



Arbitration CAS 2016/A/4387 Delfino Pescara 1936 v. Royal Standard Liège & Fédération Internationale de Football Association (FIFA), award of 8 July 2016

Panel: Mr Mark Hovell (United Kingdom), Sole Arbitrator

Football

Overdue payables and Article 12bis Regulations on Status and Transfer of Players (RSTP)

De novo hearing and right to be heard

Applicability of Article 12bis RSTP

Reasonableness and proportionality of sanctions under Article 12bis RSTP and transfer activities of a club

Intent of Article 12bis RSTP

Ungrounded decision issued by FIFA's legal bodies and procedural costs

- 1. Article R57 of the CAS Code grants CAS panels full power of review on a *de novo* basis, which has been confirmed by numerous CAS precedents. Accordingly, a large amount of procedural flaws in a first instance decision can often be cured by a CAS proceeding. Amongst the first instance procedural violations that can be cured by a *de novo* CAS proceeding is the 'right to be heard', as consistently established in CAS jurisprudence and confirmed by the Swiss Federal Tribunal (SFT). 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.**
- 2. Article 12bis of the Regulations on the Status and Transfer of Players (RSTP) is framed to allow FIFA to assess the situation of overdue payables after 1 April 2015. All that matters is that the assessment date is after 1 April 2015 and whether there are overdue payables at the assessment date. The date from which the payables have been overdue (even if that date lies prior to 1 April 2015) is immaterial insofar as classing it as an overdue payable or not; however the due date may well have an impact on the type and amount of any sanction.**
- 3. When reviewing the reasonableness and proportionality of a sanction imposed under Article 12bis RSTP, the transfer activities of a club during a period of time during which overdue payables to another club built up, are irrelevant if considered in isolation. This is because all clubs need to bring players in and get them out at the end of each season, and often throughout too. Rather, if at all, the entire picture of movements in and out would need to be reviewed to assess the net position, *e.g.* details of whether players purchased during the relevant period of time went out later at a profit; whether other players had left that were more expensive; whether other players had been sold; whether the squad was reduced in size; etc.**

4. **Article 12bis RSTP is intended to cover cases where one club takes a serious advantage over another club or over players, and trades at their expenses. *E.g.* if a club purchases a player from another club, but does not pay the transfer fee agreed upon, and, upon selling the player to another club at a later point in time does not use the sale proceeds in order to clear its overdue payables related to the original purchase of the player. In proceedings under Article 12bis RSTP, a club that wishes to plead financial difficulties needs to provide respective evidence of its finances.**
5. **Under Article 15(1) of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (the "Procedural Rules") it is FIFA's discretion whether to issue a grounded decision or an ungrounded one. In case FIFA issues an ungrounded decision, Article 18(3) of the Procedural Rules foresees that if a party does not ask for the grounds of the decision, no fees shall be charged. However, once FIFA has made the choice to issue a grounded decision, Article 18(3) is rendered irrelevant. Lastly according to established CAS jurisprudence it is not for the CAS to reallocate the costs of proceedings before previous instances.**

I. PARTIES

1. Delfino Pescara 1936 ("Pescara" or "the Appellant") is a football club with its registered office in Pescara, Italy. Pescara is currently competing in Serie B. It is a member of the Federazione Italiana Giuoco Calcio ("the FIGC"), which in turn is affiliated to Fédération Internationale de Football Association.
2. Royal Standard Liège ("Standard Liège" or "the First Respondent") is a football club with its registered office in Liège, Belgium. Standard Liège is currently competing in the Belgian Pro League. It is a member of the Royal Belgian Football Association ("the Belgian FA"), which in turn is affiliated to Fédération Internationale de Football Association.
3. The Fédération Internationale de Football Association ("FIFA" or "the Second Respondent") is the governing body of world football and has its registered office in Zurich, Switzerland.

II. FACTUAL BACKGROUND

4. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced during these proceedings. Additional facts and allegations 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.

5. By virtue of winning the Serie B title during the 2011/12 season, Pescara was promoted to Serie A for the 2012/13 season.
6. On 10 July 2012, Pescara and Standard Liège entered into a transfer agreement (hereinafter referred to as “the Agreement”) for the temporary transfer of B. (hereinafter referred to as “the Player”) from Standard Liège to Pescara.
7. Under Clause C of the Agreement, the Player would be loaned to Pescara from 10 July 2012 until 30 June 2013.
8. Under Clause 1.3 of the Agreement, Pescara agreed to pay Standard Liège a loan fee of EUR 300,000, payable in two EUR 150,000 instalments. This amount was paid by Pescara in accordance with the fee schedule set out in Clause 1.3.
9. Clause 2.1 of the Agreement provided as follows:

“The Parties and the player agree that Club B shall be granted an option for the purchase of the Player at the following terms and conditions:

The option shall be exercisable by Club B until June 15, 2013 at latest by giving Club A written notice by fax: 0032 42521469. The option shall be granted for the purchase of the Player at a NET amount of 900.000 (Nine hundred thousand/00) Euros including Taxes (“Transfer fee”); the right of Club B shall exist only and at the extent that the consideration of 900.000 (Nine hundred Thousand/00) Euros, including Taxes is offered by Club B in the notice of the exercise of the option, to be paid as it follows:

 - Euro 450.000,00 within and no later than 30/09/2013;
 - Euro 450.000,00 within and no later than 30/09/2014”.
10. The Sole Arbitrator notes that, under the Agreement, Pescara was defined as “Club B” in Clause 1, Standard Liège was defined as “Club A” in Clause 2 and the Player was defined as the “Player” in Clause 3. Furthermore, Clause 2.3 of the Agreement stated that in case of late payment of the definitive transfer fee, an interest rate of 10% would apply over the outstanding amounts from the due date until the effective date of payment.
11. On 5 May 2013, Pescara, being mathematically unable to accumulate enough points to avoid being relegated from Serie A, was aware that they would be competing in Serie B during the 2013/14 season.
12. On 6 June 2013, Pescara exercised the option clause to complete the transfer for the Player on a permanent basis.
13. On 7 August 2013, Pescara sent a letter to Standard Liège requesting to amend the payment schedule stated in the Agreement. In lieu of the EUR 450,000 due no later than 30 September 2013, Pescara requested to pay five equal instalments of EUR 90,000 on 30 September 2013, 30 November 2013, 31 January 2014, 31 March 2014 and 31 May 2014. The EUR 450,000 due by 30 September 2014 remained in place. Standard Liège agreed to these new terms.

14. On 30 September 2013, Pescara paid the first instalment of EUR 90,000 under the restructured payment schedule.
15. On 30 November 2013, Pescara paid the second instalment of EUR 90,000 under the restructured payment schedule. As a result, EUR 720,000 remained unpaid by Pescara.
16. On 21 January 2014, Pescara agreed to buy the player H. from his former club, HSK Zrinjski Mostar, for a transfer fee of up to EUR 200,000 payable as follows:
 - € 50,000 (*fifty thousand Euro*) by 31 March 2014;
 - € 50,000 (*fifty thousand Euro*) by 30 June 2014;
 - € 50,000 (*fifty thousand Euro*) by 30 August 2014”.

An additional EUR 50,000 would be due to HSK Zrinjski Mostar once H. had played in ten official matches for Pescara.
17. On 31 January 2014, Pescara failed to pay to Standard Liège the third instalment of EUR 90,000 due under the restructured payment schedule.
18. On 31 March 2014, Pescara failed to pay to Standard Liège the fourth instalment of EUR 90,000 due under the restructured payment schedule.
19. On 31 May 2014, Pescara failed to pay to Standard Liège the fifth instalment of EUR 90,000 due under the restructured payment schedule.
20. On 31 July 2014, Pescara agreed to buy the player M. from his former club, Crewe Alexandra, for a transfer fee of up to GBP 105,000 payable as follows:
 - *GBP 65.000,00 (sixth five thousand pounds), (solidarity mechanism included) upon transfer of the Player to Pescara.*
 - *GBP 10.000,00 (ten thousand pounds), once the Player will have played 10 matches with Pescara’s first team in official Italian League Competition and if the Player has played each of those matches for minimum 45 minutes.*
 - *GBP 15.000,00 (fifteen thousand pounds), once the Player will have played 20 matches with Pescara’s first team in official Italian League Competition and if the Player has played each of those matches for minimum 45 minutes.*
 - *GBP 15.000,00 (fifteen thousand pounds), once the Player will have played 30 matches with Pescara’s first team in official Italian League Competition and if the Player has played each of those matches for minimum 45 minutes”.*
21. On 30 September 2014, Pescara failed to pay to Standard Liège the EUR 450,000 due under both the original and restructured payment schedule.

