

# Decision of the FIFA Disciplinary Committee

passed on 08 June 2023

## DECISION BY:

**Paola LÓPEZ BARRAZA (MEXICO), Member**

## ON THE CASE OF:

**FC Metalist Kharkiv**

**(Decision FDD-13721)**

## REGARDING:

**Art. 21 of the FIFA Disciplinary Code - *Failure to respect decisions***

## 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.

### A. Facts preceding the initiation of the disciplinary proceedings

2. On 29 July 2016, the FIFA Dispute Resolution Chamber (**DRC**) rendered a decision regarding an employment-related dispute arisen between the parties and ordered the club FC Metalist Kharkiv (**the Original Club** or **the Old Club**) to pay the player Mr. Jurica Buljat (**the Claimant** or **the Player**) the amount of USD 87,499 plus 5% interest *p.a.* until the date of effective payment, as follows:
  - 5% *p.a.* as of 1 March 2015 on the amount of USD 1,399;
  - 5% *p.a.* as of 1 April 2015 on the amount of USD 21,000;
  - 5% *p.a.* as of 1 May 2015 on the amount of USD 21,000;
  - 5% *p.a.* as of 1 June 2015 on the amount of USD 21,000;
  - 5% *p.a.* as of 1 July 2015 on the amount of USD 21,000;
  - 5% *p.a.* as of 1 August 2015 on the amount of USD 2,100.
3. On 8 August 2016, the Ukrainian Association of Football (**UAF**) informed FIFA that “[d]espite the fact that the [Original Club] still exists as a legal entity, registered under legislation of Ukraine, after losing the membership in the Ukrainian Premier League the FC Metalist Kharkiv automatically lost affiliation with the Football Federation of Ukraine since the club did not enter any other professional or amateur league directly affiliated with the FFU or regional federations”.
4. On 19 August 2016, the terms of the abovementioned decision (**the DRC Decision**) were notified to the parties.
5. The grounds of the DRC Decision were not requested by the parties, resulting in the decision becoming final and binding.
6. On 30 October 2017, the UAF informed FIFA that the Original Club “*is under bankruptcy proceedings. The relevant case is being heard in Commercial Court of Kharkiv Region*”.
7. On 19 March 2018, and upon the request of the Claimant to open disciplinary proceedings against the Original Club, the FIFA Disciplinary Committee informed the former that, on account of the aforementioned correspondences dated 8 August 2016 and 30 October 2017 from the UAF, it did not appear to be in a position to further proceed with the case in which the Original Club is involved.

8. On 27 December 2022, the Claimant requested the FIFA Disciplinary Committee to open disciplinary proceedings against the club “FC Metalist Kharkiv” (**the New Club or the Respondent**). In particular, the Claimant argued that this club was the sporting successor of the Original Club and should therefore be held responsible for the debt incurred by the latter.

## B. Investigatory Report

9. In view of the above, in particular, the information received from the Claimant (cf. par. 8 *supra*) the Secretariat to the FIFA Disciplinary Committee (**the Secretariat**) carried out investigations in accordance with art. 32 (5) of the FIFA Disciplinary Code (**FDC**), 2019 edition (currently art. 35 (5) of the FDC, 2023 edition). In the scope of the investigations, the Secretariat invited the Claimant, the New Club and UAF to provide information and their comments/positions on specific elements. In particular, the UAF submitted its comments on 13 March 2023 and the Claimant did so on 20 March 2023. Moreover, despite several attempts by the Secretariat to obtain the New Club’s comments, no communication was received from the former.
10. The results of the above investigations were set out in a report (**the Investigatory Report**) which can be summarized as follows:

### I. Sporting succession

11. Upon analysing the potential sporting succession between the Original club and the New Club, the Investigatory Report emphasized that both clubs share the following elements:
- *“Important elements:*
    - *The current president of the New Club is a former president of the Original Club and the beneficiary of the main sponsor of the New Club “DHC”, which it was the main sponsor of the Original Club.*
    - *According to the UAF, five individuals who were previously registered with the Original Club, are registered with the New Club.*
    - *The New Club, in its social media channels and website, refers to the same history as that of the Original Club as well as to the sporting achievements of the latter”.*
  - *“Relevant elements:*
    - *Popular name, “FC Metalist”.*
    - *Team colours: yellow and blue.*
    - *The New Club uses the same logo as the Original Club”.*
  - *“Elements of minor importance:*
    - *Both clubs’ addresses are the same”.*
  - *“In view of the above, and according to the case file, it is highly likely that the public perceives the New Club as the Original Club)”.*

12. Summarising the above, the Investigatory Report concluded that *"it appears that the elements, which reveal sporting succession, would prevail over the non-existence elements, and as a consequence, it seems that the New Club should be considered the sporting successor of the Original Club"*.

