



Arbitration CAS 2013/A/3358 Mersin Idman Yurdu Club v. Fédération Internationale de Football Association (FIFA), award of 25 April 2014

Panel: Prof. Petros Mavroidis (Greece), Sole Arbitrator

Football

Disciplinary sanction for failure to comply with a FIFA decision

Revision

Object of the appeal

Validity of the enforcement mechanisms of FIFA to implement decisions

Proportionality of the sanction

Justification for the failure to satisfy an obligation of payment

1. Any decision, which is binding on the arbitral tribunal, is open to revision. A party may request the revision of a final and binding decision if it becomes aware of relevant facts or conclusive evidence of which it had no knowledge in the previous proceedings. An application for revision must be filed within 90 days following the discovery of the grounds for revision.
2. The object of an appeal with the CAS against disciplinary sanctions imposed for failing to comply with a decision that has become final and binding, cannot extend beyond the limits of a review of said sanctions. In the absence of a ground for revision, the reasons of the decision that has become final and binding are not open for consideration by the CAS panel.
3. Sanctions issued by an association such as FIFA in conformity with its statutes and regulations are not in conflict with the State monopoly to enforce monetary judgments (“Zwangsmonopol des Staates”). The Swiss Federal Tribunal has ratified the validity of the enforcement mechanisms of FIFA to implement final decisions delivered by its own organs or by the CAS against its direct or indirect members.
4. In disciplinary matters, each situation must be evaluated on a case-by-case basis and interests at stake have to be balanced in respect of the principle of proportionality. Account must be taken of the seriousness of the facts and other related circumstances as well as of the damage that the penalised conduct entails for the parties involved, for the federation in question and for its sport. In the same way, the disciplinary bodies may evaluate any aggravating and/or extenuating circumstances that might be related to the infringement.
5. Lack of financial means to satisfy an obligation of payment, or risk of bankruptcy, does not excuse the failure to make the required payment.

I. PARTIES

1. Club Mersin Idman Yurdu (the “Appellant” or “Club Mersin”) is a football club with its registered office in Mersin, Turkey. It is a member of the Turkish Football Federation (Türkiye Futbol Federasyonu, hereinafter “TFF”), itself affiliated to the Fédération Internationale de Football Association since 1923.
2. The Fédération Internationale de Football Association (the “Respondent” or “FIFA”) is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the governing body of international football at worldwide level. It exercises regulatory, supervisory and disciplinary functions over continental confederations, national associations, clubs, officials and players worldwide.

II. FACTUAL BACKGROUND

A. Background facts

1. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions, pleadings and evidence adduced. Additional facts and allegations found in the Parties’ written submissions, pleadings and evidence will be discussed, 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, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

B. The various decisions issued by FIFA

2. On 5 September 2011, the Dutch club NAC Breda accepted to transfer the Player M. to the Appellant for the sum of EUR 450,000. This amount was to be paid in several instalments.
3. Eventually and because the Appellant had not paid several instalments of M.’s transfer fee in accordance with the contractual obligations assumed, the club NAC Breda filed an application with FIFA to order the Appellant to pay in its favour the outstanding amounts, plus interests and penalty fees.
4. On 15 August 2012, the Single Judge of the FIFA Players’ Status Committee decided the following:
 - “1. *The claim of the Claimant, NAC Breda, is partially accepted.*
 2. *The Respondent, Mersin Idman Yurdu, has to pay to the Claimant within 30 days as from the date of notification of this decision, the amount of EUR 300,000 plus default interest on said amount until the date of effective payment as follows: (...)*

