CAS 2018/A/5854 Club Eskişehirspor Kulübü v. Sebastian Andres Pinto Perurena & Fédération Internationale de Football Association (FIFA)

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Lars Hilliger, Attorney-at-Law in Copenhagen, Denmark

in the arbitration between

Club Eskişehirspor Kulübü, Istanbul, Turkey

Represented by Mr. Sami Dinc, Attorney-at-Law with the Sami Dinc Law Office in Istanbul, Turkey

Appellant

and

Sebastian Andres Pinto Perurena, Santiago, Chile

Represented by Mr. Cumhur Bati, Attorney-at-Law in Istanbul, Turkey

First Respondent

and

Fédération Internationale de Football Association (FIFA), Zürich, Switzerland

Represented by Mr Mario Gallavotti, Director, and Mr. Jaime Cambreleng Contreas, Head of Disciplinary

Second Respondent

I. PARTIES

1. Club Eskişehirspor Kulübü (the "Appellant" or the "Club") is a professional Turkish football club affiliated with the Türkiye Futbol Federasyonu (the "TFF"), which in turn is affiliated with the Fédération Internationale de Football Association ("FIFA"). The Club is currently competing in the Turkish 1st League.

2. Mr. Sebastian Andres Pinto Perurena (the "First Respondent" or the "Player") is a professional football player of Chilean nationality.

3. FIFA (or the "Second Respondent") is the world governing body of Football, whose headquarters are located in Zürich, Switzerland.

II. FACTUAL BACKGROUND

A. Background Facts

4. Below is a summary of the relevant facts and allegations based on the written submissions, pleadings and evidence filed by the Appellant and the Second Respondent. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.

5. On 15 December 2016, the FIFA Dispute Resolution Chamber (the "FIFA DRC") rendered its decision (the "DRC Decision") in a contractual dispute between the Player and the Club with the following operative part:

> "*1. The claim of the [Player] is partially accepted.*
>
> *2. The [Club] has to pay to the [Player], within 30 days as from the date of notification of this decision, outstanding remuneration in the amount of EUR 272,000, plus 5% interest p.a. on said amount as from 8 August 2016 until the date of effective payment.*
>
> *3. The [Club] has to pay to the [Player], within 30 days as from the date of notification of this decision, compensation for breach of contract in the amount of EUR 162,000, plus 5% interest p.a. on said amount as from 8 August 2016 until the date of effective payment.*
>
> *4. In the event that the amounts plus interest due to the [Player] in accordance with the above-mentioned points 2. and 3. are not paid by the [Club] within the stated time Limits, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.*
>
> *5. Any further claim lodged by the [Player] is rejected.*

6. *The [Player] is directed to inform the [Club] immediately and directly of the account number to which the remittance are to be made and to notify the Dispute Resolution Chamber of every payment received.*

7. *The [Club] shall be banned from registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods following the notification of the present decision"*

6. On 1 March 2017, the Appellant filed an appeal to the CAS against the Respondents in relation to the DRC Decision.

7. On 10 July 2017, the CAS ruled as follows:

1. *The appeal filed on 1 March 2017 by Eskişehirspor Kulübü against the decision issued on 15 December 2016 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is dismissed.*

2. *The decision issued on 15 December 2016 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association 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 Eskişehirspor Kulübü.*

4. *Each party shall bear his/its own legal fees and other expenses incurred in connection with the present arbitration.*

5. *All other and further motions or prayers for relief are dismissed.*

8. On 2 September 2017, the legal representative of the Appellant requested FIFA to review the DRC Decision since, *inter alia*, *"A new Committee and a new President of the Club were elected in July 2017 as a result of the KNOWN issues (financial problems) that led to this Decision"* and since "*[...] the new President of the Club... has decided to pay all the salaries[..]".*

9. By letter of 8 September 2017, the FIFA Players' Status Department informed the Appellant, *inter alia*, that

"[...] In this respect, we kindly draw your attention to the fact that the Rule Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: Procedural Rules) do not include the possibility of review of decisions passed by our competent decision-making bodies, especially not when said decision has been confirmed by CAS and thus has become final and binding. [...]".

