Arbitration CAS 2020/A/7259 Aris Football Club v. Fédération Internationale de Football Association (FIFA), award of 1 September 2022

Panel: Mrs Anna Bordiugova (Ukraine), President; Mr Rui Botica Santos (Portugal); Mr Lars Hilliger (Denmark)

Football
Disciplinary sanctions for failure to comply with a non-financial decision (transfer ban)
Composition of the FIFA Disciplinary Committee panel
Notification of FIFA decisions
Enforceability of a FIFA Disciplinary Committee decision regarding a transfer ban
Implementation of a transfer ban
Violation of article 15 FIFA Disciplinary Code
Legal basis for sanctioning a club for lack of compliance with a transfer ban

1. **There is no provision of the FIFA Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (the "Rules"), which would prohibit a member of the FIFA Disciplinary Committee (DisCo) to sit on a case where the same party is involved, however the subject matter is different, notwithstanding the cases are intertwisted. Therefore, this issue has no legal basis and does not influence the validity of the appealed decision.**

2. **In accordance with article 50 of the FIFA Disciplinary Code (FDC), FIFA notifies its decisions intended for third parties, e.g. clubs, through its members, i.e. national associations. It is only in extremely rare cases where such communications are not delivered to their addressee or delivered late, what causes procedural problems for the latter. Such late delivery of a notification or its non-delivery, however, shall be proven by an addressee in order to justify its relevant procedural claims or failures.**

3. **The deliberate choice of a club to hide behind its own unsubstantiated beliefs and procedural ignorance cannot serve as excuse for entirely ignoring the FIFA DisCo decisions holding that said club failed to comply with a non-financial decision, i.e. a transfer ban resulting from the failure to comply with decisions issued by the FIFA DisCo passed in accordance with the same Article 15 FDC. Those FIFA decisions are final and binding. The club has to be responsible for its own procedural choices.**

4. **Pursuant to Article 15 para.1 c) FDC, a club's failure to comply with a FIFA financial decision after expiration of the 30-days grace period from notification entails automatically a ban from registering new players nationally and internationally. There is therefore no need for any further notification, neither from FIFA nor from the national federation. Furthermore, in accordance with Annex 3 to the FIFA Regulations on the Status and Transfer of Players, all TMS users shall check it with regular intervals on**

daily basis. Therefore, the club cannot be reasonably unaware of being banned from effectuating transfers on national and international level.

5. **Article 15 FDC does not distinguish between forms of fault in order to determine if a violation took place. In accordance with Article 8 FDC, infringements are punishable regardless of whether they have been committed deliberately or negligently. The fact that the national federation erroneously proceeded with the registration of the relevant player does not change the legal position of the club.**

6. **A club that failed to comply with a FIFA DisCo decision for a violation of Article 15 FDC, and therefore (i) was fined by the FIFA DisCo and granted a final deadline of 30 days to comply with the relevant decision of the FIFA DRC; (ii) ignored such a deadline without paying respective fines and debts; and (iii) even disregarded the transfer ban automatically imposed on the club for not complying with said decision, cannot be further sanctioned on the basis of Article 15 FDC because said article does not foresee any sanction under these circumstances. Indeed, para. 1.c), second sentence of Article 15 FDC foresees deduction of points or relegation to a lower league in case of "persistent" failure to comply with a decision, or in case of "repeated" offences. However, a club's violation characterized by FIFA as a "new breach" is not covered by the provision. Moreover, the reference to *"other disciplinary sanctions being reserved"* in para. 3 of Article 15 FDC is not a sufficient legal basis for applying different sanctions than the ones mentioned in para. 1, but is only making it clear, that, e.g., if a transfer ban is lifted because of the debtor's payments of an outstanding amount to a creditor, that does not mean that a possible fine imposed on the same debtor is also lifted.**

I. PARTIES

1. Aris Football Club ("Aris FC" or the "Appellant", or the "Club") is a Greek professional football club with its registered office in Thessaloniki, Greece. It is a member of the Hellenic Football Federation ("HFF"), which in turn is affiliated to the Fédération Internationale de Football Association.

2. The Fédération Internationale de Football Association ("FIFA" or the "Respondent") is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the governing body of international football at worldwide level. It exercises regulatory, supervisory and disciplinary functions over continental confederations, national associations, clubs, officials and players worldwide.

II. FACTUAL BACKGROUND

3. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings, and evidence adduced at the hearing. References to additional facts and

allegations revealed from the Parties' written submissions, pleadings, and evidence will be made, where relevant, in connection with the legal analysis that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this award only to the submissions and evidence it deems necessary to explain its reasoning.

4. In 2013, the FIFA Dispute Resolution Chamber (the "FIFA DRC") and the FIFA Players' Status Committee (the "FIFA PSC"), respectively, rendered four decisions (the "2013-Decisions"), pursuant to which the Greek football club P.A.E. O Aris Thessalonikis (the "Old Aris") was ordered to pay certain outstanding amounts to four of its creditors (three players and a football agent). These outstanding amounts were never paid by the Old Aris. This appeal is brought by Aris FC, sporting successor of the Old Aris, against the decision rendered by the FIFA Disciplinary Committee (the "FIFA DisCo") on 28 April 2020 (the "Appealed Decision"), regarding an alleged offence under Article 15 of the FIFA Disciplinary Code (the "FDC"), namely failure to comply with a non-financial decision – i.e. violation of the ban from registering new players, either nationally or internationally, imposed on the Appellant by FIFA for failure to comply with four decisions issued by the FIFA DisCo in 2019 (the "Aris Decisions") passed in accorcance with the same Article 15 FDC, ordering the Appellant to comply with the 2013-Decisions. In particular:

   - On 2 October 2019, the FIFA DisCo Secretariat sent to the Club via HFF, notification of the FIFA DisCo decision with ref. nr 131149 PST for the violation of Article 15 FDC whereas Aris FC was sanctioned for not respecting the decision passed by the FIFA DRC on 23 January 2013, by means of which the Old Aris was ordered to pay outstanding amounts due to the player Cristian Portilla Rodriguez; Aris FC was fined and granted a final deadline of 30 days to comply with the relevant decision of the FIFA DRC and warned that, should it not comply with the said decision (i.e., to pay the outstanding amounts) within the deadline stipulated (i.e., 30 days as from notification of the decision), a ban from registering new players ("transfer ban"), either nationally or internationally, would be automatically imposed on the Club;

   - On 7 November 2019, three other decisions were passed by the Deputy Chairman of the FIFA DisCo for a violation of Article 15 FDC (decisions with reference nr 130834 PST, 131086 PST, 150025 PST) and sent by the FIFA DisCo Secretariat to Aris FC via HFF. The Club was sanctioned in each of the three instances with a fine for failing to comply with the decisions passed by the Single Judge of the FIFA PSC on 21 January 2013 (related to decision 130834 PST) and by the FIFA DRC on 7 June 2013 (related to decisions 131086 PST and 150025 PST), by means of which the Old Aris was ordered to pay outstanding amounts to the respective creditors and granted a final deadline of 30 days to comply with the relevant decisions; the Club was warned that, should it not comply with the said decisions withing the stipulated deadline, a ban from registering new players, either nationally or internationally, would be automatically imposed on the Club.

