

Decision
of the
**Deputy Chairman of the FIFA Disciplinary
Committee**

Mr Alejandro Piera [PAR]

on 7 November 2019,

to discuss the case of:

Club Mostecký fotbalový, Czech Republic
(Decision 190742 PST)

regarding:

failure to comply with

art. 15 of the FDC (2019 ed.) / art. 64 FDC of the FDC (2017 ed.)

I. inferred from the file

1. On 15 December 2016, the Dispute Resolution Chamber (hereinafter also referred to as *DRC*) decided that the club FK Banik Most 1909 had to pay to the player Šime Maruna (hereinafter, the Creditor):
 - CZK 46,000 plus 5% interest *p.a.* as from 18 June 2015 until the date of effective payment;
 - CZK 23,000 plus 5% interest *p.a.* as from 18 June 2015 until the date of effective payment.
2. The terms of the decision were notified to the Creditor and the club FK Banik Most 1909, on 11 January 2017.
3. On 17 October 2017, as the aforementioned amount was not paid to the Creditor, and upon request of the latter, the Secretariat to the FIFA Disciplinary Committee (hereinafter, the Secretariat) opened disciplinary proceedings against the club Mostecký fotbalový (formerly known as FK Banik Most 1909) under Ref. N° 170877.
4. On 31 October 2017, the club Mostecký fotbalový protested against the decision passed by the Dispute Resolution Chamber. In this respect, the latter informed the Secretariat that FIFA did not respect its right *"to defend [it]self"*, claiming that *"FK Banik Most [1909] informed FIFA that it is no longer a member of the Association of the Czech Republic and has no right to any defense of the decision in question and that the transfer of rights [and] obligations is at the moment [with] Mostecky Fotbalovy Klub"*. According to the latter, it was never notified of the decision passed by the DRC and therefore, it had no chance to file an appeal.
5. On 22 October 2018, the Secretariat informed the parties:
 - a. that the Chairman of the FIFA Disciplinary Committee *"considered that such Committee is currently not in a position to enforce the aforementioned decision against the club Mostecký Fotbalový"* since said decision was *"notified (...) to the club Banik Most 1909 – which was at that time no longer affiliated to the Czech Football Association – instead of its legal successor since 29 July 2016, the club Mostecký Fotbalový, o.p.s"*
 - b. that the matter was referred back to the Players' Status and Governance department, in order for the decision passed by the Dispute Resolution Chamber on 15 December 2016 *"to be duly notified to the legal successor of the club Banik Most 1909, i.e. the club Mostecký Fotbalový"*.

- c. that the relevant "*disciplinary proceedings opened against the club Mostecký Fotbalový are closed*".
6. On 3 April 2019, the decision passed by the Dispute Resolution Chamber on 15 December 2016 was duly notified to the club Mostecký fotbalový (hereinafter, the Debtor), via the Czech Football Association. No grounds were requested.
7. As the aforementioned amount was not paid to the Creditor, the Secretariat opened disciplinary proceedings against the Debtor on 17 October 2019 and informed the Debtor that the case would be submitted to a member of the Disciplinary Committee on 4 November 2019.
8. On 24 October 2019, the Debtor provided the Secretariat with its statement, which can be summarised as follows:
 - Club Mostecký fotbalový is not *per se* the legal successor of the former club FK Banik Most 1909. The parties only agreed on a transfer of membership rights of the players and licenses for football competitions but not on any general legal succession nor on any "*assignment of debts*";
 - Club Mostecký fotbalový was not a party of the proceedings before the Dispute Resolution Chamber and can therefore not be legally bound by the decision;
 - On 26 July 2016, the club Mostecký fotbalový "*made a public promise (...) to all members of the Czech Football Association*" and "*undertook to access to a debt at the request of the member [of the Czech Football Association] arising from obligations*" of the former club. Said promise was however limited to certain conditions and Mr Sime Maruna has never requested the club Mostecký fotbalový to access to the debt he is allegedly having against the former club;
 - The club Mostecký fotbalový cannot pay debts without legal grounds;
 - The club Mostecký fotbalový was informed by a letter of 22 October 2018 that the disciplinary proceedings opened against Mostecký fotbalový were closed, therefore, it is not clear under which grounds the proceedings were opened again.
 - The club Mostecký fotbalový refuses to be bound by the decision passed by the Dispute Resolution Chamber.

II. and considered

A) Applicable law and jurisdiction of the FIFA Disciplinary Committee to decide on the present matter

1. First of all, the Deputy Chairman of the FIFA Disciplinary Committee (hereinafter, the Deputy Chairman of the Committee) would like to analyse which version of the FIFA Disciplinary Code (FDC) applies.
2. In this sense, the Deputy Chairman of the Committee underlines that the 2019 edition of the FDC (hereinafter, the 2019 FDC) entered into force on 15 July 2019 (art. 72 par. 1 of the 2019 FDC) and applies to all disciplinary offenses committed following said date (art. 4 par. 1 of the 2019 FDC).
3. With regard to the matter at hand, the Deputy Chairman of the Committee highlights that the disciplinary offense, *i.e.* the potential failure to comply with the DRC decision, was committed before the 2019 FDC entered into force. As a result, the Deputy Chairman of the Committee deemed that the merits of the present case fall under the 2017 edition of the FDC (hereinafter, the 2017 FDC).
4. Notwithstanding the above, the Deputy Chairman of the Committee held that the procedural aspects of the present matter are governed by the 2019 FDC.
5. According to art. 53 par. 2 of the FIFA Statutes, the Disciplinary Committee (hereinafter also referred to as *the Committee*) may pronounce the sanctions described in the Statutes and the FIFA Disciplinary Code on member associations, clubs, officials, players, intermediaries and licensed match agents.
6. For the sake of good order, it is worth emphasising that, in line with art. 54 par. 1 lit h) of the 2019 FDC, cases involving matters under art. 15 of the 2019 FDC (former art. 64 of the 2017 FDC) may be decided by one member of the Disciplinary Committee alone, *i.e.* the Deputy Chairman of the Committee in the case at hand.

