



Arbitration CAS 2005/A/1001 Fulham FC (1987) Ltd v. Fédération Internationale de Football Association (FIFA), award of 9 May 2006

Panel: Mr Jean-Philippe Rochat (Switzerland), President; Mr Daniel Bethlehem (United Kingdom); Mr Raymond Hack (South Africa)

Football

Disciplinary proceedings for failing to comply with a CAS decision

Autonomy of the association to impose sanctions

Disciplinary jurisdiction of FIFA towards clubs

Disciplinary jurisdiction regarding contractual litigation

Alleged abuse of dominant position

Discretionary powers on the measure of the sanction

1. Swiss Law grants an association a wide discretion to determine the obligations of its members and other people subject to its rules, and to impose such sanctions it deems necessary to enforce the obligations. The only conditions for an association to be able to impose a sanction are 1) that the violator is subject to the rules and regulations of that association, 2) that there is a sufficiently clear statutory basis for a penalty in the statutes or bylaws of the association and 3) that the sanction procedure must guarantee the right to be heard.
2. The regulations of International Federations apply at every level of the sport that they rule. It is widely recognised that the applicability of IF's regulations on lower levels, i.e. also on clubs, is acceptable as long as the statutes of the IF provide for a clear delegation clause.
3. Art. 70 of the FIFA Disciplinary Code constitutes a sufficient legal basis for the Disciplinary Committee to be able to sanction a club which does not respect the decision of a body of FIFA. This includes decisions of the FIFA Player's Status Committee on contractual litigation between clubs.
4. The mere fact that an FI is in a monopoly situation does not mean that it has abused that position: in order to find an abuse of dominant position, it would have to be shown that the IF has indeed sought to restrict competition and overcome rival competitors through its dominant market power. This is however not the case if the IF is acting, not as a competitor on the market with financial stake in the outcome, but as a mere private association exerting regulatory authority. Sanctions issued in application of regulations drawn up by the IF are necessary to safeguard the correct application of the regulations. They do not constitute an abuse of dominant position, but the justified exercise of an IF's power to draw up and apply the rules for the sport for which it is responsible.

5. **The severity of a penalty must be in proportion with the seriousness of the infringement and the seriousness of the penalty depends on the degree of the fault committed by the person responsible. Even though the CAS – in its capacity as an appellate body – enjoys the same discretion in fixing the extent of the sanction as do the IF’ internal instances, it would require compelling evidence of the disproportionality before it would be prepared to interfere with a decision of the IF. Indeed, only if the sanction is evidently and grossly disproportionate in comparison with the proved rule violation and if it is considered as a violation of fundamental justice and fairness, will the CAS regard such a sanction as abusive and, thus, contrary to mandatory Swiss law.**

Fulham FC (1987) Limited (hereafter the “Appellant”) and Juventus FC (hereafter referred to as “Juventus”) entered into an agreement on 31 July 2001 whereby the parties mutually agreed on the transfer of the player E. (hereafter “the Player”) from Juventus to the Appellant. The total transfer fee amounted to GBP 7,000,000. The parties agreed on payment to be made in three instalments, the third instalment was an amount of GBP 2,000,000 (EUR 3,255,728.24) to be paid by no later than 15 August 2003. The execution of the payment of the transfer fee was personally and unconditionally guaranteed by Mr Mohamed Al Fayed, Chairman of the Appellant.

The Appellant withheld the payment of the last instalment. It indicated that it fully recognised its debt and remained willing to make payment, but only on condition that Juventus would disclose certain information and documents relating to the transfer of the Player, as requested in its letter dated 22 July 2003. The Appellant stated that it had become aware of a number of breaches of duty by its former manager J., including but not limited to the transfers of players at excessive prices, including the one of the Player.

On 13 October 2003 the chairman of the FIFA Players’ Status Committee found that the Appellant had no legitimate reason for not complying with its contractual obligations to Juventus. It accordingly ruled that the Appellant had to pay the third and last contractual instalment of the transfer fee, namely GBP 2,000,000, within 40 days of notification of the decision.

The Appellant lodged an appeal from that decision. On 29 February 2004, the FIFA Executive Committee dismissed the appeal, and confirmed the finding of the FIFA Players’ Status Committee and further ordered the Appellant to pay a 5% default interest per annum from 15 August 2003.