22. On 7 January 2015, Pescara agreed to buy the player S. from his former club, Nk Novigrad, for a transfer fee of EUR 100,000 payable in two equal instalments on 30 September 2015 and 30 April 2016.
23. On 3 July 2015, Standard Liège notified Pescara, via e-mail, that they were still awaiting payment of the outstanding EUR 720,000, and warned that *“if payment is not done for the 10th of July, we send a claim to the UEFA”*.
24. On 7 July 2015, Pescara responded to Standard Liège’s e-mail with an attached letter dated 3 July 2015, requesting to once again amend the repayment schedule. The letter stated, *inter alia*, that Pescara *“has encountered substantial financial difficulties since the relegation of the club from the Italian Serie A. Our club is therefore unable to make the payment of the outstanding transfer fee at the present time”*. Pescara also proposed to Standard Liège that after deducting EUR 45,000 as the amount payable to the Player’s former clubs as solidarity payments, the amount owed to Standard Liège was EUR 675,000.

25. Pescara requested the following repayment schedule:

*“EUR 168.750,00= due on 31/10/2015;
EUR 168.750,00= due on 31/12/2015;
EUR 168.750,00= due on 31/03/2016;
EUR 168.750,00= due on 31/06/2016”*.

26. On 8 July 2015, Pescara sold the Player to FC Basel for a transfer fee of EUR 1m payable in full no later than three days from the release of the international transfer certificate by the FIGC.
27. On 9 July 2015, Standard Liège responded to Pescara via e-mail, stating *inter alia*, that they declined to accept Pescara’s amended repayment schedule, but that they would agree to amend the repayment schedule to the following:

*“EUR 168.750,00= due on 15/07/2015 (Cash);
EUR 168.750,00= due on 15/09/2015;
EUR 168.750,00= due on 15/11/2015;
EUR 168.750,00= due on 31/12/2015”*.

Pescara did not respond to this e-mail.

28. On 14 July 2015, Pescara agreed to buy the player A. from his former club, FC Viitorul, for a transfer fee of EUR 300,000 payable as follows:

*“- EUR 75.000 (seventy five thousand euro) payable within 15 days from the registration of the Player with Delfino Pescara;
- EUR 75.000 (seventy five thousand euro) payable within and no later than 30 September 2015;*

- EUR 75.000 (*seventy five thousand euro*) payable within and no later than 31 July 2016;
 - EUR 75.000 (*seventy five thousand euro*) payable within and no later than 30 September 2016”.
29. On 1 September 2015, Standard Liège put Pescara in default of payment of the EUR 675,000 balance and set a time limit expiring on 16 September 2015 in order to remedy the default. Pescara did not make any payments following the default notice.

Proceedings before FIFA

30. On 24 September 2015, Standard Liège filed a statement of claim before the FIFA Players’ Status Committee (“the FIFA PSC”), requesting that Pescara be ordered to pay overdue payables in the amount of EUR 675,000 plus interest of 10% *p.a.* as from the due dates until effective payment, as per the Agreement.
31. On 14 October 2015, the FIFA PSC wrote to the FIGC informing them of Standard Liège’s claim against Pescara. The FIFA PSC invited Pescara to either proceed with the remittance of the alleged overdue payables to Standard Liège, or respond to the claim made by Standard Liège. The letter stated, *inter alia*, the following:

“From the enclosed statement of claim, it can be noted, inter alia, that according to Royal Standard de Liège, Delfino Pescara 1936 has overdue payables towards it.

...

In this sense, we kindly refer Delfino Pescara 1936 to art. 12bis of the Regulations on the Status and Transfer of Players, in accordance with which clubs are required to comply with their financial obligations towards players and other clubs as per the terms stipulated in the contracts signed with their professional players and in transfer agreements. In addition, any club found to have delayed a due payment for more than 30 days without a prima facie contractual basis may be sanctioned by the competent deciding bodies of FIFA”.

32. On 19 October 2015, Pescara received from the FIGC the aforementioned communication from FIFA. However, Pescara did not proceed with the remittance of the alleged overdue payables, nor did it respond to the claim made by Standard Liège.
33. On 17 November 2015, the FIFA PSC wrote to Standard Liège and the FIGC informing them that the investigation phase of the matter has been closed, and that the matter would be submitted to the Single Judge of the FIFA PSC within the next 5 to 7 days. Pescara received this communication from the FIGC on the same day.
34. On 24 November 2015, the FIFA PSC rendered a decision (“the Appealed Decision”) as follows:

“1. The claim of the Claimant, Royal Standard de Liège, is accepted.

2. The Respondent, Delfino Pescara Calcio 1936, has to pay to the Claimant, within 30 days as from the date of notification of this decision, overdue payables in the amount of EUR 675,000, plus interest at the rate of 10% p.a. until the date of effective payment as follows:

- on the amount of EUR 90,000 as of 1 February 2014,
 - on the amount of EUR 90,000 as of 1 April 2014,
 - on the amount of EUR 90,000 as of 1 June 2014, and
 - on the amount of EUR 405,000 as of 1 October 2014.
3. *If the aforementioned amount 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. *The Respondent is ordered to pay a fine in the amount of CHF 50,000. The fine is to be paid **within 30 days** of notification of the present decision to FIFA to the following bank account*
 5. *The final amount of costs of the proceedings in the amount of CHF 25,000 is to be paid by the Respondent, **within 30 days** as from the notification of the present decision, as follows:*
 - a) *The amount of CHF 5,000 by the Respondent to the Claimant.*
 - b) *The amount of CHF 20,000 to FIFA to above mentioned bank account of FIFA*
 6. *The Claimant is directed to inform the Respondent immediately and directly of the account number to which the remittances under point 2. and 5.a) are to be made and to notify the Single Judge of every payment received”.*
35. On 18 December 2015, FIFA wrote to Standard Liège and the FIGC notifying them of the Appealed Decision.
36. On 19 December 2015, the FIGC notified Pescara of the Appealed Decision.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

37. On 8 January 2016, pursuant to Article R47 and Article R48 of the Code of Sports-related Arbitration (“the CAS Code”), Pescara filed a Statement of Appeal against Standard Liège and FIFA at the Court of Arbitration for Sport (“the CAS”). The Statement of Appeal contained the following requests for relief:
- “1. *Declare the present appeal admissible.*
 2. *Set aside the decision of the Single Judge of the FIFA Players’ Status Committee under appeal.*
 3. *Decide that Appellant has never been charged with the disciplinary violations for which it has been punished.*
 4. *Decide that no punishment may be imposed on Appellant on the basis of the proceeding before the Single Judge of the FIFA Players’ Status Committee.*
 5. *Decide that the Article 12bis of the FIFA Regulations on the Status and Transfer of Players may not be applied retroactively.*

6. *Annul the sanction imposed on Delfino Pescara 1936 by the Single Judge of the FIFA Players' Status Committee.*
 7. *Alternatively, decide that the sanction imposed by the Single Judge of the FIFA Players' Status Committee is excessive and reduce the sanction to a warning.*
 8. *Decide that no party to the proceeding before the Single Judge of the FIFA Players' Status Committee has requested the grounds of the decision to be issued.*
 9. *Decide that the procedural costs indicated in the decision of the Single Judge of the FIFA Players' Status Committee are not payable.*
 10. *Alternatively, decide that the procedural costs indicated in the decision of the Single Judge of the FIFA Players' Status Committee are excessive and must be reduced.*
 11. *Award any further relief to Appellant as the Panel deems fit.*
 12. *Decide that the Respondents must bear all the costs of the present arbitration.*
 13. *Decide that the Respondents must make a contribution towards the legal costs of Appellant incurred in the present proceedings”.*
38. In its Statement of Appeal, Pescara listed both Standard Liège and FIFA as Respondents, but stated the following:
- “15. *The Decision under Appeal in reality contains two separate decisions. The first decision concerns the contractual matter between Pescara and Standard, whereas the second concerns a fine imposed by FIFA on Pescara for a breach of the rules of FIFA.*
 16. *Delfino Pescara 1936 is minded to appeal exclusively against the decision of FIFA concerning the amounts ordered payable to by Appellant to FIFA. Appellant therefore considers that the matter is an appeal against a decision issued by an international federation in a disciplinary matter as intended in Article R65 of the CAS Code. The proceeding shall therefore be free in accordance with Article R65.2 of the CAS Code”.*
39. On 21 January 2016, pursuant to Article R51 of the CAS Code, Pescara filed its Appeal Brief with the CAS Court Office, reiterating all the requests for relief contained in the Statement of Appeal plus an additional request for relief as follows:
- “6. *Decide that the sanction imposed on Delfino Pescara 1936 by the Single Judge of the FIFA Players' Status Committee is unreasonable”.*
40. On 22 January 2016, Standard Liège requested to be removed as a party from this matter, citing a lack of legal interest in the proceedings and Pescara’s assertion that it is minded to “*appeal exclusively against the decision of FIFA concerning the amounts ordered to be paid by Pescara to FIFA*”.
41. On 22 January 2016, the CAS Court Office wrote to the Parties informing them that it is not for the CAS Court Office to make any decision on the quality of the Parties. As Pescara listed Standard Liège as the First Respondent, the CAS Court Office would proceed with the arbitration on this basis.

