



Arbitration CAS 2017/A/5117 Eskisehir Spor Kulübü v. Ibrahim Sissoko & Fédération Internationale de Football Association (FIFA), award of 1 March 2018

Panel: Mr Michele Bernasconi (Switzerland), Sole Arbitrator

Football

Disciplinary sanctions for failing to comply with the decision of a FIFA body

Evaluation of disciplinary cases under the principle of proportionality

Irrelevance of the argument of financial difficulties to justify non-payment of debts

Criteria for the amendment of a disciplinary sanction

- 1. 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.**
- 2. One debtor's difficult financial situation is not a justification for its failure to pay its debt(s) to its creditor(s), all the less so where such contention is not supported by any evidence.**
- 3. Modifications by CAS panels of disciplinary sanctions shall be limited to occurrences where the sanction exceeded the margin of discretion granted by the principle of association autonomy, *i.e.* where one sanction is to be considered evidently and grossly disproportionate to the offence.**

I. THE PARTIES

1. Eskisehir Spor Kulübü ("Eskisehir", the "Club" or the "Appellant") is a football club affiliated to the Turkish Football Federation, which is, in turn, affiliated to the Fédération Internationale de Football Association ("FIFA" or the "Second Respondent").
2. Mr Ibrahim Sissoko ("Mr Sissoko" or the "First Respondent") is a professional football player, national of Ivory Coast.
3. The Fédération Internationale de Football Association (FIFA) ("FIFA" or the "Second Respondent", and, together with the First Respondent, the "Respondents") is the world

governing body for football. It exercises regulatory, supervisory, disciplinary and coordinating functions over national associations, clubs, officials and players at worldwide level. FIFA is an association under Swiss law and has its seat in Zurich.

II. FACTS

A. Facts of the case and origin of the dispute

a) *The proceedings before the FIFA Dispute Resolution Chamber*

4. The FIFA Dispute Resolution Chamber (“DRC”) was seized through a request brought by Mr Sissoko against Eskisehir with relation to an employment contract.
5. Indeed, on 29 January 2014, the Parties had signed an employment contract (the “Contract”), valid from 27 August 2014 until 31 May 2017. The request brought by Mr Sissoko before the DRC regarded the non-payment of salaries due under the Contract, as well as the residual value of the Contract.
6. After having considered the relevant evidence and heard both parties, on 28 January 2016 the DRC issued the following decision (the “DRC Decision”):

- “1. *The claim of the Claimant/Counter-Respondent, Ibrahim Sissoko, is partially accepted.*
2. *The counterclaim lodged by the Respondent/Counter-Claimant is rejected.*
3. *The Respondent/Counter-Claimant, Eskisehir Spor Kulübü, is ordered to pay to the Claimant/Counter-Respondent, within 30 days as from the date of notification of this decision, outstanding remuneration in the amount of EUR 233,549.87 plus 5% interest p.a. on said amount as from 25 May 2015 until the date of effective payment.*
4. *In the event that the amount and interest due to the Claimant/Counter-Respondent in accordance with the above-mentioned number 3. is not paid by the Respondent/Counter-Claimant within the stated time limit, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.*
5. *The Respondent/Counter-Claimant is ordered to pay to the Claimant/Counter-Respondent, within 30 days as from the date of notification of this decision, compensation for breach of contract in the amount of EUR 60,000.*
6. *In the event that the amount due to the Claimant/Counter-Respondent in accordance with the above-mentioned number 5. is not paid by the Respondent/Counter-Claimant within the stated time limit, interest at the rate of 5% p.a. will fall due as of expiry of the aforementioned time limit and the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.*