## **II. Diligence of the Claimant to recover his credit**

13. In continuation, the Investigatory Report went on to *"examine the Claimant's behaviour in claiming its credit within the bankruptcy proceedings of the Original Club"* and stressed the following elements:

*"In this regard, and according to the case file, in particular the Claimant's statement dated 20 March 2023, the Secretariat notes that the former declared to have not registered his claim in the bankruptcy proceedings of the Original Club. In particular, the Claimant declared "that at the time (2016/2017), he only had the information that the Original [Club] was disaffiliated from the [UAF] and that it was confiscated by the Ukrainian government and placed under state property, all by the means of publicly available information and the letters of the [UAF]".*

*In this respect, and according to the case file, it would appear that on 19 March 2018 the Claimant was informed by the Secretariat about the ongoing bankruptcy proceedings of the Original Club. In particular, the Secretariat forwarded to the Claimant a letter issued by the UAF on 30 October 2017, according to which the Original Club 'is under bankruptcy proceedings. The relevant case is being heard in Commercial Court of Kharkiv Region'.*

*In other words, it appears that the Claimant was already aware of the (difficult) financial situation of the Original Club since "2016/2017" and undoubtedly became fully aware of the bankruptcy proceedings of the latter at the latest on 19 March 2018.*

*Notwithstanding the above, the Claimant alleged that "since bankruptcy proceedings were never conducted given the confiscation of the Original [Club] by the Ukrainian state, the C[Claimant] was not able, by any means, to take part of bankruptcy proceedings of the Original [Club] (which effectively finished with the above-mentioned confiscation of the Ukrainian state), i.e. he was not able to register himself in the relevant list of the creditors (if any, given the said confiscation".*

*In this respect, according to the UAF's statement, the Original Club was declared bankrupt in April 2021, the date on which the liquidation proceedings commenced.*

*Specifically, and according to information publicly available, it appears that, in line with the UAF's statement and contrary to the Claimant's allegations,*

- *On 9 June 2017, bankruptcy proceedings were initiated against the Original Club.*
- *On 11 June 2017, an official publication was carried out to announce the initiation of bankruptcy proceedings against the Original Club.*

- *On 2 December 2019, the insolvency receiver Levkovich O.K was appointed as the property manager of the Original Club.*
- *On 17 March 2020, the Economic Court of Kharkiv approved the register of claims of the Original Club's creditors.*
- *On 2 July 2020, a meeting of creditors was held.*
- *On 22 April 2021, the Economic Court of Kharkiv declared the Original Club bankrupt and initiated the liquidation proceedings of the latter".*

*Put differently, and according to the case file, it appears that, based on his established knowledge of the Original Club's difficult financial situation as from "2016/2017", but also more importantly, following the aforementioned communication from FIFA informing him about the ongoing bankruptcy against the Original Club, the Claimant could theoretically have registered his credit in connection with the DRC Decision.*

14. In view of the above, the Investigatory Report pointed out that *"according to the documentation in file, it would appear that there is no evidence in file that could suggest that the Player registered (or at the very least attempted to register) his credit in the bankruptcy/liquidation proceedings of the Original Club".*

### **III. Conclusion(s) of the Investigatory Report**

15. In sum, the Investigatory Report concluded that:
- *"Disciplinary proceedings should be opened against the New Club for potential violation of art. 21 FDC".*
  - *"The New Club should be considered as the sporting successor of the Original Club".*
  - *"The Claimant appears to have remained passive in pursuing his credit".*

## **C. Disciplinary proceedings**

16. On 12 May 2023, based on the above, disciplinary proceedings were opened against the New Club with respect to a potential breach of art. 21 FDC (2023 ed.). In particular, the latter was provided with the Investigatory Report and was granted a six-day deadline to provide the Secretariat with its position.
17. No position was provided by the New Club.