The Appellant then proceeded to file a statement of appeal with the Court of Arbitration for Sport (hereafter referred to as “CAS”) against the decision of 29 February 2004. It alleged that FIFA should not exercise its enforcement powers in favour of a club allegedly in breach of its obligations to another club, and that any club within the FIFA family owes obligations to any other club within the FIFA family to cooperate with that club and to comply with reasonable requests for information and assistance and to facilitate the proper regulation and management of the sport of football. According to the Appellant, Juventus was obliged to provide it with certain information and was in breach of its obligation because of its refusal of the Appellant’s alleged reasonable request for information and

assistance. The Appellant argued that FIFA is a body with common concerns that transcend mere commercial interests so that all those setting and enforcing rules have as their principal purpose the mutual promotion of the sport of football.

In its award dated 12 May 2005 the CAS stated that it could not find anywhere in the statutes or regulations of FIFA a provision clearly establishing an obligation for a club to comply with the requests for information and assistance of another club. In the absence of any clear provision to that effect, the CAS considered that it had no authority to substitute itself for the legally established organs and bodies of FIFA in order to issue new or more specific rules, and that the matter lay entirely within the competence and authority of FIFA. The CAS held that there was no legal ground for them to depart from the applicable FIFA regulations in respect of the transfer of players. The CAS held further that the transfer agreement did not contain any clause or article that provided either party was obliged to provide information and there is no general obligation to inform and assist as submitted by the Appellant. In view of the above, the CAS found that Juventus did not violate any obligation deriving from the statutes or other regulations of FIFA or any obligation otherwise imposed, including by Swiss Law. The CAS therefore upheld the decision of the FIFA Executive Committee in its entirety and ordered the Appellant to pay the transfer fee plus interest at the rate of 5% per annum from 15 August 2003.

On 18 July 2005 and 8 August 2005 the secretary of the FIFA Disciplinary Committee (hereafter the “Disciplinary Committee”), on the request of Juventus, instituted proceedings against the Appellant for failing to comply with the CAS award dated 12 May 2005. The Appellant was instructed to pay the outstanding amount without delay; failing which the case would be put to the Disciplinary Committee for the enforcement of sanctions.

On 29 August 2005 the Disciplinary Committee found the Appellant guilty of violating Art. 70 of the FIFA Disciplinary Code (hereafter the “FDC”, in its version entered into force on 1 May 2005) and the Appellant was ordered to pay a fine of CHF 60,000. The Disciplinary Committee held further that, in the event the Appellant failed to comply with the CAS award within 30 days, Juventus would be entitled to demand that six points be deducted from the Appellant.

The Secretary of the Disciplinary Committee informed the parties on 7 September 2005 that the 29 August 2005 decision had been declared void on the basis that the Appellant had not received the letters dated 18 July and 8 August 2005 and thus could not have exercised its procedural rights, namely its right to be heard. The Secretary of the Disciplinary Committee again noted that disciplinary proceedings had been instituted against the Appellant for failing to respect the CAS award dated 12 May 2005. The Appellant was instructed to make payment without delay, failing which the case would be put to the Disciplinary Committee on 30 September 2005 for the enforcement of certain sanctions.

On 29 September 2005 the Appellant sent a telefax to FIFA, requesting that the payment to Juventus be deferred unless and until Juventus provided the requested information. The Appellant additionally requested that it be allowed to attend the hearing on 30 September 2005, which was accepted. The parties insisted on attending the Disciplinary Committee’s hearing on 31 October 2005.

Juventus refused to participate in the hearing. However, the Appellant did attend, and was represented

by one of its directors, Mr Stuart Benson. He agreed to the facts as they were presented to him. He confirmed that the Appellant was willing to pay the amount due once the requested information was provided by Juventus. He alleged that the Appellant was not seeking to avoid the payment and was in fact willing to deposit the amount in an independent interest-bearing escrow account pending final resolution of this matter. The Appellant however, insisted that FIFA should support it, and order that Juventus disclose the requested information.

In its decision dated 31 October 2005 (hereafter the “Appealed Decision”), the Disciplinary Committee held that the facts were undisputed, and that the Appellant had not respected the CAS award of 12 May 2005. It further held that such decision had accordingly become final and binding. The Disciplinary Committee, in addition, held that it was not in a position to modify the latter, and in the circumstances a payment to an independent escrow account would not comply with the CAS award.

The Disciplinary Committee held further that the Appellant was required to pay the outstanding amount to Juventus unconditionally and that the Disciplinary Committee did not have the necessary authority to be able to enter into the merits of the contractual dispute. The scope of the disciplinary proceedings was limited to determining whether or not the decision taken by the CAS had been respected or not. The Disciplinary Committee held that it had not.

