



**Arbitration CAS 2016/A/4595 Al Ittihad Saudi v. Fédération Internationale de Football Association (FIFA), award of 21 November 2016**

Panel: Mr Manfred Nan (The Netherlands), President; Mr Attila Berzeviczi (Hungary); Prof. Martin Schimke (Germany)

*Football*

*Sanctions in proceedings before the FIFA Disciplinary Committee*

*Scope of review under Article 64 FIFA Disciplinary Code*

*Duty of deference and scope of review of disciplinary sanctions imposed by FIFA Disciplinary Committee*

1. According to established CAS jurisprudence, in case a decision rendered by the FIFA Players' Status Committee (PSC) has become final and binding, but nevertheless is not complied with by the party in debt, in the subsequent proceedings before the FIFA Disciplinary Committee (FIFA DC), the FIFA DC, when determining whether to impose sanctions under Article 64 of the FIFA Disciplinary Code (FDC), is limited to analyse whether the party in debt complied with the final and binding PSC decision. Accordingly, a CAS panel, upon appeal of the FIFA DC decision, can only hear submissions relating to the fine imposed by the FIFA DC, such as its legal basis and quantum; the CAS panel cannot consider requests concerning the debt owed as the issues relating thereto have been decided by the PSC decision.
2. CAS jurisprudence has held that 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, disciplinary bodies may evaluate any aggravating and/or extenuating circumstances that might be related to the infringement. It is further consistent CAS jurisprudence that CAS panels shall give a certain level of deference to decisions of sports governing bodies in respect of the proportionality of sanctions; those sanctions can only be reviewed when they are evidently and grossly disproportionate to the offence. Accordingly, in CAS appeal proceedings against a decision by the FIFA DC imposing sanctions on one party, the test to be applied by the CAS panel is not whether the fine imposed is in accordance with the FIFA DC's longstanding practice, but rather whether the fine imposed is evidently and grossly disproportionate to the offence.

## **I. PARTIES**

1. Al Ittihad Saudi (the “Appellant” or the “Club”) is a football club, with its registered office in Jeddah, Saudi Arabia. The Club is registered with the Saudi Arabian Football Federation (hereinafter: the “SAFF”), which in turn is affiliated to the Fédération Internationale de Football Association.
2. The Fédération Internationale de Football Association (“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**

3. Below is a summary of the main relevant facts, as established on the basis of the parties’ written submissions and the evidence examined in the course of the present appeal arbitration proceedings. This background is presented for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.
4. On 29 July 2015, the Single Judge of FIFA’s Players’ Status Committee (the “Single Judge”) decided (the “PSC Decision”) that the Club had to pay to the Italian football club AS Roma, within 30 days as from the date of notification of the decision, the amount of EUR 1,760,000 as well as interest at a rate of 5% *p. a.* until the date of the effective payment.
5. Furthermore, the Single Judge imposed a fine in the amount of CHF 60,000 on the Club that had to be paid within 30 days of notification of the decision as well as the costs of the proceedings to the total amount of CHF 25,000 to be paid within 30 days of notification of the decision, out of which CHF 20,000 to FIFA and CHF 5,000 to AS Roma.
6. The motivated decision was duly communicated to the Club on 4 August 2015. As no appeal was lodged against the PSC Decision with the Court of Arbitration for Sport (“CAS”), the decision became final and binding.
7. On 26 October 2015, FIFA urged the Club to provide FIFA with a copy of the payment receipt of the relevant amounts by no later than 5 November 2015, in the absence of which FIFA would proceed to forward the file to the Disciplinary Committee (the “FIFA DC”) for consideration and a formal decision.
8. On 25 November 2015, FIFA informed the Club that in view of the fact that the Club had not provided any evidence of payment, the matter was forwarded to the FIFA DC.
9. On 22 January 2016, AS Roma confirmed having received the owed amounts.