## **II. CONSIDERATIONS OF THE DISCIPLINARY COMMITTEE**

18. In view of the circumstances of the case, 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 New Club to comply with the DRC Decision as well as the potential sanctions resulting therefrom.

## A. Jurisdiction of the FIFA Disciplinary Committee

19. First of all, the Committee began by analysing whether it was competent to assess if the New Club can be considered as the (sporting) successor of the Original Club.
20. In these circumstances, the Committee commenced its analysis by highlighting that it was uncontested that the Original Club, *FC Metalist Kharkiv* – the subject of the DRC Decision, was no longer affiliated to the UAF.
21. In these circumstances, the Committee wished to recall that, according to art. 51 (2) of the FIFA Statutes, it may pronounce the sanctions described in the Statutes and the FDC on member associations, clubs, officials, players, football agents and match agents.
22. 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.
23. The aforementioned principle is embedded within art. 14 (1) (d) 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. 59 (2) FIFA Statutes which 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 only being possible to the extent that the so-called “members” are still affiliated to the member associations of FIFA.
24. Therefore, since the UAF had confirmed that the Original Club was no longer one of its affiliated clubs, the former implied that the latter had lost its indirect membership to FIFA and, therefore, the Committee could no longer impose sanctions upon it. This said, the Committee likewise noted that, following the disaffiliation of the Original Club from the UAF, the Claimant requested it (i) to consider the New Club – *FC Metalist Kharkiv* – as the sporting successor of the disaffiliated Original Club – *FC Metalist Kharkiv* – and (ii) to hold the New Club liable for the debts incurred by the Original Club, *i.e.*, those contained in the DRC Decision.
25. In this regard, in view of art. 21 (4) FDC and consistently with the pertinent jurisprudence of the Court of Arbitration for Sport (**CAS**) - which has confirmed that the present judicial body is competent to deal with sporting succession cases<sup>1</sup> - the Committee considered that it was not prevented from reviewing and/or making a legal assessment of and, therefore, deciding, whether the New Club may be considered as the same as – and/or the successor of – the Original Club (this, particularly considering that the New Club is still affiliated to the UAF and, as such, under the jurisdiction of the Committee).
26. As a result of the foregoing, the Committee deemed that it was competent to assess the present matter and to pass a formal decision of a substantive nature with respect to the

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<sup>1</sup> See for instance CAS 2018/A/5647; CAS 2020/A/7543; CAS 2021/A/7684

Claimant's request concerning the liability of the New Club towards the debts incurred by the Original Club.

## B. Applicable Law

27. With regard to the matter at hand, the Committee pointed out that the disciplinary offense, *i.e.* the potential failure to comply with the DRC Decision, was committed continuously prior to and after the entry into force of the 2023 edition of the FDC. In this respect, and whilst keeping in mind the principles enshrined under art. 4 FDC, the Committee deemed that the merits as well as the procedural aspects of the present case should fall under the 2023 edition of the FDC.
28. Having established the above, the Committee wished to recall the content and scope of art. 21 FDC in order to duly assess the case at hand.
29. 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, a subsidiary 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, a subsidiary or an instance of FIFA, or by CAS:*

- a) will be fined for failing to comply with a decision and receive any pertinent additional disciplinary measure; and, if necessary:*
- 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;*

*(...)*

- d) 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.*

*(...)*

4. *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.*"

30. Finally, the Committee emphasized that it cannot review or modify as to the substance a previous decision, which is final and binding, but that its only task is to verify as to whether the Respondent had complied with the decision by settling its debt towards the Claimant<sup>2</sup>.

### C. Merits of the dispute

31. Having established that it was competent to assess the present matter, the Committee next proceeded to analyse whether i) the New Club had a connection with the Original Club; and, ii) should it be the case, whether it can be held liable for the debts of the latter.

#### *I. The sporting succession criteria*

32. To begin with, the Committee considered it relevant to recall the existing CAS jurisprudence with respect to the topic of sporting succession.

