



TAS / CAS

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

CAS 2024/A/10609 Alanyaspor Kulübü v. Davidson da Luiz Pereira & FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Fabio Iudica, Attorney-at-Law in Milan, Italy

in the arbitration between

Alanyaspor Kulübü, Alanya, Turkey

Represented by Mr Sami Dinç, Attorney-at-law, Istanbul, Turkey

- Appellant -

and

Davidson da Luz Pereira, São Paulo, Brazil

Represented by Mr Breno Costa Ramos Tannuri and Mr Andre Oliveira de Meira Ribeiro,
Attorneys-at-law at Tannuri Ribeiro Advogados, São Paulo, Brazil

- First Respondent -

and

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

Represented by Mr Miguel Liétard, FIFA Litigation Department

- Second Respondent -

I. INTRODUCTION

This appeal is brought by Alanyaspor Kulübü, against the decision rendered by the FIFA Disciplinary Committee on 4 April 2024 regarding a breach of Art. 21 of the FIFA Disciplinary Code committed by Alanyaspor Kulübü for failing to respect a CAS award.

II. THE PARTIES

1. Alanyaspor Kulübü (the “Appellant” or the “Club”) is a professional football club based in Alanya, Turkey, affiliated to the Turkish Football Federation (the “TFF”) which in turn is affiliated with FIFA.
2. Mr Davidson da Luz Pereira (the “First Respondent” or the “Player”) is a professional football Player of Brazilian nationality.
3. FIFA (also, the “Second Respondent”) is the international governing body of football worldwide. It is an association under Articles 60 ss. of the Swiss Civil Code, with headquarter in Zürich, Switzerland; The Appellant and the Respondents are jointly referred to as the “Parties”.

III. FACTUAL AND PROCEDURAL BACKGROUND

4. Below is a summary of the main relevant facts and allegations based on the Parties’ written and oral submissions, and the evidence examined in the course of the proceedings. Additional facts and allegations may be set out, where relevant, in connection with the further legal discussion. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in the Award only to the submissions and evidence he considers necessary to explain its reasoning.

Brief summary of the early factual background

5. The earliest beginnings of the present dispute are to be found in the agreement on the early termination of an employment contract between the Player and the Club based on the “Protocol” signed on 14 February 2022 (the “Termination Agreement”). Under the Termination Agreement, the Player had waived some outstanding salaries which had accrued at that time and also undertook to pay a compensation to the Club for the early termination of the employment contract.

Procedural background

6. On 8 September 2022, given that the Player had only made a partial payment of the total amount due to the Club as compensation under the Termination Agreement, the Club lodged a claim with the FIFA DRC requesting that the Player be ordered to fully comply with the payment obligations deriving from the Termination Agreement. In the proceedings before the FIFA DRC, the main issue concerned the validity of the Termination Agreement, which was disputed by the Player. In its decision rendered on 23 February 2023 (the “FIFA DRC Decision”), following the exchange of the parties’ written submissions, the FIFA DRC finally established the validity of the Termination Agreement, rejecting the Player’s objections and ordering the latter to pay the contested sums to the Club. The grounds of the FIFA DRC Decision were issued on 24 March 2023.
7. On 14 April 2023, the Player lodged an appeal with the CAS against the Club, requesting the CAS to set aside the FIFA DRC Decision.
8. On 26 January 2024, the CAS rendered its award in the above-mentioned case CAS 2023/A/9574 (the “CAS Award”). In overturning the FIFA DRC Decision, the relevant CAS ruling established that the Player’s waiver as well as the obligation undertaken by the latter to pay a compensation to the Club for early termination of the employment contract were inadmissible under the applicable law. Consequently, the Club was ordered to pay to the Player the amount of EUR 296,000 corresponding to his outstanding salaries as well as to reimburse the amounts already paid by the Player to the Club under the Termination Agreement.
9. The operative part of the CAS Award reads as follows:
 - “1. *The appeal filed by Davidson Da Luiz Pereira against the decision rendered on 23 February 2023 by the FIFA Dispute Resolution Chamber is upheld.*
 2. *The decision rendered by the FIFA Dispute Resolution Chamber on 23 February 2023 is set aside.*
 3. *Alanyaspor Kulübü Derneği is ordered to pay to Davidson Da Luz Pereira the following amounts:*
 - *EUR 296,000 plus annual interest of 5% as from 15 February 2022;*
 - *EUR 20,000 plus annual interest of 5% as from 03 September 2022;*
 - *EUR 20,000 plus annual interest of 5% as from 07 September 2022;*

- *EUR 10,000 plus annual interest of 5% as from 10 September 2022.*
 - 4. *The costs of the arbitration, to be determined and served to the parties by the CAS Court Office, shall be borne by Alanyaspor Kulübü Derneği*
 - 5. *Alanyaspor Kulübü Derneği is ordered to pay to Davidson Da Luz Pereira the amount of CHF 4,000 (four thousand Swiss Francs) as a contribution towards its legal costs and expenses incurred in connection with the present arbitration proceedings.*
 - 6. *All other prayers for relief are dismissed”.*
10. By e-mail dated 7 February 2024, the Player formally requested the Club to make the relevant payment in accordance with the CAS Award and provided the Club with his bank account details. The Player also informed the Club that in case of failure to make the relevant payment within 45 days of the issuance of the CAS Award, he would commence an enforcement proceeding against the Club before the FIFA Disciplinary Committee.
11. On 27 February 2024, the Club lodged an appeal before the Swiss Federal Tribunal against the CAS Award, requesting that the relevant decision be annulled on the grounds of incompatibility with public policy in accordance with Art. 190 para 2, lit. e of the Swiss Federal Act on Private International Law (“PILA”). The case was registered under 4A_134/2024. In this context, the Club did not file any specific request to stay the execution of the CAS Award. The Player also filed his written submissions in the proceedings before the Swiss Federal Court requesting to dismiss the appeal lodged by the Club against the CAS Award.
12. On 12 March 2024, the Player informed FIFA that the Club had failed to comply with the payment order under the CAS Award and therefore requested the initiation of disciplinary proceedings against the Club in accordance with Art. 21 of the FIFA Disciplinary Code (the “FIFA DC”).

