

# Decision of the Disciplinary Committee

passed in Zurich, Switzerland, on 8 October 2020,

## COMPOSITION:

Mr. Anin Yeboah, Ghana (Chairman)

## RESPONDENT:

Club ASD Martina Calcio 1947, Italy

Regarding failure to comply with:

Article 15 of the FDC (2019 ed.)

## I. INFERRED FROM THE FILE

1. Below is a summary of the main relevant facts and allegations based on the documents pertaining to the file. Although the Chairman of the FIFA Disciplinary Committee has considered all the facts, allegations, legal arguments and evidence submitted by the parties, he refers in his decision only to submissions and evidence he considers necessary to explain.
2. On 7 April 2016, the Dispute Resolution Chamber decided that the Italian club AS Martina Franca 1947 (hereinafter also referred to as *the Original Debtor*) had to pay to the player Andrei Cristea the amount of EUR 87,022, plus interest as follows:
  - a. 5% p.a. on the amount of EUR 10,000 as of 11 September 2015
  - b. 5% p.a. on the amount of EUR 15,000 as of 1 October 2015
  - c. 5% p.a. on the amount of EUR 400 as of 1 October 2015
  - d. 5% p.a. on the amount of EUR 400 as of 1 November 2015
  - e. 5% p.a. on the amount of EUR 25,000 as of 1 December 2015
  - f. 5% p.a. on the amount of EUR 2,574 as of 1 December 2015
  - g. 5% p.a. on the amount of EUR 2,574 as of 1 January 2016
  - h. 5% p.a. on the amount of EUR 2,574 as of 1 February 2016
  - i. 5% p.a. on the amount of EUR 2,500 as of 1 February 2016
  - j. 5% p.a. on the amount of EUR 10,000 as of 1 February 2016
  - k. 5% p.a. on the amount of EUR 16,000 as of 1 February 2016
3. The findings of the decision passed by the Dispute Resolution Chamber on 7 April 2016 (hereinafter, the *DRC Decision*) were notified to, amongst others, the Creditor and the Original Debtor on 14 April 2016. Since the grounds of the DRC Decision were not requested, the said decision is final and binding.
4. On 21 July 2016, the Italian Football Association (hereinafter, *the Italian FA*) released a publication informing that the Original Debtor had not registered for the 2016/2017 season. As a consequence, as from 22 December 2016, the Original Debtor was no longer affiliated to the Italian FA.
4. On 19 June 2020, the Creditor requested the Secretariat to resume the disciplinary proceedings concerning the Original Debtor against the Italian club ASD Martina Calcio 1947 (hereinafter also referred to as *the New Club*), as he considered the latter to be the successor of the Original Debtor and therefore, liable for its debts. In particular, the Creditor based his allegations on the following information and/or evidence<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.

- Both the Original Debtor and the New Club make reference to 1947 as their founding year;
  - The Original Debtor and the New Club share the same colours (i.e. white and blue);
  - The New Club plays its home matches in the same stadium as the Original Debtor did (i.e. Stadio Gian Domenico Tursi);
  - The crest and logo of the New Club is similar to the ones of the Original Debtor;
  - Since the Original Debtor did not register in the league for the 2016/2017 season, it lost its position. For this reason, the New Club, which is the Original Debtor's successor, had to start its football activity from the lowest category for which it was eligible;
  - The New Club portrays itself as being a phoenix entity of the Original Debtor.
5. Following the above-mentioned correspondence, on 25 July 2020, the Secretariat of the FIFA Disciplinary Committee (hereinafter, the *Secretariat*) contacted the Italian FA and requested the latter to provide its comments regarding the allegations brought forward by the Creditor, as well as to specify in which divisions from the national championship had the Original Debtor and the New Club played in the last five years.
6. On 29 July 2020, the Italian FA provided the Secretariat with the following information:
- The Original Debtor participated in the Serie C – Lega Pro championship during the 2015/2016 sporting season, which was the last one in which it participated before losing its affiliation from the Italian FA on 22 December 2016;
  - The New Club became a member of the Italian FA on 4 August 2016 and started its participation in organized football playing in the regional championship, known as “Prima Categoria”, which is organized by the Puglia Regional Committee. Currently (i.e. July 2020), the New Club is participating in the amateur regional championship, known as Eccellenza.
  - The New Club never participated in national championships and as far as the Italian FA is aware, there is no connection between the New Club and the Original Debtor.
7. Taking into consideration the information provided by the Creditor and by the Italian FA, on 4 August 2020, the Secretariat of the FIFA Disciplinary Committee (hereinafter, 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. On 9 August 2020, the New Club provided its position in relation to the allegations made by the Creditor.
9. On 5 October 2020, the New Club and the Creditor, amongst others, were informed that the case was going to be submitted to a member of the FIFA Disciplinary Committee on 8 October 2020 for evaluation.

## II. RESPONDENT'S POSITION

1. The arguments brought forward by the New Club can be summarized as follows<sup>2</sup>:
  - The Original Debtor participated in the Serie C – Lega Pro championship during the 2015/2016 sporting season, which was the last one in which it participated before losing its affiliation from the Italian FA on 22 December 2016;
  - New Club became a member of the Italian FA on 4 August 2016 and started its participation in organized football playing in the regional championship, known as “Prima Categoria”, which is organized by the Puglia Regional Committee. Currently (i.e. July 2020), the New Club is participating in the amateur regional championship, known as Eccellenza;
  - None of the founding members of the New Club was member of the Original Debtor;
  - The New Club and the Original Debtor are two different clubs with different federal registration numbers and different company logo.

