



**Arbitration CAS 2018/A/5900 Al Jazira FSC v. Fédération Internationale de Football Association (FIFA), award of 22 March 2019**

Panel: Mr Mark Hovell (United Kingdom), President; Mr Daniel Lorenz (Portugal); Mr Frans de Weger (The Netherlands)

*Football*

*Disciplinary sanction for failure to comply with a CAS award*

*Legal framework applicable in case of a failure to comply with payment obligations*

*Power of a CAS panel to review disciplinary sanctions*

*Correlation between the value of the outstanding debt and the measure of the sanction*

*Other simultaneous disputes with creditors as mitigating factor*

*Difficult financial situation*

*Proportionality of a fine*

*Proportionality of a point deduction*

- 1. Article 64 of the FIFA Disciplinary Code (FDC) provides FIFA with a clear legal basis to sanction a club that failed to pay another club a sum of money following an instruction to do. Article 64 para. 1 FDC clearly sets out the legal framework applicable in the event of a club's failure to comply with payment obligations set by a body of FIFA. It therefore enables the club to foresee the potential consequences of failing to comply with a FIFA decision. It is clear that under Article 64 FDC, a club that is obliged to comply with a FIFA decision may be subject to a number of measures, such as fines, point deductions, transfer bans, etc., in the event it disregards a decision ordering it to pay an amount of money to another club: in other words, the FIFA statutes clearly indicate not only the existence of a violation, but also the kinds of sanctions.**
- 2. There is an established line of CAS jurisprudence which states that the sanctions imposed by a disciplinary body can only be amended by a CAS panel if the sanction(s) concerned is (are) evidently and grossly disproportionate to the offence.**
- 3. The outstanding amount of debt provides the most logical nexus between the severity of the violation committed and the sanctions to be imposed. The correlation between the "*outstanding amounts due*" and the measure of the sanction satisfies the principles of predictability, equal treatment and procedural fairness: any club could expect in good faith that the more severe its violation, the more severe the sanction that it might be subjected to.**
- 4. Simultaneous disputes that a club may have with other creditors should not lead to a reduced sanction. Not only would it compromise the interests of the other creditors (in relation to the pressure that could be exercised under Article 64 of the FDC), but it also leads to a perverse outcome where the club is, in effect, 'rewarded' with a more lenient**

punishment for its repeated financial mismanagement when compared to another debtor who might, for example, have only one overdue debt but receives ‘ordinary’ (i.e. harsher) sanctions. It would compromise the entire basis of Article 64 of the FDC. In other FIFA Regulations (such as the RSTP), this behaviour would likely label the club as a “repeat offender” and it would be taken as an aggravated factor, not a mitigating one.

5. A difficult financial situation is not a valid justification for a club to fail to pay its debts.
6. A fine imposed on a club equal to fines imposed on other clubs for very similar violations cannot be considered disproportionate.
7. If precedents demonstrate that a 6 point deduction in case of continued non-compliance with a FIFA DRC Decision related to clubs where amounts due are comparable or even lower does not deviate from FIFA DC’s practice, then this 6 point deduction cannot be considered grossly disproportionate.

## I. PARTIES

1. Al Jazira FSC (the “Club” or the “Appellant”) is a professional football club with its registered office in Abu Dhabi, United Arab Emirates. The Club is a member of the United Arab Emirates Football Association (“UAEFA”), which in turn is affiliated with the Fédération Internationale de Football Association.
2. The Fédération Internationale de Football Association (“FIFA” or the “Respondent”) is the governing body of world football and has its registered office in Zurich, Switzerland.

## II. FACTUAL BACKGROUND

3. Below is a summary of the main relevant facts and allegations based on the Parties’ written submissions and evidence adduced during these proceedings. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning.

### A. Proceedings before the FIFA Players’ Status Committee

4. On 27 July 2016, the Single Judge of the FIFA Players’ Status Committee (the “FIFA PSC”), decided on the dispute between the agent, Mr. José Mesas Puerta (the “Agent”) and the Club as follows (“FIFA PSC Decision”):

- “1. *The claim of the [Agent], is admissible.*
2. *The claim of the [Agent], is partially accepted.*
3. *The [Club] has to pay to the [Agent], within 30 days as from the date of notification of this decision, the outstanding amount of EUR 1,100,000, plus interest at a rate of 5% per year from 20 March 2014 until the date of effective payment.*
4. *Any further claims lodged by the [Agent], are rejected.*
5. *If the aforementioned sum, plus interest as provided above, 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.*
6. *The final costs of the proceedings amounting to CHF 18,000 are to be paid by the [Club], within 30 days as from the date of notification of the present decision, as follows:*
  - 6.1 *The amount of CHF 5,000 has to be paid directly to the [Agent];*
  - 6.2 *The amount of CHF 13,000 has to be paid directly to FIFA to the following bank account [...].*
7. *The [Agent], is directed to inform the [Club], directly and immediately of the account number to which the remittances under points 2. and 6.1 above are to be made and to notify the [FIFA PSC] of every payment received”.*