The FIFA Disciplinary Proceedings and the Appealed Decision

13. On 13 March 2024, FIFA notified the Club of the opening of disciplinary proceedings against the latter for failing to comply with the CAS Award, thus constituting a potential breach of Art. 21 of the FIFA Disciplinary Code. In this context, and in accordance with Art. 58 in conjunction with Art. 1 of the FIFA DC, the Secretariat to the FIFA Disciplinary Committee proposed the Club the application of the following sanction on the basis of the existing file:

“1. The Respondent, Alanyaspor, shall pay to Mr Davidson da Luz Pereira (the Creditor)

as follows:

- *EUR 296,000, plus annual interest of 5% as from 15 February 2022.*
- *EUR 20,000, plus annual interest of 5% as from 03 September 2022.*
- *EUR 20,000, plus annual interest of 5% as from 07 September 2022.*
- *EUR 10,000, plus annual interest of 5% as from 10 September 2022.*

*2. The Respondent is **granted a final deadline of 30 days** as from the present proposal becoming final and binding in which to pay the amount(s) 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.*

*3. The Respondent **shall pay a fine to the amount of CHF 20,000**".*

14. Furthermore, in accordance with Art. 58 of the FIFA DC, the Secretariat informed the Club that it had the right to reject the said proposal and submit its position before the Disciplinary Committee, in which case, regular disciplinary proceedings would be initiated.
15. Also on 13 March 2024, the Club rejected the proposal of the FIFA Secretariat and on 25 March 2023, submitted its position based on the following arguments:

*"First of all, we would like to state that an Annulment Case before the Swiss Federal Court has been filed by Alanyaspor Kulübü in order for the annulment of the CAS Arbitral Award subject to this file on the grounds of violation of Swiss Public Order. The proceedings still continue before the Swiss Federal Court. Please find attached the letter of Swiss Federal Court dated 29.02.2024 (**Annex**) in this regard.*

*In this context, since the dispute in regards to this file is pending before the Swiss Federal Court, it is clear that the CAS Arbitral Award is not final and the ongoing proceedings before the Swiss Federal Court should be considered as a "**preliminary issue**" and the decision of the Swiss Federal Court should be awaited".*

16. Also on 25 March 2024, the FIFA Secretariat informed the parties that the present matter would be referred to the FIFA Disciplinary Committee for consideration and decision.
17. On 4 April 2024, the FIFA Disciplinary Committee rendered its decision in the disciplinary proceedings (FDD-17959) (the "Appealed Decision"). The operative part of the Appealed Decision reads as follows:

"1. Alanyaspor is found responsible for failing to comply in full with the award issued by the Court of Arbitration for Sport on 26 January 2024 (Ref. CAS 2023/A/9574).

2. Alanyaspor is ordered to pay to Mr. Davidson Da Luz Pereira as follows:

- *EUR 296,000 plus annual interest of 5% as from 15 February 2022;*
- *EUR 20,000 plus annual interest of 5% as from 03 September 2022;*
- *EUR 20,000 plus annual interest of 5% as from 07 September 2022;*
- *EUR 10,000 plus annual interest of 5% as from 10 September 2022;*
- *CHF 4,000 as contribution towards the legal costs and expenses incurred in connection*

3. Alanyaspor is granted a final deadline of 30 days as from notification of the present decision in which to pay the amount(s) 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.

4. Alanyaspor is ordered to pay a fine to the amount of CHF 20,000.

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

18. On 1 July 2024, the Swiss Federal Court dismissed the appeal lodged by the Club against the CAS Award in the proceedings 4A_134/2024.

IV. SUMMARY OF THE APPEALED DECISION

19. Firstly, the Committee considered that it was competent to decide the present case, on the basis of Articles 56 and 57 of the FIFA DC and to impose sanctions in case of corresponding violations. The Committee also stressed that, pursuant to Art. 58 of the FIFA DC, where a party rejects the proposed sanction from the Secretariat, as in the present case, the matter shall be referred to it for a formal decision to be rendered. As the present case involves matters under Art. 21 of the FIFA DC, it may be adjudicated by a single member of the Committee, as *in casu*.
20. The Committee observed that, in accordance with Art. 51(2) of the FIFA Statutes, the Committee may pronounce the sanctions described in the Statutes and in the FIFA DC on member associations, clubs, officials, players, football agents and match agents.
21. Furthermore, the Committee established that the present case should fall under the 2023 edition of the FIFA DC since the potential failure to comply with the CAS Award was committed by the Club after the entry into force of that edition of the Code.