42. On 27 January 2016, Pescara wrote to the CAS Court Office stating that it “*is only appealing against the decision of FIFA concerning the amounts ordered payable to FIFA by FIFA*”, and “*would have no issue with Standard remaining entirely passive in the arbitration*”.
43. On 28 January 2016, Standard Liège requested once again to be removed as a party from this matter once the Panel was duly constituted.
44. On 28 January 2016, the CAS Court Office wrote to the Parties informing them that the issue of the standing to be sued of Standard Liège shall be addressed once the Panel was constituted.
45. On 3 February 2016, Pescara wrote to the CAS Court Office stating that it preferred to have this matter heard by a Sole Arbitrator.
46. On 4 February 2016, Standard Liège wrote to the CAS Court Office stating that it agreed to have this matter heard by a Sole Arbitrator.
47. On 11 February 2016, FIFA wrote to the CAS Court Office stating that it preferred to have this matter heard by a Panel of three arbitrators.
48. On 19 February 2016, the CAS Court Office wrote to the Parties informing them that, pursuant to Article R50 of the CAS Code, the President of the CAS Appeals Arbitration Division decided to submit the present matter to a Sole Arbitrator.
49. On 9 March 2016, the CAS Court Office wrote to the Parties informing them that Mark A. Hovell, Solicitor, Manchester, United Kingdom was appointed as the Sole Arbitrator in this matter.
50. On 11 March 2016, the CAS Court Office wrote to the Parties informing them that, since Pescara did not expressly agree to exclude Standard Liège from these proceedings, that Standard Liège would remain a party to this matter.
51. On 29 March 2016, pursuant to Article R55 of the CAS Code, Standard Liège filed its Answer containing the following requests for relief:

“IN PRINCIPAL ORDER

- *to confirm the Decision under Appeal in its entirety;*
- *to order the Appellant to pay all costs of the arbitration procedure;*
- *to order the Appellant to pay a substantial contribution towards the legal costs incurred by the First Respondent;*
- *to award any other relief to the First Respondent as the Sole Arbitrator deems fit;*

IN SUBSIDIARY ORDER

- *to confirm the Decision under Appeal insofar as it relates to*

- *the overdue payables in the amount of EUR 675.000,00, plus interest at the rate of 10 percent per annum (paragraph III.2 of the Decision under Appeal); and*
 - *the costs of the FIFA proceedings to be paid by the Appellant to the First Respondent (paragraph III.5.a of the Decision under Appeal);*
 - *to order the Appellant and the Second Respondent to pay all costs of the arbitration procedure;*
 - *to order the Appellant to pay a substantial contribution towards the legal costs incurred by the First Respondent;*
 - *to award any other relief to the First Respondent as the Sole Arbitrator deems fit”.*
52. On 1 April 2016, pursuant to Article R55 of the CAS Code, FIFA filed its Answer containing the following requests for relief:
- “1. *In light of the above considerations, we insist that the decision passed by the Single Judge is fully justified. We therefore request that the present appeal be rejected and the decision taken by the Single Judge on 24 November 2015 be confirmed in its entirety.*
 - 2. *Furthermore, all costs related to the present procedure as well as the legal expenses of FIFA shall be borne by the Appellant”.*
53. On 4 April 2016, the CAS Court Office wrote to the Parties inviting them to inform the CAS Court Office whether they preferred a hearing to be held in this matter or whether they wished for the Sole Arbitrator to issue an award based solely on the Parties’ written submissions.
54. On 7 April 2016, Pescara wrote to the CAS Court Office requesting that the Sole Arbitrator permit them to file additional written submissions and to extend the time limit for expressing an opinion on whether they preferred a hearing to be held in this matter.
55. On 11 April 2016, FIFA wrote to the CAS Court Office stating that it did not deem a hearing to be necessary and wished for the Sole Arbitrator to render an award solely on the written submissions.
56. On 11 April 2016, the CAS Court Office wrote to the Parties inviting them to inform the CAS Court Office whether they would agree to a further round of submissions as requested by Pescara. The CAS Court Office also extended the time limit for expressing an opinion on whether they preferred a hearing to be held in this matter until 15 April 2016.
57. On 14 April 2016, FIFA wrote to the CAS Court Office stating that it did not agree to a further round of submissions.
58. On 14 April 2016, Standard Liège wrote to the CAS Court Office stating that it did not agree to a further round of submissions.
59. On 15 April 2016, the CAS Court Office wrote to the Parties on behalf of the Sole Arbitrator inviting the Parties to answer the following questions in the hope that, upon receipt of the

answers, the Sole Arbitrator would be sufficiently well-informed to deal with this matter on the papers, should Pescara join the other Parties and decide that a hearing is unnecessary:

- “1. *What is the relevance to the sanction issued by the Second Respondent of the Appellant’s transfer activity from 2012?*
2. *What other cases has FIFA dealt with to date concerning Article 12bis and can copies of the decisions be provided?*
3. *Is there some form of tariff that the Second Respondent refers to when issuing sanctions?*
4. *At para 19 of the Decision is a reference to ‘repeated offence[s]’ – has the Appellant been sanctioned before in relation to Article 12bis? If so, please provide the details”.*

60. On 19 April 2016, Pescara wrote to the CAS Court Office, *inter alia*, reiterating its request for a full and unlimited second round of written submissions.
61. On 21 April 2016, the CAS Court Office wrote to the Parties, informing them that the Sole Arbitrator denied Pescara’s request for a further round of submissions. On the same day, Standard Liège wrote to the CAS Court Office declining the opportunity to answer the questions put forth by the Sole Arbitrator.
62. On 2 May 2016, both Pescara and FIFA wrote to the CAS Court Office with their responses to the questions put forth by the Sole Arbitrator.
63. On 10 May 2016, Pescara wrote to the CAS Court Office with additional unsolicited submissions.
64. On 12 May 2016, the CAS Court Office wrote to the Parties informing them that based on the two rounds of written submissions to date, the Sole Arbitrator deemed himself sufficiently informed to render an award on the written submissions alone, without a hearing, in accordance with Article R44.2 of the CAS Code. Accordingly, no hearing would be held in this matter.
65. On 13 May 2016, FIFA wrote to the CAS Court Office requesting that Pescara’s submission dated 10 May 2016 be declared inadmissible.
66. On 17 May 2016, the CAS Court Office wrote to the Parties informing them that the Sole Arbitrator had deemed Pescara’s unsolicited submission dated 10 May 2016 as inadmissible.
67. On 19 May 2016, Standard Liège filed a signed Order of Procedure with the CAS Court Office.
68. On 25 May 2016, Pescara wrote to the CAS Court Office stating that it refused to sign the Order of Procedure, as it submitted that its right to be heard had not been respected. On the same day, FIFA filed a signed Order of Procedure with the CAS Court Office.
69. On 29 June 2016, Pescara wrote to the CAS Court Office stating that it had discharged the majority of the sums due to Standard Liège.

IV. SUBMISSIONS OF THE PARTIES

70. The following summary of the Parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the Parties. The Sole Arbitrator however, has carefully considered all the submissions made and evidence advanced by the Parties, even if no explicit reference is made in what immediately follows.

A. Pescara's Submissions

In summary, Pescara submitted the following in support of its Appeal:

i. Right to be heard on Article 12bis FIFA RSTP

71. Pescara submitted that prior to the case being heard by the FIFA PSC, it was not presented with a charge for violating Article 12bis of the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP"), nor was it informed by FIFA of an investigation into possible violations of Article 12bis, nor was it informed by FIFA of the possibility that it could face sanctions arising out of any charge or investigation.