5. On 8 November 2019, following the notification of the Aris Decisions by FIFA to HFF, the HFF informed the FIFA DisCo Secretariat that there are three different Greek sport entities in Greece known as "Aris FC". These entities are 1) Aris Thessalonikis A.S, which is an amateur

sports association with several sports departments; 2) P.A.E. O Aris Thessalonikis, a "football societé anonyme" dissolved in 2014 and disaffiliated from the HFF since then; and 3) Athlitikos Syllogos Thessalonikis O Aris Podosferiki Anonymi Eteria, a "football societé anonyme" competing in the Greek Super League Championship (i.e. the Appellant in these proceedings). In this respect, the HFF requested the FIFA DisCo Secretariat to clarify to which of these three entities the Aris Decisions were addressed to.

6. In addition, the HFF explained that the confusion regarding the identity of the addressee of the Aris Decisions was due to the fact that the entity against which the 2013-Decisions were passed back in 2013, was the Old Aris, while it appeared that the Aris Decisions were addressed to Athlitikos Syllogos Thessalonikis O Aris Podosferiki Anonymi Eteria (i.e. the Appellant in these CAS proceedings).

7. On 27 November 2019, the FIFA DisCo Secretariat confirmed to the HFF that, indeed, the club Aris FC to which the Aris Decisions were addressed, is the "football societé anonyme" Athilitikos Syllogod Thessalonikis o Aris Podosferiki Anonymi Eteria"(i.e. the Appellant), because it is considered to be sporting successor of the "old entity", as established in the Aris Decisions. Therefore, the HFF was requested to forward the Aris Decisions to the Appellant.

8. On 1 January 2020, the transfer window in Greece opened and in view of the Appellant's non-compliance with Aris Decisions within the deadline granted (i.e., 30 days from the notification to the Club, this is, 27 November 2019), the above-mentioned transfer ban which was already automatically imposed on the Appellant was validated.

9. On 3 January 2020, the Club loaned from FC Olimpiacos player Fiorin Durmishaj (the "Player") and registered him (i.e., effectuated a national transfer).

10. On 2 January 2020, the creditor in the case nr 150025 informed FIFA about *"speculations that Aris FC is about to sign or signed the Greek player from another Greek club* […]*"*.

11. On 4 January 2020, the Appellant announced in social media that it had signed the Player.

12. On 7 January 2020, the Creditor in case 131149 informed FIFA about the above-mentioned announcement.

13. On 9 January 2020, the HFF sent a correspondence to the FIFA DisCo Secretariat, by means of which it acknowledged that it came to its knowledge that an international transfer ban had been imposed on the Appellant and requested, amongst others, clarification for the specific reasons and the legal basis of the imposition of the transfer ban on the Appellant and to be provided with guidance on how to address the matter at the national level.

14. On 10 January 2020, the FIFA DisCo Secretariat sent its response to the HFF, informing the latter that Aris Decisions had become final and binding and that, bearing in mind that after the deadline of 30 days granted to the Club to comply with the relevant decisions, the Appellant had failed to do so, the transfer ban became effective. FIFA recommended to HFF to withdraw

the registration of the Player, mentioning that if it was not done, disciplinary proceedings could have been opened against HFF.

15. On 13 January 2020, the Appellant fielded the Player in a league match.

16. Based on the response from the FIFA DisCo, the HFF submitted the matter to the HFF Players Status Committee (the "HFF PSC") and on 17 January 2020, HFF PSC rendered a decision, by which it withdrew the registration of the Player.

17. On 20 January 2020, the Club filed an appeal against this decision to HFF Court of Arbitration for Football (the "HFF CAF").

18. On 21 January 2020, and following the information received by the FIFA DisCo Secretariat, the latter informed the HFF that it had become aware that the Appellant had registered the Player after the transfer ban had become effective. As a result, the HFF was asked to provide its position regarding this situation.

19. On 24 January 2020, the HFF confirmed to FIFA that the Appellant indeed had acquired the Player on loan, however, following directions of FIFA, on 17 January 2020, HFF PSC withdrew the registration of the Player with the Appellant. The Appellant appealed this decision to the HFF CAF, which, on 23 January 2020, overturned the HFF PSC decision and confirmed the registration of the Player with the Appellant. One of the basis on which the HFF PSC decision was overturned is that the Appellant was not the legal successor of the Old Aris and could not be held as debtor and sanctioned by FIFA.

Proceedings before the FIFA Disciplinary Committee

20. On 6 February 2020, the FIFA DisCo Secretariat opened disciplinary proceedings against the Club, for a potential violation of Article 15 FDC, i.e. for non-compliance with the disciplinary sanction applied, namely – violation of the transfer ban.

21. On 28 April 2020, the FIFA DisCo rendered the Appealed Decision and found the Appellant to have breached Article 15 FDC as follows:

1. The FIFA Disciplinary Committee found the club Aris FC guilty of failing to comply with the decisions rendered by the Deputy Chairman of the FIFA Disciplinary Committee on 25 September 2019 (Decision 131149) and on 7 November 2019 (Decisions 130834; 131086 and 150025), in particular, with point 4 of the mentioned decisions in relation to a transfer ban imposed on the club.

2. The FIFA Disciplinary Committee imposes on the club Aris FC a ban from registering new players, either nationally or internationally, for two (2) entire and consecutive registration periods as from the first day of the next registration period following the notification of the present decision. The transfer ban will be implemented automatically at national and international level by the Hellenic Football Federation and FIFA, respectively. The transfer ban shall cover all men eleven-a-side teams of the club Aris FC - first team and youth categories -. The club Aris FC shall be able to register new players, either nationally or internationally, only from the next registration period following the complete serving of the transfer ban. The club Aris FC may not make use of the

exception and provisional measures stipulated in Article 6 of the Regulations on the Status and Transfer of Players in order to register players at an earlier stage.

3. As a member of FIFA, the Hellenic Football Federation is reminded of its duty to implement this decision and provide FIFA with a proof that the transfer ban has been implemented at national level. If the Hellenic Football Federation does not comply with this decision, the FIFA Disciplinary Committee will decide on appropriate sanctions on the latter. This can lead to an expulsion from FIFA competitions.

22. On 19 June 2020, the grounds of the Appealed Decision were communicated to Aris FC.

III. SUMMARY OF THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

23. On 10 July 2020, the Club filed a Statement of Appeal with the CAS against FIFA challenging the Appealed Decision. In its Statement of Appeal the Club requested that the case be submitted to a Panel of three arbitrators and nominated Mr. Rui Botica Santos, Attorney-at-Law in Lisbon, Portugal, as an arbitrator. The Club also requested for provisional measures to be applied, i.e., a stay of execution of the Appealed Decision.

24. On 15 July 2020, the CAS Court Office acknowledged receipt of the Statement of Appeal together with the Request for provisional measures and granted to the Respondent 7 days to file its position regarding the Appellant's request.