7. *Any further claim lodged by the Claimant/Counter-Respondent is rejected.*
8. *The Claimant/Counter-Respondent is directed to inform the Respondent/Counter-Claimant, immediately and directly, of the account number to which the remittances are to be made and to notify the Dispute Resolution Chamber of every payment received”.*
7. The findings of the DRC Decision were notified on 8 February 2016 to the parties. The grounds of the DRC Decision were requested by Eskisehir and were notified to the parties on 21 April 2016. No appeal was filed against this decision.
8. On 1 June 2016, the First Respondent informed the FIFA Players’ Status and Governance Department that, to such date, the Appellant had not paid the amounts which it had been ordered to do so by the DRC Decision. The First Respondent added that he had duly given the Appellant his bank details through a letter dated 16 May 2016, but had not received any payment since then.
9. On 17 June 2016, the FIFA Players’ Status and Governance Department invited the Appellant to immediately pay the relevant amounts to the First Respondent and informed Appellant that, unless it sent proof of said payment until 27 June 2016, the file would be transmitted to the Disciplinary Committee of FIFA.
10. The Appellant did not pay the requested amounts and, on 28 June 2016, the First Respondent informed accordingly the FIFA Players’ Status and Governance Department.
11. On 12 July 2016, the case was transferred to the secretariat to the FIFA Disciplinary Committee and the parties were advised thereof.
- b) *The proceedings before the FIFA Disciplinary Committee***
12. The secretariat to the FIFA Disciplinary Committee opened disciplinary proceedings against Eskisehir on 4 January 2017 and informed accordingly the Turkish Football Association, as well as the parties.
13. On 25 January 2017, the secretariat urged the Appellant to pay the outstanding amounts by 8 February 2017 at latest and added that, if no payment was made, the case would be examined by the FIFA Disciplinary Committee (“DC”) on 15 March 2017 and a decision taken on the basis of the file in its possession.
14. The Appellant did not respond to this letter.
15. On 9 February 2017, the First Respondent informed the secretariat that he did not receive a payment within the set time limit.
16. On 15 March 2017, the DC decided as follows (the “Appealed Decision”):

- “1. *The club Eskisehir Spor Kulübü is pronounced guilty of failing to comply with the decision passed by the Dispute Resolution Chamber on 28 January 2016 and is, therefore, in violation of art. 64 of the FIFA Disciplinary Code.*
 2. *The club Eskisehir Spor Kulübü is ordered to pay a fine to the amount of CHF 20,000. The fine is to be paid within 60 days of notification of the present decision. Payment can be made either in Swiss francs (CHF) to account no. [...] with reference to case no. 161193 jbl.*
 3. *The club Eskisehir Spor Kulübü is granted a final period of grace of 60 days as from notification of the present decision in which to settle its debt to the creditor, the player Ibrahim Sissoko.*
 4. *If payment is not made by this deadline, the creditor may demand in writing from the secretariat to the FIFA Disciplinary Committee that six (6) points be deducted from the debtor's first team in the domestic league championship. Once the creditor has filed this request, the points will be deducted automatically without further formal decision having to be taken by the FIFA Disciplinary Committee. The order to implement the points deduction will be issued on the association concerned by the secretariat to the FIFA Disciplinary Committee.*
 5. *If the club Eskisehir Spor Kulübü still fails to pay the amount due even after deduction of the points in accordance with point 4. above, the FIFA Disciplinary Committee will decide on a possible relegation of the debtor's first team to the next lower division.*
 6. *As a member of FIFA, the Turkish Football Association is reminded of its duty to implement this decision and, if so requested, provide FIFA with proof that the points have been deducted. If the Turkish Football Association does not comply with this decision despite being ordered to do so, the FIFA Disciplinary Committee will decide on appropriate sanctions on the member. This can lead to expulsion from all FIFA competitions.*
 7. *The costs of the proceedings amounting to CHF 2,000 are to be borne by the club Eskisehir Spor Kulübü and shall be paid according to the modalities stipulated under point 2. above.*
 8. *The creditor is directed to notify the secretariat to the FIFA Disciplinary Committee of every payment received”.*
17. The terms of the Appealed Decision were notified to the Appellant, the First Respondent and the Turkish Football Association on 23 March 2017.
 18. Upon the Appellant's request, the grounds of the Appealed Decision were communicated to the parties on 10 April 2017.

