

# Decision of the Disciplinary Committee

passed in Zurich, Switzerland, on 24 September 2020

## COMPOSITION:

Mr. Alejandro Piera, Paraguay (Deputy Chairman)

## RESPONDENT:

FC Nizhny Novgorod, Russia

Regarding failure to comply with  
Art. 15 of the FDC (2019 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 member of the FIFA Disciplinary Committee (hereinafter, the Single Judge) 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.
2. On 10 April 2015, the Dispute Resolution Chamber decided that the club FC Volga Nizhny Novgorod (hereinafter also referred to as *the Original Debtor*) had to pay to the player Ianos Jozsef Szekely (hereinafter also referred to as *the Creditor*), the following amounts:
  - RUB 245,645 and USD 222,046 as outstanding remuneration, plus 5% interest as from 28 March 2012 until the date of effective payment;
  - USD 1,288,600 as compensation for breach of contract, plus 5% interest as from 30 days as of notification of the relevant decision.
3. The findings of the decision of the Dispute Resolution Chamber dated 10 April 2015 (hereinafter also referred to as "*the DRC Decision*") were notified to, amongst others, the Creditor and the Original Debtor, on 29 April 2015. Following the notification of the findings of the DRC Decision, the Original Debtor requested the grounds of the said decision, which were notified on 7 December 2015.
4. Furthermore, the Court of Arbitration for Sport (CAS), following the appeal lodged by the Original Debtor against the DRC decision, rendered an Award on Costs on 31 May 2016, which, consequently, resulted in the DRC decision being final and binding. In addition, the Original Debtor was ordered to pay CHF 1,000 to the Creditor as contribution towards expenses related to the CAS proceedings.
5. On 1 July 2016, the Football Union of Russia (hereinafter, "*the FUR*") informed the secretariat of the FIFA Disciplinary Committee (hereinafter, "*the Secretariat*") that the Original Debtor was no longer affiliated to the FUR due to its voluntary withdrawal from the national competitions.
6. On 15 June 2020, the Creditor requested the Secretariat to open disciplinary proceedings against the club FC Nizhny Novgorod (hereinafter also referred to as *the New Club*), which is affiliated to the FUR and, according to the Creditor, the successor of the Original Debtor, for not complying with the DRC Decision. In particular, the Creditor provided the following arguments and/or evidence to support his allegations<sup>1</sup>:

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<sup>1</sup> 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.

- There has already been a decision passed by the FIFA Disciplinary Committee holding<sup>2</sup> that the New Club is the sporting successor of the Original Debtor;
  - The FUR has expressly recognized that the Original Debtor and the New Club are the same club;
  - The Original Debtor and the New Club share the same *de facto* ownership structure, being the government of Nizhny, the *de facto* owner of both;
  - The perception of the fans and the “football Community” are clearly that the New Club is the successor of the Original Debtor;
  - The New Club has always made attempts to retain the Original Debtor’s fan base;
  - The New Club maintains the same main source of founding as the Original Debtor;
  - The New Club has similar logo, colours, and played its home matches in the same stadium as the Original Debtor did;
  - Many former players and staff of the original Debtor were retained by the New Club.
7. On 30 June 2020, the Secretariat opened disciplinary proceedings against 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 this sense, the New Club was invited to provide its position regarding the allegations made by the Creditor.
8. Following the opening of disciplinary proceedings, the New Club provided its position in relation to the said proceedings, on 13 July 2020.
9. On 23 July 2020, following the correspondence from the New Club and due to the particular circumstances, the Secretariat asked the Creditor, on behalf of the Chairman of the Disciplinary Committee, to provide his comments in relation to the allegations brought forward by the New Club, namely, information regarding all the measures and actions taken in order to recover the credit recognized in the DRC Decision.
10. The Creditor provided his comments over the allegations of the New Club, which can be summarized as follows<sup>3</sup>, on 28 July 2020:
- The argument regarding the “due diligence” of the Creditor is inconsistent with the FIFA Disciplinary Code. This argument could create the consequence that creditors are always obliged to try to recover any debt via ordinary means in order to not “*contribute to the non-compliance*” of a decision.

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<sup>2</sup> Disciplinary case number 200223

<sup>3</sup> 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.

