Arbitration CAS 2017/A/5274 Mersin Idman Yurdu SK v. Milan Stepanov & Fédération Internationale de Football Association (FIFA), award of 2 March 2018

Panel: Mr Manfred Nan (The Netherlands), President; Mr Stuart McInnes (United Kingdom); Mr Edward Canty (United Kingdom)

Football
Sanction imposed by the FIFA DC for failure to comply with a FIFA decision
Proportionality of the sanction
Scope of CAS power to interfere with a sanction imposed by a disciplinary body

1. **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. A fine of approximately 2,7% of the debtor's total debt *vis-à-vis* the creditor is not disproportionally high.**

2. **The measure of the sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rules can be reviewed only when the sanction is evidently and grossly disproportionate to the offence.**

I. PARTIES

1. 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 Milan Stepanov (the "First Respondent" or the "Player") is a professional football player of Serbian 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 information is given 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 23 July 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 counterclaim of the* [Club] *is rejected.*
>
> *3. The* [Club] *has to pay to the* [Player*], within 30 days as from the date of notification of this decision, outstanding remuneration in the amounts of EUR 270,000 and Serbian Dinar (RSD) 78,577 plus 5% interest p.a. until the date of effective payment* […].
>
> *4. The* [Club] *has to pay to the* [Player], *within 30 days as from the date of notification of this decision, compensation for breach of contract in the amount of EUR 650,000 plus 5% interest p.a. as from 15 August 2013 until the date of effective payment.*
>
> *5. In the event that the amounts due to the* [Player] *are not paid by the* [Club] *within the stated time limits, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.*
>
> […]*".*

6. On 26 October 2015, upon the Club's request, the grounds of the FIFA DRC Decision were communicated to the parties.

7. On 13 November 2015, the Club lodged an appeal against the FIFA DRC Decision with the Court of Arbitration for Sport ("CAS"). A procedure was thus opened by the CAS Court Office under the reference CAS 2015/A/4281 Mersin Idman Yurdu Spor Kulübü v. Milan Stepanov.

8. On 19 February 2016, CAS rendered a Termination Order in the procedure CAS 2015/A/4281 Mersin Idman Yurdu Spor Kulübü v. Milan Stepanov because the Club failed to pay the advance of costs.

9. On 15 March 2016, 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 with his bank details. The Player requested FIFA to open disciplinary proceedings and impose disciplinary sanctions on the Club.

10. On 22 April 2016, FIFA urged the Club to immediately pay the relevant amount to the Player and to provide FIFA with a copy of the payment receipt by 2 May 2016 at the latest, failing which the entire file would be forwarded to the FIFA Disciplinary Committee (the "FIFA DC").

11. On 4 May 2016, 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 DC.

12. On 12 May 2016, FIFA informed the Player and the Club that the entire file would be forwarded to the FIFA DC for consideration and a formal decision.

B. Proceedings before the FIFA Disciplinary Committee

13. On 19 December 2016, the secretariat to the FIFA DC opened disciplinary proceedings against the Club because it had allegedly failed to comply with the FIFA DRC Decision, thereby violating Article 64 FIFA Disciplinary Code. The Club was informed that, if it would pay the outstanding amount immediately and send FIFA copies of proof of payment, the disciplinary proceedings would be closed.

14. On 6 February 2017, the secretariat to the FIFA DC informed the Club that the case would be submitted to the FIFA DC for evaluation on 15 March 2017. The Club was also informed that, should it pay the outstanding amounts by 3 March 2017, the proceedings would be closed.