B. Proceedings before the Court of Arbitration for Sport

19. Eskisehir filed its Statement of Appeal with the Court of Arbitration for Sport (“CAS”) on 1 May 2017. In its submission, the Appellant (i) asked for the case to be submitted to a sole

- arbitrator, (ii) requested the stay of execution of the Appealed Decision as well as (iii) an extension of 15 days to file its Appeal Brief.
20. On 5 May 2017, the CAS Court Office acknowledged receipt of the Statement of Appeal, directed against Mr Sissoko and FIFA, and invited the Respondents to state their position regarding the requested extension of the time-limit to file the Appeal Brief (noting that, in the meantime, said time limit was suspended), the appointment of a sole arbitrator, the language of procedure being English and the request for stay of the Appealed Decision.
 21. On 8 May 2017, FIFA agreed to all these requests. On the same day, the First Respondent opposed the extension of the time-limit as well as the stay of the Appealed Decision, but agreed with English as the procedural language and the appointment of a sole arbitrator, nominating Mr Michele Bernasconi as sole arbitrator.
 22. On 9 May 2017, the CAS Court Office informed the parties that given the First Respondent's refusal, the extension of the time-limit to file the Appeal Brief was to be decided by the President of the CAS Appeals Arbitration Division or her Deputy and that, in the meanwhile, the time-limit remained suspended. The CAS Court Office also invited the Appellant and the Second Respondent to indicate whether they agreed with the appointment of Mr Bernasconi as sole arbitrator. The First Respondent was furthermore invited to state whether he maintained his objection to the request for stay of the Appealed Decision, in light of the Second Respondent's position. Finally, the language of the proceedings was determined as being English.
 23. On 10 May 2017, Mr Sissoko agreed to the stay of the Appealed Decision.
 24. On the same day, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, confirmed the stay of execution of the Appealed Decision.
 25. On 11 May 2017, FIFA confirmed that it did not have any objection to the appointment of Mr Bernasconi as sole arbitrator.
 26. On 12 May 2017, the parties were informed that the President of the Appeals Arbitration Division had decided to grant a 5-day extension of the time-limit to file the Appeal Brief and that said time limit resumed with the notification of CAS' letter.
 27. On 19 May 2017, Eskisehir confirmed that it also did not have any objection with the appointment of Mr Bernasconi as sole arbitrator.
 28. The Appellant produced its Appeal Brief on 24 May 2017.
 29. In a letter of the CAS Court Office dated 29 May 2017, the Respondents were invited to file their Answers.
 30. The Arbitration Panel constituted by Mr Michele Bernasconi (as Sole Arbitrator) was duly appointed and the parties were notified of its constitution on 7 June 2017.

31. The Second Respondent filed its Answer on 19 June 2017. The First Respondent did not file an Answer.
32. On 22 June 2017, the CAS Court Office advised the parties that, in accordance with Article R55 of the Code of Sports-related Arbitration (the “Code”), the Panel may nevertheless proceed with the arbitration and deliver an award, despite the fact that the First Respondent had not filed an answer. The parties were also informed that they would not be authorized to supplement their submissions or to file new documents, on the basis of Article R56 of the Code. Finally, the parties were invited to express their preference for a hearing to be held or for the case to be decided on the basis of the written submissions.
33. On 26 June 2017, both Mr Sissoko and FIFA wrote that they did not require a hearing.
34. On 29 June 2017, the parties were informed of the appointment of Mrs Nora Krausz as *ad hoc* clerk.
35. Given that the Appellant did not state its position regarding a hearing, on 25 August 2017, the CAS Court Office granted it a final deadline to do so. On 29 August 2017, Eskisehir expressed its wish that a hearing be held.
36. On 1 September 2017, the CAS Court Office informed the parties that the Sole Arbitrator had decided to hold a hearing.
37. On 4 September 2017, the First Respondent wrote that he would not attend the hearing, irrespective of its date.
38. On 26 September 2017, the First Respondent confirmed that he would not attend the hearing.
39. On 29 September 2017, the date of the hearing was confirmed and the parties were invited to provide the CAS Court Office with the names of the persons who would attend the hearing.
40. On 5 October 2017, the CAS Court Office wrote to the parties noting that the Appellant had failed to provide its list of attendees.
41. After having been granted an additional time-limit, the Appellant replied on 9 October 2017 informing CAS that Mr Sami Dinç, its counsel, would attend the hearing on 16 October 2017.
42. The parties received the Order of Procedure on 10 October 2017. They all duly signed and returned a copy thereof.
43. On Sunday 15 October 2017, the day before the hearing, the Appellant’s counsel wrote an email to the CAS Court Office stating that he hadn’t received the arrangements from his client in order to attend the hearing and couldn’t reach the Club’s officials. He therefore indicated that he was not able to be present at the said hearing.