10. By letter of 25 September 2017 from the FIFA Players' Status Department, the Parties were informed, *inter alia*, as follows:

"[...] As a result, we kindly inform [the Club] that it should immediately pay the relevant amount to [the Player].

In this context, we kindly ask [the Club] to provide us with a copy of the payment receipt of the relevant amount by 16 October 2017 at the latest.

Finally, we kindly ask the parties to note that in case [the Club] does not provide proof of payment within the aforementioned timeframe, we will proceed to forward the entire file to the Disciplinary Committee for consideration and formal decision.[...] "

11. On 17 October 2017, the First Respondent informed FIFA that the Appellant had failed to pay the amount due and requested FIFA to take the necessary actions according to the FIFA Regulations.

12. On 25 October 2017, and without receipt of any payments or other reaction from the Appellant, the Appellant was informed by FIFA that the file was now being forwarded to the FIFA Disciplinary Committee (the "FIFA DC") for consideration and a formal decision.

B. Proceedings before the FIFA DC

13. By letter of 8 February 2018 from the Deputy Secretary of the FIFA DC, the TFF was informed that the Appellant had not acted in accordance with the DRC Decision, further stating, *inter alia*, as follows:

"*[...] Should [the Club] pay all the outstanding amounts by 22 February at the latest and send us copies of proof of payments by the same deadline, the case will not be submitted to a member of 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, this matter will be submitted to a member of the FIFA Disciplinary Committee for consideration and a formal decision, within the next week as of the expiry of the aforementioned time limit. The decision will be passed based on the file in its possession (cf. art. 110 par 4 FDC).
[...]
The Turkish Football Association is kindly requested to forward this letter to [the Club] immediately."

14. On 9 March 2018, and without any reply from the TFF or the Appellant, the FIFA DC rendered the Appealed Decision and decided, *in particular*, that:

1. *The [Club] is pronounced guilty of failing to comply with the decision passed by the Court of Arbitration for Sport on 10 July 2017 and is, therefore, in violation of art 64 of the FIFA Disciplinary Code.*

2. *[the Club]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. [...]*

3. *[the Club]is granted a final period of grace of 60 days as from the notification of the present decision in which to settle its debt to the creditor, [the Player].*

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 his request, the points will be deducted automatically without a further formal decision having to be taken by the FIFA Disciplinary Committee. The order to implement the points deduction will be issued on the association concerned by the secretariat to the FIFA Disciplinary Committee.*

5. *If [the Club] still fails to pay the amount due even after the deduction of 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 the expulsion from all FIFA competitions.*

7. *The costs of these proceedings amounting to CHF 2,000 are to be borne by [the Club] and shall be paid according to the modalities stipulated under point 2. above.*

8. *[...].*

15. On 21 March 2018, the terms of the Appealed Decision were duly communicated to the Appellant and the First Respondent, and on 27 March 2018, the Appellant requested to be provided with the grounds of the Appealed Decision.

16. On 19 July 2018, the grounds of the Appealed Decision were communicated to the Appellant and the First Respondent.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

17. On 9 August 2018, the Appellant filed its Statement of Appeal in accordance with Articles R47 and R48 of the CAS Code of Sports-related Arbitration (the "CAS Code") against the Appealed Decision rendered by the FIFA Disciplinary Committee on 9 March 2018. The Appellant also requested *inter alia* that this appeal be referred to a Sole Arbitrator.

18. On 14 August 2018, the Second Respondent confirmed its agreement to refer this appeal to a Sole Arbitrator.

19. On 16 August 2018, the Appellant, following an agreed upon extension of time, filed its Appeal Brief in accordance with Article R51 of the CAS Code.

20. On 3 September 2018, the Parties were informed by the CAS Court Office that the President of the CAS Appeals Arbitration Division decided to submit this procedure to Mr Lars Hilliger, attorney-at-law in Copenhagen, Denmark, as Sole Arbitrator.

21. On 7 September 2018, the Second Respondent filed its Answer in accordance with Article R55 of the CAS Code.

22. The First Respondent did not file an answer.

23. By letter of 10 October 2018, the Parties, upon consultation, were informed that the Sole Arbitrator had decided to hold a hearing in this matter.