As the Appellant had ignored the decision adopted by the CAS on 12 May 2005, and had failed to pay the monies due to Juventus, it was in breach of Art. 68 FDC (in its version entered into force on 1 September 2005). In determining the quantum of the fine, the Disciplinary Committee held that the amount due to Juventus was substantial, that its non-payment constituted a very serious breach of the contract, and that it could result in Juventus suffering financial difficulty. In view of the above, the Disciplinary Committee considered a fine of CHF 60,000 to be appropriate and held that this complied with the Disciplinary Committee’s established practice.

The Disciplinary Committee imposed a final 30-day period during which the Appellant was to pay monies due to Juventus and additionally warned the Appellant that, in the event that it failed to pay, six points would be deducted from it, or it would be relegated to the lower division in terms of Art. 68 para. 1c) FDC.

The Appellant was notified of the Appealed Decision on 6 December 2005.

On 16 December 2005, the Appellant lodged a statement of appeal against the Appealed Decision with the CAS.

LAW

CAS Jurisdiction

1. The jurisdiction of CAS derives from the combination of Art. 59 ff. of the FIFA Statutes, as well as from Art. R47 of the Code. It is further confirmed by the order of procedure duly signed by the parties.
2. It follows that CAS has jurisdiction to rule on this appeal. According to Art. R57 of the Code, the Panel has full power to review the facts and the law of the case. Furthermore, the Panel may issue a new decision which replaces the decision challenged or may annul the decision and refer the case back to the previous instance.

Appeal Proceedings

3. As these proceedings involve an appeal against a disciplinary decision issued by a federation (FIFA) whose statutes provide for an appeal to the CAS, they are considered and treated as appeal arbitration proceedings in a disciplinary case, within the meaning of and for the purposes of the Code.

Admissibility

4. The parties appeals were filed within the deadline provided by Art. 60 of the FIFA Statutes and indicated in the Appealed Decision, i.e. within 10 days after notification of such decision. It follows that the Appeal is admissible, which is also undisputed.

Applicable material and procedural law

5. Art. R58 of the Code provides the following :
“The panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the panel deems appropriate. In the latter case, the panel shall give reasons for its decision”.
6. Pursuant to Article 59 para. 2 of the FIFA Statutes:
“CAS applies the various regulations of FIFA or, if applicable, of the Confederations, Members, Leagues and clubs and, additionally, Swiss Law”.
7. In this case, accordingly, the FIFA rules and regulations fall to be applied primarily, with Swiss law applying in a secondary nature.

8. Pursuant to Art. 4 FDC – in both its versions entered into force on 1 May 2005 and 1 September 2005 – the material law of the FDC “*applies to facts that have arisen after it has come into force. It also applies to previous facts if it is equally favourable or more favourable for the perpetrator of the facts and if the judicial bodies of FIFA are deciding on these facts after the code has entered into force*”. In the case at hand, the contested conduct of the Appellant to respect the decisions of CAS started under the version of the FDC entered into force on 1 May 2005, as the CAS made the award on 12 May 2005. Even though the Appellant’s conduct has continued after the entry into force on 1 September 2005 of the version dated 29 June 2005 - the Disciplinary Committee rendered the Appealed Decision on 31 October 2005 –, the Panel will apply the FDC in its version of entered into force on 1 May 2005, namely the version that was in force at the moment that the failure started. The Panel notes with the exception of Art. 40 para. 4 FDC, which in any event is not relied upon by the Panel, that the relevant provisions of the FDC have not changed materially between the two versions, with the consequence that the application of either version does not have any substantial impact on the award.

9. The rules relevant to these proceedings are the following:

Article 2 FIFA Statutes (version 2004)

The objectives of FIFA are:

(...)

- (c) *to draw up regulations and provisions and ensure their enforcement;*
- (d) *to control every type of Association Football by taking appropriate steps to prevent infringements of the Statutes, regulations and decisions of FIFA (...);*
- (e) *to prevent all methods or practices which might jeopardise the integrity of matches or competitions or give rise to abuse of Association Football.*

Article 13 para. 1 FIFA Statutes

Members have the following obligations:

- (a) *to comply fully with the Statutes, regulations, directives and decisions of FIFA bodies at any time; (...)*
- (d) *to ensure that their own members comply with the Statutes, regulations, directives and decisions of FIFA bodies*

Article 55 FIFA Statutes

The disciplinary measures are primarily:

- 1 *for natural and legal persons:*

- (a) *a warning;*
- (b) *a reprimand;*
- (c) *a fine ;*
- (d) *the return of awards.*

