

Decision of the Disciplinary Committee

passed in Zurich, Switzerland, on 8 October 2020

COMPOSITION:

Mr. Anin Yeboah, Ghana (Chairman)

RESPONDENT:

Club PFC CSKA-Sofia, Bulgaria

Regarding failure to comply with:

Article 15 of the FDC (2019 ed.) / Article 64 of the FDC (2011 ed.)

I. FACTS OF THE CASE

1. The following summary of the facts does not purport to include every single contention put forth by the actors at these proceedings. However, the Chairman of the FIFA Disciplinary Committee has thoroughly considered 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.
2. On 13 October 2015, the Single Judge of the Players' Status Committee decided that the club PFC CSKA Sofia (hereinafter also referred to as *the original Debtor*) had to pay to the Players' Agent X (hereinafter also referred to as *the Creditor*), within 30 days as from the date of notification of the relevant decision:

EUR 80,000 plus 5% interest *p.a.* on said amount as from 21 August 2012 until the date of effective payment, as well as the sum of **EUR 14,893**.
3. The findings of the decision passed by the Single Judge of the Players' Status Committee were duly communicated to the parties on 28 October 2015.
4. By means of a letter received on 13 September 2017, the Bulgarian Football Union informed the secretariat to the FIFA Disciplinary Committee (hereinafter: *the Secretariat*) that the Sofia City Court had declared the club PFC CSKA Sofia bankrupt. In addition, the Bulgarian Football Union drew the Secretariat's attention to the fact that the Bulgarian Football Union's Executive Committee decided on 20 June 2017 to disaffiliate the original Debtor.
5. By means of a correspondence dated 10 March 2020, the legal representative of the Creditor made reference to the notion of sporting successor illustrated in the recent jurisprudence of the FIFA Disciplinary Committee and claimed that this jurisprudence should apply in the present case. Consequently, the Creditor requested that disciplinary proceedings be initiated against the club PFC CSKA-Sofia, competing in the first division of the Bulgarian championship.
6. On 3 July 2020, the Secretariat initiated disciplinary proceedings against the club PFC CSKA-Sofia (hereinafter also referred to as *the new Club*), for a potential failure to respect a decision passed by a body, a committee or an instance of FIFA or a CAS decision. In addition, the new Club was informed that the case would be submitted to the Disciplinary Committee for evaluation on 6 August 2020 and was invited to provide its position regarding the allegations made by the Creditor.

II. RESPONDENT'S POSITION

1. On 15 July 2020, the legal representative of the new Club provided its position, which can be summarized as follows:
 - The new Club claimed that there was no legal, financial or organizational connection between the legal entity of the original Debtor "PFC CSKA AD" and the new Club "PFC CSKA-Sofia EAD".

- In particular, the new Club pointed out that it is the legal successor of the club Litex Lovech and provided the following explanation:
 - In the 2015/2016 season, the club “Litex Lovech” was expelled from the first Bulgarian league;
 - At the beginning of the 2016/2017 season, a group of entrepreneurs bought the company “PFC Litex Lovech AD”, the legal entity behind the club Litex Lovech;
 - The main idea of these entrepreneurs was to create a club that maintains and reflects the historical sporting history of the former club, which at that time was already declared insolvent and was no longer participating in organized football;
 - Therefore, on 2 June 2016, the entrepreneurs changed the name of the company “PFC Litex Lovech AD” to “PFC CSKA-Sofia EAD”. Accordingly, the club Litex Lovech became the club PFC CSKA-Sofia. Nevertheless, the new Club took part in the newly created Bulgarian first division championship (2016/2017 season) with the sporting license of the club Litex Lovech.

- Furthermore, the new Club admitted that it was using a similar logo and image to the original Debtor because it bought certain logos, trademarks, etc. out of the bankruptcy mass of the original Debtor. However, the new Club wished to draw the Disciplinary Committee’s attention to the fact that the two clubs have different owners, licenses, football teams and legal entities, implying that the new Club cannot be considered as the sporting successor of the original Debtor.