22. Moreover, the Committee underlined that, equal to the competence of any enforcement authority, it cannot review or modify as to the substance of a previous decision which is final and binding and thus, has become enforceable.
23. As to the merits of the present matter, the Committee observed that it concerned the potential failure to comply with the CAS Award by means of which the Club was ordered to pay certain amounts to the Player.
24. The Committee then considered the position of the Club that the CAS Award could not be considered final and binding due to the appeal lodged with the Swiss Federal Tribunal and that the appeal proceedings should have a suspensive effect on the disciplinary proceedings before FIFA in that it should be treated as a “*preliminary issue*”.
25. In this respect, the Committee referred to Chapter 12 of the Swiss PILA and recalled that, in accordance with Art. 190, an arbitral award can be set aside on certain specific grounds only. Furthermore, the Committee underlined that in accordance with Art. 103(1) of the Federal Supreme Court Act (Bundesgerichtsgesetz or “BGG”) the filing of an action to set aside a CAS award does not automatically suspend the enforcement of said award, although a party may request a stay of the enforcement by seeking to obtain an order granting suspensive effect pursuant to Art. 103(3) BGG. However, the Disciplinary Committee emphasized that there was no indication that the Club had submitted such a request in the present case.
26. As a consequence, the Committee found no basis upon which to justify the closure or suspension of the disciplinary proceedings against the Club. Therefore, the arguments put forward by the Club were not deemed sufficient to justify its non-compliance with the CAS Award. As the Club did not provide any proof of payment to the Player, nor did the latter confirm having received any of the outstanding amounts, the Committee concluded that the Club had failed to pay the Player the amounts due to him in accordance with the CAS Award. The Club was therefore in breach of Art. 21 of the FIFA DC and had to be sanctioned for the said violation.
27. With regard to the determination of the sanction, the Committee first observed that, given that the Club is a legal person, it was subject to the sanctions described under Articles 6(1) and 6(3) of the FIFA DC and that, on the other hand, Art. 21 foresees specific sanctions in case of failure to pay someone a sum of money in full or in part, even though instructed to do so by a body, a committee, a subsidiary or an instance of FIFA or a CAS decision.

28. In respect to the fine to be imposed, the Committee recalled that pursuant to Art. 6(4) FIFA DC, such fine shall range between CHF 100.00 and CHF 1,000,000.00 and that Annex 1 to the FIFA DC provides for a list of specific disciplinary measures that may be taken into account in cases concerning failures to respect financial decisions.
29. In view of the above, the Committee finally concluded that in consideration of the circumstances of the present case and taking into account the outstanding amounts due in light of the said Annex 1, a fine amounting to CHF 20,000.00 was appropriate.
30. In application of Art. 21(1)(b) FIFA DC, the Club was granted a final deadline of 30 days in order to pay the amounts due to the Player and, pursuant to Art. 21(1)(d) FIFA DC, the Club was also warned that in case of default within the stipulated deadline, a registration ban would be automatically imposed until the due amounts are paid (and a further deduction of points or relegation to a lower division may also be ordered later on, in addition to the registration ban in case of persistent failure)

V. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

31. On 23 May 2024, the Club filed a Statement of Appeal with the Court of Arbitration for Sport (the “CAS”) in accordance with Article R48 of the Code of Sports-related Arbitration (2023 edition) (the “CAS Code”) against the Player and FIFA with respect to the Appealed Decision. The Appellant requested that the present dispute be submitted to a sole arbitrator. The Respondents agreed to submit this matter to a Sole Arbitrator.
32. On 14 June 2024, within an extended time limit, the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code.
33. On 30 July 2024, the CAS Court Office informed the Parties that Mr Fabio Iudica, attorney-at-law in Milan, Italy, had been appointed as a sole arbitrator in the present case.
34. On 27 and 29 August 2024, within an extended time limit, the Respondents filed their respective Answers in accordance with Article R55 of the CAS Code.
35. On 17 September 2024, after having consulted the Parties, the CAS Court Office informed them that the Sole Arbitrator had decided to hold a hearing in this matter.
36. On 3 October 2024, the CAS Court Office forwarded the Order of Procedure to the Parties which was duly signed by the Parties without any reservation.

37. On 31 October 2024, a hearing took place in the present case, by videoconference. In addition to the Sole Arbitrator and Mr Antonio de Quesada, Head of Arbitration, the following persons attended the hearing:

For the Appellant:

➤ Mr Sami Dinç and Mr Emirhan Çeviker, Legal Counsels;

For the First Respondent:

➤ Mr Breno Costa Tannuri and Mr Pedro Vasconcelos Botelho, Legal Counsels

For the Second Respondent:

➤ Mr Roberto Nájera, Legal Counsel

38. At the outset of the hearing, the Parties confirmed that they had no objection to the constitution and appointment of the Sole Arbitrator, nor to the jurisdiction of the CAS. The Parties confirmed the arguments already presented in their respective written submissions. Before the hearing was concluded, the Parties expressly stated that they did not have any objection to the procedure adopted by the Sole Arbitrator and that their rights to be heard and to be treated equally had been duly respected.

VI. SUBMISSIONS OF THE PARTIES

39. The following outline is a summary of the main positions of the Parties which the Sole Arbitrator considers relevant to decide the present dispute and does not comprise each and every contention put forward by the Parties. However, the Parties' written and oral submissions, documentary evidence and the content of the Appealed Decision were all taken into consideration.

A. The Appellant's submissions and requests for relief

40. In its Appeal Brief, the Club submitted the following request for relief:

“1- To accept this appeal against the decision of the FIFA Disciplinary Committee.

2- To cancel the Decision of FIFA Disciplinary Committee, with reference number of FDD-17959, mentioned in the B/2 section of this Appeal Brief.

3- To make a decision that the judicial costs and the attorney fees that the Appellant is faced with shall be paid by the Respondents”.

