

Decision
of the
Member of the FIFA Disciplinary Committee

Mr. Lord VEEHALA [TGA], Member
on 12 February 2020

to discuss the case of:

Club PFC CSKA-Sofia, Bulgaria
(Decision 140533 PST)

regarding:

failure to comply with
art. 15 of the FDC (2019 ed.) / art. 64 FDC of the FDC (2017 ed.)

I. inferred from the file¹

1. On 28 August 2013, 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 the following amounts:

- To the players' agent, Ms Soukeyna Ba Bengelloun (hereinafter also referred to as "*the Creditor*"):

EUR 50,000 as follows:

- o EUR 30,000 as well as 5% interest per year on the said amount as from 15 December 2012 until the date of effective payment, within 30 days as from the date of notification of the decision;
- o EUR 20,000 as well as 5% interest per year on the said amount as from 28 February 2013 until the date of effective payment, within 30 days as from the date of notification of the decision.

CHF 2,000 as costs of the proceedings.

- To FIFA:

CHF 6,000 as costs of the proceedings.

2. The terms of the decision of the Single Judge of the Players' Status Committee were duly communicated to the parties on 17 September 2013. Moreover, the grounds of the aforementioned decision were, upon request of the original Debtor, notified to the parties on 5 November 2013. Finally, no appeal was filed before the Court of Arbitration for Sport (CAS).
3. As the aforementioned amounts were not paid to the Creditor, the Secretariat to the FIFA Disciplinary Committee (hereinafter, "*the Secretariat*") opened disciplinary proceedings against the original Debtor on 16 September 2014.
4. On 10 March 2015, the Disciplinary Committee sanctioned the original Debtor for failing to comply with the decision rendered on 28 August 2013 by the Single Judge of the Players' Status Committee.
5. On 31 August 2015, the Secretariat informed the parties that the Creditor requested that six points be deducted from the original Debtor's first team in accordance with the decision of the Disciplinary Committee dated 10 March 2015. In particular, the Bulgarian Football Union was requested to provide a proof that the point deduction had been duly implemented.

¹ Below is a summary of the main relevant facts and allegations based on the documents pertaining to the file. Although the Member of the 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 his reasoning

6. On 13 October 2015, the Secretariat informed the parties that the disciplinary proceedings against the original Debtor were suspended given that the latter was undergoing insolvency proceedings.
7. By means of a letter received on 13 September 2017, the Bulgarian Football Union informed 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 Executive Committee decided on 20 June 2017 to disaffiliate the original Debtor.
8. On 10 January 2019, the Creditor, relying on a CAS award rendered on 28 December 2018, requested the Disciplinary Committee to enforce the decision of the Single Judge of the Players' Status Committee against the original Debtor.
9. On 19 October 2019, the Creditor requested to be informed of the status of the proceeding, in particular whether disciplinary proceedings had already been initiated against the club PFC CSKA-Sofia (hereinafter also referred to as "*the new Club*"), which, according to decision 150860 PST dated 25 September 2019, is to be considered as the sporting successor of the original Debtor. In addition, the Creditor insisted that disciplinary proceedings be opened immediately in the even that no proceedings had yet been initiated.
10. On 22 January 2020, the Secretariat initiated 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 addition, the new Club was informed that the case would be submitted to the Disciplinary Committee for evaluation on 10 February 2020 and was invited to provide its position regarding the allegations made by the Creditor.
11. On 23 January 2020, the new Club requested an extension of the time limit for filing its position.
12. On 30 January 2020, the Secretariat informed the parties that the new Club's request had been exceptionally granted and therefore invited the latter to provide its position by 5 February 2020 at the latest.
13. On 5 February 2020, the new Club provided the Secretariat with its position, which can be summarized as follows:
 - I. The new Club claimed that there is no legal, financial or organizational connection between the legal entity of the former club "*PFC CSKA AD*" and the new one "*PFC CSKA-Sofia EAD*".
 - II. In particular, the new Club pointed out that it is the legal successor of the club Litex Lovech and provided the following explanations :
 - o In the 2015/2016 season, a club called "*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 new club, which maintains and reflects the historical sporting history of the old club, which at that time was already declared insolvent and was no longer participating in organized football;
 - Therefore, 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 highlighted that it took part in the newly created Bulgarian first division championship (2016/2017 season) using the sporting licence of the club Litex Lovech.
- III. Furthermore, the new Club claimed that players' agents do no longer fall under the jurisdiction of FIFA since April 2015. Therefore, by virtue of the principle of equal treatment, such players' agents should not be able to take advantage of FIFA's enforcement mechanism to force another person being under the jurisdiction of FIFA to comply with a decision.
- IV. Then, the new Club admitted that it is 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 new Club and the original Debtor have different owners, licences, football teams and legal entities, implying that the first one cannot be considered as the successor of the second one.
- V. In these circumstances, the new Club argued that it has never signed any contract with the Creditor. Therefore, the new Club was of the opinion that the Creditor should have claimed her credit in the bankruptcy proceedings before the Bulgarian civil court. In particular, the new Club stressed that thanks to its extremely high bid placed and paid into the bankruptcy mass, many creditors registered in the bankruptcy proceedings have been/will be compensated. In addition, the new Club pointed out that the Court of Arbitration for Sport determined that in case a creditor has listed his privileged claim – or has omitted to pursue such a claim although possible in a national bankruptcy –, no disciplinary enforcement of the same claim can occur against an alleged successor club.
- VI. In light of the above, the new Club noted that the Creditor does not appear on the list of the creditors dated 16 June 2017 and, therefore did not take part in the bankruptcy proceedings despite having been informed of the definitive bankruptcy of the original Debtor through the correspondence dated 13 October 2015 from the Secretariat. The new Club further pointed out that the opening of the bankruptcy proceedings was published in the commercial register of the Republic of Bulgaria and was widely covered by the media. Consequently, the new Club claimed that the Creditor was negligent since she did not participate in the bankruptcy proceeding and emphasised that the Disciplinary Committee is not the appropriate forum for remedying a procedural negligence on the part of the Creditor.

