

Decision of the FIFA Disciplinary Committee

passed on 14 September 2023

DECISION BY:

Lord VEEHALA (Tonga and New Zealand), Member

ON THE CASE OF:

Yeni Mersin Idmanyurdu Futbol AS

(Decision FDD-15539)

REGARDING:

Art. 21 of the FIFA Disciplinary Code - *Failure to respect decisions*

I. FACTS OF THE CASE

1. The following summary of the facts does not purport to include every single contention put forth by the actors at these proceedings. However, the member of the FIFA Disciplinary Committee (**the Committee**) has thoroughly considered any and all evidence and arguments submitted, even if no specific or detailed reference has been made to those arguments in the following outline of its position and in the ensuing discussion on the merits.

A. Background

2. On 2 July 2015, the FIFA Dispute Resolution Chamber (**DRC**) passed a decision (**the DRC Decision** – Ref. no. 13-02698), by means of which it ordered the club Mersin Idman Yurdu Spor Kulübü (**the Original Club**) to pay the player Mr. Ivan Saraiva de Souza (**the Claimant**) the following amounts:
 - Outstanding remuneration in the amount of EUR 235,000 plus 5% interest *p.a.* as from 24 April 2013 until the date of effective payment;
 - Compensation for breach of contract in the amount of EUR 645,750 plus 5% interest *p.a.* as from 24 April 2013 until the date of effective payment.
3. On 8 February 2016, the grounds of the DRC Decision were communicated to the parties.
4. On 29 February 2016, the Original Club lodged an appeal in front of the Court of Arbitration for Sport (**CAS**) against the DRC Decision (Ref. no. CAS 2016/A/4476).
5. On 20 July 2016, the CAS issued a Termination Order by means of which the procedure CAS 2016/A/4476 was terminated and removed from the CAS roll.
6. On 9 December 2017, since the amounts due were not paid to the Claimant, the FIFA Disciplinary Committee passed a decision (ref. no. 171126) by means of which it *inter alia* found the Original Club responsible for failing to comply in full with the DRC Decision.
7. On 28 February 2018, the grounds of the aforementioned decision were notified to the parties.
8. On 1 and 9 August 2023, the Claimant *inter alia* requested “[to] recognize that the Respondent (Yeni Mersin) [**the New Club or the Respondent**] is the sportive successor of the Original [Club] and, accordingly, is subject to the obligations of the Original [Club] under the decision passed by the FIFA DRC on 2 July 2015 [...]”. In this respect, the Claimant submitted, in particular, that “[by] continuing the exact same activities as the old entity and sharing the same assets, history, name, colors, fans, sporting achievements, shield, stadium, historic figures, etc. the Respondent thereby creating, knowingly and with no doubt, an image of continuity to the eyes of the general public, namely that Mersin and the Yeni Mersin are one and the same club”.

B. The Investigatory Report

9. In view of the allegations put forward by the Respondent, investigations were conducted by Secretariat to the FIFA Disciplinary Committee (**the Secretariat**), which were summarised in a report (**the Investigatory Report**).
10. The essential elements of the Investigatory Report can be summarised as follows:
- (i) The Disciplinary Committee already considered the Respondent as the sporting successor of the Original Club (**the Previous Disciplinary Decision**):

"On 16 March 2023 [in the context of separate disciplinary proceedings], the FIFA Disciplinary Committee passed a decision by means of which it considered the club Yeni Mersin Idmanyurdu Futbol AS (the New Club) responsible for the debt(s) incurred by the Original Club (Ref. no. FDD-14109), and, as such, was found responsible for failing to comply in full with the FIFA decision rendered on 21 January 2015 (Ref. no. 12-03264)."

- (ii) In the context of said decision, the various elements regarding the concept of sporting succession (as defined in the FIFA Disciplinary Code (**FDC**) and the CAS jurisprudence) have already been analysed:

"on the basis of the information and documentation at its disposal and, in particular, in consideration of the various elements as outlined above, collectively evaluated, the Committee was comfortably satisfied in its conclusion that the New Club – Yeni Mersin Idmanyurdu Futbol AS – was to be considered as the sporting successor of the Original Club – Mersin Idam Yurdu"

- (iii) *"Based on the foregoing, and after having taken into due consideration all the specific circumstances of the case, the Secretariat to the FIFA Disciplinary Committee deems that,*
- Disciplinary proceedings should be opened against the New Club for potential violation of art. 21 FDC.
- The New Club should be considered as the sporting successor of the Original Club".

C. The present proceedings

11. On 28 August 2023, the Secretariat informed the Respondent that the latter appeared to have failed to comply with the DRC Decision, which would constitute a potential breach of art. 21 FDC. In this respect, the Respondent was provided with the entire case file, including a copy of the Investigatory Report. In this context, the Secretariat proposed the following sanction to the Respondent in accordance with art. 58 FDC as read in conjunction with Annexe 1 FDC:

1. *Yeni Mersin Idmanyurdu Futbol AS is considered responsible for the debt(s) incurred by the club Mersin Idman Yurdu.*

2. The Respondent, Yeni Mersin Idmanyurdu Futbol AS, **shall pay to Mr. Ivan Saraiva de Souza (the Creditor)** as follows:

- As outstanding remuneration in the amount of EUR 235,000 plus 5% interest p.a. as from 24 April 2013 until the date of effective payment.
- As compensation for breach of contract in the amount of EUR 645,750 plus 5% interest p.a. as from 24 April 2013 until the date of effective payment.

3. The Respondent **is granted a final deadline of 30 days** as from the present proposal becoming final and binding in which to pay the amount due. Upon expiry of the aforementioned final deadline and in the event of persistent default or failure to comply in full with the Decision within the period stipulated, a ban on registering new players will be issued until the complete amount due is paid.

