CAS 2020/A/6784 Al Wahda Sports Club v. FIFA & Bursaspor KD

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition

Sole Arbitrator: Mr Frans M. de Weger, Attorney-at-Law, Haarlem, the Netherlands

in the arbitration between

Al Wahda Sports Club, Abu Dhabi, United Arab Emirates

Represented by Mr Nasr El-din Azzam, Attorney-at-Law, Cairo, Egypt

Appellant

And

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

Represented by Mr Miquel Liétard Fernández-Palacios and Mr Saverio Paolo Spera, FIFA Litigation department

First Respondent

Bursaspor Kulübü Derneği, Bursa, Turkey

Represented by Mr Dr Nihat Güman, Attorney-at-Law, Istanbul, Turkey

Second Respondent

I. INTRODUCTION

1. This appeal is brought by Al Wahda Sports Club (the "Appellant" or the "Debtor") against the decision rendered by the FIFA Disciplinary Committee (the "FIFA DC") of the Fédération Internationale de Football Association (the "First Respondent" or "FIFA") on 14 January 2020 (the "Appealed Decision"), regarding an infringement of Article 15 of the (edition 2019) FIFA Disciplinary Code (the "FDC") for failing to comply with a decision passed by the Single Judge of the FIFA Players' Status Committee ("FIFA PSC") on 22 August 2018.

II. PARTIES

2. The Appellant is a professional football club based in Abu Dhabi, United Arab Emirates. The Appellant is registered with the United Arab Emirates Football Association (the "UAEFA"), which in turn is affiliated with FIFA.

3. The First Respondent is the international governing body of football at worldwide level. It is an association under Swiss law and has its registered office in Zurich, Switzerland.

4. Bursaspor Kulübü Derneği (the "Second Respondent" or the "Creditor") is a football club based in Bursa, Turkey. The Second Respondent is registered with the Turkish Football Federation (the "TFF") which in turn is also affiliated with FIFA.

5. The Appellant and the Second Respondent are jointly referred to as the "Clubs".

6. The Appellant, the First Respondent and the Second Respondent are jointly referred to as the "Parties".

III. FACTUAL BACKGROUND

7. Below is a summary of the main relevant facts, as established on the basis of the Parties' written submissions on the file, the video-hearing and relevant documentation produced in this appeal. Additional facts and allegations found in the Parties' submissions may be set out, where relevant, in connection with the further legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings and at the video-hearing, the Award only refers to the submissions and evidence it considers necessary to explain its reasoning.

A. Background Facts

8. On 9 August 2016, the Second Respondent and the Appellant signed a transfer agreement (the "Transfer Agreement") by virtue of which the professional football player Balazs Dzsudzsak (the "Player") was transferred from the Second Respondent to the Appellant.

9. According to Article 1 of the Transfer Agreement, the transfer of the Player was conditional to the payment of a transfer fee of a total amount of EUR 3,000,000 payable in two instalments as follows:

   - EUR 2,000,000 by 19 August 2016 at the latest; and
   - EUR 1,000,000 by 8 August 2017 at the latest.

10. In addition, Article 1 of the Transfer Agreement stipulates that *"if the* [Appellant] *does not pay the amount of* [EUR] *1,000,000I- (Euro One Million* [Net]*) to the* [Second Respondent] *until 8th August 2017. The* [Appellant] *accepts and undertakes that the* [Second Respondent] *will be able to claim* [EUR] *300,000 as compensation in addition to* [EUR] *1,000,000 transfer fee"*.

11. On 26 October 2017, the Second Respondent sent a default notice to the Appellant, requesting the payment of EUR 500,000 deriving from the Transfer Agreement plus EUR 300,000 as compensation, within 10 days. Per the same letter, the Second Respondent provided its bank account details indicating the Denizbank with IBAN TR58 [...] 5002 26 and a power of attorney, dated 25 October 2017.

12. On 29 October 2017, the Appellant sent a letter to the Second Respondent, indicating, *inter alia,* that it was committed to make the payment of EUR 500,000 before 15 November 2017.

13. On 7 November 2017, the Second Respondent lodged a claim in front of FIFA against the Appellant, sustaining that the Appellant had failed to comply with its contractual duties and requesting the payment of the amount of EUR 800,000.

14. On 9 November 2017, the Appellant paid the remainder of the second instalment of a transfer fee of EUR 500,000.

15. On 22 August 2018, the Single Judge of the FIFA PSC rendered its decision (the "PSC Decision"). The terms of the PSC Decision were duly communicated to the Clubs on 4 September 2018. The FIFA PSC decided that the Appellant had to pay to the Second Respondent, in accordance with the Transfer Agreement, an amount of EUR 300,000 as penalty fee (the "Penalty Fee") and an amount of CHF 5,000 as costs of the proceedings.

16. On 18 September 2018, the Second Respondent sent an email (from av.jaledemir.bursaspor@gmail.com)[1] to the Appellant (to alwahdaclub@wahdas.ae, ahmedmabdelhak@gmail.com and alwahdafco@gmail.com) requesting the payment of the Penalty Fee of EUR 300,000 and the amount of CHF 5,000 as costs of the proceedings to the bank account of the Appellant at the Denizbank. More specifically, in this email, the Second Respondent requested, *inter alia*, to the Appellant:

[1] In this Award, where necessary, the relevant email addresses will be mentioned as the exact email addresses are of importance for the outcome in this case.

"Please reimburse the payment of 300.000.EUR plus an interest of 5% p.a to the following account numbers below, in accordance with the above-mentioned decision of FIFA and send fax or mail the proof of payment to the contact information above.

Account	***: EUR***
Beneficiary	*: Bursaspor Kulübü Derneği*
Bank Name	*: Denizbank*
IBAN	*:TR58 [...] 5002 26*
SWIFT CODE	*: DENITRISXXX"*

17. The Appellant requested the grounds of the decision, which were duly communicated, amongst others, to the Parties on 8 March 2019.

18. On 22 March 2019, after the PSC Decision became final and binding, the Second Respondent sent an email (from av.jaledemir.bursaspor@gmail.com) with its bank details indicating the Denizbank and IBAN TR58 [...] 5002 26, to the Appellant (to alwahdaclub@wahdas.ae, ahmedmabdelhak@gmail.com and alwahdafco@gmail.com) requesting for the payment of the Penalty Fee and costs of the proceedings.

19. On 21 May 2019, the Second Respondent requested the FIFA DC to open disciplinary proceedings against the Appellant.

20. On 30 August 2019, Appellant sent a letter by email (from alwahdaclub@wahdas.ae) to the Second Respondent (to av.jaledemir.bursaspor@gmail.com) requesting the bank account details of the Second Respondent in order to transfer the Penalty Fee in accordance with the PSC Decision.

21. On 31 August 2019, the Second Respondent sent an email (from av.jaledemir.bursaspor@gmail.com) to the Appellant (to alwahdaclub@wahdas.ae), stating, *inter alia,* that it received the correspondence of the Appellant and informing the Appellant that the Second Respondent would share the bank account details in due course.

22. On 1 September 2019, the Second Respondent received an email (on av.jaledemir.bursaspor@gmail.com) from the email address alwahdaclub.wahdas.ae@gmail.com (which email address did not belong to the Appellant) with another request to provide the bank account details in order to make the payment.

23. On 1 September 2019, the Second Respondent sent an email (from av.jaledemir.bursaspor@gmail.com) to the email address alwahdaclub.wahdas.ae@gmail.com with an enclosed letter, requesting, *inter alia*, the following:

"Please reimburse the payment of 300.000.EUR plus an interest of 5% p.a to the following account numbers of the club lawyer, in accordance with the above-mentioned decision of FIFA. After remittance please share swift and we will immediately close the file before FIFA.

Account	*: EUR*
Beneficiary	*: Nihat Güman*

Bank Name : T. Garanti Bankasi A.Ş.
Branch and Code :Atrium Branch/ 662
IBAN : TR34 [...] 0972 42
SWIFT CODE : TGBATRISXXX"

24. On 1 September 2019, the Appellant received an email (on alwahdaclub@wahdas.ae) from the email address av.jaledemirr.bursaspor@gmail.com (that did not belong to the Second Respondent), with a letter (using the format of the Second Respondent) and a power of attorney enclosed, dated 25 October 2017, in which the Appellant was provided with the following bank account details:

> *"Please reimburse the payment of 300.000.EUR plus an interest of 5% p.a to the following account numbers of the club lawyer, in accordance with the above-mentioned decision of FIFA. After remittance please share swift and we will immediately close the file before FIFA.*
>
> *Account : EUR*
>
> *Bank Name : GARANTI BANKASI*
> *Bank Address : BODRUM ÇARŞI TURKEY.*
> *Beneficiary : KADIR DURMAZ*
> *Account No : 1366-9093120*
> *IBAN : TR89 [...] 0931 20*
>
> *SWIFT CODE : TGBATRISXXX"*

25. On 1 September 2019, the Second Respondent received an email (on av.jaledamir.bursaspor@gmail.com) from the email address alwahdaclub.wahdas.ae@gmail.com stating "[d]*ear Sir, Noted with thanks*".

26. On 2 September 2019, the Appellant received an email (on alwahdaclub@wahdas.ae) from the email address av.jaledemirr.bursaspor@gmail.com in which it was asked whether the Appellant received the email of 1 September 2019 and in which the Appellant was requested to transfer the Penalty Fee.

27. On 3 September 2019, the Second Respondent (from av.jaledamir.bursaspor@gmail.com) sent an email to the Appellant (to alwahdaclub@wahdas.ae), stating *"please send money transfer document after transferring the amount due to we will be able to follow the payment"*.

28. On the same day, 19 minutes later, the Appellant received an email from the email address av.jaledemirr.bursaspor@gmail.com with the email of the Second Respondent (av.jaledamir.bursaspor@gmail.com) of 3 September 2019 in the email string, in which the Appellant was requested to *"advise accordingly*".

29. Also, on 3 September 2019, the Second Respondent received an email (on av.jaledamir.bursaspor@gmail.com) from the email address alwahdaclub.wahdas.ae@gmail.com, stating *"*[t]*hank you for your mail, we will revert back with the payment copy once the transfer is done"*.

30. On 4 September 2019, the Appellant received an email (on alwahdaclub@wahdas.ae) from the email address av.jaledemirr.bursaspor@gmail.com in which a confirmation was requested whether the Appellant already proceeded the transfer of the Penalty Fee.

31. On 5 and 9 September 2019, the Appellant received two subsequent emails from the email address av.jaledemirr.bursaspor@gmail.com again with a request to confirm whether the Appellant proceeded with the transfer of the Penalty Fee.