24. The Appellant and the Second Respondent both duly signed and returned the Order of Procedure. The First Respondent did not sign the Order of Procedure or otherwise object to its contents.

25. On 14 November 2018, a hearing was scheduled to be held in Lausanne, Switzerland.

26. On 13 November 2018, however, the legal representative of the Appellant informed the CAS Court Office, *inter alia*, that "*We would like to state that we are not going to be able to attend the hearing on 14.11.2018 due to the cancellation of the flight ticket reservation in the flight from Istanbul to Geneva on 13.11.2018 at 15:55 (TK 1919) which was obviously not definitively bought but only booked by our Client [...]. Under these circumstances we sadly waive our request for the hearing. [...].*"

27. Following the receipt of this correspondence, the CAS informed the Parties that the scheduled hearing was cancelled and further stated as follows: "*Given the current posture of the case, the parties are invited to state whether they agree to forego the rescheduling of a hearing and permit the Sole Arbitrator to decide this appeal based solely on the parties' written submission within three (3) days. A party's silence will be considered acceptance of such suggestions. In the event of a dispute, the Sole Arbitrator will decide whether it is necessary to reschedule the hearing.*"

28. By letter of 15 November 2018 to the CAS Court Office, FIFA stated as follows:

> "*We acknowledge receipt of your correspondence dated 13 November 2018 and have duly taken note of its content.*
> *In this regard, we respectfully wish to reflect our dissatisfaction with the Appellant's behaviour in what concerns its alleged impossibility to attend the hearing that was scheduled for 14 November 2018.*
> *Moreover, we wish to highlight that this is not an isolated case since already in a previous appeal procedure before CAS (CAS 2017/A/8[... .....], the Appellant and his legal representative acted in the very same way, informing on 15 October 2017 about their impossibility to attend the hearing that was scheduled for the subsequent day.*
> *In this sense, as in the aforementioned procedure, given that FIFA could not avoid incurring any costs with respect to the attendance of the hearing that was organised as per the Appellant's sole request and which was finally cancelled, we kindly request the*

Panel to order the Appellant to pay a minimum amount of CHF 595,50 as contribution towards the expenses incurred by FIFA (cf. enclosed).
We are aware that is a petty amount but our request is well-founded and stands up to the Appellant's lack of diligence and disrespect towards CAS and the Second Respondent.
Finally, and in line with our letter dated 26 September 2018, we would like to inform you that we do not require a hearing to be rescheduled and would agree that the Sole Arbitrator issues an award on the sole basis of the written submissions. Setting a new hearing would only favour the Appellant's dilatory practices that are solely aimed at postponing the payment of its debt towards the Second Respondent."

29. By letter of 16 November 2018 to the CAS Court Office, the Appellant stated, *inter alia*, as follows: "*We would like to state that we hereby waive our request on having a hearing in this matter as we already presented within our letter dated 13.11.2018. We again present our sincere apologies on the cancellation of the hearing.*"

30. Based on the above, and since the Sole Arbitrator deemed himself sufficiently informed to decide the case and to render an award solely based on the written submissions received without holding a hearing, the Sole Arbitrator decided to do so.

IV. THE PARTIES' SUBMISSIONS

31. The following outline of the Parties' requests for relief and positions is illustrative only and does not necessarily comprise every contention put forward by the Parties. The Sole Arbitrator, however, has carefully considered all the submissions and evidence filed by the Parties with the CAS, even if there is no specific reference to those submissions or evidence in the following summary.

A. The Appellant

32. In its Appeal Brief, the Appellant requested the following relief:

"1.- To accept this appeal against the decision of the Disciplinary Committee of FIFA dated 9 March 2018,

2.- To adopt an award declaring the annulation of the said decision, in particularly the fine in the amount of 20.000 CHF and six (6) points deduction and the possible further measures,

3.- To adopt an award declaring the annulation of the said decision, in particularly the cost of proceedings in the amount of 2.000 CHF."

33. The Appellant's submissions, in essence, may be summarised as follows:

- The Appellant has a good reputation in the football community of Turkey and is known for complying with its obligations towards all parties with whom it enters into agreements.