15. The Club did not respond to the letters of the secretariat to the FIFA DC.

16. On 15 March 2017, the FIFA DC issued its decision (the "Appealed Decision), notified to the parties on 20 March 2017, 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 60 days of notification of the present decision.* […].
>
> *3. The* [Club] *is granted a final period of grace of 60 days as from 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] *has 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 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 2 above.*

8. The [Player] *is directed to notify the secretariat to the FIFA Disciplinary Committee of every payment received".*

17. On 27 March 2017, the Club requested the grounds of the Appealed Decision.

18. On 18 July 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* [*i.e.* the FIFA Disciplinary Code]*):*
  - *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 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 26 October 2015 to the* [Club]. *Moreover, even though an appeal was lodged against such decision before CAS, the latter rendered a termination order on 19 February 2016. 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 amounts 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 amounts 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 60 days as appropriate for the amounts 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

19. On 8 August 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.

20. On 18 August 2017, the Player and FIFA jointly nominated Mr Edward Canty, Solicitor in Manchester, United Kingdom. Further, the Player and FIFA informed the CAS Court Office that the Appellant's request for a stay is moot and the Player requested that the Club be ordered to make a security deposit.

21. On 18 August 2017, the Club filed its Appeal Brief, pursuant to Article R51 of the CAS Code, requesting *"CAS to take the Statement of Appeal as Appeal Brief"*. The Club challenged the Appealed Decision, submitting the following requests for relief:

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

2- Annulment of the decision given by the FIFA Disciplinary Committee.

3- An establishment that the costs of the arbitration procedure and legal expenses shall be borne by the Respondents".

22. On 23 August 2017, FIFA informed the CAS Court Office that it leaves it to the CAS to decide whether the Club should be ordered to make a security deposit as requested by the Player. The Club failed to submit its position on this issue.

23. On 30 August 2017, the CAS Court Office provided the parties with a copy of a decision rendered by CAS in an unrelated matter 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.

24. On 7 September 2017, the Club informed the CAS Court Office that it maintained its request for a stay of execution of the Appealed Decision.

25. On 29 September 2017, the President of the CAS Appeals Arbitration Division issued an Order on the Request for the Stay, by which both the Appellant's request for a stay and the Player's request that the Club be ordered to make a security deposit were dismissed.

26. On 9 October 2017, the Player filed its Answer, pursuant to Article R55 of the CAS Code, submitting the following requests for relief

"1. The Appellant's appeal dated 4 (statement of appeal) and 18 August 2017 (appeal brief) shall be rejected in its entirety;

2. The Appellant shall bear all the costs of the present arbitration procedure and he shall bear as well all legal expenses of the First Respondent (plus 8% value-added tax) related to the present arbitration procedure".

27. On 12 October 2017, FIFA filed its Answer, pursuant to Article R55 of the CAS Code, submitting 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".

28. On 13 and 17 October 2017 respectively, upon being invited to express their position, the Player, FIFA and the Club informed the CAS Court Office that they did not consider a hearing necessary, requesting for an award to be rendered on the sole basis of the parties' written submissions.

29. On 18 October 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 Manfred Nan, Attorney-at-Law in Arnhem, the Netherlands, as President;
- Mr Stuart C McInnes, Solicitor in London, United Kingdom; and
- Mr Edward Canty, Solicitor in Manchester, United Kingdom, as arbitrators.

30. On 9 November 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.

31. On 14, 15 and 20 November 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.

32. 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.

IV. SUBMISSIONS OF THE PARTIES

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

- *"The Appellant was not given enough opportunity to defend itself in front of FIFA DC,*
- *The decision of FIFA DC was not completely in line with the provisions and well-established jurisprudence,*
- *The fine of 30.000 CHF imposed upon the Appellant is excessive".*

34. The Player's submissions, in essence, may be summarised as follows:

- The Club did not substantiate its appeal in violation of Article R51 of the CAS Code;
- The Club was granted enough opportunity to defend itself in front of the FIFA DC, but the Club did not use it;
- Finally, the fine imposed on the Club by the FIFA DC is *"entirely appropriate"*, adding that the Appealed Decision is *"completely in line with the provisions and well-established jurisprudence"*.

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

- The spirit of Article 64 of the FIFA Disciplinary Code is to enforce decisions that had been rendered by a body, a committee or an instance of FIFA or CAS in a subsequent appeal decision, which are final and binding. This article provides FIFA with a legal tool ensuring to a certain extent that decisions passed by the relevant authority within FIFA (or CAS following an appeal) are respected and that the rights of players or clubs be guarded. 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 DC, in line with the competence of any "enforcement authority", cannot review or modify the substance of a previous decision.

