

Decision of the Disciplinary Committee

passed in Zurich, Switzerland, on 8 October 2020,

COMPOSITION:

Mr. Anin Yeboah, Ghana (Chairman)

RESPONDENT:

Club FC Farul Constanta, Romania

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 20 August 2014, the Dispute Resolution Chamber decided that the Romanian club “Sport Club FC Farul Constanta” (hereinafter also referred to as *the Original Debtor*) had to pay to the player Francisco Jose Castro Fernandes (hereinafter also referred as the Creditor), the following amounts:
 - EUR 20,000 as outstanding remuneration, plus 5% interest until the date of effective payment as follows:
 - 5% p.a. as of 1 February 2010 on the amount of EUR 6,666;
 - 5% p.a. as of 1 March 2010 on the amount of EUR 6,667;
 - 5% p.a. as of 1 April 2020 on the amount of EUR 6,667.
 - EUR 73,320 as compensation for breach of contract , plus 5% interest p.a. as from 21 September 2010
3. The findings of the decision passed by the Dispute Resolution Chamber on 20 August 2014 (hereinafter, the *DRC Decision*) were notified to, amongst others, the Creditor and the Original Debtor on 3 September 2014. Furthermore, the grounds of the DRC Decision, which were requested by the Original Debtor, were notified to the latter and the Creditor on 10 February 2015. Since no appeal was lodged against the aforementioned decision, it is final and binding.
4. Since the aforementioned amounts were not paid to the Creditor, upon request of the latter, disciplinary proceedings were opened against the Original Debtor on 15 February 2016.
5. On 14 March 2016, the Romanian Football Federation (hereinafter, *the Romanian FA*) informed the secretariat of the FIFA Disciplinary Committee (hereinafter, *the Secretariat*) that the Original Debtor was undergoing insolvency proceedings.
6. In light of the above, on 19 April 2016, the Secretariat informed the Creditor, amongst others, that the disciplinary proceedings were suspended for the duration of the Original Debtor’s insolvency proceedings.
7. On 14 January 2020, the Creditor requested the Secretariat to resume the disciplinary proceedings concerning the Original Debtor against the Romanian club “Asociatia Fotbal Club Farul Constanta” (hereinafter also referred to as *the New Club or FC Farul Constanta*), as he considered the latter to be the successor of the Original Debtor and therefore, liable for its debts.

In particular, the Creditor, who provided further information regarding the alleged sporting succession on 27 April 2020, based his allegations on the following information and/or evidence¹:

- On 22 September 2016, the Original Debtor was declared bankrupt;
 - In this sense, when it became clear that bankruptcy was unavoidable, a group of supporters, organised in the Farul Supporters Association, registered a new entity with the sole purpose to continue the tradition of the Original Debtor. As a result, they founded, on 8 August 2016, the “Suporter Spirit Club Farul Constanta”, which assured the “football continuity” of the Original Debtor;
 - The aforementioned club was enrolled in “Liga IV” of the Romanian championship in the 2016-2017 season and was promoted at the end of the season 2017-2018 to the “II League”;
 - In the summer of 2018, the former Romanian player, Ciprian Marica, bought Farul Constanta’s brand and created FC Farul Constanta (i.e. the New Club) and enrolled the team in “Liga IV”;
 - After this, Ciprian Marica and the Farul Supporters Association reached a consensus and, as a result, the New Club is currently (i.e. season 2019-2020) competing in the League 2 and has, as well, a second team competing in League 4;
 - It must be noted that the Original Debtor and the New Club have identical names, and share the same colours, logo and stadium;
 - The New Club, as It can be retrieved from its official website, assumes the fact that it is the same club as the Original Debtor and, hence, declares to have been founded the same year as the Original Debtor (i.e. 1920).
8. Following the above-mentioned correspondence, on 28 April 2020, the Secretariat contacted the Romanian 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 seasons.
9. On 20 May 2020, the Romanian FA provided the Secretariat with the following information:
- The Original Debtor was declared bankrupt on 11 March 2013 and is still undergoing bankruptcy proceedings;
 - The Original Debtor’s last season in organised football was the 2015-2016 season, during which it participated in the League 2;

¹ The summary does not purport to include every single contention put forth by the Debtor. However, the FIFA Disciplinary Committee has thoroughly considered in its discussion and deliberations any and all evidence and arguments submitted, even if no specific or detailed reference has been made to those arguments in the following outline of its position and in the ensuing discussion on the merits.