33. To that end, the Committee referred to decisions that had dealt with the question of the succession of a sporting club in front of CAS<sup>3</sup>. In particular, the Committee pointed out that it had been established that, on the one hand, 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. This said, on the other hand, 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 allowing a club to distinguish itself from all other clubs. Hence, the prevalence of the continuity and permanence in time of the sporting institution in front of the entity which manages it has been recognised, even when dealing with a change of management completely different from themselves<sup>4</sup>.

34. In these circumstances, the CAS has held that a "new" club has to be considered as the "sporting successor" of another one in a situation where (i) the "new" club created the impression that it wanted to be legally bound by the obligations of its predecessor (*i.e.* the "old" club), (ii) the "new" club took over the licence or federative rights from the "old" club and (iii) the competent federation treated the two clubs as successors of one another<sup>5</sup>.

35. By the same token, a "sporting succession" is the result of the fact that (i) a new entity was set up with the specific purpose of continuing the exact same activities as the old entity, (ii) the

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<sup>2</sup> See for instance CAS 2016/A/4595; CAS 2013/A/3323

<sup>3</sup> See for instance CAS 2007/A/1355; TAS 2011/A/2614 and TAS 2011/A/2646; TAS 2012/A2778

<sup>4</sup> CAS 2013/A/3425.

<sup>5</sup> CAS 2007/A/1322.



“new” club accepted certain liabilities of the “old” club, (iii) after the acquisition of the assets of the “old” club, the “new” club remained in the same city and (iv) the “new” club took over the licence or federative rights from the “old” club<sup>6</sup>.

36. Furthermore, the issue of the succession of two sporting entities (*i.e.* distinct 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, as a general rule, transcends the legal entities which operate it<sup>7</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.
37. For the sake of completeness, it is likewise important to emphasise that the aforementioned established jurisprudence of the CAS is reflected within the 2023 edition of the FDC under art. 21 (4). According to the aforesaid 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”*.
38. Against such background, it is likewise worth mentioning that the elements as referred to under art. 21 (4) FDC (formerly art. 15 (4) of the 2019 FDC) are non-exhaustive<sup>8</sup>. More specifically, the CAS has considered that the existence of several elements in light of this provision can lead, in its combination, and so even if not all elements are met in a specific case, to the conclusion that a club has to be considered (or not) as a “sporting successor”. The overall package of the elements, collectively considered, being decisive<sup>9</sup>.

## ***II. The assessment of the potential sporting succession***

39. With the above in mind, the Committee subsequently turned to focus on the documentation at its disposal in light of the criteria set by the relevant CAS jurisprudence (reflected in art. 21 (4) FDC) and as applied by the Committee (and CAS) in such situations.
40. In this sense, the Committee noted that the Respondent did not provide any comment during the investigations conducted by the Secretariat nor any position during the course of the present disciplinary proceedings.
41. Taking into account the foregoing, the Committee once again deemed it appropriate to refer to the above-mentioned constant jurisprudence of CAS, according to which a club is a sporting entity identifiable by itself that, as a general rule, transcends the legal entities which operate it. In other words, the fact that a club may be operated through a different legal entity than its

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<sup>6</sup> CAS 2011/A/2646.

<sup>7</sup> CAS 2016/A/4576.

<sup>8</sup> CAS 2020/A/6884.

<sup>9</sup> CAS 2020/A/6884.