4. The Respondent **shall pay a fine to the amount of CHF 30,000.**

12. On 1 September 2023 (*i.e.* within the five days deadline granted by art. 58 FDC), the Respondent rejected the aforementioned proposed sanction and provided its position, requesting regular proceedings to be conducted¹.

II. POSITION OF THE RESPONDENT

13. The position submitted by the Respondent can be summarised as follows:

A. Procedural Request

14. The Respondent was wrongfully addressed as the sporting successor of the Original Club in the Previous Disciplinary Decision proceeding under reference FDD-14109.

15. The Respondent has appealed the said decision in front of CAS.

16. In this respect, FIFA should wait until there is a final and binding decision. Therefore, the Respondent requested the suspension of the present proceedings until CAS renders an award on the merits of the alleged sporting succession.

B. Merits of the Respondent's Objection

i. The Respondent is not the Sporting Successor

a. General Overview

17. This case is not the typical "*textbook*" case of sporting succession.

¹ The position of the Respondent is summarised under section II. *infra*.

18. Despite the fact that there are similarities between both clubs, these similarities had to be created due to public pressure and due to the football culture of the city, which are substantially insufficient in order to procure an outcome for sporting succession.

b. Relevant Regulations

19. According to art. 24ter of the Regulations on the Status and Transfer of Players (**RSTP**) and art. 15.4 FDC, ed. 2019, the Respondent will only be subject to disciplinary consequences if it is the sporting successor of the Original Club.
20. The elements established in both provisions are non-exhaustive, so that according to CAS jurisprudence, the judicial bodies should make their analysis on a case-by-case basis.
21. Therefore, the name, history, fans, sporting achievements, are elements which, among others (including the development and existence of the club), allow a club to distinguish itself from the another one. The continuity of the original club is a very important element in determining the existence, or not, of a potential sporting succession by another club, especially concerning that each club is unique and identifying itself separately.
22. In the current case, the New Club and the Original Club have totally different growing paths and histories, leading to two clear parallel existences and continuities.

c. Name

23. There are 32 teams in Turkey which include IDMAN YURDU in their names, the Original Club being the oldest one with this in its name. Idman Yurdu simply means 'training center' in Turkish.
24. The Respondent changed its name to "*İÇEL İDMAN YURDU*" in 2019 after the Original Club halted their operations in order to honour the city's successful football history.
25. In 2022, the Respondent's name has been changed to "*Yeni Mersin İdmanyurdu A.Ş.*" because of the public pressure, while also considering that there is no trademark registration regarding the name of the Original Club.
26. It is common for football clubs to include the regional or district name of where they are located in their names (for example: Turkish Super League clubs, Trabzonspor and Trabzon Idman Yurdu or Premier League clubs, Manchester United and Manchester City).

d. Founding Year

27. The Original Club (or with its current name) Mersin Talim Yurdu is 97 years old and has been established in 1925.

28. The Respondent was founded by Seyfi Ali Türkoğlu, as "İÇELSPOR KULÜBÜ" in 1964. It competed in amateur divisions until 2016. During the 2019-2020 season, all leagues have been suspended due to Covid-19 Pandemic and at the end of this season, İçel İdman Yurdu was announced as champion by decision of the Turkish Football Association (TFF) (it was in the first place when the leagues were suspended) and, as such, was entitled to promote to TFF 3. League. This was the first success by the Respondent to promote to a professional League, during its 56 years of history.
29. These two teams (the Original Club and the Respondent) have a different history. There is no historical similarity between the two clubs. Both clubs have a very old history, however, with no connection.

e. Tittle and Sporting Achievements

30. It should be considered that there is no sporting continuation between both clubs. The Respondent did not start its sporting journey from where the Original Club left. The two clubs had different sporting journeys in different leagues throughout their history.

f. Public Perception

31. It is well known that the Original Club was struggling with debts, and *"it was meant to be closed at the end of the 2017-2018 football season"*. However, some supporters from the Original Club's well-known ultras group Red Devils took over the management of the latter in their last active football season, because there were no candidates for the presidency and the ultras of the team did not want Original Club to close.
32. As far as the Respondent could understand, there was another team already established to take the place of the Original Debtor at that time which is *'Idmanyurdu 1925 SK'*.
33. The Respondent found a news article that has been published in the local newspaper *Mersin Portal* titled – *Mersin İdman Yurdu defeated its brother İdman Yurdu 1925 with one goal* –. The opening paragraph of the article could be read as follows: *"Mersin İdman Yurdu, which is having had bad days due to the sanction of deduction of points from FIFA, won the game with a single goal in the 7th week of the Super Amateur League against İdmanyurdu 1925 SK, which was established to take Mersin İdman Yurdu's place."* (Free Translation).
34. However, despite the efforts of the President of the Original Club's ultras, they could not manage to keep the club alive. Mr. Sevet Varan, who was an old board member, became the Original Club's president again. However, due to relegation sanctions from FIFA, the club ended its football activities at the end of the 2018-2019 season.
35. As was mentioned previously, the Original Club was the oldest, the most well-known and the most successful club in the city of Mersin's history. The Original Club was a big community and, from top to bottom, every single citizen always supported this valuable city club. Due to the Original Club's relegation to the amateur leagues, the city of Mersin was left without a (professional) club. As a

result of this, citizens had no team to support, no team to be a fan of, and no team to watch their games.