5. On 16 March 2017, FIFA notified the grounds of the FIFA PSC Decision to the Club and the Agent.

**B. First Proceeding before the Court of Arbitration for Sport**

6. On 6 April 2017, the Club filed an appeal at the Court of Arbitration for Sport (the “CAS”) challenging the FIFA PSC Decision.
7. On 18 December 2017, the CAS issued a decision as follows (the “CAS Award”):
  - “1. *The appeal filed by [the Club] on 6 April 2017 against the [FIFA PSC Decision] is dismissed.*
  2. *The [FIFA PSC Decision] is confirmed.*
  3. *The costs of the arbitration, to be determined and served to the parties by the CAS Court Office, shall be borne in their entirety by [the Club].*
  4. *[The Club] is ordered to pay to [the Agent] a total of CHF 7,000 as a contribution towards his legal fees and other expenses incurred in connection with these arbitration proceedings.*

5. *All other motions or prayers for relief are dismissed”.*
8. On 18 January 2018, the Agent informed FIFA of the Club’s failure to comply with the CAS Award.
9. On 26 January 2018, the FIFA PSC urged the Club to pay FIFA the amount of CHF 13,000 as procedural costs.
10. On 19 February 2018, the Agent once again informed FIFA of the Club’s failure to comply with the CAS Award.

**C. Proceedings before the FIFA Disciplinary Committee**

11. On 23 February 2018, the Club and Agent were informed by the FIFA PSC that the matter was forwarded to the FIFA Disciplinary Committee (the “FIFA DC”) for consideration and a formal decision.
12. On 18 May 2018, the Agent reiterated to FIFA that the amount due was still outstanding.
13. On 6 June 2018, as the aforementioned amounts were not paid to the Agent or to FIFA, the FIFA DC opened disciplinary proceedings against the Club due to its failure to comply with the CAS Award. By means of that correspondence, the Club was urged to pay the amount due to the Agent by 20 June 2018 at the latest and was informed that the case would be submitted to a member of the FIFA DC once the aforementioned time limit expired. Moreover, the Club was informed that the FIFA DC would take a decision based on the documents in its possession, should the Club fail to submit any statement or pay the outstanding amounts by the specified deadline.
14. On 11 July 2018, the FIFA DC rendered a decision as follows (the “Appealed Decision”):
  - “1. *The [Club] is found to have infringed art 64 of the FIFA Disciplinary Code as it is guilty of failing to comply with the [CAS Award] [...].*
  2. *The [Club] is ordered to pay a fine to the amount of CHF 30,000. The fine is to be paid within 90 days of notification of the present decision. Payment can be made either in Swiss francs (CHF) [...] or in US dollars (USD) [...].*
  3. *The [Club] is granted a final deadline of 90 days as from notification of the present decision in which to settle its debt to the [Agent] and to FIFA.*
  4. *If payment is not made to the [Agent] and proof of such a payment is not provided to the [FIFA DC] and to the [UAEFA] by this deadline, six (6) points will be deducted automatically by the [UAEFA] without a further formal decision having to be taken nor any order to be issued by the [FIFA DC].*

5. *If the [Club] still fails to pay the amount due to the [Agent] even after the deduction of points in accordance with point 4 above, the [FIFA DC], upon request of the [Agent], will decide on a possible relegation of the [Club's] first team to the next lower division.*
  6. *As a member of FIFA, the [UAEFA] is reminded of its duty to implement this decision and provide FIFA with proof that the points have been deducted in due course. If the [UAEFA] does not comply with this decision, the [FIFA DC] will decide on appropriate sanctions on the member. This can lead to an expulsion from FIFA competitions.*
  7. *The costs of these proceedings amounting to CHF 3,000 are to be borne by the [Agent] and shall be paid according to the modalities stipulated under point 2. above.*
  8. *The [Agent] is directed to notify the secretariat to the [FIFA DC] as well as the [UAEFA] of every payment made and to provide the relevant proof of payment.*
  9. *The [Agent] is directed to notify the secretariat to the [FIFA DC] as well as the [UAEFA] of every payment received”.*
15. On 11 July 2018, the findings of the Appealed Decision were communicated to the Club and the Agent.
  16. On 17 August 2018, the grounds of the Appealed Decision were communicated to the Club and the Agent.

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

17. On 6 September 2018, in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the “CAS Code”), the Club filed a Statement of Appeal at the CAS against FIFA challenging the Appealed Decision.
18. In its Statement of Appeal, the Club nominated Mr. Daniel Lorenz, Attorney-at-law, Porto, Portugal, as arbitrator.
19. On 17 September 2018, FIFA wrote to the CAS Court Office nominating Mr. Frans de Weger, Attorney-at-law, Haarlem, the Netherlands, as arbitrator.
20. On 24 September 2018, pursuant to Article R51 of the CAS Code, the Club submitted its Appeal Brief to the CAS Court Office.
21. On 10 October 2018, 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 Panel appointed to this case was constituted as follows:

President: Mr. Mark A. Hovell, Solicitor, Manchester, United Kingdom  
Arbitrators: Mr. Daniel Lorenz, Attorney-at-law, Porto, Portugal

Mr. Frans de Weger, Attorney-at-law, Haarlem, the Netherlands

22. On 31 October 2018, pursuant to Article R55 of the CAS Code, FIFA submitted its Answer to the CAS Court Office.
23. On 20 November 2018, the CAS Court Office, on behalf of the Panel and after having consulted the Parties in detail, informed the Parties that, pursuant to Article R57 of the CAS Code, the Panel had determined that no hearing would be held in this matter. However, the Panel had decided to grant the Parties the possibility of a further round of written submissions.
24. On 30 November 2018, the Club filed its second written submission.
25. On 17 December 2018, FIFA filed its second written submission.
26. On 15 January 2019, FIFA submitted a copy of the signed Order of Procedure to the CAS Court Office.
27. On 17 January 2019, the Club submitted a copy of the signed Order of Procedure to the CAS Court Office.