- The Creditor could only have registered his credit in the bankruptcy proceedings of the Original Debtor between 1 February 2017 and 12 April 2017. Therefore, to conclude that the New Club is not liable for the amounts recognized in favor of the Creditor by the DRC Decision would constitute a *de facto* reduction of the statute of limitations provided in article 10 par. 1 c) of the FIFA Disciplinary Code from 5 years to 2 months and a half;
- The FIFA Disciplinary Code does not provide that in order to establish sporting succession, a Creditor must have registered the relevant credit in the bankruptcy proceedings of the predecessor club;
- As held in CAS 2019/A/6461<sup>4</sup> the relevance of the argument regarding the relevant creditor's diligence shall be analysed on a case-by-case basis;
- The Creditor was never made aware of the bankruptcy proceedings. He actually only found out on 25 May 2020, when he sent the default notice to the New Club;
- During the timeframe by which the Creditor had to register his claim in the relevant bankruptcy proceedings, the Creditor was living in Italy and the notification of the said proceedings was only made in Russia. This means that the Creditor was never in a position by which he could register his claim in the bankruptcy proceedings of the Original Debtor on time;
- Even if the Creditor would have registered his credit, he would not even have recovered part of that Credit. In the above-mentioned CAS Award (CAS 2019/A/6461) it was established that one of the fundamental conditions for the due diligence argument to operate is that the Creditor could have recovered at least part of its debt before the bankruptcy court.
- Following the content of the documentation submitted by the New Club, it is clear that the Creditor would not have recovered the full or part of his credit, since the State Register of the Original Debtor shows that none of the Original Debtor's creditors got any of their money back;
- Should the argument of the Creditor's diligence be considered by the Disciplinary Committee, this would constitute a violation of the principle of equal treatment, since in the case already decided by the latter regarding the same issue (i.e. whether the New Club is the sporting successor of the Original Debtor), the diligence of the relevant creditor was not even discussed;
- In this sense, the argument of whether the relevant creditor has been diligent or not cannot depend on whether the parties to the dispute refer to it or not;
- Also, it must be noted that the application of due diligence places an incredibly high burden on the creditor's to register their credit in the context of bankruptcy proceedings;
- To conclude, the fact that the Creditor did not register his debt in the bankruptcy proceedings of the Original Debtor is either completely irrelevant or at the very least, not an impediment for the Disciplinary Committee to hold the New Club liable for the amounts awarded to the Creditor by the DRC decision;

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<sup>4</sup> CAS 2019/A/6461 Tartu Jalgpallikool Tammeka v. FIFA

11. On 30 July 2020, the Secretariat acknowledged receipt of the Creditor's correspondence (cf. point I. 10 *ut supra*).
12. On the same date, the New Club contested some of the arguments brought forward by the Creditor with relation to the actions taken by the latter to recover his credit.
13. On 7 September 2020, the Secretariat informed the New Club and the Creditor that the case was going to be submitted for evaluation to a member of the FIFA Disciplinary Committee on 24 September 2020.

## II. RESPONDENT'S POSITION

14. The arguments and allegations brought forward by the New Club, can be summarized as follows<sup>5</sup>:
  - The previous decision passed by the Disciplinary Committee holding that the New Club is the successor of the Original Debt is not final and binding and hence, the Disciplinary Committee cannot rely on that decision and must make a new determination based on the facts and submissions made within the context of the present case;
  - The Original Debtor and the New Club are different legal entities, demonstrated by the fact that the Debtor and the original Debtor have different legal entities, founders and heads of club, and as such, differing ownership structures;
  - The New Club started competing on 2015 in a lower division than the one in which the Original Debtor played before its disaffiliation;
  - The Original Debtor and New Club have similar names because they are both based in the same city (i.e. Nizhny Novgorod) but this does not implicate that they are connected;
  - The renaming to FC Nizhny Novgorod by the Original Debtor was made in order to foster its popularity and image;
  - The logos of the Original Debtor and the New Club are completely different. If the colours are the same it is, namely, because they both use the traditional color of Russia and the Nizhny Novgorod region (i.e. blue);
  - The registration rights over the Original Debtor's players were not transferred to the New Club on the summer of 2016, when the New Club was participating in the lower division of the Russian national championship;

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<sup>5</sup> 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.