36. At this point, the Respondent, which was founded in 1964, named İçelspor, had been fighting in the amateur league for 54 seasons, had increased its success in this period and started to make successful debuts by winning championships in the amateur league. Following this development, İçelspor (the Respondent) started to progress towards becoming the new city team of Mersin. As a result of this, citizens of Mersin who longed for the Original Club embraced this new club and devoted all their support to it as there was no other club in the city.
37. İçelspor (the Respondent) changed its name to Icel Idman Yurdu at the beginning of the 2019-2020 football season.
38. While it is true (and should be expected) that some of the citizens of Mersin support the New Club, it is wrong to conclude that the New Club is the continuation of the Original Club on the sole basis of its supporters. The fact that people living in a city support the city's new successful team does not mean that this club is a continuation of the old club. As will be proven here, there is no general acceptance by anyone that the Respondent is the Original Club.
39. For instance, some fans of the Original Club were furious about the name 'Icel Idman Yurdu' and were against the revival of the Mersin's football culture under any different name (i.e. Mersin Idman Yurdu).
40. A group of Ultras of the Original Club "*Şeytanlar*" has existed for 30 years. This group is one of the most influential group of ultras in Turkish football by its devotion to the Original Club's teams. It cannot be expected that the fans of the old club would disappear, and it is not possible to prevent them from supporting another team if their team is no longer competing in the leagues. When the city's only team becomes unable to compete in the leagues, it is ridiculous to expect the 30-year-old Ultras group to adapt to all possible changes that the football culture of the city is undergoing at that moment.
41. It is also not true that the ultras of the Original Club supported the Respondent since the beginning of its existence.
42. The Respondent provided a statement made by the Ultras Red Devils on Facebook on 04 May 2020, in which they stated that their requests to support Icel Idman Yurdu (the Respondent) have not been met, as a result of which, they would no longer support the Respondent and their only and true love is for the Original Club. They also stated that their first wish - which was that the Original Club's crest is kept alive under the same name and that the Respondent becomes the team of the whole city - did not come true.
43. There is even a Facebook group called '*Lovers of the Original Mersin Idman Yurdu*' which is basically a group of people who interpose against the suspension of the football activities of the Original Club. On 20 May 2023, when the Respondent was promoted to the TFF 2nd League, they celebrated

the Respondent by stating “[o]ne of the teams of our city, YMIF [the Respondent] that is Icel Spor with its former name became champion and promoted the TFF 2nd League”.

44. From the comment above, it is clearly understandable that this group of people accepted the Respondent as one of the teams from their city and not as being (the successor of) the Original Club.
45. There is no general public acceptance with regards to the Respondent being the sporting successor of the Original Club.
46. There is pressure from the public towards the Respondent as being the most successful club in the city to mimic the city’s oldest club.
47. Some football fans of the city are not happy that the Respondent is the flag carrier of the city.

g. Registered Address

48. The registered addresses of the two clubs have always been different. The Respondent and the Original Club do not have the same registered address or telephone number since their respective establishment. Furthermore, both clubs are currently registered under the TFF with different club codes.

h. Legal Form and Ownership Structure

49. The Original Club is an association that still continues to legally exist under the name Mersin Talim Yurdu SK.
50. On the other hand, the Respondent is a joint stock company. A Joint Stock Company in Turkish called “Anonim Şirketi” and its abbreviation is A.Ş.
51. The Respondent has only two board members, the president Metin Saltık and his brother Serdar Saltık. It is worth noting that these two names have never been involved with the Original Club in any level.

i. Team Colours

52. Many teams in Mersin use the same colour.
53. Mersin’s city colours are blue and red because Mersin is near the Mediterranean Sea which brings colour of navy-blue, and the colour of red orange represents the city’s extremely hot climate. These colours are used not only by the Respondent, but also in the logos of the city’s municipal teams and other teams established in the city.

j. Logo

54. Unlike most sporting succession cases where the original club ceased to exist, it was natural to compare all the elements of the new club with the elements that the old club carried the moment it ceased to exist.
55. However, both clubs are different in the current case as they have continued to exist and currently coexist. The so-called "*Original Club*" still is under operation.
56. Therefore, the comparison must take place at the same time. One cannot compare the Respondent to the Original Club as if the latter ceased to exist since both still exist. As such, what must be compared is the elements in the same period (be it the current state or the state when the dispute arose). It not only makes more sense, but it is also necessary to bear in mind that given the numerous changes that all the elements have undertaken, in both clubs, one cannot pick and choose when to compare; it must be done correspondingly in time. The two teams' elements have to be compared in the same period of time.

k. Players and Technical Staff

57. In the Previous Disciplinary Decision, it has been stated that "*[a]ccording to the TFF, a total of 23 players, who were registered for the Old Club, were registered as amateurs in the season 2019/2020 for the New Club.*"
58. The fact that some players have played for both teams is not sufficient to establish the existence of sporting succession.
59. According to the TFF's records, it is clear that most of these 23 players are only amateur players who are playing amateur football in their city. Therefore, 23 players out of 141 amateur players who registered for the Respondent could not be deemed as a significant element for deciding about the sporting succession, contrary to what has been made under the Previous Disciplinary Decision. Those players are mostly residing in the city and play football at amateur level in addition to their daily lives in the city.
60. It is worth noting that none of the technical staff from the Original Club has been transferred and/or registered for the Respondent. In their last active season, the Original Club changed 5 technical directors within one year.
61. Finally, in order to finalize this chapter, the Respondent would like to inform the FIFA Disciplinary Committee that as the Original Club still exists and as the registrations of the Original Club and the Respondent completely differentiate according to the TFF records, it is impossible for the Respondent to collect any national contribution (such as solidarity and/or training compensation) for the Original Club's former or current players. This matter was one of the criteria that was analysed in some CAS cases but in the dispute at stake, it is impossible for the Respondent to be accused by such event.