41. The Club's appeal is based on the arguments and legal submissions which are summarized below.

With regards to the main facts in relation to the early termination of the employment contract between the Club and the Player:

42. According to the Termination Agreement, the Player undertook to pay to the Club the amount of EUR 496,000, partly (EUR 296,000) by waiving his due and outstanding receivables and the remaining amount (EUR 200,000) in two equal instalments. However, the Player did not fulfil his payment obligations towards the Club, as he only made two partial payments on 6 and on 7 September 2022, respectively, in the total amount of EUR 39,968.00, plus a further partial payment of EUR 9,986.00 on 13 September 2022, after the commencement of the FIFA proceedings before the DRC at the Club's initiative.
43. As a result, the DRC Decision was correct while the CAS Award does not reflect the reality of the facts and is clearly contrary to the general principle of sports law and therefore the Appellant had to recourse to the Swiss Federal Court for its annulment.
44. The Club rejected the FIFA Secretariat's sanction proposal on the grounds that the appeal lodged before the Swiss Federal Tribunal should be treated as a "*preliminary issue*"; that the CAS Award should not be considered final and binding pending the appeal proceedings before the Swiss court and that the decision of the Swiss Federal Tribunal should be awaited.
45. In such context, the FIFA Disciplinary Committee violated the Appellant's right to a fair trial by rejecting his request to suspend the disciplinary proceedings pending the decision of the Swiss Federal Tribunal and by deciding the case straight away: "*At such a situation, the violation of the Client Club's right to a fair trial is far from justice and break the Club's application to the Swiss Federal Court to correct the erroneous decision taken by the FIFA Disciplinary Committee*".
46. In addition, the sanction imposed by the FIFA Disciplinary Committee is clearly not proportional and should be cancelled.

B. The First Respondent's submissions and requests for relief

47. In his Answer, the First Respondent submitted the following requests for relief:

"FIRST – To issue a preliminary award excluding the Player from the ongoing proceedings, on the grounds of lack of standing to be sued;

Subsidiarily, and only in case the above is rejected

SECOND – To dismiss the appeal filed by the Club and confirm the terms of the Challenged Decision in full;

At any rate

THIRD – To render the operative part of the final award within 4 (four) months as from the closure of the evidentiary proceedings (cf. Art. R59 CAS Code);

FOURTH – To order the Club to bear all costs associated with the present arbitration;

and

FIFTH – To order the Club to pay a contribution towards the legal fees, costs and expenses incurred by the Player in the amount of at least CHF 5,000 (five thousand Swiss francs).”

48. The following is a summary of the Respondent’s arguments:

With regard to the factual background

49. During the term of the employment contract, the Club had repeatedly failed to comply with its financial obligations toward the Player, forcing the Player to put the Club in default several times.
50. The Player was pressured to sign the Termination Agreement under which he accepted unfair conditions of early termination in order to obtain the Club’s consent to his transfer to another Club. He also initially made some partial payments to the Club in good faith as he believed he had no legal alternative but to fulfil the financial obligations deriving from the Termination Agreement. He then resorted to legal assistance in order to challenge the validity of the Termination Agreement and seek redress against the Club.

The First Respondent’s lack of standing to be sued in the present proceedings

51. According to legal scholars and CAS jurisprudence, a party is considered to have standing to be sued and may be brought before CAS “*only if something is sought against it*” and if it “*is personally obliged by the disputed right at stake*” and in this respect, the assessment of whether a party to an arbitration proceedings before CAS has standing to be sued is a matter of substance and does not pertain to the admissibility of the relevant claim and shall be made pursuant to substantive law.
52. Following the above principles, according to the well-established jurisprudence of CAS, in disciplinary cases where the matter in dispute relates to the imposition of sanctions

by FIFA, as is the present case, only FIFA is considered to have standing to be sued: *“Under Swiss law, one defending party has standing to be sued (legitimation passive) if it is personally obliged by the disputed right at stake. In other words, one party has standing to be sued and may thus be summoned before the CAS only if it has some take in the dispute because something is sought against it. Only FIFA has standing to be sued with respect to disciplinary sanctions imposed by FIFA on a club”* (CAS 2017/A/5322).

53. Furthermore, in order to determine which party has standing to be sued in appeal proceedings where an appeal is directed against a decision issued by FIFA as an association under Swiss law, and to assess whether FIFA has standing to be sued in the relevant appeal proceedings, CAS states that this depends on the role played by FIFA in the decision under appeal: *“Which entity is the best suited to defend the will expressed by the organ of the association will depend on the role assumed by the latter. If the latter acted in an adjudicatory capacity, i.e. by resolving a dispute between other parties (so-called horizontal dispute), standing to be sued will rest on the party that vail itself of the binding effect of the decision. If, on the contrary, the organ of the association assumed an administrative or disciplinary role instead (so-called vertical dispute) and its interests are at stake, then the party having standing to be sued is the association”* (CAS 2020/A/6694).
54. With regard to the present case, it is undisputed that the Club does not seek any relief against the Player (who was not even considered a party to the disciplinary proceedings) but only against FIFA: *“the annulment of a decision (i) that affects its capacity as a member of FIFA though the imposition of a disciplinary sanction and (ii) that was rendered within the framework of legal proceedings aimed at safeguarding the very own interests of no one else but FIFA itself (i.e. to ensure compliance with the decisions passed or recognised by its bodies)”*.
55. Therefore, it is undeniable that, in the present case, the Player lacks standing to be sued and shall be excluded from the arbitration proceedings or disregarded in the assessment of the requests for relief submitted by the Appellant, which shall only be examined vis-à-vis FIFA.

The alleged violation of the Club’s right to a fair trial

56. First, the Appellant has not discharged its burden of proof as to how and to what extent its right to a fair trial was somehow infringed by the findings of the Appealed Decision.