32. On 10 September 2019, the Appellant received another email (on alwahdaclub@wahdas.ae, with in copy (CC) to alizamin@alwahdafootballclub.ae) from the email address av.jaledemirr.bursaspor@gmail.com stating, *inter alia*:

> *"In spite of several emails i sent, still have not received any response from Al-Wahda regarding the due amount to Bursaspor.*
>
> *Could you please advise if Al-Wahda already process the transfer of the due amount?.*
>
> *Please send money transfer copy and we will closed the file immediately after receiving the amount for the said case before FIFA.*
>
> *Please acknowledge the receipt of my email.*
>
> *Waiting for your swift response"*

33. On 10 September 2019, the Appellant instructed its bank to transfer the Penalty Fee to the bank account of Kadir Durmaz, as stipulated in the email which the Appellant received (on alwahdaclub@wahdas.ae) from the email address av.jaledemirr.bursaspor@gmail.com on 1 September 2019. Subsequently, the Appellant sent an email (from alwahdaclub@wahdas.ae) to the email address av.jaledemirr.bursaspor@gmail.com stating that it processed the payment.

34. On the same day, the Appellant instructed its bank to transfer the payment of an amount of CHF 13,000 to FIFA in relation to the costs of the FIFA proceedings.

35. On 11 September 2019, the Appellant received an email (on alizamin@alwahdafootballclub.ae with in copy (CC) alwahdaclub@wahdas.ae) from the email address av.jaledemirr.bursaspor@gmail.com in which the proof of payment was requested.

36. On the same day, the Second Respondent (from the email address av.jaledamir.bursaspor@gmail.com) sent an email to the Appellant (to alwahdaclub@wahdas.ae), indicating that it did not receive any payment from the Appellant.

37. That same day, three minutes later, the Appellant received a copy of the previous email from the other email address av.jaledemirr.bursaspor@gmail.com.

38. Also, on 11 September 2019, another three minutes later, the Appellant received another email from the email address av.jaledemirr.bursaspor@gmail.com in which the proof of payment was requested.

39. On that same day, the Second Respondent received an email (on av.jaledamir.bursaspor@gmail.com) from the email address alwahdaclub.wahdas.ae@gmail.com, stating that *"we have arranged the payment and will revert back with the payment copy once its debited from our account"*.

40. On 12 September 2019, the Second Respondent received an email (on av.jaledamir.bursaspor@gmail.com) from the email address alwahdaclub.wahdas.ae@gmail.com, that the payment would *"hit your account in 3-5 working days as advised by our bank and you will receive the payment latest by Tuesday"*.

41. On 12 September 2019, the Second Respondent (from av.jaledamir.bursaspor@gmail.com) sent an email to the email address alwahdaclub.wahdas.ae@gmail.com, indicating that it would inform FIFA "*to close the file"* as soon as it received the payment.

42. On 15 September 2019, the Appellant sent an email (from alwahdaclub@wahdas.ae) to the Second Respondent (to bursaspor@bursaspor.org.tr), indicating that it transferred the Penalty Fee to the bank account as stipulated in the email of 1 September 2019, i.e. the bank account of Kadir Durmaz. The Appellant enclosed the proof of payment to its correspondence.

43. On 17 September 2019, the Second Respondent received an email (on av.jaledamir.bursaspor@gmail.com) from the email address alwahdaclub.wahdas.ae@gmail.com, in reply to the email of the Second Respondent dated 12 September 2019, stating: *"*[s]*orry for the inconveniences this might caused you, we received information from our bank this morning that due to OFAC clearing process with the intermediary bank your payment was delayed but you should not worry, the payment will hit your bank account latest by Friday morning and you will receive the payment. Please bear with us"*.

44. On 23 September 2019, the Appellant received two emails from the email address av.jaledemirr.bursaspor@gmail.com in which it was indicated that the payment was not received and the Appellant should request its bank to release the payment to Kadir Durmaz *"as the payment is on-hold and we cannot receive until your bank send a confirmation swift to release the payment"*.

45. Also, on 23 September 2019, the Second Respondent (from av.jaledamir.bursaspor@gmail.com) sent an email to the Appellant (to alwahdaclub@wahdas.ae), indicating that it did not receive any payment yet and therefore "[w]*e continue procedure before Fifa FDC*". In reply, on the same day, the Second Respondent received an email (on av.jaledamir.bursaspor@gmail.com) from the email address alwahdaclub.wahdas.ae@gmail.com in which it was stated that *"*[i] *will check with our bank today regarding the payment and inform you accordingly"*.

46. On 24 September 2019, the Second Respondent received an email (on av.jaledamir.bursaspor@gmail.com) from the email address alwahdaclub.wahdas.ae@gmail.com), following which, *inter alia*:

"Sorry for the inconveniences this has caused you, as we received information from our bank that the payment is on-hold due to OFAC clearing process with the intermediary bank, We are doing everything possible best to make sure the bank release the payment and credit your bank account. Hopefully payment will hit your bank account latest this week and you will receive the payment."

47. On 24 September 2019, the Appellant received an email (on alwahdaclub@wahdas.ae) from the email address av.jaledemirr.bursaspor@gmail.com, stating, *inter alia*:

"Could you please send a swift instruction message through your bank to our bank to release the payment to KADIR DURMAZ as the payment is on-hold and we cannot receive the payment until your bank send a confirmation swift to release the payment."

48. On the same day, the Appellant also received an email from FIFA, indicating, *inter alia,* that it appeared that the Appellant did not make the payment in relation to the procedural costs in the amount of CHF 5,000 to the Second Respondent. Consequently, FIFA requested the Appellant to proceed with the payment and provide FIFA with a proof of payment.

49. On 25 September 2019, the Appellant received an email (on alwahdaclub@wahdas.ae) from the email address av.jaledemirr.bursaspor@gmail.com, stating, *inter alia*:

"Due to the new Policy on the Turkish bank now, the bank refused to release the funds to us. Please could you send me your IBAN no to transfer back the funds to you as the bank is requesting your IBAN to return back the money and then we will instruct you the company account to re-send the payment to enable us to receive the money."

50. Later that day, the Appellant received another email (on alwahdaclub@wahdas.ae) from the email address av.jaledemirr.bursaspor@gmail.com in which the IBAN number of the Appellant was requested to *"return back the money as the bank is requesting for it"*.

51. On 26 September 2019, the Second Respondent received an email (on av.jaledamir.bursaspor@gmail.com) from the email address alwahdaclub.wahdas.ae@gmail.com, stating, *inter alia*:

"Sorry for the inconveniences, we were informed today that the money will return back to our bank account as the intermediary bank refused to credit the funds to your bank account.

Please do not worry we will resend the payment next week through another bank once the money return back to us, to enable you receive the payment without any issue.

Please bear with us as we will do everything possible to processed the payment."

52. On 26 September 2019, the Second Respondent (from av.jaledamir.bursaspor@gmail.com) sent an email to the email address alwahdaclub.wahdas.ae@gmail.com, stating that it was waiting until the payment process was completed.

53. On 3 October 2019, the Appellant (from alwahdaclub@wahdas.ae) sent an email to the Second Respondent (to bursaspor@bursaspor.org.tr) with an official letter enclosed, dated 1 October 2019, stating, *inter alia*:

"With reference to the decision of 22 August 2018 by FIFA, according to which we were instructed to pay procedural costs amounting to CHF 5,000 to Bursaspor Kulubu Dernegi. We request you to provide us with an official letter containing the complete bank account details (updated) in order to enable us to process the payment and ensure that the payment is made to the original beneficiary."

54. On 7 October 2019, the Second Respondent (from av.jaledamir.bursaspor@gmail.com) sent an email to the email address alwahdaclub.wahdas.ae@gmail.com indicating that *"we couldn't understand why the payment has not been made yet. Do you have a problem about payment? Please inform us clearly, your club will make a payment or not. We should know it to continue Fifa Discipline procedure against your club*".

55. On 15 October 2019, the Second Respondent (from av.jaledamir.bursaspor@gmail.com) sent another email to the email address alwahdaclub.wahdas.ae@gmail.com informing that the FIFA DC would open "*investigation in coming days*".

56. On 16 October 2019, the Appellant received an email (on alwahdaclub@wahdas.ae) from the email address av.jaledemirr.bursaspor@gmail.com, stating, *inter alia*:

"Could you check with your bank if you have received back the payment?
As we have contacted with FIFA Disciplinary committee shall open invetigation in coming days.
This is the last reminder for payment.

We are waiting your answer Mr.Junaibi."

57. On 17 October 2019, the Appellant received another email (on alwahdaclub@wahdas.ae) from the email address av.jaledemirr.bursaspor@gmail.com, stating, *inter alia*:

"(...) sorry for this inconvenience this has caused you , we want you to help us to send a confirmation mail through your bank to our bank to release the payment to Kadir Durmaz as the bank is still holding the payment.
Please send copy to my email the letter you are sending to our bank to help us facilitate the release of the payment from our bank.

We will inform FIFA to close the case once the bank release the payment to us.

Thank you for your understanding and co-operation Mr.Junaibi."

58. On the same day, the Second Respondent received an email (on av.jaledamir.bursaspor@gmail.com) from the email address alwahdaclub.wahdas.ae@gmail.com, stating, *inter alia*:

"Sorry for the inconvenience, we are waiting for the payment to return back to our bank account and then we will resend the payment through another bank to your bank account to enable you receive the payment without any issue."

59. On 21 October 2019, the Appellant received an email (on alwahdaclub@wahdas.ae with in copy (CC) nihatgumans76@gmail.com and nihat.guman.icloud@outlook.com) from the email address av.jaledemirr.bursaspor@gmail.com, stating, *inter alia*:

> *"(...) i sent you several emails but you did not respond. Please if you cannot assist to advise your bank to send a confirmation letter to our bank to release the payment for Mr Kadir Durmaz, then kindly ask your bank to re-call back the payment to enable the funds to come back to your bank account without delay, so we can provide you a company bank account to transfer the payment once you receive back the money.*
>
> *Also please send copy of the future correspondence to Mr. Nihat Guman as Mr. Adv. Dr. Nihat Guman is in charge of this case.*
>
> *Mr. Nihat Guman's correspondence addresse as follows; nihatgumans76@gmail.com , nihat.guman.icloud@outlook.com*
>
> *Your swift action in this matter would be highly be appreciated.*
>
> *Thank you for your understanding and co-operation Mr.Junaibi."*

60. On 27 October 2019, the Appellant sent a letter to FIFA, stating, *inter alia,* that the Appellant complied with the PSC Decision and indicating that the Second Respondent is encountering problems with the Turkish bank to which the Appellant transferred the due amount. Furthermore, the Appellant indicated that the request made by the Second Respondent to intervene between the Second Respondent and the Turkish bank was not within the context of its competence or powers, but it was a matter relating to financial obligations between the Turkish bank and the Second Respondent. In addition, the Appellant requested FIFA to close the file as the Second Respondent was delaying the closure of the PSC Decision in bad faith.