I. Management

62. The referred members in the Investigatory Report of the Previous Disciplinary Decision, were members of the association named İçel İdman Yurdu Kulübü Derneği, which only existed in the 2019/2020 football season before the Respondent became a joint stock company. Therefore, these individuals had no participation in the management of the New Club.
63. As the support from all aspects of the city was needed to create another team capable of representing the city, these individuals have been part of the association for that season, since they are some of the wealthiest individuals of the city Mersin.
64. Contrary to the findings of the Previous Disciplinary Committee, Mr. Şevket Varan, the current president of the Original Club, was elected as a board member for the Respondent during the congress held on 28 June 2019 when the Respondent was an association. He resigned within three months (on 28 October 2019). The reason why Mr. Şevket Varan was elected to the management of the Respondent was the belief that he could be useful to the team with his knowledge about professional football life and club management as he was the board member of the Original Club even when they were in the highest professional league of Turkey.
65. However, all these names do not exhibit any significance as the Respondent was only an association for one season. The new legal form of the Respondent and the new ownership structure is completely different as it is explained under the element legal form.

m. Stadium

66. Mersin Stadium has been constructed for the 2013 Mediterranean Games, and it is the biggest and only top-tier football-capable stadium in the city.
67. This is not an element that should be considered while establishing the sporting succession because the stadium is the only capable stadium in the city for professional football. Since 2019, the Respondent, starting from the 3rd Professional League, has been competing in the professional football leagues.

ii. Request for Relief

68. In view of all of the above, the Respondent requested:
- (i) to suspend the current proceedings until there is a formal and binding decision by CAS on the Previous Disciplinary Decision; and
 - (ii) to issue a decision determining that the Respondent is not the sporting successor of the Original Club and is, therefore, not liable for the debts incurred by the Original Club towards the Claimant.

III. CONSIDERATIONS OF THE DISCIPLINARY COMMITTEE

69. In view of the circumstances of the case, the Committee decided to first address the procedural aspects of the present matter, namely, its jurisdiction as well as the applicable law, before entering into the substance of the matter and assessing the possible failure of the New Club to comply with the DRC Decision as well as the potential sanctions resulting therefrom.

A. Jurisdiction of the FIFA Disciplinary Committee

70. First of all, the Committee began by analysing whether it was competent to assess if the New Club can be considered as the (sporting) successor of the Original Club.
71. In these circumstances, the Committee started its analysis by highlighting from the case file that it was uncontested that the Original Club – Mersin Idman Yurdu –, the subject of the DRC Decision, was an amateur club affiliated to the TFF, which had (according to the case file) last participated as a professional club (under the name ‘Mersin Idman Yurdu’) in the 3rd professional division of Turkish football in the 2017/2018 season, before participating in the Regional Amateur League for the 2018/2019 season and subsequently, the Local Amateur League for the 2019/2020 season through to the 2022/2023 season.
72. With the foregoing in mind, the Committee next proceeded to recall that, according to art. 53.2 of the FIFA Statutes, the Committee may pronounce the sanctions described in the Statutes and the FDC on member associations, clubs, officials, players, intermediaries and licensed match agents.
73. Clubs are affiliated to regional and/or national football associations and these national football associations are members of FIFA. Consequently, football clubs are considered as “indirect members” of FIFA and therefore, are subject to and bound by the FIFA Statutes and all other FIFA rules and regulations, as well as by all relevant decisions passed by the FIFA bodies.
74. The aforementioned principle is embedded within art. 14.1 (d) FIFA Statutes which requires the member associations “to cause their own members to comply with the Statutes, regulations, directives and decisions of FIFA bodies” as well as in art. 59.2 FIFA Statutes which states that the member associations, amongst others, “shall take every precaution necessary to ensure their own members, players and officials comply with these decisions”. The foregoing only being possible to the extent that the so-called “members” are still affiliated to the member associations of FIFA, and, as far as clubs are concerned, are participating and active in a competition of the member association concerned. Otherwise, any sporting disciplinary measures which might be imposed on a club - such as a ban from registering new players or a deduction of points - would be ineffective.
75. This being established, the Committee noted from the case file before it that the Original Club’s last participation as a professional club had been in the 2017/2018 season in the 3rd Professional Division, following which it had subsequently competed in amateur divisions in Turkey, at present being affiliated to the TFF as an amateur club and competing in the Local Amateur League only – this, whilst the New Club had confirmed itself that at the end of the 2019/2020 season it was promoted to the 4th Professional Division in Turkey, having previously competed in amateur

divisions, where it remains to the present date, in 2022 having changed its name to 'Yeni Mersin Idmanyurdu AS'. Furthermore, the Committee observed that the Claimant had requested the Committee (i) to consider the New Club – *Yeni Mersin Idmanyurdu Futbol AS* – as the sporting successor of the Original Club – *Mersin Idman Yurdu* – which the Claimant believed the former had substituted, and; (ii) to hold the New Club liable for the debts incurred by the Old Club, *i.e.* those contained in the DRC Decision.

76. In this regard, in view of the wording of art. 21.4 FDC (2023 edition) as well as the jurisprudence of CAS which had confirmed that the present judicial body was competent to deal with sporting succession cases², the Committee considered that it was not prevented from reviewing and/or making a legal assessment and, therefore, deciding if the New Club was the same as – and/or the successor of – the Original Club.
77. As a result of the foregoing, the Committee deemed that it was competent to assess the present matter and to pass a formal decision of a substantive nature with respect to the Claimant's request concerning the liability of the New Club towards the debts incurred by the Original Club.