- The former employees of the Original Debtor moved freely to the New Club after the disaffiliation of the Original Debtor because they wanted to continue working in their home town and the New club was the only professional football club in the city;
- The Original Debtor and New Club have similar websites because they were designed by the same website designer, which is the only firm with experience in football club's websites production;
- The reason why the New Club used for some time the stadium where the Original Debtor used to play is because the former does not own a stadium. However, currently, the New Club is playing in a different stadium;
- The New Club has not purchased any of the assets or assumed any of the debts of the Original Debtor;
- The fact that the New Club was created, at first, as a farming club for the region of Nizhny Novgorod does not establish sporting succession as both clubs co-existed during the 2015/2016 season;
- The New Club did not replace the Original Debtor in the national championship;
- The New Club's promotion to higher divisions from 2015 to 2017 is not connected with a relegation on sporting merits from the Original Debtor but rather, from the disaffiliation from the FUR from the Original Debtor. Therefore, the sporting continuity between the Original Debtor and the New Club was interrupted;
- The Original Debtor and the New Club have similarities because the New Club was in "essence" the professional subsidiary of the latter. However, the obligations and liabilities of the Original Debtor did not move to the New Club following the former's bankruptcy;
- In any event, should the New Club be considered the sporting successor of the New Club, quod non, it must be noted that the Creditor did not claim his credit in the relevant bankruptcy proceedings, *i.e.* he is not listed in the list of Creditors dated 27 February 2020, contributing with his lack of diligence to the failure to respect the DRC decision by the New Club;
- The information regarding the Original Debtor's bankruptcy proceedings was public and the Creditor was aware of it;
- Therefore, and following the CAS jurisprudence (CAS 2011/A/2646) as well as recent positions assumed by the FIFA Disciplinary Committee, by failing to register his credit in the relevant bankruptcy proceedings, the Creditor has contributed to the New Club's failure to respect the DRC decision and hence, the latter cannot be held liable for the amounts awarded to the Creditor in the said decision.

### III. CONSIDERATIONS OF THE DISCIPLINARY COMMITTEE

1. In the case at hand, in view of the arguments raised by the parties, the member of the FIFA Disciplinary Committee (hereinafter also referred to as *the Single Judge*) will first assess whether he is competent to decide on the present matter and, should it be the case, whether the club FC Nizhny Novgorod is to be held liable and responsible for a potential failure to respect the decision passed by the Dispute Resolution Chamber (DRC) on 10 April 2015.

#### A. Jurisdiction of the FIFA Disciplinary Committee

2. First of all, the Single Judge analyzes whether he is competent to assess if the New Club is the successor of the Original Debtor.
3. In these circumstances, the Single Judge begins his analysis by highlighting that the exclusion of the Original Debtor, FC Volga Nizhny Novgorod, from the Football Union of Russia, is an undisputed fact.
4. Moreover, the Single Judge 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.
5. 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.
6. The aforementioned principle is embedded in art. 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 art. 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.
7. Therefore, since the FUR has confirmed that the Original Debtor is no longer affiliated to the association, this implies that the Original Debtor has lost its indirect membership to FIFA and, therefore, the Disciplinary Committee can no longer impose sanctions on it. However, the Single Judge notes that, following the disaffiliation of the Original Debtor from the FUR, the Creditor requested the enforcement of the DRC Decision against FC Nizhny Novgorod, which, in his opinion, should be considered as the successor of the disaffiliated club, FC Volga Nizhny Novgorod.

8. In this regard, and in line with the jurisprudence of the Court of Arbitration for Sport<sup>6</sup>, the Single Judge considers that he is not prevented from reviewing and/or making a legal assessment and, therefore, deciding if the New Club, FC Nizhny Novgorod, is the same as – and/or the successor of – the Original Debtor, FC Volga Nizhny Novgorod, especially considering that the former is affiliated to the FUR and, as such, under the jurisdiction of the FIFA Disciplinary Committee.
9. In light of all of the above, the Single Judge deems he is competent to assess the present matter and to pass a formal decision of a substantive nature with respect to the Creditor's request concerning the liability of the New Club towards the debts incurred by the Original Debtor.

## B. Applicable Law

10. With regard to the matter at hand, the Single Judge recalls that the disciplinary offense, i.e. the potential failure to comply with the DRC decision, was committed before the 2019 edition of the FDC (hereinafter FDC 2019) entered into force.
11. Nevertheless, the Single Judge considers that, following what is established in art. 4 par. 2 of the FDC 2019, both the merits and the procedural aspects of the present case fall under the FDC 2019<sup>7</sup>.
12. Having determined the above, the Single Judge wishes to recall the content and the scope of the provision here at stake.
13. According to article 15 of the FDC 2019

*“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 CAS decision (financial decision), or anyone who fails to comply with another final decision (non-financial decision), passed by a body, a committee, or an instance of FIFA, or by CAS:*