- If the FIFA DC 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 failing to comply with a final and binding decision, and will grant the debtor a final period of grace in which to settle its debt to the creditor and/or FIFA.
- In the present case it is clear and uncontested 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 on 22 April 2016 and 12 May 2016, and the secretariat to the FIFA DC on 6 February 2017, to which the Club failed to respond. The Club thereby not only blatantly disrespected a final and binding decision of the FIFA DRC, but although it had ample opportunity to defend itself, 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 limits itself to challenge in a couple of sentences the sanction imposed on it.
- 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 DC is refrained 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 subject to enforcement.
- In this regard, FIFA considers a fine in the amount of CHF 30,000 to be appropriate and proportionate in the light of the debt of EUR 270,000 and RSD 78,577 plus 5% interest *p.a.* to be calculated in accordance with the FIFA DRC decision, and EUR 650,000 plus 5% interest *p.a.* as from 15 August 2013 until the date of effective payment. A meagre fine would contradict the principle of repression and prevention and would fail to encourage the prompt fulfilment of obligations. In fact, FIFA purports that a fine of CHF 30,000 is actually on the lower end of the scale, underlining that the Club has failed to prove that this fine would be excessive.
- FIFA highlights that the fine imposed on the Club is in compliance with the principle of proportionality and in line with the FIFA DC'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. The sporting sanction will only be imposed if the Club persists in its failure to comply with the FIFA DRC Decision.

- Finally, FIFA maintains that the Club engaged in dilatory conduct in the present proceedings as well as in several other proceedings held before CAS. FIFA indicates that it believes that the Club used the proceedings before the judicial bodies of FIFA and before CAS with the sole intention to postpone 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 refers to seven other CAS proceedings in this respect. FIFA also finds that in the present case, the Club filed an extremely short and inconsistent submission, which reflects the complete lack of respect towards the Player, FIFA and CAS. FIFA requests that the Panel take this reproachable behaviour of the Club into account.

V. JURISDICTION

36. 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.

37. 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".

38. 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 DC before CAS. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by all parties.

39. It follows that CAS has jurisdiction to decide on the present dispute.

VI. ADMISSIBILITY

40. 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. The appeal brief was also filed within the time limit stipulated by Article R51 of the CAS Code.

41. It follows that the appeal is admissible.

VII. APPLICABLE LAW

42. The Club argued that *"pursuant to the article 58 of the [CAS Code], in the absence of any choice of law, the Panel shall decide according to the law of the country in which the federation has issued the challenged decision. As the decision was made by the FIFA, the Swiss law shall be applied"*.

43. The Player did not make any submissions in respect of the applicable law.

44. 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.

45. 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision"*.

46. 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"*.

47. 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, and subsidiarily, Swiss law, should the need arise to fill a possible gap in the various regulations of FIFA.

VIII. MERITS

A. The Main Issues

48. The main issues to be resolved by the Panel are:

i. Is there a legal basis for the FIFA DC to impose a disciplinary sanction on the Club?

ii. If there is a legal basis, is the disciplinary sanction imposed on the Club by the FIFA DC disproportionate?

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

49. 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;

[…]".

50. The Panel observes that the Club's primary request for relief is for CAS *"*[t]*o cancel the decision of FIFA DC in total"*, because it *"was not given enough opportunity to defend itself in front of FIFA DC"* and that *"the decision of FIFA DC was not completely in line with the provisions and well-established jurisprudence"*.

51. Insofar as the Club argues that its right to be heard was not respected in the proceedings before the FIFA DC by submitting that it *"was not given enough opportunity to defend itself in front of FIFA DC"*, this argument must be dismissed as the Club failed to substantiate its argument, and even failed to attempt to explain why it could not defend itself in front of the FIFA DC. Moreover, the Panel notes that the Club was duly informed by FIFA on several occasions, not only regarding the opening of the proceedings at the FIFA DC but also during the proceedings at the FIFA DC, and as such, had full opportunity to defend its case, but failed to do so.

52. In any event, such alleged violation of the Club's right to be heard can be cured by the *de novo* competence of CAS.

53. 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).