- The First Respondent unlawfully terminated the employment contract, under which the Appellant had fulfilled all of its obligations within the scope of the contract. The FIFA DC thus rendered a wrongful verdict and made an assessment unsatisfactory.

- Accordingly, the request for outstanding remunerations and the claim for compensation for breach of contract must be rejected.

- Furthermore, the DRC Decision with regard to compensation for breach of contract, must be considered excessive, due to the fact that the Appellant acted in good faith within its contractual relationship. Hence, the compensation in the amount of EUR 162,000 must be rejected, or at least mitigated at the rate of 75 percent at the very least.

- The Appealed Decision is disproportionate and will cause irreparable damage to the Appellant.

B. The First Respondent

34. The First Respondent did not provide an answer in these procedures.

C. The Second Respondent

35. In its Answer, the Second Respondent requested the following relief:

"*1. To reject the Appellant's appeal in its entirety*

2. To confirm [the Appealed Decision] rendered by the chairman of the FIFA Disciplinary Committee on 9 March 2018 hereby appealed against.

3. To order the Appellant to bear all costs and all legal expenses related to the present procedure."

36. The Second Respondent's submissions, in essence, may be summarised as follows:

- First of all, in the event of non-compliance with FIFA decisions or those of the CAS, the Swiss Federal Supreme Court has deemed the system and procedure concerning the application of Art. 64 of the FIFA Disciplinary Code as solid and lawful.

- With regard to the sanction imposed on the Appellant, it must be recalled that anyone who fails to pay another person or a club or FIFA a sum of money in full or in part, even though instructed to do so, will be sanctioned in accordance with Art. 64, par. 1, of the FIFA Disciplinary Code.

- The spirit of the said article is to enforce decisions comparable to judgments that have been rendered by a body of FIFA or by the CAS, and the possible sanctions stipulated in the article are designed to put the debtor under pressure to finally comply with the decision. Nonetheless, proceedings under Art. 64, par. 1, are to be considered as the imposition, rather than enforcement, of a sanction for breach of an association's regulations and under the terms of association law.

- Furthermore, it must be stressed that the FIFA DC is not allowed to analyse a case decided by the relevant body as to substance, but has been assigned with the sole task of analysing whether the debtor complied with the final and binding decision of the relevant body.

- In this case, it is clear and uncontested that the Appellant was ordered by the decision of the FIFA DRC, which was confirmed by the CAS, to pay a sum of money to the First Respondent and that the Appellant has not made such payment, not even partially, and it is further uncontested that the Appellant failed to enter into any payment plan regarding the said payment obligation. In these circumstances, the Appellant is in breach of Art. 64 of the FIFA Disciplinary Code.

- Furthermore, the sanctions imposed on the Appellant are proportionate, and in any event, the CAS must only amend a disciplinary decision of a FIFA judicial body in cases in which it finds that the relevant body exceeded the margin of discretion accorded to it by the principle of association autonomy.

- The fact that the Appellant is having financial problems is not a justification for failing to pay its debt. Additionally, according to the Swiss Civil Code the Appellant is under a duty to demonstrate the existence of an alleged fact, and the Appellant substantiated no documentary evidence of its financial problems, nor of the irreparable damage the Appealed Decision will allegedly cause to the future of the Appellant.

- In line with CAS jurisprudence, a fine imposed on a club which is equal to fines imposed on other clubs for very similar violations cannot be considered disproportionate, and the Appellant has not contested the proportionality of the fine.

- Finally, the sporting sanction is in line with the Committee's longstanding practice, which has been repeatedly confirmed by the CAS and is only imposed in the event of persistent failure to comply.

- Also, a potential relegation to a lower league would only be imposed at the express request of the First Respondent and by means of a new decision of the Committee, which implies that the sanction cannot be contested at this stage.

V. JURISDICTION

37. Article R47 of the Code provides as follows:

> *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 as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.*

38. With respect to the Appealed Decision, the jurisdiction of the CAS derives from Article 58 of the FIFA Statutes and Article 64 of the FIFA Disciplinary Code. In addition, neither the Appellant nor the Respondents objected to the jurisdiction of the CAS, and both the

Appellant and the Second Respondent confirmed the CAS jurisdiction when signing the Order of Procedure.

