TAS / CAS
TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

CAS 2023/A/10255 Yeni Mersin Idman Yurdu A.S. v. Danilo Petrolli Bueno & FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Petros C. Mavroidis, Professor at Columbia Law School, New York City, USA

Arbitrators: Patrick Grandjean, Attorney-at-Law, Belmont-sur-Lausanne, Switzerland
Mark Hovell, Solicitor, Manchester, United Kingdom

in the arbitration between

Yeni Mersin Idman Yurdu A.S., Türkiye

Represented by Mr Juan de Dios Crespo Pérez, Mr Juan Crespo-Ruiz-Huerta, Ms Juan Yu Attorneys-at-law, Ruiz-Huerta & Crespo Sports Lawyers, in Valencia, Spain, and Mr Umur Varat, Attorney-at-law, Varat – Kuruloğlu Hukuk Bürosu, in Istanbul, Türkiye

Appellant

And

1/ Danilo Petrolli Bueno, Brazil

Represented by Ms Débora Trombeta de Mattos Cesário, and Mr Rafael Queiroz Botelho, Attorneys-at-law, São Paulo, Brazil

First Respondent

2/ Fédération Internationale de Football Association (FIFA), Switzerland

Represented by Mr Miguel Liétard Fernández-Palacios, its Director of Litigation, and Mr Alexander Jacobs, Senior Legal Counsel at its Litigation Department

Second Respondent

I. THE PARTIES

1. Yeni Mersin Idman Yurdu A.S. ("YM2" or the "Appellant") is a football club headquartered in Mersin, Türkiye, and currently participating in the second professional league of the country. YM2 is the Appellant in the present proceedings.

2. Mr Danilo Petrolli Bueno is a former professional football player ("Mr Bueno", the "Player" or the "First Respondent"). Mr Bueno is the First Respondent in the present proceedings.

3. The Fédération Internationale de Football Association is the world's football governing body, headquartered in Zurich, Switzerland ("FIFA"). FIFA is the Second Respondent in the present proceedings.

II. FACTS

4. The facts of the present dispute are quite complicated and, on occasion, not germane to the resolution of the present dispute. In what follows, the Panel limited itself to a succinct description of those facts that are of direct relevance to the resolution of the dispute.

A. Background

5. The heart of the dispute is whether YM2 is the sporting successor to Mersin Idman Yurdu SK, which is now called Mersin Talim Yurdu SK ("YM1"), and consequently, also liable for the payment of a debt that YM1 had assumed *vis-à-vis* Mr Bueno. Mr Bueno had been contractually committed to YM1. He had signed his contract with YM1 on 5 January 2012. His contract ran until the end of the 2014/2015 football season. YM1 had not honoured its obligation to pay Mr Bueno the agreed compensation, and he submitted a complaint before the competent FIFA bodies where he prevailed. As he remained unpaid, he introduced a new complaint against YM2 this time, arguing that YM2 was the sporting successor club to YM1, and thus liable (under the FIFA regulations in force) for the debts incurred by the original debtor (YM1). The Panel explains all this in what now follows.

B. Proceedings before FIFA

6. Of direct relevance to the resolution of the present dispute is the decision passed by the FIFA Dispute Resolution Chamber ("DRC") of 3 September 2015 (Ref. 13-01057).

7. Mr Bueno had introduced a complaint claiming the payment of sums due to him by YM1 (his employer). The DRC agreed with the heart of the complaint and held that YM1 had indeed been in violation of its obligations. Accordingly, it (the "Original DRC Decision") ordered YM1 to compensate Mr Bueno by effectuating a payment of:

    - EUR 29,097;

    - Adding an interest rate of 5% per annum payable as of 4 October 2015 (the effective date of the payment due to Mr Bueno).

8. The grounds of the decision were notified to the Parties on 26 January 2016 (the "Original DRC Decision").

9. Subsequently, on 6 May 2017, since the amount(s) due had not been paid in accordance with the Original DRC Decision, the FIFA Disciplinary Committee (the "FIFA DISCO") passed a decision by means of which it found YM1 responsible for failing to comply with the Original DRC Decision. The grounds of the decision were duly notified to the relevant parties on 1 November 2017 (the "First FIFA DISCO Decision").

10. This decision opened the possibility to impose sporting sanctions against YM1 contingent upon non-payment of the adjudicated sums.

11. On 8 September 2023, Mr Bueno introduced a new complaint before the FIFA DISCO, this time against YM2. Mr Bueno was claiming that, as YM2 was the sporting successor of YM1, it was liable for the payment of the amounts due to him by YM1.