- 2 *for natural persons:*

- (a) *a caution;*
- (b) *an expulsion;*
- (c) *a match suspension;*
- (d) *a ban from the dressing rooms and/or the substitutes’ bench;*
- (e) *a ban from entering a stadium;*

- (f) *a ban on taking part in any football-related activity.*
- 3 *for legal persons:*
- (a) *a transfer ban;*
 - (b) *playing a match without spectators;*
 - (c) *playing a match on neutral territory;*
 - (d) *a ban on playing in a particular stadium;*
 - (e) *annulment of the result of a match;*
 - (f) *expulsion;*
 - (g) *a forfeit ;*
 - (h) *deduction of points;*
 - (i) *relegation to a lower division.*
- 4 *The Executive Committee shall draw up a FIFA Disciplinary Code.*

Article 57 FIFA Statutes

- 1 *The Disciplinary Committee shall consist of a chairman, deputy chairman and the number of members deemed necessary. The chairman and the deputy chairman shall have legal qualifications.*
- 2 *The function of this body shall be governed by the FIFA Disciplinary Code. The committee shall pass decisions only when at least three members are present. In certain cases, the chairman may rule alone.*
- 3 *The committee may pronounce the sanctions described in these Statutes and the FIFA Disciplinary Code on Members, clubs, Officials, Players and match and players' agents.*
- 4 *These provisions are subject to the disciplinary powers of the Congress and Executive Committee with regard to the suspension and expulsion of Members.*

Article 61 para. 1 FIFA Statutes

Arbitration, Obligation

The Confederations, Members and Leagues shall agree to recognise CAS as an independent judicial authority and to ensure that their members, affiliated Players and Officials comply with the decisions passed by CAS. The same obligation shall apply to licensed match and players' agents.

Article 62 FIFA Statutes

Submission to decisions of FIFA: Principle

- 1 *The Confederations, Members and Leagues shall agree to comply fully with any decisions passed by the relevant FIFA bodies which, according to these Statutes, are final and not subject to appeal.*
- 2 *They shall take every precaution necessary to ensure that their own members, Players and Officials comply with these decision.*

Article 63 FIFA Statutes

Submission to decisions of FIFA: Sanctions

Any violation of the foregoing provisions will be punished in compliance with the FIFA Disciplinary Code.

Article 1 FDC: Object

This code describes infringements of the rules in FIFA regulations, determines the sanctions incurred, regulates the organisation and function of the bodies responsible for taking decisions and the procedure to be followed before these bodies.

Article 2 FDC: Scope of application: material law

This code applies to every match and competition organised by FIFA. Beyond this scope, it also applies if a match official is harmed and more generally, if the statutory objectives of FIFA are breached, especially with regard to forgery, corruption and doping.

Article 70 FDC

Failure to respect the decisions of a body, Payment of sums of money

Anyone who fails to pay another person (such as a player, a coach or a club) a sum of money in full, even though instructed to do so by a body of FIFA

- (a) will be sanctioned with a minimum fine of CHF 5,000 for failing to comply with the instructions issued by the body that imposed the payment (cg. Art. 55 par. 1c) of the FIFA Statutes)*
- (b) will be given a final time limit by the judicial bodies of FIFA in which to settle the debt;*
- (c) if it is a club, it will be warned and threatened with deduction of points or relegation to the next lower division if it has not paid by the final time limit. Furthermore, a transfer ban may be imposed.*

Procedural issues

- 10. The parties did not make any objections either with regard to the composition of the Panel or with regard to any aspect of the proceedings.
- 11. At the conclusion of the hearing held on 29 April 2006, the parties acknowledged that their right to be heard had been respected and that they had no objections in respect of their right to be treated equally in the arbitration proceedings.
- 12. With the exception of a preliminary procedural issues raised by the parties, the parties did not raise any other procedural issues.

The merits

A. Disciplinary jurisdiction of FIFA

- 13. The Appellant claims that the Respondent did not have jurisdiction to discipline the Appellant as the enforceability of a private contract between two clubs does not fall within the scope of application of the FDC as defined at Art. 2 FDC.
- 14. In its oral pleading, the Appellant noted that pursuant to Art. 2 FDC, the FDC applies if the statutory objectives of FIFA are breached, especially with regard to forgery, corruption and

doping. FIFA's statutory objectives are defined at Art. 2 of the FIFA Statutes. The Appellant is of the opinion that the enforceability of a private contract between two clubs is not covered by any of these statutory objectives.