- While the Creditor claims that he participated in the bankruptcy proceedings, but for “unknown” reasons he was not registered as a creditor, he omits to provide the relevant documents for his diligence. However, the Creditor only provided documents showing that a hearing shall be held, but failed to disclose and remit information as to the outcome of the hearing and more importantly a copy of the decision itself. Indeed, according to art. 36 par. 2 of the FDC, any party claiming a right on the basis of an alleged fact shall carry the burden of proof of this fact. While the Creditor provided a document that a hearing was held about his claim, he did not provide the decision rendered by the Sofia City Court after that hearing. The reason why his claim was not included could have been as simple as him not providing enough evidence for his claim or not in the required shape or form. After all, the Creditor did not provide the exact documentation his Bulgarian lawyer had provided to the court but only an internal communication of the Bulgarian lawyer to his Portuguese lawyer that something has been filed. However, there is no proof that the documents have been filed correctly. There is no other alternative but to conclude that the Creditor could not demonstrate the required level of diligence.

- In case a supposed creditor is not included in the list, the Creditor may file an objection against the non-inclusion/exclusion of his claim. The court shall rule on the list after considering the objections (art. 693 par. 2 BCC). Such a ruling is not appealable (art. 693 par. 6 BCC). If the claim is not accepted under art. 693, the Creditor may file a separate claim under art. 694 BCC. In these proceedings the Creditor had the opportunity to present the amount of his entire claim and to present all evidence. This is a separate lawsuit with all the admissible evidence. This case is heard by another panel of the court (art. 694 para. 6 BCC) and is not influenced by the acts of the bankruptcy court. Such a decision has a binding effect

for the debtor, the trustee in bankruptcy and all creditors in the insolvency proceedings (art. 694 para. 8 BCC). However, in the matter at stake, the Creditor chose not to file a separate lawsuit.

- What is more, the Players Agent does not fall under the jurisdiction of FIFA anymore and he therefore cannot seek protection from FIFA. Art. 15 of FDC lists the people who are entitled to make use of the “enforcement procedure” implemented at FIFA to ensure compliance with a FIFA or CAS decision. Agents are not mentioned. Due to this, Agents do not fall under the jurisdiction of FIFA anymore since April 2015 and are not entitled to make use of the system implemented by FIFA. Indeed, as a matter of principle of equality of treatment, an Agent may not seek for FIFA’s help to enforce a decision when it is not possible to do so, should an Agent be a debtor in a specific matter. As a matter of illustration, if a party under the jurisdiction of FIFA seeks compliance with a decision against an Agent, it could not use FIFA’s system anymore. This is even more true here, when the Agent had the opportunity to participate in the national bankruptcy proceedings in Bulgaria and to be compensated via national public enforcement law system. For this reason already, all charges shall be dismissed and the matter shall be closed without further consideration.
 - In addition, the new Club claimed that the bankruptcy proceedings were still ongoing which means that the original Debtor is still able to fulfil its financial obligations towards its employees. Thus, the new Club pointed out that as long as the original Debtor is still in a position to pay its debt, FIFA cannot initiate proceedings against an alleged sporting successor, as the latter would not be able to comply with a decision based on art. 15 of the FDC given that it is up to the Sofia Civil court to decide on the amounts owed to each creditor registered in the bankruptcy proceedings.
 - Finally, the new Club submitted that the Disciplinary Committee would be competent to investigate whether a new club can be held liable for the debts of an old club only in the event that the latter disappears and becomes disaffiliated without the involvement of bankruptcy proceedings. Nevertheless, the new Club emphasized that the present matter involves a club that went bankrupt, so that national bankruptcy laws take precedence over the Disciplinary Committee’s competence to act in such matters.
2. Upon request from the Secretariat, the legal representative of the Creditor provided his position on 2 August 2020 in relation to the issue regarding his diligence, which can be summarized as follows:
- On 3 November 2015, the Creditor requested to be accepted in the Sofia City Court bankruptcy procedure of the original Debtor.
 - On 5 January 2016, the Creditor found out that his request was not accepted. Immediately, through his lawyer, the Creditor requested to be notified of the reasons for the rejection.
 - On 5 January 2016, the answer of the Bankruptcy administrator Miss Dora Mileva, stated: *“if your claim from PFC CSKA Sofia AD has been placed in the list with unapproved receivables, this was because you did not provide the required supporting documents that show your right to receive the requested amount. There might be other reasons, as well. For example, if you did not send your claim in Bulgarian language, or if you did not provide an address in Bulgaria. (...) If your claim has not been accepted you have the opportunity, by January 11th, to send to the court an objection. (...) If you decide to proceed you need to*

