complied with the final and binding decision of the relevant body.
- In this case, it is clear and undisputed that the Appellant was ordered by a final and binding decision of the DRC to pay a sum of money to IAC Cordoba and FIFA and that the Appellant has not made such payment, not even partially, and it is also undisputed that the Appellant failed to enter into any payment plan regarding the said payment obligation. In these circumstances, the Appellant is in breach of art. 64 of the FDC.
- Furthermore, the sanctions imposed on the Appellant are proportionate, and the CAS may in any event 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.
- In line with CAS jurisprudence, a fine imposed on a club which is equal to fines imposed on other clubs for very similar violations, which is the case here, cannot be considered disproportionate.
- Furthermore, the sporting sanction is in line with the FIFA DC's longstanding practice, which has been repeatedly confirmed by the CAS and is only imposed in the event of persistent failure to comply. It is evident that a six (6) point deduction is to be considered an appropriate sanction in conformity with the practice of FIFA DC – and the CAS –, especially taking into account the outstanding amount that has been unlawfully withheld from IAC Cordoba.
- Moreover, the transfer ban under art. 64 of the FDC can be imposed in addition to other sanctions. In this regard, it must be noted that the principle of "*ne bis in idem*" does not prevent a judicial body from imposing multiple sanctions for the same violation, but only prevents a judicial body from imposing an additional sanction on the perpetrator for the same violation once he/she has already been sanctioned for such violation by the same judicial body.
- Finally, it must be stressed that the points-deduction and the transfer ban will only be imposed in case of continued non-compliance of the Appellant, hence such a gradual increase in the severity of sanctions imposed on the Appellant is not disproportionate.

## V. JURISDICTION

23. 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 as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.*

24. With respect to the Appealed Decision, the jurisdiction of the CAS derives from Article 58 of the FIFA Statutes and Article 64 of the FIFA Disciplinary Code. In addition, neither the Appellant nor the Respondent objected to the jurisdiction of the CAS, and both Parties confirmed the CAS jurisdiction when signing the Order of Procedure.
25. It follows that the CAS has jurisdiction to decide on the appeal of the Appealed Decision.

## **VI. ADMISSIBILITY**

26. 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.*

27. It follows from Article 58 of the FIFA Statutes that “*appeals 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 receipt of the decision in question*”.
28. The grounds of the Appealed Decision were notified to the Appellant on 17 April 2019, and the Appellant’s Statement of Appeal was lodged on 8 May 2019, i.e. within the statutory time limit of 21 days set forth in Article R49 of the CAS Code, which is not disputed. Furthermore, the Statement of Appeal and the Appeal Brief complied with all the requirements of Articles R48 and R51 of the CAS Code.
29. It follows that the appeal is admissible.

## **VII. APPLICABLE LAW**

30. Article R58 of the Code provides as follows:

*The Panel shall decide the dispute according to the applicable regulations and 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.*

31. Article 57(2) of the FIFA Statutes determines 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.*

32. Despite the Respondent's submission that it is the Appellant's position that only Swiss law will apply, the Sole Arbitrator finds that the Parties agree that the applicable regulations in these proceedings for the purpose of Article 58 of the CAS Code are the rules and regulations of FIFA and, additionally, Swiss law since the present appeal is directed against a decision issued by the FIFA DC applying the rules and regulations of the same.
33. Furthermore, Article R58 of the CAS Code does not admit any derogation from applicable sports regulations and imposes a hierarchy of norms in matters of substantive laws, given that the parties are not allowed to oust the relevant applicable sports regulations, but only complement them by choosing a law that will apply subsidiarily to those regulations.
34. Based on the above, and with reference to the filed submissions, the Sole Arbitrator is satisfied that the various regulations of FIFA are primarily applicable, in particular the FIFA FDC (2018-edition), and subsidiarily Swiss law should the need arise to fill a possible gap in the various regulations of FIFA.
35. For the sake of completion and with regard to the Appellant's submission regarding the specificity of sport and the application of the TFEU, the Sole Arbitrator finds that the Appellant has failed to prove why and how this could be applicable to and/or of any relevance for this particular case.

