CAS 2018/A/6287 Cruzeiro Esporte Clube v. FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition

Sole Arbitrator: Mr Fabio Iudica, attorney-at law in Milan, Italy

in the arbitration between

Cruzeiro Esporte Clube, Brazil

Represented by Mr Breno Costa Ramos Tannuri, Attorney-at-law, Tannuri Ribeiro Advogados, São Paulo, Brazil

Appellant

and

Fédération Internationale de Football Association, Switzerland

Represented by Mr Jaime Cambreleng Contreras, Head of Litigation

Respondent

I. INTRODUCTION

1. This appeal is brought by Cruzeiro Esporte Clube against the decision rendered by the FIFA Disciplinary Committee (the "FIFA DC") of the Fédération Internationale de Football Association ("FIFA") on 22 March 2019 (the "Appealed Decision"), regarding an infringement of Article 64 of FIFA Disciplinary Code for failing to comply with a decision passed by CAS on 14 August 2018, confirming a decision rendered by the Single Judge of the FIFA Player's Status Committee (the "PSC") on 28 February 2017.

II. PARTIES

2. Cruzeiro Esporte Clube ("Cruzeiro" or the "Appellant") is a Brazilian professional football club, based in Belo Horizonte, Brazil. It is a member of the Brazilian Football Confederation which, in turn, is affiliated with FIFA.

3. FIFA (or the "Respondent"), is the international governing body of football at worldwide level. It is an association under Swiss law and has its registered offices in Zurich, Switzerland.

The Appellant and the Respondent are hereinafter jointly referred to as the "Parties".

III. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts and allegations based on the Parties' written submissions on the file and relevant documentation produced in this appeal. Additional facts and allegations may be set out, where relevant, in connection with the further legal discussion. 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 this award only to the submissions and evidence he considers necessary to explain his reasoning.

5. On 28 February 2017, the Single Judge of the FIFA PSC passed a decision in the case 15-00231/vmo by which Cruzeiro was ordered to pay to FC Zorya Luhansk ("FC Zorya") the following amounts, within 30 days as from the date of notification:

- default interest at a rate of 5% *p.a.* over the amount of EUR 487,500 as from 9 October 2014 until 3 March 2015;

- default interest at a rate of 5% *p.a.* over the amount of EUR 487,500 as from 9 October 2015 until 24 November 2015;

- the total amount of EUR 487,500, as well as interest at a rate of 5% *p.a.* on the said amount as from 8 April 2016 until the date of effective payment, as well as an additional amount of CHF 10,000 to FIFA as costs of the proceedings (the "PSC Decision").

6. The findings of the PSC Decision were notified to the Parties on 13 March 2017 and the relevant grounds were served on 18 May 2017.

7. On 8 June 2017, Cruzeiro filed an appeal before the CAS against FC Zorya requesting the dismissal of the PSC Decision in full (the relevant proceedings were registered under CAS 2017/A/5195).

8. On 14 August 2018, CAS rendered an award (the "CAS Decision") by which the appeal lodged by Cruzeiro was dismissed and the PSC Decision confirmed in its entirety. Cruzeiro was also ordered to pay to FC Zorya a total amount of CHF 10,000 as contributions toward legal expenses incurred by the latter in connection with the CAS proceedings.

9. On 23 August 2018, FC Zorya sent a warning letter requesting Cruzeiro to pay the amounts due in compliance with the CAS Decision.

10. On 21 September 2018, failing any payment by Cruzeiro, FC Zorya requested FIFA to open disciplinary proceedings in accordance with Article 64 of the FIFA Disciplinary Code.

11. On 12 October 2018, FIFA invited Cruzeiro to proceed with the relevant payment, and to provide the PSC Office with copy of the payment receipt within the deadline of 2 November 2018.

12. On 5 November 2018, persisting the failure by Cruzeiro to make payment of the amounts due, FC Zorya requested FIFA to impose disciplinary sanctions on the latter.

13. On 6 November 2018, FIFA informed Cruzeiro that the file would be forwarded to the FIFA Disciplinary Committee in accordance with Article 64 of FIFA Disciplinary Code for consideration and a formal decision.

IV. THE PROCEEDINGS BEFORE FIFA DC

14. On 21 February 2019, FIFA informed Cruzeiro, through the Brazilian Football Association, that disciplinary proceedings have been initiated due to its failure to comply with the CAS Decision and that the case would be submitted to a Member of the FIFA DC on 6 March 2019 for evaluation and a decision in accordance with Article 78 (2) of FIFA Disciplinary Code so that disciplinary measures (fine, deduction of points, transfer ban or relegation to a lower league) could be imposed. FIFA also invited Cruzeiro to submit its position by 27 February 2019, informing the latter that, in case of payment of the amounts due or, alternatively, in case of a payment plan agreed upon with FC Zorya, within the proposed deadline, the proceedings would be terminated.

15. On 27 February 2019, Cruzeiro informed FIFA of an investigation originated from a bankruptcy proceedings of the club Metalist FC before the Financial Court of Kharkiv (Ukraine), allegedly involving the underlying facts of the dispute between Cruzeiro and FC Zorya that could supposedly justify the suspension of the disciplinary proceedings

against Cruzeiro. Based on the foregoing, Cruzeiro requested an extension of the granted deadline in order to submit its position before the FIFA DC.

16. On 5 March 2019, FIFA replied to Cruzeiro and recalled that, in accordance with the disciplinary proceedings set forth under the provision of Article 64 of the FIFA Disciplinary Code, the FIFA DC was only invested with the authority to assess whether Cruzeiro had or not complied with the CAS Decision, which had become enforceable, without any authority to review or modify said decision as to its substance. As a consequence, FIFA informed Cruzeiro that the disciplinary proceedings were not going to be suspended because of the reported bankruptcy proceedings. Besides, Cruzeiro was exceptionally granted a 6-day extension of the time limit to file its position before the FIFA DC. Finally, FIFA notified that the relevant case would be submitted to a Member of the FIFA DC on 20 March 2019 and that, in the event that Cruzeiro complied with the payment or the parties otherwise agreed on a payment plan within the new deadline, the proceedings would be terminated with no further consequences.

17. On 11 March 2019, Cruzeiro filed its position, requesting the FIFA DC to suspend the relevant disciplinary proceedings until a formal decision was rendered in the relevant bankruptcy proceedings by the Financial Court of Kharkivand to establish that there was no legal or factual basis for the imposition of disciplinary sanction on Cruzeiro.

