Sent to:  
Confederação Brasileira de Futebol  
General Secretariat  
Decision Ref: 191075  

Zurich, 11 December 2019  

Notification of the terms of the decision  

Dear Sirs,

Please find attached the grounds of the decision passed in the aforementioned case by a member of the FIFA Disciplinary Committee on 19 November 2019.

The Confederação Brasileira de Futebol is kindly requested to forward this decision to Coritiba Foot Ball Club.

We would appreciate your taking due note of this decision and ensuring its implementation.

Yours faithfully,

FIFA  

Carlos Schneider Salvadores  
Head of the FIFA Disciplinary Department  

Cc: - Football Club Dynamo Kyiv  
- Coritiba Foot Ball Club
Decision

of the

Member of the FIFA Disciplinary Committee

Mrs. PITCAIRN Theresa [CAY], Member

on 19 November 2019,

to discuss the case of:

Coritiba Foot Ball Club, Brazil

(Decision 191075)

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 19 September 2019, the Single Judge of the Players’ Status Committee decided that the club Coritiba FC (also known as Coritiba Foot Ball Club, hereinafter also referred to as the Debtor) had to pay to the club FC Dynamo Kyiv (hereinafter also referred to as the Creditor), within 30 days as from the date of notification of the relevant decision, the amount of BRL 1,250,000 plus interest at a rate of 18% p.a. to be calculated in accordance with said decision.

2. The findings of the decision of the Single Judge of the Players’ Status Committee were duly communicated to the parties on 24 September 2019. The Debtor requested the grounds of the decision, which were notified to the parties on 7 January 2019.

3. The Debtor subsequently lodged an appeal before the Court of Arbitration for Sport (CAS), which issued a termination order on the matter on 2 April 2019.

4. On 30 October 2019, as the aforementioned amount was not paid to the Creditor, the Secretariat to the FIFA Disciplinary Committee (hereinafter: the Secretariat) opened disciplinary proceedings against the Debtor.

5. On 5 November 2019, the Debtor provided the Secretariat with its position, which can be summarized as follows:\n
   i. The Debtor has gone through a difficult period over the last years;
   ii. At the end of 2017, it was relegated in the second division, therefore creating “uncountable financial troubles”. In particular, “the amount received by broadcasting rights is ten times lower than before, [which] is incredibly harmful for the [Debtor] to maintain its activities in high level”;
   iii. The Debtor’s “financial situation was not easily controlled before the relegation year. However, in the last two years, the huge drop in revenue, corroborated by the delicate financial moment that Brazil is going through, contributed to this situation”;
   iv. The “budget deficit” of the Debtor was of BRL 23,378,993 in June 2019 and has gone worse since then;
   v. The only was for the Debtor to increase its revenue would be to be promoted to the first division;
   vi. It really “wants to pay this debt [towards the Creditor], but at this moment, this would not be possible without players and all the staff not receiving their salaries, at the expense of paying the debt”;
   vii. The Debtor only has two ways of settling the debt:

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1 The summary does not purport to include every single contention put forth by the Debtor. However, the FIFA Disciplinary Committee has thoroughly considered in its discussion and deliberations 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. “Paying this debt in 24 instalments, starting on January, 2020”;
b. By negotiating and selling some of its young players.

viii. As a result, the Debtor requests the FIFA Disciplinary Committee to take into consideration these arguments when deciding on the case, but also to analyse the two proposals made.

II. and considered

1. In view of the circumstances of the present matter, the member of the FIFA Disciplinary Committee (hereinafter also referred to as the member of the Committee) decided to first address the procedural aspects of the present matter, namely the applicable law as well as its jurisdiction, before entering into the substance of the matter and assessing the potential failure to comply with the decision of the Single Judge of the Players’ Status Committee as well as the potential sanctions resulting therefrom.

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

2. First of all, the member of the Committee went on to analyse which version of the FIFA Disciplinary Code (FDC) applies.

3. In this sense, the member of the Committee underlined 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).

4. With regard to the matter at hand, the member of the Committee highlighted that the disciplinary offense, i.e. the potential failure to comply with the decision of the Single Judge of the Players’ Status Committee, was committed before the 2019 FDC entered into force. As a result, the member of the Committee deemed that the merits of the present case fall under the 2017 edition of the FDC (hereinafter, the 2017 FDC).

5. Notwithstanding the above, the member of the Committee held that the procedural aspects of the present matter are governed by the 2019 FDC.

6. Having said that, and 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, as in the case at hand.
7. The applicable law having been determined and her jurisdiction having been established, the member of the Committee subsequently turned her attention to the decision rendered by the Single Judge of the Players’ Status.

B) Did the Debtor comply with the decision passed by the Single Judge of the Players’ Status Committee?