B. Applicable Law

78. With regard to the matter at hand, the Committee recalled that the disciplinary offense at stake, *i.e.* the potential failure to comply with the DRC Decision, was committed continuously prior to and after the entry into force of the 2023 edition of the FDC. In this respect, and whilst keeping in mind the principles enshrined under art. 4 FDC, the Committee deemed that the merits as well as the procedural aspects of the present case should fall under the 2023 edition of the FDC.
79. Having established the above, the Committee wished to recall the content and scope of art. 21 FDC in order to duly assess the case at hand.
80. According to this provision:

"1. Anyone who fails to pay another person (such as a player, a coach or a club) or FIFA a sum of money in full or part, even though instructed to do so by a body, a committee, a subsidiary or an instance of FIFA or a CAS decision (financial decision), or anyone who fails to comply with another final decision (non-financial decision), passed by a body, a committee, a subsidiary or an instance of FIFA, or by CAS:

- a) will be fined for failing to comply with a decision and receive any pertinent additional disciplinary measure; and, if necessary;*
- b) will be granted a final deadline of 30 days in which to pay the amount due or to comply with the non-financial decision;*

(...)

² CAS 2018/A/5647; CAS 2020/A/7543; CAS 2021/A/7684.

d) *in the case of clubs, upon expiry of the aforementioned final deadline and in the event of persistent default or failure to comply in full with the decision within the period stipulated, a ban on registering new players will be issued until the complete amount due is paid or the non-financial decision is complied with. A deduction of points or relegation to a lower division may also be ordered in addition to a ban on registering new players in the event of persistent failure (i.e. the ban on registering new players has been served for more than three entire and consecutive registration periods following the notification of the decision), repeated offences or serious infringements or if no full registration ban could be imposed or served for any reason;*

(...)

3. *If the sanctioned person disregards the final time limit, FIFA and/or the relevant association (in cases involving clubs or natural persons) shall implement the sanctions imposed. Where a registration ban (in the case of a club), a ban on any football-related activity (in the case of a natural person) or a disciplinary measure (in the case of associations) has been enforced against a debtor in accordance with this article in relation to a financial obligation resulting from a CAS or FIFA decision and where the debtor provides FIFA with reliable evidence of having complied with such decision, such ban or measure may be provisionally lifted.*

(...)

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

81. Finally, the Committee stressed that it cannot review or change the substance of a previous decision, which is final and binding, but that its only task was to verify that the debtor had complied with the decision by settling its debt towards the Claimant³.

C. Merits of the dispute

82. Having established that it was competent to assess the present matter, the Committee moved on to analyse the merits on the present case, starting with the preliminary request lodged by the Respondent.

i) Preliminary issue

83. To begin with, the Committee noted that the Respondent requested to suspend the present proceedings given that an appeal is pending in front of CAS in relation to the same topic (namely the appeal against the Previous Disciplinary Decision).

³ See for instance CAS 2016/A/4595 ; CAS 2013/A/3323.

84. In this respect, the Committee would like to highlight that, in accordance with art. 21.2 FDC, in the context of financial decisions passed by a body, a committee, a subsidiary or an instance of FIFA, or CAS, as *in casu*, disciplinary proceedings may only commence at the request of the creditor or any other affected party.
85. In this sense, and according to the case file, the Committee observed that present proceedings were initiated upon the request of the creditor established in the DRC Decision, Mr. Ivan Saraiva de Souza. In this respect, the Committee pointed out that (i) despite the fact that he was aware of the allegations raised by the Respondent, at no point did the Claimant request the suspension of the present disciplinary proceedings, and more importantly, (ii) no provision in the FDC (nor under any other applicable regulations) prevents it from assessing and deciding on a case while a separate one related to a similar (and/or identical) issue (but involving different parties) is subject to an appeal.
86. Consequently, and taking into consideration the foregoing, the Committee was of the view that is not prevented to assess and decide on the present matter, despite the (ongoing) appeal lodged by the Respondent before CAS against the Previous Disciplinary Decision. As such, the Committee considered that it was not required to suspend the present proceedings pending the outcome of said appeal, as requested by the Respondent.
87. Having established the above, the Committee next proceeded to analyse whether the Respondent had a connection with the Original Club (1) and, should it be the case, whether it can be held liable for the debts of the latter (2).

ii) The sporting succession criteria

88. To begin with, the Committee considered it relevant to recall the existing CAS jurisprudence with respect to the topic of sporting succession.
89. To that end, the Committee referred to decisions that had dealt with the question of the succession of a sporting club in front of CAS⁴. In particular, the Committee pointed out that it had been established that, on the one side, a club is a sporting entity identifiable by itself that, as a general rule, transcends the legal entities which operate it, meaning that the obligations acquired by any of the entities in charge of its administration, in relation with its activity, must be respected. On the other side, it had also been stated that the identity of a club is constituted by elements such as its name, colours, fans, history, sporting achievements, shield, trophies, stadium, roster of players, historic figures, *etc.* These elements allowing a club to distinguish itself from all other clubs. Hence, the prevalence of the continuity and permanence in time of the sporting institution in front of the entity that manages it has been recognised, even when dealing with the change of management completely different from themselves⁵.
90. In these circumstances, the CAS has held that a “new” club has to be considered as the “sporting successor” of another one in a situation where (i) the “new” club created the impression that it

⁴ See for instance CAS 2007/A/1355; TAS 2011/A/2614 and TAS 2011/A/2646; TAS 2012/A2778.

⁵ CAS 2013/A/3425.

wanted to be legally bound by the obligations of its predecessor (*i.e.* the “old” club), (ii) the “new” club took over the licence or federative rights from the “old” club and (iii) the competent federation treated the two clubs as successors of one another⁶.

