

Decision

of the

Member of the FIFA Disciplinary Committee

Mr Mahmoud Hammami [TUN]

via electronic mail

on 23 April 2019

to discuss the case of:

Club Bursaspor Kulübü Derneği, Turkey

(Decision 190210 PST TUR ZH)

regarding:

failure to comply with the award issued on 23 July 2018 by the Court of Arbitration for Sport (CAS) regarding an employment-related dispute arisen between the player Sebastian Frey, France, and the club Bursaspor Kulübü Derneği, Turkey.

(Art. 64 of the FIFA Disciplinary Code)

I. inferred from the file

1. On 21 September 2017, the Dispute Resolution Chamber decided that the club Bursaspor Kulübü Derneği (hereinafter also referred to as "*the Debtor*") had to pay to the player Sebastian Frey (hereinafter also referred to as "*the Creditor*") the amount of EUR 650,000 plus 5% interest p.a. to be calculated in accordance with said decision.
2. The findings of the decision of the Dispute Resolution Chamber were duly notified to the parties on 5 October 2017. The grounds of said decision, which were requested by the Debtor, were communicated to the parties on 4 December 2017. Following the notification of the grounds, the Debtor lodged an appeal before the Court of Arbitration for Sport (CAS) on 22 December 2017.
3. On 23 July 2018, CAS issued an Award dismissing the appeal lodged by the Debtor and confirming the decision rendered by the Dispute Resolution Chamber on 21 September 2017. Additionally, CAS ordered the Debtor to pay to the Creditor a total amount of CHF 6,000 as contribution toward the expenses incurred in connection with the arbitration proceedings.
4. As the aforementioned amounts were not paid to the Creditor, the secretariat to the FIFA Disciplinary Committee (hereinafter, "*Secretariat*") opened disciplinary proceedings against the Debtor on 3 April 2019.

Additionally, the Secretariat invited the Debtor to provide its position by 9 April 2019 at the latest and informed the parties that the case would be submitted on 15 April 2019 to a member of the FIFA Disciplinary Committee, who would take a decision based on the documents in its possession. Moreover, the Debtor was informed that the case would not be submitted to a member, should the Creditor confirm settlement of the debt.

5. After having opened disciplinary proceedings, the Debtor did not present any position.

II. and considered

1. According to art. 53 par. 2 of the FIFA Statutes, the Committee may pronounce the sanctions described in the Statutes and the FIFA Disciplinary Code (hereinafter also referred to as *the FDC*) on member associations, clubs, officials, players, intermediaries and licensed match agents.
2. 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 or an instance of FIFA or a subsequent CAS appeal decision (art. 64 par. 1 of the FDC):
 - a) will be fined for failing to comply with a decision;
 - b) will be granted a final deadline by the judicial bodies of FIFA in which to pay the amount due;
 - c) if it is a club, it will be warned and notified that, in the case of default or failure to comply with a decision within the period stipulated, points will be deducted or demotion to a lower division ordered. A transfer ban may also be pronounced.

If the club disregards the final time limit, the relevant association shall be requested to implement the sanctions threatened (art. 64 par. 2 of the FDC).

3. Moreover, in line with art. 78 par. 2 of the FDC, cases involving matters under art. 64 of the FDC may be decided by one member of the Disciplinary Committee alone (hereinafter also referred to as *member of the Committee*).
4. The member of the Committee emphasises that equal to the competence of any enforcement authority, it cannot review or modify as to the substance a previous decision, which is final and binding and, thus, has become enforceable.
5. Having said that, the member of the Committee notes that the finding of the decision passed by the Dispute Resolution Chamber on 21 September 2017 had been duly notified to the parties on 5 October 2017. Furthermore, the member of the Committee observes that the Debtor requested the grounds of said decision, which were duly communicated to the parties on 4 December 2017. Finally, the member of the Committee also notes that CAS, as a result of an appeal lodged by the Debtor against the aforementioned decision, issued an award on 23 July 2018, which became final and binding.
6. In view of what has been explained under paragraph II.4. above, the member of the Committee is not allowed to analyse the arbitral award rendered by CAS as to the substance, in other words, to check the correctness of the amount ordered to be paid, but has as a sole task to analyse if the Debtor complied with said final and binding award.

7. In this regard, the member of the Committee observes that, on the basis of the documents at his disposal, he has no other alternative but to conclude that the Debtor has not made any payment to the Creditor in accordance with the award issued by CAS on 23 July 2018, which confirmed the decision passed by the Dispute Resolution Chamber on 21 September 2017.
8. The member of the Committee subsequently emphasises that, as the Debtor did not comply with the aforementioned decision and subsequent CAS award and is consequently withholding money from the Creditor, it is considered guilty under the terms of art. 64 of the FDC.
9. The fine to be imposed under the above-referenced art. 64 par. 1 a) of the FDC in combination with art. 15 par. 2 of the FDC shall range between CHF 300 and CHF 1,000,000. The Debtor withheld the amount unlawfully from the Creditor. Even FIFA's attempts to urge the Debtor to fulfil its financial obligations failed to induce it to pay the total amount due. In view of all the circumstances pertaining to the present case and by taking into account the outstanding amount due, the member of the Committee regards a fine amounting to CHF 25,000 as appropriate. This amount complies with the Committee's established practice.
10. In application of art. 64 par. 1 b) of the FDC, the member of the Committee considers a final deadline of 60 days as appropriate for the amount due to be paid to the Creditor and FIFA.
11. In accordance with art. 64 par. 1 c) of the FDC and with the Circular n° 1628, the Debtor is hereby warned and notified that, in the case of default within the period stipulated, points will be deducted, a transfer ban may also be pronounced or demotion to a lower division may be ordered.
12. A deduction of points from the Debtor's first team in the national league will be automatically implemented by the Turkish Football Federation in case of non-payment within the stipulated deadline. Thus, once the deadline has expired, the points will be deducted automatically by the Turkish Football Federation without a further formal decision having to be taken nor any order having to be issued by the Committee or its secretariat.
13. With regard to the amount of points to be deducted, art. 64 par. 3 of the FDC is applicable, whereby the number of points deducted must be proportionate to the amount owed. In light of the foregoing criteria, regarding the amount of the fine to be imposed and in keeping with the Committee's well-established practice, a deduction of six (6) points is considered appropriate.
14. Additionally, in case of non-compliance with the aforementioned decision and subsequent CAS award, a ban from registering any new players, either nationally or internationally, will be automatically imposed on the Debtor as from the first day of the next registration period following the expiry of the granted deadline.