18. On 22 March 2019, the FIFA DC rendered the Appealed Decision establishing as follows:

1. *"The club Cruzeiro Esporte (hereinafter, the Debtor) is found to have infringed art. 64 of the FIFA Disciplinary Code as it is guilty of failing to comply with the award issued by the Court of Arbitration for Sport (CAS) on 14 August 2018, which confirmed the decision passed by the Single Judge of the Players' Status Committee, according to which the Debtor was ordered to pay.*

    - *To the club FC Zorya Luhansk (hereinafter, the Creditor):*

        - *5% interest p.a. over the amount of EUR 487,500 as from 9 October 2014 until 3 March 2015;*

        - *5% interest p.a. over the amount of EUR 487,500 as from 9 October 2015 until 24 November 2015;*

        - *EUR 487,500 plus 5% interest over said amount as from 8 April 2016 until the date of effective payment;*

        - *CHF 10,000 as contribution towards the club FC Zorya Luhansk's legal fees and expenses in accordance with the CAS award dated 14 August 2018;*

    - *To FIFA:*

        - *CHF 10,000 as final costs of the proceedings.*

2. *The Debtor is ordered to pay a fine to the amount of CHF 25,000. The fine is to be paid within 60 days of notification of the present decision. Payment can be made either in Swiss francs (CHF) to account no. 0230-325519.70J, UBS AG, Bahnhofstrasse 45, 8098 Zurich, SWIFT: UBSWCHZH80A, IBAN: CH85 0023 0230 3255 1970 J or in US dollars (USD) to account no. 0230-325519.71U, UBS AG, Bahnhofstrasse 45, 8098 Zurich, SWIFT: UBSWCHZH80A, IBAN: CH95 0023 0230 3255 1971 U, with reference* ***to case no. 190125 bbu.***

3. *The Debtor is granted a final deadline of 60 days as from notification of the present decision in which to settle its debt to the Creditor and FIFA.*

4. *If payment is not made to the Creditor and proof of such a payment is not provided to the secretariat to the FIFA Disciplinary Committee and to the Brazilian Football Association by this deadline six (6) points will be deducted automatically by the Brazilian Football Association from the Debtor's first team in the domestic league championship without a further formal decision having to be taken nor any order to be issued by the FIFA Disciplinary Committee or its secretariat.*

   In this respect, and for the sake of clarity, the Brazilian Football Association is referred to arts. 90 to 92 of the FDC in what concerns the calculation of time limits.

5. *If the Debtor still fails to pay the amount due to the Creditor even after the deduction of points in accordance with point III.4 above, the FIFA Disciplinary Committee, upon request of the Creditor, will decide on a possible relegation of the Debtor's first team to the next lower division.*

6. *As a member of FIFA, the Brazilian Football Association 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 Brazilian Football Association does not comply with this decision, the FIFA Disciplinary Committee will decide on appropriate sanctions on the member. This can lead to an expulsion from FIFA competitions.*

7. *The Debtor is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the Brazilian Football Association of every payment made and to provide the relevant proof of payment.*

8. *The Creditor is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the Brazilian Football Association of every payment received."*

19. The grounds of the Appealed Decision were served by facsimile to the Appellant on 26 April 2019.

V. GROUNDS OF THE APPEALED DECISION

20. The grounds of the Appealed Decision can be summarized as follows:

21. Firstly, the FIFA DC considered that, according to Article 53 (2) of the FIFA Statutes, it may impose sanctions described in the Statutes and in FIFA Disciplinary Code on member associations, clubs, officials, players, intermediaries and licensed match agents.

22. Moreover, pursuant to Article 78 (2) of the Disciplinary Code, cases involving matters under Article 64 may be decided by one member of the FIFA DC alone.

23. According to Article 64 (1) of FIFA Disciplinary Code, 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 in part, even though instructed to do so by a body, a committee or an instance of FIFA or a subsequent CAS 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; c) if it is a club, it will be warned and notified that, in the case of default or failure to comply with a decision within the period stipulated, points will be deducted or demotion to a lower division ordered. A transfer ban may be also be pronounced.

24. As to the merits of the case, the FIFA DC observed that the CAS Decision, confirming the PSC Decision, had become final and binding.

25. In such context, the FIFA DC recalled that it was not allowed to review the case decided by CAS as to its substance, *i.e.* to check the correctness of the amount ordered to be paid, being its task limited to analyse whether Cruzeiro had complied with the final and binding CAS Decision.

26. In this respect, the FIFA DC rejected the arguments put forward by Cruzeiro that it was allegedly prevented from paying the relevant amounts due to the ongoing bankruptcy proceedings and that the outcome of the relevant bankruptcy proceedings could have an impact on the amounts due to FC Zorya.

27. With regard to the request of suspension of the disciplinary proceedings concerning the ongoing bankruptcy proceedings involving a third party, the FIFA DC emphasized that the relevant facts could not in any case exonerate Cruzeiro from its obligations to pay the outstanding amounts in accordance with the CAS Decision, given that this third party (the club Metalist FC) was not party to the CAS proceedings nor to the disciplinary proceedings.

28. As a consequence, the FIFA DC considered that Cruzeiro had failed to comply with the CAS Decision, in full, and therefore that it was unlawfully withholding money from FC Zorya and as a consequence, it was responsible for the infringement of Article 64 of FIFA Disciplinary Code.

29. Finally, the fine imposed on Cruzeiro was considered to be appropriate in consideration of the amount due and all the other circumstances of the case, including the fact that FIFA's attempts to urge Cruzeiro to pay the outstanding debt had failed to induce it to comply with its obligations. Likewise, the FIFA DC also considered the deduction of 6 points to be appropriate and consistent with the FIFA DC's well-established practice.

30. In application of Article 64 (1) lit. b) of the FIFA Disciplinary Code and taking into account the amount due, the FIFA DC concluded that a final deadline of 60 days was also appropriate.

VI. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

31. On 17 May 2019, the Appellant filed its Statement of Appeal with the Court of Arbitration for Sport (the "CAS") against the Respondent with respect to the Appealed Decision, in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration, 2019 edition (the "CAS Code").

32. On 27 May 2019, the Appellant requested a 10-day extension of its time limit to file the Appeal Brief.

33. In accordance with Article R51 of the CAS Code, the Appellant filed its Appeal Brief on 6 June 2019.

34. On 11 June 2019, the Respondent requested that the time limit to file its Answer be fixed after the payment by the Appellant of its share of the advance of costs, pursuant to Article R55 (3) of the CAS Code.

35. On 24 June 2019, the CAS Court Office informed the Parties that, following the agreement of the Parties on the composition of the arbitral tribunal, the President of the CAS Appeals Arbitration Division had decided to submit the present case to a sole arbitrator and that Mr Fabio Iudica, Attorney-at-law in Milan, Italy, had been appointed as a Sole Arbitrator in the present procedure.

36. On 15 July 2019, the Respondent filed its Answer in accordance with Article R55 of the CAS Code.

37. On 19 July 2019, FC Zorya submitted a request for intervention in the present arbitration proceedings pursuant to Article R41 (3) of the CAS Code.

38. On 22 July 2019, the CAS Court Office invited the Parties to submit their comments regarding the request for intervention filed by FC Zorya.

39. On 25 July 2019, the CAS Court Office informed the Parties that, on behalf of the Sole Arbitrator, the Appellant was invited to file written statements of the two witnesses indicated in its Appeal Brief (Mr Benecy Queiros and Mr Marcelo Kiremitijian) within the next ten days. With respect to the Appellant's evidentiary request to have free access to FIFA database of the decisions rendered by the FIFA DC during the last twelve months, the CAS Court Office informed the Parties that such request had been denied, as the Appellant failed to clearly identify the decisions that would be relevant for the resolution of the present dispute and that such request was considered as a "fishing expedition" which is not allowed by the IBA Guidelines on the Taking of Evidence in International Arbitration (the "IBA Guidelines"). On the other hand, upon request of the Sole Arbitrator on the same day, FIFA was invited to produce, within the next ten days,

copies of the decisions rendered within the last six months in similar cases as the one at stake (similar facts and amounts), if any.

40. On 23 July 2019, the Respondent notified the CAS Court Office that it disagreed with the intervention of FC Zorya as a third party in the present proceedings.