#### **IV. THE PARTIES' SUBMISSIONS**

28. 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 Panel however, has carefully considered all the submissions made by the Parties, even if no explicit reference is made in what immediately follows.

##### **A. The Club's Submissions**

29. The Appeal Brief contained the following prayers for relief, which were reiterated in the Club's second submission:

- (i) Set aside the [Appealed Decision];*
- (ii) Find that the [FIFA DC] should impose a fine in the amount of CHF 5,000;*
- (iii) Find that, in the event that payment is not executed in the deadline given, the [UAEFA] may only deduct 3 points to [the Club];*
- (iv) Order [FIFA] to pay the full amount of the CAS arbitration costs;*
- (v) Order the Respondents to pay a significant contribution towards the legal costs and other related expenses of [the Club]."*

30. In summary, the Club submitted the following in support of its appeal:

**1. Article 64 of the FIFA Disciplinary Code**

31. The Club submitted that Article 64 of the FIFA Disciplinary Code (“FDC”) sets out, *inter alia*, that any party that fails to comply with a decision by FIFA or the CAS can be subject to a fine, be granted a final deadline to pay and/or be warned that further failure to pay could result in a points deduction and/or a transfer ban.
32. The spirit of Article 64 of the FDC is to enforce decisions rendered by a FIFA body or the CAS, which are final and binding. The sanctions available to the FIFA DC are designed to put the debtor under pressure to finally comply with the decision at stake. The role of the FIFA DC is to impose those sanctions accordingly.
33. However, Article 64 does not provide for any explanation as to how the FIFA DC should assess the sanctions to be imposed. The Club submitted that while FIFA advocates that it analyses each case separately and imposes sanctions on a case-by-case basis, “*a careful analysis of the decisions rendered by the [FIFA DC] proves otherwise: the [FIFA DC] has a mechanic[al] approach to Article 64 of the FDC*”.

**2. The FIFA DC’s “mechanic[al]” application of Article 64 FDC**

34. The Club submitted that once it has been established that a certain debtor owes an amount of money to a creditor, the FIFA DC decides on the sanction to be imposed in accordance with Article 64 of the FDC.
35. Pursuant to FIFA Circular 1628 of 9 May 2018, FIFA adjusted the procedure involving Article 64 of the FDC, and debtors were informed that “*should the relevant amount due not be paid in full by the debtor by the aforementioned final deadline, the debtor’s association will have the obligation to check whether the decision has been complied with by the deadline and will be required to automatically apply the point deduction (...)*” (emphasis added by the Club).
36. The Club submitted that given the seriousness of the sanctions that can be imposed, “*one would expect the [FIFA DC] would undertake a proper and detailed analysis of all the facts of the case being analysed. And only upon a thorough analysis, would it decide on the sanctions to be imposed, always within the boundaries of article 64 of the FDC. This would lead to a tailor-made decision*”.
37. However, the Club argued that “*the overriding evidence*” is that the FIFA DC does not abide by the above procedure, “*at least not to the extent that one would expect*”. With the exception of exceptional circumstances, the FIFA DC “*uses the amount outstanding as the exclusive basis upon which it renders its decision. The amounts are divided into groups, each group having a pre-defined amount of fine to be imposed, a pre-defined number of points to be deducted and pre-defined number of days to be given in addition for the debtor to execute the payment of the outstanding amount*”.
38. The Club argued that this “*mechanic[al] approach*” leads to decisions which are disproportionate and contrary to the purpose of Article 64, which is the execution of the payment of the outstanding amount.

**3. *The Appealed Decision is disproportionate and inadequate***

39. The Club did not deny that it owed money to the Agent, which it has failed to pay thus far. It also did not deny that Article 64 was applicable. However, the Club argued that the Appealed Decision was disproportionate and inadequate.
40. The Club argued that the FIFA DC failed to take into account all the relevant facts pertaining to this case, in particular the number of claims which the Club was currently disputing before FIFA and the CAS. The Club noted that it was presently involved in 16 disputes at FIFA or the CAS in which creditors were claiming over EUR 10 million in total. The Club submitted that the fact that this was not mentioned in the Appealed Decision suggests that this was not taken into account.
41. Whilst the Club was attempting to negotiate settlements with all of their respective creditors, if all of those cases were heard by the FIFA DC, the Club *“could be facing an apocalyptic situation”*. In respect of fines, the Club could be imposed with total fines of over EUR 250,000.
42. The Club submitted that FIFA had recognised that imposing financial sanctions above a certain limit was counterproductive to the logic of Article 64 of the FDC, as it would create additional financial difficulties to debtors. The Club argued that whilst a fine of CHF 30,000 might not seem excessive for debts in the millions, repeated fines of CHF 30,000 can have a counterproductive effect. The fines which are being imposed could instead be used to pay its debtors.
43. The Club argued that the fines imposed should be *“symbolic”* so as to not create further additional financial difficulties for the Club.
44. In respect of the point deduction, the Club argued that when all the relevant point deductions across their disciplinary cases at FIFA are added together, the Club could potentially be facing a total deduction of more than 20 points in a matter of months. The Club submitted that such high fines and potential relegation jeopardises the future of the Club and consequently, affects the possibility of creditors being paid.
45. The Club stated that the argument was *“not simply theoretical”* as FIFA would be aware of the many clubs that have either entered into insolvency (the Club cited the Ukrainian club Dnipro as an example) or had come up with *“creative”* solutions such as mergers or transformations (the Club cited the example of AEK Kouklia and AEP Paphos merging to create Paphos FC, leaving numerous creditors without the possibility of seeking payment). The Club also stated that 3 clubs in the UAE had been forced to merge due to financial problems.
46. The Club argued that a deduction of 3 points would have been sufficient, as the Club was fighting to qualify for the AFC Champions League, so the point deduction would *“already have a major impact on the club and would effectively force it to pay”*.
47. In summary, the Club argued that the Panel should use its powers to change the Appealed Decision in order to make it proportional and adequate in the circumstances.