provide all supporting documents – including bank statements, court decisions, contracts, invoices, or any other document – showing that you are entitled to receive the amount that you claim.” All documents had been sent, however, not in Bulgarian language.

- As this was the only reason for the rejection, the Creditor contacted a Bulgarian lawyer to assist in the bankruptcy proceedings and all documents were translated to Bulgarian. On 11 January 2016, the Creditor delivered the objection to the rejection of the request initially presented on 3 November 2015.
 - Inexplicably, the Creditor was excluded from the list of creditors. On 26 January 2016, this decision was appealed.
 - *“[I]t is clear that the creditor and Claimant players’ agent [X] had done exactly the same diligences as the two others creditors (...) – case FDD 4978 (...) – case FDD 5030) that have been accepted in the list of creditors of the club PFC CSKA-Sofia and, despite he had been diligent in recovering his debts, the procedural steps he took and the expenses he had to bear will legal advisors and lawyers in Bulgaria, the truth is that, inexplicably, his name was not included in the list of creditors”.*
 - Consequently, as the Creditor proactively participated in the bankruptcy proceedings at national level and tried to recover his credit, the Creditor was diligent and did not contribute to the non-compliance of the FIFA DRC decision.
3. On 25 August 2020, upon request from the Secretariat, the legal representative of the Creditor informed the Secretariat that the decision of including or excluding the claims presented by the referred creditors was never notified by the Sofia City Court. He highlighted again that the Creditor did exactly the same as the two creditors that were included on the list of creditors. The creditors only became aware of their inclusion or exclusion when the list of creditors became public as no decision was communicated to the creditors by the Sofia City Court.
4. On 23 September 2020, after the legal representative of the new Club had been provided with the Creditor’s positions dated 2 August 2020 and 25 August 2020, he provided an additional position:
- The Creditor did not explain what happened after 10 February 2016 when his Bulgarian lawyer explained to him that she received *“some documents in the Sofia city court”*, even though those documents indicated that a hearing was going to be held on 5 April 2016.
 - FIFA granted the Creditor twice the opportunity to file a position *“exclusively in relation to issue regarding his diligence in claiming the relevant credit raised by PFC CSKA-Sofia”*. The Creditor was specifically requested to provide his comments with supporting documentary evidence as per FIFA’s Email dated 27 July 2020. The Creditor filed his position, however, without any supporting document.
 - The Creditor failed to provide any documentary evidence that he was a diligent creditor and that he had properly filed and followed up with his credit in the bankruptcy proceedings of the original Debtor.
 - While the Creditor filed for the third time comments in relation to his alleged diligence, he again failed to provide any evidence thereto. He only once again provided the subpoenas

for the Sofia City Court hearing dated 5 April 2016. The Creditor simply stated that the decisions of including or excluding the claims presented by the Creditor “*were never notified by the Sofia City Court*”.