## VIII. MERITS

36. Initially, the Sole Arbitrator notes that the DRC Decision of 4 May 2018 is undisputed by the Parties, according to which, *inter alia*:

*"[...] The Respondent, Cruzeiro EC, has to pay to the Claimant, within 30 days as from the date of notification of this decision, the amount of USD 100,439.43 plus 5% interest p.a. on the said amount as from 7 February 2017 until the date of effective payment.*

*In the event that the aforementioned sum plus interest is not paid by the Respondent within the stated time limit, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.*

*Any further claim lodged by the Claimant is rejected.*

*The final costs of the proceedings in the amount of CHF 15,000 are to be paid by the Respondent, within 30 days of notification of the present decision as follows:*

*The amount of CHF 12,000 has to be paid to FIFA [...].*

*The amount of CHF 3,000 has to be paid to the Claimant [...]".*

37. It is further undisputed that the Appellant never paid any of these amounts, either in full or in part, as it is also undisputed that the Appellant never entered into a payment plan with either the Claimant, IAC Cordoba, or FIFA.
38. Based on the foregoing, on 8 March 2019, the FIFA DC rendered the Appealed Decision and decided, in particular, that:
  - “1. *The [Appellant] is found to have infringed art. 64 of the FIFA Disciplinary Code as it is guilty of failing to comply with the decision passed by the Single Judge of the Sub-committee of the Dispute Resolution Chamber on 4 May 2018 according to which it was ordered to pay to the club LAC Córdoba (hereinafter, the Creditor):*  
*USD 100,439.43 within 30 days of notification of the decision plus 5% interest p.a. on the said amount as from 7 February 2017 until the date of effective payment.*
  2. *The [Appellant] is ordered to pay a fine to the amount of CHF 15,000. The fine is to be paid within 30 days of notification of the present decision. [...].*
  3. *The [Appellant] is granted a final deadline of 30 days as from notification of the present decision in which to settle its debt to the Creditor.*
  4. *If payment is not made to the Creditor and proof of payment is not provided to the secretariat to the FIFA Disciplinary Committee and to the [CBF] by this deadline:*
    - a) *six (6) point will be deducted automatically by the [CBF] without a further formal decision having to be taken nor any order to be issued by the FIFA Disciplinary Committee or its secretariat.*  
*and*  
*b) a ban from registering new players, either nationally or internationally, for one (1) entire registration period will be imposed on the [Appellant] as from the first day of the next registration period following the expiry of the granted deadline. Once the deadline has expired, the transfer ban will be implemented automatically at national and international level by the [CBF] and FIFA respectively, without a further formal decision having to be taken nor any order to be issued by the FIFA Disciplinary Committee or its secretariat. The transfer ban shall cover all men eleven-a-side teams of the [Appellant] – first team and youth categories -. The [Appellant] shall be able to register new players, either nationally or internationally, only from the next registration period following the complete serving of the transfer ban or upon the payment to the Creditor of the total outstanding amount, if this occurs before the full serving of the transfer ban. In particular, the [Appellant] may not make use of the exception and the provisional measures stipulated in article 6 of the Regulations of the Status and Transfer of Players in order to register players at an earlier stage.*
  5. *If the [Appellant] still fails to pay the amount due to the Creditor even after the deduction of points in accordance with point 4 above, the FIFA Disciplinary Committee, upon request of the Creditor, will decide on a possible relegation of the Debtor's first team to the next lower division.*

6. As a member of FIFA, the [CBF] is reminded of its duty to implement this decision and provide FIFA with proof that the points have been deducted in due course. If the [CBF] does not comply with the decision, the FIFA Disciplinary Committee will decide on appropriate sanctions on the member. This can lead to an expulsion from FIFA competitions.
7. The [Appellant] is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the [CBF] of every payment made and to provide the relevant proof of payment.
8. The Creditor is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the [CBF] of every payment received. “
39. In relation to this, a number of issues have been raised by the Appellant. In essence, the Appellant submits that the FIFA DC failed to take into consideration mandatory principles set out in, *inter alia*, the FIFA Disciplinary Code and, in particular, Swiss law, and that the FIFA DC also failed to take into consideration the circumstances of this particular case, which led to the impositions of disproportionate sanctions on the Appellant.
40. Thus, the main issues to be resolved by the Sole Arbitrator are:

**Did the Respondent comply with the applicable rules and regulations during the process, and do the imposed sanctions have the necessary legal basis and proportionality?**

41. Art. 64 of the FIFA Disciplinary Code (2018-edition) states, *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 decision ordered. A transfer ban may also be pronounced.