57. In this respect, the Appellant both failed to meet the burden of production of proof and the burden of persuasion, considering the groundless and unsubstantiated assumptions raised in the Appeal Brief.
58. In addition, the right to a fair trial is not an end in itself, but rather a means to ensure that legal proceedings do not result in a vitiated judgement, particularly in the taking of evidence. However, the Appellant is not able to demonstrate any harmful consequences resulting from the alleged violation, nor has the Club indicated what arguments he would have put forward in the proceedings and what influence they would have had on the outcome of the proceedings.
59. On the contrary, the Appellant has been granted access to the case file of the disciplinary proceedings and could file its answer to the sanction proposal made by the FIFA Secretariat and on the other hand, it completely failed to submit any substantiated arguments regarding the alleged violation of its right to a fair trial.
60. Furthermore, the Appeal Decision itself has clarified that the mere filing of an action to set aside against an arbitral award does not stay the enforcement thereof, unless the Swiss Federal Tribunal has granted suspensive effect upon request of the party concerned.
61. As the Club did not submit any similar request, it follows that the Club itself would be solely responsible for any such alleged deprivation of rights.
62. In any case, since the Swiss Federal Tribunal has already dismissed the Club's action to set aside the CAS Award, the present appeal is completely devoid of any grounds whatsoever and the Appellant lacks any current interest worthy of protection: *"Therefore, it is undisputed that the dismissal of the setting aside proceedings by the SFT has caused the Club to lose any interest worthy of legal protection that could otherwise justify, arguendo and in theory, the annulment of the Challenged Decision on the above-mentioned grounds – thus leading to either the inadmissibility or dismissal, whichever the stance of the Sole arbitrator may be, of the request herein under scrutiny"*.
63. With regard to the proportionality of the sanction imposed by the Appealed Decision, which is contested by the Appellant, the long-standing CAS case-law has clarified that a sanction imposed by a first instance decision-making body may only be reviewed or set aside should it be *"grossly disproportionate"* vis-à-vis the breach giving rise thereto.

64. In the present case, considering that the Appellant has not discharged its burden of proof with regard to the alleged disproportionality of the fine imposed by FIFA, and that, in any event CHF 20,000.00 represents only approximately 6% of the overall sum due to the Player, such request should also be rejected.

C. The Second Respondent's submissions and requests for relief

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

“a) reject the requests for relief sought by the Appellant;

b) confirm the Appealed Decision in its entirety;

c) order the Appellant to bear the full costs of these arbitration proceedings”.

66. The following is a summary of the arguments put forward by FIFA in its Answer.

67. The present appeal concerns a decision by the FIFA Disciplinary Committee following the Appellant's violation of article 21 FIFA DC due to the failure to comply with the CAS Award.

68. The Appellant does not deny having not complied with the CAS Award but assumes that the Appealed Decision should be annulled due to the fact that the CAS Award was appealed before the Swiss Federal Tribunal. However, in the absence of any provisional relief granted by the Swiss Federal Tribunal, any CAS award is final from the time when it is communicated and the appeal filed by the Club against the CAS Award has no suspensive effect on the latter, based on art. 190(1) PILA. Therefore, the FIFA Disciplinary Committee was fully entitled to open disciplinary proceedings and to sanction the Club under the FIFA DC.

69. In line with the above, Art. R59 of the CAS Code establishes that *“[t]he award shall be enforceable from such notification of the operative part by courier, facsimile and/or electronic mail”.*

70. Consequently, the CAS Award, which was notified to the Appellant on 26 January 2024, became final on that date.

71. Furthermore, according to Art. 103(1) BGG, in principle, lodging an appeal to set aside a CAS award does not suspend the effect of the *“enforceability”* of such award. It follows that the Player was entitled to request (and FIFA to initiate) disciplinary proceedings to verify compliance with the CAS Award.

72. Moreover, although the Club had the possibility to request a stay of the CAS Award in accordance with Art. 126 BGG, it failed to do so.
73. Given the above, it is clear that, since the Appellant did not file any request for suspensive effect with the Swiss Federal Tribunal, the CAS Award remains enforceable, which is the reason why the FIFA Disciplinary Committee concluded that “*there was no basis upon which to justify the closure, or suspension of, the present disciplinary proceedings against [Alanyaspor]*”.
74. Such principles are supported by legal doctrine and CAS case law.
75. With regard to the entity of the sanction imposed by the Appealed Decision, the amount of the fine is proportionate and adequate to the circumstances at hand, and particularly considering the outstanding amount ordered in the CAS Award, which is in line with FIFA jurisprudence in similar cases where analogous sanctions have been imposed for similar outstanding amounts.
76. Moreover, according to CAS jurisprudence, an arbitral tribunal will not readily interfere with the discretion granted to an international association (such as FIFA) sanctioning its members and therefore, CAS will generally not reverse FIFA’s disciplinary decisions unless they are grossly disproportionate to the offence and the amount in dispute.
77. Considering that the fine imposed in the Appealed Decision is not evidently and grossly disproportionate to the offence, the Appealed Decision must be confirmed in full.

VII. JURISDICTION

78. Art. R47 of the CAS Code provides as follows:

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

79. Pursuant to Art. 52 of the FIFA DC, “*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*”.
80. The Appellant relied on Art. 57 and Art. 58 of the FIFA Statutes (May 2022 ed.) as conferring jurisdiction to the CAS. According to Art. 57(1) of the FIFA Statutes,

“Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of notification of the decision in question”.

81. The Respondents did not dispute that CAS has jurisdiction in the present case. Furthermore, the jurisdiction of the CAS was further confirmed by the signature of the Order of Procedure and at the hearing by the Parties.
82. Accordingly, the CAS has jurisdiction to hear the present case.

VIII. ADMISSIBILITY

83. Art. R49 of the CAS Code provides the following:

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

84. According to Art. 57(1) of the FIFA Statutes, *“Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of notification of the decision in question”.*
85. The Sole Arbitrator notes that the Appealed Decision was rendered on 4 April 2024 and that the grounds of the Appealed Decision were notified to the Parties on 6 May 2024.
86. Considering that the Appellant filed its Statement of Appeal on 23 May 2024, i.e., within the deadline of 21 days set in the FIFA Statutes, the Sole Arbitrator is satisfied that the present appeal was filed in due time. Moreover, the Respondents did not contest the admissibility of the Appeal.
87. Furthermore, the appeal complied with all other requirements of Art. R48 of the CAS Code and is thus admissible.