- The Creditor did not provide any other evidence than the mere statement that he had never received a decision. In particular, there is no inquiry about the status of the matter in the insolvency proceedings. The Creditor is silent about what happened subsequently. It would have been very logical for the Creditor to ask his Bulgarian lawyer how the court hearing went and when he could expect a decision.
- Since the Creditor did not provide any documents following the court hearing dated 5 April 2016, the only conclusion to be drawn is that the Creditor was not diligent, at the very least from this point on.
- In conclusion, the failure to provide the Sofia City Court decision shall be held against the Creditor. He failed to dispose his burden of proof to demonstrate that he has been a diligent creditor. In any event, the new Club refers to para. 137 et sequ. of its submission dated 15 July 2020 whereas it explained that even in case of a negative decision following the 5 April 2016 hearing, there were still legal remedies available to the Creditor. In light of all the foregoing, the new Club stresses that the Creditor was not, or at the very least could not demonstrate that he was a diligent creditor.

III. CONSIDERATIONS OF THE DISCIPLINARY COMMITTEE

1. In the case at hand, in view of the arguments raised by the parties, the Chairman of the FIFA Disciplinary Committee (hereinafter also referred to as Chairman of the Committee) decides to first assess as to whether he is competent to decide on the present matter, and should it be the case, as to whether PFC CSKA-Sofia could be held liable for a potential failure to respect the decision passed by the Single Judge of the Players’ Status Committee on 13 October 2015.

A. Applicable Law

2. First of all, the Chairman of the Committee would like to analyse which version of the FIFA Disciplinary Code (FDC) applies.
3. In this sense, the 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).
4. With regard to the matter at hand, the Chairman of the Committee highlights that the disciplinary offense, was committed before the 2019 FDC entered into force. As a result, the Chairman of the Committee deems that the merits of the present case fall under the 2011 edition of the FDC (hereinafter: the 2011 FDC).

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

B. Jurisdiction of the FIFA Disciplinary Committee to decide on the present matter

6. In view of the circumstances of the case, the Chairman of the Committee will now analyse as to whether he is competent to assess if the new Club is the successor of the original Debtor.
7. 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 2011 FDC) may be decided by one member of the Disciplinary Committee alone, i.e. the Chairman of the Committee in the case at hand.
8. In this context, the Chairman of the Committee first emphasises that it is uncontested that the original Debtor, subject of the initial decision of the Single Judge of the Players' Status Committee, had been disaffiliated from the Bulgarian Football Union.
9. In these circumstances, the Chairman of the Committee wishes to recall that, 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 FDC on member associations, clubs, officials, players, intermediaries and licensed match agents.
10. Clubs are affiliated to regional and/or national football associations and these national football associations are members of FIFA. Consequently, football clubs are considered as "indirect members" of FIFA and therefore, are subject to and bound by the FIFA Statutes and all other FIFA rules and regulations as well as by all relevant decisions passed by the FIFA bodies.
11. The aforementioned principle is embedded in article 14 par. 1 lit d) of the FIFA Statutes which requires the member associations "*to cause their own members to comply with the Statutes, regulations, directives and decisions of FIFA bodies*" as well as in article 60 par. 2 of the FIFA Statutes that states that the member associations, amongst others, "*shall take every precaution necessary to ensure their own members, players and officials comply with these decisions*". The foregoing is only possible to the extent that the so-called "members" are still affiliated to the member associations of FIFA.
12. Since the Bulgarian Football Union has confirmed that the original Debtor was no longer one of its affiliated clubs, the original Debtor has lost its indirect membership to FIFA and the Disciplinary Committee can therefore no longer impose sanctions on it. However, the Chairman of the Committee notes that the Creditor subsequently requested the enforcement of the decision passed by the Single Judge of the Players' Status Committee against the club competing in the first division of the Bulgarian championship, PFC CSKA-Sofia, which, in his view, should be considered as the successor and/or the same entity as the original Debtor, PFC CSKA Sofia.
13. In this context, the Chairman of the Committee takes note that in other disciplinary proceedings involving the original Debtor, CAS also had to discuss the question of the potential successor of the original Debtor. In this respect, the Sole Arbitrator decided on 28 December 2018 that the Disciplinary Committee was not prevented from reviewing, making a legal assessment and deciding if the club PFC CSKA-Sofia was the same as – and/or the successor of – the original Debtor.