61. On 29 October 2019, the Appellant received another email (on alwahdaclub@wahdas.ae with in copy (CC) nihatgumans76@gmail.com and nihat.guman.icloud@outlook.com) from the email address av.jaledemirr.bursaspor@gmail.com, indicating, *inter alia*:

> *"Have you sent for a re-call back of the payment? Please contact your bank and ask them to contact the correspondant bank and request for a tracer to know where the funds is hanging.*
>
> *Please send copy of the future correspondence to Mr. Nihat Guman as Mr. Adv. Nihat Guman is in charge of this case.*
>
> *Mr. Nihat Guman's correspondence addressee as follows; "nihatgumans76@gmail.com", nihat.guman.icloud@outlook.com".*

62. On 30 October 2019, the Second Respondent received the letter of the Appellant to FIFA from the TFF.

63. On 25 November 2019, the Second Respondent sent a correspondence informing FIFA that no payment had been received up to that date, and that the Appellant had allegedly forged documents intentionally.

64. On 9 December 2019, the secretariat of the FIFA DC (the "Secretariat") initiated disciplinary proceedings against the Appellant for a potential failure to respect a decision passed by a body, a committee or an instance of FIFA or a decision of the Court of Arbitration for Sport ("CAS").

B. Proceedings before the FIFA Disciplinary Committee

65. On 22 December 2020, per request of the Secretariat and after an extension of the deadline to submit its position, the Appellant provided the Secretariat with its position, which, in essence, may be summarised as follows:

- The Appellant never received the letter of the Second Respondent authorizing Mr Güman to collect the Penalty Fee dated 1 September 2019 nor did the Second Respondent submit any proof that the letter had been provided to the Appellant.

- The only letter the Appellant received on 1 September 2019 was the email from av.jaledemirr.bursaspor@gmail.com indicating the bank account details of Kadir Durmaz.

- Furthermore, the Appellant stated that "*it is unquestionable and undeniable to verify the additional "r" in the email (av.jaledemirr.bursaspor@gmail.com) from where many communications have been sent since this email has been replied previously by the oter email (av.jaledemir.bursaspor@gmail.com), and vice-versa*".

- In addition, *"it is more important to verify the document **only** received in light of the circumstances and the sequences of the facts as it is impossible that someone will be aware of these confidential communications, therefore the question of the emails is irrelevant and shall not be taken into account especially there was no other letters received by the* [Appellant] *that might mislead the* [Appellant] *at this time"*. [original emphasis]

- The Appellant fully respected its obligations towards the Second Respondent by paying the Penalty Fee in full within the granted time limit and *"any disciplinary proceedings claimed has no legal basis and therefore the* [Appellant] *reserves its rights to claim compensation from the* [Second Respondent] *due its wrong requests that may affect the club's reputation."*

66. On 14 January 2020, the FIFA DC rendered the Appealed Decision and concluded, *inter alia,* that the Appellant did not comply with the PSC Decision and was consequently withholding money from the Second Respondent and therefore considered it guilty of non-complying with a financial decision, under the terms of Article 15 of the FDC.

67. In addition, the FIFA DC argued that the Appellant withheld the Penalty Fee unlawfully from the Second Respondent and even the attempts of FIFA to urge the Appellant to fulfil its financial obligations failed to induce the Appellant to pay the total amount due.

68. In conclusion, the FIFA DC decided as follows:

> *"1. The club* [Appellant] *is found guilty of failing to comply with the decision passed by the Single Judge of the Players' Status Committee on 22 August 2018, according to which it was ordered to pay to the* [Second Respondent]*:*
>
> *EUR 300,000 as penalty fee within 30 days of the date of notification of the decision plus 5% interest p.a. as from expiry of the aforementioned time limit until the date of effective payment.*
>
> *2. The* [Appellant] *is ordered to pay a fine to the amount of CHF 20,000. The fine is to be paid within 30 days of notification of the present decision.*
>
> *3. The* [Appellant] *is granted a final deadline of 30 days as from notification of the present decision in which to settle its debt to the* [Second Respondent]*."*

69. The terms of the Appealed Decision were duly communicated, amongst others, to the Parties on 4 February 2020.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

70. On 20 February 2020, the Appellant filed a Statement of Appeal with the CAS in accordance with Article 58 of the FIFA Statutes and Articles R47 and R48 of the Code of Sports-related Arbitration (January 2020 edition) (the "CAS Code"). In its submission, the Appellant requested that the Panel was comprised of three arbitrators and that an oral hearing would be held. Furthermore, in its Appeal Brief the Appellant had applied for provisional measures and requested the stay of execution of the Appealed Decision.

71. On 4 March 2020, the Appellant submitted a letter to the CAS Court Office, requesting, *inter alia,* from "the president of the Appeal Division", i) to order the Second Respondent to produce proof of sending "the alleged 'original' letter dated 1 September 2019, ii) to appoint an expert in order to review the validity of the 'original' letter dated 1 September 2019 in which the request was made that payment would have to be made to the bank account of Mr Nihat Güman; and iii) to suspend time limit to file its Appeal Brief "*until receiving the Expert's report*".

72. On the same day, the CAS Court Office invited the Respondents to file their comments as to the three requests from the side of the Appellant and informed the Parties that the Appellant's time limit to file its Appeal Brief was stayed pending the decision on its request.

73. On 9 March 2020, the Second Respondent informed the CAS Court Office that it did not agree with the suspension of the time limit for filing the Appeal Brief. As to the nomination of an expert, it stated that this was not needed as "*the documents are pretty clear and it can be seen forgery even with naked eyes*". Per the same letter, the Second Respondent reserved its right "*to submit entire file and all of our evidences to during our response after the appeal brief has been filed properly and CAS procedural advance fee is totally paid by Appellant*".

74. Per letter of the same day, the First Respondent informed the CAS Court Office that, as to the request for the production of evidence from the side of the Second Respondent,

that it considered this request to be left to the Second Respondent to comment on it. As to the request for the appointment of an expert, the Second Respondent found that the Appellant had "*the opportunity, and ample time, to request its own evidentiary measures, including the appointment of an ex parte expert would it wish to do so*" and, opposed thereto, and consequently, it did not agree to the suspension of the time limit to file the Appeal Brief.

75. On 12 March 2020, the Appellant informed the CAS Court Office and filed an unsolicited letter that it insisted on its requests.

76. On 13 March 2020, the CAS Court Office informed the Parties, referring to Article R44.3 of the CAS Code, that the Appellant's requests for production of documents and to appoint an expert were, at that stage, denied as "*only the Panel may order a party to produce documents and decide to appoint an expert*". Per the same letter, the Parties were informed by the CAS Court Office that, in accordance with Article R32(2) of the CAS Code, the Appellant's time limit to submit its appeal brief was extended with five days and the Appellant was advised that the suspension of its time limit to submit its Appeal Brief was lifted from receipt of that letter.

77. On 17 March 2020, the Appellant requested the CAS Court Office for the extension of two weeks of the time limit to file its Appeal Brief "*due to the national and international situation caused by the Covid-19 virus*", which was accepted by the CAS Court Office by means of its letter of 18 March 2020. Per the same letter, the CAS Court Office, by referring to its letter of 2 March 2020, and considering the absence of any communication from the side of the Appellant whether or not it wished to maintain of withdrew its application for provisional measures, informed the Parties that an Order on Provisional Measures would be issued by the President of the Appeals Arbitration Division, or her Deputy.

78. On 19 March 2020, the Appellant withdrew its application for provisional measures.

79. On 20 March 2020, the CAS Court Office informed the Parties that the Appellant's application for provisional measures and the Respondent's positions had already been forwarded to the President of the Appeals Arbitration Division and that an Order would be issued in due time.

80. On 23 April 2020, after an extension of the time limit, the Appellant submitted its Appeal Brief pursuant to Article R51 of the CAS Code.

81. On 16 June 2020, the CAS Court Office invited the Respondents to file their Answers.

82. On 22 June 2020, the CAS Court Office provided the Parties with the Order on Request for Provisional Measures as was issued by the President of the CAS Appeals Arbitration Division.

83. On 22 June 2020, the Second Respondent informed the CAS Court Office that it did not receive all the exhibits of the Appeal Brief.

84. On 1 July 2020, the CAS Court Office informed the Parties that, pursuant to Article R54 of the CAS Code and on behalf of the President of the CAS Appeals Arbitration Division, the Panel appointed to hear the appeal was constituted as follows:

- Sole Arbitrator: Mr Frans de Weger, Attorney-at-law in Haarlem, the Netherlands

85. On 10 July 2020, the CAS Court Office informed the Parties that it did not receive all exhibits by courier from the Appellant. The Appellant was exceptionally granted a last and final deadline to resend all exhibits by courier to the CAS Court Office.

86. On 15 July 2020, the Appellant informed the CAS Court Office that "*the annexes mentioned in the brief are 36 Annexes which is the correct number for final annexes to our brief. And that just the final list of annexes which may include error in the numbering*". Per that same letter, an updated list of the annexes was attached, and the Appellant would "*forward by courier a full copy from the annexes submitted equal to 36 annexes*".

87. On 16 July 2020, the CAS Court Office informed the Parties that the Appellant would send by courier a complete set of annexes to its Appeal Brief and that upon receipt of these annexes by the Respondents by courier, their time limit to file their Answers would be resuming.

88. On 6 August 2020, the CAS Court Office informed the Parties as to the annexes that no further communication was received from the Appellant. Consequently, the Respondents, per that same letter, were invited to prepare their Answer on the basis of the elements already on file and were granted twenty days from receipt of that letter to submit their Answer.

89. On 6 August 2020, the Appellant informed the CAS Court Office that the annexes were sent by USB via courier on 15 July 2020 which included the updated list of the annexes with correct numbers and attached proof thereto.

90. On 7 August 2020, the CAS Court Office advised the Appellant that the "Proforma Invoice" attached to its letter of 6 August 2020 did not constitute a proof of sending. Per that same letter, the Parties were informed that no USB sticks had been received sofar.

91. On 16 August 2020 and 7 September 2020 respectively, the Second Respondent and the First Respondent, after an extension, filed their Answer in accordance with Article R55 of the CAS Code.

92. On 8 September 2020, the CAS Court Office acknowledged receipt of the Respondents' Answers, and informed the Parties that, unless the Parties agreed or the Sole Arbitrator ordered otherwise on the basis of exceptional circumstances, Article R56 of the CAS Code, provided that the Parties would be authorised to supplement or amend their requests or their argument, nor to produce new exhibits, nor to specify further evidence on which they would intent to rely, after the submission of the Appeal Brief and of the Answer.

93. Per letter of the same day, the Second Respondent informed the CAS Court Office that it preferred that a hearing would be held in the present matter.

94. On 22 September 2020, the CAS Court Office informed the Parties that:

- The Sole Arbitrator decided that a hearing would be held in the present matter.
- The Sole Arbitrator decided that the request to appoint an expert was denied as the Sole Arbitrator considered that the Appellant could have appointed its own expert at an earlier stage of the procedure and that it was not for the CAS to remedy such failure.
- The Sole Arbitrator denied the Appellant's request for production of a proof of sending the letter of 1 September 2019 for the mere reason that the Second Respondent already provided such proof of sending together with its Answer (see exhibits 8, 8 bis, 8bis 1 and 8 bis 2).

95. On 13 October 2020, the CAS Court Office informed the Parties that a hearing would be held by video-conference on 9 November 2020.