12. On 9 November 2023, the FIFA DISCO confirmed that YM2 was indeed the sporting successor to YM1. Consequently, it was liable for the payment of the amounts due by YM1 to Mr Bueno. The operative part of the decision of the FIFA DISCO in its entirety reads as follows:

"1. Yeni Mersin Idmanyurdu Futbol AS is considered responsible for the debt(s) incurred by the club Mersin Idman Yurdu Spor Külübü, and, as such, is found responsible for failing to comply in full with the FIFA decision rendered on 03 September 2015 (Ref. 13-01057).

2. Yeni Mersin Idmanyurdu Futbol AS is ordered to pay to Mr. Danilo Petrolli Bueno as follows:

• EUR 29,097 as outstanding remuneration, plus 5% interest p.a. as from the expiry of the stipulated time limit.

3. Yeni Mersin Idmanyurdu Futbol AS is granted a final deadline of 30 days as from notification of the present decision in which to pay the amount due. 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 registering new players will be issued until the complete amount due is paid. 6

4. Yeni Mersin Idmanyurdu Futbol AS is ordered to pay a fine to the amount of CHF 5,000.

5. The fine is to be paid within 30 days of notification of the present decision".

13. The Decision above was notified to the Parties on 9 November 2023, and the grounds on 11 December 2023 (the "Appealed Decision").

14. It is against this decision of the FIFA DISCO that YM2 lodged the present appeal on 26 December 2023.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

15. On 26 December 2023, YM2 submitted its Statement of Appeal against the Appealed Decision with the CAS Court Office in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the "Code").

16. In its Statement of Appeal, YM2 designated Mr Patrick Grandjean (Switzerland) as an arbitrator.

17. On 12 and 15 January 2024 respectively, the Respondents informed the CAS Court Office of their agreement to submit this matter to the same Panel as in CAS 2023/A/9807 and CAS 2023/A/10043 and, accordingly, implied the nomination by the Respondents of Mr Mark A. Hovell (United Kingdom) as an arbitrator.

18. On 18 January 2024, and following various requests of extension, YM2 filed its Appeal Brief.

19. On 15 March 2024, FIFA submitted its Answer.

20. On 18 March 2024, Mr Bueno filed his Answer.

21. On 19 March 2024 the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, confirmed the constitution of the Panel as follows:

President:	Petros C. Mavroidis, Professor at Columbia Law School, New York City
Arbitrators:	Patrick Grandjean, Lawyer, Belmont-sur-Lausanne, Switzerland
	Mark Hovell, Solicitor, Manchester, United Kingdom

22. On 27 and 28 June 2024, the Parties signed and returned the Order of Procedure.

23. On 26 June 2024, a virtual hearing was organized by CAS. Physically present at the CAS headquarters in Lausanne, Switzerland, was Mr Fabien Cagneux, Managing Counsel to the CAS.

24. Additionally, the following individuals followed the hearing via Webex

- The Panel members;
- YM2, which was represented by Mr Juan de Dios Crespo Pérez and Mr Umur Varat, legal counsels;
- The Club's representative, its President Mr Metin Saltik, assisted by Mr. Melide Inoluk, interpreter;
- Mr Bueno's counsels, namely Ms Débora Trombetta de Mattos Cesário, and Rafael Queiroz Botelho;
- FIFA's representatives, Mr Miguel Liétard Fernández-Palacios, Director of Litigation, and Mr Alexander Jacobs, Senior Legal Counsel.

25. Upon request by the Panel, the Parties confirmed that they had no objection to the Panel's composition, nor did they object to the manner in which the process had been handled up to the hearing-stage. At the end of the hearing, both the Appellant and the Respondents explicitly confirmed that their right to be heard had been fully observed throughout the arbitration proceedings.

IV. PARTIES' POSITIONS AND PRAYERS FOR RELIEF

26. The following section summarises the Parties' main arguments in support of their respective requests for relief. Even though the Panel has examined the full record submitted by the Parties to the dispute, in what follows it will be presenting only the claims and arguments which in the Panel's view are relevant in deciding the issues before it.

A. The Appellant

27. The gist of the claims and arguments put forward by YM2 (the Appellant) is that there is no evidence to support that YM2 is the sporting successor of YM1. YM2 claimed before the Panel that the evidence lawfully before the Panel should lead to the conclusion that Mr Bueno was targeting the wrong club. YM2 further claimed that whatever overlap exists between YM1 and YM2, it is largely the result of public pressure exerted upon YM2, and this is no appropriate basis to conclude that it is the successor club to YM1.

28. The Panel divided the Appellant's claims and arguments under the following headings: the appropriate legal basis in the FIFA statutes; the statutory criteria substantiating that the FIFA DISCO erroneously decided in favour of sporting succession; the severity of the sanctions imposed; and the standard of review that this Panel should apply to the pertinent facts of the case. Based on its analysis, YM2 requested from the Panel to reverse the Appealed Decision.