72. Pescara acknowledged that, on 19 October 2015, it received a document sent by FIFA to the FICG on 14 October 2015. This letter made a reference to Article 12bis. However, Pescara submitted that this document did not constitute proper notice of an alleged violation of Article 12bis and the subsequent proceedings at the FIFA PSC.

73. While the document made reference to Article 12bis, Pescara submitted that it was a passing general reference and insufficient to give Pescara any reason to believe that a sanction could be imposed without further notice.

74. Pescara also quoted CAS 2012/A/2740, which stated:

"78. Indeed, the right to be heard is a fundamental right and one of the most important elements of the right to a due process that must be respected in the course of the proceedings in front of any judicial body. A party to any such proceedings has the right of defending itself and shall have the chance to state its case and to provide its position regarding the subject matter in question, as well as to provide evidences that it may deem relevant for the case".

75. FIFA did not properly notify Pescara of the proceedings before the FIFA PSC, and therefore, Pescara was *"therefore never afforded the chance to react in any way to an alleged violation, let alone present a reasoned defence against an explicit charge identifying a perceived disciplinary violation under investigation by the deciding body"*. As a result, FIFA violated Pescara's right to be heard.

76. Pescara also submitted that a *de novo* review would not rectify the fundamental violation of their right to be heard. While CAS jurisprudence has, from time to time, recognised that a *de novo* review could cure some violations of the right to be heard by a sports governing body, these instances are rare and exceptional (as established in CAS 2010/A/2275) and would not suffice in the present proceedings.

77. To grant a *de novo* review in this case, where Pescara was not heard at all in reference to the Appealed Decision, would effectively remove the obligation of sport federations to respect the right to be heard, and therefore set a dangerous precedent.
78. Accordingly, for all the reasons above, Pescara stated that the Appealed Decision should be set aside.

ii. *Retroactive application of Article 12bis FIFA RSTP*

79. Pescara submitted that FIFA applied Article 12bis retroactively, in violation of Article 4 of the FIFA Disciplinary Code and the fundamental principle of non-retroactivity.
80. The Agreement between Pescara and Standard Liège for the Player was entered into on 10 July 2012, while Article 12bis did not take effect until April 2015. When undertaking its financial obligations towards Standard Liège under the Agreement in July 2012, Pescara had no means for which to take into consideration the fact that Article 12bis would be enacted nearly three years later.
81. Pescara also quoted CAS 2008/A/2583-1584, which stated, in relevant part:

“43. As regards the principle of non-retroactivity, the Second Respondent is correct to the extent that this is a fundamental legal principle, which does – basically – apply to measures taken by associations having the character of a sanction”.

82. Pescara also cited the principle *nullum crimen sine lege, nulla poena sine lege*, arguing that this prohibited punishments based on retroactive laws or rules of law. As the sanction upon Pescara was imposed retroactively in violation of Article 4 of the FIFA Disciplinary Code as well as the fundamental principle on non-retroactivity, it must therefore be set aside.

iii. *Unreasonableness of the sanctions*

83. Even if the Sole Arbitrator were to rule the principle of non-retroactivity does not apply to the present case, Pescara argued that *“it would be completely unreasonable to sanction Appellant on the basis of commitments undertaken well before Article 12bis of the FIFA Regulations came into existence”.*
84. Pescara argued that *“[a] football club cannot simply decide that it will no longer be in financial difficulties when an international football federation changes its rules”* and further, that *“there was absolutely nothing Pescara could have done to change the commitments undertaken by the club in the past or the financial situation of the club that resulted from the earlier chain of events”.* As such, Pescara submitted that as there was no way for it to consider Article 12bis when making financial commitments prior to its announcement or enactment, it could not therefore seek to ensure compliance with a regulation that did not yet exist.

iv. Proportionality of the sanctions

85. In the event that the Sole Arbitrator decided that a sanction may be imposed, Pescara submitted that the fine imposed upon Pescara by the FIFA PSC is disproportionate and excessive under the circumstances.
86. Pescara notes the four types of sanctions listed under Article 12bis (4):
- a) *a warning;*
 - b) *a reprimand;*
 - c) *a fine;*
 - d) *a ban from registering any new players, either nationally or internationally, for one or two entire and consecutive registration periods”.*
87. As it was fined, Pescara received the second most severe sanction available for a violation of Article 12bis. The Appealed Decision contained no mention as to why the FIFA PSC elected to fine Pescara, rather than issue a reprimand or warning.
88. The fine was disproportionate because there were lesser sanctions available to the FIFA PSC, and because any violation would have been the first such violation Pescara had faced under Article 12bis. Additionally, Pescara freely admitted the amounts due to Standard Liège and attempted to reach an amicable solution with Standard Liège in this matter. As such, there were no aggravating factors, nor was there any reason for the FIFA PSC to forgo the first two sanctions for a first-time offender.
89. Accordingly, for all of the reasons above, Pescara requested that the Sole Arbitrator reduce the sanction from a fine to a warning.

v. Costs of the proceedings

90. Pescara submitted that FIFA’s imposition of CHF 25,000 in procedural costs arising out of the proceedings before the FIFA PSC were applied to Pescara in violation of Article 18(3) of the FIFA Procedural Rules, which states the following:
- “3. *No fees shall be charged if a party decides not to ask for the grounds of a decision once the findings have been communicated”.*
91. Neither Pescara nor Standard Liège requested that FIFA provide the grounds of the decision before the FIFA PSC. Rather, FIFA sent the grounds of the decision to both Parties unprompted and of its own volition. As such, pursuant to Article 18(3), Pescara cannot be charged fees, and the procedural costs were issued in error by FIFA.
92. Accordingly, for all of the reasons above, Pescara requested the Sole Arbitrator to confirm that no procedural costs are payable.

vi. *Costs of FIFA were excessive*

93. Pescara submitted that FIFA's imposition of CHF 25,000 in procedural costs arising out of the proceedings before the FIFA PSC were excessive.
94. According to Article 18(1) of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (the "Procedural Rules"), the maximum amount of procedural costs allowable is CHF 25,000. FIFA therefore imposed the maximum amount in the proceedings before the FIFA PSC, despite the decision-making body consisting of just one person, when proceedings before the FIFA PSC routinely involve up to thirteen judges. Additionally, FIFA sent just two pieces of correspondence to the proceedings and Pescara didn't submit a defence, so the work involved and time spent by FIFA did not justify imposing the maximum allowable procedural costs and was "*blatantly excessive under any standard of review*".
95. Accordingly, for all of the reasons above, Pescara requested that, in the event the Sole Arbitrator orders Pescara to pay procedural costs, the Sole Arbitrator reduces the amount of procedural costs to a level proportionate to the amount of work undertaken by FIFA in the proceedings before the FIFA PSC.

vii. *Pescara's answers to the questions posed by the Sole Arbitrator*

In summary, Pescara submitted the following responses to the Sole Arbitrator's questions:

- a. *What is the relevance to the sanction issued by the Second Respondent of the Appellant's transfer activity from 2012?*
96. Pescara contended that FIFA used the Transfer Matching System to review Pescara's transfer activity and then used this information to determine whether to impose a sanction and decide upon the severity of the sanction. Pescara submitted that it was illogical that FIFA would submit information regarding Pescara's 2012 transfer activity as evidence to the Sole Arbitrator if it did rely upon this information in imposing its sanction. If FIFA did not use the information regarding Pescara's 2012 transfer activity as the basis for its decision to sanction Pescara, then FIFA would not have had any grounds whatsoever to defend the sanction imposed by the FIFA PSC.
97. Further, FIFA's review of Pescara's transfer activity was incomplete. The review only considered international transfer activity and failed to take into account domestic transfer activity.
98. FIFA's review of Pescara's transfer activity was also misguided, in that FIFA apparently considered that Pescara selling players and buying new players would be a reasonable basis to impose a sanction. Football clubs must engage in the buying and selling of players as a fundamental part of running a football club. Its transfer activity was necessary to both remain competitive so as to avoid being relegated further down the Italian football pyramid. Additionally, the transfer activity, for which Pescara earned a profit, helped rectify the club's

financial difficulties, allowing it to avoid insolvency as well as taking steps towards settling the few remaining overdue payables.

99. Pescara also reiterated its argument in its Appeal Brief that its right to be heard had been violated as it was not given the opportunity to defend itself against the charges of Article 12bis. Had it been given the opportunity to do so, it could have provided FIFA with proof of its successful efforts to remedy their difficult financial situation. Despite this, there were still no grounds for FIFA to consider any aggravating circumstances based on Pescara's transfer activities in any event.

b. What other cases has FIFA dealt with to date concerning Article 12bis and can copies of the decisions be provided?