IX. APPLICABLE LAW

88. Art. R58 of the CAS Code provides the following:

“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related

body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.”

89. According to Art. R56(2) of the FIFA Statutes, *“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”*.
90. In its Statement of Appeal, the Appellant refers to the relevant FIFA Regulations and subsidiarily, Swiss Law, as the law applicable to the present matter. The Respondents did not contest that.
91. In consideration of the above and in accordance with the wording of Art. R58 of the CAS Code, the Sole Arbitrator holds that the present dispute shall be decided principally according to the FIFA Regulations, namely, the FIFA DC, 2023 edition, with Swiss law applying subsidiarily in case of regulatory gap.

X. LEGAL ANALYSIS

What is this case about?

92. The present appeal concerns a decision issued by the FIFA Disciplinary Committee in the context of a disciplinary proceeding against the Club involving a breach of Art. 21 of the FIFA DC for failure to respect a CAS financial decision (i.e., the CAS Award). The Club’s failure to comply with the payment order under the CAS Award is not disputed. What is disputed among the Parties in the present case is whether the disciplinary proceedings before FIFA were conducted in accordance with the relevant principles of law. In particular, the Appellant claims that its right to a fair trial has been violated, in that the Disciplinary Committee disregarded the Club’s request to suspend the proceedings while an appeal lodged by the Club was pending before the Swiss Federal Tribunal, aimed at setting aside the CAS Award.

A. Preliminary issue – Does the Player have standing to be sued in the present arbitration proceedings?

93. Before addressing the legal arguments put forward by the Appellant in support of the challenge of the Appeal Decision, the Sole Arbitrator notes that he first needs to resolve a preliminary issue raised by the First Respondent regarding his alleged lack of standing to be sued in the present arbitration proceedings.

94. In brief, the First Respondent contends that, according to the doctrine of legal scholars and the jurisprudence of CAS and of the Swiss Federal Tribunal, only FIFA has the capacity to defend the present dispute as FIFA is the only subject against which the Appellant is seeking redress, whereas the Player is not personally bound by the disputed claim at issue.
95. The Sole Arbitrator observes that, since neither the FIFA Statutes nor any other FIFA regulations nor the CAS Code contain a specific provision regarding standing to sue or to be sued, CAS panels has resorted to Swiss law and the jurisprudence of the Swiss Federal Tribunal in order to fill this gap.
96. Under Swiss law, the closest concept to standing to sue/be sued is so-called “*légitimation active/passive*” (“*Aktiv und Passivlegitimation*”), which is characterized as a matter of substantive law. *Légitimation active/passive* derives from the mere fact of legally owning the right in dispute, i.e. a party has standing to sue or to be sued if a substantive right of its own is concerned by the claim (CAS 2013/A/3278).
97. With regard to standing to be sued in particular, CAS jurisprudence agrees that a party may be considered having capacity to be sued “*if it has some stake in the dispute because something is sought against it*” (CAS 2017/A/5322) or if it is personally obliged by the “*disputed right at stake*” (CAS 2007/A/1329 & 1330, CAS 2006/A/1206)
98. In such legal framework, it is agreed by CAS panels that in appeal proceedings against a decision issued by a FIFA’s body, when in the first instance proceedings FIFA acted not only as the adjudicatory body but principally in the exercise of its administrative or disciplinary sanctions (i.e. in the so-called vertical disputes, such as in disciplinary proceedings) only FIFA is generally considered to be the subject having standing to be sued.
99. In fact, FIFA disciplinary proceedings are primarily meant to protect an essential interest of FIFA and FIFA’s (direct and indirect) members, i.e. the full compliance with the rules of the association and with the decisions rendered by FIFA’s decision-making bodies and/or by CAS. In this respect, the power to impose disciplinary sanctions on a member or affiliate because of a violation of the FIFA Regulations is at the sole discretion of FIFA, e.g. another direct or indirect member lacks such disciplinary power. Indeed, it is FIFA that has a *de facto* personal obligation and interest as a sports governing body to ensure that its affiliates fully comply with its regulations and with any disciplinary sanctions imposed by its bodies.

100. Thus, when deciding who is the proper party to defend an appealed decision, CAS panels proceed by a balancing of the interests involved and taking into account the role assumed by the association in the specific circumstances. Consequently, one must ask whether a party stands to be sufficiently affected by the matter at hand in order to qualify as a proper respondent within the meaning of the law (CAS 2020/A/7356).
101. The Sole Arbitrator concurs with the abovementioned principles and believes that only FIFA has capacity to be sued in disciplinary proceedings with respect to claims where the matter in dispute relates to disciplinary sanctions imposed by FIFA on one of its direct or indirect members.
102. *“The only party with standing to be sued in appeals before the CAS derived from FIFA disciplinary proceedings is FIFA. Because the “opposing party” (i.e. a club or a player) did not take part in the FIFA disciplinary proceedings and the relevant decision was only directed to the sanctioned party, no other party other than FIFA should take part as a respondent in the relevant appeal against such disciplinary decision”.* (CAS 2018/A/5838)
103. With regard to the present case, the Sole Arbitrator agrees with the First Respondent that the Appellant does not seek any relief against the Player but only against FIFA. In fact, by challenging the Appealed Decision, the Appellant is challenging FIFA’s authority to impose the relevant sanction on the Club for an alleged breach and on the other hand, the Disciplinary Committee acted in order to pursue FIFA’s very own interest to ensure compliance with a CAS decision.
104. On the other hand, the Sole Arbitrator notes that the Player is not an uninterested party in the dispute and in the outcome of the proceedings. As a matter of fact, the Player is the subject whose initiative led FIFA to initiate the disciplinary proceedings against the Club. In fact, it is recalled that, in accordance with Art. 21(2) FIFA DC, in case of non-compliance with a financial decision issued by FIFA or CAS, disciplinary proceedings may only commence at the request of the creditor. Moreover, the imposition of a sanction (beside responding to the specific interest of FIFA as an association in exercising its administrative and disciplinary authority over its members in case of non-compliance) also serves the purpose of encouraging the defaulting party to comply with a decision and therefore, the Player himself has a personal interest in the fact that the threat of further sanctions being imposed on the Club will hopefully lead to the payment of the outstanding amounts due. However, such a stake in the dispute does not rise to the level of a standing to be sued as a respondent in the appeal proceedings.