- a) will be fined for failing to comply with a decision; in addition:*
- b) will be granted a final deadline of 30 days in which to pay the amount due or to comply with the non-financial decision;*
- c) in the case of clubs, upon expiry of the aforementioned final deadline and in the event of persistent default or failure to comply in full with the decision within the period stipulated, a transfer ban will be pronounced until the complete amount due is paid or the non-financial decision is complied with. A deduction of points or relegation to a lower division may also be ordered in addition to a transfer ban in the event of persistent failure, repeated offences or serious infringements or if no full transfer could be imposed or served for any reason.*

*(...)*

- 3. If the sanctioned person disregards the final time limit, FIFA and/or the relevant association (in cases involving clubs or natural persons) shall implement the sanctions*

<sup>6</sup> CAS 2018/A/5647 Civard Sprockel v. FIFA & PFC CSKA Sofia, para. 135.

<sup>7</sup> Cf. CAS 2020/A/6755

*imposed. A transfer ban or a ban on taking part in any football-related activity may only be lifted before it has been fully served upon payment of the due amounts, with other disciplinary measures being reserved.*

14. For the sake of good order, it is worth emphasizing that, in line with ar. 54 par. 1 lit. h) of the FDC 2019 edition, cases involving matters under art. 15 of the said code may be decided by one member of the Disciplinary Committee alone, acting as a single judge.

## C. Merits of the dispute

### I. Analysis and determination of the liability and responsibility of FC Nizhny Novgorod

15. Once having confirmed the jurisdiction of the FIFA Disciplinary Committee, the Single Judge moves on to analyse whether the New Club has a connection with the Original Debtor (1) and, should it be the case, whether it can be held liable for the debts of the latter (2).

#### (1) Connection between the New Club and the Original Debtor

16. To begin with, the Single Judge considers relevant to recall the CAS jurisprudence with regard to the topic of sporting succession.
17. To that end, he refers to decisions passed both by the CAS<sup>8</sup> and by the FIFA decision-making bodies<sup>9</sup>, in relation to the question of the succession of a sporting club. In particular, the Single Judge points out that it has been established that, on the one side, a club is a sporting entity identifiable by itself that, as a general rule, transcends the legal entities that operate it, meaning that the obligations acquired by any of the entities in charge of its administration, in relation with its activity, must be respected. On the other side, it has been stated 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. These elements allow a club 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<sup>10</sup>.
18. In these circumstances, CAS considers that a “new” club has 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 by the obligations of its predecessor (i.e. the “old” club) b) the “new” club took over the licence or federative rights from the “old” club and c) the competent federation treated the

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<sup>8</sup> CAS 2007/A/1355; TAS 2011/A/2614 and TAS 2011/A/2646; TAS 2012/A2778.

<sup>9</sup> FIFA DRC 12150569.

<sup>10</sup> CAS 2013/A/3425.

two clubs as successors of one another<sup>11</sup>. 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, the “new” club remained in the same city and 4) the “new” club took over the licence or federative rights from the “old” club<sup>12</sup>.

19. Furthermore, 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. In particular, it is important to recall that according to CAS, a club is a sporting entity identifiable by itself that generally transcends the legal entities that operate it<sup>13</sup>. Consequently, elements to consider are, amongst others, the name, the logo and colours, the registration address and/or the managing board of the club.
20. For the sake of completeness, it is important to emphasise that the aforementioned established jurisprudence from CAS is now reflected in the 2019 FDC edition under art. 15 par. 4. According to this provision, *“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”*.
21. With the above in mind, the Single Judge focuses on the documentation at his disposal in light of the criteria set by the relevant CAS jurisprudence (now reflected in art. 15 par. 4 of the 2019 FDC edition) and applied by the FIFA Disciplinary Committee in such situations.
22. In this sense, the Single Judge observes that according to the Creditor, the New Club has a similar logo, uses the same colours and used to play in the same stadium as the Original Debtor did. Furthermore, the New Club, as it can be deduced from its official website, makes reference to the same founding date as that of the Original Debtor and, apparently, adopts as its own, the history of the latter as well as its sporting achievements.
23. However, the Single Judge notes that the New Club alleges that it is “in essence”, the professional subsidiary of the Original Debtor, acknowledging with this, in the Single Judge’s opinion, that they have some similarities. At the same time, the New Club affirms, *inter alia*, that it is not the successor of the Original Debtor since they are both different legal entities and were founded and are administrated by different people.
24. To this respect, and for the sake of completeness, reference is made once again to the CAS jurisprudence, according to which a club is a sporting entity identifiable by itself that, as a general rule, transcends the legal entities which operate it or, in other words, the fact that a club is operated through a different legal entity than its predecessor does not bear relevance on whether a sporting succession has taken place.