41. On 1 August 2019, the Appellant informed the CAS Court Office that it did not object to FC Zorya's request for intervention.

42. On 5 August 2019, the Appellant filed the written statements from Mr Benecy Quieroz and Mr Marcelo Kiremitijian.

43. On the same day, the Respondent submitted to the CAS Court Office copy of five decisions passed during the last six months by the FIFA DC on the basis of Article 64 of FIFA Disciplinary Code and based on similar facts and amounts.

44. On 19 August 2019, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to deny the request for intervention filed by FC Zorya, in the absence of the precondition according to the CAS Code.

45. On 6 September 2019, the CAS Court Office informed the Parties that the Sole Arbitrator, after consultation with the Appellant and the Respondent respectively, and pursuant to Article R57 of the CAS Code, had decided not to hold a hearing in the present procedure.

46. On 7 October 2019, the CAS Court Office forwarded to the Parties a copy of the Order of Procedure which was returned in duly signed copies by the Parties on respectively 14 and 15 October 2019.

VII. SUBMISSIONS OF THE PARTIES

47. The following outline is a summary of the Parties' arguments and submissions which the Sole Arbitrator considers relevant to decide the present dispute and does not necessarily comprise each and every contention put forward by the Parties. The Sole Arbitrator has nonetheless carefully considered all the submissions made by the Parties, even if no explicit reference has been made in the following summary. The Parties' written submissions, documentary evidence and the content of the Appealed Decision were all taken into consideration.

A. The Appellant's Submissions and Requests for Relief

48. The Appellant's submissions in its Appeal Brief may be summarized as follows.

49. The Appellant submitted that the Appealed Decision violates the mandatory principles set forth under FIFA Disciplinary Code as well as the fundamental principles of law, based on the following arguments.

50. With regard to FIFA authority to impose disciplinary sanctions on its affiliated, the Appellant invoked the European Convention on Human Rights (the "ECHR") and claimed that according to the CAS jurisprudence, Swiss procedural public policy requires that "*parties to an arbitration are guaranteed a fair proceedings within a reasonable time by an independent and impartial arbitral tribunal*".

51. According to the Appellant, the application of the abovementioned principles also represents a matter of good governance which is only achievable through the respect of the mandatory principle of transparency.

52. Such principle requires, *inter alia*, that rules governing the functioning of a disciplinary system shall be clearly formulated as regards the criteria that shall be used to apply sanctions and regarding the degree of sanctions that shall be applied in comparison with the different level of infringements.

53. To the contrary, Cruzeiro argued that Article 64 of FIFA Disciplinary Code lacks any reference to such criteria so that it is impossible to know in advance the sanction that FIFA will apply.

54. Moreover, although the Appealed Decision referred to the FIFA DC "*well established practice*", as the main basis on which the degree of sanctions had to be established for the Appellant's violation of Article 64 of FIFA Disciplinary Code, FIFA's persistent refusal to publish its decisions actually violates the principle of good governance and transparency established by the European Commission under the European Convention and the Treaty on the Functioning of the European Union (the "TFEU").

55. In such context, reference to FIFA "*well established practice*" when establishing the sanctions to be imposed on Cruzeiro also breaches the fundamental principle of equal treatment of the parties, as FIFA has exclusive access to that data base, to the detriment of the Appellant.

56. In fact, it emerges from the Appealed Decision that the FIFA DC has decided to impose a fine of CHF 25,000, as well as a deduction of 6 points, merely based on the fact that this would comply with the "*well established practice*" of the DC, although there is no clarification as to what is the meaning of this reference. Nor has the FIFA DC mentioned even one decision within the "*well established practice*" on which it relied on for the imposition of the relevant disciplinary measures to Cruzeiro. Since the Appellant was denied access to the database of the Respondent's case-law, its right to be heard or to have a fair trial has been violated.

57. As a matter of fact, the Appealed Decision does not indicate any reasons why the specific penalty amounting to CHF 25,000 and a 6-point deduction were imposed *in lieu* of a different penalty and a different deduction of points.

58. Therefore, the type or level of sanctions imposed on the Appellant with the Appealed Decision "*was a result of an unknown, unbalanced, unfair and unilateral expedient*".

59. In this respect, the Appellant argued that sports organizations are not allowed to impose disciplinary sanctions without a proper legal regulatory basis, as this would result in a violation of the principle of legality and predictability of sanctions.

60. Likewise, such lack of transparency in the Appealed Decision also resulted in the violation of Article 94 (2) lit. e) of the FIFA Disciplinary Code which protects the right of any party to a disciplinary proceeding "*to obtain a reasoned decision*".

61. As a consequence, the principle of due process has been violated.

62. Moreover, the Appellant maintained that a decision to impose a 6-point deduction on a club, as in the present case, is such a severe sanction to be able to determine the relegation to the lower division of the relevant club, thus requiring a "*a much diligent and transparent approach from the members of the FIFA Disciplinary Committee*"; moreover, the deduction of points appears to be in contrast with the principle of the "*sporting merit*" established under Article 9 (1) of the FIFA Regulations Governing the Application of the Statues which in theory, should be "*the only factor considered whenever establishing the promotion or relegation of a football club at the end of a football season*".

63. In any event and besides the foregoing, the Appealed Decision also failed to comply with the principle of proportionality, in its threefold elements (adequacy, necessity and proportionality *stricto sensu*) which is a matter of public policy according to Article 190 of the Swiss Federal Statute on Private International Law ("PILA").

64. Furthermore, it is unknown whether the Appealed Decision has actually complied with the parameters used in the Meca-Medina case for what concerns the compliance with EU Competition Law and, therefore, whether Article 101 (1) as well as Article 102 (2) of the TFEU, were respected with regard to the prohibition to "*apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage*".

65. In any event, the sanctions imposed on the Appellant cannot be considered proportionate in relation to the "*outstanding amount due*" when compared with other sanctioning treatments applied by the same FIFA DC in similar cases, which demonstrates that the Appealed Decision applied different standards, as the same fine of CHF 25,000 or even a lower fine was imposed on other clubs in cases where the outstanding amount was much (even 66%) higher than in the present case.

66. The circumstances of the present dispute leave no doubt that the fine of CHF 25,000 imposed on Cruzeiro with the Appealed Decision is completely arbitrary and shall therefore be reviewed by the CAS.

67. The same considerations apply to the deduction of 6 points which has no legal basis and is also excessive and unfair if one considers that the same sanction was applied by the FIFA DC in the other cases mentioned above, where the "*outstanding amount due*" amounted to more than double than the outstanding debt in the present case.

68. The Appellant argues that the deduction imposed by the Appealed Decision is not even consistent with the principle of "necessity", as there were other more lenient measures (such as a transfer ban, or a deduction of fewer points, for instance) that could be applied to achieve the same goal.

69. According to the two witness statements submitted by the Appellant upon request of the Sole Arbitrator, the Appellant faced a catastrophic financial crisis in late 2015 and 2016 and still suffers its consequences; therefore, the 60-day period of grace granted to the Appellant for the payment of the outstanding debt and additional costs is "*unrealistic and highly unreasonable time frame*".