105. As a consequence, the Sole Arbitrator considers that, although the Player is an interested party in the present matter, and is bound by the same arbitration agreement within the meaning of Art. R41(4) of the CAS Code, FIFA is the only subject to be considered a full Respondent having standing to be sued within the purpose specified above since the Player is not bound to the claim lodged by the Appellant and the Appellant is not seeking any relief against him.
106. It follows that the Appellant's request for relief in the present appeal will only be regarded as addressed to FIFA and not vis-à-vis the First Respondent and that the appeal filed against the First Respondent shall be dismissed.

B. The Appellant's allegations regarding the violation of its right to a fair trial

107. The Appellant has brought the present appeal on the assumption that the CAS Award was not final and binding and that the Disciplinary Committee should have treated the appeal proceedings pending before the Swiss Federal Tribunal as a "*preliminary issue*" and should have suspended the disciplinary proceedings until the decision of the Swiss Federal Tribunal. On the contrary, by rejecting the Club's request and imposing a sanction for failure to comply with the CAS Award, the FIFA Disciplinary Committee allegedly violated the Appellant's right to a fair trial.
108. In any case, the Appellant contends that the sanction imposed by the Appealed Decision is disproportionate and should be cancelled by CAS.
109. With regard to the alleged violation of the right to a fair trial, the main objections raised by the Respondents are the following:
- a) CAS awards are final and binding since the time when they are communicated to the parties;
 - b) an appeal before the Swiss Federal Tribunal does not suspend *per se* the enforcement of a CAS award;
 - c) the Appellant did not submit any specific request for a stay in order for the Swiss Federal Tribunal to finally grant a suspensive effect to the CAS Award pursuant to Art. 103(3) BGG;
 - d) as a consequence, the First Respondent was entitled to request (and the FIFA Disciplinary Committee to start) the opening of a disciplinary proceedings against the Appellant for not complying with the CAS Award under the provision of Art. 21 of FIFA DC;

- e) in the meantime, on 1 July 2024, the Swiss Federal Tribunal finally dismissed the Appellant's application to set aside the CAS Award, so that the present appeal should be considered to be moot or completely groundless;
 - f) in any case, the Appellant has failed to meet its burden of proof with regard to how and to what extent its right to a fair trial was violated by the findings of the Appealed Decision.
110. In order to resolve the present issue, the main task of the Sole Arbitrator is therefore to establish whether the FIFA Disciplinary Committee should have suspended the disciplinary proceedings against the Club pending the appeal before the Swiss Federal Tribunal and if the failure to do so may have breached the Appellant's right to a fair trial.

The relevant legal framework

111. With regard to the relevant legal framework, the Sole Arbitrator notes that the following provisions are relevant in order to address this issue:
112. According to Art. 21(1) of FIFA DC, disciplinary sanctions are imposed on "*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, a subsidiary 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, a subsidiary or an instance of FIFA, or by CAS*". The relevant sanction will consist in a fine, according to Art. (21)(1)(a), while the debtor may be granted a final deadline of 30 days to comply with the payment order of the relevant decision, and in the case of clubs, persistent failure to comply will result in the application of further sporting sanctions in accordance with Art. 21(1)(b). In this regard, pursuant to Art. 21(2) of FIFA DC, in case of non-compliance of a financial CAS award, as is the present case, disciplinary proceedings are initiated at request of the creditor (or any other affected party).
113. Pursuant to Art. R59 of the CAS Code, which applies to CAS appeal proceedings, CAS awards are final and binding upon notification to the parties: "*The Panel may decide to communicate the operative part of the award to the parties, prior to the reasons. The award shall be enforceable from such notification of the operative part by courier, facsimile and/or electronic mail. The award, notified by the CAS Court Office, shall be final and binding upon the parties subject to recourse available in certain circumstances pursuant to Swiss Law within 30 days from the notification of the award by mail or*

courier". It follows that, upon its notification to the parties, the CAS award has *res judicata* effect and can be enforced, unless it is challenged before the Swiss Federal Tribunal and provided that the latter grants suspensive effect to it, as further explained below.

114. According to Art. 190(1) PILA which is applicable to CAS arbitration pursuant to Art. 176 PILA, "*the award is final from the time when it is communicated*". With regard to "*recourses*" permitted against CAS awards mentioned in Art. R59 of the CAS Code above, it is noted that under the said Art. 190 PILA, in conjunction with Art. 191 PILA, a CAS award may be set aside by the Swiss Federal Tribunal (albeit only under restricted grounds provided therein to be considered exhaustive).
115. According to Art. 103 BGG, the action to set aside a decision before the Swiss Federal Tribunal insofar as such decision consists of a payment order, does not stay the enforceability of the challenged decision, unless the Swiss Federal Tribunal, upon request of the interested party or *ex officio*, grants suspensive effect, pursuant to Art. 103(3), in combination with Art. 126 BGG.