100. Pescara submitted that it was not aware of FIFA having taken any decision regarding Article 12bis.

c. Is there some form of tariff that the Second Respondent refers to when issuing sanctions?

101. Pescara submitted that FIFA had not published any tariffs nor has it indicated in any manner how the sanctions are to be imposed. Pescara therefore reiterated its argument in its Appeal Brief that the sanction imposed had been disproportionate to any violation Pescara might have committed under Article 12bis.

d. At para 19 of the Decision is a reference to 'repeated offence[s]' – has the Appellant been sanctioned before in relation to Article 12bis? If so, please provide the details.

102. Pescara submitted that it had not been sanctioned for an Article 12bis violation prior to the Appealed Decision being issued.

B. Standard Liège's Submissions

In summary, Standard Liège submitted the following in support of its defence:

103. The overdue payables of EUR 675,000 are an uncontested debt and Pescara has never disputed this. In fact, at several times during these proceedings, Pescara had stated itself that the overdue payables in question were an uncontested debt. Further, Pescara had stated that that it was only appealing exclusively against the decision of FIFA concerning the amounts ordered payable by Pescara to FIFA, and further that the outstanding amount of EUR 675,000 had been correctly indicated as payable in the Appealed Decision.

104. Standard Liège submitted that an interest rate of 10 percent should be applied to all of the late payments by Pescara, as from the date on which these payments first became due. Pescara had not contested this either during the first instance proceedings at FIFA or at the CAS. Moreover,

in support, Standard Liège cited Article 163 of the Swiss Code of Obligations (“CO”) and Article 2.3 of the Agreement, which states, in relevant part (emphasis added by Standard Liège):

“In case of late payment of the definitive transfer fee from [Pescara], [Standard de Liège is entitled to a penalty interest of ten (10) percent on the outstanding amount from the date from which the payment was due until [Pescara] has paid the total amount due”.

105. Standard Liège submitted that all costs of the proceedings should be paid by Pescara (or in subsidiary, FIFA), and Pescara should pay a substantial contribution to the costs Standard Liège had incurred. Standard Liège submitted that it had made attempts to resolve this dispute on an amicable basis by allowing Pescara a new payment schedule. As Pescara did not adhere to the new payment schedule, Standard Liège was forced to commence legal proceedings before FIFA. Standard Liège had no legal interest in these proceedings, as Pescara had never contested the debt it owes to Standard Liège, and pointed this out to Pescara numerous times. Pescara nevertheless included Standard Liège as a party to these proceedings.

106. In support, Standard Liège cited Article 2.3 of the Agreement, which states in relevant part:

“[in] case of dispute, [Pescara] will pay all legal costs of procedure and enforcement, administrative costs and potential extrajudicial collection costs”.

107. Standard Liège elected not to respond to the questions submitted to the Parties by the Sole Arbitrator “given that the questions all relate to the sanction imposed on the Appellant by the Second Respondent and that Standard de Liège therefore cannot provide the Sole Arbitrator with any relevant and useful answer in this regard”.

C. FIFA’s Submissions

In summary, FIFA submitted the following in support of its defence:

i. The alleged violation of Pescara’s right to be heard

108. FIFA submitted that Pescara’s argument that the FIFA administration violated its right to be heard was “*simply absurd*” and further, that Pescara appeared to be searching for invalid arguments allowing it to further delay the payment of the amount it undeniably owed to Standard Liège.

109. FIFA’s letter to the FIGC, sent on 14 October 2015, and received by Pescara on 19 October 2015, made a clear reference to Article 12bis. In relevant part, the letter stated (emphasis added by FIFA):

“In this sense, we kindly refer [the Appellant] to art. 12bis of the Regulations on the Status and Transfer of Players, in accordance with which clubs are required to comply with their financial obligations towards players and other clubs as per the terms stipulated in the contracts signed with their professional players and in transfer agreements. In addition, any club found to have delayed a due payment for more than 30 days without a prima facie contractual basis may be sanctioned by the competent deciding bodies of FIFA”.

110. As can be seen from the letter in question, FIFA argued that “*not only was the Appellant perfectly informed about the existence and main content of art. 12bis of the Regulations, its attention was also explicitly drawn to the fact that sanctions may be imposed by the Single Judge*” [emphasis added by FIFA].
111. FIFA noted that Pescara confirmed that it elected not to respond to FIFA because Pescara did not contest the claim filed by Standard Liège, and therefore had no reason to submit a defence. FIFA argued that Pescara waived its right to be heard by actively choosing not to participate in the proceedings before the FIFA PSC.
112. FIFA submitted that Pescara’s submissions relating to Article 12bis should be excluded from these proceedings in accordance with Article R57 of the CAS Code. In support, FIFA argued that Pescara’s argument and the corresponding documentation was available to Pescara during the proceedings before the FIFA PSC, and further, that Pescara “*merely abuses these appeal proceedings to further delay the payment of the, undoubtedly overdue, transfer compensation to the first Respondent*”.
113. FIFA submitted that should the Sole Arbitrator take Pescara’s arguments and submissions relating to Article 12bis into consideration, Pescara was duly informed that a potential violation of Article 12bis was under investigation, as evidenced by the letter FIFA sent on 14 October 2015.
114. FIFA cited the example of Article 17 of the FIFA RSTP and specifically the sporting sanction elements contained in Articles 17(3) and (4). FIFA noted that if and when sporting sanctions were potentially applicable in a matter, there is never any separate disciplinary investigation conducted by FIFA as the sporting sanctions were merely imposed in the context of the employment related dispute in question. Moreover, the letters by FIFA administration to the parties in the dispute never specifically refer to Articles 17(3) and (4) of the FIFA RSTP as every club and player should be (and normally is) well aware of the content of the FIFA RSTP and the potential consequences of acting contrary to those regulations. Accordingly, FIFA in fact went beyond what was required of them in specifically directing Pescara to Article 12bis. The fact that Pescara willingly chose not to respond to FIFA’s letters does not mean that its right to be heard was violated.

ii. The application of Article 12bis FIFA RSTP

115. FIFA noted that, pursuant to FIFA Circular No. 1468, it was made clear that Article 12bis would come into force on 1 March 2015. Applying Articles 26(1) and 26(2) of the FIFA RSTP to the proceedings at hand, any case brought to FIFA after 1 March 2015 shall be assessed according to the March 2015 edition of the FIFA RSTP. As Standard Liège’s claim against Pescara was brought on 24 September 2015, it is evident that Article 12bis applied to the contractual dispute between Pescara and Standard Liège.
116. FIFA also noted that the line of argumentation used by Pescara that they could not, in 2012, have taken into account a rule that was to be enacted 3 years later confirms the dilatory tactics being used by Pescara. FIFA stated that clubs should not need any further motivation to comply

with its financial contractual obligations and it is precisely for this reason that Article 12bis was introduced by FIFA.

117. FIFA also argued that because Pescara did not raise this argument during the proceedings before the FIFA PSC, which had the effect of Pescara accepting, without reservation, the application of Article 12bis.

iii. The alleged unreasonableness of the sanction

118. FIFA submits that, generally, financial difficulties cannot be invoked as justification for the non-payment of a transfer fee to which a party had freely committed to paying. In these proceedings specifically, FIFA argues that *“every ‘compassion-argument’ that the Appellant tries to seek should immediately be dismissed as the Appellant’s current financial status is nothing more than the result of its own financial recklessness”*.
119. FIFA noted that the option to purchase the Player permanently for EUR 900,000 under the Agreement could have been exercised until 15 June 2013. Pescara played its final match of the 2012/13 season on 19 May 2013 and as such, was aware on that date at the latest that it would be relegated and would have to face the inevitable financial consequences of relegation. Despite this, on 6 June 2013, i.e. three weeks after being relegated, Pescara chose to exercise its option to purchase the Player. Merely two months later, on 7 August 2013, Pescara asked Standard Liège to agree to an amended payment schedule which either proves that Pescara either did not have the money to exercise the EUR 900,000 option to purchase the Player, or worse, that it decided to spend the money differently.
120. FIFA pointed to a number of similar transactions Pescara made after being relegated from Serie A at the end of the 2012/13 season. In summary, instead of paying Standard Liège the outstanding transfer fees of EUR 675,000 agreed in July 2012, Pescara chose to purchase 4 new players for a total of EUR 730,000 over the next few years *“which must be considered a blatant disrespect of its financial contractual obligations”* towards Standard Liège. In light of Pescara engaging in the sort of unreasonable financial behaviour that Article 12bis was enacted to prevent, FIFA submitted that the Sole Arbitrator should disregard Pescara’s assertion that *“there was absolutely nothing Pescara could have done to change the commitments undertaken by the club in the past or the financial situation of the club that resulted from the earlier chain of events”*.
121. FIFA also noted that Pescara sold the Player for EUR 1m on 8 July 2015 but was still yet to repay Standard Liège for its original purchase of the Player. In fact, 6 days after receiving this amount of EUR 1m, Pescara chose to purchase another player for EUR 300,000. FIFA argued that all these actions demonstrated that it was not the case that Pescara was unable to meet its financial obligations towards Standard Liège, but rather simply chose not to.
122. For the reasons listed above, FIFA submitted that the sanction imposed on Pescara was not unreasonable.