## B. Proceedings before the Disciplinary Committee of FIFA

10. On 3 February 2016, FIFA instigated disciplinary proceedings against the Club and informed the SAFF, *inter alia*, as follows:

*“We refer to the above-mentioned matter as we have learned that [the Club] has not acted in accordance with the [PSC Decision]. This would appear to be a violation of article 64 of the FIFA Disciplinary Code (FDC), and as such, it will be subject of an investigation by the FIFA Disciplinary Committee.*

*We are therefore opening disciplinary proceedings against [the Club] in respect of a violation of article 64 of the FDC.*

*In this regard, we wish to inform you and [the Club] that the case will be submitted to the FIFA Disciplinary Committee for evaluation on 4 March 2016 so that disciplinary measures (fine, deduction of points, relegation to a lower league) may be imposed on the club.*

*With this in mind, we hereby urge [the Club] to pay immediately the following outstanding amounts due to FIFA and send us a copy of proof of payment:*

- CHF 20,000 as procedural costs.
- CHF 60,000 as a fine.

*Should [the Club] pay all outstanding amounts by **22 February 2016** at the latest and send us copies of proof of payment by the same deadline, the case will not be submitted to the FIFA Disciplinary Committee and the disciplinary proceedings will be closed.*

*Should [the Club] fail to submit a statement or pay the outstanding amounts by the specified deadline, the FIFA Disciplinary Committee will decide on the case using the file in its possession (cf. art. 110 par. 4 FDC).*

*The Saudi Arabian Football Federation is kindly requested to forward this letter to [the Club] immediately”.*

11. On its meeting held on 4 March 2016, the FIFA DC rendered the following decision (the “Appealed Decision”):

- “1. The club Al Ittihad is pronounced guilty of failing to comply with the decision passed by the Single Judge of the Players’ Status Committee on 29 July 2015 and is, therefore, in violation of art. 64 of the FIFA Disciplinary Code.*
- 2. The club Al Ittihad is ordered to pay a fine to the amount of CHF 10,000. The fine is to be paid within 30 days of notification of the present decision. [...].*
- 3. The club Al Ittihad is granted a final period of grace of 30 days as from notification of the present decision in which to settle its debt to FIFA.*
- 4. Finally, the debtor is warned and notified that in the case of non-payment of the outstanding amount to FIFA within the period stipulated, the case will be re-submitted to the FIFA Disciplinary Committee*

*in order to impose harsher sanctions against the debtor. These sanctions may lead, amongst others, to a deduction of points from the debtor's first team in the domestic league championship or to a relegation of said team to a lower league.*

5. *The costs of these proceedings amounting to CHF 2,000 are to be borne by the club Al Ittihad and shall be paid according to the modalities stipulated under point 2. above”.*

12. On 21 April 2016, the grounds of the Appealed Decision were communicated to the parties, determining the following:

- *“According to art. 62 par. 2 of the FIFA Statutes, the Disciplinary Committee (hereinafter referred to as the Committee) may pronounce the sanctions described in the Statutes and the FIFA Disciplinary Code (hereinafter also referred to as the FDC) on Members, clubs, Officials, Players and match and players' agents.*
- *Anyone who fails to pay another person (such as a player, a coach or a club) or FIFA a sum of money in full or part, even though instructed to do so by a body, a committee or an instance of FIFA or a subsequent CAS appeal decision (art. 64 par. 1 of the FDC):*
  - a) *will be fined for failing to comply with a decision;*
  - b) *will be granted a final deadline by the judicial bodies of FIFA in which to pay the amount due;*
  - c) *if it is a club, it will be warned and notified that, in the case of default or failure to comply with a decision within the period stipulated, points will be deducted or demotion to a lower division ordered. A transfer ban may also be pronounced.*

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

- *The Committee emphasises that equal to the competence of any enforcement authority, it cannot review or modify as to the substance a previous decision, which is final and binding and thus has become enforceable.*
- *In what concerns the matter at stake, the Committee takes due note that the decision imposed by the Single Judge of Players' Status Committee on 29 July 2015 was passed in application of art. 12bis of the Regulations on the Status and Transfer of Players, which aims at establishing a stronger system with regard to overdue payables towards players and clubs (Circular No 1468 dated 23 January 2015). The FIFA Disciplinary Committee underlines, in this context, that the aim of this new provision is to ensure that clubs comply with their contractual obligations.*
- *Having said that, the Committee notes that the grounds of the decision passed by the Single Judge of the Players' Status Committee on 29 July 2015 had been duly communicated on 4 August 2015 to the debtor and that no appeal against the decision passed by the Single Judge of the Players' Status Committee was lodged with the Court of Arbitration for Sport (CAS). Therefore, the decision became final and binding.*