70. In its Appeal Brief, the Appellant submitted the following requests for relief:

"*FIRST – To set aside the Appealed Decision;*

SECOND – To refer the case back to the FIFA Disciplinary Committee for a new decision, in light of the grounds of the Appealed Decision;

THIRD – To order FIFA to pay all arbitration costs and be ordered to reimburse the Appellant the minimum CAS court office fee of CHF 1,000 and any other advance of costs paid to the CAS; and

FOURTH – To order FIFA to pay to the Appellant any contribution towards the legal and other costs incurred and regarding the ongoing proceedings in an amount to be duly established at discretion of the Panel.

Alternatively, and only in the event the above is rejected:

FIFTH – To confirm that the sanctions imposed on the Appellant in relation to the fine and deduction of points are set aside;

SIXTH – To confirm that paragraph 2 of item III of the Appealed Decision shall be amended as follows:

"2 The Debtor is ordered to pay a fine to the amount of CHF 8,500. The fine is to be paid within 90 days of notification of the present decision. Payment can be made either in Swiss francs (CHF) to account no. (omissis) or in US dollars (USD) to account no. (omissis) with reference to case no. 180908 dtb"

SEVENTH – To confirm that paragraph 4 of item III of the Appealed Decision shall be amended as follows:

"4 if payment is not made to the Creditor and proof of such a payment is not provided to the secretariat to the FIFA Disciplinary Committee and to the Brazilian Football Association by this deadline two (2) points will be deducted automatically by the Brazilian Football Association without a further formal decision having to be taken nor any order to be issued by the FIFA Disciplinary Committee or its secretariat"

EIGHTH – To order FIFA to pay all arbitration costs and be ordered to reimburse the Appellant the minimum CAS court office fee of CHF 1,000 and any other advance of costs paid to the CAS; and

NINTH – To order FIFA to pay to the Appellant any contribution towards the legal and other costs incurred and regarding the ongoing proceedings in an amount to be duly established at discretion of the Panel".

B. The Respondent's Submissions and Requests for Relief

71. The position of the Respondent is set forth in its Answer and can be summarized as follows.

72. The Appellant has been unlawfully withholding payment to FC Zorya and FIFA, it has failed to comply with the PSC Decision and the CAS Decision confirming the latter; therefore, it has infringed Article 64 of FIFA Disciplinary Code; moreover, it has never showed any willingness to fulfil its financial obligations and is still withholding payment after a year has passed from the CAS Decision.

73. As a consequence, the FIFA DC correctly imposed disciplinary measures on the Appellant.

74. The extremely broad and unfounded allegations put forward by the Appellant only demonstrate that the sole intention behind this appeal is to further delay the payment of the amounts due.

75. Notwithstanding the Appellant's attempt to challenge the legitimacy of FIFA disciplinary system, Article 64 of FIFA Disciplinary Code establishes an enforcement mechanism which has been constantly confirmed and supported by the Swiss Federal Tribunal (the "SFT", see SFT 4P.240/2006, decision of 5 January 2007) and by the CAS.

76. Moreover, the Respondent recalled that, the right of associations to impose disciplinary measures on club, under Swiss law, has been acknowledge by the CAS jurisprudence as the expression of the freedom of those associations and federations to regulate themselves.

77. In addition, CAS case-law suggests that disciplinary provisions and proceedings of sports organizations are considered to be in line with the principle of legality and the principle of *nulla poena sine lege* when the relevant regulations and provisions meet the following conditions: a) they emanate from duly authorized bodies; b) they have been adopted in constitutionally proper ways; c) they are not the product of an obscure process of accretion; d) they are not mutually qualifying or contradictory; e) they are not able to be understood only on the basis of the *de facto* practice over the course of many years of a small group of insiders; and f) there is a clear connection between the incriminated behaviour and the sanction imposed.

78. None of the above-mentioned conditions were challenged by the Appellant with respect to the provisions of FIFA Disciplinary Code.

79. With regard to the issue of "predictability", such principle, as well as the principle of legality, does not require that the stakeholder subject of sanctions knows in advance the exact measure that will be imposed, which is compatible with the discretionary powers of the FIFA DC, as it is also confirmed by the CAS jurisprudence: "*The fact that the competent body applying the FIFA DC has the discretion to adjust the sanction mentioned in the rules deemed applicable to the individual behaviour of a player breaching such rules is not inconsistent with those principles*" (CAS 2014/A/3665, 3666 & 3667).

80. CAS has therefore established that Article 64, in conjunction with Article 15 of the FIFA Disciplinary Code, clearly sets out the legal framework applicable in the event of a club's failure to comply with an order of payment from a FIFA body or from CAS, as the club is perfectly aware of the potential consequences of failing to comply with such decisions and "*The fact that article 15 para 2 of FDC defines in broad way the range of a possible fine (from CHF 300 to CHF 1,000) is not per se in contradiction with the principles of legality and predictability: actually, the existence of a margin of appreciation allows FIFA to identify the proper measure of the fine according to the circumstances of the case*" (CAS 2018/A/5663).

81. Regarding the Appellant's objections with respect to the FIFA DC "*well established practice*", the Respondent claimed that, according to the CAS jurisprudence, the sole reference to the outstanding amount due, as a parameter for the application of a disciplinary measure, is sufficient to substantiate the sanction imposed as it satisfies the principles of predictability, equal treatment and procedural fairness (CAS 2018/A/5663).

82. As to the argument relating to the violation of the principle of good governance, the Appellant's allegation is inconsistent since such principle refers to the separation of powers and the independency of the members of the FIFA DC and other FIFA judicial bodies, which is not applicable to the present matter, besides the fact that the Appellant failed to substantiate the alleged violation.

83. Concerning the principle of transparency, the Respondent submitted that, according to the CAS jurisprudence, the publication of FIFA decisions is not *per se* required as a condition for the FIFA DC to lawfully impose sanctions on clubs for violating Article 64 of the FIFA Disciplinary Code and, in any case, FIFA has frequently provided CAS with anonymized decisions concerning such violation, which CAS panels have proven to be sufficient and valid proof of the FIFA DC consistent and longstanding practice.

84. Moreover, the allegation concerning the breach of the Appellant's right to be heard is far from being relevant as it is clearly invalidated by the facts of the present case.

85. With regard to the argument concerning the legality of the deduction of 6 points, the Respondent argued that "sporting merit" is not conceived to be the sole element on which a club's entitlement to take part in a domestic league championship shall depend

according to Article 9 (1) of FIFA Regulation Governing the Applications of the Statutes and, in any case, "sporting merit" cannot prevail over the application of Article 64 of FIFA Disciplinary Code which constitutes the *lex specialis.*

86. Furthermore, EU Competition law is not applicable to the present matter, so that any alleged violation of Articles 101 and 102 of the TFEU is irrelevant, besides the fact that the Appellant also failed to substantiate its allegations.

87. Since the Appealed Decision falls within the category of disciplinary decisions of a private association under Article 75 of Swiss Civil Code, it shall be amended only if it is established that it violated the law or the association's own statutes or regulations, *i.e.* if the relevant association has exceeded the margin of discretion accorded to it by law and therefore, if it acted arbitrarily. As a consequence, the Sole Arbitrator shall only amend the Appealed Decision if the relevant sanctions are to be considered evidently and grossly disproportionate to the offence, as a result of an arbitrary act of the FIFA DC.

88. In this respect, the Appellant's reference to some FIFA DC precedents with the intention to demonstrate that the sanctions imposed by the Appealed Decision are disproportionate is misleading since the information adduced by Cruzeiro with regard to the relevant cases are incorrect or deficient.