25. On 23 July 2020, pursuant to Article R37 of the Code of Sports-related Arbitration (the "CAS Code"), FIFA submitted its answer to the Appellant's request for provisional measures.

26. On 27 July 2020, the Respondent nominated Mr. Lars Hilliger, Attorney-at-Law in Copenhagen, Denmark, as an arbitrator.

27. On 31 July 2020, the Parties were informed that by her reasoned written decision dated the same day, the Deputy President of the CAS Appeals Arbitration Division granted the application and ordered that the costs of that Order should be determined in the final award or in any other final disposition of this arbitration.

28. On 20 August 2020, pursuant to Article R51 of the CAS Code, the Club submitted to the CAS Court Office its Appeal Brief.

29. On 23 November 2020, FIFA submitted to the CAS Court Office its Answer, pursuant to Article R55 of the Code.

30. On 24 November 2020, the Parties were informed by the CAS Court Office that the Panel appointed to decide the case was constituted as follows:

President:	Ms Anna Bordiugova, Attorney-at-Law in Kyiv, Ukraine;
Arbitrators:	Mr Rui Botica Santos, Attorney-at-Law, in Lisbon, Portugal;

Mr Lars Hilliger, Attorney-at-Law, Copenhagen, Denmark.

31. By the same letter the CAS Court invited the Parties to indicate whether they wished a hearing to be held in this matter.

32. On 26 November 2020, the Respondent informed the CAS Court Office that the award could be rendered solely based on the Parties' written submissions, but that it would participate in the hearing if the Panel would decide to convene it.

33. On 30 November 2020, the Appellant informed the CAS Court Office that it preferred for the Panel to hold a hearing.

34. On 4 December 2020, the CAS Court Office informed the Parties that the Panel had decided to hold a hearing in this matter.

35. On 14 December 2020, after having consulted the Parties, the CAS Court Office confirmed that a hearing would be held on 8 February 2021 by videoconference.

36. On 22 December 2020, the CAS Court Office, on behalf of the President of the Panel, issued an order of procedure (the "Order of Procedure").

37. On 11 January 2021, both Parties returned a duly signed copy of the Order of Procedure to the CAS Court Office.

38. A hearing was held on 8 February 2021 by videoconference. All members of the Panel were present and assisted by Mr Fabien Cagneux, Counsel to the CAS. The Parties did not raise any objection as to the constitution and composition of the Panel. The following persons attended the hearing:

> For the Appellant - its legal counsel Mr Konstantinos Zemberis;
>
> For the Respondent - Mr Jaime Camberleng Contreras, Head of Litigation and Mr Saverio Paolo Spera, Senior Legal Counsel.

39. No witnesses or expert witnesses were heard.

40. Both Parties were given full opportunity to present their cases, submit their arguments and to answer the questions posed by the members of the Panel. Upon the closure of the hearing, the Parties expressly stated that they had no objections in respect of their right to be heard and to have been treated equally and fairly in these arbitration proceedings.

IV. SUBMISSIONS OF THE PARTIES

41. The following summary of the Parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by them. The Panel, however, has carefully

considered all the submissions made by the Parties, even if no explicit reference is made in what immediately follows.

A. The Appellant

42. Aris FC submitted the following requests for relief:

1. to annul the challenged decision;
2. to rule that no violation of article 15 of the FIFA Disciplinary [Code] existed in the present matter;
3. to condemn the Respondent to the payment in the favour of the Appellant of the legal expenses incurred;
4. to establish that the costs of the arbitration procedure shall be borne by the Respondent.

Subsidiarily, and only in the event that the above is rejected:

1. to set aside the challenged decision;
2. to rule that no sanction shall be imposed to the Appellant or that the sanction imposed by the FIFA Disciplinary Committee, taking into consideration the special circumstances of the case, is disproportional and to replace such sanction with a simple fine;
3. to condemn the Respondent to the payment in the favour of the Appellant of the legal expenses incurred;
4. to establish that the costs of the arbitration procedure shall be borne by the Respondent.

43. The submissions of Aris FC, in essence, may be summarized as follows:

- The Appellant is totally different legal entity from the Old Aris, against which Aris Decisions were rendered; it is not a legal and/or sporting successor of the said Old Aris; for this reason, the Appellant has never submitted any position within the said four disciplinary Aris proceedings and has never requested the grounds of Aris Decisions and has never appealed them to the CAS for the same reasons;
- On 3 January 2020, the Appellant filed a request to the HFF for the registration of the Player, who was transferred on a loan basis from Olympiacos FC (i.e., a domestic transfer). The HFF registered the Player without raising any objections and without mentioning anything regarding any ban imposed on the Appellant;
- Only few days later the Appellant was informed by HFF that bans from registering any new players had been imposed on the Appellant for failure to comply with each of Aris Decisions, since no payment was made to any of the four creditors;
- In spite of the HFF letter dated 9 January 2020 to FIFA, which explained that the ban had been imposed to the wrong entity and that highlighted clear and undisputed lack of connection and/or succession between the old Aris (the debtor) and the Appellant, by its letter of 10 January 2020 FIFA ignored these explanations, refrained from clarifying the entity concerned by mentioning that the decisions were clear, but explained that the ban shall be also imposed at national level and recommended to the HFF to revert any transfers that have been made at national level, in order to avoid the imposition of any disciplinary sanctions on the HFF;

- On the basis of the aforementioned "instructions" of the FIFA DisCo Secretariat, the HFF submitted the matter to the HFF PSC, which on 17 January 2020 decided to revert the transfer of the Player, by withdrawing his registration with the Appellant;
- Following an appeal lodged by the Appellant with the HFF CAF, the HFF PSC decision was set aside on 23 January 2020. This appeal was filed by the Club in order to protect the rights of the Player;
- Following the complaints filed with the FIFA DisCo Secretariat by the players Siston, Portilla and Umbides, the Respondent, on 21 January 2020 informed the HFF that it had become aware that the Appellant had registered the Player at the beginning of January 2020, i.e., after the transfer ban was imposed on the Appellant and requested the HFF to provide its position regarding the matter;
- On 6 February 2020, the FIFA DisCo Secretariat opened disciplinary proceedings against the Appellant which led to the Appealed Decision;
- Article 15 FDC was not applicable in the present matter since there is no failure of the Appellant to comply with a FIFA decision in the meaning of said article;
- In the present matter, the Respondent, by applying Article 15 FDC, had to impose a fine to the Appellant and, mandatorily, to grant a deadline to the Appellant to remedy the alleged breach of the said article, and only in the event that the breach had not been remedied within the set deadline, to apply the sanction – i.e., the transfer ban;
- The Appealed Decision shall be set aside because no violation of Article 15 FDC has been committed by the Appellant, - the Appellant genuinely and reasonably believed that the disciplinary proceedings and Aris Decisions were actually addressed and concerned the Old Aris, which is currently under liquidation and which was the actual debtor of all amounts due to the aforementioned four creditors;
- The Appellant had no relationships with the creditors and it is not the legal and/or sporting successor of the Old Aris; this was confirmed to FIFA many times by the HFF in different procedures, and specifically in its letter of 9 January 2020;
- The Appellant was not aware of the exchange of correspondence between the HFF and the Respondent and was not notified of such correspondence (namely of FIFA letter dated 27 November 2019) or of its content until after the submission of its position of 18 February 2020 to the FIFA DisCo in the proceedings which led to the Appealed Decision and thus, had no knowledge that FIFA had expressly confirmed that Aris Decisions were allegedly addressed to and concerned the Appellant;
- The Appellant became aware of the fact that the ban had actually been imposed on 9 January 2020 when it was informed about it by the HFF and only after the Player had been registered with the Appellant by the HFF without any problem - the Appellant did not proceed intentionally to any action of violation of the sanction (transfer ban);
- When the Appellant requested the registration of the Player (national transfer without approval via TMS), it did not realise that there was a ban imposed on the Appellant; the HFF had to notify the Appellant of the said restriction and had anyway to reject the application for the registration of the Player;