15. The Appellant contends that Art. 2 lit. a) FIFA Statutes is a general objective, the purpose of which is to promote the game of football in itself. Art. 2 lit. b) is self-explanatory and does not constitute a legal basis for disciplinary action. Art. 2 lit. c) is too vague and general and subordinated to Art. 2 lit. a): it shall be interpreted as a competence for FIFA to draw up regulations in relation with the laws of the game only. Art. 2 lit. d) is not directed at arbitral decisions on contractual disputes, but rather at infringement of FIFA's regulations. Art. 2 lit. e) does not include debt collecting issues, but is about integrity of the game, which question was not addressed in the case at hand.
16. The Appellant is of the opinion that the sanctions provided for by the FDC are of a penal nature and that they are subject to particularly high standards with respect of clarity. The FDC, however, contains no provision which clearly states that a failure to pay a contractual amount falls within its scope and which legitimate a disciplinary action.
17. The Appellant further claims that only FIFA members are obliged to comply with the Statutes, regulations, directives and decisions of FIFA bodies pursuant to Art. 13 para. 1 lit. a) FIFA Statutes. This provision does not apply to clubs, which are no direct members of FIFA. It accordingly does not apply to the Appellant.
18. According to the Appellant, Art. 13 para. 1 lit. d) and 61 para. 1 and 3 of the FIFA Statutes only impose obligations to the Confederations, Members and Leagues and do not entitle the Respondent to discipline the clubs directly. Enforcement of CAS decisions lies within the sole competence of the Confederations, Members and Leagues. Moreover, these articles do not contain any reference to a failure to comply with a CAS award: such failure can therefore not be dealt with under the FDC.
19. In response to questions from the Panel, the Appellant advanced the view that Art. 70 FDC does not refer to Art. 57 para. 3 of the FIFA Statutes. Art. 57 para. 3 of the FIFA Statutes establishes the Disciplinary Committee but does not address the nature of the offences that can lead to sanctions. Such offences can only be assessed by reference to Art. 70 FDC, which does not extend to the enforcement of CAS awards. Art. 70 FDC therefore does not apply.
20. The Panel does not accept the Appellant's analysis. In a recent Advisory Opinion, the CAS concluded that Swiss Law grants an association a wide discretion to determine the obligations of its members and other people subject to its rules, and to impose such sanctions it deems necessary to enforce the obligations (CAS 2005/C/976 & 986, n° 142). The only conditions for an association to be able to impose a sanction are i) that the violator is subject to the rules and regulations of that association, ii) that there is a sufficiently clear statutory basis for a penalty in the statutes or bylaws of the association and iii) that the sanction procedure must guarantee the right to be heard (ibid., n° 126).

21. In the case at hand, these three conditions are met. The Panel refers in particular to the clear provisions of Art. 2 lit. c) and d), 13 para. 1 lit a) and d), 61 to 63 of the FIFA Statutes as well as to Art. 70 and 100 FDC. At Art. 2 lit. c) and d) of the FIFA Statutes clearly state that one of FIFA's core objective is to draw up regulations and ensure their enforcement and to control every type of Association Football by taking steps to prevent infringements of the Statutes, regulations or decisions of FIFA. The obligations to respect these regulations are imposed on FIFA members pursuant to Art. 13 para. 1 lit. a) of the FIFA Statutes. The FIFA members have in turn to pass these obligations on their own members pursuant to Art. 13 para. 1 lit. d) of the FIFA Statutes. It is widely recognised that the regulations of international federations (hereafter "IF") apply at every level of the sport that they rule. It is widely recognised that the applicability of IF's regulations on lower levels is acceptable as long as the statutes of the IF provide for a clear delegation clause (ZEN-RUFFINEN P., *Droit du Sport*, Zurich [etc.] 2002, n° 383 ff.). In the case at hand, Art. 13 para. 1 lit. d), 61 para. 1 in fine and 62 para. 2 of the FIFA Statutes establish clear delegation clauses in this respect. Art. 57 para. 3, on the other hand, establishes the jurisdiction of the Disciplinary Committee to pronounce sanctions also against the clubs.
22. These provisions constitute an explicit legal basis to enable the Respondent to take steps to ensure that both its regulations and decisions, as well as those of the CAS, are respected and complied with. They establish the competence of the Disciplinary Committee to issue disciplinary decisions in cases of breach of the Respondent's rules and regulations. As a consequence, the Panel considers that the obligations provided for by the FIFA Statutes are also binding directly on every member of a national football federation, i.e. also on clubs, and that the Disciplinary Committee is entitled to discipline the clubs directly. It is also reminded that the Appellant is subject to and bound by the applicable rules and regulations of the FIFA.
23. The Panel still has to examine if the enforceability of a private contract between two clubs falls within the scope of application of the FDC.
24. The Appellant claims that the heading of Section 9 – in which Art. 70 FDC appears – mentions "*Failure to respect disciplinary decisions*", that the CAS award dated 12 May 2005 was not a disciplinary decision, and that the Disciplinary Committee was therefore not entitled to discipline the Appellant.
25. The Panel refers to the Respondent's explanations: the reference to disciplinary decisions is indeed a translation error and the French version, which is authoritative pursuant to Art. 153 para. 2 FDC, shall prevail. The correct heading of Section 9 is "*Failure to respect the decisions of a body*", as this also appears in the table of contents of the English version. According to the Panel, Art. 70 FDC constitutes a sufficient legal basis for the Disciplinary Committee to be able to sanction a club which does not respect the decision of a body of FIFA. This includes decisions of the FIFA Player's Status Committee on contractual litigation between clubs.
26. In the case at hand, the Panel recalls that the Chairman of the FIFA Player's Status Committee, the FIFA Executive Committee and finally the CAS were competent to rule over the dispute of the parties on their contractual relationship pursuant to the provisions of the Regulations for the Status and Transfers of Players.