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<sup>11</sup> CAS 2007/A/1322 FC Politehnica Timisoara SA v. FIFA & RFF & Politehnica Stintia 1921 Timisoara Invest SA.

<sup>12</sup> CAS 2011/A/2646 Club Rangers de Talca v. FIFA.

<sup>13</sup> CAS 2016/A/4576 Ujpest 1885 v. FIFA, para. 134 – 139.

25. In addition, it has also been noted that, besides sharing a similar name and logo and the same colours, stadium and history, and despite the New Club suggesting that this does not imply that there has been a succession, many former players and employees of the Original Debtor were engaged by the New Club.
26. Finally, for the ease of completeness, the Single Judge remarks that the Disciplinary Committee already decided, in a previous occasion<sup>14</sup>, that the New Club is the sporting successor of the Original Debtor, concluding, consequently, that the former was liable for the relevant debts incurred by the Original Debtor.
27. As a result, and considering that the New Club shares with the Original Debtor the elements identifying a sporting entity, this is, the name, the emblem, the stadium, colours and history, and that the New Club has kept many of the players and employees of the Original Debtor, the Single Judge has no other alternative but to conclude that the New Club, FC Nizhny Novgorod, is the sporting successor of the Original Debtor, FC Volga Nizhny Novgorod.

## **(2) Whether the New Club is liable for the debts of the Original Debtor**

28. Once having determined that the New Club is the sporting successor of the Original Debtor, the Single Judge moves on to analyse whether the New Club is to be held liable for the debt recognised by the Dispute Resolution Chamber on 10 April 2015.
29. In this sense, the Single Judge recalls that, according to art. 15 par. 4 of the FDC 2019, the sporting successor of a non-compliant party shall also be considered a non-compliant party and thus, subject to the obligations under art. 15 of the FDC 2019. Therefore, in the Single Judge's view, in principle, whenever a club is considered the sporting successor of a non-compliant party that does no longer exist or is no longer under FIFA's jurisdiction, it is automatically responsible of the debts of its predecessor.
30. Notwithstanding the above, the Single Judge observes that the New Club claims that it cannot be held liable for the Original Debtor's obligations and therefore, sanctioned for not complying with the DRC Decision, since the Creditor did not announce and register his credit in the relevant liquidation proceedings and hence, was not diligent in recovering his credit, contributing with this attitude to the already mentioned breach.
31. In this sense, the New Club relies on previous CAS decisions, namely, in the reasoning of the Panel in the proceedings CAS 2011/A/2646, as well as in previous decisions taken by the Disciplinary Committee in order to support its argument.
32. First of all, it is important to leave clear that, in principle, the assessment of the creditor's diligence has to be made based on the specific circumstances of each case<sup>15</sup>.

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<sup>14</sup> Disciplinary case number 200223

<sup>15</sup> CAS 2019/A/6461

33. In light of the above, it is clear for the Single Judge that in the present case, there are no signs that indicate that the Creditor knew that he could announce his credit in the liquidation process of the Original Debtor or that, being aware of this possibility, that he had the intention to claim the credit but in the end did not do it.
34. Furthermore, the Single Judge believes it appropriate to bring back some of the facts of the present case in order to duly assess the issue of the Creditor's diligence in recovering his credit.
35. The Creditor and the Original Debtor concluded an employment contract on 1 July 2011. On 28 March 2012, the Creditor lodged a complaint before FIFA against the Original Debtor for outstanding salaries and compensation for breach of contract, which concluded in the decision of the Dispute Resolution Chamber from 10 April 2015. This decision was contested by the Original Debtor before the CAS, which, on 31 May 2016, rendered an Award on costs. Therefore, as from that date, the DRC Decision is final and binding.
36. Subsequently, the Single Judge observes that it was not until 30 June 2016, that the Original Debtor, after voluntarily withdrawing itself from national competitions, lost its affiliation to the FUR and that, only on 1 February 2017, once the Original Debtor was no longer under the jurisdiction of FIFA, the Original Debtor was declared insolvent. This means that, almost five (5) years passed between the Creditor lodged the relevant claim, after which he was no longer playing in Romania, and the declaration of insolvency of the Original Debtor.
37. To this respect, since the Creditor, who is a national from Romania, signed for a club in Poland on August 2012<sup>16</sup>, after terminating his employment contract with the Original Debtor, and was never informed of the disaffiliation nor about the insolvency proceedings of the latter, the Single Judge has serious concerns as to whether the Creditor, could have known that he had to register himself in the relevant list of creditors. In particular, the Single Judge believes that it is not always clear for foreign creditors to know when a bankruptcy proceeding is opened and when they have to present themselves to verify their credits. In many jurisdictions, the transparency of the bankruptcy and/or insolvency proceedings is at best poor and, from a practical point of view, it is very difficult to be aware of such proceeding.
38. Consequently, the Single Judge concludes that, the Creditor, who chose to seek redress before FIFA to solve his dispute with the Original Debtor, following the logical steps, especially considering that he was not aware of any other available legal options, resorted to FIFA claiming that the New Club was liable for the payment of his credit.
39. In light of all the above, in the Single Judge's opinion, there are no signs in the present case that could suggest that the Creditor remained passive and hence, contributed to the New Club failure to comply with the DRC decision.