[...]

3. If points are deducted, they shall be proportionate to the amount owed”.

42. Furthermore, art. 15 par. 2 of the same Code states as follows:

“The fine shall not be less than CHF 300, or in the case of a competition subject to an age limit not less than CHF 200, and not more than CHF 1,000,000”.

43. The Sole Arbitrator initially notes that the FIFA DC is not allowed to analyse a case decided by the relevant body as to substance, but has been assigned with the sole task of analysing whether the debtor complied with a final and binding decision.
44. In the case under review, it can be regarded as undisputed that the Appellant has failed to pay a sum of money to another club, even though instructed to do so by the FIFA DRC, for which reason the basic conditions for applying art. 64 of the FDC have been met.
45. However, the Appellant submits in essence that, by not rendering a decision with the necessary grounds and in a predictable manner, the FIFA DC violated mandatory rules set out, *inter alia*, in the FIFA Statutes and the FDC as well as in the principles of Swiss law. Furthermore, the potential deduction of six points and the imposition of a transfer ban in this matter clearly ignore any premise of proportionality and have no legal grounds whatsoever, and the Disciplinary Committee furthermore failed to take into consideration the circumstances of this particular case.
46. With regard to the alleged non-compliance with the “predictable test”, the Sole Arbitrator initially notes that according to the principle of the association’s autonomy, the existence of which has been confirmed by CAS jurisprudence (CAS 2008/A/1583; CAS 2008/A/1584) under Swiss law, the right of associations to impose sanctions or disciplinary measures on clubs is not the exercise of a power delegated by the State, rather it is the expression of the freedom of associations and federations to regulate themselves. Indeed, when passing a decision, the FIFA disciplinary proceedings are meant to protect the essential objectives of FIFA, such as taking all appropriate steps to prevent infringements of the Statutes, regulations or decisions of FIFA or of the Laws of the Game (art. 2 of the FIFA Statutes).
47. There is, indeed, general consensus that certain contents of the principle of *nulla poena sine lege* are also applicable to disciplinary provisions and proceedings in the context of sports organisations. The CAS, in particular, has adopted certain contents of this principle with regard to disciplinary proceedings and regulations of sports organisations by establishing a so-called “predictability test”.
48. The Sole Arbitrator agrees with FIFA that disciplinary provisions and proceedings of FIFA must be considered to be in line with the principle of *nulla poena sine lege* if:
  - The relevant regulations and provisions emanate from duly authorised bodies.
  - The relevant regulations and provisions have been adopted in constitutionally proper ways.
  - The relevant regulations and provisions are not the product of an obscure process of accretion.
  - The relevant regulations and provisions are not mutually qualifying or contradictory.
  - The relevant regulations and provisions are not able to be understood only on the basis of the de facto practice over the course of many years of a small group of insiders.