27. Subject to the analysis of whether a CAS decision shall be considered as a decision of a body of FIFA in the sense of Art. 70 FDC (see below), the Panel thus considers that the FDC is indeed applicable to proceedings involving non-compliance with a FIFA decision requiring a club to pay a sum of money to another club and that such non-compliance is subject to the sanctions set forth in Art. 70 FDC. This has been confirmed by CAS in the case CAS 2005/A/957 (para. 58). The imposition of sanctions for non-compliance with decisions also corresponds with FIFA's practice (see CAS 2004/A/734 and CAS 2005/A/899).
28. The result of this grammatical interpretation leaves no room for any further or different method of interpretation. Mr Länzlinger's¹ statement is thus not accepted by the Panel in as so much as he considers that the FIFA regulations do not establish a competence of the Disciplinary Committee to issue the Appealed Decision.

B. *Does a CAS award correspond to a decision of a body of FIFA as envisaged in Art. 70 of the FDC?*

29. The Appellant had alleged that a CAS award cannot be considered as a decision of a body of FIFA as envisaged in Art. 70 FDC. The Panel refers to and agrees with the decisions in the case CAS 2005/A/957 in this respect, in which the CAS considered (para. 58) the following:

"The Panel notes that CAS awards – as recognised by the Swiss Federal Court – are final and binding arbitral awards, enforceable as such by State courts, inter alia, on the basis of the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards. At the same time, the Panel remarks that, pursuant to Art. 61 of the FIFA Statutes, "the Confederations, Members and Leagues shall agree to ensure that their members, affiliated Players and Officials comply with the decisions passed by CAS". In other words, all subjects affiliated to FIFA, including clubs and players are bound to comply with awards issued by CAS. Therefore, although CAS is assuredly not "a body of FIFA" in the sense of Art. 70 FDC, its awards are to be considered, under the FIFA Statutes and from its perspective, to have the same effect as a decision issued by a body of FIFA. As a result, the failure to comply with a CAS award, in addition to the possible enforcement proceedings available at State level, exposes a party affiliated with FIFA also to a possible disciplinary proceeding, in accordance with Article 70 FDC. Any different interpretation would seriously impair the efficiency and effectiveness of the FIFA disciplinary system; appeal to the CAS is intended to secure an external review of the FIFA decisions and cannot be construed as a way to obtain per se, even on the basis of frivolous appeals, an immunity from the disciplinary sanctions for non-compliance with obligations imposed by FIFA rules".

30. By failing to comply with CAS award dated 12 May 2005, and pay Juventus the third instalment of the transfer fee, the Appellant was therefore liable to sanctions pursuant to the FDC and the Disciplinary Committee was fully entitled to discipline the Appellant on this basis.

C. *FIFA's investigating powers in disciplinary proceedings*

31. The Appellant contends that the Respondent has not taken into consideration the Appellant's

¹ [Fulham's expert witness].

concern about a possible case of corruption and that the Respondent has wrongly not made use of its investigation powers under Art. 116 and 117 FDC. The Respondent should not, accordingly, be entitled to take any disciplinary action against the Appellant.