(a) The Legal Basis in the FIFA Statutes to Decide on Sporting Succession

29. YM2 identified two provisions of immediate interest to the resolution of the present dispute:

- Article 24ter (1) of the FIFA Regulations on the Status and Transfer of Players ("RSTP"); and
- Article 15 (4) of the FIFA Disciplinary Code (the "FDC").

While the former provision includes the criteria that are appropriate to decide on sporting succession, the latter explains the legal consequences in case a club has been considered successor to another club that has incurred debts towards third parties. The Panel noted that Article 24ter RSTP had become Article 25 in the 2023 Edition of RSTP and Article 15 (4) had become Article 21 (4) in the 2023 Edition of the FDC.

Additionally, the criteria embedded in Article 25 (1) RSTP to show that sporting succession has occurred, echo verbatim those included in Article 21 (4) FDC. Indeed, throughout the proceedings all Parties to the dispute referred primarily to Article 21 (4) FDC when discussing the criteria for deciding on sporting succession. The Panel thus decided to do the same in its award, noting that it is simply irrelevant to refer to one (Article 21 (4) FDC) or the other (Article 25 (1) RSTP) provision in this respect, as the two provisions include exactly the same indicative list of criteria to assess sporting succession.

(b) The Statutory Criteria Substantiating Sporting Succession

30. YM2 first invoked the standing case law of CAS panels according to which the list of criteria embedded in Article 21 (4) FDC is non-exhaustive. Furthermore, so the argument goes, previous panels have approached questions relating to sporting succession on a case-by-case basis.

31. With this in mind, YM2 went on and assessed the evaluation of the FIFA DISCO regarding the overlap of individual criteria between YM1 and YM2. In what follows, the Panel reproduces the criteria mentioned by YM2 to substantiate its claim that it is not the successor of YM1. Some of them are explicitly reflected in the body of Article 21 (4) FDC, whereas others are not.

32. The claim of YM2 is that both mentioned as well as non-mentioned criteria are relevant as the list of Article 21 (4) FDC has not been treated as exhaustive in past case law. The relevance of criteria explicitly mentioned in the body of Article 21 (4) FDC can be taken for granted. Conversely, the relevance of criteria not explicitly included in the body of Article 21 (4) FDC has to be demonstrated. In the present case, the relevance of criteria not mentioned in the body of Article 21 (4) FDC presented the Panel with no issues at all. The disputing Parties agreed that they were relevant. While the Panel is not bound by similar agreements, it conceded to their relevance as all criteria mentioned during the proceedings can indeed be appropriately taken into account when discussing sporting succession. Past case law as well, had reached the same conclusion.

33. With this in mind, the Panel now presents YM2's views regarding the relevant criteria and their impact on the resolution of the present dispute.

34. *Name of the club*: YM2 argued that the Panel should pay no particular attention to this criterion, as twenty-four clubs in Türkiye included the words "Idman Yurdu" in their name. These two words mean "training center" in Turkish.

35. YM2 had changed its name to include the word "Içel" in 2019 in order to honour the football history of the city. The change occurred in 2019, that is after YM1 had stopped its football operations.

36. In 2022, YM2 changed its name again to "Yeni Mersin Idmam Yurdu AS" for reasons that have nothing to do with the intent to create the public perception that it was "usurping" the identity of YM1. "Mersin" is the name of the city where YM2 is playing football, and it is quite typical of clubs in Türkiye to carry the name of their city of

origin. The acronym "AS" simply denotes the legal nature of the club (joint stock company).

37. Finally, there is a third club called Idman Yurdu 1925 SK, the name of which is clearly closer to that of YM1 for two reasons. First, 1925 is the year when YM1 was incorporated, and hence the inclusion of this element in the name of the club is clear reference to YM1. Second, Idman Yurdu 1925 SK contains some of the trademark rights of YM1. These elements strongly support the conclusion that, if at all, the public perception should be that it is Idman Yurdu 1925 SK that is the sporting successor to YM1.

38. *History of the club*: the history of YM1 is totally distinct from that of YM2. The former has been around since 1925 whereas the advent of YM2 dates from the 1960s. In fact, the two clubs have been overlapping since that day and have been following different pathways that simply have never met.

39. *Public Perception*: YM2 refutes the allegation that the public perception has been that it has emerged as the successor to YM1. In fact, this has never been the case and the reactions of the public itself in Mersin is the best testimony to this effect.

40. When YM1 was about to exit the football scene altogether, a group of its most dedicated fans, the Red Devils, overtook the management of the club in order to avert its waning into non-existence. The fact that the Red Devils went public stating that they would not be supporting YM2 is, in the YM2's view, the most adequate evidence to the effect that the public has not perceived it as the successor of YM1.