- VII. In addition, the new Club claimed that the bankruptcy proceedings are 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 (2019 edition) given that it is up to the Sofia civil court to decide on the amounts owed to each creditor registered in the bankruptcy proceedings.
- VIII. 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 would disappear and become disaffiliated without the involvement of bankruptcy proceedings. Nevertheless, the new Club pointed out 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.

II. and considered

1. In view of the arguments raised by the parties, the Member of the Disciplinary Committee (hereinafter, "*the Member of the Committee*") decides first to assess the law applicable to the matter at hand (A), but also as to whether he is competent to decide on the present matter (B), and should it be the case, as to whether the new Club, PFC CSKA-Sofia, could be held liable for a potential failure to respect the decision rendered on 28 August 2013 by the Single Judge of the Players' Status Committee (C).

A) Applicable law

2. First of all, the Member of the Committee would like to analyze which version of the FIFA Disciplinary Code (FDC) applies.
3. In this sense, the Member 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 Member of the Committee highlights that the disciplinary offense, *i.e.* the potential failure to comply with the relevant decision of the Single Judge of the Players' Status Committee, was committed before the 2019 FDC entered into force. As a result, he deems that the merits of the present case fall under the 2017 edition of the FDC (hereinafter, "*the 2017 FDC*").
5. Notwithstanding the above, the Member of the Committee holds that the procedural aspects of the present matter should be governed by the 2019 FDC.

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

6. In view of the particular circumstances of the case, the Member 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 2017 FDC) may be decided by one member of the Disciplinary Committee alone, *i.e.* the Member of the Committee in the case at hand.
8. In this context, the Member of the Committee first emphasises that it is uncontested that the original Debtor subject of the decision rendered on 28 August 2013 by the Single Judge of the Players' Status Committee has been disaffiliated from the Bulgarian Football Union.
9. In these circumstances, the Member 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 FIFA Disciplinary Code 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 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.
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 Member of the Committee notes that the Creditor subsequently requested the enforcement of the decision of the Single Judge of the Players' Status Committee against the club PFC CSKA-Sofia, which, in her view, should be considered as the successor and/or the same entity as the original Debtor, PFC CSKA Sofia.
13. In this context, the Member of the Committee takes note that in another disciplinary proceedings involving the original Debtor, CAS also had to discuss the question of the potential successor of the original Debtor². In this respect, the Sole Arbitrator decided on

² CAS 2018/A/5647 Civard Sprockel v. FIFA & PFC CSKA Sofia, para. 135.

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 Member 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 Member 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 2017 FDC.

C) The liability and responsibility of the new Club, PFC CSKA-Sofia

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

16. After having established that he is competent to assess the present matter, the Member of the Committee 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 Member of the Committee finds it worthwhile to recall the existing CAS jurisprudence on this particular topic.
18. To that end, he first refers to decisions that had dealt with the question of the succession of a sporting club in front of CAS³ and in front of FIFA's decision-making bodies⁴. In particular, 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 which 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 was determined 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 themselves⁵.
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 by the obligations of its predecessor, *i.e.* the "old" club, b) the "new" club took over the licence or federative rights from the

³ CAS 2007/A/1355; TAS 2011/A/2614 and TAS 2011/A/2646; TAS 2012/A2778.

⁴ FIFA DRC 12150569.

⁵ CAS 2013/A/3425.

“old” club and c) the competent federation treated the two clubs as successors of one another⁶. 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” club⁷.