89. The fine imposed on the Appellant in the amount of CHF 25,000 is appropriate and proportionate in relation to the outstanding amount due (*i.e.* EUR 487,500 plus 5% interest, as well as CHF 10,000 to the creditor and CHF 10,000 to FIFA, corresponding to CHF 570,050), considering that "*a higher fine may not be proportionate and could contradict the longstanding jurisprudence of FIFA Disciplinary Committee while a meagre fine would go against the principle of repression and prevention and would fail to encourage the prompt fulfilment of obligations*".

90. The Respondent also submitted copies of some previous FIFA DC's decisions that it considered to be similar cases to the present matter (similar facts and similar amounts), in which the same fine and points deduction were imposed.

91. Besides and regardless of the above, the Respondent submitted that CAS already established that the fact that similar fine were imposed on clubs that had much higher outstanding amounts due, which means that the percentage of fine was lower, should not be considered a relevant argument (CAS 2018/A/5959).

92. With regard to the 6-point deduction, the sanction is merely potential and the Appellant can still avoid the relevant imposition by fully complying with the Appealed Decision, besides the fact that the application of a point deduction is grounded on Article 64 (1) lit. c) of the FIFA Disciplinary Code and it is therefore lawful, as it has also been confirmed by the CAS and the SFT jurisprudence, and the sanction is proportionate in consideration of the circumstances of the present case and in comparison with FIFA DC precedents above.

93. In conclusion, the Appellant failed to provide any proof that could justify its failure to comply with the PSC Decision and the CAS Decision and the Appealed Decision was correctly rendered and the arguments put forward by the Appellant are not applicable to the present matter.

94. In its Answer, the Respondent submitted the following requests for relief:

a) "*To reject the Appellant's appeal in its entirety;*

b) *To confirm the decision 190125 PST BRA ZH rendered by the FIFA Disciplinary Committee on 22 March 2019:*

c) *To order the Appellant to bear all costs incurred with the present procedure and to cover all the legal expenses of FIFA related to the present procedure*".

VIII. JURISDICTION

95. Article R47 of the CAS Code provides as follows:

An appeal against the 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 it prior to the appeal, in accordance with the statutes or regulations of that body.

96. The Appellant relied on Article 58 (1) of the FIFA Statutes as conferring jurisdiction to the CAS.

97. The jurisdiction of the CAS is not contested by the Respondent and is also confirmed by the Parties' signing of the Order of Procedure.

98. Accordingly, the Sole Arbitrator is satisfied that CAS has jurisdiction to hear the present case.

IX. ADMISSIBILITY OF THE APPEAL

99. Article R49 of the CAS Code provides the following:

"*In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against*".

100. According to Article 58 (1) of the FIFA Statutes "*Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of notification of the decision in question*".

101. The Sole Arbitrator notes that FIFA DC rendered the Appealed Decision on 22 March 2019 and that the grounds of the Appealed Decision were notified to the Parties on 26 April 2019. Considering that the Appellant filed its Statement of Appeal on 17 May 2019, *i.e.* within the deadline of 21 days set in the FIFA Statutes, the Sole Arbitrator is satisfied that the present appeal was filed timely and is therefore admissible.

X. APPLICABLE LAW

102. Article R58 of the CAS Code provides the following with respect to the substantive rules/laws to be applied to the merits of the dispute:

"*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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision*".

103. Such provision does not admit any derogation and imposes a hierarchy of norms, which implies for the Sole Arbitrator the obligation to resolve the matter pursuant to the regulations of the relevant "*federation, association or sports-related body*". Should this body of norms leave a lacuna, it would be filled by the "rules of law chosen by the parties".

104. In this respect, the Appellant's reference to other rules of law is not relevant nor applicable to the present matter.

105. In consideration of the above and pursuant to Article R58 of the CAS Code, the Sole Arbitrator holds that the present dispute shall be decided according to FIFA rules statutes and regulations, and in particular according to the FIFA Disciplinary Code (Edition 2017), with Swiss Law applying subsidiarily.

XI. LEGAL ANALYSIS

A. PRELIMINARY ISSUES

i) THE REQUEST FOR INTERVENTION FILED BY FC ZORYA

106. First the Sole Arbitrator shall address the issue concerning the position of FC Zorya in the present proceedings.

107. As already mentioned above under paragraph 37, on 19 July 2019, FC Zorya submitted a request for intervention in the present arbitration proceedings, pursuant to Article R41.3 of the CAS Code, claiming that it is allegedly "*bound by the dispute resolution mechanism that is included in the FIFA Statutes under Article 58.1 and the FIFA*

Disciplinary Code Edition 2017 given that the dispute with the Appellant falls under Article 64.5 of the DC".

108. Moreover, FC Zorya contended to be part of the Appealed Decision by way of a reference contained in the latter, under paragraph III.5, where it was established that "*in case of failure of the Appellant to pay the amount due to the Intervenor, even after the deduction of points, the FIFA DC, upon the request of FC Zorya, would decide on a possible relegation of Cruzeiro EC's first team to the next lower division*" and stated that the outcome of the present appeal might negatively affect its right to request FIFA to impose a possible relegation of Cruzeiro in case of persistent failure to comply with its financial obligations.

109. The Sole Arbitrator believes that the relevant arguments above are inconsistent and shall be rejected.

110. In fact, according to Article 41.4 of the Code of Sports-related Arbitration, a third party can participate as a party to the arbitration proceedings already pending among other subjects only if it is bound by the same arbitration agreement binding the original parties to the dispute or if it and the other parties agree in writing to such participation.

111. The Sole Arbitrator finds that these conditions are not satisfied in the present case for the following reasons. With regard to the requirement that the intervening party be bound by the same arbitration agreement, reference is made to the well-established principle that CAS jurisdiction derives from the issuance by FIFA of a decision and is therefore limited to the scope of such decision and to the parties concerned by the same (cf. CAS 2005/A/835&942, paragraph 83).

112. Therefore, in CAS appeals against decisions rendered by FIFA's legal bodies, as a general rule, CAS also requires from the party requesting to intervene to be part of the first-instance proceedings, unless there are specific reasons justifying the non-participation, and provided that the third party is affected by the decision appealed against and has a tangible interest deriving from that decision (see CAS 2014/A/3665, 366 & 3667, para 47-50)

113. Therefore if a party, although *de facto* indirectly interested in the outcome of the arbitration, was not a party in the FIFA proceedings leading to the appealed decisions, it is not considered to be bound by the arbitration agreement within the meaning and for the purpose of Article 41.4 of the CAS Code.

114. The Sole Arbitrator also refers to the decision of another CAS panel in CAS 2009/A/1919 where, likewise, the club requesting to intervene in the proceedings had been a party to the previous CAS proceedings in which the appellant was ordered to pay an amount to the said club, however, it was not party to the subsequent disciplinary proceedings before the FIFA DC, whose decision was subsequently appealed before the CAS. In the interested case, which is similar to the one at stake, the club which had

applied for intervention was considered not to be covered by the scope of the decision under appeal and the relevant request for intervention was therefore rejected.

115. Besides, the Sole Arbitrator considers that, since the present proceedings concern disciplinary matter, FC Zorya has no legal interest (in the sense of CAS Code) with regard to the imposition of a disciplinary sanction by FIFA on the Appellant ("principle of verticality"), as it merely involves the exercise of the statutory powers of FIFA towards a club affiliated to one of its member.