96. On 3 November 2020, the Second Respondent and the Appellant returned duly signed copies of the Order of Procedure to the CAS Court Office.

97. On 6 November 2020, the First Respondent returned a duly signed copy of the Order of Procedure to the CAS Court Office.

98. On 8 November 2020, the Appellant informed the CAS Court Office regarding the on-going criminal proceedings in Turkey against the legal representative of the Second Respondent, Ms Jale Demir.

99. In addition to the Sole Arbitrator and Mr Fabien Cagneux, Counsel to the CAS, the following persons attended the hearing by video-conference on 9 November 2020:

a) For the Appellant

1) Mr Juan de Dios Crespo Pérez, Counsel
2) Mr Nasr El-din Azzam, Counsel
3) Mr Ali Al-Mazrouei, Head of Board Directors
4) Mr Khaled Rashed Al-Hanaei, Chief Executive Officer
5) Mr Abbas Jadalla, Chief Financial Officer
6) Mr Abdullah Salem, Executive Director
7) Mr Ali Zamin, Head of Finance

b) For the First Respondent

1) Mr Miguel Liétard Fernández-Palacios, Director of Litigation
2) Mr Saveiro Paolo Spera, Senior Legal Counsel

c) For the Second Respondent

1) Mr Nihat Güman, Counsel
2) Ms Jale Demir, Counsel

100. Before the hearing was concluded, the Parties expressly stated that they did not have any objection with the procedure adopted by the Sole Arbitrator and their right to be heard had been respected, subject to a reservation from the side of the Appellant as to its request to have the present CAS proceedings suspended and to appoint an expert.

101. The Sole Arbitrator confirms that it carefully heard and took into account in its decision all of the submissions, evidence, and arguments presented by the Parties, even if they have not been specifically summarised or referred to in the present arbitral award.

V. SUBMISSIONS OF THE PARTIES

102. The following summary of the Parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the Parties. The Sole Arbitrator, however, has, for the purposes of the legal analysis which follows, carefully considered all the submissions made by the Parties, even if there is no specific reference to those submissions in the following summary.

THE APPELLANT

103. On 23 April 2020, the Appellant filed its Appeal Brief pursuant to Article R51 of the CAS Code. This document contained a statement of the facts and legal arguments. The Appellant challenged the Appealed Decision.

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

- The Appellant demonstrated that it in good faith initiated the procedure to pay the amounts of money owed to the Second Respondent. In this regard, the Appellant laid emphasis on the fact that it sent on 30 August 2019, an email to the official representative of the Second Respondent, Ms Jale Demir, requesting the bank account details to which it should make payments of the amounts as stated in the Appealed Decision in order to fulfil its financial obligations.

- On 1 September 2019, so the Appellant submits, the Appellant received an email with an official letter and power of attorney enclosed from the official representative Ms Jale Demir. Both documents were printed on the official letter head, signed by her and with the stamp of the Second Respondent. From this letter it followed that the Appellant should transfer the amount due to the bank account of Kadir Durmaz. This was the only letter that the Appellant received in relation to the bank account details.

- During the following days, the Appellant received several follow-up emails of Ms Jale Demir, requesting the payment to be made and indicating that in case of failure to make the payment, the Second Respondent would request for disciplinary proceedings at FIFA.

- On 10 September 2019, the Appellant instructed its bank to transfer the amount of EUR 314,342 i.e. the Penalty Fee and interests, to the bank account as stipulated in the letter it received on 1 September 2019. As such, the Appellant is of the opinion that it fulfilled its obligations towards the Second Respondent and complied with the Appealed Decision.

- On 15 September 2019, the Appellant sent an official communication to the direct official email address of the Second Respondent enclosing the proof of payment of the amount due. No objection was raised by the Second Respondent to the bank account details and the beneficiary name as stipulated in the proof of payment.

- In this regard, the Appellant wishes to lay emphasis on the fact that it did not have a "bad history" when it came to the fulfilment of its obligations towards other clubs or its players. The Appellant already paid the total amount of EUR 3,000,000 to the Second Respondent on the basis of the Transfer Agreement.

- The Second Respondent maliciously introduced a forged document before the FIFA DC which it allegedly sent on 1 September 2019. The Appellant denies that it received that letter. The Second Respondent did not submit this letter, or any other document from which it follows that the Appellant sent or forwarded such letter, in the proceedings in front of FIFA.

- In relation to the statements of the Second Respondent claiming that the Appellant forged the letter dated 1 September 2019 with the bank account details of Kadir Durmaz, the Appellant stressed that it never had the material similar to the aforementioned letter to forge such letter. Moreover, the fact that the Appellant did transfer the amount to the bank account of Kadir Durmaz, clearly showed that it never had the intention not to pay the amount.

- Furthermore, the FIFA Disciplinary Committee failed to adequately perform its role as it failed to review the arguments of the Appellant in relation to the failure of the Second Respondent to produce proof that it sent the letter of 1 September 2019 stipulating the bank account details of the Second Respondent. In addition, FIFA failed to request the submission of such proof of sending.

- Moreover, the Appealed Decision included a mistake which is very crucial. The Appealed Decision stated that the Second Respondent sent a letter to the Appellant on 18 September 2019, with a power of attorney entitling Mr Güman as the legal representative of the Second Respondent and indicating the bank account details of the Second Respondent. However, the Second Respondent never claimed to have sent such letter on 18 September 2019, but on 1 September 2019. On top of that, the letter sent on 1 September 2019, as claimed by the Second Respondent, stipulated the bank account details of Mr Güman and not the bank account details of the Second Respondent. Accordingly, the Appealed Decision was based on false considerations and should be annulled.

- Ms Jale Demir, the legal representative of the Second Respondent, contacted the Appellant through various email addresses interchangeably such as

av.jaledemir.bursaspor@gmail.com and av.jaledemirr.bursaspor@gmail.com. The email with the letter stipulating the bank account details of Kadir Durmaz was sent from the email address of av.jaledemirr.bursaspor@gmail.com. The correspondence between the Clubs was always confidential. The fact that Ms Jale Demir used both email addresses interchangeably was demonstrated by the fact that both emails were followed up from both email addresses. In addition, the follow up emails contained the same spelling mistakes. The Appellant always dealt in good faith in order to comply with its financial obligations deriving from the Appealed Decision and never realized that Ms Jale Demir was sending letters from two different email addresses.

- Accordingly, the Second Respondent deliberately and intentionally created confusion to the Appellant and FIFA, in order to be able to manipulate the Appellant and consequently FIFA, in particular the FIFA DC, in order to collect the sum of money twice. In this regard, the Appellant initiated a criminal procedure in Turkey in order to prove this counterfeit.

105. On this basis, the Appellant made the following requests for relief:

"1. To accept this Appeal against the Appealed Decision rendered by the First Respondent and to annul the Appealed Decision.

2. To determine that the Appellant complied with the Decision rendered by FIFA and communicated to the parties on 4 September 2018, the grounds of which were duly notified to the parties on 8 March 2019 and, in any event, that the Appellant fulfilled its obligations according to the Decision and made the bank transfer according to the instructions received.

3. To determine that no violation of Article 15 of the FIFA Disciplinary Code 2019 was committed and therefore no sanctions shall be imposed on the Appellant.

4. To determine that the Appellant shall not pay any costs derived from the proceedings before the FIFA Disciplinary Committee.

5. To determine any other any other [sic] *relief the Panel may deem appropriate.*

5. To fix a sum of CHF 20,000 (Twenty Thousand Swiss Francs) to be jointly paid by the First and Second Respondent to the Appellant, for the payment of its legal fees and costs.

6. To condemn the First and the Second Respondents to the payment of the CAS administration costs."

FIRST RESPONDENT

106. On 7 September 2020, the First Respondent filed its Answer in accordance with Article R55 of the CAS Code.

107. The submissions of the First Respondent, in essence, may be summarised as follows:

- The Appellant does not contest FIFA's discretion to impose sanctions under Article 15 FDC for failing to comply with the PSC Decision. The FIFA DC

cannot review or modify the substance of the PSC Decision, which is final and binding and has become enforceable. Consequently, the FIFA DC has the sole task to analyse whether the Debtor complied with a final and binding decision of the relevant body. The CAS should only address the question whether the Appellant respected and complied with the decision, but should no longer consider its content.

- In relation to the disciplinary proceedings, it follows from Swiss law and the FIFA Regulations, that the Appellant had the burden to prove that it had indeed performed the payment indicated in the PSC Decision. As to the standard of proof, the First Respondent submits that, in accordance with Article 35(3) FDC, the standard of proof to be applied is the comfortable satisfaction.

- The sole task of the Sole Arbitrator is to assess whether the financial amounts as defined in the final and binding decision, i.e. the PSC Decision, were paid to the Second Respondent. In this respect, it is the duty of the debtor, i.e. the Appellant to pay all the necessary attention required from the circumstances to make sure that the monetary obligation ordered in the relevant decision is effectively fulfilled pursuant to the indications of the creditor. From CAS 2013/A/3323, it follows that it is to the discretion of the creditor to determine the details and the place of the bank account into which the amount due is transferred. Moreover, it is the responsibility of the debtor to do all relevant efforts to comply with its payment obligations in accordance with a FIFA decision and according to the creditor's wishes.

- The Appellant received copious correspondence from av.jaledemirr.bursaspor@gmail.com, all of which aimed at obtaining a payment towards the bank account of Kadir Durmaz and which were sent within an extremely tight time frame in order to push the Appellant to finalise it as quickly as possible.

- It seems that the Appellant ultimately realised that something might not have been right with the email address av.jaledemirr.bursaspor@gmail.com, as the Appellant suddenly decided to address its enquiry to a different email address, i.e. bursaspor@bursaspor.org.tr. The Appellant substantially infers that the Second Respondent produced fake documentation. However, it is beyond the scope of these proceedings, as well as those of the previous instance, to assess whether the Appellant was the victim of any fraud orchestrated in Turkey. What is within the scope of the proceedings, is to whether the Appellant had performed its obligations towards the Second Respondent in the manner as indicated by the latter. The facts of the case show that the Second Respondent never received the money indicated in PSC Decision.

- The Appellant did not perform a diligent assessment of the documents and information in its possession in relation to the monetary obligation it had to fulfil. The Appellant exchanged correspondence with two different email addresses allegedly pertaining to the Second Respondent. No matter how minimal the difference between the two addresses is, using the diligence required by the circumstances the Appellant could have realised it was not

interacting with the same addressee. The Appellant should have kept interacting only with the account provided by the Second Respondent during the FIFA proceedings.

- From Article 3(2) Swiss Civil Code ("SCC") and CAS jurisprudence, it follows that, no person may invoke the presumption of good faith if he has failed to exercise the diligence required by the circumstances. Even a slight negligence is sufficient to lose the right to invoke good faith. In addition, the Appellant did not meet its burden of proof that it no longer is obliged to comply with the PSC Decision.

- For the sake of completeness, it is recalled that the Appellant does not only not contest the FIFA Disciplinary Committee's power to impose sanctions for violation of Article 15 of the FDC, it also does not contest their proportionality.

