

Disciplinary Committee

FIFA[®]

Date: 14 January 2022

Sent to:
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C.C
Mr Mattia Vincenzi
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Bulgarian Football Union
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Notification of the grounds of the Decision

Ref. N°: FDD-9140

Dear Sirs,

Please find attached the grounds of the decision passed in the aforementioned case by a member of the FIFA Disciplinary Committee on 18 November 2021.

The Bulgarian Football Union (in copy) is kindly requested to forward this decision to its affiliated club, PFC Levski Sofia.

We would appreciate your taking due note of this decision and ensuring its implementation.

Yours faithfully,

FIFA



Carlos Schneider
Director of the FIFA Judicial Bodies

Fédération Internationale de Football Association

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Decision of the FIFA Disciplinary Committee

passed on 18 November 2021

DECISION BY:

Ms. Thi My Dung Nguyen, Vietnam (Member)

ON THE CASE OF:

PFC Levski Sofia, Bulgaria

(Decision FDD-9140)

REGARDING:

Failure to respect decisions (Article 15 FIFA Disciplinary Code)

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 (**the Committee**) has thoroughly considered any and all evidence and arguments submitted, even if no specific or detailed reference has been made to those arguments in the following outline of its position and in the ensuing discussion on the merits.
2. On 11 September 2019, Mr Mattia Vincenzi filed a request for arbitration with the Court of Arbitration for Sport (**CAS**) and named the club PFC Levksi Sofia as sole respondent.
3. On 3 February 2021, CAS in an ordinary procedure ordered the club PFC Levski Sofia (**the Respondent**) to pay to Mr Mattia Vincenzi (**the Claimant**) the following amounts:
 - **EUR 1,108 and EUR 3,099.66** to the Bulgarian Tax Authorities on behalf of the Claimant, including any potential interest, if not already done so;
 - **EUR 9,969**, plus 5% interest *p.a.* as from 21 August 2018 until the date of effective payment;
 - **EUR 27,896.97**, plus 5% interest *p.a.* as from 1 March 2019 until the date of effective payment;
 - **CHF 4,000** as contribution towards the legal fees and other expenses incurred by the Claimant in connection with the arbitration proceedings.
4. In addition, CAS decided that the costs of the arbitration, to be determined and served to the parties by the CAS Court Office, shall be borne in full by the Respondent. Such correspondence was delivered to the parties on 20 July 2021 and the Respondent was ordered to pay to the Claimant the amount of **CHF 20,998** as arbitration costs.
5. On 21 September 2021, as the aforementioned amounts due by the Respondent were not paid, the Claimant requested the initiation of disciplinary proceedings against the Respondent for failure to comply with the CAS award dated 3 February 2021 (**the CAS Award**).
6. On 28 September 2021, in light of the foregoing, and as the aforementioned amounts were not paid to the Claimant, the Secretariat to the FIFA Disciplinary Committee (**the Secretariat**) opened disciplinary proceedings against the Respondent. In this regard, the latter was informed that the case would be referred to the next meeting of the FIFA Disciplinary Committee on 21 October 2021 and was invited to provide its position within six days of the notification of the opening of the disciplinary proceedings.
7. On 4 October 2021, the Respondent submitted that the CAS Award "*is not final and binding (...). There is a special procedure in accordance to the Civil procedural code of Republic Bulgaria for recognition and enforcement of foreign arbitral decision which beyond any doubt the aforementioned decision of CAS is*".

8. Upon receipt of the aforementioned correspondence, the Secretariat requested the Respondent to clarify its statement and informed the Claimant that he had the opportunity to provide his comments on the foregoing, if any.
9. On 21 October 2021, the Claimant filed his comments and merely pointed out that the CAS Award was final and binding and that the FIFA Disciplinary Committee was competent to enforce “*decisions made by CAS (regardless to the division which ruled on the case, whether ordinary or appeal division)*”.
10. On the same day, the Respondent submitted the clarification requested by the Secretariat.
11. On 8 November 2021, the Secretariat acknowledged receipt of the aforementioned correspondences submitted by the parties and informed them that the case would be referred to a member of the FIFA Disciplinary Committee on 18 November 2021.