3. *If the aforementioned sum plus interest is not paid within the aforementioned deadline, 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 amount of costs of the proceedings in the amount of CHF 20,000 are to be paid within 30 days as from the date of notification of the present decision as follows:*
 - 5.1. *The amount of CHF 15,000 has to be paid by the Respondent to FIFA to the following bank account (...)*
 - 5.2. *The amount of CHF 5,000 has to be paid by the Claimant to FIFA (...)*
5. On 9 November 2012, the Appellant was notified of the operative part as well as of the reasons of the decision (the "Decision of 15 August 2012").
6. On 29 November 2012, the Appellant lodged a statement of appeal with the Court of Arbitration for Sport (the "CAS") to challenge the Decision of 15 August 2012.
7. The Appellant's appeal brief was filed late and, therefore, was found to be inadmissible. As a result, the CAS held that the Appellant's appeal "*shall be deemed withdrawn in application of Article R51 of the [CAS Code of Sport-related Arbitration]*" and issued a termination order on 8 February 2013.
8. On 28 May 2013, the Deputy Secretary to the FIFA Disciplinary Committee asked the TFF to forward the following letter to the Appellant:

"Ref. no. 130410 obi (...)
Club NAC Breda, Netherlands / Club Mersin Idman Yurdu, Turkey
(...)

We refer to the above-mentioned matter, as we have learnt that the club Mersin Idman Yurdu has not acted in accordance with the decision passed by the Single Judge of the Players' Status Committee on 15 August 2012. This would appear to be a violation of article 64 of the FIFA Disciplinary Code (FDC), and as such, it will be the subject of an investigation by the FIFA Disciplinary Committee.

We are therefore opening disciplinary proceedings against the club Mersin Idman Yurdu in respect of a violation of article 64 of the FDC. This case will be on the agenda for the next meeting of the FIFA Disciplinary Committee so that disciplinary sanctions (fine, deduction of points, relegation to a lower league) may be imposed on the club.

With this in mind, we hereby urge the club Mersin Idman Yurdu to immediately pay to the club NAC Breda the outstanding amount of EUR 300,000, plus the 5% interest to be calculated in accordance with the decision of the Single Judge of the Players' Status Committee dated 15 August 2012, as well as the proceedings costs of CHF 15,000 to FIFA, and to send us copies of the respective proof of payments.

Should the club pay the outstanding amounts immediately and send us copies of the respective proof of payments, these disciplinary proceedings will be closed.

Should the club Mersin Idman Yurdu fail to submit a statement or pay the outstanding amounts, the FIFA Disciplinary Committee will decide the case using the file in its possession (cf. Art. 110 par. 4 FDC)."

9. On 5 July 2013 and via the TFF, the Deputy Secretary to the FIFA Disciplinary Committee informed the Appellant that its case would be submitted to the FIFA Disciplinary Committee for evaluation on 24 July 2013. It took this opportunity to urge the Appellant one more time to pay the outstanding amount immediately, which would bring an end to the disciplinary proceedings.
10. The Appellant did not react upon the communication of the Deputy Secretary to the FIFA Disciplinary Committee.
11. In a decision dated 24 July 2013 (the "Appealed Decision"), the FIFA Disciplinary Committee insisted on the fact that it could not review or modify as to the substance the Decision of 15 August 2012, because it was final and had become enforceable. It held that its sole task was to analyse whether the Appellant complied with the decision (of 15 August 2012), which, it held, had not been the case. In particular, it considered that *"In the matter at stake, the outstanding amounts equal to EUR 300,000 plus 5% of interest to be calculated in accordance with the decision passed by the Single Judge of the PSC to be paid to the creditor, and CHF 15,000 to be paid to FIFA. The combined application of art. 64 par. 1 a) and art. 15 par. 2 of the FDC entails that the fine shall range between CHF 300 and CHF 1,000,000. Non-payment of such amounts can cause a club financial difficulty. The debtor withheld the amount unlawfully from the creditor and FIFA. Even FIFA's attempts to urge the debtor to fulfil its financial obligations failed to induce it to pay. In view of the circumstances and, in particular, by also taking into account the high outstanding amount due, the Committee decides to impose a fine amounting to CHF 20,000. This amount is line with the Committee's well-established practice"*.
12. As a result, the FIFA Disciplinary Committee decided the following:
"(Decision 130410 PST TUR ZH) (...)
 1. *The club Mersin Idman Yurdu is pronounced guilty of failing to comply with a decision of a FIFA body in accordance with art. 64 of the FDC.*
 2. *The club Mersin Idman Yurdu is ordered to pay a fine to the amount of CHF 20,000. The fine is to be paid within 60 days of notification of the decision. (...)*
 3. *The club Mersin Idman Yurdu is granted a final period of grace of 30 days as from notification of the decision in which to settle its debt to the creditor and to FIFA.*
 4. *If payment is not made by this deadline, the creditor may demand in writing from FIFA that six (6) points be deducted from the debtor's first team in the domestic league championship. Once the creditor 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 Mersin Idman Yurdu still fails to pay the amounts due even after deduction of the points (...), the FIFA Disciplinary Committee will decide on a possible relegation of the debtor's first team to the next lower division.*