**4. *The Club's second written submission***

48. In its second written submission, the Club responded to some of the points raised by FIFA in its Answer.

49. In brief summary, the Club argued that:

- FIFA had confirmed its “*mechanical*” process and the fact that it failed to take into account the relevant circumstances. If it had followed due process, it would have explained in the Appealed Decision why these circumstances had no impact.
- It did not understand why it had the obligation to submit information to FIFA which FIFA would have already been aware of (i.e. disputes involving the Club being heard in front of FIFA).
- FIFA analysed the Club’s transfer activity but failed to analyse its disputes and potential impact on the imposition of sanctions.
- FIFA “*had the boldness*” to argue that the Club had failed to make even partial payments, when it should have been aware that in negotiations an alleged debtor would not execute partial payments before a preliminary agreement had been reached. This was “*particularly true*” when the debtor’s financial situation “*is critical and it has to face financial obligations arising from other disputes*”.
- FIFA should have known that since 2017, the Club was dealing with more than 20 disputes (14 still ongoing) before FIFA bodies in disputes worth approximately EUR 20 million, with similar amounts of cases running at the CAS. The Club had paid almost EUR 10 million over the past 2 years, and intended to settle as many of its debts as possible.
- The Club noted that the fine imposed in the present case is roughly the same as the amount in its dispute with Mr. Marcelo Leite Chirol, so it was “*at the centre of this paradox*” where FIFA imposed disproportionately high fines to protect the interests of players, coaches and other clubs, but by doing so were jeopardising the Club’s financial position and therefore its ability to meet its debts to players, coaches and other clubs.

**B. FIFA’s Submissions**

50. FIFA’s Answer to the Appeal requested the following prayers for relief, which were reiterated in its second submission:

- “1. To reject the [Club’s] appeal in its entirety.
2. To confirm the [Appealed Decision] hereby appealed against.

3. *To order the [Club] to bear all costs and legal expenses related to the present procedure”.*

51. In summary, FIFA submitted the following arguments:

**1. *The Club’s breach of Article 64 of the FDC***

52. Firstly, FIFA submitted that the system of sanctions used by the FIFA DC has been confirmed by the SFT as being lawful (Decision of the SFT 4P.240/2006 dated 5 January 2007) and proceedings under Article 64 of the FDC are *“to be considered not as enforcement but rather as the imposition of a sanction for breach of the association’s regulations and under the terms of association law”*.

53. FIFA noted that the CAS Award was final and binding. As such, the sole task for the FIFA DC was therefore to analyse if the debtor (i.e. the Club) had complied with the CAS Award (FIFA cited, *inter alia*, CAS 2006/A/1008 and CAS 2013/A/3323). Similarly, the task of the Panel here was to analyse whether the Club respected and fulfilled the CAS Award, not to analyse its content (CAS 2012/A/3032).

54. FIFA noted that it could only take into account facts arising after the date on which the relevant decision (which needed to be complied with) had been made, and any other considerations were out of scope of the disciplinary proceedings (CAS 2016/A/4910). In that regard, FIFA noted that despite the CAS Award being issued in October 2017, at no point has the Club shown any willingness to pay the amounts due. The Club did not even attempt to participate in the disciplinary proceedings at the FIFA DC (save for submitting a revised Power of Attorney) which led to the Appealed Decision.

55. Moreover, the Club itself admitted that it owed money to the Agent which it had failed to pay, and that Article 64 of the FDC was therefore applicable. As such, there was no debate the Club was in breach of Article 64 of the FDC.

**2. *An appropriate decision-making procedure was followed***

56. FIFA stated that, contrary to the Club’s assertions, it does pay attention to the specifics of the case, as well as amounts due, and whether there are any exceptional circumstances. In the present case, there were no exceptional circumstances justifying the non-compliance of a final and binding decision (CAS 2012/A/2730). FIFA also submitted that it was not necessary for the sanctioned stakeholder to know in advance the exact sanction that would be imposed but for the process to follow the *principles of predictability and legality*.

57. FIFA argued that what the Club was claiming to be a *“mechanical approach”* by FIFA was in reality *“the perfect application by [FIFA] of the principles of predictability and legality”*. The CAS has clearly explained that such fundamental principles are satisfied whenever the disciplinary rules have been properly adopted, the infringement is described and the relevant sanctions are provided for, directly or by reference (CAS 2014/A/3665, 3666 & 3667, and CAS 2014/A/3765).