II. RESPONDENT’S POSITION

12. The position submitted by the Respondent on 21 October 2021 merely developed and clarified the elements contained in the Respondent’s correspondence dated 4 October 2021, and can be summarized as follows:
 - The CAS Award is not final and binding because it has not been recognized by the competent state authority of Bulgaria.
 - This means that the Claimant has not initiated proceedings before the competent Bulgarian court for the recognition and enforcement of the CAS Award, so that the said Award is in no way binding on the Respondent.
 - In this respect, FIFA should only intervene when ordinary CAS awards – as opposed to the appeal procedure against a decision issued by FIFA – have been recognized by a state authority.
 - By bypassing the abovementioned procedure, the Claimant deprived the Respondent of the possibility to request the competent state court to refuse to recognize the CAS Award, taking into account the prohibition under Bulgarian law of settling labour disputes through arbitration.
 - By avoiding the above-mentioned procedure, a precedent might be created, which would allow forum shopping to specifically avoid the recognition and enforcement of arbitral awards on a national basis.
 - Finally, the CAS Award to be enforced completely contradicts the previous decisions of the FIFA Players' Status Committee, in which the latter ruled in favour of the Respondent.
13. The Committee once again reiterated that it had considered all the facts, allegations, legal arguments and evidence provided by the Respondent, and in the present decision, had only referred to those observations and evidence for which it considered necessary to explain its reasoning.

III. CONSIDERATIONS OF THE DISCIPLINARY COMMITTEE

14. In view of the circumstances of the present matter, the Committee decided to first address the procedural aspects of the present matter, namely, its jurisdiction as well as the applicable law, before entering into the substance of the matter and assessing the possible failure of the Respondent to comply with the CAS Award as well as the potential sanctions resulting therefrom.

A. Jurisdiction of the FIFA Disciplinary Committee

15. First of all, the Committee noted that at no point during the present proceedings did the Respondent challenge its jurisdiction or the applicability of the FIFA Disciplinary Code (FDC).

16. Notwithstanding the above and for the sake of good order, the Committee found it worthwhile to emphasize that, on the basis of art. 53(2) of the FIFA Statutes, the Committee may pronounce the sanctions described in the Statutes and the FDC on member associations, clubs, officials, players, intermediaries and licensed match agents.

B. Applicable legal framework

17. With regard to the matter at hand, the Committee pointed out that the disciplinary offense, *i.e.* the potential failure to comply with the CAS Award, was committed after the 2019 FDC entered into force. As a result, the Committee deemed that the merits as well as the procedural aspects of the present case should fall under the 2019 edition of the FDC.

18. Having established the above, the Committee wished to recall the content and scope of art. 15 FDC in order to duly assess the case at hand.

19. According to this provision:

1. 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 club disregards the final time limit, the relevant association shall be requested to implement the sanctions threatened.

20. Moreover, for the sake of good order, it is worth emphasizing that in line with art. 54 (1) (h) FDC, cases involving matters under art. 15 FDC may be decided by one member of the Disciplinary Committee alone, as in the present case.
21. Finally, the Committee emphasized that, equal to the competence of any enforcement authority, it cannot review or modify as to the substance a previous decision, which is final and binding, and thus has become enforceable. In particular, pursuant to art. 72 (2) FDC, the Disciplinary Committee can impose disciplinary measures for failure to respect a final CAS decision rendered in the context of ordinary CAS proceedings, provided that the respective CAS procedure started after the entry into force of the FDC on 15 July 2019.
22. Its jurisdiction being established and the applicable law determined, the Committee subsequently turned its attention to the CAS Award.