- Employment of the Player and the application for the registration of the Player *per se*, do not constitute a violation of the ban imposed and of Article 15 FDC; the filing of a legitimate appeal by the Appellant before the HFF CAF also does not constitute a violation of the ban and of Article 15 FDC; the registration of the Player became valid automatically following the decision 4/2020 of the HFF CAF without any action of the Appellant and of the Player, therefore no violation of Article 15 FDC and of the imposed ban has been committed by the Appellant;
- Compliance by the Appellant and the HFF with the aforementioned decision of the HFF CAF cannot be considered to constitute a violation of Article 15 FDC by either the HFF or the Appellant;
- The decision of the HFF CAF, an institution recognized by FIFA as an independent arbitral tribunal, is also binding for FIFA and had to be respected; thus, the FIFA DisCo Secretariat and/or the FIFA DisCo should have closed the relevant disciplinary proceedings against the Appellant and should have refrained from sanctioning the Appellant on the basis of an alleged violation of Article 15 FDC;
- The alleged violation of the ban had been applied as a result of execution of wrong and/or null and void decisions, because they had been rendered by the member of the FIFA DisCo in blatant violation of the limitation period of Article 10 FDC, which applies to the said matter and in particular, to the procedural issues of the said cases, as it has been confirmed by the Respondent numerous times;
- The Appellant has settled all its debts and the disciplinary proceedings related to Aris Decisions have now been closed, there is no real reason and basis for the Appellant to be sanctioned with the very severe unconditional sanction of the ban from registering new players for two entire and consecutive transfer periods and definitely, such a situation would not reflect any sense of justice and/or evidently would not respect the principle of proportionality between violation and imposed sanction.

B. The Respondent

44. FIFA submitted the following requests for relief:

(a) Reject the requests for relief sought by the Appellant;

(b) Confirm the Appealed Decision;

(c) Order the Appellant to bear the full costs of these arbitration proceedings;

(d) Order the Appellant to make a contribution to FIFA's legal costs.

45. The submissions of FIFA, in essence, may be summarized as follows:

- Unlike the vast majority of cases revolving around a breach of Article 15 FDC, the Appellant has not been sanctioned as a direct result of disrespecting an order to comply

with its financial obligations towards its creditors. For that offence, the Appellant had already been sanctioned by the Aris Decisions. *In casu*, the Appellant has been sanctioned for having registered a player while serving a ban that had been imposed as a consequence of the disrespect of the Aris Decisions;

- Any discussion concerning the Appellant's status of sporting successor of Old Aris falls outside the scope of these proceedings; Aris Decisions are irrelevant, since they are final and binding in view of the absence of any appeal;
- There can be no debate whether the FIFA DisCo was right in finding that Aris FC is the sporting successor of Old Aris which had entered into contracts with the different creditors involved in the Aris Decisions. For the same reason, the Appellant's opinion about the alleged nullity of the Aris Decisions also falls outside the scope of this appeal;
- The Appellant has not only failed to comply with the deadline to pay its creditors contained in the Aris Decisions up until July 2020, reason for which the first automatic ban was imposed in January 2020, but it also utterly disregarded the existence of the said ban and registered the Player in violation of it;
- The transfer ban imposed by the Appealed Decision is therefore (i) the necessary consequence of the escalating nature of the Appellant's violation of the FIFA DisCo rulings and (ii) the necessary mean at disposal of the FIFA DisCo to ensure that debtors comply with their financial obligations and with the decisions rendered by the FIFA bodies;
- The Appellant's disrespect of the Aris Decisions represents an attempt to circumvent and erode the effectiveness of the system built around Article 15 FDC and cannot be tolerated. It is for this reason that a transfer ban for two entire and consecutive registration periods is the correct (and even lenient) sanction that the Appellant can expect to be imposed in view of the gravity of its violation;
- Without claiming it openly, the Appellant suggests that the FIFA DisCo panel which rendered the Appealed Decision was improperly composed due to the fact that the Deputy Chairman participated in the proceedings leading to Aris Decisions and in the proceedings which led to the Appealed Decision. However, Aris Decisions dealt with different issues from the one leading to the Appealed Decision - there are no grounds for questioning the impartiality and/or the independence of the Deputy Chairman, nor is this a situation in which the Deputy Chairman had a conflict of interest; furthermore, this issue is irrelevant because even if one were to consider that the panel was incorrectly composed, any such breach would be cured in the scope of these arbitration proceedings, in light of Article R57 CAS Code;
- The Appellant does not deny at any time the facts leading to the Appealed Decision. In fact, Aris FC: (i) confirms having concluded arrangements with its creditors only in July 2020. In other words, it admits it had not yet paid any of its creditors – let alone all of them – when it registered the Player on 3 January 2020 and kept on failing to do so for the following months; (ii) confirms having registered the Player on 3 January 2020, i.e., while it was supposed to be serving a transfer ban for the failure to comply with the Aris Decisions within the deadline given therein;