91. By the same token, a “sporting succession” is the result of the fact that (i) a new entity was set up with the specific purpose of continuing the exact same activities as the old entity, (ii) the “new” club accepted certain liabilities of the “old” club, (iii) after the acquisition of the assets of the “old” club, the “new” club remained in the same city and (iv) the “new” club took over the licence or federative rights from the “old” club⁷.
92. Furthermore, the issue of the succession of two sporting entities (*i.e.* distinct clubs) might be different than if one were to apply civil law, regarding the succession of two separate legal entities. In particular, it was important to recall that according to the CAS, a club is a sporting entity identifiable by itself that, as a general rule, transcends the legal entities which operate it⁸. Consequently, elements to consider are, amongst others, the name, the logo and colours, the registration address and/or the managing board of the club.
93. For the sake of completeness, it is likewise important to emphasise that the aforementioned established jurisprudence of the CAS is reflected within the FDC under art. 21.4. According to the aforesaid provision, *“The sporting successor of a non-compliant party shall also be considered a non-compliant party and thus subject to the obligations under this provision. Criteria to assess whether an entity is to be considered as the sporting successor of another entity are, among others, its headquarters, name, legal form, team colours, players, shareholders or stakeholders or ownership and the category of competition concerned”*.
94. Against such background, it is further worth mentioning that the elements as referred to under art. 21.4 FDC (formerly art. 15.4 of the 2019 FDC) are non-exhaustive⁹. More specifically, the CAS has considered that the existence of several elements in light of this provision can lead, in its combination, and so even if not all elements are met in a specific case, to the conclusion that a club has to be considered (or not) as a “sporting successor”. The overall package of the elements, collectively considered, being decisive¹⁰.

iii) The assessment of the potential sporting succession

95. With the above in mind, the Committee subsequently turned to focus on the documentation at its disposal in light of the criteria set by the relevant CAS jurisprudence (reflected under art. 21.4 FDC) and as applied by the Committee in such situations.
96. In this sense, the Committee noted that the Respondent, by way of its position(s) as denoted *supra*, had declared that it was not the sporting successor of the Original Club and had submitted, in particular, that:

⁶ CAS 2007/A/1322.

⁷ CAS 2011/A/2646.

⁸ CAS 2016/A/4576.

⁹ CAS 2020/A/6884 (said award however pertaining to art. 15.4 of the 2019 edition of the FDC).

¹⁰ CAS 2020/A/6884.

- The Respondent cannot be considered as the sporting successor of the Old Club as the majority of the criteria indicates that the New Club is *not* the sporting successor of the Old Club;
 - Specifically, the Respondent changed its name to ““İÇEL İDMAN YURDU” in 2019 after the Original Club halted its operations in order to honour the city’s successful football history and, later in 2022, the name of the Respondent was changed to ““Yeni Mersin İdmanyurdu A.Ş.” because of the public pressure, while also considering that there is no trademark registration regarding the name of the Original Club;
 - 23 players out of 141 amateur players registered for the Respondent could not be deemed as a significant element for deciding about the sporting succession;
 - Despite the fact that there are similarities between both clubs, these similarities had to be created due to public pressure and due to the football culture of the city, which are substantially insufficient in order to procure an outcome for sporting succession;
 - Ultimately, the comparison of elements must take place in the same period of time (be it the current state or the state when the dispute arose) since both clubs have continued to exist and currently coexist.
97. Taking into account the foregoing, the Committee once again deemed it appropriate to refer to the above-mentioned jurisprudence of CAS, according to which a club is a sporting entity identifiable by itself that, as a general rule, transcends the legal entities which operate it. In other words, the fact that a club may be operated through a different legal entity than its predecessor does not bear any relevance on whether or not sporting succession can be established.
98. With the above in mind, and upon review of the information on file, the Committee noted that – in some respects contrary to the submissions of the Respondent – the New Club shared several significant similarities with the Original Club. All these elements – when put together – pointed towards a sporting succession between the former and the latter.
99. In particular, the Committee was left unconvinced by the arguments put forward by the Respondent (particularly relating to the fact that the elements should be analysed at specific moment in time) and concurred with the conclusions already made in the Previous Disciplinary Decision in so far that i) the names of the Original Club – *Mersin İdman Yurdu* – and the one of the New Club – *Yeni Mersin İdmanyurdu Futbol AS* – were particularly similar, the Respondent even clarifying that it changed its name from “İÇEL İDMAN YURDU” to “Yeni Mersin İdmanyurdu A.Ş.” because of the public pressure, while also considering that there is no trademark registration regarding the name of the Original Club; ii) both clubs share especially similar uniforms and the same colours, *i.e.* red and navy; iii) both clubs share similar logos – the Committee noting that the New Club’s logo had maintained most of the elements of the Original Club’s logo (shape, design *etc.*) with only minor differences between the two – and ; iv) the clubs both share the same stadium (Mersin Stadium).