C. Merits of the dispute

I. Analysis of the facts in light of art. 15 FDC

23. The foregoing having been established, the Committee noted that CAS, by means of its Award dated 3 February 2021, ordered the Respondent to pay to the Claimant the amounts outlined above. However, the Committee acknowledged that the Respondent considered that the CAS Award, rendered in an ordinary procedure by CAS, could not be enforced by the Disciplinary Committee.
24. In this regard, the Respondent argued that since the Claimant had not initiated the relevant procedure before the competent Bulgarian court for the recognition and enforcement of the CAS Award, the said Award was in no way binding on the Respondent. In other words, the Respondent submitted that FIFA should only intervene when ordinary CAS awards – as opposed to the appeal procedure against a decision issued by FIFA – have been recognized by a state authority.
25. Against this background, the Committee wished to refer to art. 5 FDC on the law applicable in disciplinary proceedings. According to this provision, FIFA's judicial bodies base their decisions primarily on the FIFA Statutes as well as on the regulations, circulars and other directives of FIFA, and subsidiarily on Swiss law and on any other law that the competent judicial body deems applicable.
26. In this respect, the Committee noted that art. 59 (1) of the Statutes provides that the confederations, member associations and leagues undertake to recognize CAS as an independent

- judicial authority and to ensure that their members, affiliated players, and officials abide by the decisions rendered by CAS. In addition, the second paragraph states that *“Recourse to ordinary courts of law is prohibited unless specifically provided for in the FIFA regulations”*.
27. On reading the aforementioned provision, the Committee considered that the Respondent's position cannot stand, as it would be contradictory if, on the one hand, the (in)direct members of FIFA were required to comply with the awards rendered by CAS and could not turn to the ordinary courts, but, on the other hand, in order for an ordinary CAS award to be binding on the parties, the said award must be recognized in the proceedings before the competent national courts.
 28. In addition to the above and as far as art. 15 FDC is concerned, the Committee emphasized that the FDC does not prescribe any specific conditions for a FIFA decision or CAS award to be enforced by the Disciplinary Committee, other than that the decision subject to enforcement is final and binding. In addition, and as stated above, the Disciplinary Committee may impose disciplinary measures for non-compliance with a final CAS award rendered in the context of an ordinary CAS procedure, provided that the respective CAS procedure was initiated after the entry into force of the FDC on 15 July 2019.
 29. In this legal context, the Committee noted that (i) the CAS Award had not been challenged before the Swiss Federal Tribunal, so that the said Award was enforceable, and (ii) the CAS proceedings were initiated by the Claimant on 11 September 2019, i.e. after the entry into force of the current edition of the FDC, so that in case of non-compliance with the final, binding and enforceable CAS Award, disciplinary measures could be imposed on the Respondent.
 30. Finally, the Committee recalled that it is not allowed to analyse the case decided by CAS as to the substance, in other words, to check the correctness of the amount ordered to be paid, but has as a sole task to analyse if the Respondent complied with the enforceable Award rendered by the aforementioned Tribunal on 3 February 2021.
 31. Having demonstrated the aforementioned, the Committee observed that subsequent to the opening of the disciplinary proceedings against the Respondent, the latter did not provide any proof of payment. Similarly, the Claimant did not confirm the receipt of the outstanding amounts.
 32. Against this background, the Committee concluded that the Respondent had failed to pay to the Claimant the outstanding amounts due to him in accordance with the CAS Award and was therefore in breach of art. 15 FDC.
 33. In view of the foregoing, the Committee concluded that the Respondent, by its conduct as described above, violated art. 15 FDC and had to be sanctioned accordingly.

II. The determination of the sanction

34. With regard to the applicable sanctions, the Committee observed in the first place that the Respondent was a legal person, and as such was subject to the sanctions described under art. 6 (1) and (3) FDC.