8. First of all, the member of the Committee emphasised 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.

9. Having said that, the member of the Committee noted that the terms of the decision passed by the Single Judge of the Players’ Status Committee on 19 September 2019 have been duly communicated, amongst others to the parties, on 24 September 2019. In addition, the member of the Committee noticed that the grounds of the aforementioned decision were notified on 7 January 2019, as a result of which an appeal was lodged by the Debtor before the CAS. Nevertheless, the member of the Committee also acknowledged that a termination order was issued by the CAS on 2 April 2019, as a result of which the decision of the Single Judge of the Players’ Status Committee became final and binding.

10. In view of what has been explained under paragraph II./8. above, the member of the Committee is not allowed to analyse the case decided by the Single Judge of the Players’ Status Committee 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 Single Judge of the Players’ Status Committee.

11. In these circumstances, the member of the Committee noticed that the Debtor explained that it was not in a position to pay the amounts due to the Creditor, as it is currently facing the “worst moment of [its] history”, particularly considering its financial situation and the club’s budget deficit.

12. In light of these elements, the member of the Committee found it worthwhile to emphasise that a club has the duty to be aware of its actual financial strength, constitute provision in anticipation of possible issues, such as a relegation (i.e. a contingency that any club may face), and finally conclude contracts that can be fulfilled. In other words, the principle of *pacta sunt servanda* – more relevant in the context of contractual dispute *per se* – is of paramount importance for FIFA and a key issue to be protected among others by the Regulations on the Status and Transfer of Players.

13. To that end, the member of the Committee also wished to refer to the content of art. 2 of the Swiss Civil Code, according to which “*everyone is bound to exercise his rights and fulfil his obligations according to the principle of good faith*” (cf. par. 45 ff. CAS 2010/A/2144
Real Betis Balompié SAD v. PSV Eindhoven). Thus, the sole fact that the Debtor may be undergoing financial problems does not exonerate it from its obligations to pay the outstanding amounts owed to the Creditor.

14. As such, the member of the Committee deemed that the arguments raised by the Debtor could not justify the fact that the amounts due to the Creditor in accordance with the decision passed by the Single Judge of the Players’ Status have not been paid.

15. In light of all of the above, the member of the Committee concluded that the Debtor did not comply with the decision passed by the Single Judge of the Players’ Status on 19 September 2019, and is consequently withholding money from the Creditor, as a result of which it is considered guilty of non-complying with a financial decision, under the terms of art. 64 of the 2017 FDC.

16. Notwithstanding the above, the member of the Committee wished to address the proposal made by the Debtor to settle its debt by either (1) “Paying this debt in 24 instalments, starting on January, 2020” or (2) by negotiating and selling some of its young players.

17. With respect to the first of these two proposals, the member of the Committee affirmed that a possible payment plan has to be agreed upon directly with the creditor, in casu the club FC Dynamo Kyiv, which at its own discretion can accept or not the payment plan proposed. As such, under no circumstances may the member of the Committee subrogate herself to the rights of the Creditor and impose and/or grant such a payment plan.

18. As far as the second proposal is concerned, the member of the Committee stressed that it is up to the Debtor to decide on how to settle its debt and/or to find the financial resources to do so. By no means can the member of the Committee be competent to assess such proposal.

19. This being said, and after having established the violation committed by the Debtor, the member of the Committee went on to assess the sanction resulting therefrom.

C) The sanctions to be imposed

20. First of all, and with regard to the sanction to be imposed, the member of the Committee recalled that the 2017 FDC is applicable. In particular, the latter referred 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.

21. In these circumstances, the member of the Committee underlined that 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.

22. This being established, the member 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.

23. In view of all the circumstances pertaining to the present case, but particularly taking into account the outstanding amount due, the member of the Committee regarded a fine amounting to CHF 20,000 as appropriate. This amount complies with the Committee’s established practice, namely to the fines imposed in cases in which similar amounts were due.

24. 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 member of the Committee decided to grant the Debtor with a final deadline of 30 days to pay the amount due to the Creditor.

25. 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 member of the Committee considered 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 member of the Committee held 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.

26. For the sake of good order, the Confederação Brasileira de Futebol 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 Confederação Brasileira de Futebol is referred to art. 34 of the 2019 FDC in what concerns the calculation of time limits. Should the Confederação Brasileira de Futebol fail to automatically implement said sanction and provide the Secretariat 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 Coritiba Foot Ball Club (hereinafter, the Debtor) is found guilty of failing to comply in full with the decision passed by the Single Judge of the Players’ Status Committee on 19 September 2018 according to which it was ordered to pay to the Club FC Dynamo Kyiv (hereinafter, the Creditor) BRL 1,250,000, as well as interests to be calculated in accordance with the decision passed by the Single Judge of the Players’ Status Committee.

2. The Debtor is ordered to pay a fine to the amount of CHF 20,000. The fine is to be paid within 30 days of notification of the present decision.

3. The 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 Confederação Brasileira de Futebol 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 Confederação Brasileira de Futebol 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 Confederação Brasileira de Futebol 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 Confederação Brasileira de Futebol 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 Confederação Brasileira de Futebol 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 Confederação Brasileira de Futebol of every payment received.

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION

PITCAIRN Theresa
Member of the Disciplinary Committee

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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 case number above mentioned.

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.

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

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