- *In view of what has been explained [...] above, the Committee is not allowed to analyse the case decided by the Single Judge of the Players' Status Committee as to the substance, in other words, to check the correctness of the amount ordered to be paid, but has as a sole task to analyse if the debtor complied with the final and binding decision rendered by the Single Judge of the Players' Status Committee.*
- *As the debtor did not fully comply with the decision passed by the Single Judge of the Players' Status Committee on 29 July 2015 and is consequently withholding money from FIFA, it is considered guilty under the terms of art. 64 of the FDC.*
- *The fine to be imposed under the above-referenced art. 64 par. 1a) of the FDC in combination with art. 15 par. 2 of the FDC shall range between CHF 300 and CHF 1,000,000. The debtor withheld the amount unlawfully from FIFA. Even FIFA's attempts to urge the debtor to fulfil its financial obligations failed to induce it to pay the total amount due. In view of all the circumstances pertaining to the present case and by taking into account the outstanding amount due, the Committee regards a fine amounting to CHF 10,000 as appropriate. This amount complies with the Committee's established practice.*
- *In application of art. 64 par. 1b) of the FDC, the Committee considers a final deadline of 30 days as appropriate for the amount to be paid to FIFA.*
- *In accordance with art. 64 par. 1c) of the FDC, the debtor will be warned and notified that, in the case of default within the period stipulated, the case will be resubmitted to the FIFA Disciplinary Committee in order to impose harsher sanctions on the debtor. These sanctions may lead, amongst others, to a deduction of points from the debtor's first team in the domestic league championship or to a relegation of said team to a lower league. The order to implement the deduction of points will be issued on the association concerned by the secretariat to the FIFA Disciplinary Committee.*
- *The Committee decides based on art. 105 par. 1 of the FDC that the costs and expenses of these proceedings amounting to CHF 2,000 shall be borne by the debtor”.*

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

13. On 6 May 2016, the Club lodged a Statement of Appeal with the CAS in accordance with Article R48 of the CAS Code of Sports-related Arbitration (the “CAS Code”), challenging the Appealed Decision and nominating Mr Attila Berzeviczi, Attorney-at-Law in Budapest, Hungary, as arbitrator.
14. On 19 May 2016, the Club filed its Appeal Brief in accordance with Article R51 of the CAS Code. This document contained a statement of the facts and legal arguments and included the following requests for relief:
  - “i. *To uphold and accept the appeal against the FIFA decision dated March 04, 2016 in the matter with reference number ref. 160067 PST KSA ZH.*

- ii. *To annul the part of the Appealed decision obliging the Club to pay the amount of fine equal to CHF 10,000.*

*Alternatively,*

- iii. *In case the honourable members of the Panel consider that the fine, in principle should be applied to the Club, to reduce its amount in order for it to be in line with the established practice of the FIFA Disciplinary Committee.*
- iv. *To condemn FIFA to payment of all the CAS arbitration and administration costs and the Arbitrator fees.*
- v. *To fix a sum to be paid by FIFA to Al Ittihad Saudi in an amount of CHF 5,000 to cover its defence fees and costs”.*

15. On 19 May 2016, FIFA nominated Prof. Dr. Martin Schimke, Attorney-at-Law in Dusseldorf, Germany, as arbitrator.
16. On 28 June 2016, FIFA filed its Answer in accordance with Article R55 of the CAS Code, submitting the following requests for relief:
  - a. *To reject the Appellant’s appeal in its entirety.*
  - b. *To confirm the decision hereby appealed against.*
  - c. *To order the Appellant to bear all costs incurred with the present procedure and to cover all the Respondent’s legal expenses relating to the present procedure”.*
17. On 29 June 2016, FIFA informed the CAS Court Office of its preference that the arbitral award be rendered on the basis of the parties’ respective written submissions.
18. On 30 June 2016, the Club informed the CAS Court Office of its preference for a hearing to be held.
19. On 15 July 2016, pursuant to Article R54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the arbitral tribunal appointed to decide the matter was constituted by:
  - Mr Manfred Nan, Attorney-at-Law in Arnhem, the Netherlands, as President;
  - Mr Attila Berzeviczi, Attorney-at Law in Budapest, Hungary; and
  - Prof. Dr. Martin Schimke, Attorney-at-Law in Dusseldorf, Germany, as arbitrators.
20. On 3 August 2016, and on behalf of the Panel, the CAS Court Office informed the parties that the Panel, upon examination of the written submissions, did not deem a hearing necessary at the time, but invited the parties to inform the CAS Court Office whether they would agree to file one final round of written submissions *in lieu* of a hearing.

