

Decision

of the

Chairman of the FIFA Disciplinary Committee

Mr. YEBOAH Anin [GHA], Chairman

on 16 December 2019,

to discuss the case of:

Yao Guy Eloge Koffi, Côte d'Ivoire

(Decision 191546)

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 7 June 2018, the Dispute Resolution Chamber (DRC) decided that the player Yao Guy Eloge Koffi (hereinafter also referred to as "*the Debtor*") had to pay to the club FC Internazionale Milano (hereinafter also referred to as "*the Creditor*"), within 30 days as from the date of notification of the relevant decision, the amount of EUR 133,532 as compensation for breach of contract plus interest at a rate of 5% p.a. to be calculated in accordance with said decision. In addition, the DRC found the club FC Lugano jointly and severally liable for the payment of the aforementioned compensation.
2. The findings of the decision of the DRC were duly communicated to the parties on 28 June 2018. Subsequently, on 29 October 2018, the grounds of the decision were notified to the parties.
3. On 19 November 2018, FC Lugano lodged an appeal before the Court of Arbitration for Sport (CAS) against the decision of the DRC.
4. On 28 December 2018, the Debtor filed a request for intervention before CAS.
5. On 7 February 2019, the parties were informed by the CAS Court Office that the Debtor's request for intervention had been rejected.
6. On 28 February 2019, the legal representative of the Creditor requested the intervention of the FIFA Disciplinary Committee since the Debtor "*ha[d] not arranged for the payment of the amount*" due to the Creditor. In particular, the latter claimed that "*[o]nly FC Lugano has appealed against the [Decision of the DRC before CAS]*" and since the Debtor "*did not appeal against the Decision, it has become final and binding upon him*".
7. On 29 August 2019, the legal representative of the Creditor emphasised that it "*specifically requested that (...) disciplinary proceedings (...) are opened only against the Player, because Lugano has appealed against the [DRC] Decision and the procedure is still pending before CAS*". In particular, it insisted that the DRC decision "*has become final and binding on the Player (res judicata)*" while referring to the jurisprudence of the Swiss Federal Tribunal.
8. On 9 September 2019, CAS rendered its Arbitral Award in relation to the appeal lodged by FC Lugano. In particular, said appeal was partially upheld and the decision of the DRC confirmed, "*save for para. 4 of the operative part [of the DRC decision], which shall read as follows: 'FC Lugano SA is jointly and severally liable with the Player for the payment of compensation for breach of contract in the amount of EUR 120,000'*".
9. On 16 September 2019, the legal representative of the Creditor provided a copy of the aforementioned Award to the Secretariat to the Disciplinary Committee (hereinafter,

"the Secretariat") and reiterated its request for disciplinary proceedings to be opened against the Debtor.

10. On 27 November 2019, as the aforementioned amount (cf. para. I.1 *supra*) was not paid to the Creditor, the Secretariat (hereinafter: *the Secretariat*) opened disciplinary proceedings against the Debtor.

11. On 2 December 2019, the Debtor provided the Secretariat with its position, which can be summarized as follows¹:
 - i. The amount due is equivalent to more than one year of salary. As a result, he is currently not in a position to settle such debt without "*infringing his personal rights as a worker, with an excessive contractual restriction including the suppression of his economic freedom, limiting it to such an extent that the basis of his economic existence is threatened* (ref. SFT 4A_668/2016, c. 4.2)" (free translation from French to English);
 - ii. Being imposed a fine or a suspension by the Committee would worsen his financial situation and delay the payment of his debt to the Creditor;
 - iii. The Committee is requested to take into consideration the above and to suspend the proceedings;
 - iv. The Debtor proposes to settle his debt toward the Creditor in monthly instalments (minimum 24).

12. On 9 November 2019, the Secretariat provided a copy of the Creditor's position to the Debtor and informed the parties that "*a possible payment plan has to be agreed upon directly with the creditor*", but also that the case would still be submitted to a member of the FIFA Disciplinary Committee "*unless the debt is settled between the parties*".

II. and considered

1. In view of the circumstances of the present matter, the Chairman of the FIFA Disciplinary Committee (hereinafter also referred to as "*the Chairman 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 a financial decision of FIFA or CAS as well as the potential sanctions resulting therefrom.

¹ The summary does not purport to include every single contention put forth by the Debtor. However, the Chairman of the FIFA Disciplinary Committee has thoroughly considered in his 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 his position and in the ensuing discussion on the merits.

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

2. First of all, the Chairman of the Committee went on to analyse which version of the FIFA Disciplinary Code (FDC) applies.
3. In this sense, the Chairman 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 Chairman of the Committee stressed that the disciplinary offense, i.e. the potential failure to comply with the decision of the DRC, was committed before the 2019 FDC entered into force. As a result, the Chairman 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 Chairman 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 his jurisdiction having been established, the Chairman of the Committee subsequently turned her attention to the decision rendered by the DRC.

B) Did the Debtor fail to comply with a financial decision passed by FIFA or CAS?

8. First of all, the Chairman of the Committee pointed out 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 Chairman of the Committee noted that the terms of the decision passed by the DRC on 7 June 2018 have been duly communicated, amongst others to the parties, on 28 June 2018. In addition, the Chairman of the Committee noticed that the grounds of the aforementioned decision were notified on 29 October 2018.
10. This having been established, the Chairman of the Committee subsequently acknowledged that FC Lugano, who was severally and jointly liable for the payment of

the compensation due by the Debtor to the Creditor, lodged an appeal before CAS against the DRC decision.