14. In light of the foregoing and bearing in mind that the club PFC CSKA-Sofia is still duly affiliated to the Bulgarian Football Union, and as such, under the jurisdiction of the Disciplinary Committee, the Chairman of the Committee decides to endorse the approach established in the aforementioned CAS award by considering that he is not prevented from making a legal assessment and deciding whether the club PFC CSKA-Sofia is the same as – and/or the successor of – the original Debtor.
15. As a result, the Chairman of the Committee deems that he is competent to assess the present matter and therefore to pass a formal decision of a substantive nature on the Creditor's request concerning the liability of the new Club towards the debts of the original Debtor in the frame of art. 64 of the 2011 FDC.

C. Whether the new Club, PFC CSKA-Sofia, is liable for the debts incurred by the original Debtor

16. After having established that the Chairman of the Committee is competent to assess the present matter, he moves on to analyse whether the new Club has a connection with the original Debtor and therefore, can be held liable for the debts of the latter.
17. In this sense, the Chairman of the Committee finds it worthwhile to recall the existing jurisprudence from CAS on this particular topic.
18. To that end, the Chairman of the Committee would first like to refer to the decisions that had dealt with the question of the succession of a sporting club in front of the CAS¹ and in front of FIFA's decision-making bodies² which have established that, on the one side, a club is a sporting entity identifiable by itself that, as a general rule, transcends the legal entities which operate it. Thus the obligations acquired by any of the entities in charge of its administration in relation with its activity must be respected; and on the other side, that the identity of a club is constituted by elements such as its name, colours, fans, history, sporting achievements, shield, trophies, stadium, roster of players, historic figures, etc. that allow it to distinguish from all the other clubs. Hence, the prevalence of the continuity and permanence in time of the sporting institution in front of the entity that manages it has been recognized, even when dealing with the change of management completely different from themselves.³
19. In these circumstances, CAS already considered that a "new" club had to be considered as the "sporting successor" of another one in a situation where a) the "new" club created the impression that it wanted to be legally bound to obligations of its predecessor, *i.e.* the "old" club, b) the "new" club took over the License or federative rights from the "old" club and c) the competent federation treated the two clubs as successors of one another⁴.
20. By the same token, a "sporting succession" is the result of the fact that 1) a new entity was set up with the specific purpose of continuing the exact same activities as the old entity, 2) the "new" club accepted certain liabilities of the "old" club, 3) after the acquisition of the assets of the "old" club,

¹ CAS 2007/A/1355; TAS 2011/A/2614 and TAS 2011/A/2646; TAS 2012/A2778

² FIFA DRC 12150569

³ CAS 2013/A/3425

⁴ CAS 2007/A/1322 FC Politehnica Timisoara SA v. FIFA & RFF & Politehnica Stintia 1921 Timisoara Invest SA

the “new” club remained in the same city and 4) the “new” club took over the license or federative rights from the “old” club⁵.