6. (...)
 7. *The costs of these proceedings amounting to CHF 2,000 are to be borne by the club Mersin Idman Yurdu (...)*”.
13. On 3 October 2013, the Appellant was notified of the Appealed Decision.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

14. On 22 October 2013, the Appellant filed its statement of appeal with the CAS and requested the present matter to be submitted to a sole arbitrator. It also applied for the stay of the Appealed Decision.
15. On 25 October 2013, the Respondent informed the CAS Court Office that it agreed to stay the execution of the Appealed Decision until CAS rendered a final decision. However, the Respondent requested the matter to be referred to a panel of three arbitrators in *“view of the issue of principle which is at stake”*.
16. On 25 October 2005, the CAS Court Office acknowledged receipt of the Respondent’s letter of the same day, and confirmed, on the behalf of the President of the CAS Appeals Arbitration Division, that the Appealed Decision was stayed. It also informed the Parties that the President of the CAS Appeals Arbitration Division or his Deputy would decide on the number of arbitrators to deal with the present matter in due time.
17. On 4 November 2013, the CAS Court Office acknowledged receipt of the Appellant’s appeal brief filed on 31 October 2013.
18. On 15 November 2013, the CAS Court Office informed the Parties that the President of the CAS Appeals Arbitration Division nominated Prof. Massimo Coccia to serve as Sole Arbitrator. In a letter dated 19 November 2013, the Appellant challenged Prof. Coccia’s nomination. Under these circumstances, the latter decided to decline his appointment as Sole Arbitrator in the present procedure. Eventually, Prof. Petros C. Mavroidis, Professor in Commugny, Switzerland, was appointed to replace Prof. Coccia.
19. On 25 November 2013 and in a timely manner, the Respondent filed its answer.
20. On 28 November 2013, the Parties were invited to inform the CAS Court Office on or before 5 December 2013 whether their preference was for a hearing to be held.
21. On 29 November 2013, the CAS Court Office informed the Parties that the Panel to hear the case had been constituted as follows: Prof. Petros C. Mavroidis, Sole Arbitrator.
22. On 3 December 2013, the Respondent confirmed its preference for the dispute to be decided solely on the Parties’ written submissions.

23. On 9 December 2013, the CAS Court Office invited the Respondent to take position with respect to the holding of a hearing on or before 12 December 2013. The Appellant did not respond to this request.
24. On 20 and 23 January 2014, FIFA and Club Mersin respectively sent to the CAS Court Office a duly signed copy of the Order of Procedure. None of the Parties made any comment as regards the content of the said document, which provides namely that “By the signature of the present Order, the parties confirm their agreement that the Sole Arbitrator may decide this matter based on the parties’ written submissions. The parties confirm that their right to be heard has been respected. Pursuant to Article R57 of the Code, the Sole Arbitrator considers himself to be sufficiently well informed to decide this matter without the need to hold a hearing”.