44. Given this information received on the morning of the hearing, the CAS Court Office informed the parties by email and facsimile that despite the fact that Mr Sami Dinç would not attend the hearing, the Sole Arbitrator had decided, in accordance with Article R57 of the Code, to proceed with the hearing and render an award.
45. The hearing took place in Lausanne on 16 October 2017 and was attended by Messrs Jacques Blondin and Julien Deux on behalf of FIFA.
46. At the outset of the hearing, the Sole Arbitrator informed FIFA that the Appellant and the First Respondent were not present, but that the hearing would proceed, as per the letter sent on the same morning to the parties.
47. FIFA confirmed having no objection regarding the composition of the Panel or the conduct of the proceedings.
48. During the hearing, FIFA had the opportunity to present its case and answer the questions posed by the Sole Arbitrator. Given the fact that the other parties were not present and the fact that its position was already fully developed in its written submissions, FIFA confirmed its prayers for relief and did not wish to present oral arguments.

C. The parties' request for relief

49. In its Appeal Brief, Eskisehir requested the following relief:

"The Appellant requests the Panel:

1. *To accept this appeal against the decision of the Disciplinary Committee of FIFA dated 15.03.2017,*
2. *To adopt an award declaring the annulment of the said decision, in particularly the sanctions on points deduction and the possible relegation to the next lower division".*

50. The Second Respondent's Answer contains the following prayers for relief:

"Finally, we would like to request CAS:

1. *To reject the Appellant's appeal in its entirety.*
2. *To confirm the decision hereby appealed against.*
3. *To order the Appellant to bear all costs incurred with the present procedure and to cover all legal expenses of the Second Respondent related to the present procedure".*

51. The First Respondent did not present any prayers for relief.

III. LEGAL DISCUSSION

A. Jurisdiction of the CAS

52. As the CAS is an arbitral tribunal with seat in Switzerland, and as two of the three parties do not have their domicile or habitual residence in Switzerland, pursuant to Article 176 of the Swiss Private International Law Act (“PILA”), chapter 12 of this act (Articles 176 to 194 PILA) is applicable to the present arbitration¹.
53. According to Article 186 PILA, the arbitral tribunal shall rule on its own jurisdiction. Therefore, the Sole Arbitrator is competent to rule on his own jurisdiction (“*Kompetenz Kompetenz*”).
54. Article R47 para. 1 of the Code provides the following: “*An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body*”.
55. The present dispute is governed by the FIFA Statutes, the FIFA Disciplinary Code (“FDC”) and by the FIFA Regulations on the Status and Transfer of Players (“RSTP”). According to Article 58 para. 1 of the FIFA Statutes, “*Appeals 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*”. Article 64 para. 5 FDC provides: “*Any appeal against a decision passed in accordance with this article shall be lodged with CAS directly*”.
56. In the case under scrutiny, the Appealed Decision is a final decision passed by one of FIFA’s legal bodies, namely the DC, in accordance with Article 64 FDC, and is therefore capable of appeal before the CAS. In addition, none of the parties raised any objection regarding the jurisdiction of the CAS.
57. In conclusion, the Sole Arbitrator finds that he has jurisdiction to rule upon the present dispute.
58. CAS jurisdiction is further confirmed by the signature of the Order of Procedure by all parties.