32. The Appellant, however, loses sight of the fact that the matter at issue in the disciplinary proceedings against the Appellant was whether the Appellant had respected the CAS award dated 12 May 2005. The Disciplinary Committee was not therefore permitted to consider any other matter relating to the dispute. The Disciplinary Committee did indeed make use of its investigatory powers pursuant to Art. 116 and 117 FDC, but only in relation with matter at issue, i.e. the failure by the Appellant to respect the conclusions of the CAS award and accordingly to pay the due amount. The Appellant's argument is therefore unfounded.
33. The Panel expresses some doubts about the Appellant's good faith in the proceedings at hand: it is indeed unclear to the Panel why the Appellant – if it had well-founded suspicions – did not take steps to have criminal proceedings initiated before the competent English courts, as confirmed by Mr Benson, or courts elsewhere against its former manager or any other person potentially involved.

D. Respect for natural justice

34. The Appellant claims that Disciplinary Committee has breached the principle of natural justice.
35. The Panel recalls that the respect of this principle in the appeal proceedings before the CAS cures any violation that might have occurred before any of the associative bodies, since the Panel has full power to review the facts pursuant to Art. R57 of the Code (see also TAS 2002/A/358, Digest of CAS Awards III 2001-2003, p. 250, n° 16 *in fine*). In the present proceeding, the Appellant has been given all opportunities to exercise its right to be heard, both in writing and orally at both the 22 March and 29 April 2006 hearings. At the end of the second hearing, the Appellant acknowledged that its right to be heard had been respected. Any potential breaches with respect to principle of natural justice have therefore been cured.
36. This notwithstanding, the Panel considers that the Appellant's alleged violations are groundless. First of all, the Panel refers to CAS' Advisory Opinion, where it has been considered, contrary to the Appellant's argumentation, that *"Disciplinary sanctions imposed by associations are subject to the civil law and must be clearly distinguished from criminal penalties. A sanction imposed by an association is not a criminal punishment. Neither Swiss legal doctrine nor case law stipulate that Art. 63 et seq. of the Swiss Penal Code, which require the criminal judge to allocate the penalty according to the degree of guilt, the motives of the offender, his or her curriculum and his or her personal circumstances, are applicable directly or by analogy to sanctions imposed by an association. Art. 63 et seq. of the Swiss Penal Code does not constitute a general principle for any kind of sanctions. In particular, it is not applicable to sanctions based on civil law or sanction based on administrative law. This does not mean that there are no limits to sanctions outside the criminal law, but that the limits are different"* (CAS 2005/C/976 & 986, n° 127). The Panel also notes that the Appellant has been given full opportunity to present its arguments in fact and law and to produce all evidence at the Disciplinary Committee meeting which took place on 31 October 2005. It

subsequently obtained a fully reasoned decision in which the Disciplinary Committee expressly dismissed its arguments. The Disciplinary Committee specifically stated that it was not in a position to modify the decision taken by the CAS in any manner and that it was not therefore able to enter into the substance of the contractual dispute. Mr Benson moreover declared at the 22 March hearing that he had not been denied the opportunity to make his point at the hearing on 31 October 2005. He further confirmed that he personally had knowledge of the annulled Disciplinary Committee decision dated 29 August 2005 before he attended the 31 October 2005 hearing. The Appellant was well aware of the purpose of the disciplinary proceedings and of the nature of the sanctions that it was facing. The Disciplinary Committee has therefore fully complied with the provisions of Art. 100 FDC.

E. Alleged abuse of dominant position

37. The Appellant sustains that the effect of Art. 70 FDC corresponds to an abuse of dominant position of FIFA. The Panel notes that the arguments set out by the Appellant in this regard are terse at the very least and lacking in clarity. The Appellant does not mention any concrete provision in support of its arguments and does not refer to Swiss or European case law or legal opinion. In the absence of sufficiently reasoned submissions, the Panel considers that this claim shall be dismissed and the Appellant's argument rejected.
38. The Panel nevertheless notes that the mere fact that the Respondent is in a monopoly situation does not mean that it has abused that position: in order to find an abuse of dominant position, it would have to be shown that the Respondent has indeed sought to restrict competition and overcome rival competitors through its dominant market power (see CAS 98/200, Digest of CAS Awards II 1998-2000, p. 39, n° 140). It appears however that the Respondent is – in the case at hand – not acting as a competitor on the market with financial stake in the outcome, but as a mere private association exerting regulatory authority.
39. The Respondent has drawn up a set of regulations the aim of which is to improve and promote the game of football and to ensure their enforcement and prevent any infringements thereof. The sanctions in issue in this case derive from the application of these rules, which are meant to fix a general scheme valid for all competitors. The sanctions are necessary to safeguard the correct application of the Respondent's regulations. They therefore do not constitute an abuse of dominant position, but the justified exercise of an international federation's power to draw up and apply the rules for the sport for which it is responsible (see CAS 96/166, Digest of CAS Awards I 1986-1998, p. 361, n° 39). The sanctions provided for by Art. 70 FDC cannot be held to be a restriction on competition. The Panel further reminds that these regulations and their sanctions have been accepted by all FIFA members and their own members, including the Appellant. The Panel finally observes that the sanctions are proportionate to the objective pursued: the amount of the fine depends upon the litigious amount and the effectiveness of the points' deduction is in the hand of the breaching party.
40. The Panel accordingly finds that the sanction mechanism set by Art. 70 FDC does not constitute a restriction on competition, that it is objectively justified to safeguard the enforcement of the