108. On this basis the First Respondent submitted the following requests for relief:

"Based on the foregoing, FIFA respectfully requests the CAS to issue an award on the merits:

(a) rejecting the Appellant's appeal in its entirety;

(b) confirming the decision 191616 PST rendered by the FIFA Disciplinary Committee on 14 January 2020;

(c) ordering the Appellant to bear all costs incurred with the present procedure;

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

SECOND RESPONDENT

109. On 16 August 2020, the Second Respondent filed its Answer in accordance with Article R55 of the CAS Code.

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

- The Second Respondent is of the opinion that there was a *"serious fake chain of documents on the case"* constituted without the involvement of the Second Respondent. The Second Respondent sent the bank account details upon request to the Appellant. However, the management of the Appellant forged a fake email address and power of attorney. It is very clear that the documents produced by the Appellant were forged.

- Initially, the Appellant did not pay the second instalment of the transfer fee. Therefore, the Second Respondent initiated proceedings in front of FIFA. Before the application to FIFA, a default notice was sent to the Appellant, dated 26 October 2017. The power of attorney was issued one day before, i.e. 25 October 2017.

- Av.jaledemir.bursaspor@gmail.com is the real email address of the Second Respondent. Av.jaledemirr.bursaspor@gmail.com is a fake email address. Furthermore, the Appellant created two more fake email addresses, namely, nihatgumansS76@gmail.com and nihat.guman.icloud@outlook.com, both email addresses are fake. Nihatguman76@gmail.com and nihat.guman@icloud.com are the real email addresses of Mr Güman.

- The Appellant contacted the Second Respondent on av.jaledemir.bursaspor@gmail.com via the email address alwahdaclub@wahdas.ae on 31 August 2019. Ms Jale Demir replied to the request of the Second Respondent that she would share to bank account details with the Appellant. On 1 September 2019, Ms Jale Demir received another email from the Appellant via the email address of alwahdaclub.wahdas.ae@gmail.com, requesting bank account details. At that time, the Second Respondent did not notice that the email address of the Appellant from which it responded to the email of Ms Jale Demir was a different email address. Someone from within the Appellant controlled both email addresses and organised the entire chain of forgery.

- The letter dated 1 September 2019, produced by the Appellant and indicating the bank account details of Kadir Durmaz, states at the bottom *"Power of Attorney and the document (date 30.08.2019) from Al Wahda Fc"*. It is clear that the Appellant forgot to erase this statement on the fake document.

- After Ms Jale Demir received a confirmation from the email address alwahdaclub.wahdas.ae@gmail.com, the Second Respondent waited for the payment. However, during that time, someone from within the Second Respondent was producing fake documents and opening fake email addresses.

- On 11 September 2019, Ms Jale Demir sent another email requesting the payment. On the same day, the Appellant responded to the aforementioned email, stating that the payment has been arranged. Since the Second Respondent did not receive any payment, Ms Jale Demir sent another email on 23 September 2020, requesting the payment. However, the Second Respondent did not receive the payment from the Appellant.

- After receiving the letter from the TFF, it was noticed that the documents were forged. The Appellant changed the bank account details by using photoshop, it changed the power of attorney and added the name of Kadir Durmaz by using photoshop but forgot to change the Turkish Identity Number of Mr Güman and the delete the 'Dr title'.

- All the correspondence from the side of the Second Respondent was sent from av.jaledemir.bursaspor@gmail.com. The Appellant created the fake email addresses Av.jaledemirr.bursaspor@gmail.com, nihatgumansS76@gmail.com and nihat.guman.icloud@outlook.com. After the discovery of the forgery, the Second Respondent requested the FIFA to start disciplinary proceedings. The Second Respondent is the victim of the forgery and did not receive any amount following the PSC Decision.

111. On this basis the Second Respondent submitted the following requests for relief:

> "[Second Respondent] *is victim of this chain of forgery made by* [the Appellant] *management and we kindly request from CAS panel that* [the Appellant] *request from against decision of FIFA disciplinary committee should be rejected."*

VI. JURISDICTION

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

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

113. The jurisdiction of CAS derives from Article 49 of the (edition 2019) FDC:

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

114. The jurisdiction of CAS to hear the appeal filed by the Appellant against the Appealed Decision is not disputed by the Respondents and is further contemplated by the Statutes of FIFA in the following terms:

Article 57 "*Court of Arbitration for Sport (CAS)*"

> "*1. FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, member associations, confederations, leagues, clubs, players, officials, intermediaries and licensed match agents.*
>
> *2. 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.*"

Article 58 "*Jurisdiction of CAS*"

> "*1. 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.*
>
> *2. Recourse may only be made to CAS after all other internal channels have been exhausted. [...].*"

115. The jurisdiction of CAS is further confirmed by the Orders of Procedure duly signed by the Parties.

116. It follows that CAS has jurisdiction to decide on the present dispute.

VII. ADMISSIBILITY

117. Article R49 of the CAS Code provides as follows:

> *"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties."*

118. The Sole Arbitrator notes that pursuant to Article 58(1) of the FIFA Statutes, the time limit to file an appeal is 21 days of receipt of the Appealed Decision.

119. The grounds of the Appealed Decision were communicated to the Parties on 4 February 2020. The Appellant filed the Statement of Appeal with CAS on 20 February 2020 and filed its Appeal Brief on 23 April 2020, i.e. within the granted extension of the time limit. The Statement of Appeal further complied with the other conditions set out in Article R48 of the CAS Code.

120. Therefore, the appeal was timely submitted and is admissible.

VIII. APPLICABLE LAW

121. Article R58 of the CAS Code provides more specifically 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 Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision."*

122. Article 57(2) of the FIFA Statutes reads as follows:

> *"The arbitral tribunal shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to the rules of law with which the dispute has the closest connection."*

123. In view of the above provisions, the Sole Arbitrator remarks that the "applicable regulations" are the FIFA Statutes and Regulations, in particular the FDC (2019 edition), with Swiss law applying to fill in any gaps or *lacuna* within those regulations.

124. The Sole Arbitrator is satisfied that the FIFA Statutes and Regulations are applicable, in particular the FDC (2019 edition), with Swiss law applying to fill in any gaps or *lacuna* within those regulations.

IX. MERITS

A. The Main Issue

125. The main issue to be resolved by the Sole Arbitrator is whether or not payment has been made by the Appellant to the Second Respondent. In this regard, it is clear to the Sole Arbitrator, and as such he is comfortably satisfied, that the payment has not been made by the Appellant to the Second Respondent, but that payment has been made to a wrong party. As such, it is the question here now whether or not the Appellant, as follows from the applicable Swiss law, should be discharged from its payment obligations in case of a wrong payment and whether there is any contributory negligence from the side of the Second Respondent in relation to the wrong payment as was made by the Appellant.

126. Before turning to the examination of this main issue, the Sole Arbitrator has to address preliminary points, which were raised by the Parties in the course of the arbitration.

B. Preliminary Points

Admissibility copy file criminal proceedings

127. The first issue to discuss is related to the copy of the file regarding criminal proceedings initiated by the Appellant in Turkey against Ms Jale Demir, which was submitted by the Appellant to the CAS Court Office together with its email dated 8 November 2020.

128. At the outset of the hearing, the First and Second Respondent clearly objected to the admissibility of these documents and asked the Sole Arbitrator not to admit it to the file.

129. After considering the objections as expressed by the Respondents with regard to the admissibility of the copy of the file regarding criminal proceedings, the Sole Arbitrator notes that this document was indeed filed late. However, in view of the fact that, in principle, new evidence should be admitted if it has become available after the time limit for filing the appeal brief (RIGOZZI/HASLER, *Sports Arbitration under the CAS Rules*, in: ARROYO M. (ed.), Arbitration in Switzerland. The Practitioner's Guide, Kluwer Law I1nternational 2013, p. 1034; see CAS 2015/A/4232), the Sole Arbitrator decides to admit the Appellant's late submission on the basis of exceptional circumstances in accordance with Article R56(1) of the CAS Code. As such, the Sole Arbitrator notes that the documents, dated 6 November 2020, were only received by the Appellant on 8 November 2020 and, subsequently, immediately provided the CAS Court Office with it, although this was only one day before the hearing. In other words, the documents were not available before the filing of the Appeal Brief. Therefore, the Sole Arbitrator finds it reasonable to admit these documents, all the more because the Sole Arbitrator will also refer to these documents in the present award as will be shown below. The Sole Arbitrator also finds that it is not necessary to dismiss the Appellant's submissions as it does not influence the outcome of the present arbitration proceedings.

Request for suspension

130. Another preliminary issue to deal with is the Appellant's request to suspend the present proceedings, which request was only made during the hearing, for the first time. In this respect, the Sole Arbitrator refers to Article R32 of the CAS Code, according to which ongoing proceedings before CAS can be suspended in the event of 'justified grounds'.

131. In this regard, the Sole Arbitrator observes that Counsel for the Appellant made such request due to the pending criminal case, as referred to above, and from which criminal proceedings the documents were submitted and, as set out above, admitted to the file.

132. In view of the foregoing, the Sole Arbitrator notes that a request for suspension due to the existence of a pending criminal case can be accepted provided that the latter is directly linked to the case at hand and that the suspension does not prejudice the other party (MAVROMATI/REEB, The Code of the Court of Arbitration for Sport, 2015, p. 129, with references to CAS 2010/A/2298, CAS 2011/A/2364 and CAS 2011/A/2363).

133. The Sole Arbitrator finds, however, as will be shown below, that the criminal proceedings are not directly linked to the present CAS proceedings. The Sole Arbitrator realises there is a link, but no such direct link in the sense that the outcome of the criminal proceedings is decisive for the outcome of the present case. More specifically, in the context of these CAS proceedings, the Sole Arbitrator is not convinced and does not find that the role of Ms Jale Demir, against whom the criminal proceedings are initiated, is decisive here. What the Sole Arbitrator finds relevant, as will be shown below, is that both the Clubs communicated with email addresses that did not belong to the Clubs, that the payment was not made by the Appellant to the Second Respondent as well as that the latter did not provide its bank details on 1 September 2019 to the Appellant by sending the details to an email address that did not belong to the Appellant.

134. Further to this, it is clear to the Sole Arbitrator that the suspension does prejudice the rights of the other party. In fact, if a suspension would be accepted, this directly affects the position of the Second Respondent as the Appellant is withholding money under the PSC Decision and such situation would be continued in the event of a suspension. What is more, from the copy of the file regarding the criminal proceedings, as submitted by the Appellant, it follows that there was a delay due to the Covid-19 pandemic, that "*ever since the opening, the court houses are operating by half work force*", and that it is not clear when the criminal proceedings will be finalised. In this regard, the Sole Arbitrator remarks that Ms Jale Demir has not been summoned by the Turkish prosecutor yet. Therefore, the Sole Arbitrator sees no reason to suspend the current CAS proceedings.