39. It follows that the CAS has jurisdiction to decide on the appeal of the Appealed Decision.

VI. ADMISSIBILITY

40. 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.*

41. The grounds of the Appealed Decision were notified to the Appellant on 19 July 2018, and the Appellant's Statement of Appeal was lodged on 9 August 2018, i.e. within the statutory time limit of 21 days set forth in Article R49 of the CAS Code, which is not disputed. Furthermore, the Statement of Appeal and the Appeal Brief complied with all the requirements of Articles R48 and R51 of the CAS Code.

42. It follows that the appeal is admissible.

VII. APPLICABLE LAW

43. Article R58 of the Code provides as follows:

> *The Panel shall decide the dispute according to the applicable regulations and 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 application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.*

44. The Parties agree that the applicable regulations in these proceedings for the purpose of Article 58 of the CAS Code are the rules and regulations of FIFA and, additionally, Swiss law since the present appeal is directed against a decision issued by the FIFA DC applying the rules and regulations of the same.

45. Based on the above, and with reference to the filed submissions, the Sole Arbitrator is satisfied to accept the application of the various regulations of FIFA and, additionally, Swiss law.

VIII. MERITS

46. Initially, the Sole Arbitrator notes that it is uncontested by the Parties that pursuant to the DRC Decision, which was later confirmed by the CAS, the Appellant has to pay to the Player a) *outstanding remuneration in the amount of EUR 272,000 plus 5% interest p.a.*

on said amount as from 8 August 2016 until the date of effective payment, and b) *compensation for breach of contract in the amount of EUR 162,000 plus 5% interest p.a. on said amount as from 8 August 2016 until the date of effective payment.*

47. It is further uncontested that the Appellant never paid any of these amounts to the Player, either in full or in part, and it is likewise uncontested that the Appellant failed to enter into a payment plan with the Player.

48. Based on the foregoing, on 9 March 2018, the FIFA DC rendered the Appealed Decision as follows:

> *The [Club]is pronounced guilty of failing to comply with the decision passed by the Court of Arbitration for Sport on 10 July 2017 and is, therefore, in violation of art 64 of the FIFA Disciplinary Code.*
>
> *[the Club]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. [...]*
>
> *[the Club]is granted a final period of grace of 60 days as from the notification of the present decision in which to settle its debt to the creditor, [the Player].*
>
> *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 his request, the points will be deducted automatically without a further formal decision having to be taken by the FIFA Disciplinary Committee. The order to implement the points deduction will be issued on the association concerned by the secretariat to the FIFA Disciplinary Committee.*
>
> *If [the Club]still fails to pay the amount due even after the deduction of 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.*
>
> *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 the expulsion from all FIFA competitions.*
>
> *The costs of these proceedings amounting to CHF 2,000 are to be borne by [the Club] and shall be paid according to the modalities stipulated under point 2. above.*
>
> *[...].*

49. In relation to this, the Appellant submits, in essence, that the FIFA DC rendered a wrongful and unsatisfactory decision, for which reason the request for payment of outstanding remuneration and compensation must be rejected or at least mitigated. Furthermore, the Appellant submits that the Appealed Decision is disproportionate and will cause irreparable damage to the Appellant.

50. In this regard, the Sole Arbitrator notes that Art. 64 of the FIFA Disciplinary Code states, *inter alia*, as follows:

> *"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 decision ordered A transfer ban may also be pronounced.*
> *d) [..]*
>
> *[...]*
>
> *3. If points are deducted, they shall be proportionate to the amount owed. [...]"*

51. Furthermore, Art. 15, par. 2, of the same Code states as follows:

> *"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 that CHF 1,000,000."*

52. The Sole Arbitrator initially notes that the FIFA DC is not allowed to analyse a case decided by the relevant body as to substance, but has been assigned with the sole task of analysing whether the debtor complied with a final and binding decision.

53. In the case under review, and as already mentioned above, it can be regarded as undisputed that the Appellant has failed to pay a sum of money to the Player, even though instructed to do so by the FIFA Dispute Resolution Chamber (and the CAS), for which reason the basic conditions for applying Art. 64 of the FIFA Disciplinary Code have been met.