- predecessor does not bear any relevance on whether or not sporting succession can be established.
42. With the above in mind, and upon review of the information on file and with particular regard to the contents of the Investigatory Report, the Committee noted that the New Club shared a number of significant similarities with the Original Club, all of which indicated towards a sporting succession between the former and the latter. In particular, the Committee found that i) the names of the Original Club – *FC Metalist Kharkiv* – and the one of the New Club – *FC Metalist Kharkiv* – are identical, ii) both clubs have the same colours, *i.e.* yellow and blue, iii) both clubs' logos are identical, iv) both clubs' registered address are the same, and v) both clubs share similar management and staff.
43. In this context, the Committee likewise noted from the information and documentation at its disposal as well as from publicly accessible information, that the New Club could also be seen to share an intertwined history with the Original Club (as explicated under section B. I. *supra.*), and that in accordance with the Investigatory Report, it appears that the New Club recognises the Original Club's history as its own. In particular, the official website of the New Club, states the following: “[...] *Alexander Yaroslavsky actively supports the development of sports in Kharkiv. In 2005, he became president of the Metalist football club. In the next seven years, the club under his leadership turned from a middle peasant of Ukrainian football into one of the domestic giants [...] In 2020, Alexander Yaroslavsky headed for the revival of the legendary Kharkiv club and the restoration of the city's football infrastructure [...]*”<sup>10</sup>. Said website also mentioned the “return of the club historical name” (namely FC Metalist Kharviv) and specified that “*in the Kharkiv metro was launched the first fan train "Metalist", symbolizing the revival and new ascent of the beloved city football club. Fan train #1 can be found between the stations Cold Mountain - Industrialnaya*”<sup>11</sup>.
44. The Committee thus pointed out that all aforementioned elements constitute important indicators towards the consideration of the New Club as the sporting successor of the Original Club.
45. In addition, the Committee was assured by the stipulations of the Investigatory Report that the Respondent was clearly identified by the public as being connected to the Original Club. For instance, and according to information publicly available<sup>12</sup>, the ultras group of the Original Club's supporters, named “*Simmer Polecats Crew*”, acknowledges the New Club as being the Original Club.
46. In light of all the above, the Committee recalled once more that, in line with the jurisprudence of the Committee and CAS as well as with art. 21 (4) FDC, the identity of a club is constituted

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<sup>10</sup> <https://fcmetalist.com.ua/staff/20/>

<sup>11</sup> <https://fcmetalist.com.ua/news/8357.html>

<sup>12</sup> [https://www.instagram.com/p/Bv8yDbvFV\\_n/?hl=en](https://www.instagram.com/p/Bv8yDbvFV_n/?hl=en)

<https://www.instagram.com/p/CttFXuNinB/?hl=en>

<https://www.facebook.com/105111084568948/posts/metalist-kharkiv-hooligans-group-simmer-polecats-crew-and-the-hooligans-group-of/494310018982384/>

<https://www.dreamstime.com/stock-image-metalist-fans-support-their-team-image16796901>

by elements such as its name, colours, logo, fans, history, players, stadium, *etc.*, regardless of the legal entity operating it.

47. As such, on the basis of the information and documentation at hand, the Committee was comfortably satisfied that the New Club – *FC Metalist Kharkiv* – was to be considered as the sporting successor of the Original Club – *FC Metalist Kharkiv*.

### ***III. The potential liability of the New Club for the debts of the Original Club***

48. Having determined that the New Club is to be considered the sporting successor of the Original Club, the Committee moved on to analyse whether the New Club was to be held liable for the debt(s) incurred by the former as recognised in the DRC Decision.
49. In this sense, the Committee recalled that, according to art. 21 (4) FDC, the sporting successor of a non-compliant party shall also be considered a non-compliant party and thus, be subject to the obligations under art. 21 FDC. Therefore, in the Committee's view, in principle, whenever a club is considered the sporting successor of a non-compliant party that no longer exists or is no longer under FIFA's jurisdiction, it is automatically responsible for the debts of its predecessor.
50. Notwithstanding the above, the Committee pointed out that according to the CAS jurisprudence, a creditor is expected to be vigilant and to take prompt and appropriate legal action to assert its claim<sup>13</sup>. By way of consequence, in principle, no disciplinary sanction can be imposed on a club as a result of succession, should the creditor fail to claim their credit in the liquidation and/or bankruptcy proceedings of the former club, as there is a theoretical possibility that they could have recovered their credit, instead of remaining passive<sup>14</sup>. However, the Committee underlined that there is no blanket rule as to whether or not a creditor has shown the required degree of diligence and that an assessment of the creditor's diligence has to be made based on the specific circumstances of each case<sup>15</sup>.
51. With the foregoing in mind, the Committee turned its attention to the specifics of the case at hand and, in consideration of the documentation and evidence presented before it, observed the following:
- The Original Club is no longer affiliated to the UAF since 2016.
  - On 9 June 2017, bankruptcy proceedings were initiated against the Original Club.
  - On 21 August 2017, the Sosnovsky District Court of Cherkasy, applied special confiscation against the Original Club.

<sup>13</sup> CAS 2011/A/2646; CAS 2019/A/6461; CAS 2020/A/6884; CAS 2020/A/6745; CAS 2020/A/7290.