Request for expert

135. Alternatively, in the event that a suspension would not be accepted, during the hearing the Appellant also reiterated its request to appoint an expert. As such, as motivated by the Appellant, the appointment of an expert would be necessary as the expert could review the validity of the 'original letter' allegedly sent by the Second Respondent on 1 September 2019. The appointment of the expert would be necessary as an expert report can prove that the payment has been made to the Second Respondent. In this regard, the

Sole Arbitrator underlines that the Appellant's request, by means of the letter of 22 September 2020 from the CAS Court Office to the Parties, had already been denied.

136. As communicated by the CAS Court Office in its letter of 22 September 2020, the Sole Arbitrator remarks that the Appellant could have appointed its own expert, which the Appellant failed to do. As such, it is not for the CAS to remedy such failure. In this respect, the request was also not supported by both the Respondents, as opposed to what the Appellant stated in its letter of 12 March 2020 last from which it follows that that "*there is no objection from the Second Respondent on the Appellant's request for the nomination of an expert by CAS*". In fact, by means of its letter of 9 March 2020, the Second Respondent stated that there was no need for the nomination of an expert.

137. In this regard, as correctly stated by the First Respondent, the Sole Arbitrator wishes to add that there was also sufficient time for the Appellant to request its own evidentiary measures, including the appointment of an expert. The Appellant freely decided not to appoint its own expert. In this context, the Sole Arbitrator observes that the Appellant requested the appointment of an expert by the CAS for reasons of independency and impartiality. However, the Sole Arbitrator does not find this convincing as also party appointed experts will not automatically rule out any independence or impartiality.

138. Additionally, the Sole Arbitrator refers to Article 8 of the Swiss Civil Code ("SCC"), according to which "[u]*nless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact*". By the same token, also in light of the burden of proof as established in Article 36(2) of the FDC, following which "[a]*ny party claiming a right on the basis of an alleged fact shall carry the burden of proof of this fact*", it is clear to the Sole Arbitrator that the burden of proof falls on the Appellant. As such, it would have made sense that, considering that it also follows from Article 36 (2) of the FDC that "[d]*uring the proceedings, the party shall submit all relevant facts and evidence of which the party is aware at that time, or of which the party should have been aware by exercising due care*", if the Appellant had the wish to appoint an expert and found this of relevance for its position in the present case, it should have appointed, as soon as possible, its own expert in support of its claim that the payment has been made to the Second Respondent. This is not what happened here as the Appellant decided to let the Sole Arbitrator decide on this issue and so left it to the discretion of the Sole Arbitrator. However, the Sole Arbitrator concludes, and is not convinced, that an expert should be appointed in the present arbitration proceedings to answer the question whether the FIFA DC was right in its decision that the Appellant did not respect and comply with the PSC Decision.

139. Finally, the Sole Arbitrator also notes that it is not necessary to appoint an expert in the current proceedings as the latter would, in essence, have focused on the veracity of the letter of 1 September 2019. However, as was also communicated by the CAS Court Office by means of its letter 22 September 2020, in which letter the request for the proof of sending the letter of 1 September 2019 was denied, which is now further confirmed by means of this Award, the Second Respondent had already provided proof of sending of such letter together with its Answer. More specifically, it follows from the exhibits 8, 8bis, 8bis 1 and 8bis 2 that such email was sent by the Second Respondent to the email address alwahdaclub.wahdas.ae@gmail.com that did not belong to the Appellant.

140. In any event, the Sole Arbitrator does not agree with the Appellant that this case is only IT-related, as was submitted during the hearing by the Counsel of the Appellant, and that for this reason the present CAS proceedings must be suspended or that an expert should be appointed. As will follow from the considerations below, the Sole Arbitrator finds that other circumstances must be taken into account and are of relevance in light of the assessment whether or not the Appealed Decision should be annulled or not.

141. The Sole Arbitrator will now turn to the substantive issue, to be examined in sequence.

C. The payment to the bank account of Kadir Durmaz and its legal consequences

Scope of review

142. As a starting point, the Sole Arbitrator wishes to make some introductory comments as to the scope of review for the Sole Arbitrator in relation to the present CAS arbitration.

143. In view of the above, the Sole Arbitrator notes that it follows from the PSC Decision of 22 August 2018 that the Appellant had to pay to the Second Respondent the Penalty Fee of EUR 300,000 as well as an amount of CHF 5,000 as costs of the FIFA proceedings.

144. It is undisputed that the decision of the FIFA PSC became final and binding upon the Clubs. In this respect, the First Respondent noted that the sole task for the FIFA DC was therefore to analyse if the debtor (i.e. the Appellant here) had complied with the PSC Decision (FIFA cited; see also, *inter alia*, CAS 2006/A/1008 and CAS 2013/A/3323).

145. In this regard, the Sole Arbitrator wishes to underline that – as a general principle – the FIFA DC had to take into account only the facts arising after the date on which the PSC Decision became final and binding, as the disciplinary proceedings were designed to assess only the compliance with the final decision rendered by the relevant FIFA body. This was the scope of the FIFA disciplinary proceedings (see, *inter alia*, CAS 2016/A/4910). Similarly, the task of the Sole Arbitrator now is to analyse whether or not the Appellant respected and fulfilled the PSC Decision, not to analyse its content (CAS 2012/A/3032). The Sole Arbitrator observes that this interpretation of the scope of the review of the FIFA DC has been acknowledged in a number of CAS decisions (cf. CAS 2006/A/1008, CAS 2008/A/1610, CAS 2013/A/3326 and CAS 2013/A/3380).

146. In addition, the Sole Arbitrator notes that only submissions relating to the sanction imposed by the FIFA DC, such as its legal basis and quantum, can be heard by the Sole Arbitrator, however arguments as to the substance of the PSC Decision cannot be considered. As stated by the panel in CAS 2008/A/1610 and also CAS 2010/A/2148:

> *"the object of [an] appeal cannot extend beyond the limits of a review of the disciplinary sanction imposed by the FIFA Disciplinary Committee, hence, only submissions relating to the fine imposed by the FDC, such as its legal basis and quantum, can be considered. The Panel cannot consider requests concerning the debt owed by Appellant, the issues relating thereto having been decided by the FDC decision which is final and binding."*

147. In view of the above, considering CAS' power to review a case *de novo* according to Article R57 of the CAS Code, the Sole Arbitrator finds that the review and the power to amend a disciplinary decision of a FIFA judiciary body should only take place in

cases, in which the relevant FIFA judiciary body has exceeded the margin of discretion granted to it by the principle of association authority, i.e. only in cases, in which the FIFA judiciary body concerned must be held to have acted arbitrarily. As such, only if the sanction concerned must be considered as evidently and grossly disproportionate to the offence, will the Sole Arbitrator have the authority to amend or set aside the decision (see, *inter alia*, CAS 2014/A/3562; CAS 2009/A/1817 & 1844; CAS 2004/A/690; CAS 2005/A/830; CAS 2006/A/1175; CAS 2007/A/1217; and CAS 2009/A/1870).

148. Bearing in mind these clear principles, there are circumstances that the Sole Arbitrator wishes to address in relation to the facts which have arisen after the date on which the PSC Decision had been made. As such, it was only during the CAS proceedings for the first time that the Second Respondent provided proof in relation to its letter of 1 September 2019 containing the bank details of the Second Respondent, described by the Appellant as the "Fake Letter", from which it clearly follows that such letter, fake or not, was only sent to an email address (alwahdaclub.wahdas.ae@gmail.com) that did not belong to the Appellant. Put differently, it was only during the CAS proceedings that it became clear that such letter was not sent to an email address that belonged to the Appellant. Such proof was not in the FIFA file. In its submissions before CAS, the First Respondent stated that this email was sent to the Appellant, which is understandable as the letter itself referred to an email address that belonged to the Appellant (alwahdaclub@wahdas.ae), more specifically following from the header of such letter. However, the proof as provided by the Second Respondent during the CAS proceedings now clearly demonstrates that such letter was not sent to the correct email address of the Appellant and that such letter was only sent to alwahdaclub.wahdas.ae@gmail.com, which was also confirmed by the Counsel of Second Respondent during the hearing.

149. The Sole Arbitrator finds these exceptional circumstances important as to the outcome of the present dispute. As such, the FIFA disciplinary authorities always adopt a case-by-case approach and analysis and take into account all the specific circumstances of each case as foreseen as *"similar cases must be treated similarly, but dissimilar cases could be treated differently"* (see, *inter alia*, CAS 2012/A/2750 and CAS 2019/A/6278).

Legal framework under Swiss law

150. Addressing the question whether the wrong payment of the Appellant to the bank account of Kadir Durmaz released it from its contractual obligations deriving from the Transfer Agreement, the Sole Arbitrator points out that it follows from Swiss law that, in case of a wrong payment, a debtor is not discharged from its payment obligations unless the debtor paid to the wrong person due to contributory negligence of the creditor.

151. In this regard and pursuant to Article 41 of the SCO (in conjunction to its Article 99(3)), the Sole Arbitrator wishes to emphasise that the party that has caused a damage to the other party, either by negligence or imprudence, shall compensate it. In particular *"*[l]*orsque le montant exact du dommage ne peut être établi, le juge le détermine équitablement en considération du cours ordinaire des choses et des mesures prises par la partie lésée"* which can be freely translated into English as *"*[w]*here the exact value of the loss or damage cannot be quantified, the court shall estimate the value at its discretion in the light of the normal course of events and the steps taken by the injured party"*. At the same time, also pursuant to Article 44 (1) SCO *"*[l]*e juge peut réduire*

les dommages-intérêts, ou même n'en point allouer, lorsque la partie lésée a consenti à la lésion ou lorsque des faits dont elle est responsable ont contribué à créer le dommage, à l'augmenter, ou qu'ils ont aggravé la situation du débiteur", which can be informally translated as follows *"*[w]*hen the injured party consented the action which caused the loss or damage or circumstances attributable to him helped to give rise to or to increase the loss or damage or otherwise to make worse the position of the party liable for it, the court may reduce the compensation due or even exempt it entirely".*

152. Against the above legal framework, the Sole Arbitrator will now carefully analyse whether, in light of the specific circumstances of the case, the Appellant can be discharged from its payment obligations towards the Second Respondent and whether any contributory negligence from the side of the Second Respondent exists in this case.

Specific circumstances of the case

153. As to the payment of the Penalty Fee, the Sole Arbitrator notes that it is clear that the Appellant did not transfer the Penalty Fee to the correct bank account. Instead, the Appellant wired the Penalty Fee to a different bank account, i.e. the bank account of Kadir Durmaz, as is also proven by the Appellant. Although the Clubs accuse each other of forgery of documents, the Sole Arbitrator does not rule out that the wrong payment was made because the Clubs were the victims of a scheme committed by a fraudster. At the least, also in light of the burden of proof as enshrined in Article 8 of the SCC as to rights deriving from alleged facts, as these accusations it would have been up to the Clubs to provide the Sole Arbitrator with conclusive evidence to support their positions. The Clubs did, however, not provide any evidence that one of the Clubs forged any documents and, therefore, the Sole Arbitrator will not deal with this issue any further.