- Even if sporting succession would have been analysed by the FIFA DisCo, the concrete particularities of cases concerning other Greek clubs cannot be blindly extrapolated from their context and applied to the Appellant simply due to their shared nationality;
- *In casu*, in view of all the evidence on file, there were good grounds not to rely on the recent information received from the HFF;
- The Appellant's alleged unawareness of the exchange of correspondence between FIFA and the HFF, whereby it was clarified to the latter that the Aris Decisions concerned the Appellant, is irrelevant. The Appellant confirmed having received the Aris Decisions, however, claims that it did not request their grounds because it was "under the assumption" that they did not concern it; hiding behind an assumption without even asking any clarifications in the face of four disciplinary decisions received from FIFA qualifies as willful ignorance and cannot be protected;
- According to Article 15.3 FDC, *"[i]f the sanctioned person disregards the final time limit, FIFA and/or the relevant association (in cases involving clubs or natural persons) shall implement the sanctions imposed. A transfer ban or a ban on taking part in any football-related activity may only be lifted before it has been fully served upon payment of the due amounts, with other disciplinary measures being reserved"*. When the Appealed Decision was rendered, the Appellant had already been: (i) found not to have respected its financial obligations towards its creditors as per the various FIFA DRC and FIFA PSC decisions; (ii) given a deadline of 30 days to fulfil its financial obligations and (iii) sanctioned with a ban for its failure to comply; the regulatory framework provides the FIFA DisCo with the possibility to impose further (and even harsher) sanctions;
- The Appellant claims that by means of the decision passed on 23 January 2020, the HFF CAF essentially authorised it to disregard both the FIFA disciplinary framework and the Aris Decisions rendered by the FIFA DisCo; said decision of the HFF CAF to set aside the decision of the HFF PSC had in the meantime revoked the registration of the Player since it occurred in violation of the Aris Decisions and of Article 15 FDC;
- The decision to register a player notwithstanding the prohibition to do so is obviously of the club, as it is of the club the decision to employ a new player. It is the club that starts negotiations to that end and prompts the registration of a player, and not a fault of the HFF, as the Appellant claims since the HFF is technically the party that operates the registration of the Player. In fact, the Appellant recognises that it *"requested the registration of the player"*;
- The FIFA DisCo assessment of a breach of the FDC is completely independent from any evaluation made by the HFF PSC of the correctness of a registration;
- The sanction has been imposed by the Appealed Decision in full accordance with the principle of proportionality given the seriousness of the infringement as well as the escalating nature of the Appellant's violations and the supposed mitigating circumstances that it relies on are of no avail to the Appellant;
- The deterrent effect of a sanction plays a crucial role in a disciplinary system whose aim is to ensure the compliance with the decisions of its bodies and thus ultimately protect its private legal order. In order for the system to be effective, sanctions escalate

proportionately and in accordance with the escalation of the wrongdoing; sanctions are modulated in order to reflect the gravity of the violations that they have to respond to. This is also one of the reasons why the Aris Decisions contained a fine and, only in case of non-compliance with the obligation to pay the creditors within a given deadline, an automatic transfer ban which, however, the Appellant could have had lifted upon full payment of its creditors;

- The Appellant's wrongdoing indeed escalated: (i) it did not pay the creditors within the given deadline; (ii) it did not pay them even after the transfer ban was imposed and (iii) neglectful of the FIFA DisCo's rulings, which it negligently considered dead letter, it proceeded to register the Player. Against such an utter disregard of the rulings of a FIFA judicial body, the FIFA DisCo was not only entitled, but had the duty to impose a harsher sanction on the Appellant;
- The Appellant argues that it did not act with wilful intent since it registered only one player in violation of the transfer ban even though it needed more *"to strengthen its team"*. Firstly, Article 8.1 FDC clearly establishes that *"infringements are punishable regardless of whether they have been committed deliberately or negligently"*. Secondly - one's conduct amounting to a violation of a provision of law, or – as *in casu* – of a ruling, does not become intentional only if repeated in time. Violating a prohibition to do something only once does not deprive the conduct of intentionality, it only deprives it from repetitiveness;
- Instead of many players over time, the Appellant has intentionally registered only one player in violation of the transfer ban it was serving. While it could be argued that a repeated violation of the ban could have probably worsened the Appellant's position, it cannot certainly be inferred that a lack of repetitiveness constitutes a mitigating circumstance. This is all the more true when this "isolated" infringement is a serious one that can potentially endanger the system implemented by FIFA to ensure that its decisions are complied with and become effective;
- The Appellant's proactive behaviour from a procedural point of view, i.e. appealing the HFF PSC decision that had initially invalidated the registration, rather shows its will to seek the registration of the Player to all extents, which is an aggravating factor;
- The Appellant claims that the Player would unjustly suffer the consequences of the Appealed Decision since he would be ineligible to play with any team, however, the Player is not affected by the transfer ban imposed on the Appellant;
- The Appellant claims having settled its debts with the creditors of the Aris Decisions. However, the Appellant concluded arrangements with its creditors only in July 2020, i.e.: (i) more than 8 months after the Aris Decisions were rendered; (ii) 7 months after a ban was imposed for their violation; (iii) after having registered the Player neglectful of all the foregoing and (iv) even after the Appealed Decision was rendered;
- The fact that the Appellant did not disobey one decision and/or directive of the FIFA DisCo but four, shall bear a considerable weight in the evaluation of the sanction and be considered as an aggravating element;
- Considering that a transfer ban had already been imposed and violated, a more lenient sanction would have addressed the gravity of the breach in a disproportionately lenient

manner. It would have not served as a sufficient deterrent to avoid future similar conducts that endanger the private legal order created by FIFA but, instead, it would have sent the message that violation of the FDC is being rewarded by avoiding a transfer ban and only being imposed a more lenient sanction.

V. JURISDICTION

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

"An appeal against a decision of a federation, association or sports related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the Statutes or regulations of that body".

47. Article 49 of the FDC provides as follows:

"Decisions passed by the Disciplinary and Appeal Committees may be appealed against before CAS, subject to the provisions of this Code and articles 57 and 58 of the FIFA Statutes".

48. In accordance with Article 57 para. 1(e) of the FDC, decisions of the FIFA Disciplinary Committee, passed in compliance with Article 15 of the Code, shall be appealed directly to CAS.

49. Article 58 para. 1 of the FIFA Statutes currently in force provides:

"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 receipt of the decision in question".

50. None of the Parties objected to CAS jurisdiction. The jurisdiction of CAS is further confirmed by the Order of Procedure, duly signed by the Parties. It follows that CAS has jurisdiction to decide on the present dispute.

VI. ADMISSIBILITY

51. 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".

52. According to Article 58, para. 1 of the FIFA Statutes, appeals *"shall be lodged with CAS within 21 days of notification of the decision in question".*

53. FIFA notified the grounds of the Appealed Decision on 19 June 2020. The Appellant lodged the Statement of Appeal with CAS on 10 July 2020, i.e., within the 21 days allotted under Article 58 para. 1 of the FIFA Statutes. The Statement of Appeal also complied with the requirements of Articles R47, R48 and R64.1 of the CAS Code, including the payment of the CAS Court Office fee.

54. It follows that the appeal is admissible.

VII. APPLICABLE LAW

55. Article R58 of the Code provides the following:

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

56. Article 57 para. 2 of the FIFA Statutes reads as follows:

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

57. The Parties agree that the applicable regulations are those set by FIFA and that Swiss law applies subsidiarily.

58. The Panel is, therefore, satisfied that primarily the various regulations of FIFA are applicable to the substance of the case, in particular the FDC 2019, and additionally Swiss law, should the need arise to fill a possible gap in the various regulations of FIFA.

VIII. MERITS

59. The Panel notes that this is an appeal against a decision pronounced by the FIFA DisCo in accordance with Article 15 FDC 2019, whereby the FIFA DisCo sanctioned the Appellant for failure to comply with the transfer ban imposed on the Appellant in the Aris Decisions for failure to comply with the 2013 Decisions. It is not disputed between the Parties that the underlying Aris Decisions were final and binding since they were not appealed by the Appellant – the Appellant had to pay outstanding debts to four creditors (which it ultimately did in July and August 2020).