IV. SUBMISSIONS OF THE PARTIES

(i) *The Appellant’s submissions*

25. The Appellant submitted the following requests for relief:
“(…) the CAS is respectfully requested:
 1. *We have received the decision of FIFA (disciplinary Committee) on October 03, 2013 by means of Fax and we are submitting the statement of appeal within the time limit of 21 days.*
 2. *We request that execution of the decision of FIFA disciplinary Committee must be stayed until final verdict of the CAS.*
 3. *To accept the present appeal against the challenged decision;*
 4. *To set aside the challenged decision;*
 5. *To establish that the Appellant does not have to pay the Respondent any amount.*
 6. *To condemn the Respondent to the payment in the favour of the Appellant of the legal expenses incurred;*
 7. *To establish that the costs of the arbitration procedure shall be borne by the Respondent”.*
26. All of the Appellant’s submissions were developed in a single page brief, which can be reproduced hereafter:
“Subject
Appeal against the decision of FIFA dated on 03 October 2013.
Explanations:
As we have explained that FIFA’ decision is based on wrong assessment of the fact and we request from the Court of Arbitration for Sport the annulment of the decision given by FIFA October 03, 2013.
However, the decision dated 03 October 2013 contain extremely hard and heavy provisions and puts our club under huge obligations. The agreement signed between two clubs is wrongly construed by FIFA decision dated 03 October 2013 and the decision is attempted to be implemented.

On the other hand, by the FIFA Disciplinary Committee on 29 August 2013 Octavian Bivolaru a signed article, the file is transmitted as a club be shut down due to financial obligations have been defined, according to which the file was closed in the club records processed the information written articles in this way are given where necessary.

Moreover, the present agreement signed between our club and player M. had been terminated bilaterally by both parties. During termination with the player, our club had not made any income out of the player, but due to the fact that the club had met all needs of the player, our club had suffered 1,000,000 Euro damage. Also, we are put under obligation to pay the player's transfer fee. We request that this situation is amended.

Wishing that all these matters are considered, we request that the decision of FIFA dated 03 October 2013 is cancelled and that our club is acquitted.

In conclusion: *We kindly request that Annulment of the FIFA decision”.*

27. In support of its submissions, the Appellant filed a letter dated 29 August 2013, signed by the Deputy Secretary to the FIFA Disciplinary Committee, with the following reference “no. 120269 obi (...) Club NAC Breda, Netherlands/Club Mersin Idman Yurdu, Turkey”. According to Club Mersin, this letter which reads “(...) the disciplinary proceedings (...) are closed, since all financial duties have been fulfilled” showed that the disciplinary proceedings initiated against it in relation to the Decision of 15 August 2012 were closed.

(ii) The Answer

28. The Respondent filed an answer, with the following requests for relief:

“Requests:

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 Respondent related to the present procedure”.*

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

- The sanctions applied in accordance with Article 64 of the FIFA Disciplinary Code (the “FDC”) are necessary tools for FIFA to ensure that final and binding decisions reached by the CAS or other instances are enforced. A decision that cannot be enforced is of no use to the successful party.
- The FIFA Disciplinary Committee could not review or modify as to the substance the Decision of 15 August 2012, because it was final and had become enforceable. Its sole task was to analyse whether the Appellant had complied with the decision, i.e. whether the financial compensation that had to be paid in accordance with the Decision of 15 August 2012 had indeed been transferred by the debtor.
- In the present case, the Appellant has not proven that it had paid any amount awarded to the club NAC Breda in the Decision of 15 August 2012.