- There is a clear connection between the incriminated behavior and the sanction imposed.
49. In the matter at stake, the Appellant never disputed that the FDC emanates from a duly authorised body and was adopted in a fair manner and in a transparent way complying with the rules of the association (Arts. 60 et seq. of the Swiss Civil Code). Nor has the Appellant claimed that the FDC cannot be understood generally or that such rules are contradictory.
50. In the opinion of the Sole Arbitrator, it must have been clear to the Appellant that it was not fulfilling its financial obligations towards IAC Cordoba, thus breaching the disciplinary regulations, and that an appropriate sanction would therefore be imposed.
51. In order for the principles of predictability and legality to be respected, it is not necessary for the sanctioned stakeholder to know in advance the exact sanction that will be imposed. On the contrary, the Sole Arbitrator agrees with a former Panel, which has clearly explained that *“Such fundamental principles are satisfied whenever the disciplinary rules have been properly adopted, describe the infringement and provide, directly or by reference, for the relevant sanction. The fact that the competent body applying the FIFA DC has the discretion to adjust the sanction mentioned in the rules deemed applicable to the individual behavior of a player breaching such rules is not inconsistent with those principles”* (CAS 2014/A/3665, 3666 & 3667).
52. Furthermore, it is worth noting that the Swiss Federal Supreme Court has deemed as lawful the system of sanctions used by the Respondent in the event of non-compliance with its decisions or those of the CAS, which have been applied in the present case (decision of the Swiss Federal Supreme Court dated 5 January 2007, 4P.240/2006).
53. The Sole Arbitrator finds in this connection that a decision cannot be required to contain an elaborate list of all deliberations made by the legal body when deciding on sanctions as long as the sanctions fall within an appropriate and predictable framework and it is possible to establish with sufficient certainty the considerations and deliberations providing the basis for the decision and the sanctions imposed.
54. Therefore, in view of the foregoing, the Sole Arbitrator finds that the FIFA DC has not violated the FIFA Statutes, the FIFA Disciplinary Code or any provisions of Swiss law since the system and procedure concerning the application of art. 64 of the FDC is solid and lawful.
55. With regard to the disproportionality of sanctions imposed on the Appellant, the Sole Arbitrator agrees with the Respondent's position that the CAS may 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, i.e. only in cases in which the FIFA judicial body concerned must be held to have acted arbitrarily (cf. RIEMER H. M., Berner Kommentar, Art. 60-79 ZGB, no 230 on art. 70). This is, however, 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 (CAS 2014/A/3562).

56. The FIFA disciplinary authorities always adopt a case-by-case approach and analyse and take into account all the specific circumstances of each case as foreseen under art. 39 par. 4 of the FDC and as confirmed by the CAS: “*similar cases must be treated similarly, but dissimilar cases could be treated differently*” (cf. CAS 2012/A/2750).
57. In connection with decisions on sanctions to be imposed, it is essential to mention by way of explanation that imposing financial sanctions above a certain limit would be counter-productive. Indeed, it must be underlined that it is not the intention of the FIFA DC or the logic behind art. 64 of the FDC to impose sanctions that engender additional financial difficulties for the debtor which might compromise the payment of the outstanding amount due to another football stakeholder subject to enforcement.
58. In this sense, and in line with the above-mentioned general considerations, the Sole Arbitrator takes into account the fact that when deciding upon the possible sanctions to be imposed *in casu*, the FIFA DC always takes into consideration the outstanding amount due and decides in line with the longstanding jurisprudence of the FDC, which has been repeatedly confirmed by the CAS (cf. *inter alia* CAS 2012/A/2730).
59. In this case, the outstanding amounts owed by the Appellant are USD 100,439.43 plus interest, CHF 3,000 (due to IAC Cordoba) and CHF 12,000 (due to FIFA).
60. As a consequence, the FIFA DC considered that, in the present case, a fine in the amount of CHF 15,000 would be appropriate and proportionate in the light of the amount of the outstanding debt. The purpose of the fine is to serve as a deterrent to parties who do not wish to comply with decisions of, amongst others, the FIFA bodies (CAS 2010/A/2148).
61. Based on the evidence of the case and the FIFA jurisprudence submitted by FIFA during these proceedings, the Sole Arbitrator finds himself convinced that the Appealed Decision was passed in accordance with the overriding principle of proportionality as well as in line with the FIFA DC’s longstanding practice, although the existence of other decisions that provide otherwise cannot be denied.
62. In the light of these circumstances alone, the Sole Arbitrator finds no grounds for granting the request made by the Appellant during these proceedings to be permitted access to the database of the decisions rendered by the FIFA DC.
63. With regard to the period of grace granted to the Appellant, the Sole Arbitrator recalls that the FIFA DC’s margin of discretion foreseen under art. 39 par. 1 of the FDC refers not only to the imposition of the pertinent fines and points to be deducted and transfer bans to be pronounced, but also to the establishment of the conditions under which such sanctions are to be served. Undeniably, the final period of grace that the FIFA DC may grant in accordance with art. 64 par. 1(b), of the FDC falls within such scope of discretion and, therefore, the imposition of a 30-day deadline also demonstrates the case-by-case analysis that was carried out in this case and the proportionality of the disciplinary measures imposed.