154. In fact, from the evidence produced by the Parties, the Sole Arbitrator does not rule out that the Clubs were victims of a so-called *"Man-in-the-middle"* scheme, which can be considered as a kind of electronic fraud targeted to business transactions in which wire transfers payments take place. Taking into account the evidence produced by the Parties and after a careful analysis of it, the Sole Arbitrator considers that it is highly likely that the email systems of the Clubs were hacked by cybercriminals (fraudsters) and used by unauthorised persons, who assumed Ms Jale Demir's and Mr Güman's identity to defraud the Appellant (i.e. an identity theft) and under which scenario the Appellant paid the Penalty Fee to a wrong bank account, i.e. the bank account of Kadir Durmaz.

155. Notwithstanding the above and irrespective of the fact whether the Clubs were victim of such fraudulent constructions, it is clear to the Sole Arbitrator that the payment by the Appellant has been made to a wrong party and that both the Clubs communicated with email addresses that did not belong to the Clubs, as was also explicitly confirmed by the Clubs, for which both the Clubs can be hold accountable, so finds the Sole Arbitrator. In this regard, the Appellant corresponded with the incorrect email addresses av.jaledemirr.bursaspor@gmail.com, nihatgumans76@gmail.com as well as nihat.guman.icloud@outlook.com, and also the Second Respondent corresponded with an incorrect email address, more specifically with alwahdaclub.wahdas.ae@gmail.com.

156. Having carefully reviewed the Parties' submissions, the correspondence exchanged and the assessment of the statements of all the party representatives heard at the hearing, the Sole Arbitrator finds that the following succession of cardinal events can be established:

i. On 26 October 2017, the Second Respondent sent a default notice to the Appellant, requesting the payment of EUR 500,000 deriving from the Transfer Agreement plus EUR 300,000 as compensation, within 10 days. Per the same letter, the Second Respondent provided the Appellant with its bank account details indicating the Denizbank with IBAN TR58 [...] 5002 26 and a power of attorney was enclosed, dated 25 October 2017.

ii. On 18 September 2018, the Second Respondent sent an email from av.jaledemir.bursaspor@gmail.com to the Appellant alwahdaclub@wahdas.ae, ahmedmabdelhak@gmail.com and alwahdafco@gmail.com, providing a letter in which it requested the payment of the Penalty Fee and the amount of CHF 5,000 as costs of the proceedings to the bank account of the Club at the Denizbank. In the letter the same bank account details were mentioned as in the default notice under i) above.

iii. On 22 March 2019, the Second Respondent sent another email from av.jaledemir.bursaspor@gmail.com, again the same bank details indicating the Denizbank and IBAN TR58 [...] 5002 26, to the Appellant (alwahdaclub@wahdas.ae, ahmedmabdelhak@gmail.com and alwahdafco@gmail.com) for the payment of the Penalty Fee and costs of the proceedings.

iv. On 30 August 2019, the Appellant sent a letter from alwahdaclub@wahdas.ae to the Second Respondent av.jaledemir.bursaspor@gmail.com, requesting to receive its bank account details in order to transfer the Penalty Fee in accordance with the PSC Decision.

v. The following day, on 31 August 2019, the Second Respondent acknowledged that it received the letter and indicated that it would share the bank account details in due course.

vi. On 1 September 2019, the Second Respondent received an email from alwahdaclub.wahdas.ae@gmail.com requesting the bank account details in order to make the payment.

vii. Also, on 1 September 2019, the Second Respondent sent an email to alwahdaclub.wahdas.ae@gmail.com with the bank account details of Mr Nihat Güman (different bank account details than were provided before).

viii. On that same day, on 1 September 2019, the Appellant received an email from av.jaledemirr.bursaspor@gmail.com, with a letter and a power of attorney enclosed, dated 25 October 2017, in which the Appellant was provided with the bank account details of Kadir Durmaz.

ix. On 10 September 2019, the Appellant instructed its bank to transfer the Penalty Fee to the bank account of Kadir Durmaz, as stipulated in the email which the Appellant received from av.jaledemirr.bursaspor@gmail.com on 1 September 2019. Subsequently, the Appellant sent an email to av.jaledemirr.bursaspor@gmail.com stating that it processed the payment.

x. On 15 September 2019, the Appellant sent an email to the Second Respondent (bursaspor@bursaspor.org.tr), indicating that it transferred the Penalty Fee to the bank account as stipulated in the email of 1 September 2019, i.e. the bank account of Kadir Durmaz. The Appellant enclosed the proof of payment to its correspondence.

xi. On 23 September 2019, the Second Respondent sent an email to the Appellant (alwahdaclub@wahdas.ae), indicating that it did not receive any payment yet and therefore would continue to request FIFA to start disciplinary proceedings. In reply, on the same day, the Second Respondent received an email (on av.jaledamir.bursaspor@gmail.com) from the email address alwahdaclub.wahdas.ae@gmail.com in which it was stated that *"I will check with our bank today regarding the payment and inform you accordingly"*.

xii. On 3 October 2019, the Appellant sent an email to the Second Respondent (bursaspor@bursaspor.org.tr) with an official letter enclosed, dated 1 October 2019, requesting, *inter alia, "an official letter containing the complete bank account details (updated)"* in order to transfer the payment of the costs of the proceedings and *"ensure that the payment is made to the original beneficiary"*.

xiii. On 25 November 2019, the Second Respondent sent a correspondence informing FIFA that no payment had been received up to that date, and that the Appellant had allegedly forged documents intentionally.

xiv. On 9 December 2019, the Secretariat initiated disciplinary proceedings against the Appellant for a potential failure to respect a decision passed by a body, a committee or an instance of FIFA or a CAS decision.

157. In view of the above events, the Sole Arbitrator wishes to underline that although the Appellant contests that the Second Respondent provided it with the correct bank account details of the Second Respondent, it is clear that the Second Respondent provided the Appellant with the correct bank account details on several occasions, more specifically, by means of its correspondence on 26 October 2017, 18 September 2018 and 22 March 2019. The bank account details of the Second Respondent were sent from the email address av.jaledemir.bursaspor@gmail.com to the email addresses of the Appellant alwahdaclub@wahdas.ae, ahmedmabdelhak@gmail.com and alwahdafco@gmail.com. In other words, the correct bank account details were sent to the correct email addresses.

158. The Sole Arbitrator observes that on 1 September 2019, the Appellant received an email with the bank account details of Kadir Durmaz which bank details were used by the Appellant to transfer the amount due. However, there is no doubt that this email with the incorrect bank details was sent from the email address that did not belong to the Second Respondent, i.e. av.jaledemirr.bursaspor@gmail.com, instead of the correct

email address, i.e. av.jaledemir.bursaspor@gmail.com. The Sole Arbitrator finds, as was also noted by the First Respondent in its submissions before CAS, that no matter how small the difference between these two email addresses is (one "r" versus two), it cannot be denied that Appellant made a mistake and corresponded with an email address that did not belong to the Second Respondent, which was also confirmed by the latter.

159. In this context, the Sole Arbitrator wishes to add that he finds it hard to believe that the Appellant *"never realized that Ms Jale Demir was sending from two different email addresses"*, based on the fact that as from 15 September 2019, the Appellant did no longer send any correspondence to the email address of Ms Jale Demir nor to the incorrect email address with the double 'r'. Instead, as from then the Appellant sent its correspondence *"to Bursaspor's official email, that was included in the original contract between the Appellant, the Second Respondent and the Player"*. It seems to the Sole Arbitrator that the Appellant became aware it was corresponding with an incorrect email address and, for this reason, started to use the official email address of the Second Respondent, the one that was mentioned in the Transfer Agreement and used in TMS.

160. Further to this and as set out above, the Second Respondent had already provided the Appellant with the correct invoice on three different occasions. The Sole Arbitrator finds that at the moment of receiving the incorrect bank details from the incorrect email address on 1 September 2019, had the Appellant verified the content and the attachment of the correct bank details received on 26 October 2017, 18 September 2018 and 22 March 2019, the wrong payment by the Appellant to the bank account of Kadir Durmaz could have been prevented. What is more, had the Appellant paid the Penalty Fee after the Second Respondent provided it with the bank details on 26 October 2017, 18 September 2018 or 22 March 2019, the current situation could also have been prevented. The Sole Arbitrator has serious doubts as to why the Appellant requested the bank details in its letter of 3 October 2019 again whilst these were already in its possession.

161. Moreover, the Sole Arbitrator also finds and wishes to add, as was also stated by the First Respondent, that the extremely tight time frame that the emails were sent from the incorrect email address in order to put pressure on the Appellant to finalise the payment as soon as possible should, indeed, have raised serious suspicions with the Appellant.

162. Additionally, the Sole Arbitrator also finds it essential to emphasize that the bank account details as stipulated in the email of 1 September 2019 did not mention the bank account details of the Second Respondent, at all. There was only reference to a person called "Kadir Durmaz". In light of a diligent assessment, this should, at the least, have triggered the Appellant to do more research and, for example, to check with the Second Respondent why there was no reference to the club. That is a duty of care that rests on the Appellant's shoulders. In other words, the Sole Arbitrator finds that, also as to the issue of the absence of the bank details of the Second Respondent and absence of the latter's name on the fake invoice, the Appellant should have acted with more diligence.

Contributory negligence Second Respondent

163. As to the question whether there is any contributory negligence from the side of the Second Respondent, the Sole Arbitrator is aware that the Second Respondent also communicated with an email address that did not belong to the Appellant, as was also

clearly admitted in the Second Respondent's Answer. As such, the Second Respondent also made a mistake of importance. As set out above, on 30 August 2019, the Appellant sent a letter from alwahdaclub@wahdas.ae to the Second Respondent av.jaledemir.bursaspor@gmail.com, requesting to receive its bank account details in order to transfer the Penalty Fee in accordance with the PSC Decision. The following day, the Second Respondent acknowledged that it received the letter and indicated that it would share the bank account details in due course. The Sole Arbitrator observes that this communication was between the correct email addresses of the Clubs. However, on that next day, on 1 September 2019, the Second Respondent also received an email from the incorrect email address alwahdaclub.wahdas.ae@gmail.com. What the Second Respondent subsequently did wrong here is that it did not sent the correct bank account details of Mr Güman on 1 September 2019 to the correct email address that the Appellant used (alwahdaclub@wahdas.ae) on 30 August 2019, but the Second Respondent sent it to the incorrect email address alwahdaclub.wahdas.ae@gmail.com. During the hearing it was also confirmed by the Counsel for the Second Respondent that this email was only sent to the email address alwahdaclub.wahdas.ae@gmail.com.

164. Here too, the Sole Arbitrator wishes to underline that the Second Respondent should have been aware of the differences between the two email addresses, which are even more significant as compared to the "jale demir" email addresses (in which there was only the difference of one "r"). What is more, it is even clear to the Sole Arbitrator that the Second Respondent must have been aware of these differences as both email addresses were mentioned on the top of the letter of 1 September 2019, as indicated before. In any event, it goes without saying that the Second Respondent also made a clear mistake in its communication and, as such, must also be hold accountable for this.