21. On 4 August 2016, the Club agreed to file one final round of written submissions *in lieu* of a hearing.
22. On 5 August 2016, FIFA informed the CAS Court Office that it did not deem it necessary to file a final round of written submissions.
23. On 9 August 2016, the CAS Court Office informed the parties that, upon consideration of their position, the Panel had decided to order the parties to file an additional round of written submissions, pursuant to Articles R57 and R44.3 of the CAS Code.
24. On 24 August 2016, the Club filed its Reply in accordance with the instructions of the Panel.
25. On 1 September 2016, FIFA filed its Second Response in accordance with the instructions of the Panel.
26. On 27 and 28 September 2016 respectively, FIFA and the Club returned duly signed copies of the Order of Procedure to the CAS Court Office, in which both parties expressly stated that they did not raise any objection to the procedure adopted by the Panel and that their right to be heard had been respected.
27. The Panel confirms that it carefully heard and took into account in its decision all of the submissions, evidence, and arguments presented by the parties, even if they have not been specifically summarised or referred to in the present award.

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

28. The following outline of the parties' positions is illustrative only and does not necessarily encompass every contention put forward by the parties. However, the Panel has carefully considered all the written submissions made by the parties, even if there is no specific reference to those submissions in the following summaries.
29. The Club's submissions, in essence, may be summarised as follows:
  - The Club refers to Article 39 of the FIFA Disciplinary Code ("FDC") and asserts that the sanction imposed by FIFA is disproportionate because not all relevant factors were taken into account.
  - Firstly, the Club points out that the Appealed Decision does not contain any reference to the fact that the Club paid the total amount due to AS Roma, which amount was equal to approximately 95% of the total sum due.
  - Secondly, the Club submits that as FIFA, pursuant to Article 40 FDC, can increase a sanction in case of repeated infringements, FIFA should also take it into account if a club commits a first infringement and that this should be considered like a "*mitigating factor for application of a less severe sanction*".

- With reference to CAS jurisprudence, the Club argues that the sanction imposed is approximately equal to 17% of the total amount due to FIFA, which is not in accordance with FIFA's well-established practice as "*at no point the fines imposed on the parties exceeded 10% of the principal amount of the debt*".
- Finally, the Club maintains that the amount of the fine is to be reduced to an amount which would be in line with the well-established practice of the FIFA PSC. The discretion of the Panel to mitigate the fine derives from Article 163(3) of the Swiss Code of Obligations (the "SCO").

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

- FIFA maintains that the PSC Decision was notified to the Club on 4 August 2015. As no appeal to the CAS was lodged by the Club, the PSC Decision was final and binding at the time the disciplinary proceedings were opened.
- The FIFA DC is not allowed to analyse a case decided by the relevant body as to the substance but has as a sole task to analyse if the debtor complied with the final and binding decision of the relevant body. Moreover, CAS should only address the question whether the Club respected and fulfilled that decision, but no longer its content.
- FIFA maintains that if the FIFA DC is not provided with proof that the payment has been executed or that a payment plan was agreed upon, it will render a decision imposing a fine on the debtor for failing to comply with a decision and will grant the debtor a final period of grace as from notification of the decision in which to settle its debt to the creditor and/or to FIFA. It is undisputed that the amounts owed to the creditor club were executed and that no payment – not even a partial amount – in favour of FIFA was executed by the Club.
- FIFA finds that the FIFA DC correctly applied Article 64 of the FDC as the Club breached said article by not complying with a final and binding decision passed by a FIFA body.
- In respect of the proportionality of the fine, FIFA maintains that CAS – notwithstanding its power to review a case *de novo* – shall amend a disciplinary decision of a FIFA judicial body only in cases in which it finds that the relevant FIFA body exceeded the margin of discretion accorded to it by the principle of association autonomy. According to FIFA, this is not the case if the Panel merely disagrees with a specific sanction, but only if the sanction concerned is to be considered as evidently and grossly disproportionate to the offence.
- FIFA submits that the FIFA DC took into account all relevant factors, arguing that – in the light of the amount of the outstanding debt – the sanction imposed for non-compliance is "*proportionate and in line with the Committee's longstanding practice and jurisprudence*".