116. In addition, considering that not even the second condition under Article R41.4, concerning the agreement of all the parties on the intervention was met, the Sole Arbitrator believes that FC Zorya was not legitimated to intervene as a party in the present arbitration proceedings.

ii) THE APPELLANT'S REQUEST TO REFER THE CASE BACK TO THE PREVIOUS INSTANCE

117. The Sole Arbitrator observes that the present appeal concerns the challenge of a decision rendered by the FIFA DC regarding the infringement by the Appellant of Article 64 of the FIFA Disciplinary Code for failing to comply with the underlying CAS Decision, confirming the previous PSC Decision whereby the Appellant was ordered to pay to FC Zorya the outstanding amount of EUR 487,500 plus interests, as well as CHF 10,000 to FIFA and CHF 10,000 to FC Zorya.

118. As a preliminary request for relief, the Appellant applies for the CAS to set aside the Appealed Decision and to refer the case back to FIFA DC in order to render a new decision. As an alternative, in the case of rejection of the first request for relief, the Appellant applies for the CAS to review the present case and to reduce the two sanctions imposed by the Appealed Decision.

119. In this respect, the Sole Arbitrator recalls that, according to Article R57 of the Code, he has "*full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance*".

120. This being established, the Sole Arbitrator believes that there are no particular circumstances in the present case which require this matter to be referred back to the previous instance and, therefore, the Sole Arbitrator will deal with the matter *de novo* according to the provision of Article R57 of the CAS Code.

121. Turning his attention to the specific matter at stake, the Sole Arbitrator notes that according to the well-established jurisprudence of the CAS, and whereas a CAS panel would normally have a wide scope of review according to Article R57 of the Code, in cases where the Panel is asked to review sanctions enforced by an international federation like FIFA, as in the present case, the scope of review is narrower and more limited, which has been acknowledged in a number of CAS awards (see for instance CAS 2015/A/4291, confirmed in CAS 2016/A/4719).

122. Reference is also made to the well-established CAS case-law with respect to the matter of the discretionary powers that the decision-making bodies of sports associations enjoy and the scope and extent of the CAS power to review their exercise. Such case-law consistently allows for the wide exercise of such powers which is to be restrained by CAS only in extreme cases (CAS 2009/A/1817 & CAS 2009/A/1844; see also CAS 2006/A/1175, CAS 2005/A/830, CAS 2004/A/690).

123. In particular, as it will be addressed further in the relevant paragraph below, the Sole Arbitrator observes that, as a fundamental rule, the measure of a sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rules can be reviewed only when a sanction is found to be evidently and grossly disproportionate to the offense (CAS 2017/A/5401; see also CAS 2014/A/3562; CAS 2009/A/1817).

B. MERITS

124. With regard to the substance of the present matter, the Sole Arbitrator considers that the Appellant does not dispute the following facts: that the CAS Decision has been duly notified, that it has remained unchallenged and therefore, it has become final and binding. Moreover, it is undisputed that the Appellant failed to make any payment to FC Zorya with reference to the relevant payment order, and that the relevant amount due is still fully outstanding. It is furthermore not disputed that the Appealed Decision was duly notified to the Appellant.

125. In summary, the present arbitration proceedings concerns the challenge of the Appealed Decision in that the Appellant argues that a wrongful application of Article 64 of FIFA Disciplinary Code has allegedly breached the Appellant's fundamental rights, such as the right to a fair trial and to the due process of law and because the FIFA DC allegedly violated the principles of legality, predictability, transparency and proportionality.

126. In essence, according to the Appellant, the disciplinary measures imposed by the Appealed Decision are excessive and arbitrary since they are allegedly not grounded on a legal regulatory basis; moreover, the 60-day period of grace granted by the Appealed Decision is unreasonable also in consideration of the financial difficulties which the Appellant has been facing since 2015 due to the serious economic crisis in Brazil.

127. On the other side, the Respondent maintains that the application of Article 64 of the FIFA Disciplinary Code was triggered by the persistent unlawful behaviour of the Appellant which has been withholding payment to another club so far, with no justification whatsoever; that the legality of the enforcement system based on FIFA Disciplinary Code has been constantly confirmed and supported by the SFT and by the CAS; that FIFA has the power to impose sanctions and disciplinary measures to the stakeholders based on Article 64 of FIFA Disciplinary Code as an emanation of FIFA's discretionary powers in accordance with the right of associations under Swiss law to self-determination. Moreover, it is undisputable that the FIFA Disciplinary Code is consistent with the principle of legality and predictability and the sanctions imposed on the Appellant were proportionate and in line with FIFA DC well-established practice.

128. Therefore, the present case involves the alleged failure by the Appellant to comply with the obligation to pay to another club the outstanding amount of EUR 487,500 plus interests and additional costs deriving from an order of the PSC Decision and the subsequent CAS Decision (further to an appeal lodged by Cruzeiro) and therefore, it concerns the application of Article 64 of FIFA Disciplinary Code which, in the relevant parts, provides the following:

> 1. *Anyone who fails to pay another person (such as a player, a coach or a club) or FIFA a sum of money in full or part, even though instructed to do so by a body, a committee or an instance of FIFA or a subsequent CAS appeal decision (financial decision)(...):*
>
> *a) will be fined for failing to comply with a decision;*
>
> *b) will be granted a final deadline by the judicial bodies of FIFA in which to pay the amount due or to comply with the (non-financial) decision;*
>
> *c) (only for clubs:) will be warned and notified that, in the case of default or failure to comply with a decision within the period stipulated, points will be deducted or relegation to a lower division ordered. A transfer ban may also be pronounced;*
>
> *d) (...);*
>
> 2. *If a club disregard the final time limit, the relevant association shall be requested to implement the sanctions threatened.*
>
> 3. *If points are deducted, they shall be proportionate to the amount owed.*
>
> 4. *(...);*
>
> 5. *Any appeal against a decision passed in accordance with this article shall be lodged with CAS directly.*
>
> 6. *(...)*
>
> 7. *(...)* .

129. The Sole Arbitrator also observes that, according to Article 15 (2) of the FIFA Disciplinary Code, "*The fine shall not be less than CHF 300, or in the case of a competition subject to an age limit not less than CHF 200, and not more than CHF 1,000,000*".

130. As a precondition, FIFA's authority to impose sanctions and disciplinary measures to the stakeholders is enshrined in Article 53 (2) of the FIFA Statutes, according to which the Disciplinary Committee may pronounce the sanctions describes in the Statutes and in the FIFA Disciplinary Code on members associations, clubs, officials, players, intermediaries and licensed match agents.

131. The spirit of Article 64 of the FIFA Disciplinary Code is to guarantee respect of final and binding decisions that have been rendered by a body, a committee, or an instance of FIFA, or a subsequent CAS appeal decision. The possible sanctions stipulated in this article, and which may possibly be imposed on the defaulting party, are designed to apply within the football family and to its direct and indirect members, and to put the debtor under pressure to actually comply with the decision. This article provides FIFA with a legal tool for ensuring, to a certain degree, that decisions passed by the relevant FIFA or CAS authorities are being respected and the rights of the players and clubs are being safeguarded.