B. Admissibility of the appeal

59. As quoted above, Article 58 para. 1 of the FIFA Statutes provides that appeals to CAS shall be filed within a time limit of 21 days from the date of notification.
60. In the present case, the Appealed Decision was notified on 10 April 2017 and Eskisehir lodged its Statement of Appeal on 1 May 2017, *i.e.* within the set time-limit.
61. The Statement of Appeal further respects the formal conditions set out by Article R48 of the Code.

¹ CAS 2005/A/983 & 984 para. 61; CAS 2006/A/1180 para. 7.1.

62. Accordingly the Sole Arbitrator concludes that the appeal is admissible.

C. Applicable law

63. Article 187 para. 1 PILA provides: *“The arbitral tribunal shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to the rules of law with which the case has the closest connection”*.

64. According to Article R58 of the Code, *“the Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”*.

65. In the present case, the Appellant is of the view that, as the Appealed Decision was issued by FIFA, Swiss law should apply.

66. The Second Respondent refers to Article 57 para. 2 of the FIFA Statutes, which provides: *“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”*. The Second Respondent therefore considers that the FIFA regulations and additionally Swiss law should apply to the present dispute.

67. Given the above provisions, the Sole Arbitrator shall apply the relevant rules of FIFA, which is the federation whose decision has been challenged, and, on a subsidiary basis, Swiss law, to which the FIFA Statutes make explicit reference.

D. Merits of the case

68. Given the parties' submissions, the Sole Arbitrator considers that his award has to answer the following questions: a) Was the Appealed Decision correct, in particular were the imposed sanctions proportionate? b) If the answer to the first question is positive, did the Appellant settle its debt or part of it since the Appealed Decision?

a) Was the Appealed Decision correct, in particular were the imposed sanctions proportionate?

i) The Appellant's position

69. According to the Appellant, it is currently facing financial problems and, in order to solve them, it is trying to have its first team promoted back to the Turkish Super League. In the Appellant's view, the Appealed Decision is disproportionate, in particular the points deduction and the relegation to the lower division, and it will cause irreparable damages to the Appellant, probably including its bankruptcy.

70. The Appellant did not produce any piece of evidence in connection with the above statements.

ii) The Second Respondent's position

71. According to the Second Respondent, the Appealed Decision is correct. Indeed, the Appellant did not comply with the DRC Decision, in violation of Article 64 para. 1 FDC. Given this fact, the DC had the task to analyse if the debtor had complied with the final and binding decision of the DRC, in other words whether the amount due had been paid or, for a certain reason, was not due anymore.

72. In the present case, it was undisputed that the Appellant had been ordered to pay EUR 233,549.87 and EUR 60,000 plus interest and that it had not made any payment, despite several invitations to pay and despite having been informed of the possible consequences of non-compliance with the DRC Decision. FIFA also maintained that the Appellant's alleged financial problems are not relevant, according to CAS case-law, and that Eskisehir did not substantiate nor prove its allegations, despite the fact that the Appellant bears the burden of proof.

73. Furthermore, in the Second Respondent's view, the sanctions imposed on the Appellant are proportionate. FIFA mentions that according to Article 15 FDC, the DC can impose a fine ranging from CHF 300 to CHF 1,000,000, taking into account the circumstances of the case as foreseen by Article 39 para. 4 FDC. FIFA also underlines that the logic behind Article 64 FDC is not to create additional financial difficulties to the debtor, which might compromise the payment of the outstanding amounts. In this particular case, the fine of CHF 20,000 is proportionate in the light of the Appellant's outstanding debt and has an appropriate deterring effect.

74. Additionally, FIFA recalls that according to CAS case law the Sole Arbitrator shall amend a disciplinary decision of a disciplinary body only if he finds that this latter exceeded the margin of discretion granted by the principle of association autonomy, *i.e.* if the sanction is to be considered as evidently and grossly disproportionate to the offence.