## III. CONSIDERATIONS OF THE DISCIPLINARY COMMITTEE

1. In view of the arguments raised by the parties, the Chairman of the FIFA Disciplinary Committee (hereinafter also referred to as *the Single Judge*) has to assess, in the first place, whether he has jurisdiction to decide on the present matter, and should it be the case, whether the New Club, ASD Martina Calcio 1947, could be held liable and considered responsible of failing to respect the DRC Decision.

### 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.

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<sup>2</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.

3. In these circumstances, the Single Judge begins his analysis by highlighting that the exclusion of the Original Debtor, AS Martina Franca 1947, from the Italian FA, 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 Italian FA 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 Italian FA, the Creditor requested the enforcement of the DRC Decision against ASD Martina Calcio 1947, which, in his opinion, should be considered as the successor of the disaffiliated club, AS Martina Franca 1947.
8. In this regard, and in line with the jurisprudence of the Court of Arbitration for Sport<sup>3</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, ASD Martina Calcio 1947, is the same as – and/or the successor of – the Original Debtor, AS Martina Franca 1947, especially considering that the former is affiliated to the Italian FA 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

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<sup>3</sup> CAS 2018/A/5647 Civard Sprockel v. FIFA & PFC CSKA Sofia, para. 135.

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>4</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 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.

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<sup>4</sup> Cf, CAS 2020/A/6755

### C. Merits of the Dispute

15. After having established that he is competent to assess the present matter, the Single Judge moves on to analyse whether the New Club has a connection with the Original Debtor and, therefore, whether it can be held liable for the debts of the latter.
16. In this sense, 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>5</sup> and by the FIFA decision-making bodies<sup>6</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>7</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 two clubs as successors of one another<sup>8</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>9</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>10</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.

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<sup>5</sup> CAS 2007/A/1355; TAS 2011/A/2614 and TAS 2011/A/2646; TAS 2012/A/2778.

<sup>6</sup> FIFA DRC 12150569.

<sup>7</sup> CAS 2013/A/3425.

<sup>8</sup> CAS 2007/A/1322 FC Politehnica Timisoara SA v. FIFA & RFF & Politehnica Stintia 1921 Timisoara Invest SA.

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

<sup>10</sup> CAS 2016/A/4576 Ujpest 1885 v. FIFA, para. 134 – 139.

20. For the sake of completeness, the Single Judge wishes 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 regard, the Single Judge notes that the New Club shares some similarities with the Original Debtor, such as, the same colours, a similar name and logo and the fact that they both played in the same stadium. In addition, the Single Judge also observes that the New Club and the Original Debtor make reference to the same year as their year of foundation.
23. However, the Single Judge also acknowledges that there are several disparities between the Original Debtor and the New Club. In this sense, both clubs have a different federal number and were founded by different members. In particular, it must be noted that, as confirmed by the Italian FA, the New Club became a member of the former on 4 August 2016, while the Original Debtor was excluded from the Italian FA on 22 December 2016, meaning that both clubs were affiliated to the Italian FA at the same time for a certain period of time.
24. Having this in mind, the Single Judge considers very unlikely that two different legal entities affiliated to a member association at the same time are the same club or connected somehow between each other. In this sense, and on the Single Judge’s opinion, this is a clear sign that each of the two clubs hold their own federative rights and that none of them have taken over the said rights from the other.
25. In fact, the Single Judge believes that the fact that, as confirmed by the Italian FA, the New Club had to start competing in the lowest division while the Original Debtor completed its last sporting season in a higher and different division than the one the New Club started participating in, is a unequivocal evidence that the federative rights of the Original Debtor were not transferred to the New Club.
26. In light of the foregoing, it appears that certain elements that constituted the identity of the Original Debtor were taken over by the New Club, while other elements diverge between both clubs. Confronted with this situation, the Single Judge deems that the category of competition, as mentioned in art. 15 par. 4 of the 2019 FDC edition, should, in this particular case, take precedence. Consequently, considering that the New Club began to compete at amateur level and in a lower division than the Original Debtor, and that its participation in this category was not connected with the “sporting relegation” of the Original Debtor, the Single Judge believes that this fact indicates that there is no sporting continuity between the New Club and the Original Debtor.

27. As a result, the Single Judge concludes that, based on the information and documentation at his disposal, it has not been established to his comfortable satisfaction that the New Club, ASD Martina Calcio 1947, is the legal and/or sporting successor of the Original Debtor, AS Martina Franca 1947.
28. Against this background, and following the jurisprudence of the FIFA Disciplinary Committee, the Single Judge determines that since the New Club cannot be regarded as the sporting successor of the Original Debtor, all charges against the New Club have to be dismissed, as the New Club cannot be considered as a non-compliant party within the meaning of art. 15 of the 2019 FDC, and, therefore, cannot be subject to the obligations laid down in the said article.

#### **IV. DECISION OF THE DISCIPLINARY COMMITTEE**

1. All charges against the club ASD Martina Calcio 1947 are dismissed.
2. The disciplinary proceedings initiated against the club ASD Martina Calcio 1947 are hereby declared closed.

FÉDÉRATION INTERNATIONALE  
DE FOOTBALL ASSOCIATION



**Anin Yeboah**

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.

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