20. 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. In particular, it is recalled that according to CAS, a club is a sporting entity identifiable by itself that generally transcends the legal entities which operate it⁸. Consequently, elements to consider are amongst others the name, the logo and colours, the registration address and/or the managing board of the club.
21. For the sake of completeness, the Member 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”*.
22. With the above in mind, the Member of the Committee subsequently analyses the documentation at his disposal in 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.
23. The Member 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.
24. Secondly, the Member of the Committee remarks that decisions on the issue relating to the sporting successor of the original Debtor were recently rendered by the Chairman and the Deputy Chairman of the Disciplinary Committee⁹. 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

⁶ CAS 2007/A/1322 FC Politehnica Timisoara SA v. FIFA & RFF & Politehnica Stintia 1921 Timisoara Invest SA.

⁷ CAS 2011/A/2646 Club Rangers de Talca v. FIFA.

⁸ CAS 2016/A/4576 Ujpest 1885 v. FIFA, para. 134 – 139.

⁹ Cf. Decision 150860 of the Deputy Chairman of the Disciplinary Committee rendered on 19 September 2019; Decisions 150034 and 170528 of the Chairman of the Disciplinary Committee rendered on 20 November 2019.

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.

25. Finally, the Member of the Committee observes that in these 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, continued the activity formerly developed by the old club with the same image, badge, hymn, representative colours, emblems and placement¹⁰.
26. 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.
27. Having taken all the above into account and on the basis of the information and documentation at his disposal, the Member of the Committee decides to endorse the conclusions of the Chairman and the Deputy Chairman of the Disciplinary Committee and 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.
28. In this regard, the Member of the Committee notes that neither the original Debtor nor the new Club have complied with the decision passed on 28 August 2013 by the Single Judge of the Players' Status Committee as neither club has paid the outstanding amounts to the Creditor.
29. As such, following the jurisprudence of the FIFA Disciplinary Committee, the Member 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 2017 FDC.

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

30. First and foremost, the Member 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

¹⁰ CAS 2011/A/2646 Club Rangers de Talca v. FIFA.

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 2017 FDC as it could be that his credit would have been paid in the bankruptcy proceedings and therefore no sanction may be imposed¹¹.

31. In this regard, the Member of the Committee first recalls that art. 64 of the 2017 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).
32. Secondly, the Member 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 FDC on a new club that was considered as the successor of the bankrupt club¹². In particular, CAS decided that no disciplinary sanctions could be imposed on the new club, should the player fail to claim his credit in the bankruptcy proceedings of the former/bankrupt club.
33. Bearing the above in mind, the Member of the Committee shares CAS conclusion that there is no certainty that a creditor will 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.
34. 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.
35. The Member 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.
36. 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 Member 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 in the bankruptcy proceedings.
37. Turning back to the case at hand, the Member of the Committee observes that the new Club claimed that the Creditor has been duly informed of the bankruptcy proceedings

¹¹ CAS 2011/A/2646 Club Rangers de Talca v. FIFA.

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

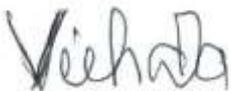
and had the opportunity to file a claim within those proceedings. However, the new Club submitted that for an unknown reason the Creditor decided not to participate in the bankruptcy proceedings and, therefore was negligent as she failed to properly register her claim in the aforementioned bankruptcy proceedings.

38. Bearing the above in mind, and taking into consideration that the Creditor did not register her claim during the bankruptcy proceedings as she is not listed on the list of creditors dated 16 June 2017, it appears that the Creditor decided not to participate in the bankruptcy proceedings – or at least remained passive –, therefore waiving her right to collect her credit within the frame of the bankruptcy proceedings.
39. As a result, the Member of the Committee concludes that the Creditor failed to perform the expected due diligence that the circumstances demanded, and hence, contributed to the non-compliance by the original Debtor, and subsequently by the new Club, of the decision passed on 28 August 2013 by the Single Judge of the Players' Status Committee.
40. Therefore, although the new Club, PFC CSKA-Sofia, is to be considered the sporting successor of the original Debtor, PFC CSKA Sofia, the Member of the Committee resolves that no disciplinary sanctions shall be imposed on the new Club and all charges against the latter shall be dismissed as a result of the lack of diligence of the Creditor in collecting her credit in the insolvency proceedings.

III. has therefore decided

1. All charges against the club PFC CSKA-Sofia are dismissed.
2. The disciplinary proceedings initiated against the club PFC CSKA-Sofia are hereby declared closed.

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



Lord VEEHALA
Member of the Disciplinary Committee

LEGAL ACTION

According to article 49 together with article 57 par. 1e) of the FDC and article 58 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision. Within another 10 days following the expiry of the time limit for filing the statement of appeal, the appellant shall file a brief stating the facts and legal arguments giving rise to the appeal with the CAS.

The full address and contact numbers of the CAS are the following:

Avenue de Beaumont 2
1012 Lausanne
Switzerland
Tel: +41 21 613 50 00
Fax: +41 21 613 50 01
e-mail: info@tas-cas.org
www.tas-cas.org