60. The Panel, at the outset, needs to address the issue raised by the Club, namely the alleged "problematic" composition of the FIFA DisCo panel, which rendered the Appealed Decision. Thus, the Appellant pointed that the member of the FIFA DisCo, who rendered, sitting alone, three out of four Aris Decisions, namely in proceedings 130834, 131086 and 150025, participated as a member of the panel in the proceedings, which led to the Appealed Decision.

61. The Panel notes that while raising this criticism, the Appellant does not come to any conclusion as to the consequences of such alleged "irregularity". The Panel further observes that the Appellant does not refer to any provision of FIFA Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (the "Rules"), which would prohibit a member of the FIFA DisCo to sit on a case where the same party is involved, however the subject matter is different, notwithstanding the cases are intertwisted - the Rules do not exclude any member from being involved in rendering the Appealed Decision. Moreover, there were two other FIFA DisCo members participating in rendering the Appealed Decision. The Panel has not been directed to any compelling arguments as to why the relevant individual FIFA DisCo member could not have been a member of the panel. Therefore, this alleged issue has no legal basis and does not influence the validity of the Appealed Decision.

62. Article 15 FDC reads 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 CAS decision (financial decision), or anyone who fails to comply with another final decision (non-financial decision) passed by a body, a committee or an instance of FIFA, or by CAS:

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

b) will be granted a final deadline of 30 days in which to pay the amount due or to comply with the non-financial decision;

c) in the case of clubs, upon expiry of the aforementioned final deadline and in the event of persistent default or failure to comply in full with the decision within the period stipulated, a transfer ban will be pronounced until the complete amount due is paid or the non-financial decision is complied with. A deduction of points or relegation to a lower division may also be ordered in addition to a transfer ban in the event of persistent failure, repeated offences or serious infringements or if no full transfer could be imposed or served for any reason.

d) in the case of associations, upon expiry of the aforementioned final deadline and in the event of persistent default or failure to comply in full with the decision within the period stipulated, additional disciplinary measures may be imposed;

e) in the case of natural persons, upon expiry of the aforementioned final deadline and in the event of persistent default or failure to comply in full with the decision within the period stipulated, a ban on any football-related activity for a specific period may be imposed. Other disciplinary measures may also be imposed.

2. With regard to financial decisions passed by a body, a committee or an instance of FIFA, or CAS, disciplinary proceedings may only commence at the request of the creditor or any other affected party, who will have the right to be notified of the final outcome of the said disciplinary proceedings.

3. If the sanctioned person disregards the final time limit, FIFA and/or the relevant association (in cases involving clubs or natural persons) shall implement the sanctions imposed. A transfer ban or a ban on taking

part in any football-related activity may only be lifted before it has been fully served upon payment of the due amounts, with other disciplinary measures being reserved.

4. The sporting successor of a non-compliant party shall also be considered a non-compliant party and thus subject to the obligations under this provision. Criteria to assess whether an entity is to be considered as the sporting successor of another entity are, among others, its headquarters, name, legal form, team colours, players, shareholders or stakeholders or ownership and the category of competition concerned.

5. Any financial or non-financial decision that has been pronounced against a club by a court of arbitration within the relevant association or national dispute resolution chamber (NDRC), both duly recognised by FIFA, shall be enforced by the association of the deciding body that has pronounced the decision in accordance with the principles established in this article and in compliance with the applicable disciplinary regulations.

6. Any financial or non-financial decision that has been pronounced against a natural person by a court of arbitration within the relevant association or NDRC, both duly recognised by FIFA, shall be enforced by the association of the deciding body that has pronounced the decision or by the natural person's new association if the natural person has in the meantime registered (or otherwise signed a contract in the case of a coach) with a club affiliated to another association, in accordance with the principles established in this article and in compliance with the applicable disciplinary regulations".

63. The Panel observes that there were actually three requests for relief put forward by the Club before CAS in relation to the Appealed Decision, which were as follows:

- *to annul the challenged decision;*
- *to rule that no violation of article 15 of the FDC existed in the present matter;*

Subsidiarily, and only in the event that the above is rejected:

- *to set aside the challenged decision;*
- *to rule that no sanction shall be imposed to the Appellant or that the sanction imposed by the FIFA Disciplinary Committee, taking into consideration the special circumstances of the case, is disproportional and to replace such sanction with a simple fine.*

64. In essence, the Appellant submits that even if (*quod non)* it violated Article 15 FDC, it was not its fault and that the sanction imposed by FIFA DisCo has no legal basis. In its opinion, it should have been given a 30-days period to comply with the decision and/or fined.

65. Accordingly, the Panel notes that it is called by the Appellant to decide whether there was a violation of Article 15 FDC committed by the Appellant and, if answered positively, if the Appealed Decision is legally sound for being pronounced with violation of principle of legality based on preceding assessment of whether the Respondent have complied with the applicable rules and regulations during the decision making process, and, especially, whether the imposed sanction has the necessary legal basis and is adequate, necessary and proportionate to the violation.

66. Therefore, the questions to be analysed by the Panel are:

i. Did the Appellant commit a violation of Article 15 FIFA DisCo? And if answered in affirmative,
ii. Does the imposed sanction have the necessary legal basis and is adequate, necessary and proportionate to the violation?

i. Did the Appellant commit a violation of Article 15 FDC?

67. As a staring point, the Panel observes that the Appellant substantially criticized the way FIFA notifies its communications what allegedly caused late delivery of the relevant communications by the HFF to the Appellant and that such late notification led to the violation of Article 15 FDC with which the Appellant is charged.

68. Indeed, in accordance with Article 50 FDC: *"All communications concerning an association, club or individual (including notifications of proceedings against them and the issuing of the decisions taken by the FIFA judicial bodies) are addressed to the association or club concerned, which must then, if applicable, inform the club or the individual in person. All such communications by FIFA or the FIFA judicial bodies take the form of emails sent by the secretariat"* [emphasis added by the Panel].

69. Further, in accordance with Article 44.4 FDC: *"Decisions and other documents intended for players, clubs and officials are addressed to the association concerned on condition that it forwards the documents to the parties concerned. In the event that the documents were not also or solely sent to the party concerned, these documents are considered to have been communicated properly to the ultimate addressee the day after receipt of the document by the respective association. Failure by the association to comply with the aforementioned instruction may result in disciplinary proceedings in accordance with this Code".*

70. The Panel observes that this system of communications' notification is implemented by FIFA for a long time ago. Notably, FIFA is not the only international sports organization which notifies its decisions intended for third parties through its members, i.e. national associations. It is well known that International Olympic Committee and a number of other International Federations have the same procedure in place.

71. As much as it can be criticized, it is only in extremely rare cases where such communications are not delivered to their addressee or delivered late, what causes procedural problems for the latter. Such late delivery of a notification or its non-delivery, however, shall be proven by an addressee in order to justify its relevant procedural claims or failures. The Panel observes that this is not the case here, as will be demonstrated below.