11. Nevertheless, the Chairman of the Committee also took note of the fact that the Debtor filed a request for intervention before CAS, such request being subsequently dismissed.
12. In view of these elements, the Chairman of the Committee held that he first had to assess as to whether the Debtor is bound by the decision of the DRC, or if he can benefit from the appeal lodged by Lugano FC.
13. In these circumstances, the Chairman of the Committee turned its attention to the relevant jurisprudence of the Swiss Federal Tribunal and CAS², but also to the award rendered by CAS in relation to the matter at stake³.
14. In particular, the Chairman of the Committee was convinced that both debtors, *i.e.* the Debtor and FC Lugano, remain independent from each other since the behaviour of one of them, and in particular his withdrawal, failure to appear or appeal, is without influence upon the legal position of the others. As such, the *res judicata* effect of the judgment concerning joint defendants must be examined separately for each joint defendant in connection with the opponent of the joint defendants because there are as many *res judicata* effects as couples of claimant/defendant⁴.
15. Applying this reasoning to the matter at hand, the Chairman of the Committee determined that the Debtor is to be considered the principal obligor (and not a subsidiary one - FC Lugano *in casu* -) and that the decision of the DRC became final and binding upon the Debtor after its request for intervention before CAS had been rejected.
16. As such, and in view of what has been explained under paragraph II./8. above, the Chairman of the Committee recalled that he is not allowed to assess the case decided by the DRC 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 decision rendered by the DRC which is final and binding upon him.
17. In this context, the Chairman of the Committee first noticed that the Creditor claimed that the amounts due have not been paid by the Debtor.
18. In continuation, the Chairman of the Committee acknowledged that the Debtor explained that he was not in a position to settle his debt towards the Creditor, as the amount at stake represents more than one year of his current salary. Nonetheless, the Debtor did not provide any documentary evidence demonstrating his current salary

² CAS 2019/A/6233 Al Shorta Sports Club v. FIFA & Dalian Yifang FC.

³ CAS 2018/A/6017 FC Lugano SA v. FC Internazionale Milano S.p.A.

⁴ SFT 4A_6/2014.

and/or his financial situation. Referring to art. 36 of the FDC, the Chairman of the Committee therefore deemed that he could not rely upon the Debtor's allegations.

19. As such, the Chairman of the Committee deemed that, on the basis of the file in his possession, there were no valid reason justifying that the amounts due to the Creditor in accordance with the decision passed by the DRC have not been paid.
20. In light of all of the above, the Chairman of the Committee concluded that the Debtor did not comply with the decision passed by the DRC on 7 June 2018, 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.
21. Notwithstanding the above, the Chairman of the Committee wished to address the proposal made by the Debtor to settle its debt in monthly installments.
22. In reply thereto, the Chairman of the Committee recalled that any possible payment plan has to be agreed upon directly with the creditor, *in casu* the club FC Internazionale Milano, which at its own discretion can accept or not the payment plan proposed. As such, under no circumstances may the Chairman of the Committee subrogate himself to the rights of the Creditor and impose and/or grant such a payment plan.
23. This being said, and after having established the violation committed by the Debtor, the Chairman of the Committee went on to assess the sanction resulting therefrom.

C) The sanction(s) to be imposed

24. First of all, and with regard to the sanction(s) to be imposed, the Chairman 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.
25. In addition, a ban on any football-related activity may also be imposed against natural persons in accordance with art. 64 par. 4 of the 2017 FDC.
26. In these circumstances, the Chairman 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.

27. This being established, the 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.
28. With the above in mind, the Chairman of the Committee insisted on the fact that the Debtor at hand is a natural person and that any possible fine imposed on the latter should not prevent him from settling his debt towards the Creditor. As such, after a careful analysis of all the circumstances pertaining to the present case, the Chairman of the Committee regarded a fine amounting to CHF 500 as appropriate and proportionate.
29. 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 Chairman of the Committee decided to grant the Debtor with a final deadline of 30 days to pay the amount due to the Creditor.
30. 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), the Chairman of the Committee also considered a ban on any football-related activity to be an appropriate sanction. In particular, the Chairman of the Committee held that such ban may be imposed on the Debtor following the expiry of the granted deadline and upon request of the Creditor, should the debt remain unsettled.

III. has therefore decided

1. The natural person Yao Guy Eloge Koffi (hereinafter, the Debtor) is found guilty of failing to comply in full with the decision passed by the Dispute Resolution Chamber on 29 October 2018 according to which it was ordered to pay to the club FC Internazionale Milano (hereinafter, the Creditor) EUR 133,532 as compensation for breach of contract, plus 5% interests p.a. to be calculated in accordance with the aforementioned decision.
2. The Debtor is ordered to pay a fine to the amount of CHF 500. 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 Schweizerischer Fussballverband by this deadline, the Creditor may demand in writing from the secretariat to the FIFA Disciplinary Committee that the matter be resubmitted to the FIFA Disciplinary

Committee, so that a ban on taking part in any kind of football-related activity be imposed on the Debtor.

5. The Debtor is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the Schweizerischer Fussballverband of every payment made and to provide the relevant proof of payment.
6. The Creditor is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the Schweizerischer Fussballverband of every payment received.

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



YEBOAH Anin
Chairman of the Disciplinary Committee

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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