41. *Public Pressure*: this is closely related to the aforementioned criterion. YM2 claimed that the people in Mersin wanted to have a successful club in their city, following the years of topflight football that they had enjoyed with YM1. It is public pressure that pushed YM2 towards changing its name (and adopt the name "Mersin" in the title), and not the autonomous decision of the club aiming to create the public perception that it was in fact the successor to YM1.

42. *Corporate identity and Registered address*: YM1 and YM2 share neither corporate identity nor (corporate) address. While YM1 is an association, YM2 is a joint stock company. The two clubs are headquartered in different parts of Mersin. Accordingly, confusion between the two clubs is impossible if based on these criteria.

43. *Team colours*: YM2 does not deny that the two teams wear on occasion the same colours but qualifies the relevance and materiality of this observation in two ways. First, red and blue are the colours of the city of Mersin. Consequently, sharing the same colours is not attempt to influence public perceptions in a particular way, but quite simply the direct consequence of the fact that the two clubs ply their trade in the same city. Second, the overlap is occasional. YM2 has been wearing shirts of different colours, and recently added a new away kit which does not include either the red or the blue colour.

44. *Logo*: YM2 has claimed that the Panel should not pay much heed to this criterion either. The two clubs have repeatedly changed their logos a few times and will undoubtedly

continue to do so in the future. Furthermore, the logos reflect the colours blue and red, which, as already explained above, are the colours of the city of Mersin. Hence, the similarity is not the result of a deliberate attempt to create a certain public perception, but simply the reflection of the fact that the two clubs chose to represent the colours of their city in their respective logos.

45. *Overlapping players*: YM2 accepts that there are overlapping players between the two clubs, but this is yet another minor element to base an assessment of sporting succession upon. 23 amateur players have moved from YM1 to YM2, but many of them have played in different clubs in the city of Mersin. Amateur players usually stay within the same city, and anyway their overall number is 23 out of 141 players in the books of YM2.

46. *Management and Administrative staff*: no member of the administrative staff of YM1 has moved to YM2. As to management, three individuals (Mr Sabri Tekli; Mr Besir Acar; and Mr Mehmet Hanifi Isic) were members of the association until 2019-2020. The YM1 President, was also a member of the Board for YM2 only during the 2020-2021 season. Nevertheless, YM2 is a joint stock company. Only Mr Metin Seltik, and Mr Serdard Seltik have acted as managers of YM2, and none of them was member of the management for YM1.

47. *Stadium*: the stadium where both YM1 and YM2 play does not belong to YM1. It was built in 2013 in anticipation of the Mediterranean games. Besides, the next available stadium is approximately 45 kilometres further away from the headquarters of YM2, so from a pure logistics perspective it makes good sense to have shared the same stadium with YM1.

48. The analysis above led YM2 to conclude that FIFA's assessment that the two clubs shared seven criteria should be revised downwards. They in fact shared only one in YM2's view, the name. And as already explained, there was a very good reason why this was the case. At any rate, the decision to change the name was not germane to an attempt to create a certain public perception of succession.

49. Furthermore, YM2 brought to the attention of the Panel all relevant case law according to which a hierarchy across the various relevant criteria had been established. Previous panels had distinguished between important, relevant and minor criteria. They, thus, drove a wedge between the relevance and the materiality of criteria employed to assess sporting succession.

50. Under "important", previous panels had classified the founding year of the original club, its sporting achievements, the category of competition where the original and the successor club played, ownership and management of the original and successor club, the identity of the President for the original and the successor club, as well as the number of overlapping players. YM2 concluded that YM2 shared none of these important criteria with YM1.

51. The overall conclusion thus that YM2 drew from the analysis above was that the Panel could not reach the conclusion that sporting succession had indeed occurred (from YM1

to YM2) by considering the criteria embedded in Article 21 (4) FDC and/or other relevant criteria that past case law had employed to reach similar conclusions. YM2 was, in this line of reasoning, unrelated to YM1.

(c) The Severity of Sanctions Imposed

52. YM2 claimed that the monetary fine imposed against it was plainly unfair. This had been the first instance that the FIFA bodies had taken a case against YM2, as fines had been usually imposed against recalcitrant entities. YM2 could hardly be accused for being recalcitrant, as it was unaware that it would be considered the successor to YM1 until the Appealed Decision was issued. Mr Bueno had initiated his initial complaints against YM1 and only turned against YM2 in his last attempt before the FIFA bodies to secure payment of the sums that he had been entitled to.

53. Imposing a monetary fine against a club which was found to be at fault only once was thus, a disproportional measure.

(d) The Appropriate Standard of Review

54. Past case law to which YM2 referred to extensively in its pleadings suggested that sporting succession has been pronounced in quite restrictive way. Past case law, in other words, leaves no doubt that panels have not approached the issue of sporting succession in liberal manner.