21. Further, the issue of the succession of two sporting clubs might be different than if one were to apply civil law, regarding the succession of two separate legal entities. “A *sporting entity identifiable by itself that, as a general rule, transcends the legal entities which operate it*”⁶. Consequently, elements to consider are amongst others the name, the logo and colours, the registration address and/or the managing board of the club.
22. For the sake of completeness, the Chairman of the Committee wishes to point out that this established jurisprudence from CAS has now been reflected in the 2019 FDC, under art. 15 par. 4 which states that “*The sporting successor of a non-compliant party shall also be considered a non-compliant party and thus subject to the obligations under this provision. Criteria to assess whether an entity is to be considered as the sporting successor of another entity are, among others, its headquarters, name, legal form, team colours, players, shareholders or stakeholders or ownership and the category of competition concerned*”.
23. With the above in mind, the Chairman of the Committee subsequently analyses the documentation at his disposal in the light of the criteria set by the relevant jurisprudence of CAS (now reflected in art. 15 par. 4 of the 2019 FDC) and applied by the Committee in such situations.
24. The Chairman of the Committee first takes note from the new Club’s submission that the latter bought certain logos and other trademarks out of the bankruptcy mass of the original Debtor. Moreover, he observes that the new Club claimed that it has different owners, licences, football teams and legal entities than the original Debtor, implying that the first one cannot be considered as the successor of the second one.
25. Moreover, the Chairman of the Committee observes that decisions on the issue relating to the sporting successor of the original Debtor were recently rendered by himself and other members of the Disciplinary Committee⁷. In particular, it has already been determined that the new Club, PFC CSKA-Sofia, is to be considered the sporting successor of the original Debtor, PFC CSKA Sofia, on the basis of the following elements:
 - The new Club itself admitted that when the group of entrepreneurs bought the company “PFC Litex Lovech AD” – the legal entity behind the club Litex Lovech – at the beginning of the 2016/2017 season, the main idea was to maintain and reflect the historical sporting history of the original Debtor, which was already declared insolvent.
 - The colours used by the original Debtor and the new Club were identical as well as the logo, the address and the stadium. In addition, it was emphasised that the names of both clubs were very similar and that according to the new Club’s official website, they share the same history and sporting achievements.
26. Finally, the Chairman of the Committee further observes that in those decisions reference was made to a CAS award, according to which a new club acquiring in the bankruptcy proceedings the “economic unit composed of all the assets seized” from the old club was to be understood as a successor of the old club since it was clear that the new club, by purchasing the assets of the old club,

⁵ CAS 2011/A/2646 Club Rangers de Talca v. FIFA

⁶ CAS 2016/A/4576 Ujpest 1885 v. FIFA, para. 134 – 139.

⁷ Cf. Decision 150860 rendered on 25 September 2019; Decision 150034 and 170528 rendered on 20 November 2019; Decision 150851 and 160566 rendered on 12 February 2020; FDD-4978 and FDD-5030 rendered on 9 August 2020.

continued the activity formerly developed by the old club with the same image, badge, hymn, representative colours, emblems and placement.

27. In light of the aforementioned considerations, it was held that the fact that the new Club uses elements that constituted the identity of the original Debtor, combined with its intention to appear as the original Debtor, had to prevail over the arguments put forward by the new Club, such as its ownership, licence, football teams and legal entities being different from those of the original Debtor. It was therefore decided that the new Club had to be considered as the sporting successor of the original Debtor.
28. Having taken all the above into account and on the basis of the information and documentation at his disposal, the Chairman of the Committee considers that there is no other alternative but to conclude that the new Club, PFC CSKA-Sofia, is to be regarded as the sporting successor of the original Debtor, PFC CSKA Sofia
29. In this regard, the Chairman of the Committee notes that neither the original Debtor nor the new Club have complied with the decision passed by Single Judge of the Players' Status Committee on 13 October 2015, as neither club has paid the outstanding amounts to the Creditor.
30. As such, following the jurisprudence of the FIFA Disciplinary Committee, the Chairman of the Committee concludes that, in principle, the sporting successor, i.e. the new Club, of a non-compliant party, i.e. the original Debtor, shall also be considered a non-compliant party and is thus subject to the obligations under art. 64 of the 2011 FDC.

D. Whether the new Club, PFC CSKA-Sofia, is responsible to pay the amounts imposed in the decision passed by the Single Judge of the Players' Status Committee

31. First and foremost, the Chairman of the Committee stresses that the original Debtor went bankrupt. In this context, and as established already by CAS, it appears relevant for the legal assessment of this case to analyse the diligence of the Creditor in recovering his debt in order to assess as to whether a sanction can be imposed on the new Club, i.e. whether the Creditor also contributed to create the breach of art. 64 of the 2011 FDC as it could be that his credit would have been paid in the bankruptcy proceedings and therefore no sanction may be imposed⁸.
32. In this regard, the Chairman of the Committee first recalls that art. 64 of the 2011 FDC empowers the Disciplinary Committee to impose sanctions on a club that failed to respect a financial decision rendered by a body, a committee or an instance of FIFA or in a subsequent CAS award. In other words, a club will be sanctioned in the event it did not respect a financial decision by means of which it was ordered to pay a certain amount to another person (such as a player, a coach or a club).
33. Secondly, the Chairman of the Committee notes that, as mentioned above, CAS already discussed the possibility for the Disciplinary Committee to impose sanctions in accordance with art. 64 of the

⁸ CAS 2011/A/2646 Club Rangers de Talca v. FIFA.