58. FIFA further submitted that CAS jurisprudence has also confirmed that the outstanding amount due provides the most logical nexus between the severity of the violation committed and the sanctions to be imposed (CAS 2018/A/5663; CAS 2018/A/5551).
59. FIFA submitted that the Club received in excess of EUR 13 million in transfer fees in 2018, which was much higher than the outstanding debt. They also signed 3 new players costing a total of USD 500,000 and EUR 750,000. Notwithstanding this, the Club did not even partially pay off any of the debt it owed to the Agent – *“it prioritised such transactions over the payment of the debt for which it has now been sanctioned”*.
60. In light of the above, FIFA argued that it *“finds it hard to believe that the Appealed Decision would cause the catastrophic consequences alleged”* by the Club, which in any event were entirely unsubstantiated by any evidence and should therefore be disregarded pursuant to Article 8 of the Swiss Civil Code (“CC”).
61. In any event, FIFA did take into account the circumstances of the case, and the Club was also given a 90-day final grace period in which to pay its debts. FIFA also noted that clubs have a duty to be aware of their financial strength and follow the principle of *pacta sunt servanda*, which is *“of paramount importance to FIFA and a key issue to be protected”* by the FIFA Regulations on the Status and Transfer of Players (the “RSTP”).
62. In that context, the Club’s claim that it was facing 14 other ongoing proceedings was not supported by any evidence, and should therefore be dismissed under Article 8 of the CC. Even if it had been proven, this argument would not constitute as a mitigating factor in any event as it *“would only prove a neglectful management and a persistent disrespect of contractual obligations with different creditors”* and this could not be used as an argument to obtain lower sanctions. FIFA could not take into account potential future violations that an offender may incur. Article 64 of the FDC needs to be applied in every single decision, so the Club allegedly having 14 other similar proceedings *“cannot lead to a unique sanction being applied”*. If the Club’s suggested approach of leniency is adopted, this *“would directly cause a deterioration of the position of its alleged 14 creditors, as they would no longer be able to exercise the same pressure on the [Club] that Article 64 envisages and that has been corroborated by the CAS and the Swiss Federal Tribunal”*.
63. Finally, FIFA submitted that Article 2 of the CC states that every person *“is bound to exercise his rights and fulfil his obligations according to the principle of good faith”* (CAS 2010/A/2144). As such, the sole unproven allegation that the Club was undergoing financial problems *“does not exonerate it from its obligations to pay the outstanding amounts owed”* to the Agent (FIFA cited, *inter alia*, CAS 2013/A/3358 and CAS 2018/A/5622).
64. In conclusion, FIFA submitted that it did take into consideration all the circumstances of the case in reaching the Appealed Decision.

### ***3. The sanctions imposed on the Club were proportionate***

65. FIFA submitted that notwithstanding its *de novo* powers under Article R57 of the CAS Code, the Panel could only amend the disciplinary decision of a FIFA judicial body if it considered

that it acted arbitrarily and it exceeded the margin of discretion afforded to it by the principle of association autonomy (cf. RIEMER H. M., Berner Kommentar, no. 230 on art. 70). That is to say, even if the Panel disagreed with a specific sanction, it should only amend it “*if the sanction concerned is to be considered as evidently and grossly disproportionate to the offence*” (FIFA cited, *inter alia*, CAS 2014/A/3562; CAS 2009/A/1817; CAS 2009/A/1844; CAS 2015/A/4271).

66. Moreover, FIFA submitted that Article 75 of the CC states that only grossly disproportionate decisions constitute violations of relevant laws and/or an association’s own statutes and regulations. Only those alleged violations can be claimed in the context of challenges under Article 75 of the CC.
67. Further, FIFA argued that it has always dealt with cases on a case-by-case basis taking into account the relevant circumstances pursuant to Article 39, para. 4 of the FDC and as confirmed by the CAS, “*similar cases must be treated similarly, but dissimilar cases could be treated differently*” (CAS 2012/A/2750).
68. FIFA submitted that as the Club had not at any time produced any evidence of financial difficulties despite claiming that the Club “*does not have the financial capacity to execute the payment of the total amounts it has outstanding [...] and is currently in contact with the majority of the creditors to reach settlement agreements*”. The Panel should therefore not give consideration to this argument in advance of the Club’s claims on proportionality. FIFA noted that pursuant to Article 8 of the CC, the Club bore the burden of proof (Article 8 of the CC) in establishing its allegedly difficult financial situation – which it failed to satisfy.
69. Further, FIFA submitted that in line with longstanding jurisprudence of the FIFA DC which has been repeatedly confirmed by the CAS (for example CAS 2012/A/2730), the FIFA DC always has regard to the amount outstanding when deciding on the level of sanctions to be imposed. FIFA argued that the sanctions imposed on the Club in the Appealed Decision were proportionate. In support of this, FIFA submitted that the imposition of a fine of CHF 30,000 (2.7% of the amount owed) is well within the range set out in Article 15 of the FDC (the maximum being CHF 1,000,000) and hardly at the level that can create additional financial difficulties for the Club.
70. FIFA maintained that in the present case the FIFA DC acted in accordance with the overriding principle of proportionality, as well as in line with the FIFA DC’s established practice in setting the fine at the said level. In support of these arguments, FIFA submitted a table showing a small sample of cases detailing amounts outstanding with the corresponding sanctions. This table is set out below:

<b>Case number</b>	<b>Outstanding amount</b>	<b>Fine</b>	<b>Grace period</b>	<b>Deduction</b>
130394 PST ZH	CHF 1,173,040	CHF 30,000	90 days	6 points
160018 PST ZH	CHF 1,381,160	CHF 30,000	90 days	6 points
170317 PST ZH	CHF 1,043,766	CHF 30,000	90 days	6 points

170318 PST ZH	CHF 1,505,786	CHF 30,000	90 days	6 points
170380 PST ZH	CHF 958,462	CHF 30,000	90 days	6 points
170919 PST ZH	CHF 1,171,692	CHF 30,000	90 days	6 points