55. Consequently, YM2 requested from the Panel to adopt the same standard of review when applying its legal reasoning to the facts of the present case.

(e) Overall conclusion

56. For all the reasons explained above, YM2 requests from the Panel:

" *1. to accept this Appeal Brief against the Decision.*

2. to annul the Decision and issue an award determining that the Appellant is not the sporting successor of the Original Club and, therefore, not liable for the debts incurred by the Original Club towards the Player, not subject to Art. 21 FDC, and there should be no fine and transfer ban against the Appellant.

3. to determine any other relief the Panel may deem appropriate.

4. to fix a sum to be paid by the Respondents, in order to contribute to the payment of the Appellants legal fees and costs in the amount of CHF 20,000.00/- (twenty thousand Swiss francs); and

5. to condemn the Respondents to the payment of the whole CAS administration costs and arbitrator fees."

B. The First Respondent

57. Mr Bueno, the First Respondent, dismisses the quintessential claim of YM2 to the effect that it does not represent the successor of YM1. The heart of the argument presented by

Mr Bueno relies on an analysis one by one of the criteria that YM2 also employed to demonstrate that it is not the sporting successor of YM1. Contrary to YM2 though, Mr Bueno reaches the opposite conclusion.

58. More specifically, Mr Bueno finds that YM1 and YM2 share 8/16 employed criteria, namely, name, history, colours, logo, stadium, management, players, and public perception. Mr Bueno also finds that the remaining criteria do not rebut the public perception that the eight overlapping criteria have established.

59. Mr Bueno and YM2 agree that the name is a criterion that YM1 and YM2 share. This is where similarities in the argument presented stop. Mr Bueno dismisses the analysis presented by YM2 with respect to all other criteria, and more precisely:

- the history of the two clubs (YM1, YM2) is the same, and the proof is that YM2 has been celebrating various birthdays of YM1;

- the colours are the same, and all YM2 has advanced as argument in this respect is to justify why this has been the case. YM2 nevertheless, did not deny that the colours are indeed identical;

- the logos of the two clubs have indeed changed over time. YM2 nonetheless, has not explained at all why it chose to revert to a logo that YM1 had used in the 1970s;

- the stadium is the same for the two clubs, and YM2 once simply justified it as an economically justifiable choice without denying that indeed it had been using the same stadium as YM1 did;

- the situation regarding management is not exactly what YM2 has presented before the Panel. Four key figures from YM1, namely Mr Sabri Tekli, Mr Besir Acar and Mr Sevket Varan (who took over the presidency of YM2), moved from YM1 to YM2 immediately after the former ended its activities, which is more than enough evidence to prove sporting succession.;

- the fact that 23 players have plied their trade with both clubs is not a minor observation, and/or of secondary order of importance. It is a sizeable volume of players that moved from YM1 to YM2 showing thus the strong links between the two clubs;

- finally, YM2 misrepresented the situation regarding public perceptions. In its view, it is well-known in football circles that the current President of YM2 has established strong links with the fans of YM1.

60. Consequently, Mr Bueno claims that 8/16 relevant criteria support the conclusion that YM2 is the sporting successor to YM1. The remaining criteria do not suffice to undo this image.

61. The Panel notes that in his Answer, Mr Bueno also claimed that YM1 and YM2 had "merged". Nevertheless, it was unclear whether Mr Bueno meant an actual commercial merger. In fact, Mr Bueno did not submit any information from the relevant commercial registry in Türkiye, and but only submitted journal articles to this effect.

62. According to Mr Bueno, and pursuant to Article 10 (1) c FDC, "*the statute of limitation to persecute infringements is subject for claims up to five (5) years as from the event giving rise to the dispute*. […] *In light of the particularities of the case at hand, it is essential to clarify that the event giving rise to the dispute occurred on 05 August 2022, i.e. the day when the Appellant changed its name to Yeni Mersin Idman Yurdu and consequently, the Player become aware of the sporting succession*." Based on the foregoing, Mr Bueno denies that the limitation period for prosecuting YM2 was time-barred when he brought the matter before the FIFA DISCO on 8 September 2023.

63. In conclusion, Mr Bueno claims that YM2 is the sporting successor of YM1. As a result, there are concrete legal consequences stemming from this finding. Mr Bueno, hence, requests from the Panel

> "[…] *to admit this Answer and enact an Award upholding the DRC and the DisCo Decision in their entirety, condemning the Appellant to pay to the Player:*
>
> > *(i) EUR 29,097 as outstanding remuneration plus 5% interest p.a. as from 04 October 2015.*
> >
> > […] *Finally, given the ludicrous nature of the Appeal, the Panel shall condemn the Appellant to support all costs associated with this dispute and fix the sum of at least CHF15,000 to be paid by the Appellant to contribute towards the Player's legal fees and costs.*"

C. The Second Respondent

64. FIFA, the Second Respondent, claims that there are glaring similarities between YM1 and YM2, and the only, inescapable indeed, conclusion is that the latter is the sporting successor of the former.