iv. *The alleged disproportionality of the sanction*

123. FIFA submitted that Pescara didn't argue that the amount of the fine is, in itself, disproportionate, but rather, that Pescara was arguing that they shouldn't have been fined at all because being fined is the second most severe sanction available under Article 12bis.
124. FIFA submitted that the imposition of a fine is not the second most severe sanction, as the list of four sanctions contained in Article 12bis was not exhaustive. FIFA may also impose a combination of the sanctions and has "*wide discretion when it comes to the sanctioning of clubs*".
125. As Pescara's argument that it had admitted that the amounts were payable and sought to reach an amicable solution with Standard Liège, rather than attempting to challenge the claim and thereby cause unnecessary costs to Standard Liège was not brought to the attention of the FIFA PSC and was "*flagrantly untrue*" if taking into account Pescara's other transfer activity, the fine imposed by the FIFA PSC was neither unreasonable, nor disproportionate. As such, the fine should not be annulled or reduced.

v. *The costs of the proceedings*

126. FIFA submitted that Pescara deceived Standard Liège, unnecessarily provoked the use of FIFA's resources, and wasted the time of Standard Liège, FIFA, and the CAS.
127. Addressing Pescara's argument that because it never requested the grounds of the decision, it cannot be held liable to pay fees under Article 18(3) of the Procedural Rules, FIFA submitted that any reference to Article 18(3) was irrelevant. Pursuant to Article 15(1) of the Procedural Rules, decision making bodies of FIFA may decide not to communicate the grounds of a decision and instead communicate only the findings of the decision. Accordingly, FIFA are capable of providing a decision with grounds immediately, which "*as a general rule, applies to all decisions that include an element of sanctioning*". In the present proceedings, the Appealed Decision was notified to the Parties with grounds, and therefore Article 18(3) was not applicable.
128. Addressing Pescara's argument that the procedural costs were excessive, FIFA submitted that Pescara had forfeited its right to contest this particular element. FIFA argued that this right had been forfeited as a result of Pescara not replying to the claim in the first instance before the FIFA PSC and now claiming that it did not do so because it did not have the financial resources, despite FIFA proving (through submissions of other transfer activity) that Pescara did actually have the financial resources to fulfil its obligations to Standard Liège. Pescara simply chose to spend those resources acquiring new players instead.
129. FIFA also pointed to the table contained in Annex A of the Procedural Rules and stated that the procedural costs levied upon Pescara by the FIFA PSC fully corresponded to that table. The table states as follows:

Amount in dispute	Procedural costs
up to CHF 50,000	up to CHF 5,000
up to CHF 100,000	up to CHF 10,000
up to CHF 150,000	up to CHF 15,000
up to CHF 200,000	up to CHF 20,000
from CHF 200,001	up to CHF 25,000

vi. FIFA’s answers to the questions posed by the Sole Arbitrator

In summary, FIFA submitted the following responses to the Sole Arbitrator’s questions:

- a. *What is the relevance to the sanction issued by the Second Respondent of the Appellant’s transfer activity from 2012?*
130. FIFA contended that Pescara’s transfer activity of 2012 or any other year had no impact on, or relevance to the sanction imposed on Pescara in the Appealed Decision. The primary reason the FIFA PSC chose to levy a fine upon Pescara was because Pescara did not respond to Standard Liège’s claim, and had no valid reason not to provide a response.
131. FIFA submitted that including Pescara’s transfer activity in its submissions was only to show the Sole Arbitrator that Pescara’s allegations as to why it failed to pay to Standard Liège the overdue amount were simply not true, and that Pescara was using these proceedings to further delay payment to Standard Liège.
- b. *What other cases has FIFA dealt with to date concerning Article 12bis and can copies of the decisions be provided?*
132. FIFA submitted that all decisions regarding overdue payables and Article 12bis were published online on its website. FIFA also provided direct links to 7 decisions in which the FIFA PSC and Dispute Resolution Chamber had imposed a fine on a club which did not reply to an overdue payables claim.
133. FIFA’s decision-making bodies *“have been consistent in imposing a fine on clubs which are found responsible to have delayed a due payment for more than 30 days without a prima facie contractual basis and which have failed to answer to the relevant claim without any kind of valid explanation, i.e. precisely as in the matter at hand”*.
134. This approach had been systematically applied since April 2015, or 6 months before FIFA sent the 14 October 2015 letter to Pescara, via the FIGC.

- c. *Is there some form of tariff that the Second Respondent refers to when issuing sanctions?*
135. FIFA submitted that the imposition of fines under Article 12bis were not based on tariffs or tables, but on a case-by-case basis, taking into account a number of factors and the specific circumstances surrounding a particular case.
136. FIFA referred to 3 CAS awards (CAS 2006/A/1008, CAS 2012/A/2850 and CAS 2013/A/3358) which confirmed that the percentage of the fine imposed in this instance (i.e. 7.40%) was not disproportionate.
- d. *At para 19 of the Decision is a reference to ‘repeated offence[s]’ – has the Appellant been sanctioned before in relation to Article 12bis? If so, please provide the details.*
137. FIFA confirmed that Pescara had not been sanctioned before in relation to Article 12bis. FIFA submitted that the reference to “repeated offences” was to serve as a warning to Pescara that should it be found responsible for overdue payables in the future, that the relevant sanction could be harsher.

V. JURISDICTION OF THE CAS

138. Article R47 of the CAS Code provides as follows:
- “An appeal against a 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”.*
139. The jurisdiction of the CAS, which is not disputed, derives from Article 67(1) of the FIFA Statutes (2015 edition) as it determines 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 notification of the decision in question”.*
140. The jurisdiction of the CAS was confirmed by the Appellant in its Appeal Brief and was further confirmed by the Order of Procedure duly signed by the other two Parties.
141. It follows that the CAS has jurisdiction to hear this dispute.

VI. ADMISSIBILITY

142. The Statement of Appeal, which was filed on 8 January 2016, complied with the requirements of Articles R48 and R64.1 of the CAS Code, including the payment of the CAS Court Office fee.
143. It follows that the Appeal is admissible.

VII. RIGHT TO BE HEARD

144. Pescara has argued that FIFA violated its right to be heard during the Appealed Decision as they claimed they were not afforded the opportunity to address the specific claims against them in relation to Article 12bis. Moreover, Pescara also submitted that a *de novo* review at CAS in this particular case would not rectify this fundamental violation of their right to be heard. Pescara claimed that to grant a *de novo* review in this case, where Pescara was not heard at all in reference to the Appealed Decision, would effectively remove the obligation of sport federations to respect the right to be heard, and therefore set a “dangerous precedent”.
145. Pescara has also then argued that its right to be heard has not been satisfied during these CAS proceedings and did not sign the Order of Procedure for that reason.
146. The Sole Arbitrator notes that Article R57 of the CAS Code grants him full power to review this matter on a *de novo* basis and this has been confirmed by numerous CAS precedents¹. This full power of review means that procedural flaws, if any, in a first instance decision can often be cured by a CAS proceeding².
147. In CAS 2008/A/1574, the Panel dealt with the meaning of a CAS Panel’s *de novo* powers and ruled that a *de novo* hearing is:
- “a completely fresh hearing of the dispute between the parties, any allegation of denial of natural justice or any defect or procedural error even in violation of the principle of due process which may have occurred at first instance whether within the sporting body or by the Ordinary Division CAS panel, will be cured by the arbitration proceedings before the appeal panel and the appeal panel is therefore not required to consider any such allegations”³.*
148. 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 jurisprudence⁴. 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 exercised⁵.
149. The Sole Arbitrator acknowledges that some serious procedural violations cannot be cured by a *de novo* hearing under Article R57 of the CAS Code. The non-analysis of an athlete’s B sample in a doping dispute is one such example⁶. However, for the reasons set out below, the Sole Arbitrator concludes that the alleged procedural violations in the Appealed Decision are not of

¹ For example, see *inter alia*, CAS 2014/A/3467, CAS 2011/A/2500 & 2591, CAS 2008/A/1700 & 1710.