75. The Second Respondent further sets out that Article 64 para. 1 lit. c) FDC allows the DC to impose further sanctions such as deduction of points, relegation to a lower division or transfer bans. The Appealed Decision includes two such sanctions, which can be triggered by the First Respondent if the Appellant still does not comply with its obligations. FIFA maintained that the Appellant did not justify its allegations regarding the possible consequences of such sanctions and that, based on Article 8 of the Swiss Civil Code, the Sole Arbitrator should not take into account these arguments. The Second Respondent added that, in any case, the six point deduction and the possibility to relegate the Appellant's first team to a lower division are proportionate and in line with the DC's longstanding practice, as well as with CAS case law and the jurisprudence of the Swiss Federal Tribunal. Finally, FIFA underlined that the imposition of the additional sanctions depends on the Appellant's choice to comply with the Appealed Decision and on the First Respondent's request.

iii) *The Sole Arbitrator's determination*

76. In the Sole Arbitrator's view, it is to be underlined that the Appellant did not dispute the fact that the DRC Decision is in force, *i.e.* that it is final and binding. Further, Appellant did not dispute having duly received the DRC Decision. Finally, Appellant admitted that it did not pay any of the amounts due in accordance with the DRC Decision and the Appealed decision, respectively.

77. It is furthermore not disputed that the Appealed Decision was duly notified to the Appellant.

78. The main provision which was applied in the Appealed Decision is Article 64 FDC, which sets out in its relevant parts:

“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) (...):

a) will be fined for failing to comply with a decision;

b) will be granted a final deadline by the judicial bodies of FIFA in which to pay the amount due or to comply with the (non-financial) decision;

c) (only for clubs:) will be warned and notified that, in the case of default or failure to comply with a decision within the period stipulated, points will be deducted or relegation to a lower division ordered. A transfer ban may also be pronounced;

(...).

2.

If a club disregards the final time limit, the relevant association shall be requested to implement the sanctions threatened.

3.

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

79. According to Article 15 para. 2 FDC, *“The fine shall not be less than CHF 300, or in the case of a competition subject to an age limit not less than CHF 200, and not more than CHF 1,000,000”.*

80. Article 29 FDC provides that *“a club may be relegated to a lower division”*, while Article 30 FDC sets out that *“A club may have points deducted from those already attained in the current or a future championship”.*

81. Finally, Article 39 para. 4 FDC provides: *“The body shall take account of all relevant factors in the case and the degree of the offender's guilt when imposing the sanction”.*

82. In the case under scrutiny, the final and binding DRC Decision ordered the payment of the amounts of EUR 233,549,87 and EUR 60,000 (both with 5% interest *p.a.*), but was not complied with, as admitted by the Appellant itself. The DC was therefore entitled to impose sanctions on the Appellant, on the basis of Article 64 FDC.
83. As to the sanctions, the Appellant claims that they would be disproportionate, because it has a difficult financial situation and that complying with the Appealed Decision would cause additional difficulties, even bankruptcy. The Appellant does not criticize the sanctions under any other aspect.
84. In disciplinary matters, each situation must be evaluated on a case-by-case basis and interests at stake have to be balanced in respect of the principle of proportionality. Account must be taken of the seriousness of the facts and other related circumstances as well as of the damage that the penalised conduct entails for the parties involved, for the federation in question and for its sport. In the same way, the disciplinary bodies may evaluate any aggravating and/or extenuating circumstances that might be related to the infringement².
85. In the present case, the Appellant failed to pay the First Respondent a considerable amount of money, even though instructed to do so by a binding decision. The Appellant's only explanation, *i.e.* its allegations regarding its financial difficulties, are not substantiated at all.
86. In accordance with constant jurisprudence³, a difficult financial situation alleged by a party before CAS is not a justification for its failure to pay its debt to its creditors. All the less so as these allegations, as in the present case, are not supported by evidence.
87. The sanctions set out by the Appealed Decision are in line with constant practice and case law. In the practice of FIFA, the non-payment of similar outstanding amounts was sanctioned with a fine of CHF 20,000 and, in case of persistent failure to comply, a deduction of six points and the relegation to a lower division were possible⁴.
88. The fine set at CHF 20,000 (in a scale ranging from CHF 300 to CHF 1,000,000), does not seem to be oppressive and appears to be justified by the attitude of the Appellant, which made no efforts to settle its debts after the DRC Decision was issued, and proportionate to the rather substantial amount owed to the First Respondent. In addition, such a fine is consistent with others imposed in cases where the litigious amount was similar and which were confirmed by the CAS or the Swiss Federal Tribunal⁵.