71. Given the above, FIFA submitted that the Appealed Decision was clearly passed in accordance with the principle of proportionality and in line with the FIFA DC’s practice. FIFA noted that the CAS has previously confirmed that a fine imposed on a club “*equal to fines imposed on other clubs for very similar violations*” cannot be considered disproportionate in view of the FIFA DC’s practice (CAS 2016/A/4594). FIFA also noted that the fine here was 2.7% of the amount due, and the CAS has previously confirmed that a fine representing 4.37% of the amount due was not disproportionate (CAS 2018/A/5551).
72. FIFA dismissed the Club’s argument that it “*potentially faces a total combined amount of fines in excess of CHF 250,000*”, which, apart from being entirely unsubstantiated, has no relevance whatsoever. FIFA stated that this was “*mere speculation*” that should be disregarded by the Panel, and also noted that the Club failed to raise this argument during the proceedings at the FIFA DC.
73. Further, FIFA stated that it was quite “*daring*” for the Club to suggest that it could have used the amount of fines to pay its debts, given that it had never shown any willingness to pay any of its debts to the Agent and instead chose to spend considerable amounts of money in purchasing new players. FIFA submitted that if the Club truly wanted to use the alleged CHF 250,000 of fines to pay its debts to its various creditors, it could have already done so.
74. FIFA also rejected the Club’s request for the deduction of points to be reduced to 3, on the basis that it was facing a potential deduction of over 20 points due to all of its proceedings at the FIFA DC. FIFA noted that the sanction in this case was imposed based on the circumstances of this case and the relevant overdue amount. The unsubstantiated allegations of potential point deductions from other cases should be disregarded.
75. FIFA noted that the point deductions could be avoided by the Club if it simply paid its debts before the 90 day grace period elapsed. Given that the Club have repeatedly failed to pay its debts to the Agent in this matter, the 6 point deduction can be considered as an appropriate sanction.
76. Finally, FIFA submitted that “*the CAS has regularly confirmed the legality and the proportionality of the enforcement system created by FIFA and the sanctions related thereto, in particular the point’s deduction. In particular, CAS has repeatedly corroborated that the wording of art. 64 of the FDC provides with a clear statutory basis and precisely reflects the principle of proportionality: a first decision may only include a fine and the deduction of points, since it is the less severe and therefore proportionate sanction for a first infringement of the obligation to comply with a CAS appeal decision, a more severe sanction must be possible, in order to take account of the continued disrespect of both FIFA and CAS’s judicial authority (cf. inter alia CAS 2005/A/944, CAS 2011/A/2646, CAS 2012/A/3032 and CAS 2018/A/5622)*”.

**4. FIFA's second written submission**

77. In its second written submission, FIFA responded to the points raised by the Club in its second written submission.

78. In brief summary, FIFA argued that:

- The Club's request for a second round of written submissions was clearly a dilatory tactic given it submitted no further evidence or arguments, and simply repeated the same unsubstantiated arguments in its Appeal Brief.
- The decision-making process by the FIFA DC was valid, applied the principles of predictability and legality and, above all, has been widely confirmed by the CAS and the Swiss Federal Tribunal ("SFT").
- The FIFA DC did take into account the particular circumstances in this case.
- The Club referred to a dispute with a Mr. Leite without providing any kind of evidence of this dispute whatsoever. In any event, a dispute with Mr. Leite is irrelevant to the present dispute. It is up to the Club to manage its affairs in a professional manner.

**V. JURISDICTION**

79. 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".*

80. The jurisdiction of the CAS, which was 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".*

81. The jurisdiction of the CAS was further confirmed by the Order of Procedure duly signed by the Parties.

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

**VI. ADMISSIBILITY**

83. Article R49 of the Code provides as follows:

*“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late”.*

84. According to Article 67, para. 1 of the FIFA Statutes, appeals *“shall be lodged with CAS within 21 days of notification of the decision in question”*.
85. FIFA notified the grounds of the Appealed Decision on 17 August 2018. The Appellant lodged the Statement of Appeal with CAS on 6 September 2018, i.e. within the 21 days allotted under Article 67, para. 1 of the FIFA Statutes. The Statement of Appeal also complied with the requirements of Articles R47, R48 and R64.1 of the CAS Code, including the payment of the CAS Court Office fee.
86. It follows that the Appeal is admissible.

## **VII. APPLICABLE LAW**

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

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

88. Article 57(2) of the FIFA Statutes provides 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”.*

89. Further, the Parties unanimously submitted that the various regulations of FIFA should apply, with Swiss law applying on a subsidiary basis.
90. In light of the above, the Panel is satisfied that the various regulations of FIFA are applicable, with Swiss law applying to fill in any gaps or *lacuna* within those regulations.

## **VIII. MERITS**

### **A. The Main Issues**

91. The Panel notes that this is an Appeal against a decision by the FIFA DC, and it was undisputed between the Parties that the underlying CAS Award which the Club failed to comply with was final and binding. Accordingly, the Panel observes that the only issue to be resolved in this Appeal is whether the Appealed Decision should be amended for being

disproportionate and for not taking the particular circumstances of the Club into consideration.