² See CAS 2001/A/345.

³ CAS 2008/A/1574, at 42. See also CAS 2012/A/2702.

⁴ See for example, CAS 2012/A/2913, CAS 2012/A/2754, CAS 2011/A/2357 and TAS 2004/A/549.

⁵ See ATF 124 II 132 of 20 March 1998.

⁶ See CAS 2008/A/1607.

such a character that they cannot be cured by a *de novo* CAS hearing. The Sole Arbitrator further notes that FIFA's correspondence of 14 October 2015 clearly refers to the underlying dispute (i.e. that Pescara had not paid Standard Liège) being subject to Article 12bis and warns that sanctions may be applied, so it is unclear to the Sole Arbitrator why Pescara was confused in any way. However, for all the reasons just mentioned, Article 12bis has been fully considered by Pescara in this procedure before the CAS.

150. Turning next to the Appellant's allegation that the CAS had not respected its right to be heard, the Sole Arbitrator notes that according to Article R56 of the CAS Code, "*[u]nless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to reply after the submission of the appeal brief and of the answer*".
151. After FIFA had filed its Answer, the Appellant insisted that it be allowed to respond to certain facts that were made in such Answer. There was no "mutual agreement", so this should only be allowed if the Sole Arbitrator so determined, on the basis of "exceptional circumstances".
152. As outlined below in section IX of this Award, the Sole Arbitrator notes that he had some sympathy for Pescara in relation to their arguments relating to their right to be heard in relation to the Appealed Decision, as FIFA provided arguments and evidence in their Answer at CAS which they ought to have included in the grounds of the Appealed Decision if these had been considered by the Single Judge. The Sole Arbitrator believes that the inclusion of additional reasoning by FIFA that was not included in the Appealed Decision (i.e. the alleged transfer activity of the Appellant at a time when it had overdue payables) amounted to "exceptional circumstances" justifying, under Article R56 of the CAS Code, that some additional questions be answered.
153. Accordingly, the Sole Arbitrator provided Pescara with an opportunity to address these arguments and put forward any evidence it wished in relation to the above exceptional circumstances. He further took the opportunity to consider the economics of the matter at hand. The Sole Arbitrator therefore asked some further questions of the Parties, in an attempt to deem himself sufficiently well informed so as to dispense with the need for a hearing.
154. However, given that there were only narrow exceptional circumstances (i.e. the additional transfer information of Pescara provided by FIFA which were not mentioned in the Appealed Decision), while the Sole Arbitrator wanted to give Pescara the right to be heard on this issue, he did not want to provide the Parties 'carte blanche' to make unwarranted additional submissions. As such, the Sole Arbitrator provided the Parties with a list of questions to answer, the first of which specifically dealt with the exceptional circumstances in question. The Parties (Pescara and FIFA, at least, as Standard Liège had no interest in the questions) submitted written answers addressing this issue and the other questions addressed, and the Sole Arbitrator has duly taken these answers into account in making his decision.

155. The Sole Arbitrator also notes that CAS 2006/A/1088⁷ is an example of a case where a party was unaware of what was being considered in the previous instance and did not have the opportunity to challenge evidence nor to put forward its arguments and supporting evidence. In that case, the CAS Panel confirmed the curing effect of a *de novo* review and well established CAS case law, according to which:

“... the virtue of an appeal system which allows for a full rehearing before an appellate body is that issues relating to the fairness of the proceedings before the authority of first instance fade to the periphery”⁸.

156. Similarly, in the present proceedings, even if Pescara were not given the right to be heard on the issue of their transfer dealings in the Appealed Decision, they were specifically provided with an opportunity to be heard on this issue with the answers to the questions posed by the Sole Arbitrator at these CAS proceedings. Pescara took this opportunity and submitted the arguments and evidence it had and the Sole Arbitrator has taken this into account, so Pescara’s right to be heard has been respected in this regard.

157. Finally, the Sole Arbitrator notes that despite answering the Sole Arbitrator’s questions, Pescara requested that a hearing be held but the Sole Arbitrator determined, as he is empowered to do under Article R57 of the CAS Code, that he was sufficiently well informed that a hearing was not required. As mentioned above, in coming to this decision, the Sole Arbitrator had to consider the economics of holding a hearing. The Parties and their legal representatives were based in Italy, Belgium and Switzerland and the Sole Arbitrator is in the United Kingdom. The costs that were likely to be incurred by all the Parties in holding a hearing would have been disproportionate considering that the amount in dispute is CHF 75,000 (being the total of the fines and costs levied by FIFA). This was only exacerbated by the fact that Pescara brought Standard Liège into this CAS Appeal when it did not perhaps need to, had it framed its prayers for relief differently and solely against FIFA. Finally, the Sole Arbitrator ultimately determined that a hearing was unlikely to uncover any further material information or evidence which had not already been presented to him by the Parties. Accordingly, while a hearing was not held, this did not amount to a violation of Pescara’s right to be heard.

158. In summary, the Parties were provided with the opportunity to submit any evidence and arguments they wished to in relation to any of the issues involved in this dispute, including the exceptional circumstances relating to FIFA’s submissions on Pescara’s transfer activity. As such, the Parties’ right to be heard in this CAS proceeding has been fully respected.

VIII. APPLICABLE LAW

159. 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

⁷ CAS 2006/A/1088.

⁸ See TAS 98/211, award of 7 June 1999, at 19.

federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

160. Accordingly, the Sole Arbitrator rules that FIFA Regulations would apply, including the 1 March 2015 version of the FIFA RSTP, with Swiss law applying to fill in any gaps or *lacuna*, when appropriate.

IX. LEGAL DISCUSSION

A. Merits

161. The Sole Arbitrator notes that all three Parties in this dispute agree that Pescara owes EUR 675,000 to Standard Liège under the Agreement. Pescara have not denied that this money was due and payable, have not appealed this element of the Appealed Decision and have not put forward any arguments as to why the Appealed Decision should be amended in that regard. However, the Sole Arbitrator notes that the primary prayer for relief of Pescara is to:

“2. *Set aside the decision of the Single Judge of the FIFA Players’ Status Committee under appeal”.*

If the Appealed Decision were to be “set aside”, then it would have the effect of cancelling the award to Standard Liège.

162. Similarly, Article 2.3 of the Agreement stated that interest of 10% would be applicable in the event that Pescara were late in their payment of the transfer fee. Pescara did not contest this before the Appealed Decision at FIFA nor at the CAS.
163. Therefore, the Sole Arbitrator confirms that the amount of EUR 675,000 is due and payable by Pescara to Standard Liège, and interest of 10% is applicable from the due date of the payment until the effective date of payment, following that part of the Appealed Decision. Even though it appears that Pescara has discharged the majority of this sum in accordance with the Appealed Decision, the Sole Arbitrator should not upset that award.
164. The Sole Arbitrator observes that the main remaining issues to be resolved are:
- a) Is Article 12bis of the FIFA RSTP applicable in this dispute?
 - b) If so, was the sanction of a fine of CHF 50,000 pursuant to Article 12bis reasonable and proportionate?
 - c) Should the procedural costs imposed by FIFA in the Appealed Decision of CHF 25,000 be reduced for being excessive and disproportionate?

a) *Is Article 12bis of the FIFA RSTP applicable in this dispute?*

165. The Sole Arbitrator, having determined that the Appellant had been fully heard on the subject of Article 12bis in these proceedings (if not in the proceedings before FIFA), notes that the

Appellant submitted that Article 12bis was not applicable in the case at hand as Article 12bis cannot be applied retrospectively.