FDC on a new club that was considered as the successor of the bankrupt club⁹. In particular, CAS decided that no disciplinary sanctions could be imposed on the new club, should the creditor fail to claim his credit in the bankruptcy proceedings of the former/bankrupt club.

34. Bearing the above in mind, the Chairman of the Committee shares CAS' conclusion that there is no certainty that a creditor would receive the outstanding amounts in the bankruptcy proceedings but there is at least a theoretical possibility that he could recover his credit in the bankruptcy proceedings instead of remaining passive and pretending that disciplinary sanctions should be imposed on the new club, irrespective of his diligence or negligence in attempting to recover his credit.
35. As a result, should a creditor fail to pursue his claim in the bankruptcy proceedings, such creditor will be, in principle, precluded from requesting disciplinary sanctions to be imposed on the new club that took over from the bankrupt club. In such a situation, the creditor, by his inaction, somehow contributed to create the breach by the bankrupt club of art. 64 of the FDC.
36. The Chairman of the Committee concedes that bankruptcy proceedings before national courts are complex, lengthy and differ from one country to another and that their outcomes are hardly predictable. However, in light of the aforementioned CAS award, it is of paramount importance that a creditor seeking to recover his credit participates in the bankruptcy proceedings at national level.
37. Should, however, a new club appear and the creditor claim that this new club should be considered as the successor of the bankrupt one, the Chairman of the Committee considers that the Disciplinary Committee may only decide on questions relating to the succession of the former club and the liability of the new club towards the debts of the former one provided that the creditor has first participated (or attempted to participate) in the bankruptcy proceedings.
38. In this respect, the Chairman of the Committee observes that the new Club argued that the Creditor failed to provide any documentary evidence proving that he was diligent and that he had properly filed and followed up with his credit in the bankruptcy proceedings of the original Debtor.
39. This being established, the Chairman of the Committee remarks that, in principle, the assessment of the Creditor's diligence has to be made based on the specific circumstances of each case.
40. In this sense, the Chairman of the Committee finds it appropriate to bring back some of the facts of the present case in order to duly assess the Creditor's diligence in recovering his credit.
41. In this regard, the Chairman of the Committee observes that the Creditor was not included in the list of Creditors.
42. However, the Chairman of the Committee notes that the Creditor requested to be accepted in the Sofia City Court bankruptcy proceedings of the original Debtor on 3 November 2015. Moreover, after having been informed of the rejection of his claim, the Creditor subsequently proceeded to

⁹ CAS 2011/A/2646 Club Rangers de Talca v. FIFA.