A. Aris Decisions

72. The Appellant, in its Appeal Brief as well as during the hearing, admitted that it did not put forward its defence position with regards to the Aris Decisions proceedings when being invited to do so by FIFA via HFF on 4 September 2019 concerning the proceedings 131149 and on 18 October 2019 for the proceedings 130834, 131086 and 150025 voluntarily and that it further, after being notified of the Aris Decisions on 27 November 2019, did not request their grounds

in order to lodge an appeal as foreseen by Article 51 FDC because allegedly at all times the Club was of genuine belief that these decisions were addressed to the "old" entity and thus Aris FC was not the addressee of the decisions and was not a party to the proceedings.

73. The Panel, however, observes, that indeed, as underlined by FIFA, in accordance with Article 51.4 FDC *"Only the parties to which a decision is addressed can request the motivation"*. It is obvious that in the case at hand the Aris Decisions were addressed to the Appellant, and even if at any time during the proceedings, be it out of naivety or out of negligence, the Appellant did not put forward any defence in all four proceedings (notwithstanding the fact that there were not one, but four ongoing proceedings, opening of which was notified one after the other to the Appellant (such notification was not disputed by the Appellant during these CAS proceedings) and it still did not raise any suspicion of the Appellant regarding possible consequences of ignoring invitations of FIFA to put forward its position or at least addressing FIFA with request on how those proceedings were pertinent to the Appellant, when the latter, after lengthy correspondence exchange between FIFA and HFF with regard to the addressee of the Aris Decisions was finally notified on 28 November 2019 at the latest (such date is not disputed by both Parties in these proceedings), it should have reasonably proceeded with requesting the grounds of those decisions and, if needed, appeal them. This is what any reasonable person would have done.

74. The deliberate choice of the Appellant to hide behind its own unsubstantiated beliefs and procedural ignorance cannot serve as excuse for entirely ignoring the Aris Decisions. The Appellant has to be responsible for its own procedural choices. Thus, there should be no further discussion as to the enforceability of the Aris Decisions. Those FIFA decisions are final and binding. These CAS appeal proceedings do not concern the subject matter of Aris proceedings (i.e., whether Aris FC is the sporting successor of "Old Aris").

B. Implementation of transfer bans

75. The Panel observes that the Appellant claims that Aris Decisions were notified by the HFF three weeks later (from the date they were passed) and were never sent by FIFA directly to the Club's email and, allegedly for such reason, the Appellant was not aware of the imposition of the ban from registering new players (both nationally and internationally) when it requested the registration of the Player.

76. The Club in its Appeal Brief claims to have been notified by the HFF of the transfer bans imposition somewhere after 3 January and before 9 January 2020, i.e., after the registration of the Player.

77. At the same time, in its statement of defence dated 18 February 2020 addressed to the FIFA DisCo during the proceedings leading to the Appealed Decision (cf. para 10), the Appellant claimed that it had realized that there was a ban only when it tried to register a foreign player and noticed the enforced ban alert in the FIFA Transfer Match System ("TMS") database profile.

78. During the hearing the Appellant stated to the Panel that it was informed by HFF of the bans on 8 January 2020. However, the Appellant does not point how exactly the HFF allegedly informed it about the bans, the Panel has no proof of alleged actual *"ban notification date"*.

79. However, all these allegations, as much as they are inconsistent, are irrelevant.

80. In fact, the Appellant does not deny that it was notified of the Aris Decisions on 27 November 2019. The Club had the possibility either to request their grounds within 10 days from the next day of notification and to appeal, which it decided not to do, or to comply with the Aris Decisions within 30 days from their notification, which it also did not do. Therefore, and as unambiguously pointed out in the resolution of the Aris Decisions, well known to the Appellant, the Appellant was at least aware as of 28 November 2019 that a ban from registering new players nationally and internationally would automatically be imposed on it after expiration of 30-days grace period and would be validated with the next transfer window, i.e. as of 1 January 2020, after expiration of 30-days grace period in case of non-compliance and with the beginning of the next registration period of HFF. There was therefore no need for any further notification neither from FIFA, nor from HFF.

81. The Panel further notes that in accordance with Annex 3 to FIFA Regulations on Status and Transfers of Players, all TMS users shall check it with regular intervals on daily basis. Therefore, it was the Appellant's duty to check its TMS profile – had it done so it would have also been aware (reminded) of the transfer ban implementation.

82. The Panel, therefore, concludes that the Club could not have been reasonably unaware of being banned from effectuating transfers on national and international level.

C. Is the Appellant at fault in committing the violation?

83. The Panel notes that Appellant additionally claims that the registration of the Player happened due to the fault of the HFF, who actually authorized and proceeded with the registration, when instead it should have refused such a request knowing that there was a national transfer ban imposed onto the Appellant. The Club concludes that, therefore, it was not in fault and did not commit any violation of Article 15 FDC. Even if it did commit a violation – it was not, anyway, intentional.

84. The Panel does not follow the explanation of the Appellant giving the entire fault to the HFF in authorizing the registration of the Player.

85. As a starting point, the Panel notes that Article 15 FDC does not distinguish between forms of fault (intent or negligence) in order to determine if the violation took place. In accordance with Article 8 FDC infringements are punishable regardless of whether they have been committed deliberately or negligently.

86. The fact that the HFF erroneously proceeded with the registration of the Player does not change the legal position of the Appellant – it was the Appellant who ignored clear resolution of the

Aris Decisions and proceeded with requesting the registration of the Player, being the only party interested in such a registration.

87. Notwithstanding the above, the Panel is of the opinion that the Club acted deliberately and knowingly, as its active post-registration behaviour demonstrates. Thus, as soon as FIFA, on 10 January 2020 notified the HFF of a potential violation (non-imposition of the ban from registering new players at the national level) and requested the registration of the Player to be withdrawn, this was done by the HFF, i.e. on 17 January 2020, the HFF PSC decided to cancel the registration of the Player. The incident could have been over there and then.

88. However, the Panel observes that, in spite of being well aware that the ban from registering new players was imposed by an international governing body, i.e. FIFA, the Club appealed the HFF PSC decision with the HFF CAF, even if such ban could have been lifted both at national and international level only by the FIFA DisCo as clearly explained in the FIFA Circular letter 1628 of 9 May 2018 and in accordance with the respective provisions of the FIFA Disciplinary Code.

89. Having obtained through "back door" a favorable decision of the HFF CAF, which by its decision of 24 January 2020 overturned HFF PSC decision, the Club continued fielding the Player in league matches (all together 5 matches as mentioned by FIFA and not disputed by the Club). This can hardly be viewed as unintentional behaviour.

90. It is well established that any party claiming a right on the basis of an alleged fact shall carry the burden of proof of this fact. The arguments, brought forward by the Appellant, as explained above, should, therefore, be dismissed under Article 8 of the Swiss CC as unproven.