- The alleged agreement reached between the Appellant and M. is anyway irrelevant to the present proceeding as it refers to the substance of the dispute already decided by the Single Judge of the FIFA Player's Status Committee. In this regard, it must further be observed that the Appellant's allegations are not supported by evidence.
- Between 9 November 2012 (when the Decision of 15 August 2012 was disclosed) and 24 July 2013 (when the Appealed Decision was rendered), in spite of the two reminders sent by the Deputy Secretary to the FIFA Disciplinary Committee, respectively on 28 May and 5 July 2013, the Appellant failed to settle all or part of its debt.
- The letter dated 29 August 2013, signed by the Deputy Secretary to the FIFA Disciplinary Committee and filed by the Appellant in support of its appeal brief, refers to different disciplinary proceedings. The letter *"has the reference number 120269, whereas the disciplinary proceedings in the present case (and the appealed decision of the Disciplinary Committee) have the reference number 130410. (...) More precisely, the disciplinary proceedings references under the number 120269 concerned the enforcement of a different decision taken at a different date by an instance of FIFA, in relation to another amount owed by the Appellant"*, to quote the Respondent's answer.
- In view of the circumstances, the conditions for a sanction to be imposed upon the Appellant pursuant to Article 64 FDC have been met.
- The sanction imposed upon the Appellant is proportional and consistent with the FIFA Disciplinary Committee's well-established practice.

V. ADMISSIBILITY

30. The appeal is admissible as the Appellant submitted it within the deadline provided by Article R49 of the CAS Code of Sport-related Arbitration (the "Code"). It complies with all the other requirements set forth by Article R48 of the Code.

VI. JURISDICTION

31. Article R47 par. 1 of the Code provides as follows:
"An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body".
32. The jurisdiction of CAS, which is not disputed, derives from Articles 66 ff. of the FIFA Statutes and Article 64 par. 5 FDC. It is further confirmed by the Order of Procedure duly signed by the Parties.
33. It follows that the CAS has jurisdiction to decide on the present dispute.

34. Under Article R57 of the Code, the Sole Arbitrator has the full power to review the facts and the law.

VII. APPLICABLE LAW

35. Article R58 of the Code provides as follows:

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

36. Pursuant to Article 66 par. 2 of the FIFA Statutes, “[t]he 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”.
37. Regarding the issue at stake, the Sole Arbitrator notes that the Parties have not chosen any specific national law as the law applicable to the dispute. As a result, subject to the primacy of relevant and applicable FIFA’s regulations, Swiss law shall apply complementarily.
38. The relevant facts at the basis of the present case arose after 1 August 2011 and 25 July 2012, which are the dates when, respectively, the revised FDC (2011 edition) and the FIFA Statutes (2012 edition) came into force. In accordance with the principle of non-retroactivity, these are the editions of the rules and regulations under which the case shall be assessed.

VIII. MERITS

39. The main issues to be resolved by the Sole Arbitrator are the following:

- a) Is the Decision of 15 August 2012 final and binding?
- b) Are the requirements of Article 64 FDC met in the present case?
- c) Has FIFA the ability to impose disciplinary sanctions upon a club for failure to comply with one of its decisions?
- d) Has the FIFA Disciplinary Committee correctly exercised its disciplinary powers?

a) *Is the Decision of 15 August 2012 final and binding?*

40. The disciplinary proceedings initiated against the Appellant came at the end of a lengthy procedure, which was started by a petition lodged by the club NAC Breda before the FIFA Single Judge of the Player’s Status Committee, who rendered his Decision of 15 August 2012. This decision became final and binding as the Appellant’s appeal before the CAS was deemed withdrawn by a termination order issued on 8 February 2013.

41. According to the jurisprudence of the Swiss Federal Tribunal, any decision, which is binding on the arbitral tribunal, is open to revision (Judgements of the Swiss Federal Tribunal 4P.237/2005 of 2 February 2006, cons. 3.2 and ATF 122 III 492). A party may request the revision of a final and binding decision if it becomes aware of relevant facts or conclusive evidence of which it had no knowledge in the previous proceedings. An application for revision must be filed within 90 days following the discovery of the grounds for revision (Judgements of the Swiss Federal Tribunal 4A_688/2012 and 4A_126/2013 of 9 October 2013, cons. 4.3).
42. The Appellant has not brought forward any ground, which could justify a revision of the Decision of 15 August 2012, and, actually, has not even filed a formal application for revision. It is undisputed as a matter of Swiss law, that it is the Appellant that carries the burden of proof in this respect.
43. Under these circumstances, the Sole Arbitrator unavoidably comes to the conclusion that the Decision of 15 August 2012 has become final and binding upon the Appellant. As a consequence, the object of the present proceedings cannot extend beyond the limits of a review of the disciplinary sanctions imposed by the FIFA Disciplinary Committee in its Appealed Decision.
44. Based on the foregoing, the Sole Arbitrator dismisses without further consideration the Appellant's allegations according to which "FIFA' decision is based on wrong assessment of the fact and (...) [the] agreement signed between two clubs is wrongly construed by FIFA decision dated 03 October 2013".