54. Furthermore, it is worth noting that the Swiss Federal Supreme Court has deemed as lawful the system of sanctions used by FIFA in the event of non-compliance with its decisions or those of the CAS, which system has been applied in the present case (decision of the Swiss Federal Supreme Court dated 5 January 2007, ATF 4P.240/2006).

55. Therefore, in view of the above, the Sole Arbitrator finds that the FIFA DC has not violated the FIFA Statutes, the FIFA Disciplinary Code or any provisions of Swiss law since the system and procedure concerning the application of Art. 64 of the FIFA Disciplinary Code are solid and lawful.

56. With regard to the disproportionality of sanctions imposed on the Appellant, the Sole Arbitrator agrees with the FIFA's position that the CAS shall amend a disciplinary decision of a FIFA judicial body only in cases in which it finds that the relevant FIFA

judicial body exceeded the margin of discretion accorded to it by the principle of association autonomy, i.e. only in cases in which the FIFA judicial body concerned must be held to have acted arbitrarily (cf. Hans Michael Riemer, no 230 on art. 70). This is, however, 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 (CAS 2014/A/3562).

57. The FIFA disciplinary authorities always adopt a case-by-case approach and take into account all the specific circumstances of each case as foreseen under art. 39 par. 4 of the FIFA Disciplinary Code and as confirmed by the CAS: "similar cases must be treated similarly, but dissimilar cases could be treated differently" (cf. CAS 2012/A/2750).

58. In connection with decisions on sanctions to be imposed, it is essential to mention by way of explanation that imposing financial sanctions above a certain limit would be counter-productive. Indeed, it must be underlined that it is not the intention of the FIFA DC or the logic behind art. 64 of the FIFA Disciplinary Code to impose sanctions that engender additional financial difficulties for the debtor which might compromise the payment of the outstanding amount due to another football stakeholder subject to enforcement.

59. In this sense, and in line with the above-mentioned general considerations, the Sole Arbitrator takes into account the fact that when deciding upon the possible sanctions to be imposed *in casu*, the FIFA DC always takes into consideration the outstanding amount due and decides in line with the longstanding jurisprudence of the FIFA Disciplinary Committee, which has been repeatedly confirmed by the CAS (cf. *inter alia* CAS 2012/A/2730 RCD La Coruna v FIFA).

60. In this case, the outstanding amount owed by the Appellant to the Player is EUR 434,000 plus interest.

61. As a consequence, the FIFA DC considered that, in the present case, a fine in the amount of CHF 20,000 would be appropriate and proportionate in the light of the amount of the outstanding debt. The purpose of the fine is to serve as a deterrent to parties who do not wish to comply with decisions of, among others, the FIFA bodies (CAS 2010/A/2148).

62. Based on the evidence of the case and the FIFA jurisprudence submitted by FIFA during these proceedings, the Sole Arbitrator is convinced that the Decision was passed in accordance with the overriding principle of proportionality as well as in line with the FIFA DC's longstanding practice. Nothing in the Appealed Decision or put forth by the parties leads the Sole Arbitrator to consider otherwise.

63. With regard to the potential imposition of the six-point deduction from the Appellant in case of its continued failure to pay the outstanding amount due within the grace period, the Sole Arbitrator noted already that such sanction was imposed by taking into account the outstanding amount due. This has indeed been the longstanding practice of the FIFA DC and is in accordance with the FIFA Disciplinary Code.

64. The Sole Arbitrator agrees with FIFA that in the present case, a six-point deduction is to be considered an appropriate sanction in line with the FIFA DC's longstanding practice, especially taking into account the outstanding amount that has been unlawfully withheld from the Player.

65. Finally, the Sole Arbitrator would like to underline the fact that the CAS has regularly confirmed the legality and the proportionality of the enforcement system created by the FIFA and the sanctions related thereto, in particular the deduction of points, as considered on a case-by-case basis. In this sense, it should be noted that the CAS has regularly confirmed that the wording of Art. 64 of FDC provides for 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 FIFA body decision. However, in case of continued failure to comply with the said decision, a more severe sanction must be possible (i.e. relegation to a lower division), in order to take account of the continued disrespect of the FIFA' judicial authority (cf. inter alia CAS 2005/A/944 FC; CAS 2011/A/2646; CAS 2012/A/3032).