132. In this respect, the Sole Arbitrator 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).

133. Incidentally, the Sole Arbitrator recalls that the Appellant is validly bound to the rules and regulations of FIFA as a consequence of its membership with its national federation through the "indirect reference" contained in the applicable national federation to the regulations at international level (see HAAS/MARTENS, *Sportrecht –Eine Einführung in die Praxis*, p. 67 et seq.).

134. With further regard to the principle of legality, which, according to the Appellant, is not respected by the FIFA Disciplinary Code, the Sole Arbitrator refers to the CAS jurisprudence, according to which such principle requires that the offences and sanctions must be clearly and previously defined by law and must preclude the "adjustment" of existing rules to enable an application of them to situations or conduct that the legislator did not clearly intend to penalize. CAS awards have consistently held that sports organizations cannot impose sanctions without a proper legal or regulatory basis for them and that such sanctions must also be predictable ("predictability test"). In other words, offences and sanctions must be provided by clear rules enacted beforehand (CAS 2014/A/3765; see also CAS 2011/A2670; CAS 2008/A1545).

135. The Sole Arbitrator finds that based on the provisions of Article 64 of the FIFA Disciplinary Code, FIFA members and the other stakeholders are made aware that failure to respect decisions, and namely failing to comply with the payment order which has been pronounced by a FIFA body, committee or instance or by CAS as the appeal body, constitutes violation according to FIFA regulations. Moreover, it is also clear that such failure would bring the following consequences: a) a fine shall be imposed; b) the defaulting party shall be granted a final deadline to comply with the relevant order; c) if the defaulting party is a club, it shall be warned that, in case of persistent failure to comply with the relevant order within the granted period, points shall be deducted or relegation to a lower division shall be imposed and a transfer ban may also be pronounced; d) deduction of points shall be proportioned to the outstanding amount due.

136. In fact, according to the well-established CAS jurisprudence "*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 so. 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" (CAS 2018/A/5900).

137. In addition, based on Article 15 (2), of FIFA Disciplinary Code, the defaulting party is also aware that the fine imposed for the relevant failure shall range between CHF 300 at least (or CHF 200 in case of competition subject to an age limit) and CHF 1,000,000 as the maximum threshold.

138. In this context, the Sole Arbitrator believes that, for a sanction to meet the "*predictability test*" in accordance with the principle of legality, it is not necessary that the defaulting party is able to foresee the specific measure and the exact sanction that will be imposed in case of violation.

139. The Sole Arbitrator shares the findings of the CAS Panel in case CAS 2014/A/3665, 3666 & 3667 which has established that "*It is not necessary for the principles of predictability and legality to be respected that the football player should know, in advance of his infringement, the exact rule he may infringe, as well as the measure and kind of sanction he is liable to incur because of the infringement. The principles of predictability and legality are satisfied whenever the disciplinary rules have been properly adopted, describe the infringement and provide, directly or by reference, for the relevant sanction. The fact that the competent body applying the FIFA DC has the discretion to adjust the sanction mentioned in the rules deemed applicable to the individual behaviour of a player breaching such rules is not inconsistent with those principles and with the general principle nulla poena sine lege certa*".

140. In view of the considerations above, the Sole Arbitrator holds that, at least in principle, there has been a valid regulatory basis to impose a sanction on the Appellant, contrary to the Appellant's allegation.

141. That being established, the Sole Arbitrator further observes that the Appellant does not contest the outstanding amount of its debt to FC Zorya. Such debt was confirmed by CAS Decision, which certainly constitutes a "*subsequent CAS appeal decision (financial decision)*" in the meaning of Article 64 (1) of the FIFA Disciplinary Code, which had become final and binding.

142. Therefore, it is undisputed that the conditions for the imposition of sanctions under the provision of Article 64 of FIFA Disciplinary Code are met.

143. In fact, the FIFA Disciplinary Committee cannot review or modify the substance of a previous FIFA or CAS decision that is final and binding and therefore enforceable. The sole task of the FIFA Disciplinary Committee is to determine whether the debtor complied with the final and binding decision of the relevant body. Therefore, in order to impose any possible disciplinary sanction, the main question for the FIFA

Disciplinary Committee is simply whether or not the financial amounts as defined in the decision were paid by the debtor to the creditor (CAS 2018/A/5779).

144. Therefore, the Sole Arbitrator is satisfied that the FIFA DC was authorized to impose disciplinary measure to the Appellant.

145. The Sole Arbitrator now turns his attention to the Appellant's request that the fine in the amount of CHF 25,000 and the deduction of 6 points be reduced respectively to a fine of CHF 8,500 and to a deduction of 2 points.

146. In this respect, the Sole Arbitrator recalls that, according to CAS consistent jurisprudence, "*While reviewing disciplinary sanctions, a CAS panel shall give a certain level of deference to decisions of sport governing bodies. Sanctions imposed by FIFA disciplinary bodies can only be reviewed when they are evidently and grossly disproportionate to the offence*" (CAS 2017/A/5496; see also CAS 2018/A/5864; CAS 2017/A/5117).

147. Consequently, the Sole Arbitrator shall now address the further issue under examination, namely, whether the sanctions imposed by the FIFA DC in the Appealed Decision are evidently and grossly disproportionate and shall be therefore amended.

148. In this respect, the Sole Arbitrator notes that in disciplinary matters, each situation must be evaluated on a case-by-case basis, taking into account all the specific circumstances at issue, the behaviour and degree of responsibility of the defaulting party, any possible aggravating or mitigating factor, as well as the main interests at stake, in respect of the principle of proportionality.

149. In fact, based on the provision of Article 39 (4) of the FIFA Disciplinary Code, and also consistent with CAS jurisprudence, "*In disciplinary matters, each situation must be evaluated on a case-by-case basis and interests at stake have to be balanced in respect of the principle of proportionality. Account must be taken of the seriousness of the facts and other related circumstances as well as of the damage that the penalised conduct entails for the parties involved, for the federation in question and for its sport. In the same way, disciplinary bodies may evaluate any aggravating and/or extenuating circumstances that might be related to the infringement*" (CAS 2017/A/5496; see also CAS 2013/A/3358, also quoted in CAS 2016/A/4595; CAS 2017/A/5117).

150. In light of the foregoing, the Sole Arbitrator first considers that in general, the outstanding amount of debt provides a first reasonable 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.

151. In view of all the above, the Sole Arbitrator considers the following circumstance to be relevant for the purpose of deciding the present case.

152. First, the outstanding debt amounted to EUR 487,500 plus interest and additional costs, corresponding to a total amount of CHF 570,050. Secondly, the Appellant was first instructed by the PSC Decision to make the relevant payment on 28 February 2017 and the payment order became enforceable on 14 August 2018 when the CAS Decision confirmed the PSC Decision in its substance. Subsequently, on 21 February 2019, the Appellant was informed that disciplinary proceedings had been initiated against it; however, the Appellant was granted a period of grace until 20 March 2019 in order to comply with its financial obligation and avoid any disciplinary consequences. Notwithstanding the period of grace, the Appellant failed to comply with the CAS Decision.