- immediately contact the bankruptcy administrator in order to ascertain the rationale behind said rejection and contacted a Bulgarian lawyer to assist him in the bankruptcy proceedings.
43. More in particular, the Chairman of the Committee observes that after the Creditor's claim had been rejected, he appealed said decision on 26 January 2016.
 44. Therefore, the Chairman of the Committee observes that it was only when the Creditor had exhausted the available options he could have possibly been aware of, when he decided to turn to FIFA claiming that the new Club was liable for the payment of his credit.
 45. In light of all the above, the Chairman of the Committee concludes that there are no signs in the present case that could suggest that the Creditor remained passive and hence, contributed to the non-compliance of the decision passed by the Single Judge of the Players' Status Committee dated 13 October 2015.
 46. Consequently, and taking into consideration the specific circumstances of the case, the Chairman of the Committee considers that there are sufficient elements in the present case to conclude that the Creditor was diligent, especially considering that the latter took the actions he could have been reasonably aware of to recover his credit.
 47. In addition, it is relevant to refer to a decision where CAS considered that "*UEFA regulations cannot be overridden by the national laws as this would lead to unequal treatment among clubs from different countries*"¹⁰. In this sense, the same principle should apply to FIFA regulations and decisions.
 48. Against this background, the Chairman of the Committee stresses that the main objective of the FIFA regulations is to create a standard set of rules to which all actors within the football community are subject and can rely on. This objective would not be achievable if national law could simply override FIFA regulations.
 49. In particular, the Chairman of the Committee considers that the bankruptcy of the original Debtor does not automatically release its sporting successor, the club PFC CSKA-Sofia, from the obligation to comply in full with the decision passed by the Single Judge of the Players' Status Committee dated 13 October 2015 which remains final and binding and cannot be overridden by a national decision.
 50. As a result, and bearing in mind that the Creditor has been diligent in trying to recover his debt, the Chairman of the Committee finds the new Club liable for the debts incurred by the original Debtor – namely the one related to the decision passed by the Single Judge of the Players' Status Committee dated 13 October 2015 – and consequently concludes that the new Club, PFC CSKA-Sofia, is responsible for complying with the aforementioned financial decision under the terms of art. 64 of the 2011 FDC. However, it appears that the new Club failed to do so and therefore must be sanctioned accordingly.

¹⁰ CAS 2013/A/3067 Málaga CF SAD v. UEFA

E. Sanctions

51. With regard to the sanction to be imposed, the Chairman of the Committee recalls that the 2011 FDC is applicable. In particular, the latter refers to art. 64 of the 2011 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.
52. The fine to be imposed under the above-referenced art. 64 par. 1 a) of the 2011 FDC, in combination with art. 15 par. 2 of the 2011 FDC shall range between CHF 300 and CHF 1,000,000.
53. The original Debtor and, subsequently, the new Club withheld the amount unlawfully from the Creditor despite FIFA's attempts to urge them to settle the debts towards the Creditor.
54. In view of all the circumstances pertaining to the present case and particularly taking into account the outstanding amount due, the Chairman of the Committee regards a fine amounting to CHF 15,000 as appropriate. This amount complies with the Committee's established practice.
55. In application of art. 64 par. 1 b) of the 2011 FDC, while taking into consideration the standard deadlines granted by the Committee in its recent decisions, the Chairman of the Committee decides to grant a final deadline of 30 days for the amount due to be paid to the Creditor.
56. In continuation, in view of the circumstances of the case (namely the long period during which the decision rendered by the Single Judge of the Players' Status Committee had not been complied with, to the detriment of the Creditor) 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 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 Chairman of the Committee holds that such ban will be automatically imposed on the new Club following the expiry of the granted deadline and will only be lifted upon the payment of the total outstanding amount to the Creditor.
57. For the sake of good order, the Bulgarian Football Union 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 Club. In this respect, and for the sake of clarity, the Bulgarian Football Union is referred to art. 34 of the 2019 FDC, in what concerns the calculation of time limits. Should the Bulgarian Football Union 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.

IV. DECISION OF THE DISCIPLINARY COMMITTEE

1. The club PFC CSKA-Sofia (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 13 October 2015 according to which it was ordered to pay to the Players' Agent X (hereinafter, the Creditor) the amount of EUR 80,000 plus 5% interest *p.a.* as from 21 August 2012 until the date of effective payment, as well as the sum of EUR 14,893.
2. The Debtor is ordered to pay a fine to the amount of CHF 15,000. 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 Bulgarian Football Union 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 Bulgarian Football Union 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 Bulgarian Football Union 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 Bulgarian Football Union 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 Bulgarian Football Union 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 Bulgarian Football Union of every payment received.

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



Anin Yeboah
Chairman of the Disciplinary Committee

NOTE RELATING TO THE LEGAL ACTION:

According to art. 49 together with article 57 par. 1 lit e) 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.

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