100. In continuation, the Committee likewise noted that, based on the information and documentation at its disposal, the Respondent could also be seen to share a number of the same players as the Original Club – the Respondent making reference, in particular, to the TFF's records that a total of "23 players were transferred as amateurs in the season 2019/2020 and 1 amateur player in the season 2020/2021 to the New Club" from the Original Club. In this respect, the Committee concurred with the Previous Disciplinary Decision that the very fact that a considerable number of the Original Club's players joined the Respondent, as amateurs or otherwise, created a sense of commonality between the two even though it could not be considered as a "significant element" in the sporting succession between both clubs. In this sense, the Committee once again reiterated that the overall package of the elements, collectively considered, would be decisive.
101. Furthermore, the Committee acknowledged that, similarly to its submissions during the proceedings related to the Previous Disciplinary Decision, the Respondent argued that i) although the citizens of Mersin support the Respondent, it is wrong to conclude that this support means that the Respondent is a continuation of the Original Club, and; ii) the fact that people living in Mersin support the city's new successful club (*i.e.* the New Club) does not mean that the Respondent is perceived as a continuation of the Original Club – there is no general acceptance by anyone of the Respondent being as the Original Club. Nevertheless, the Committee was, once again, assured by the stipulations of the Respondent (already made in the context of the Previous Disciplinary Decision), specifically, that i) some fans of the Original Club were furious about the name "*İcel İdman Yurdu*" and were not happy about the efforts to revive the football culture of the city by any attempt under any different name; ii) that one of the most influential Ultras group in Turkey "*Seytanlar*", devoted to the Original Club, now supports the Respondent and cannot be prevented from that; and iii) there is a pressure from the public towards the Respondent as being the most successful club in the city to mimic the Original Club. In the Committee's view, these elements would only suggest that the Respondent is in fact clearly identified by the public as being connected to the Original Club.
102. In fact, the Committee acknowledged that multiple publicly accessible sources of information made various references to the Original Club in connection with the Respondent¹¹ - the New Club even appearing to celebrate the Original Club's foundation on its social media and posting pictures of what seemed to be supporters of the Original Club. Furthermore, in line with the aforementioned Respondent's allegations, the Committee likewise noted that it appeared that the Ultras group of the Original Club – the 'Mersin İdman Yurdu Seytanlar Devils'¹² – clearly considered the New Club 'as its own'/the Original Club¹³, such Ultras group having *inter alia* posted on their official Facebook

¹¹<https://www.facebook.com/yenimersinidmanyurdu/photos/3424615074435697;>
<https://www.facebook.com/yenimersinidmanyurdu/photos/3424739877756550;>
<https://www.facebook.com/yenimersinidmanyurdu/photos/3442309189332952;>
<https://www.facebook.com/yenimersinidmanyurdu/photos/3293176704246202;>
<https://www.facebook.com/yenimersinidmanyurdu/photos/3238688313028375;>

¹² https://www.facebook.com/SeytanlarFan/?ref=page_internal

¹³ <https://www.facebook.com/SeytanlarFan/photos/5286690521436457;>
<https://www.facebook.com/SeytanlarFan/photos/5052856694819842;>
<https://www.facebook.com/SeytanlarFan/photos/5001748936597285;>
<https://www.facebook.com/SeytanlarFan/photos/4966826816756164;>
<https://www.facebook.com/SeytanlarFan/photos/4910497439055769;>
<https://www.facebook.com/SeytanlarFan/photos/4921532521285594>

page, on 19 December 2022 and 04 August 2022 respectively¹⁴, (*free English translation*) "**Long live our struggle for Mersin Idman Yurdu!**" and "(...) *we did not give up in the lowest leagues! Now **we are witnessing the resurrection of our Mersin Idman Yurdu!** (...) it is incumbent upon us to protect our team more than ever*" (emphasis added). Put differently, it would rather appear that the Respondent has – from the eyes of its own supporters – a strong connection with the Original Club and has not done anything to be distinguished from the latter.

103. In light of all the above, the Committee recalled once more that, in line with the jurisprudence of the Committee and CAS, which is reflected under art. 21.4 FDC, the identity of a club is constituted by elements such as its name, colours, logo, fans, history, players, stadium, *etc.*, regardless of the legal entity operating it.

104. As such, on the basis of the information and documentation at its disposal and, in particular, in consideration of the various elements as outlined above, collectively evaluated, the Committee was comfortably satisfied in its conclusion that the New Club – *Yeni Mersin Idmanyurdu Futbol AS* – was to be considered as the sporting successor of the Original Club – *Mersin Idman Yurdu*. In fact, the Committee found no element in relation to the matter at hand (including within the Respondent's submission) that would enable it to reach a different conclusion than that of the Previous Disciplinary Decision.

iv) The potential liability of the New Club for the debts of the Original Club

105. Having determined that the New Club was to be considered the sporting successor of the Original Club, the Committee moved on to analyse whether the New Club was to be held liable for the debt(s) incurred by the former as recognised in the DRC Decision.

106. In this sense, the Committee recalled that, according to art. 21.4 FDC, the sporting successor of a non-compliant party shall also be considered a non-compliant party and thus, be subject to the obligations under art. 21 FDC. Therefore, in the Committee's view, in principle, whenever a club is considered the sporting successor of a non-compliant party, it is – as a general rule – automatically (also) responsible for the debts of its predecessor.

107. As a result, the Committee deemed that it had no other alternative but to declare that the New Club was liable for the debts incurred by the Original Club, namely the one related to the DRC Decision passed on 2 July 2015 – and that, as a result, *Yeni Mersin Idmanyurdu Futbol AS* was to be held responsible for the non-compliance with a FIFA decision under the terms of art. 21 FDC.

v) Summary

108. In view of the foregoing, the Committee concluded that the Respondent, by its conduct as described above, had violated art. 21 FDC.

¹⁴ <https://www.facebook.com/SeytanlarFan/photos/5282541831851326>;
<https://www.facebook.com/SeytanlarFan/photos/4892007474238099>

109. Therefore, the Committee considered that the Respondent was to be sanctioned for the abovementioned violation.

vi) The determination of the sanction

110. As a preliminary remark, the Committee emphasized that the Original Club and, subsequently, the Respondent, withheld the amounts unlawfully from the Claimant. Even FIFA's attempts to urge the Respondent to fulfil its financial obligations failed to induce it to pay the total amount(s) due.

111. With regards to the applicable sanction(s), the Committee observed in the first place that the Respondent is a legal person, and as such was subject to the sanctions described under arts. 6.1 and 6.3 FDC.