165. In this regard, the Sole Arbitrator does not want to leave unmentioned and recalls that although the Second Respondent stated two email addresses on top of its letter sent with its email of 1 September 2019, including the correct one, for unclear reasons it only sent the correct bank details to the incorrect address alwahdaclub.wahdas.ae@gmail.com.

166. In addition, and in the context of any further contributory negligence from the side of the Second Respondent, the Sole Arbitrator also finds that the course of events, i.e. receiving two separate emails in which bank details were requested from the Second Respondent on 30 August and 1 September 2019, must have alerted the Second Respondent to do more research. If the Second Respondent verified the requests it is to be expected that bank details would not have been sent to the incorrect email address.

167. In other words, from the above course of events, it is clear to the Sole Arbitrator that also the Second Respondent corresponded with an incorrect email address, but more importantly, if the Second Respondent had sent the bank account details to both email addresses, including the correct one, the Appellant would have received the correct bank account details. If the Appellant had received the correct bank account details, it is highly likely that the Appellant would have made the payment to the correct bank account as it is clear to the Sole Arbitrator that the Appellant did make the payment, however, to the wrong bank account, as set out. At the least, it is highly likely that this would have raised suspicion with the Appellant following which it would have acted with more diligence as it eventually did by means of its correspondence of 3 October 2019 and sending it to the official email address of the Second Respondent

(bursaspor@bursaspor.org.tr). As such, the Sole Arbitrator finds it remarkable that the Second Respondent finally sent the correct bank account details to the wrong email address on 1 September 2019, but further correspondence, on the same day, and also on 3, 11 and 23 September 2019, was sent to the correct email address of the Appellant.

168. What the Sole Arbitrator also finds to be considered as passive behavior from the side of the Second Respondent, and is relevant in light of any further contributory negligence from its side, is that on 15 September 2019, the Appellant sent an email to the Second Respondent with enclosed the proof of payment indicating the bank account details of Kadir Durmaz, which obviously did not correspond to the Second Respondent's bank account. The Sole Arbitrator notes that if the Second Respondent had verified the information received from the Appellant and had alerted the Appellant, it is not ruled out that the payment to the bank account of Kadir Durmaz could have been reversed. At the least, so the Sole Arbitrator finds, it was to be expected from the Second Respondent that it took a more proactive stance as to this incorrect proof of payment as received from the Appellant by addressing this mistake to the Appellant soon after 15 September 2019. Instead, the Second Respondent did not alert this and it was only on 23 September 2019, that the Second Respondent sent an email to the Appellant, this time to the correct email address (alwahdaclub@wahdas.ae), indicating that it did not receive any payment yet and that it would continue to request FIFA to start proceedings.

169. Further to this, although this is not decisive in light of the Sole Arbitrator's assessment as to any contributory negligence from the side of the Second Respondent, the Sole Arbitrator observes and does not want to leave unmentioned that Ms Jale Demir used Gmail as her (correct) email address (av.jaledamir.bursaspor@gmail.com). As such, the Sole Arbitrator emphasises that the use of Gmail webmail services is generally known as a weak spot. However, this in itself does not automatically lead to the conclusion that there was negligence on the part of the Second Respondent by insufficiently securing its emails as the Swiss Federal Tribunal determined the following in this respect:

> *"[...] il est en effet notoire que ces dernières années, de nombreux services gouvernementaux et entreprises privées - dont on peut penser qu'ils avaient pris des précautions raisonnables pour se protéger contre une telle éventualité - ont fait l'objet d'attaques informatiques parfois couronnées de succès de la part de tiers mal intentionnés. On ne saurait dès lors présumer sans autre examen qu'une prise de contrôle comme celle dont a été victime le demandeur implique nécessairement un défaut de diligence de sa part."* (SFT 05.12.2016 – 4A_386/2016, consid. 4.4)

Free translation:

> *"[...] it is known that in the past couple of years numerous governmental departments and private enterprises – of whom one would suspect that they would take reasonable precautionary measures to protect themselves against such eventualities – were victim of cyber-attacks by malicious third parties. It can therefore not be presumed without further investigation that a take over as the one the claimant fell victim to necessarily implies a lack of diligence on his side."*

170. In view of the above, considering the circumstances and evidence at stake, the Sole Arbitrator concludes, and finds to his comfortable satisfaction, that the Second Respondent contributed to the Appellant's wrongful payment. The Sole Arbitrator finds

that the Second Respondent could have done more, or at least to avoid a ruling that there was contributory negligence on its side. As such, the Sole Arbitrator is convinced that if the Second Respondent had acted with more diligence, the Appellant would not have made the wrong payment to Kadir Durmaz. In particular, the Sole Arbitrator is convinced that if the bank account details by the Second Respondent on 1 September 2019 had been sent to the Appellant's correct email address, the latter would not have made the wrong payment and payment would have been made to the Second Respondent. At the least, Appellant would have been in the possession of Mr Güman's bank details.

D. Conclusion

171. Based on the foregoing, and after having taken into due consideration all the specific circumstances of the present proceedings, the evidence produced and the arguments submitted by the Parties in this case, the Appealed Decision is annulled as the Sole Arbitrator concludes that both the Clubs are responsible for the non-fulfilment of the PSC Decision by the Appellant as a consequence of their acting following the PSC Decision, and hence that they shall share the economic consequences arising from it.

172. The Sole Arbitrator finds that both the Clubs could have acted more diligently on several occasions, as set out above, and must have been more alert in communicating with correct email addresses, such as the email addresses as was mentioned in the Transfer Agreement and used in TMS. The Clubs failed to do so. Irrespective or whether this was due to any fraudulent actions from outside, the Clubs should not have communicated with incorrect email addresses and both the Club must bear the consequences of these mistakes as this led to the situation that the Appellant made a payment to a wrong party.

173. In light of the above, the Sole Arbitrator takes into account the above stipulated exceptional circumstances, in particular by taking into account that both the Clubs corresponded with incorrect email addresses and that the Second Respondent provided its bank account details on 1 September 2019 only to the incorrect email address instead of the correct email address of the Appellant, and as such also made a relevant mistake. Therefore, the Second Respondent has partially caused the damage to the Appellant.

174. The Sole Arbitrator wishes to recall that, in view of its scope of review, his decision is based on facts that arose after the date on which the PSC Decision became final and binding. The Sole Arbitrator did not analyse its content and fully respected the finality of such decision. However, for the sake of any misunderstanding, the Sole Arbitrator wishes to bring in mind that it was only during the CAS proceedings for the first time that the Second Respondent submitted proof in relation to its letter of 1 September 2019 containing the bank details of the Second Respondent. It is undisputed that this letter was not sent to an email address that belonged to the Appellant. In fact, this new evidence, which was not in the FIFA file and so not to the disposal of the FIFA DC, demonstrates that such letter was not sent to the correct email address of the Appellant, which was also acknowledged by the Second Respondent. Therefore, the Sole Arbitrator is comfortably satisfied that also the Second Respondent had a significant hand in the fact that the payment by the Appellant was eventually made to a wrong party, also because it should have taken a more proactive stance and it received signals, as set out above, that must have triggered the Second Respondent to do more research to avoid

the wrong payment. As mentioned before, had the Appellant received the correct bank account details, the Sole Arbitrator is comfortably satisfied that the Appellant would have made the payment to the correct bank account as it is proven by the Appellant that it did make the payment, however, it had made the payment to a wrong bank account.

175. Consequently, the total amount owed by the Appellant to the Second Respondent, i.e. EUR 300,000, shall, in light of Article 44(1) SCO and due to the fact that Sole Arbitrator finds that both the Clubs had an equal hand in the fact that the payment by the Appellant was eventually made to a wrong party, be reduced by way of compensation in the amount of EUR 150,000. As a consequence of such reduced compensation, the Appellant shall be ordered to pay to Second Respondent the amount of EUR 150,000.

176. As to the fine in the amount of CHF 20,000 as was also ordered in the Appealed Decision, the Sole Arbitrator finds it fair and reasonable that the amount of CHF 20,000 is only due and will be made subject to the absence of payment by the Appellant of the amount of EUR 150,000 within 30 days of the notification of the present arbitral award.

177. As a final remark, looking outside the scope of these proceedings between the Clubs, it is obvious that both the Clubs could potentially seek (further) recourse against any persons who they consider as frauds, should they be detected somehow sooner or later.

X. COSTS

178. Article R64.4 of the CAS Code provides as follows:

> *"At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include:*
> - *the CAS Court Office fee,*
> - *the administrative costs of the CAS calculated in accordance with the CAS scale,*
> - *the costs and fees of the arbitrators,*
> - *the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale,*
> - *a contribution towards the expenses of the CAS, and*
> - *the costs of witnesses, experts and interpreters.*
>
> *The final account of the arbitration costs may either be included in the award or communicated separately to the parties. The advance of costs already paid by the parties are not reimbursed by the CAS with the exception of the portion which exceeds the total amount of the arbitration costs."*

179. Article R64.5 of the CAS Code provides the following:

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

180. Having taken into account the outcome of the present arbitration proceedings, in particular the fact that the appeal by the Appellant has been partially accepted, the conduct of the parties, their financial resources and the particular circumstances of the case, the Sole Arbitrator finds that the Appellant must pay 50%, the First Respondent 15% and the Second Respondent 35% as to the costs of the arbitration, to be determined and served to the Parties by the CAS Court Office.

181. In addition, pursuant to Article 64.5 CAS Code, and in consideration of the outcome of the proceedings as well as that a video-hearing was held, the Sole Arbitrator holds that taking into account the specific circumstances of the case, the Sole Arbitrator considers it fair and appropriate that each Party shall bear its own legal fees and other expenses incurred in connection with these arbitration proceedings.

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ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 20 February 2020 by Al Wahda Sports Club against FIFA and Bursaspor Kulübü Dernegi with respect to the decision issued on 14 January 2020 by the Disciplinary Committee of the *Fédération Internationale de Football Association* is partially upheld.

2. The decision issued on 14 January 2020 by the FIFA Disciplinary Committee is confirmed, save for points n. 1 and 2, which are amended as follows:

    1. *Al Wahda Sports Club is ordered to pay to the Bursaspor Kulübü Dernegi EUR 150,000 as penalty fee within 30 days of the date of notification of the decision plus 5% interest p.a. as from expiry of the aforementioned time limit until the date of effective payment.*

    2. *Al Wahda Sports Club is ordered to pay a fine to the amount of CHF 20,000 if the payment under point 1 is not made within 30 days of notification of the present decision.*

3. The costs of the arbitration, to be determined and served to the Parties by the CAS Court Office, shall be borne for 50% by Al Wahda Sports Club, for 35% by Bursaspor Kulübü Dernegi and for 15% by FIFA.

4. The Parties shall bear their own legal costs and other expenses incurred in connection with the present proceedings.

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

Seat of Arbitration: Lausanne, Switzerland
Date: 29 March 2021

THE COURT OF ARBITRATION FOR SPORT

Frans M. de Weger
Sole Arbitrator