65. To substantiate its claim, FIFA has divided its arguments into:

(a) The objective function of sporting succession, that is, the *raison d'être* of this legal institution;

(b) How does the overarching idea apply to the specific facts of the present case.

66. In FIFA's view, when discussing sporting succession what matters most is public perceptions. In this vein, to decide whether a club is the sporting successor of another club the key criterion is the "intention to be seen by the general public as the same original club that ceased its activities" (§39 of the Appeal Brief).

67. When applying this benchmark to the facts of the case, the conclusion is that YM2 is the sporting successor of YM1, because:

- the name creates the public perception of succession as there are only two professional clubs sharing the name "Idman Yurdu". Confusion thus with the many other amateur clubs that include this name in their official title is highly unlikely;

- the colours of YM1 and YM2 are identical. The fact that YM2 changed its original black and white colours to red and blue is further indication of its intent to be perceived as the successor to YM1;

- the logos of the two clubs are almost identical as they both share the same colours and the same shape;

- sharing the stadium further corroborates the initial perception of succession. Other clubs from the same region play elsewhere and only YM2 plays its games in the same stadium where YM1 used to play;

- 5/6 of the original Board of YM2 had previously been Board members for YM1 underscoring thus a perception of continuity across the two clubs;

- 23 players have played for both clubs, a sizeable amount was one to take into account the overall number of players currently employed by YM2;

- finally, the public perception that YM2 is the sporting successor of YM1 has been boosted by the frequent celebrations of historical moments of YM1.

68. Paying heed to the analysis above, should lead the Panel towards:

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

(b) confirming the Appealed Decision;

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

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

V. JURISDICTION

69. The jurisdiction of the CAS, which is not disputed by the Parties, derives from Article R47 of the Code and Article 56 (1) of the FIFA Statutes in connection with Article 52 of the FDC.

70. Article R47 of the Code provides:

> "*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."

71. Article 56 (1) of the FIFA Statutes states:

"*FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, Members, Confederations, Leagues, Clubs, Players, Officials and licensed match agents and Players' agents*."

72. Article 57 (1) of the FIFA Statutes states:

"*Appeals against final decisions passed by FIFA and its bodies shall be lodged with CAS within 21 days of receipt of the decision in question*".

73. Article 52 of the FDC states:

"*Decisions passed by the Disciplinary and Appeal Committees may be appealed against before CAS, subject to the provisions of this Code and articles 56 and 57 of the FIFA Statutes*."

74. The present appeal is directed against a final decision of the FIFA DISCO, hence CAS has jurisdiction to adjudicate it.

75. The jurisdiction of the Panel to adjudicate the instant dispute is further corroborated by two additional factors:

(a) All disputing Parties signed the Order of Procedure; and

(b) None of them raised any issues regarding the Panel's jurisdiction during the hearing (*forum prorogatum*, prorogated jurisdiction)

76. According to Article R57 of the Code, the Panel has full power to review the facts and the law of the case and can even decide the dispute *de novo*. When doing that, the Panel

- may issue a new decision which replaces the decision challenged; or
- it may annul the appealed decision; or
- it may refer the case back to the previous instance (the FIFA Disciplinary Committee).

VI. ADMISSIBILITY

77. In accordance with Article 57 (1) of the FIFA Statutes:

"*appeals against final decisions passed by FIFA's legal bodies […] shall be lodged*

with CAS within 21 days of notification of the decision in question."

78. The Appealed Decision was notified to the Appellant, with grounds, on 11 December 2023. The Statement of Appeal was filed on 26 December 2023, within the statutorily permissible 21 days. To put this point to rest, the Respondents did not raise any claim to the effect that the appeal was inadmissible, neither in their written pleadings, nor during the hearing before the Panel. The appeal is thus admissible.

VII. APPLICABLE LAW

79. There is no disagreement between the Parties regarding the applicable law in this dispute. They all three agree that the present dispute should be adjudicated principally within the four corners of the FIFA regulations, and more precisely, the FDC, and the RSTP. Recourse to Swiss law should be made, only to the extent warranted.

80. The FIFA DISCO that issued the Appealed Decision had to adjudicate the dispute before it, observing Article 5 of the FDC:

> "*The FIFA judicial bodies base their decisions: a) primarily, on the FIFA Statutes as well as FIFA's regulations, circulars, directives and decisions, and the Laws of the Game; and b) subsidiarily, on Swiss law and any other law that the competent judicial body deems applicable*."