associative regulations of the Respondent, and that the sanctions are proportionate to the objective of preventing any infringements of these regulations.

F. *Analysis of the sanctions*

41. The Appellant argues that the Disciplinary Committee failed to exercise its own discretionary power pursuant to Art. 70 FDC and that it should not have imposed sanctions on the Appellant without considering the reasons of non-payment by the Appellant.
42. The Panel notes the affirmative wording of Art. 70 FDC, which states that “*Anyone who fails to pay (...) will be sanctioned, (...) will be warned and threatened (...)*”. The Panel remarks that this article does not leave room for the exercise of any discretionary power by the Respondent on the principle of pronouncement of sanctions. The Respondent can only exercise its discretion on the level of the penalties imposed.
43. The Disciplinary Committee was therefore required to impose the sanctions provided for in Art. 70 FDC and could not exercise discretionary power in this matter.
44. The Appellant finally claims that the sanctions imposed by the Disciplinary Committee are disproportionate to the Appellant’s offence and that the Disciplinary Committee should have taken into consideration, as mitigation factors, the reasons for the Appellant’s non-payment and its proposal to pay the amount on an escrow account as well as its alleged legitimate concerns to receive the requested information from Juventus. The Appellant points out that the Panel did not take all relevant circumstances into consideration pursuant to Art. 40 para. 4 FDC.
45. The Panel recalls that it is a widely accepted principle that the severity of a penalty must be in proportion with the seriousness of the infringement and that the seriousness of the penalty depends on the degree of the fault committed by the person responsible (CAS 99/A/246, Digest of CAS Awards II 1998-2000, p. 514, n° 31). The principle of proportionality also expressly derives from Art. 70 FDC, which is a special provision which prevails over Art. 40 para. 4 FDC.
46. Even though the CAS – in its capacity as an appellate body – enjoys the same discretion in fixing the extent of the sanction as do the IF’s internal instances (CAS 2001/A/337, Digest of CAS Awards III 2001-2003, p. 206), the Panel would require compelling evidence of the disproportionality before it would be prepared to interfere with a decision of FIFA. Indeed, only if the sanction is evidently and grossly disproportionate in comparison with the proved rule violation and if it is considered as a violation of fundamental justice and fairness, would the Panel regard such a sanction as abusive and, thus, contrary to mandatory Swiss law (CAS 2005/C/976 & 986, n° 143 *in fine*). In the case at hand, the Panel considers that the Disciplinary Committee took account of all the circumstances of the case. The Panel is of the opinion, in particular, that the Disciplinary Committee has correctly assessed that the intentional non-payment and unlawful withholding of the amount due by the Appellant constitutes a very serious offence. The Appellant’s proposal to pay such amount into an escrow account does not constitute a mitigating factor since the Appellant is thereby making the payment contingent on

conditions not provided for in the CAS award.

47. The Panel also refers to the practice of the Disciplinary Committee which has been produced by the Respondent. In this light, it is apparent to the Panel that the CHF 60,000 fine and the threat of 6 points deduction imposed on the Appellant correspond to the practice of the Disciplinary Committee.
48. The Panel is therefore of the opinion that the sanctions imposed on the Appellant are appropriate to the circumstances, all the more so since the sum due to Juventus amounts to more than EUR 3 million and that the reasons for the non-payment by the Appellant, i.e. the request of information from Juventus, do not have any legal basis.

Conclusion

49. Consequently, the Panel dismisses the appeal.

The Court of Arbitration for Sport rules that:

1. The appeal filed by Fulham FC (1987) Limited on 16 November 2005 against the decision issued on 31 October 2005 by the FIFA Disciplinary Committee is dismissed.
2. The time periods identified in the decision issued on 31 October 2005 by the FIFA Disciplinary Committee will run as from the date of notification of this award.

(...).