<sup>14</sup> CAS 2011/A/2646; CAS 2019/A/6461; CAS 2020/A/6884; CAS 2020/A/6745; CAS 2020/A/7290.

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

- On 19 March 2018, FIFA informed the Claimant of the bankruptcy proceedings against the Original Club.
  - On 2 December 2019, an insolvency receiver was appointed as the property manager of the Original Club.
  - On 17 March 2020, the Economic Court of Kharkiv approved the register of claims of the Original Club's creditors.
  - On 16 March 2021, a meeting of creditors was held, during which the creditors *inter alia* decided to authorize the property manager of the Original Club to submit a petition to the relevant court to declare the Original Club bankrupt and initiate liquidation proceedings against the latter.
  - On 22 April 2021, the Economic Court of Kharkiv declared the Original Club bankrupt and initiated the liquidation proceedings against the former.
52. In addition to the above, the committee acknowledged that it was undisputed by the Claimant that he had not registered his credit in the bankruptcy and liquidation proceedings of the Original Club.
53. In this context and in consideration of the foregoing, the Committee observed that the Claimant was informed by FIFA about the Original Club's bankruptcy proceedings (i) less than a year after the initiation of the relevant proceedings, and (ii) more importantly almost three years prior to the approval of the "register of claims" by the relevant court. In particular. The Committee noticed that the Claimant did not dispute these facts but rather stressed that due to the Original Club's state confiscation, it was *"not able, by any means, to take part of bankruptcy proceedings of the Original [C]lub (which effectively finished with the above-mentioned confiscation of the Ukrainian state) i.e. he was not able to register himself in the relevant list of creditors (if any, given the said confiscation)"*.
54. In this respect, the Committee found that, once he was made aware by FIFA of the Original Club's involvement in bankruptcy proceedings, it was within the Claimant's power to take prompt and appropriate action in view of the (difficult) financial situation of the Original Club, in particular to register the credit awarded in the DRC Decision. Indeed, on the basis of the information and documentation at its disposal, the Committee was of the opinion that there was no indication that the Claimant was legally prevented in any manner from registering his credit(s) within the bankruptcy proceedings of the Original Club. In fact, it appeared to be clear (and undisputed) that the Claimant had not even attempted to do so.
55. Furthermore, it would appear from the case file that the Original Club's state confiscation was cancelled by the initiation of the liquidation proceedings on 22 April 2021 by the relevant court at national level, i.e. more than three (3) years after the Claimant had been made aware of the bankruptcy proceedings of the Original Club. In this sense, the Committee pointed out that, although the Original Club (or its insolvency receiver) could have been prevented from

the disposal of the latter's assets, the Claimant failed to (try to) take part in the relevant bankruptcy proceedings against the Original Club (the debtor club) and failed to anticipate and (try to) take part in the liquidation proceedings of the latter in which he could theoretically have registered (and potentially recover) his credit.

56. As a result, the Committee was comfortably satisfied that the Claimant could have claimed his credit(s), or at the very least, have attempted to register them within the bankruptcy/liquidation proceedings of the Original Club, particularly considering his existing knowledge of the Original Club's (difficult) financial situation as from, at the very least, March 2018 onwards. In other words, the Claimant appears to have remained passive and to not have performed the expected due diligence that the circumstances demanded, in particular to take the required legal actions at national level to recover the amount(s) owed to him by the Original Club, and had therefore contributed to the non-compliance by the Original Club, and subsequently by the New Club, with the DRC Decision issued on 29 July 2016.
57. In light of the above, although the New Club, *FC Metalist Kharkiv*, is to be considered as the sporting successor of the Original Club, *FC Metalist Kharkiv*, the Committee resolved that no disciplinary sanctions should be imposed upon the New Club and that all charges against the latter should be dismissed, as a result of the lack of diligence of the Claimant in collecting and/or registering his debt in the respective proceedings at national level.

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

**To close the disciplinary proceedings opened against FC Metalist Kharkiv.**

FÉDÉRATION INTERNATIONALE  
DE FOOTBALL ASSOCIATION



**Paola LÓPEZ BARRÁZA**

Member of the FIFA Disciplinary Committee

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**NOTE RELATING TO THE LEGAL ACTION:**

According to art. 58 (1) of the FIFA Statutes reads together with arts. 52 and 61 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.