- On the other hand, the New Club participated for the first time in organised football in the 2016-2017 season, during which it participated in League 4 (i.e. “Liga IV”), which is organised by the Constanta County Football Association. The following season, the New Club promoted to League 3 and is, currently, playing in League 2;
 - The New Club and the Original Debtor have different names, addresses, Sports Identification Certificate numbers, identity codes, legal forms and colors;
 - Also, they were affiliated on different dates. The Original Debtor was affiliated to the Romanian FA on 13 May 2002 while the New Club became a member of the Romanian FA on 17 July 2017.
10. Taking into consideration the information provided by the Creditor and by the Romanian FA, on 21 July 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.
 11. On 14 August 2020, the New Club provided its position in relation to the allegations made by the Creditor.
 12. 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 follows²:
 - The New Club does not have any dispute before FIFA concerning the present matter;
 - The Creditor is a former player of the Original Debtor, which is in bankruptcy/liquidation process since 2010 and, hence, the present matter does not concern the New Club, which was founded in 2016.

² 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.

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, “Asociatia Fotbal Club Farul Constanta”, 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.
3. In these circumstances, the Single Judge begins his analysis by highlighting that the exclusion of the Original Debtor, “Sport Club FC Farul Constanta”, from the Romanian 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 Romanian 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 Romanian FA, the Creditor requested the enforcement of the DRC Decision against Asociatia Fotbal Club Farul Constanta, which, in his opinion, should be considered as the successor of the disaffiliated club, Sport Club FC Farul Constanta.

8. In this regard, and in line with the jurisprudence of the Court of Arbitration for Sport³, the Single Judge considers that he is not prevented from reviewing and/or making a legal assessment and, therefore, deciding if the New Club, Asociatia Fotbal Club Farul Constanta, is the same as – and/or the successor of – the Original Debtor, Sport Club FC Farul Constanta, especially considering that the former is affiliated to the Romanian 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

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 2019⁴.
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*

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

⁴ Cf. CAS 2020/A/6755

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.

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 CAS⁵ and by the FIFA decision-making bodies⁶, 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 themselves⁷.

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

⁵ CAS 2007/A/1355; TAS 2011/A/2614 and TAS 2011/A/2646; TAS 2012/A2778.

⁶ FIFA DRC 12150569.

⁷ CAS 2013/A/3425.

federation treated the two clubs as successors of one another⁸. 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” club⁹.

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 it¹⁰. 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, 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, similar colors, 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 Sports Identification Certificate Number, Fiscal Identity Code and legal form. In particular, it must be noted that, as confirmed by the Romanian FA, the New Club became a member of the former on 17 July 2017, and, before that, it was participating in organized football within the Constanta County Football Association, meaning that, before it was admitted in the Romanian Football Association, it had to participate in the lowest possible division within one of the regional associations.
24. Having this in mind, the Single Judge considers very unlikely that the New Club, which is a different legal entity than the Original Debtor and that started participating in organized football within an association different than the one the Original Debtor was affiliated with right before ending its participation in organised football, is the same club as the Original Debtor or that they

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

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

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

are 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 Romanian 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 in a lower division, which is organised by a regional association, 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, Asociatia Fotbal Club Farul Constanta, is the legal and/or sporting successor of the Original Debtor, Sport Club FC Farul Constanta.
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 FC Farul Constanta are dismissed.
2. The disciplinary proceedings initiated against the club FC Farul Constanta are hereby declared closed.

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



Anin Yeboah
Chairman of the Disciplinary Committee

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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