54. The Club also maintains that *"the decision of FIFA DC was not completely in line with the provisions and well-established jurisprudence"*. The Panel notes firstly that the Club failed to submit any argument or case-law corroborating the proposition that the Appealed Decision is not in compliance with 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 deduction of points or relegation is certainly more severe than a fine of CHF 30,000. Indeed, the imposition of a fine is only the first mandatory measure to be taken before more severe measures can be effectuated. As such, the Panel has no hesitation to consider the Appealed Decision to be in compliance with Article 64 FIFA Disciplinary Code.

55. 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.

56. 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) FIFA Disciplinary Code and that the disciplinary measures contemplated in such provision could be imposed on the Club, including the fine.

57. Consequently, the Panel finds that there was a legal basis for the FIFA DC to impose a disciplinary sanction on the Club.

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

58. The Panel observes that the Club argues that the fine of CHF 30,000 is excessive, whereas the Player and FIFA maintain that the fine is justified.

59. The Panel notes, that pursuant to Article 15(2) FIFA Disciplinary Code, a fine imposed by the FIFA DC 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.

60. Notwithstanding the above, fines within these parameters may be disproportionate subject to the particular circumstances of the case.

61. 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).

62. Furthermore, the Panel observes that it is consistent jurisprudence of CAS that CAS panels shall give a certain deference to decisions of sports governing bodies in respect of the proportionality of sanctions:

"In this latter respect, this Panel agrees with the CAS jurisprudence under which the measure of the sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rules can be reviewed only when the sanction is evidently and grossly disproportionate to the offence (see e. g. the awards of: 24 March 2005, CAS 2004/A/690, § 86; 15 July 2007, CAS 2005/A/830, § 10.26; 26 June 2007, 2006/A/1175, § 90; and the advisory opinion of 21 April 2006, CAS 2005/C/976 & 986, § 143)" (CAS 2009/A/1817 & 1844).

63. The Panel fully adheres to this consistent jurisprudence and finds that the fine imposed by the FIFA DC in the Appealed Decision can only be reviewed if it is considered to be evidently and grossly disproportionate to the offence.

64. The Panel will therefore examine whether it considers the fine of CHF 30,000 to be excessive in the sense that it is evidently and grossly disproportionate.

65. 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 920,000 and RSD 78,577, plus 5% interest p.a. as from the dates mentioned in the FIFA DRC decision, until the date of effective payment, the Panel does not find a fine of CHF 30,000 to be disproportionally 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 and pay him an amount of EUR 920,000 and RSD 78,577, plus a significant percentage of interest that has accrued for more than four years already. Indeed, the fine only amounts to approximately 2,7% of the Club's total debt vis-à-vis the Player.

66. Furthermore, the Panel notes that the Club's position that the fine is excessive, remained entirely unsubstantiated by any evidence.

67. Although FIFA did not prove that it ever imposed higher fines than CHF 30,000, it did prove that the FIFA DC imposed fines of CHF 30,000 in at least five other decisions. In these five decisions exhibited to FIFA's Answer, the clubs in question had debts in the range between EUR 712,500 and EUR 1,900,000, which outstanding debts are therefore comparable to the debt of EUR 920,000 in the matter at hand.

68. 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 DC.

69. 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, should the Club indeed fail to comply with the FIFA DRC Decision in the future.

70. Consequently, the Panel finds that the disciplinary sanction imposed on the Club by the FIFA DC is not (evidently and grossly) disproportionate to the offence and is therefore confirmed.

B. Conclusion

71. Based on the foregoing, the Panel holds that:

    i. There is a legal basis for the FIFA DC to impose a disciplinary sanction on the Club.

    ii. The disciplinary sanction imposed on the Club by the FIFA DC is not disproportionate.

72. 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 8 August 2017 by Mersin Idman Yurdu Spor Kulübü against the decision issued on 15 March 2017 by the Disciplinary Committee of the Fédération Internationale de Football Association is dismissed.

2. The decision issued on 15 March 2017 by the Disciplinary Committee of the Fédération Internationale de Football Association is confirmed.

(…)

5. All other and further motions or prayers for relief are dismissed.