² CAS 2013/A/3358, para. 58.

³ Among other cases: CAS 2005/A/957; CAS 2004/A/1008, confirmed by the judgement of the Swiss Federal Tribunal 4P.240/2006 of 5 January 2007; CAS 2006/A/1008; CAS 2013/A/3358.

⁴ Decision of the FIFA Disciplinary Committee of 24 July 2013, n°130410 PST TUR ZH, confirmed by the CAS in the award 2013/A/3358.

⁵ For instance the fine imposed in the case brought before the Swiss Federal Tribunal (*i.e.* CHF 25,000), where the litigious amount was of EUR 373,226 (judgement of the Swiss Federal Tribunal 4P.240/2006 of 5 January 2007) or the fine of CHF 20,000 imposed in the case CAS 2013/A/3358 where the outstanding amount was of EUR 300,000. Also CAS 2010/A/2148 where a fine of USD 10,000 was imposed based on the non-payment of a USD 75,000 debt.

89. The possible deduction of points and the subsequent possible relegation to a lower league are also proper and consistent with the above mentioned case law. As set out in the Appealed Decision, these sanctions are only applied after a grace period of 60 days and if the Appellant persistently fails to comply with its payment obligation. Thus, the different sanctions escalate gradually, in a proportionate manner. The sequence of deduction of points and relegation to a lower division is also consistent with CAS case law⁶.
90. Finally, the Sole Arbitrator underlines that in the proceedings before CAS, the Club did not put forward any precise arguments regarding the alleged disproportion of these sanctions. It merely stated, in a general manner, that they would be disproportionate.
91. In conclusion, taking also into due consideration the level of restraint that a CAS arbitral tribunal shall apply when reviewing a disciplinary sanction, the Sole Arbitrator is satisfied that the sanctions imposed by the Appealed Decision are justified and proportionate.
- b) Did the Appellant settle its debt or part of it since the Appealed Decision?***
92. Given the fact that the answer to the first question was positive, the Sole Arbitrator shall now turn to the second question.
93. Despite having alleged before the CAS that it was still in contact with the First Respondent in order to settle its debt, the Appellant did not provide any evidence thereof. It did not contend that it would have paid its debt or even part of it.
94. The Sole Arbitrator holds therefore that the debt was not settled, not even in part.
95. Given the above, the Appealed Decision is correct, the imposed sanctions are proportionate and the debt is still not settled.
96. Regarding the 60-days grace period for the Appellant to pay its debt, before the sanctions of points deduction and of relegation to a lower division would be possible, the Sole Arbitrator underlines that, in line with the constant practice explained by FIFA during the hearing before the CAS, the above-mentioned grace period will start running on the date of notification of the present award.
97. In conclusion, the appeal is dismissed and the FIFA Decision is upheld. This conclusion, finally, makes it unnecessary for the Sole Arbitrator to consider the other requests submitted by the parties. Accordingly, all other prayers for relief are rejected.

⁶ E.g. CAS 2012/A/3032.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Eskisehir Spor Kulübü on 1 May 2017 against the Decision of the FIFA Disciplinary Committee dated 15 March 2017, is dismissed.
2. The Decision of the FIFA Disciplinary Committee dated 15 March 2017 is confirmed.
3. (...).
4. (...).
5. All other or further claims are dismissed.