81. Finally, Article 56 (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*."

82. The Panel sees no reason to deviate from the above, as none of the Parties claimed the applicability of another body of law in the instant dispute.

83. In light of the above, the Panel decided that, in order to resolve this dispute, it would have recourse to the relevant FIFA regulations, and accessorily to Swiss law, to the extent of course, necessary. There is thus an ordinal relationship between the, in principle, sources of (applicable) law:

- The Panel would first attempt to resolve the dispute by reference to the relevant FIFA regulations; and,
- Only to the extent necessary, it would have recourse to Swiss law.

The legal consequence is that the two bodies of law are not *pari passu* (on equal footing). To the extent of conflict between them, it is the FIFA regulations that prevail. This feature is particularly relevant in the realm of the present dispute as Article 21 (4) FDC and Swiss law do not see eye to eye when it comes to succession: sporting succession is regulated in a manner alien to the regulation of succession of economic agents under Swiss law.

84. The relevant FIFA regulation is the FDC. With regard to the question of which edition of the FDC shall apply, the Panel concludes that the FDC 2023 edition is applicable. The failure to comply with the Appealed Decision was certainly committed after 1 February 2023, the date that is of the entry into force of the 2023 Edition of the FDC.

VIII. MERITS

85. As a preliminary issue, the Panel decided to examine whether the Player's claim had been time-barred at the moment that the Player had submitted it to the FIFA DISCO on 8 September 2023. If the correct response is in the affirmative, then the Player's claim should have been rejected right away. Had it been rejected, there would have been no matter to discuss before this Panel.

86. The Panel noted that YM2 had presented no claim to the effect that the Player's claim had been time-barred. Nevertheless, it is the Panel's view that it has the prerogative to decide this issue *ex officio*. Indeed, the Panel's competence to adjudicate the present dispute is in function of its assessment that claims have been properly submitted before it (*Kompetenz Komepetenz*).

87. A number of international courts have addressed this issue and have come to the conclusion that they can indeed decide *ex officio* whether a claim is properly before them.

88. In William Ralph Clayton and Others v. Government of Canada (PCA Case no 2009-04), the Arbitral Tribunal echoing the International Court of Justice in the Fisheries Jurisdiction case reached this conclusion (§§341 et seq.). In Romak v Uzbekistan (award of 26 November 1999), the Arbitral Tribunal reached the same conclusion by referencing Article 21.1 of the UNCITRAL Rules (§§165 et seq.). And in Azurix v. Argentina (Decision of 1 September 2009), the Arbitral Tribunal confirmed this view, by basing its findings on Article 41.1 of the ICSID Convention (§§90 *et seq*.). It is thus, well-established in arbitration practice that Arbitral Tribunals possess the authority to decide similar issues ex officio.

89. It should also be noted that, in his Answer, the Player expressed his position on the question of whether his claim was time-barred, thus further justifying the Panel's consideration of this issue.

90. With this in mind, the Panel proceeded to examine whether the Player's claim had been time-barred. The legal basis for assessing the validity of this claim is, in the Panel's view, Article 10 of the FDC (2023 Edition). The Panel noted that the previous editions (the 2017 edition included) reflected the same text, which pertinently reads:

> *1. Infringements may no longer be prosecuted in accordance with the following periods:*
>
> *a) two years for infringements committed during a match;*

b) ten years for anti-doping rule violations (as defined in the FIFA Anti-Doping Regulations), infringements relating to international transfers involving minors, and match manipulation;

c) five years for all other offences.

2. The limitation period runs as follows:

a) from the day on which the perpetrator committed the infringement;

b) if the infringement is recurrent, from the day on which the most recent infringement was committed;

c) if the infringement lasted for a certain period, from the day on which it ended;

d) from the day on which the decision of the Dispute Resolution Chamber, the FIFA Players' Status Committee or the Court of Arbitration for Sport (CAS) becomes final and binding.

3. The limitation periods set out above are interrupted by all procedural acts, starting afresh with each interruption.

91. The Panel proceeded to assess the relevant facts in the present case against this background. On 3 September 2015, the Original DRC Decision was rendered. The FIFA DISCO issued its First FIFA DISCO Decision on 6 May 2017, which was notified to the relevant parties on 1 November 2017. At that time, and by virtue of Article 10 (3) FDC, the 5-year limitation period started to run again.

92. The Player submitted its claim to the FIFA body against YM2 on 8 September 2023. This is more than five years after the First FIFA DISCO Decision had been issued, and hence the claim of the Player must be rejected: the decision was notified on 1 November 2017, and became binding on 23 November 2017, that is, twenty-one days after its notification since no appeal against it was ever lodged. The Player submitted his claim to the FIFA body on 8 September 2023, that is, more than five years after the issuance of the First FIFA DISCO Decision.