91. For all the above reasons the Panel is not comfortably satisfied that there are grounds to consider the Appealed Decision ill-grounded with respect to the violation by the Appellant of Article 15 FIFA DisCo.

92. As such, the Panel concludes that the Club was in breach of Article 15 FDC.

ii. Does the imposed sanction have the necessary legal basis and is adequate, necessary and proportionate to the violation?

93. As a starting point, the Panel observes that Article 15 FDC provides FIFA with legal basis to sanction a club that failed to pay another club a sum of money following an instruction to do so by an organ of FIFA and/or CAS or that failed to comply with another final (non financial) decision. It is further clear to the Panel that under Article 15 FDC, a club that is obliged to comply with a FIFA and/or a CAS decision may be subject to a number of measures, such as fines, transfer bans, point deductions, relegation to a lower league, in the event it disregards a decision ordering it to pay an amount of money to a creditor. In other words, the FDC clearly indicates not only the existence of a violation, but also the kinds of sanctions. It therefore enables the Club to foresee the potential consequences of failing to comply with a decision passed by those bodies and/or CAS.

94. The system and procedure concerning the application of Article 15 FDC 2019 (previously Article 64 FDC 2017) has been confirmed by the SFT as being lawful (Decision of the SFT 4P.240/2006 dated 5 January 2007) and proceedings under this article are confirmed *"to be considered not as enforcement but rather as the imposition of a sanction for breach of the association's regulations and under the terms of association law"*.

95. The Panel further observes that it is well established that a sport governing body may impose disciplinary sanctions upon its members if they violate the applicable rules and regulations. The power to impose such sanctions is based upon the freedom of associations to regulate their own affairs (see CAS 2008/A/1583 & 1584; CAS 2012/A/2912).

96. However, it is necessary, before a person is found guilty of a disciplinary offence, that the relevant disciplinary code must proscribe the misconduct with which he is charged. It is also necessary, that not only a duty is identified, but that it is stipulated that the breach of such a duty will trigger disciplinary sanctions.

97. The Panel agrees with the reasoning of the Panel in CAS 2018/A/5622 (para. 66 - 68) that disciplinary provisions and proceedings before FIFA Bodies must be considered to be in line with the principle of *nulla poena sine lege* if:

- The relevant regulations and provisions emanate from duly authorized bodies;
- The relevant regulations and provisions have been adopted in constitutionally proper ways;
- The relevant regulations and provisions are not the product of an obscure process of accretion;
- The relevant regulations and provisions are not mutually qualifying or contradictory;
- The relevant regulations and provisions 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.
- There is a clear connection between the incriminated behavior and the sanction imposed [emphasis added by the Panel].

98. The Panel observes that indeed, the *corpus delicti* of the violation committed by the Appellant is clearly established by Article 15.1 FDC, namely – failure to comply with final non-financial decision passed by a body of FIFA – in the case at hand the Appellant was sanctioned by FIFA with the transfer ban as a result of non-compliance with financial decisions passed by FIFA Bodies, which ban Aris has violated by hiring a player on loan.

99. The Panel notes that, with regard to the sanction, the Appellant claimed that FIFA, as per para 1.a) and b) of Article 15 FDC should have granted it a deadline of 30 days and impose a fine in order to oblige it to comply with the non-financial decision, i.e., to comply with the ban. Whereas FIFA argued that this would not have been possible because (i) the Club was already granted a final deadline to comply with Aris Decisions; (ii) was fined in each of the four cases; (iii) had ignored such a deadline without paying respective fines and debts; and (iv) even

disregarded the transfer ban. Therefore, the sanction had to be increased in order to have any effect.

100. The Panel observes that, indeed, since the transfer ban was violated, there was no retroactive way to "comply" with the ban anymore, even if the registration of the Player was cancelled; this would not eliminate or heal the violation already committed at the relevant time. In these circumstances another grace period of 30 days would have no meaning at all, whereas the fine would not have any punishing and preventive effect. Thus, the Panel concurs with FIFA that the sanction should have been increased.

101. However, the Panel further observes that Article 15 FDC does not foresee any sanction, as applied by FIFA DisCo to the Appellant in the Appealed Decision – namely, the ban from registering new players for a certain amount of registration periods – as there is no legal basis for that sanction to be applied to the Appellant under the circumstances of the case at hand. It appears that the Club, in effect, cannot be sanctioned as it was pursuant to the Appealed Decision under Article 15 FDC for the violation it committed.

102. Indeed, para. 1.c), second sentence of Article 15 FDC foresees deduction of points or relegation to a lower league in case of persistent failure to comply with a decision, or in case of repeated offences, which is not the case here – because at the time of violation there was neither repeated offence committed, nor persistent failure to comply, which took place (the definition, which is not clear to this Panel - what actually is meant as persistent failure and how this persistence is evaluated/measured by FIFA). Additionally, the Appealed Decision did not refer to this provision as basis for sanctioning the Club.

103. At the same time, para. 3 of Article 15 FDC, to which the appealed decision referred to, in the Panel's view, is essentially only giving directions on how to apply any of the sanctions set out in para. 1 of the same article, in case of failure to comply with a decision before the expiry of a granted final deadline. Moreover, the Panel finds, that the reference to *"other disciplinary sanctions being reserved"* is not a sufficient legal basis for applying different sanctions than the ones mentioned in para. 1, but is only making it clear, that, e.g., if a transfer ban is lifted because of the debtor's payments of an outstanding amount to a creditor, that does not mean that a possible fine imposed on the same debtor is also lifted.

104. Notably, when being specifically asked under which paragraph of Article 15 FDC the FIFA DisCo sanctioned the Appellant and what was the legal basis for the sanction applied - FIFA representatives were not ready to confirm that this was a case of repeated offence or a case of persistent failure under 15.1.c) but FIFA instead, characterized the violation committed by the Appellant as a "new breach". If it was a new breach, then Article 15.1 was applicable, however, the Panel does not find that Article 15.1 contains the sufficient legal basis for imposing an unconditional transfer ban for two consecutive registration periods on the Appellant.

105. Accordingly, the Panel is left with no option but to grant the Club one of its requests for relief, i.e., to set aside the sanction, because the sanction imposed by the FIFA DisCo in the Appealed Decision, namely transfer ban for two entire consecutive periods, has no legal basis as there is

no connection between the incriminated behaviour and the sanction imposed under Article 15 FDC.

106. As such, the Club's request for the sanction to be cancelled is upheld by the Panel.

iii. Conclusion

107. Therefore, the Panel partially upholds the appeal filed by the Club – it confirms the violation, however, cancels the sanction because it has no legal basis.

108. The above conclusion, finally, makes it unnecessary for the Panel to consider the other requests submitted by the Parties. Any other and further claims or requests for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Aris FC on 10 July 2020 against the decision rendered by the Disciplinary Committee of the Fédération Internationale de Football Association on 28 April 2020 is partially upheld.

2. The decision rendered by the Disciplinary Committee of the Fédération Internationale de Football Association on 28 April 2020 is confirmed, save for points n. 2 and n. 3 of the operative part, which are set aside.

3. (…).

4. (…).

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