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<sup>16</sup> Information retrieved from the Transfer Matching System

40. Consequently, and taking into consideration the specific circumstances of the case, the Single Judge considers that there are sufficient elements in the present case to conclude that the Creditor was diligent.
41. As a result, the Single Judge has no other alternative but to declare that the New Club is liable for the debts incurred by the latter – namely the one related to the decision passed by the Dispute Resolution Chamber- and that therefore, FC Nizhny Novgorod, is found responsible for non-complying with a financial decision, under the terms of article 15 of the FDC 2019.

## II. Summary

42. In view of the foregoing, the Single Judge concludes that the New Club, by its conduct as described above, violated article 15 of the FDC 2019.
43. Therefore, the Single Judge considers that the New Club is to be sanctioned for the abovementioned violation.

## III. The determination of the sanction

44. With regard to the applicable sanctions for the present case, the Single Judge observes that the New Club is a legal person and as such, it can be subject to the sanctions described under art. 6 par. 1 and 3 of the FDC 2019.
45. The fine to be imposed under the above-referenced art. 15 par. 1 a), in combination with art. 15 par. 2 of the FDC 2019 and according to the provisions of art. 6 par. 4 of the FDC 2019, shall range between CHF 100 and CHF 1,000,000.
46. The Original Debtor and, subsequently, the New Club, withheld the amount unlawfully from the Creditor. Even FIFA's attempts to urge them to fulfil their financial obligations failed to induce them to pay the total amount due. In view of all the circumstances pertaining to the present case and by taking into account the outstanding amounts due, the Single Judge regards a fine amounting to CHF 30,000 as appropriate. This amount complies with the Committee's established practice.
47. In application of art. 15 par. 1 b) of the FDC 2019, the Single Judge considers a final deadline of 30 days as appropriate for the amount due to be paid to the Creditor.
48. In accordance with art. 15 par. 1 c) of the FDC 2019, the New Club is hereby warned and notified that, in the case of default within the period stipulated, a transfer ban (at national and international level) will be automatically imposed until the complete amount due is paid.
49. The Football Union of Russia is hereby reminded of its obligation to automatically implement the transfer ban following the notification of the present decision. In this respect, and for the sake of clarity, the Football Union of Russia is referred to art. 34 of the FDC 2019 in what concerns the

calculation of time limits. Should the Football Union of Russia 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.

#### IV. DECISION OF THE DISCIPLINARY COMMITTEE

1. The club FC Nizhny Novgorod (hereinafter, the Debtor) is found guilty of failing to comply with the CAS Award on costs from 31 May 2016 as well as with the decision passed by the Dispute Resolution Chamber on 10 April 2015, according to which it was ordered to pay to the player Ianos Jozef Szekely, the following amounts:
  - RUB 245, 645 and USD 222,046 as outstanding remuneration, plus 5% interest p.a. as from 28 March 2012
  - USD 1,288,600, as compensation for breach of contract.
  - CHF 1,000 as a contribution towards expenses incurred in the arbitration proceedings
2. The Debtor is ordered to pay a fine to the amount of CHF 30,000. 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 Football Union of Russia 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 Football Union of Russia 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 Football Union of Russia 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 Football Union of Russia 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 Football Union of Russia of every payment made and to provide the relevant proof of payment.

- The Creditor is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the Football Union of Russia of every payment received.

FÉDÉRATION INTERNATIONALE  
DE FOOTBALL ASSOCIATION



**Alejandro Piera**

Deputy Chairman of the Disciplinary Committee

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#### **NOTE RELATING TO THE 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 contact details of the CAS are the following:

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