- Contrary to the argument of the Club, FIFA submits that the outstanding amount was not CHF 60,000, but CHF 80,000. FIFA provided seven other decisions of the FIFA DC where similar outstanding amounts were due and in which also a fine of CHF 10,000 was imposed. In all these decisions, the fines corresponded to 10-13% of the outstanding amounts. A fine of CHF 10,000 is 12.5% based on an outstanding amount of CHF 80,000.
- Moreover, FIFA maintains that harsher sanctions may be imposed in case of repeated infringements but there is no room in Article 40 FDC to consider the lack of repeated offences as a mitigating circumstance. Nevertheless, FIFA adds that it was not the first infringement of the Club, but that another fine (of CHF 30,000) for non-compliance with a FIFA decision had already been imposed on it before.
- Finally, FIFA concludes that *“the imposed sanction is by no means evidently and grossly disproportionate to the offence”* and as such shall not be amended.

## V. JURISDICTION

31. The jurisdiction of CAS, which is not disputed, derives from Article 58(1) of the FIFA Statutes (2016 edition) as it determines that *“[a]ppeals against final decisions passed by FIFA’s legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of notification of the decision in question”* and Article R47 of the CAS Code.
32. Article 64(1) and (5) of the FIFA Disciplinary Code (2011 edition) determine respectively that:  
  
*“Anyone who fails to pay another person (such as a player, a coach or a club) or FIFA a sum of money in full or part, even though instructed to do so by a body, a committee or an instance of FIFA or a subsequent CAS appeal decision (financial decision), or anyone who fails to comply with another decision (nonfinancial decision) passed by a body, a committee or an instance of FIFA, or by CAS (subsequent appeal decision): [...]*  
  
*“Any appeal against a decision passed in accordance with this article shall be lodged with CAS directly”.*
33. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by both parties.
34. It follows that CAS has jurisdiction to decide on the present dispute.

## VI. ADMISSIBILITY

35. The appeal was filed within the deadline of 21 days set by Article 58(1) of the FIFA Statutes. The appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fee.
36. It follows that the appeal is admissible.

## VII. APPLICABLE LAW

37. Article R58 of the CAS Code provides the following:

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

38. The Panel notes that Article 57(2) of the FIFA Statutes stipulates the following:

*“The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”.*

39. The parties agree that CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law.

40. Consequently, the Panel will apply the various regulations of FIFA, in particular the FIFA Disciplinary Code and, subsidiarily, Swiss law should the need arise to fill a possible gap in the regulations of FIFA.

## VIII. MERITS

41. The Panel notes that it is undisputed that the PSC Decision became final and binding before the opening of the disciplinary proceedings against the Club and that the Club failed to (fully) comply (see para. 45 below) with the PSC Decision.

42. The Panel observes that the Appealed Decision is based on Article 64 FDC, which provides as follows – as relevant:

*“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;*

*[...]”*

43. In continuation, the Panel considers that, since the PSC Decision became final and binding, the sole task of the FIFA DC was to analyse whether the Club complied with the final and binding PSC Decision.

44. The Panel observes that this practice has been confirmed in CAS jurisprudence dealing with this issue:

*“[T]he Panel finds that the FIFA Disciplinary Committee was limited to determine if the outstanding amount, as defined by the FIFA DRC decision, had been paid to the creditor, i.e. the Player, or if for whatever reason the above mentioned amount was still due”* (CAS 2013/A/3323, para. 72).

*“[T]he Panel underlines that the object of this appeal cannot extend beyond the limits of a review of the disciplinary sanction imposed by the DC. As a result, only submissions relating to the fine imposed by the DC, such as its legal basis and quantum, can be heard. The Panel cannot consider requests concerning the debt owed by the Appellant to the Brazilian Club, the issues relating thereto having been decided by the PSC Decision [...]”* (CAS 2006/A/1008, para. 14).