15. In this sense, in view of the amount of the outstanding debt, the member of the Committee considers a transfer ban for two (2) entire and consecutive registration periods to be proportionate. Once the deadline has expired, the transfer ban will be implemented automatically at national and international level by the Turkish Football Federation 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.
16. The Turkish Football Federation is hereby reminded of its obligation to automatically implement the abovementioned point deduction and transfer ban upon expiry of the final deadline without having received any proof of payment from the Debtor. In this respect, and for the sake of clarity, the Turkish Football Federation is referred to arts. 90 to 92 of the FDC in what concerns the calculation of time limits. Should the Turkish Football Federation fail to automatically implement said sanctions and provide the secretariat to the FIFA Disciplinary Committee with the relevant proof of point deduction and implementation of the transfer ban at national level, disciplinary proceedings – which may lead to an expulsion from all FIFA competitions – may be opened against it.

III. has therefore decided

1. The club Bursaspor Kulübü Derneği (hereinafter, the Debtor) is found to have infringed art. 64 of the FIFA Disciplinary Code as it is guilty of failing to comply with the award issued by the Court of Arbitration for Sport (CAS) on 23 July 2018, which confirmed the decision passed by the Dispute Resolution Chamber on 21 September 2017, according to which it was ordered to pay to the player Sebastian Frey (hereinafter, the Creditor) the following amounts:
 - EUR 650,000 plus 5% interest p.a. to be calculated in accordance with the decision of the Dispute Resolution Chamber dated 21 September 2017;
 - CHF 6,000 as contribution towards the Creditor's legal fees and expenses incurred in connection with the arbitration proceedings.
2. The Debtor is ordered to pay a fine to the amount of CHF 25,000. The fine is to be paid within 30 days of notification of the present decision. 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 case no. 190210 bbu.
3. The Debtor is granted a final deadline of 60 days as from notification of the present decision in which to settle its debt to the Creditor.

4. If payment is not made to the Creditor and proof of such a payment is not provided to the secretariat to the FIFA Disciplinary Committee and to the Turkish Football Federation by this deadline:
 - a) six (6) points will be deducted automatically by the Turkish Football Federation from the Debtor's first team in the domestic league championship without a further formal decision having to be taken nor any order to be issued by the FIFA Disciplinary Committee or its secretariat.
and
 - b) a ban from registering new players, either nationally or internationally, for two (2) entire and consecutive registration periods will be imposed on the Debtor as from the first day of the next registration period following the expiry of the granted deadline. Once the deadline has expired, the transfer ban will be implemented automatically at national and international level by the Turkish Football Federation 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. The transfer ban shall cover all men eleven-a-side teams of the Debtor first team and youth categories. The Debtor shall be able to register new players, either nationally or internationally, only from the next registration period following the complete serving of the transfer ban or upon the payment to the Creditor of the total outstanding amount, if this occurs before the full serving of the transfer ban. In particular, the Debtor may not make use of the exception and the provisional measures stipulated in article 6 of the Regulations on the Status and Transfer of Players in order to register players at an earlier.

In this respect, and for the sake of clarity, the Turkish Football Federation is referred to arts. 90 to 92 of the FDC in what concerns the calculation of time limits.

5. If the Debtor still fails to pay the amount due to the Creditor even after the deduction of points and the complete serving of the transfer ban in accordance with point III.4. above, the FIFA Disciplinary Committee, upon request of the Creditor, will decide on a possible relegation of the Debtor's first team to the next lower division.
6. As a member of FIFA, the Turkish Football Federation is reminded of its duty to implement this decision and provide FIFA with proof that the points have been deducted in due course and that the transfer ban has been implemented at national level. If the Turkish Football Federation does not comply with this decision, the FIFA Disciplinary Committee will decide on appropriate sanctions on the member. This can lead to an expulsion from FIFA competitions.

7. The Debtor is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the Turkish Football Federation of every payment made and to provide the relevant proof of payment.
 8. The Creditor is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the Turkish Football Federation of every payment received.
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Sent to: - Club Bursaspor Kulübü Dernegi, c/o Mr Jale Demir;
- Turkish Football Federation;
- Mr Sebastian Frey, c/o Mr Gianpaolo Monteneri and Ms Anna Smirnova.

LEGAL ACTION

According to art. 64 par. 5 of the FDC and art. 58 par. 1 of the FIFA Statutes, 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.

The full address and contact numbers of the CAS are the following:

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Baptiste Buntschu
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