b) Are the requirements of article 64 FDC met in the present case?

45. Article 64 FDC states:

- "1. Anyone who fails to pay another person (such as a player, a coach or a club) or FIFA a sum of money in full or part, even though instructed to do so by a body, a committee or an instance of FIFA or a subsequent CAS appeal decision (financial decision), or anyone who fails to comply with another decision (non-financial decision) passed by a body, a committee or an instance of FIFA, or by CAS (subsequent appeal decision):
 - a) will be fined for failing to comply with a decision;
 - b) will be granted a final deadline by the judicial bodies of FIFA in which to pay the amount due or to comply with the (non-financial) decision;
 - c) (only for clubs:) will be warned and notified that, in the case of default or failure to comply with a decision within the period stipulated, points will be deducted or relegation to a lower division ordered. A transfer ban may also be pronounced;(...)
2. If a club disregards the final time limit, the relevant association shall be requested to implement the sanctions threatened.
3. If points are deducted, they shall be proportionate to the amount owed (...)"

46. With his Decision of 15 August 2012, the Single Judge of the FIFA Players' Status Committee concluded that the club NAC Breda was entitled to the payment of EUR 300,000 plus default interest.
47. In its concise appeal brief, the Appellant claims that a settlement was found with the Player M. However, the latter was not a party to the proceedings, which led to the Decision of 15 August 2012. As a result, whether the Appellant resolved a dispute it had with the player or not, is irrelevant to the present dispute.
48. The Appellant also attached to its appeal brief a letter dated 29 August 2013, signed by the Deputy Secretary to the FIFA Disciplinary Committee, with the following reference "*no. 120269 obi (...) Club NAC Breda, Netherlands/ Club Mersin Idman Yurdu, Turkey*". However, the Appellant did not offer any clarification as to the point it wants to make with the filing of such a document. In light of the evidence on record, this letter refers to a disciplinary proceeding following a decision rendered on 26 March 2012 by the FIFA Single Judge of the Players' Status Committee, whereby the Appellant was ordered to pay to the club NAC Breda an amount of EUR 150,000 plus interests.
49. In other words, the letter of 29 August 2013 produced by the Appellant is unrelated to the present proceedings and is also of no relevance to the determination of this case.
50. As a result, the Appellant has not established that it actually paid the amount awarded to the club NAC Breda in the Decision of 15 August 2012, or that it entered into negotiations with this club in order to find an amicable settlement of the situation. As a consequence, the Sole Arbitrator finds that the Appellant failed "*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)*", as prescribed by Article 64 FDC.
51. Hence, the requirements of Article 64 FDC have been met in the present case.

c) *Has FIFA the ability to impose disciplinary sanctions upon a club for failure to comply with one of its decisions*

52. There are numerous similarities between the present dispute and a fairly recent case, brought before the Swiss Federal Tribunal (Judgement of the Swiss Federal Tribunal 4P.240/2006/len of 5 January 2007). Consequently, it seems appropriate to briefly introduce this precedent hereafter.
53. The FIFA Disciplinary Committee initiated proceedings against a Spanish club for failing to pay EUR 373,226 to a Brazilian club. It ordered the Spanish club to pay a fine in the amount of CHF 25,000 and threatened to impose further sanctions, such as the deduction of 6 points from its first team in the domestic league championship and the relegation to a lower league, should the creditor so request in the presence of persistence failure of the debtor to settle the debt.