153. Therefore, it results that the Appellant has deliberately persisted in withholding payment of the due amounts for a further period of seven months after the payment order had become enforceable, without any legal justification. In this respect, the alleged financial difficulties due to the Brazilian economic crisis in not a valid justification for the Appellant's failure to comply with its financial obligation. In fact, according to the CAS well-established jurisprudence, financial difficulties or the lack of financial means of a club cannot be invoked as justification for not complying with an obligation to pay (Among other cases: CAS 2018/A/5779; CAS 2013/A/3358; CAS 2006/A/1008; CAS 2005/A/957; CAS 2004/A/1008). Therefore, the Sole Arbitrator notes that a party that does not fulfil a contractual obligation could only be excused for its breach if it can prove that the breach is due to the occurrence of an event or an impediment that is not only beyond its control (and that it cannot avoid to get over) but also that it could not have been reasonably expected to have taken into account when it assumed the relevant obligation that was breached (that is in case of *force majeur*).

154. In addition, the Sole Arbitrator notes that the Appellant has never tried to settle the debt towards FC Zorya, nor has it made any partial payment or otherwise tried to negotiate any agreement with the creditor.

155. In continuation, it is also noteworthy that (as far as the Sole Arbitrator knows) the Appellant was found guilty of at least another infringement of the same Article 64 of the FIFA Disciplinary Code (see CAS 2018/A/5864), which fact weakens the position of the Appellant in the Sole Arbitrator's opinion with respect to the issue of proportionality, also in consideration of Article 40 of the FIFA Disciplinary Code.

156. Finally, the Sole Arbitrator notes that the Respondents maintains that the fine imposed and the deduction of points threatened in the present case also fall within the FIFA DC longstanding practice and in fact, from the prospect of precedents submitted by FIFA, it resulted that a fine of CHF 25,000 and (the threat of) a deduction of 6 points which were inflicted to the Appellant with the Appealed Decision are in line with the sanctions imposed by FIFA DC in similar cases, where the amounts in dispute were closed to the one in dispute (in a range from CHF 500,792 to CHF 682,988).

157. With regard to the prospect submitted by the Appellant, on the other hand, the Sole Arbitrator notes that Cruzeiro submits that in the relevant cases the same sanctions imposed on the Appellant were imposed by the FIFA DC for considerably higher

outstanding amounts. The Sole Arbitrator believes the relevant prospect to be misleading and rejects the Appellant's assumption in consideration of the fact that the information referred by Cruzeiro as to the outstanding amounts in the relevant decisions of reference are not always accurate or complete. In fact, the Appellant omitted to consider some circumstances such as partial payments made by the relevant debtors, as well as settlement proposals which may have been correctly considered by FIFA DC in the determination of the same sanctions.

158. Besides the foregoing with regard to FIFA well-established practice, which the Sole Arbitrator does not in any case consider to be a conclusive argument, and considering all the circumstances of the specific case at issue, the Sole Arbitrator is not persuaded that the fine of CHF 25,000 as well as the potential deduction of 6 points in case of persistent failure are "*evidently and grossly disproportionate to the offence*".

159. In fact, the Sole Arbitrator abide by the findings of another CAS panel which has concluded that "*The test to be applied by the Panel is therefore not whether the fine imposed on the Club is in accordance with the FIFA DC's longstanding practice, but rather whether the fine imposed on the Club is evidently and grossly disproportionate to the offence. In this respect, the fine imposed on the Club shall be reduced if the Panel is convinced that it is evidently and grossly disproportionate in comparison with FIFA's practice regarding the imposition of fines*" (CAS 2016/A/4595)

160. Additionally, the Sole Arbitrator concurs with FIFA that the purpose of the fine under Article 64 of FIFA Disciplinary Code is to serve as a deterrent and that it is also to be considered that the intention of FIFA by imposing the fine is not to create an additional severe financial burden to the debtor. Therefore, the Sole Arbitrator finds that even in the event that a fine of CHF 25,000 would be imposed in relation to a higher outstanding amount than the one in dispute, does not render, *per se*, the fine imposed in the matter at hand disproportionate.

161. On the other hand, the Sole Arbitrator is convinced that the imposition of a more lenient disciplinary measure in the present case would lose its deterrent strength and would not serve to the final goal of FIFA enforcement system which is to ensure compliance with FIFA and CAS decisions. In the opinion of the Sole Arbitrator, such conclusion is also confirmed by the Appellant's conduct which has persistently and deliberately failed to comply with its payment obligations over a considerable period of time.

162. With specific reference to the imposition of a 6 points deduction, the Sole Arbitrator observes that it would only occur in case of persistent failure by the Appellant to pay the outstanding amounts due, and therefore, the Appellant can still avoid such deduction by complying with its financial obligations.

163. Finally, the period of grace granted by the Appealed Decision is also considered to be proportionate by the Sole Arbitrator, all the more in consideration of the extended period of time already elapsed since the original PSC Decision.

164. In conclusion, after taking into account all the circumstances mentioned above, the Sole Arbitrator believes that the disciplinary measures imposed by the Appealed Decision

were based upon valid provisions of FIFA relevant rules; that the conditions were met for the application of Article 64 of FIFA Disciplinary Code in order to impose sanctions on the Appellant; that the fine imposed and the points deduction are not grossly disproportionate or excessive with respect to the circumstances of the present case and that there is no element on file that could lead to a reduction of the sanctions imposed by the Appealed Decision, which is therefore confirmed.

165. Any other and further claims or requests for relief are dismissed.

XII. COSTS

166. Pursuant to Article R64.4 of the CAS Code:

"*At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include:*

- the CAS Court Office fee,

- the administrative costs of the CAS calculated in accordance with the CAS scale,

- the costs and fees of the arbitrators,

- the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale,

- a contribution towards the expenses of the CAS, and

- the costs of witnesses, experts and interpreters.

The final account of the arbitration costs may either be included in the award or communicated separately to the parties. The advance of costs already paid by the parties are not reimbursed by the CAS with the exception of the portion which exceeds the total amount of the arbitration costs".

167. In addition to the payment of the arbitration costs, in his award the Sole Arbitrator may also grant the prevailing party or parties a contribution towards its legal fees and other expenses incurred in connection with the proceedings. Article R64.5 of the CAS Code provides as follows:

"*In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection 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 outcome of the proceedings, as well as the conduct and the financial resources of the parties.*"

168. Given the outcome of these proceedings, taking into account the procedural behaviour of the Parties and also considering that the appeal filed by Cruzeiro is rejected in its entirety, the Sole Arbitrator is of the view that the costs of this appeal shall be borne by the Appellant in their entirety.

169. In view of the outcome of the proceedings, the fact that no hearing was held in the present matter and that FIFA did not need to instruct an external counsel and did not prove to have incurred any direct costs, the Sole Arbitrator believes that each party shall bear its own costs and other expenses incurred in connection with the present arbitration proceedings.

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ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Cruzeiro Esporte Clube on 17 May 2019 against the decision rendered by the Disciplinary Committee of the Fédération Internationale de Football Association on 22 March 2019 is dismissed.

2. The decision rendered by the Disciplinary Committee of the Fédération Internationale de Football Association on 22 March 2019 is confirmed.

3. The costs of the present arbitration proceedings, to be determined and served to the Parties by the CAS Court Office, shall be borne by Cruzeiro Esporte Clube in their entirety.

4. Each party shall bear its own costs and other expenses incurred in connection with these arbitration proceedings.

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

Seat of arbitration: Lausanne, Switzerland
Date: 30 March 2020

THE COURT OF ARBITRATION FOR SPORT

Sole Arbitrator