92. In that regard, the Panel notes that there were two requests for relief by the Club in relation to amending the Appealed Decision, which were as follows:

“(ii) Find that the FIFA Disciplinary Committee should impose a fine in the amount of CHF 5,000;  
(iii) Find that, in the event that payment is not executed in the deadline given, the United Arab Emirates Football Association may only deduct 3 points to [the Club];”

93. As a starting point, the Panel wishes to stress that Article 64 FDC provides FIFA with a clear legal basis to sanction a club that failed to pay another club a sum of money following an instruction to do so by the PSC. The Panel finds that Article 64 para. 1 FDC clearly sets out the legal framework applicable in the event of a club’s failure to comply with payment obligations set by a body of FIFA. It therefore enables the Club to foresee the potential consequences of failing to comply with a decision passed by the PSC. It is clear that under Article 64 FDC, a club that is obliged to comply with a FIFA decision may be subject to a number of measures, such as fines, point deductions, transfer bans, etc., in the event it disregards a decision ordering it to pay an amount of money to another club: in other words, the FIFA statutes clearly indicate not only the existence of a violation, but also the kinds of sanctions (see for example, CAS 2018/A/5663).

94. At the outset, the Panel notes that there is an established line of CAS jurisprudence which states that sanctions imposed by the FIFA DC can only be amended by a CAS panel if the sanction(s) concerned are evidently and grossly disproportionate to the offence. Accordingly, the Panel considered that it could only grant the Club the requests for relief quoted above if it considered the sanctions imposed by the FIFA DC in the Appealed Decision to be ‘evidently and grossly disproportionate to the offence’.

95. The Club’s submissions broadly focussed on the proportionality of the sanctions imposed by the FIFA DC and contended that FIFA’s decision making system is “mechanical”, and does not take into account the circumstances of a case. The Club argued that it had numerous other simultaneous disputes with creditors, and therefore requested leniency in terms of the fine and point deduction levied. For completeness, the Panel wishes to address these arguments prior to addressing the issue of whether the fine and points deduction imposed in the Appealed Decision should be amended for being disproportionate.

96. Dealing first with the Club’s argument that FIFA’s decision making system is “mechanical”, the Panel notes that this argument was largely based on the premise that the FIFA DC “uses the amount outstanding as the exclusive basis upon which it renders a decision”. The Club argued that this resulted in decisions which were disproportionate and contrary to the purpose of Article 64 of the FDC.

97. However, save for making broad statements challenging the decision-making process of the FIFA DC as “mechanical”, the Panel observes that the Club failed to submit any evidence that



the decision-making process which led to the Appealed Decision itself was unlawful in any way. In any event, the Panel notes that the FIFA DC's system of sanctions, and its proceedings, have been confirmed by the SFT as being lawful (Decision of the SFT 4P.240/2006 dated 5 January 2007). Moreover, even if FIFA places a strong emphasis on the value of the outstanding debt when determining the appropriate sanction(s), CAS jurisprudence has confirmed that the outstanding amount of debt does, in fact, provide the most logical nexus between the severity of the violation committed and the sanctions to be imposed. The correlation between the "*outstanding amounts due*" and the measure of the sanction satisfies the principles of predictability, equal treatment and procedural fairness: any club could expect in good faith that the more severe its violation, the more severe the sanction that it might be subjected to (CAS 2018/A/5663 and CAS 2018/A/5551).

98. The FIFA DC would be accused of unequal treatment if it did not look to apply a measure of consistency in its sanctioning. The Panel considers that taking the amount of the unpaid debt into account is a sensible starting point.
99. In relation to the Club's argument that the FIFA DC "*failed to take into account the relevant facts of the case*", this appeared to be largely based on the argument that FIFA did not consider the numerous other simultaneous disputes the Club were having with other creditors. The Club claimed that it was potentially facing an "*apocalyptic situation*" with numerous fines and points deductions. The Panel finds this to be a curious line of argumentation.
100. Firstly, the Club failed to submit any evidence regarding the 14 (or more) other simultaneous disputes it was allegedly facing. In its second round of written submissions, the Club submitted that it did not understand why it needed to submit information regarding the 14 or so other disputes at FIFA because FIFA ought to already have been aware of that information. In this regard, FIFA did not admit in its submissions that it was aware of that information. However, even if that were the case, the Club failed to submit any of that information to the Panel during these appeal proceedings at the CAS.
101. Secondly, even if the Club's claims regarding the other disputes were substantiated, as FIFA noted, all this proves is the "*neglectful management and a persistent disrespect of contractual obligations with different creditors*". The Panel finds it remarkable that the Club is asking for leniency due to their own repeated poor financial management and decision making. In other FIFA Regulations (such as the RSTP), this behaviour would likely label the Club as a "*repeat offender*" and it would be taken as an aggravated factor, not a mitigating one.
102. Even if the Panel were to have sympathy with the Club, the Panel considers that the Club's position is severely undermined by the fact that more than 2 years have elapsed since the FIFA PSC Decision and over a year has passed since the CAS Award was issued, without any payment – not even partially – being made to the Agent whatsoever. The Panel considers that the Club's failure to agree to a payment plan or to make any payment to the Agent to date significantly weakens its position regarding proportionality and its request for leniency.
103. The Panel rejects the Club's argument that it could not execute any partial payments until "*a preliminary agreement*" had been reached with the creditor(s). The amount due to the Agent was

determined in a final and binding decision in the CAS Award. There was no longer any 'dispute'. There was nothing to negotiate or come to an agreement on in that regard, save for a payment plan (which the Agent was free to reject if he wished) to pay all the monies owed to the Agent under the CAS Award. The Club could not simply disregard the CAS Award, claim to "*not have an agreement*" with the Agent and then hide behind its own voluntary decision to avoid abiding by the CAS Award. It has shown a complete disregard in relation to abiding by its financial obligations to the Agent.