64. Furthermore, the Sole Arbitrator would like to point out that the Appellant has had knowledge of IAC Cordoba's claim since at least May 2018, but that the Appellant – during this period of time –neither paid the outstanding amount nor made any attempt to negotiate a payment plan in this regard.
65. With regard to the potential imposition of the six-point deduction from the Appellant in case of its continued failure to pay the outstanding amount due within the period of grace, the Sole Arbitrator stated already that such sanction was imposed by taking into account the outstanding amount due. This has indeed been the longstanding practice of the FIFA DC and is in accordance with the FDC.
66. The Sole Arbitrator agrees with FIFA that, in the present case, a six-point deduction is to be considered an appropriate sanction in line with the FIFA DC's longstanding practice, especially taking into account the outstanding amount that has been unlawfully withheld from the IAC Cordoba.
67. With regard to the Appellant's argument concerning the legality of the points deduction threatened to be imposed, the Sole Arbitrator agrees with FIFA that the imposition of sporting sanctions on the Appellant for violating art. 64 of the FDC is perfectly justified and fully compatible with the principles contained in the FIFA Regulations Governing the Applications of the Statutes, according to which a club's entitlement to take part in a domestic league championship must depend principally on sporting merits.
68. With regard to the potential imposition of a ban from transferring new players, either nationally or internationally, for one (1) entire registration period, the Sole Arbitrator agrees with FIFA that the transfer ban can be imposed in addition to other sanctions in accordance with art. 64 of the FDC. The principle of "*ne bis in idem*" does not prevent the FIFA DC from imposing a transfer ban in addition to the imposition of a points deduction sanction for the same violation, naturally only if there is a valid legal basis for doing so under the provision concerned, which the Sole Arbitrator finds is the case here.
69. Finally, the Sole Arbitrator would like to underline that the CAS has regularly confirmed the legality and proportionality of the enforcement system created by the FIFA and the sanctions related thereto, in particular the deduction of points. In this sense, it should be noted that the CAS has regularly confirmed that the wording of art. 64 of FDC provides for a clear statutory basis and precisely reflects the principle of proportionality (cf. *inter alia* CAS 2005/A/944; CAS 2011/A/2646; CAS 2012/A/3032).
70. The Sole Arbitrator finds that the possible deduction of points and the imposition of a transfer ban for one entire registration period are not the most severe sanction the FIFA can impose on its stakeholders, but he agrees that relevant sporting and financial consequences may arise from its implementation. However, the Appellant can avoid the imposition of the points deduction sanction by paying the debt owed, given that such sanction will only apply once the final deadline of 30 days granted in the Appealed Decision has elapsed.

71. Furthermore, the Sole Arbitrator finds that the political and financial situation of Brazil and/or the financial difficulties of the Appellant do not constitute exceptional circumstances which, in the matter at hand, could justify less severe sanctions.
72. In conclusion, the Sole Arbitrator finds that the disciplinary measures imposed by the FIFA DC in the Appealed Decision have been proven to be proportionate to the offence committed and, what is more, they were imposed in compliance with the FDC and the FIFA DC's longstanding jurisprudence, for which reason all arguments brought forward by the Appellant as regards the proportionality of the Appealed Decision are rejected.
73. In conclusion, therefore, the Sole Arbitrator finds that FIFA complied with the applicable rules and regulations during the proceedings, that FIFA did not breach any human rights and that the sanctions imposed on the Appellant pursuant to the Appealed Decision have the necessary legal basis and proportionality.

## ON THESE GROUNDS

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

1. The appeal filed by Cruzeiro Esporte Clube against the decision rendered by the Disciplinary Committee of FIFA on 8 March 2019 is dismissed.
2. The decision rendered by the Disciplinary Committee of FIFA on 8 March 2019 is upheld.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.