45. The Panel observes that it remained undisputed between the parties that the Club failed to pay the amounts awarded to FIFA in the PSC Decision. As such, the Panel finds that the FIFA DC correctly held that the Club failed to comply with the PSC Decision and that the criteria of Article 64(1) FDC for imposing disciplinary sanctions on the Club were complied with.

46. As a result of the above, the main issue to resolve by the Panel is whether the fine imposed on the Club by the FIFA DC is disproportionate.

47. The Club failed to comply with the PSC Decision, despite having been reminded and urged to do so by FIFA on several occasions. As a consequence, the FIFA DC finally imposed a fine of CHF 10,000 on the Club by means of the Appealed Decision, while granting it a final period of grace of 30 days to pay the amounts due, failing which the case will be resubmitted to the FIFA DC in order to impose harsher sanctions against the Club.

48. The Panel concurs with another CAS Panel (CAS 2013/A/3358) that *“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, disciplinary bodies may evaluate any aggravating and/or extenuating circumstances that might be related to the infringement”*. In addition, the Panel acknowledges that the purpose of the fine is to serve as a deterrent to parties who do not wish to comply with decisions of FIFA bodies.

49. The Panel observes that the Club submits that the imposed sanction is disproportionate, whereas FIFA maintains that the fine is justified.

50. As set out above, the Club argues that the sanction provided for in the Appealed Decision should be annulled and is deemed to be disproportionate or even excessive under the circumstances, for the following reasons: (a) the Club paid the total amount due to AS Roma,

which equals 95% of the total sum; (b) FIFA should have mitigated the fine pursuant to Article 40 FDC; (c) the fine is not in accordance with FIFA's well established practice; and (d) the fine is excessive and should be reduced pursuant to Article 163(3) of the SCO.

51. The Panel observes that Article 64 FDC is very clear in determining the consequences of failure to respect decisions like the Appealed Decision, not only in full but also in part, and observes that FIFA applied it correctly by imposing a fine on the Club. As such, the fact that the Club paid the outstanding amount due to AS Roma does not alter the fact that still CHF 80,000 remained unpaid to FIFA, which amount consisted of a fine of CHF 60,000 and CHF 20,000 for procedural costs, and that the FIFA DC could impose a fine on the Club for this reason. The Panel does not find this to be a mitigating circumstance that should lead to a reduction of the fine imposed.
52. Further, the Panel observes that Article 40 FDC reads as follows:
- “1. Unless otherwise specified, the body may increase the sanction to be pronounced as deemed appropriate if an infringement has been repeated”.*
53. The Panel finds that the question as to whether the possibility to impose harsher sanctions on clubs in case of repeated offences can be applied *a contrario* and, in case a club violates Article 64 of the FDC only for the first time, should be considered as a mitigating factor, can be left open as FIFA convincingly established that the Club has already violated Article 64 of the FDC before. This argument of FIFA remained uncontested in the Club's Reply.
54. As such, although it does not appear from the Appealed Decision that the FIFA DC invoked this previous violation of the Club as an argument to increase the fine imposed, the Panel finds that the FIFA DC had the discretion to do so and will take this into account in assessing the proportionality of the fine in the matter at hand. The Club's argument that the “act of mercy” of the FIFA DC had no objective basis is dismissed, as the Panel finds that this is an element that can be taken into account on the basis of Article 40 FDC and pursuant to the Panel's *de novo* competence in accordance with Article R57 of the CAS Code.
55. Furthermore, the Panel observes that the FDC provides, insofar 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 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.*

[...]”

56. First of all, the Panel concurs with FIFA that the fine imposed (CHF 10,000) represents 12,5% of the total amount due (CHF 80,000), instead of 17% (based on CHF 60,000) as incorrectly

calculated by the Club. The Panel finds that the fine is not only imposed based on the lack of payment of the fine of CHF 60,000 imposed on the Club in the PSC Decision, but also because of the lack of payment of the procedural costs of CHF 20,000 to FIFA. Had the Club paid the fine but failed to pay the procedural costs, FIFA would nevertheless have been entitled to commence disciplinary proceedings.