104. Further, the Panel concurs with FIFA's position that other alleged simultaneous disputes with creditors should not lead to a reduced sanction. Not only would it compromise the interests of the approximately 14 other alleged creditors (in relation to the pressure that could be exercised under Article 64 of the FDC), but it also lead to a perverse outcome where the Club is, in effect, 'rewarded' with a more lenient punishment for its repeated financial mismanagement when compared to another debtor who might, for example, have only one overdue debt but receives 'ordinary' (i.e. harsher) sanctions. It would compromise the entire basis of Article 64 of the FDC.
105. Thirdly, the Panel also must disregard the Club's alleged potentially "*apocalyptic*" financial situation. Despite repeatedly alluding to being in a difficult financial situation, the Club but did not submit a single piece of evidence to support this assertion. In contrast, the Club was active on the international transfer market since the beginning of 2018. In fact, FIFA noted that the Club received over EUR 13 million in transfer fees in 2018 and signed players for USD 500,000 and EUR 750,000. In this regard, FIFA emphasised that during the past two years, the Club has also internationally released two players, entitling it to receive around EUR 10,000,000 and USD 3,180,000 in exchange for their transfers. Pursuant to Article 8 of the CC, the Club bore the burden of proof in establishing its allegedly difficult financial situation – and the Panel considers that it failed to meet that burden. The Panel takes the view that in the absence of any evidence, the Club's claims regarding its financial position must be disregarded. In any event however, CAS jurisprudence (see for example, *CAS 2013/A/3358*) is clear that a difficult financial situation is not a valid justification for a club to fail to pay its debts.

**1. *Should the fine in the Appealed Decision be reduced?***

106. Turning then to the Club's specific requests for relief in lowering the sanctions, firstly, the Club requested that the fine levied in the Appealed Decision be reduced from CHF 30,000 to CHF 5,000. The Club argued that given the potentially numerous fines that the Club might be facing, a "*symbolic*" fine should be imposed so as to not create further additional difficulties for the Club. The Panel rejects this argument.
107. Firstly, the Panel did not consider a CHF 30,000 fine to be disproportionate considering it amounts to 2.7% of the amount owed to the Agent. The Panel also takes note of the table of precedents that FIFA submitted (see above para. 70), which demonstrates that a fine of CHF 30,000 in case of continued non-compliance with a FIFA decision related to clubs where amounts due were comparable or even lower does not deviate from the FIFA DC's practice. As confirmed by CAS jurisprudence, a fine imposed on a club "*equal to fines imposed on other*

*clubs for very similar violations*” cannot be considered disproportionate (CAS 2016/A/4594), and the Panel notes that a fine amounting to more than 4% was also not considered disproportionate (CAS 2018/A/5551).

108. Secondly, the Club’s argument – which again, was not supported with any evidence at all – that it was potentially facing fines totalling CHF 250,000 was irrelevant. The Panel considers the fine levied in the Appealed Decision to be appropriate and proportionate to this particular case. The Panel also rejects the Club’s argument that if the amount of the fine was lower, the money could instead be used to pay its creditors. If the Club had any intention to pay its creditors, including the Agent, it would have already done so. Instead, the Panel considers that the Club has demonstrated no intention whatsoever of meeting its debts to its creditors. In fact, it appears the Club preferred to use the money it did have on purchasing new players. Accordingly, the Club’s request for the fine levied in the Appealed Decision to be reduced from CHF 30,000 to CHF 5,000 is rejected.

**2. *Should the point deduction in the Appealed Decision be reduced?***

109. The Club also requested the Panel to reduce the point deduction in the Appealed Decision from 6 points to 3 points. The Club claimed that it was facing a potential deduction of over 20 points due to all of its ongoing proceedings.
110. Once again, the Panel takes note of the table of precedents which FIFA submitted (see above para. 70) which demonstrates that a 6-point deduction in case of continued non-compliance with a FIFA decision related to clubs where amounts due were comparable or even lower does not deviate from the FIFA DC’s practice.
111. On balance, given the amount of money which is overdue (over EUR 1 million) and the length of time it has been overdue (more than 2 years) the Panel is not convinced that a 6-point deduction was grossly disproportionate. Once again, the Club bore the burden of proof in this regard, and the Panel concludes that the Club has failed to meet its burden.
112. The Panel also rejects the Club’s argument that the point deduction should be reduced as it would otherwise potentially be facing 20 points of deductions in aggregate from its various disciplinary proceedings. The Club failed to submit any evidence of those assertions and, in any event, even if the Club were facing numerous potential points deductions, those deductions could all be avoided if the Club only paid its debts before the ‘grace periods’ elapsed.
113. Accordingly, the Club’s request for the point deduction to be reduced from 6 points to 3 points is rejected.
114. In summary, the Panel considers that the sanctions imposed by the FIFA DC in the Appealed Decision were proportionate and finds no reason to amend or reduce them in any way.

**B. Conclusion**

115. Based on the foregoing, and after taking into due consideration all the evidence produced and all submissions made, the Panel dismisses the Appeal by the Club in its entirety and upholds the Appealed Decision.
116. Any 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 September 2018 by Al Jazira FSC against the decision issued on 11 July 2018 by the FIFA Disciplinary Committee is dismissed.
2. The decision issued on 11 July 2018 by the FIFA Disciplinary Committee is confirmed.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.