66. The Sole Arbitrator finds that the deduction of points is certainly not one of the most severe sanctions the FIFA DC can impose on its stakeholders, but it agrees that relevant sporting and financial consequences may arise from its implementation. However, the Appellant can avoid the imposition of the point deduction by paying the debt owed, given that the enforcement of such sanction may only be requested once the final deadline of 60 days granted in the Appealed Decision has elapsed.

67. The Appellant is also free to negotiate a payment plan with the Player (who is free to accept it or not), which would result in the suspension of the disciplinary proceedings.

68. In conclusion, the Sole Arbitrator finds that the disciplinary measures imposed by the FIFA DC in the Appealed Decision have been proven to be proportionate to the offence committed and, what is more, they were imposed in compliance with the FIFA Disciplinary Code and the FIFA DC's longstanding jurisprudence, for which reason all arguments brought forward by the Appellant as regards the proportionality of the Appealed Decision are rejected.

69. In conclusion, therefore, the Sole Arbitrator finds that in this case, and given the specific circumstances surrounding it, the Disciplinary Committee of the FIFA was correct in imposing the disciplinary sanctions on the Appellant, i.e. to continue the enforcement of the DRC Decision as confirmed by the CAS according to Article 64 of the FIFA Disciplinary Code, which have a clear legal and proportional basis. Consequently, the Sole Arbitrator dismisses the Appellant's appeal.

IX. COSTS

70. The Sole Arbitrator notes that the present case is of a disciplinary nature.

Article R65.1 of the CAS Code provides that:

"This Article R65.1 applies to appeals against decisions which are exclusively of a disciplinary nature and which are rendered by an international federation or sports-body (...).

71. Article R65.2 of the CAS Code provides as follows:

> *"Subject to Article R65.2, para 2 and R65.4, the proceedings shall be free. The fees and costs of the arbitrators, calculated in accordance with the CAS fee scale, together with the costs of CAS are borne by CAS.*
>
> *Upon submission of the statement of appeal, the Appellant shall pay a non-refundable Court Office fee of Swiss francs 1,000. – without which CAS shall not proceed and the appeal shall be deemed withdrawn. (...)"*

72. Article R65.3 of the CAS Code provides as follows:

> *"Each party shall pay for the costs of its own witnesses, experts and interpreter., In the arbitral award, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other exspenses incurred in connectiuon with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and the outcome of the proceedings, as well as the conduct and financial resources of the parties."*

73. In view of the above, this award should be pronounced without costs, except for the Court Office fee of CHF 1,000 already paid by Club Eskişehirspor Kulübü, which is retained by the CAS. With respect to legal and other costs, the Sole Arbitrator notes that the hearing was cancelled only on the afternoon of the day before the hearing on account of the Appellant's behaviour. This said, the Sole Arbitrator recalls that the First Respondent did not intend to participate in hearing (and did not file an answer) and the Second Respondent was not assisted by an external lawyer in this procedure. Nevertheless, the Appellant's untimely excuse for its non-attendance cannot be accepted in good faith and therefore, the Sole Arbitrator finds that the Appellant shall pay a contribution towards the expenses of the Second Respondent in the amount of CHF 595.50. These conditions aside, each Party shall bear its own other costs and other expenses incurred in connection with these proceedings.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Club Eskişehirspor Kulübü on 9 August 2018 against the decision rendered by the FIFA Disciplinary Committee on 9 March 2018 is dismissed.

2. The Decision rendered by FIFA Disciplinary Committee on 9 March 2018 is confirmed.

3. The award is pronounced without costs, except for the Court Office fee of CHF 1,000 (one thousand Swiss Francs) paid by Club Eskişehirspor Kulübü, which is retained by the CAS.

4. Club Eskişehirspor Kulübü is ordered to pay to FIFA an amount of CHF 595.50 (five hundred ninety five Swiss Francs and fifty centimes) as a contribution towards the expenses incurred in connection with these arbitration proceedings.

5. Club Eskişehirspor Kulübü and Sebastian Andres Pinto Perurena shall bear their own legal and other costs.

6. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 31 January 2019

THE COURT OF ARBITRATION FOR SPORT