The Spanish club appealed to the CAS, requesting, inter alia, a one-year grace period due to financial difficulties. The matter was brought before the Swiss Federal Tribunal (Judgement of the Swiss Federal Tribunal 4P.240/2006/len of 5 January 2007), which affirmed FIFA's power to regulate its sport through suitable rules and decision-making processes. Based on the applicable FIFA regulations, the Swiss Federal Tribunal rejected the appeal on the ground that sanctions issued by an association such as FIFA in conformity with its statutes and regulations are not in conflict with the State monopoly to enforce monetary judgments ("Zwangsmopol des Staates"). The Swiss Supreme Tribunal has ratified the validity of the enforcement mechanisms of FIFA to implement final decisions delivered by its own organs or by the CAS against its direct or indirect members.

54. In view of the above, the Sole Arbitrator holds that FIFA had the legal authority to impose disciplinary sanctions upon the Appellant.

d) *Has the FIFA Disciplinary Committee correctly exercised its disciplinary powers?*

55. The FDC provides, so far as material, as follows:

Article 15 Fine

1. *A fine is issued in Swiss francs (CHF) or US dollars (USD). It shall be paid in the same currency.*
2. *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.*
3. *The body that imposes the fine decides the terms and time limits for payment. (...)*

Article 29 Relegation to a lower division

A club may be relegated to a lower division.

Article 30 Deduction of points

A club may have points deducted from those already attained in the current or a future championship".

56. The Appellant claims that the Appealed Decision "*contain extremely hard and heavy provisions and puts our club under huge obligations*" and seems to suggest that it could actually put a stop to its activity.
57. The Appellant's allegations are not substantiated with any evidence.
58. In disciplinary matters, each situation must be evaluated on a case-by-case basis and interests at stake have to be balanced in respect of the principle of proportionality. Account must be taken of the seriousness of the facts and other related circumstances as well as of the damage that the penalised conduct entails for the parties involved, for the federation in question and for its sport. In the same way, the disciplinary bodies may evaluate any aggravating and/or extenuating circumstances that might be related to the infringement.

59. In the present case, the Appellant failed to pay another club a considerable amount of money, even though instructed to do so by a binding decision. In accordance with a constant jurisprudence (CAS 2005/A/957; CAS 2004/A/1008, confirmed by the judgement of the Swiss Federal Tribunal 4P.240/2006/len of 5 January 2007), the difficult financial situation alleged by the Appellant is not a justification for its failure to pay its debt to the club NAC Breda. Lack of financial means to satisfy an obligation of payment, or risk of bankruptcy, does not excuse the failure to make the required payment. The FIFA Disciplinary Committee, therefore, rightly considered the Appellant in breach of its financial obligation.
60. As to the sanctions imposed upon the Appellant, the fine set at CHF 20,000 (in a scale ranging from CHF 300 to CHF 1,000,000), does not seem to be oppressive and appears to be justified by the attitude of the Appellant, which made no efforts to settle its debts and proportionate to the rather substantial amount (EUR 300,000 plus interest of 5% p.a. until the effective date of payment) owed to the club NAC Breda. In addition, such a fine is consistent with the one imposed in the case brought before the Swiss Tribunal Federal (i.e. CHF 25,000), where the litigious amount was of EUR 373,226 (judgement of the Swiss Federal Tribunal 4P.240/2006/len of 5 January 2007).
61. The possible deduction of points and/or demotion to a lower league is also proper and consistent with the above mentioned judgement of the Swiss Federal Tribunal.
62. In view of this, it appears that the sanctions imposed upon the Appellant must be confirmed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Club Mersin Idman Yurdu against the decision issued on 24 July 2013 by the FIFA Disciplinary Committee is dismissed.
2. The decision adopted on 24 July 2013 by the FIFA Disciplinary Committee is confirmed.
- (...)
5. All other or further requests and prayers of relief are dismissed.