166. The Appellant refers to the fact that the Agreement was entered into and the overdue payables that stemmed therefrom both pre-dated the implementation of the version of the FIFA RSTP that contained Article 12bis and brought it into force on 1 April 2015.
167. The Sole Arbitrator draws a distinction between FIFA on a given date after 1 April 2015 looking to sanction a club that had overdue payables to another club prior to that date, which had been cleared prior to that date; and looking to sanction a club that had overdue payables to another club prior to that date, which had not been cleared prior to that date (i.e. continued to have overdue payables). Here Pescara clearly falls into the second group.
168. Whilst the Appellant can argue that it had no idea that Article 12bis would come into force at the time it entered into the Agreement, it was certainly aware that it had a contractual obligation to pay Standard Liège in accordance with the Agreement. The claim made by Standard Liège was made well after 1 April 2015 and referred clearly to the overdue payables from Pescara.
169. The reality of the situation is that Pescara should have known by 1 April 2015 that Article 12bis existed and it had the opportunity to follow the legal principle that it failed to quote in the matter at hand, that of *pacta sunt servanda*, and paid the overdue sums to Standard Liège.
170. Article 12bis is clearly framed to allow FIFA to assess the situation after 1 April 2015. All that matters is whether there are overdue payables at the assessment date and that the assessment date is after 1 April 2015. The date that the payable has been overdue from is immaterial insofar as classing it as an overdue payable or not, although, that due date may well have an impact on the type and amount of any sanction.
171. The Sole Arbitrator is satisfied that FIFA were correct in concluding that Pescara had overdue payables to Standard Liège when it produced the Appealed Decision and that considering a payable that pre-dated 1 April 2015 as overdue was not a retrospective act. The sum was still due after 1 April 2015 and Pescara chose not to pay it and therefore were right to be sanctioned under Article 12bis.

b) *If so, was the sanction of a fine of CHF 50,000 pursuant to Article 12bis reasonable and proportionate?*

172. Pescara argues that the sanction of a CHF 50,000 fine was unreasonable (i.e. because Pescara had financial difficulties) and disproportionate (i.e. a different sanction could have been given or the amount of the fine could be less).
173. Here the Sole Arbitrator must address the submission made by FIFA in its Answer. It made reference to the transfer activity of Pescara during the period of time that the overdue payables to Standard Liège built up. None of these were referred to in the Appealed Decision. Did the Single Judge take these factors into account or did FIFA insert them into the Answer to give a bad impression of Pescara to the Sole Arbitrator? Pescara and FIFA can disagree on this, but

from the Sole Arbitrator's perspective, these should not have been taken into consideration by the Single Judge and if they were put forward to leave some impression on the Sole Arbitrator, that has been in vain. All clubs need to bring players in and get them out at the end of each season and often throughout too. The Single Judge would have been wrong to consider these transactions in isolation, as would the Sole Arbitrator now. While FIFA has produced details of a few players coming in, the Sole Arbitrator does not have: details of whether these players went out later at a profit; whether other players had left that were more expensive; whether other players had been sold; whether the squad reduced in size; etc. The entire picture of movements in and out would need to be reviewed to assess the net position. The Sole Arbitrator determines to take no notice of the transfer dealings of Pescara that FIFA mentioned in its Answer, as in isolation they are irrelevant. Instead, his focus is on the sums due to Standard Liège.

174. That said, Pescara has pleaded financial difficulties, but has not provided any evidence of the finances of the club. In any event, the Sole Arbitrator notes that since 31 January 2014, it simply stopped paying Standard Liège. It built up a considerable amount of overdue payables and did not even look to make payments on account every now and then. From the CAS file it appears that in July 2015, Pescara sought to reach some form of further repayment schedule with Standard Liège. Indeed, Standard Liège were willing to negotiate again by slightly altering that proposed repayment schedule, but Pescara ignored their response. It ultimately seemed content to leave the sum outstanding. The Sole Arbitrator further notes that the Player was sold by Pescara in July 2015 for a profit and that the sale proceeds were not used at all to clear the debt to Standard Liège. This is exactly the type of behaviour, where one club takes a serious advantage over another club (or in other cases, over players) and trades at their expense that resulted in FIFA bringing in regulations such as Article 12bis. It is certainly not unreasonable for FIFA to apply Article 12bis to Pescara for the sums due to Standard Liège in the case at hand.
175. Were the sanctions issued disproportionate? The Sole Arbitrator notes that the amounts due related to the permanent transfer of the Player to Pescara. The first original payment of EUR 450,000 should have been made on 30 September 2013, however the parties agreed to vary the payment schedule and the first instalment fell due on that same date, but was for EUR 90,000. That instalment was made, as was the next, however, on 31 January 2014, Pescara failed to pay the third instalment and has failed to pay any sum since that date. As set out at paragraph 162 above, the total sum, now well overdue, is EUR 675,000.
176. The Sole Arbitrator has reviewed the recent FIFA jurisprudence in the area of overdue payables and Article 12bis. The amount of overdue payables, the length of time these have been overdue, the fines and costs imposed have been summarised in the table below:

Date of Decision	Panel members	Amount in dispute (EUR)	Fine (CHF)	Fine as % of overdue payables	Costs (CHF)	Costs as % of overdue payables	Date of first overdue payable
17/04/2015	1	75,000	10,000	13%	10,000	13%	30/07/2014
11/06/2015	1	95,000	10,000	11%	10,000	11%	01/08/2014
16/09/2015	1	2,451	1,000	41%	-	-	01/04/2015
12/10/2015	1	200,000	15,000	8%	25,000	13%	15/07/2013
27/10/2015	3	128,400	15,000	12%	-	-	28/02/2015
12/11/2015	1	5,000	1,000	20%	-	-	14/08/2015
22/01/2016	3	150,000	15,000	10%	-	-	25/01/2015
Appealed Decision - 19/12/2015	1	675,000	50,000	7%	25,000	4%	31/01/2014

177. A few things are clear from this table: (1) all these offenders have received a fine of sorts, even very small amounts of overdue payables have resulted in a fine, as opposed to lesser sanctions that could be issued under Article 12bis, such as a warning or reprimand; (2) the amount that is overdue is the largest to date before FIFA from the cases they submitted; (3) the first part of the overdue payables had been outstanding for almost two years (and that is after having rescheduled payments with agreement of Standard Liège), which was the second longest of these cases; and (4), whilst the fine issued is the highest by some way (CHF 50,000 compared to the next highest of CHF 15,000), when considered as a percentage of the total overdue payables, the fine is the lowest percentage so far.

178. The Sole Arbitrator has no hesitation in determining that the sanction of a fine was the correct starting point and, bearing in mind the amount due and the period of time this has been due for, this level of fine is proportionate.

c) *Should the procedural costs imposed by FIFA in the Appealed Decision of CHF 25,000 be reduced for being excessive and disproportionate?*

179. Pescara argued that (1) as it did not ask for a grounded decision within 10 days, then the procedure should be free; and that, in any event (2) the amount of the costs are excessive and disproportionate.

180. The Sole Arbitrator is aware that FIFA often applies Article 18(3) of the Procedural Rules as a practical way to end disputes and to get the parties to accept ungrounded decisions as final and binding. The incentive for the parties is to avoid the procedural costs. However, there is nothing in the Procedural Rules to stop FIFA issuing a grounded decision, as it appears to do with Article 12bis decisions, indeed Article 15(1) leaves that decision to FIFA. However, once it has made the choice to issue a grounded decision, then Article 18(3) is rendered irrelevant.

181. In CAS 2013/A/3054⁹, the Appellant requested the Panel to order that half the procedural costs related to the proceedings at FIFA were to be borne by the Respondent but the Panel held that *“it is not for the CAS to reallocate the costs of the proceedings before previous instances, and that therefore the appeal shall be dismissed in this respect”*.
182. The Sole Arbitrator sees no reason to deviate from this CAS jurisprudence. On the one hand, the procedural costs may seem high for what appears to be a few letters and an uncontested hearing before a Single Judge, with the fairly short Appealed Decision. However, on the other hand, these costs are not high when considered as a percentage of the overdue amounts at stake or when considering the amount of time the payments had been overdue when compared to the previous FIFA jurisprudence and are in line with the table contained in Annex A of the Procedural Rules. Further, the Sole Arbitrator can understand that it would add an undue burden upon the various chambers of FIFA if they each had to allocate the exact time and expenses each incurred on every individual matter that came before them, as opposed to taking a “broad brush” approach, based on the amounts at stake/overdue. As such, for all the reasons above, the procedural costs of CHF 25,000 imposed on Pescara cannot be reviewed and is therefore deemed to be final and binding.

B. Conclusion

183. Based on the foregoing, and after taking into due consideration all the evidence produced and all submissions made, the Sole Arbitrator finds that Pescara’s Appeal is rejected in its entirety and the Appealed Decision is upheld.
184. All further claims or requests for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Delfino Pescara 1936 on 8 January 2016 against the decision of the Single Judge of the FIFA Players’ Status Committee of 24 November 2015 is rejected.
 2. The decision rendered by the Single Judge of the FIFA Players’ Status Committee of 24 November 2015 is confirmed.
- (...)
6. All other motions or prayers for relief are dismissed.

⁹ CAS 2013/A/3054, at 89.