B) Whether the Debtor complied with the decision passed by the Dispute Resolution Chamber

7. The Deputy Chairman 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.

8. Having said that, the Deputy Chairman of the Committee notes that the terms of the decision passed by the Dispute Resolution Chamber on 15 December 2016 have been duly communicated, amongst others to the parties, on 3 April 2019. In addition, the Deputy Chairman of the Committee notes that the grounds of the aforementioned decision were not requested. Therefore, the decision became final and binding.
9. In view of what has been explained under paragraph II.7. above, the Deputy Chairman of the Committee is not allowed to analyse the case decided by the Dispute Resolution Chamber 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 the final and binding decision rendered by the Dispute Resolution Chamber. As such, the Deputy Chairman of the Committee cannot take into consideration the arguments brought forward by the Debtor regarding the succession between the clubs, as these arguments should have been brought in the context of the proceedings before the DRC and/or of a potential subsequent appeal against said decision. As a matter of fact, the decision of the DRC has been notified to the Debtor, and the Deputy Chairman of the Committee can only assess as to whether the amounts due to the Creditor have been paid or not.
10. As the Debtor did not comply with the decision passed by the Dispute Resolution Chamber on 15 December 2016, and is consequently withholding money from the Creditor, it is considered guilty of non-complying with a financial decision, under the terms of art. 64 of the 2017 FDC.

C) Sanctions

11. With regard to the sanction to be imposed, the Deputy Chairman of the Committee recalls that the 2017 FDC is applicable. In particular, the latter refers to art. 64 of the 2017 FDC, in accordance with which 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:
 - 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, (...) a transfer ban may also be pronounced.

12. The fine to be imposed under the above-referenced art. 64 par. 1 a) of the 2017 FDC, in combination with art. 15 par. 2 of the 2017 FDC shall range between CHF 300 and CHF 1,000,000.
13. The Deputy Chairman of the Committee considered that 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.
14. In view of all the circumstances pertaining to the present case and by taking into account the outstanding amount due, the Deputy Chairman of the Committee regards a fine amounting to CHF 1,000 as appropriate. This amount complies with the Committee's established practice.
15. In application of art. 64 par. 1 b) of the 2017 FDC, while taking into consideration the standard deadlines granted by the Committee in its recent decisions, the Deputy Chairman of the Committee decides to grant a final deadline of 30 days for the amount due to be paid to the Creditor.
16. In continuation, in view of the circumstances of the case but also the aim of the provision at hand (i.e. to ensure that decisions passed by a body, a committee or an instance of FIFA or a subsequent CAS appeal decision are respected and complied with) while keeping in mind the content of FIFA circular no. 1628, the Deputy Chairman of the Committee considers a ban from registering new players (at national and international level) as an appropriate sanction. In particular, taking into account the standing practice of the Committee in similar situations, the Deputy Chairman of the Committee holds that such ban will be automatically imposed on the Debtor following the expiry of the granted deadline and will only be lifted upon the payment of the total outstanding amount to the Creditor.
17. For the sake of good order, the Czech Football Association is hereby reminded of its obligation to automatically implement the 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 Czech Football Association is referred to art. 34 of the 2019 FDC in what concerns the calculation of time limits. Should the Czech Football Association fail to automatically implement said sanction and provide the Secretariat to the FIFA Disciplinary Committee with the relevant proof of 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 Mostecký fotbalový (hereinafter, the Debtor) is found guilty of failing to comply in full with the decision passed by the Dispute Resolution Chamber on 15 December 2016 according to which it was ordered to pay to the player Šime Maruna (hereinafter, the Creditor):
 - CZK 46,000 plus 5% interest *p.a.* as from 18 June 2015 until the date of effective payment;
 - CZK 23,000 plus 5% interest *p.a.* as from 18 June 2015 until the date of effective payment.
2. The Debtor is ordered to pay a fine to the amount of CHF 1,000. The fine is to be paid within 30 days of notification of the present decision.
3. The Debtor is granted a final deadline of 30 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 Czech Football Association by this deadline, a ban from registering new players, either nationally or internationally, will be imposed on the Debtor. Once the deadline has expired, the transfer ban will be implemented automatically at national and international level by the Czech 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. 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 upon the payment to the Creditor of the total outstanding amount. 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 stage.
5. As a member of FIFA, the Czech Football Association is reminded of its duty to implement this decision and provide FIFA with proof that the transfer ban has been implemented at national level. If the Czech Football Association 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.

6. The Debtor is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the Czech Football Association of every payment made and to provide the relevant proof of payment.
7. The Creditor is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the Czech Football Association of every payment received.

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



Alejandro Piera
Deputy Chairman of the FIFA Disciplinary Committee

LEGAL ACTION

According to article 49 together with article 57 par. 1e) of the FDC and article 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.

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