35. In these circumstances, the Committee underlined that the fine to be imposed under the above-referenced art. 15 (1) (a) FDC in combination with art. 6 (4) FDC shall range between CHF 100 and CHF 1,000,000.
36. This being established, it is emphasized that the Respondent withheld the amounts unlawfully from the Claimant. Even FIFA's attempts to urge the Respondent to fulfil its financial obligations failed to induce it to pay the total amounts due.
37. In view of all the circumstances pertaining to the present case and by taking into account the outstanding amounts, the Committee regarded a fine amounting to CHF 7,500 as appropriate. This amount complies with the Committee's established practice, namely to the fines imposed in cases in which similar amounts were due.
38. In application of art. 15 (1) (b) FDC, the Committee considered a final deadline of 30 days as appropriate for the amounts due to be paid to the Claimant.
39. Finally, in accordance with art. 15 (1) (c) FDC, the Respondent 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 amounts due are paid. 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.
40. For the sake of good order, the Bulgarian Football Union is hereby reminded of its obligation to automatically implement the transfer ban upon expiry of the final deadline without having received any proof of payment from the Respondent. In this respect, and for the sake of clarity, the Bulgarian Football Union is referred to art. 34 FDC in what concerns the calculation of time limits. Should the Bulgarian Football Union fail to automatically implement said sanction and provide the secretariat to the FIFA Disciplinary Committee with the relevant proof of implementation of the transfer ban at national level, disciplinary proceedings – which may lead to an expulsion from all FIFA competitions – may be opened against it.

IV. DECISION OF THE DISCIPLINARY COMMITTEE

- 1. PFC Levski Sofia is found responsible for failing to comply in full with the award issued by the Court of Arbitration for Sport on 3 February 2021 (CAS 2019/O/6448).**
- 2. PFC Levski Sofia is ordered to pay to Mr Mattia Vincenzi as follows:**
 - EUR 1,108 and EUR 3,099.66 to the Bulgarian Tax Authorities on behalf of Mr Mattia Vincenzi, including any potential interest;
 - EUR 9,969, plus 5% interest *p.a.* as from 21 August 2018 until the date of effective payment;
 - EUR 27,896.97, plus 5% interest *p.a.* as from 1 March 2019 until the date of effective payment;
 - CHF 20,988 as costs of the arbitration;
 - CHF 4,000 as a contribution towards the legal fees and other expenses of Mr Mattia Vincenzi.
- 3. PFC Levski Sofia is granted a final deadline of 30 days as from notification of the present decision in which to settle said amount. 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. The transfer ban will be implemented automatically at national and international level by the Bulgarian Football Union and FIFA respectively, without a further formal decision having to be taken nor any order to be issued by the FIFA Disciplinary Committee or its Secretariat. In addition, 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.**
- 4. PFC Levski Sofia is ordered to pay a fine to the amount of CHF 7,500. The fine is to be paid within 30 days of notification of the present decision.**

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



Thi My Dung Nguyen

Member of the FIFA Disciplinary Committee

NOTE RELATING TO THE LEGAL ACTION:

According to art. 58 (1) of the FIFA Statutes reads together with art. 49 of the FDC, 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.

NOTE RELATING TO THE PAYMENT OF THE AMOUNT DUE:

As a member of FIFA, the Bulgarian Football Union is reminded of its duty to implement this decision and provide FIFA with proof that the transfer ban has been implemented at national level. If the Bulgarian Football Union does not comply with this decision, the FIFA Disciplinary Committee will decide on appropriate sanctions on the member. This can lead to an expulsion from FIFA competitions.

The Respondent, PFC Levski Sofia, is directed to notify the Secretariat to the FIFA Disciplinary Committee as well as the Bulgarian Football Union of every payment made and to provide the relevant proof of payment.

The Creditor, Mr Mattia Vincenzi, is directed to notify the Secretariat to the FIFA Disciplinary Committee as well as the Bulgarian Football Union of every payment received.

NOTE RELATING TO THE BAN FROM REGISTERING NEW PLAYERS:

The transfer ban shall cover all men eleven-a-side teams of the Respondent – first team and youth categories –. The Respondent 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 Respondent 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.

NOTE RELATING TO THE PAYMENT OF THE FINE:

Payment can be made either in Swiss francs (CHF) to account no. 0230-325519.70J, UBS AG, Bahnhofstrasse 45, 8098 Zurich, SWIFT: UBSWCHZH80A, IBAN: CH85 0023 0230 3255 1970 J or in US dollars (USD) to account no. 0230-325519.71U, UBS AG, Bahnhofstrasse 45, 8098 Zurich, SWIFT: UBSWCHZH80A, IBAN: CH95 0023 0230 3255 1971 U, with reference to case number above mentioned.