112. Notwithstanding the above, the Committee recalled that art. 21 FDC foresees specific sanctions for anyone who fails to pay another person a sum of money in full or in part, even though instructed to do so by a body, a committee, a subsidiary or an instance of FIFA or a CAS decision, in so far that the latter:

- will be fined and will receive any pertinent additional disciplinary measure (lit. a);
- will be granted a final deadline of 30 days in which to pay the amount(s) due (lit. b);
- (in the case of clubs, as *in casu*) upon expiry of the aforementioned final deadline and in the event of persistent default or failure to comply in full with the decision within the period stipulated, a ban on registering new players will be issued until the complete amount due is paid or the non-financial decision is complied with (lit. d).

113. Therefore, in alignment with the above, the Committee recalled that with respect to the fine to be imposed, in accordance with art. 6.4 FDC such fine shall range between CHF 100 and CHF 1,000,000. As such, after analysing the circumstances pertaining to the present case and whilst taking into account the outstanding amount(s) due in light of Annexe 1 FDC, the Committee regarded a fine amounting to CHF 30,000 as appropriate.

114. In continuation, in application of art. 21.1.b) FDC the Committee considered a final deadline of 30 days as appropriate for amounts due to be paid by the Respondent to the Claimant in the present case.

115. Finally, and in accordance with art. 21.1.d) FDC, the Respondent is hereby warned and notified that, in the case of default within the period stipulated, a registration ban (at national and international level) will be automatically imposed until the complete amounts due are paid. For the sake of good order, the Committee likewise recalled that a deduction of points or relegation to a lower division may later be ordered in addition to the registration ban in the event of persistent failure (*i.e.* the

ban on registering new players has been served for more than three entire and consecutive registration periods following the notification of the present decision)¹⁵.

IV. DECISION OF THE DISCIPLINARY COMMITTEE

1. **Yeni Mersin Idmanyurdu Futbol AS is considered responsible for the debt(s) incurred by the club Mersin Idman Yurdu, and, as such, is found responsible for failing to comply in full with the FIFA decision rendered on 02 July 2015 (Ref. 13-02698).**
2. **Yeni Mersin Idmanyurdu Futbol AS is ordered to pay to Mr. Ivan Saraiva de Souza as follows:**
 - **EUR 235,000 as outstanding remuneration, plus 5% interest *p.a.* as from 24 April 2013 until the date of effective payment.**
 - **EUR 645,750 as compensation for breach of contract, plus 5% interest *p.a.* as from 24 April 2013 until the date of effective payment.**
3. **Yeni Mersin Idmanyurdu Futbol AS is granted a final deadline of 30 days as from notification of the present decision in which to pay the amount due. Upon expiry of the aforementioned final deadline and in the event of persistent default or failure to comply in full with the decision within the period stipulated, a ban on registering new players will be issued until the complete amount due is paid.**
4. **Yeni Mersin Idmanyurdu Futbol AS is ordered to pay a fine to the amount of CHF 30,000.**
5. **The fine is to be paid within 30 days of notification of the present decision.**

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



Lord VEEHALA

Member of the FIFA Disciplinary Committee

¹⁵ " (...) A deduction of points or relegation to a lower division may also be ordered in addition to a ban on registering new players in the event of persistent failure (i.e. the ban on registering new players has been served for more than three entire and consecutive registration periods following the notification of the decision), repeated offences or serious infringements or if no full registration ban could be imposed or served for any reason" (art. 21.1.d) FDC).

NOTE RELATING TO THE LEGAL ACTION:

According to art. 58.1 of the FIFA Statutes reads together with arts. 52 and 61 of the FDC, this decision may be appealed against before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision. Within another 10 days following the expiry of the time limit for filing the statement of appeal, the appellant shall file a brief stating the facts and legal arguments giving rise to the appeal with the CAS.

NOTE RELATING TO THE PAYMENT OF THE AMOUNT DUE:

The Respondent, Yeni Mersin Idmanyurdu Futbol AS, is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the Turkish Football Association of every payment made and to provide the relevant proof of payment.

The Creditor, Mr. Ivan Saraiva de Souza, is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the Turkish Football Association of every payment received.

NOTE RELATING TO THE REGISTRATION BAN:

The registration ban mentioned in para. 3. of the present decision will be implemented automatically and immediately at national and international level by the Turkish Football Association and FIFA respectively, without a further formal decision having to be taken nor any order to be issued by the FIFA Disciplinary Committee or its secretariat. In such case, the Turkish Football Association is reminded of its duty to implement this decision and provide FIFA with proof that the registration ban has been implemented at national level, any failure to do so being subject to potential sanctions (which can lead to an expulsion from FIFA competitions) being imposed by the FIFA Disciplinary Committee.

The Respondent shall only be able to register new players, either nationally or internationally, upon the payment to the Creditor of the complete amount due. In particular, the Respondent may not make use of the exception and the provisional measures stipulated in art. 6 of the Regulations on the Status and Transfer of Players in order to register players at an earlier stage.

A deduction of points or relegation to a lower division may be ordered in addition to the registration ban in the event of persistent failure (i.e. the ban on registering new players has been served for more than three entire and consecutive registration periods following the notification of the decision), repeated offences or serious infringements or if no full registration ban could be imposed or served for any reason.

For more information on the registration ban as well as on the scope of said disciplinary measure, reference shall be made to [FIFA circular no. 1843](#).

NOTE RELATING TO THE PAYMENT OF THE FINE:

Payment can be made either in Swiss francs (CHF) to account no. 0230-325519.70J, UBS AG, Bahnhofstrasse 45, 8098 Zurich, SWIFT: UBSWCHZH80A, IBAN: CH85 0023 0230 3255 1970 J or in US dollars (USD) to account no. 0230-325519.71U, UBS AG, Bahnhofstrasse 45, 8098 Zurich, SWIFT: UBSWCHZH80A, IBAN: CH95 0023 0230 3255 1971 U, with reference to the abovementioned case number.