Considerations of the Sole Arbitrator

116. In the light of the legal framework mentioned above, the Sole Arbitrator recalls that, in the present case, it is undisputed that the Appellant failed to comply with the CAS Award, which became final and binding on the day of its notification, i.e. on 26 January 2024. It is also undisputed that the Appellant did not expressly request the Swiss Federal Tribunal to stay the execution of the CAS Award, although it was entitled to do so under Art. 126 BGG mentioned above. Finally, it is also undisputed that the Swiss Federal Tribunal did not suspend the enforceability of the CAS Award *ex officio*, as permitted under Articles 103(3) and 126 BGG.
117. It follows that, notwithstanding the action brought by the Club to set aside the CAS Award, the CAS Award was final and binding and could still be enforced pending the proceedings before the Swiss Federal Tribunal.
118. Consequently, pursuant to Art. 21 FIFA DC, the First Respondent was entitled to request the opening of disciplinary proceedings before the FIFA Disciplinary Committee, and the latter was entitled to impose sanctions on the Appellant after assessing its failure to comply with the CAS Award.
119. As to the Appellant's claim that the Disciplinary Committee should have treated the appeal before the Swiss Federal Tribunal as a "*preliminary issue*", the Sole Arbitrator

observes that this argument is inappropriate in the present matter. In fact, the need to stay a proceeding because of a “*preliminary issue*” to be decided elsewhere, arises when the court cannot rule on the merits because a preliminary issue must be decided elsewhere with *res judicata* effect and priority over the finding of the subordinate dispute.

120. On the contrary, the procedure before the FIFA Disciplinary Committee under Art. 21 FIFA DC is a disciplinary proceeding, where there is no room for any assessment of the merits of the dispute and the dispute before the Swiss Federal Tribunal is an appeal proceeding which has no suspensive effect over the appealed decision. Consequently, there are no reasons in the present case that could warrant the stay of the disciplinary proceedings before the FIFA Disciplinary Committee based on the Appellant’s argument.
121. It follows that there has been no violation of the Appellant’s right to a fair trial nor of any other procedural rights, besides the fact that the Appellant also failed to establish which prerogatives of its right to a fair trial would have been violated or what damage did it suffer as a result of the alleged violation.
122. Notwithstanding the above, the Sole Arbitrator also recalls that based on Art. R57 of the CAS Code, the full power of review granted to CAS panels means that any possible procedural defects or any denial of justice that may have occurred during the previous instance proceedings (which, however, is not the present case) are cured by the *de novo* proceedings before CAS. As a consequence, the Sole Arbitrator “*is therefore not required to consider any such allegations*” (CAS 2008/A/1574).
123. In addition, and notwithstanding the foregoing, as it resulted that on 1 July 2024 the Swiss Federal Tribunal finally rejected the Appellant’s action to set aside the CAS Award, the existence of any harmful consequences to the Appellant would also have been excluded in principle.
124. The Appellant’s argument on this point must therefore be rejected.
125. At this point, the Sole Arbitrator notes that in his Answer, the First Respondent argues that the dismissal of the Appellant’s action before the Swiss Federal Tribunal “*has caused the Club to lose any interest worthy of legal protection that could otherwise justify, arguendo and in theory, the annulment of the Challenged Decision on the above-mentioned grounds*”.

126. The Sole Arbitrator does not agree with the First Respondent's reasoning in this case, in consideration of the fact that the Appellant has also objected the proportionality of the sanction imposed by FIFA Disciplinary Committee in the Appealed Decision, which constitutes an autonomous interest worthy of protection in the present appeal.
127. However, the Appellant's submission on this point must be rejected as groundless, for the following reasons.
128. First, the Appellant has completely failed to substantiate its claim that the contested sanction is disproportionate, in violation of the burden of proof.
129. Second, the Sole Arbitrator recalls that, according to an established line of CAS jurisprudence, a reviewing panel should give a certain degree of deference to decisions of sports governing bodies in respect of the proportionality of sanctions which can only be amended by a CAS panel if they are evidently and grossly disproportionate to the offence (CAS 2022/A/8914; CAS 2018/A/5900; CAS 2018/A/5863; CAS 2017/A/5401; CAS 2015/A/3875; CAS 2009/A/1817&1844).
130. *"The CAS may amend a disciplinary decision of a FIFA judicial body only if the relevant FIFA judicial body exceeded the margin of discretion accorded to it by the principle of association autonomy, i.e. only where the relevant FIFA judicial body must be held to have acted arbitrarily. This is, however, not the case if the CAS panel merely disagrees with a specific sanction, but only if the sanction concerned is to be considered as evidently and grossly disproportionate to the offence"* (CAS 2022/A/8731).
131. Third, the sanction imposed by the Appealed Decision complies with the terms of Articles 6 and 21 of the FIFA DC and moreover, it is equal to the average amount of sanctions applied by FIFA in similar cases (failure to respect financial decisions) for similar amounts due, as also indicated in Annex 1 to the FIFA DC.
132. In this respect, it has been established by another CAS panel that *"A fine imposed on a club equal to fines imposed on other clubs for very similar violations cannot be considered disproportionate"* (CAS 2018/A/5900).
133. As a consequence, and also considering that the Appellant has failed to establish any mitigating circumstance which may have justified a lower fine, the Sole Arbitrator considers that the sanction imposed by the Appealed Decision is reasonable and proportionate and also satisfies the principles of legality, predictability, equal treatment and procedural fairness (see CAS 2018/A/6239).

Conclusion

134. In view of the foregoing, the Appeal filed by the Club is groundless and must be rejected in full and the Appealed Decision is confirmed in its entirety.
135. Any further claims or requests for relief from the Parties are dismissed.

XI. COSTS

(...).

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ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Appeal filed on 23 May 2024 by Alanyaspor Kulübü against the decision issued on 4 April 2024 by the of the FIFA Disciplinary Committee is dismissed.
2. The decision issued on 4 April 2024 by the FIFA Disciplinary Committee is confirmed.
3. (...).
4. (...).
5. All other motions or requests for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 19 March 2025

THE COURT OF ARBITRATION FOR SPORT

Fabio Iudica
Sole Arbitrator