57. Further, FIFA submits that a fine corresponding to 10-13% of the outstanding amount falls within the FIFA DC's longstanding practice. In support of its arguments concerning the Appealed Decision's compliance with the principle of proportionality as well as with the FIFA DC's longstanding practice, FIFA filed seven decisions of the FIFA DC in which similar total outstanding amounts were due and in which case a CHF 10,000 fine was imposed, as set out below:

Case number	Outstanding amount	Fine	Percentage
160008 PST UKR ZH	CHF 81,250	CHF 10,000	12.3%
160026 PST TUR ZH	CHF 89,410	CHF 10,000	11.2%
150761 PST SRB ZH	CHF 77,745.8	CHF 10,000	12.8%
150622 PST ALB ZH	CHF 75,338	CHF 10,000	13.3%
150628 PST TUR ZH	CHF 82,066	CHF 10,000	12.2%
150321 PST IRN ZH	CHF 91,391	CHF 10,000	10.9%
150135 PST TUR ZH	CHF 77,760	CHF 10,000	12.9%
<b>Appealed Decision</b>	<b>CHF 80,000</b>	<b>CHF 10,000</b>	<b>12,5%</b>

58. The Club on the other hand argues in its Reply that it presented evidence that at no point in time the fines imposed on the parties exceeded 10% of the principal amount of the debt and argues that FIFA imposes fines of around 6% with reference to CAS jurisprudence:

Case number	Outstanding amount	Fine	Percentage
CAS 2013/A/3358	EUR 300,000 (+/- CHF 325,000)	CHF 20,000	6.2%
CAS 2013/A/3323	USD 30,000 (+/- CHF 29,000)	CHF 2,000	6.7%
CAS 2011/A/2377	EUR 145,000 (+/- CHF 160,000)	CHF 15,000	9.4%

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

*"In this latter respect, this Panel agrees with the CAS jurisprudence under which the measure of the sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rules can be reviewed only*

*when the sanction is evidently and grossly disproportionate to the offence (see e. g. the awards of: 24 March 2005, CAS 2004/A/690, § 86; 15 July 2007, CAS 2005/A/830, § 10.26; 26 June 2007, 2006/A/1175, § 90; and the advisory opinion of 21 April 2006, CAS 2005/C/976 & 986, § 143)” (CAS 2009/A/1817 & CAS 2009/A/1844).*

60. The Panel fully adheres to this consistent jurisprudence and finds that the fine imposed by the FIFA DC in the Appealed Decision can only be reviewed if it is considered to be evidently and grossly disproportionate to the offence. The test to be applied by the Panel is therefore not whether the fine imposed on the Club is in accordance with the FIFA DC’s longstanding practice, but rather whether the fine imposed on the Club is evidently and grossly disproportionate to the offence. In this respect, the fine imposed on the Club shall be reduced if the Panel is convinced that it is evidently and grossly disproportionate in comparison with FIFA’s practice regarding the imposition of fines.
61. In consideration of the overview presented by FIFA, the Panel finds that the fine imposed on the Club was clearly not disproportionate in view of the FIFA DC’s longstanding practice. In fact, the fine imposed on the Club is equal to fines imposed on other clubs for very similar violations (lack of payment of amounts between CHF 75,338 and CHF 91,391).
62. The mere fact that there may occasionally have been decisions of the FIFA DC where the fine was only 6% of the amount due does not lead the Panel to any different conclusion, as the Panel is not convinced that this is consistent practice of FIFA. Even the Club itself refers to a decision where apparently a fine of 9.4% was imposed.
63. In view of all the above, the Panel is not convinced by the Club’s arguments as to why the fine imposed on the Club by the FIFA DC should be reduced on the basis of Article 163(3) of the SCO.
64. Consequently, the Panel finds that the disciplinary sanction imposed on the Club by means of the Appealed Decision is not evidently and grossly disproportionate to the offence and is therefore confirmed.
65. Any other and further claims or requests for relief are dismissed.

## **ON THESE GROUNDS**

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

1. The appeal filed on 6 May 2016 by Al Ittihad Saudi against the decision issued on 4 March 2016 by the Disciplinary Committee of the Fédération Internationale de Football Association is dismissed.
2. The decision of the Disciplinary Committee of the Fédération Internationale de Football Association issued on 4 March 2016 is confirmed.
- (...)
5. All other and further motions or prayers for relief are dismissed.