93. The Panel was led to this finding through a combined reading of Article 10 (1) c and 10 (2) d of the above-referenced provision.

94. For the Player to be right in arguing that his claim was not time-barred (and for the FIFA body to have lawfully entertained it) he would have to point to a procedural act interrupting the statutory deadline of five years. He pointed to none.

95. The Panel further entertained the argument whether the Player could have profited from the letter of the preceding paragraphs, namely, Articles 10 (2) a, 10 (2) b, or 10 (2) c of the FDC. For this to have been the case, the Player should have pointed to "an infringement" beyond the non-payment of his original claim. He pointed to none. Furthermore, the reading of Article 21 of the FDC does not lend to the view that sporting succession is an additional infringement. Successors simply are obliged to incur the debt

accumulated by the clubs that they have succeeded to once there has been an assessment by FIFA that the club is a sporting successor.

96. In other words, to acknowledge a team as successor, FIFA has to be first asked to assess the facts. Then, based on the relevant facts before it, the competent FIFA body will make a determination to the effect that the new club is the successor of the old club, or not. But under no circumstances is there infringement of a rule prior to that assessment. Under Article 21(4) of the FDC, the new club only becomes non-compliant when the assessment has taken place and the final conclusion is that we are indeed in presence of sporting succession. There is no backdating it to when the succession took place.

97. The limitation period is five years and Article 10 (1) c of the FDC) reads as follows: "*The limitation period runs from the day on which the decision of the Dispute Resolution Chamber, the Players' Status Committee of the Court of Arbitration for Sport (CAS) becomes final and binding*". This provision does not mention decisions issued by the FIFA DISCO, like the one before this Panel. Nevertheless, the limitation period of five years started to run from the notification of the Original DRC Decision, that is, on 26 January 2016. In the best-case scenario, provided that the Panel accepts that this limitation period can be interrupted, this five-year period was interrupted by the First FIFA DISCO Decision. It then started to run again from the date of notification of this latter (the "First FIFA DISCO") decision. The Original DRC Decision was notified on 26 January 2016. At that moment, the five-year limitation period started running as per Article 10 (2) d of the FDC. The limitation period was interrupted by the First FIFA DISCO Decision which was issued on 6 May 2017 and notified (grounds) on 1 November 2017. It is undeniable that more than five years had elapsed since the last procedural act, that is, the notification of the First FIFA DISCO Decision notified on 1 November 2017, at the time the claim was raised. Consequently, the claim is time-barred. In the present case, on 8 September 2023, when the Player filed a new complaint against YM2 with the FIFA DISCO, more than five years had elapsed since the last procedural act; *i.e*. the notification of the First FIFA DISCO Decision on 1 November 2017 (see Article 10 (3) FDC). Under these circumstances, on 8 September 2023, the FIFA DISCO could not have been asked to assess the facts and make a determination that the New Club is the sporting successor of the Old Club. Without such an assessment, there is no infringement committed by the New Club. As a matter of fact, if non-compliance only occurs after an assessment by the FDC, then, in the Panel's view, prior infringements (and the ensuing non-compliance) does not concern the successor club. The prior infringements must be imputed exclusively on the old club. This construction though of the provision would fly against the letter and the spirit of sport succession.

98. Consequently, in the Panel's view, the only rational construction of the provision [Article 10 (2) of the FDC] is to concede that the five-year period is running from the date when the final decision has become binding.

99. In light of the above, the Panel decided that the FIFA bodies should not have entertained the Player's complaint lodged on 8 September 2023 (and, consequently, they should not have issued the Appealed Decision). On these grounds, the Appealed Decision is annulled, and the appeal lodged by YM2 is upheld.

100. In light of its conclusion above, the Panel did not deem it necessary to assess the remaining claims and arguments.

IX. CONCLUSION

101. In conclusion, the Panel upholds the appeal and the Appealed Decision is set aside.

X. COSTS

(…)

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ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 26 December 2023 by Yeni Mersin Idman Yurdu A.S. against the decision of the FIFA Disciplinary Committed issued on 9 November 2023 is upheld.

2. The decision issued by the FIFA Disciplinary Committee on 9 November 2023 is set aside.

3. (…).

4. (…).

5. Danilo Petrolli Bueno and the Fédération Internationale de Football Association shall bear their legal costs and other expenses incurred by these arbitral proceedings.

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

Seat of arbitration: Lausanne, Switzerland
Date: 28 May 2025

THE COURT OF ARBITRATION FOR SPORT

Petros C. Mavroidis
President of the Panel

Patrick Grandjean
Arbitrator

Mark A. Hovell
Arbitrator