

# Decision of the FIFA Disciplinary Committee

passed on 06 July 2023

**DECISION BY:**

**Mr. Anin YEBOAH (Ghana), Deputy Chairperson**

**ON THE CASE OF:**

**SC Dnipro-1**

**(Decision FDD-11477)**

**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 Deputy Chairperson 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 8 March 2018, the FIFA Dispute Resolution Chamber (**DRC**) rendered a decision regarding an employment-related dispute arisen between the parties and ordered the club FC Dnipro Dnipropetrovsk (**the Original Club or the Old Club**) to pay the player Mr. Anderson da Silveira Ribeiro (**the Claimant or the Player**), outstanding remuneration in the amounts of USD 300,000 and EUR 35,000, plus 5% interest *p.a.* as from 18 July 2017 until the date of effective payment.
3. On 9 May 2018, the grounds of the abovementioned decision (**the DRC Decision**) were notified to the parties.
4. On 20 February 2019, as the amount(s) due to the Claimant in accordance with the DRC Decision were not paid, the FIFA Disciplinary Committee passed a decision by means of which it found the Original Club responsible for failing to comply in full with the DRC Decision (**the Disciplinary Decision**).
5. On 4 July, 12 and 28 August 2022, the Claimant requested the FIFA Disciplinary Committee to open disciplinary proceedings against the club "SC Dnipro-1" (**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

6. In view of the above, in particular, the information received from the Claimant (cf. par. 5 *supra*) the Secretariat to the FIFA Disciplinary Committee (**the Secretariat**) carried out investigations (**the Investigations**) in accordance with art. 35.5 of the FIFA Disciplinary Code (**FDC**), 2023 edition. In the scope of the investigations, the Secretariat invited the Ukrainian Association of Football (**UAF**) and the New Club to provide information and their comments/positions on specific elements. In particular, the UAF submitted its comments on 4 April 2023 and the New Club did so on 17 May 2023.
7. The results of the above investigations were set out in a report (**the Investigatory Report**) which can be summarized as follows:

### ***I. Sporting succession***

8. Upon analysing the documentation gathered during the investigations, more specifically the elements related to a potential sporting succession between the Original club and the New Club, the Investigatory Report emphasized that *"it appears that most of elements are not in favour of the sporting succession concept"*, the only element shared by both clubs being their *"Legal Form"*.
9. More specifically, the Investigatory Report concluded that *"the elements, which reveal sporting succession, would not prevail over the non-existence elements, and as a consequence, it would appear that the New Club should not be considered the sporting successor of the Old Club"*.

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

10. In sum, the Investigatory Report concluded that *"the New Club should not be considered the sporting successor of the Old club"*.

### **C. Disciplinary proceedings**

11. On 15 June 2023, following on the above, disciplinary proceedings were opened against the New Club with respect to a potential breach of art. 21 FDC. In particular, the latter was provided with the Investigatory Report and was granted a six-day deadline to provide the Secretariat with its position.
12. On 15 June 2023, the New Club simply *"reiterate[d] its position per its answer and corresponding exhibits as filed with FIFA on May 17, 2023"* within the context of the investigations conducted by the Secretariat<sup>1</sup>.

## **II. POSITION OF THE RESPONDENT**

13. The position submitted by the Respondent in the context of the Investigations – *and to which the latter refers within the present proceedings* – can be summarised as follows:
  - i. The jurisprudence of both FIFA and the Court of Arbitration for Sport (**CAS**) related to sporting succession demonstrates that the mere appearance is not sufficient, and there must be some evidence of other factors present, such as the transfer of the federative rights of the old club to allow the new club to continue in the same league, the acquisition of assets of the old club, and some continuity of players, to demonstrate sporting succession.
  - ii. The Respondent made the following observations with regard to the Claimant's allegations:

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<sup>1</sup> The position of the Respondent is summarised under section II. *Infra*.

- On the clubs' headquarters: the New and the Old club have a different address as correctly indicated by the UAF.
- On the clubs' Legal form: the current legal form of both clubs bears no significance in establishing sporting succession since the Respondent was founded as a non-profit public organisation and it's only because of the UAF's regulations and the club's sporting achievements that the latter was reorganised as a Limited Liability Company.
- On the players of the clubs: the only player mentioned by the Claimant (who allegedly moved to the Respondent) was transferred on 6 July 2017, *i.e.* before the Old Club's disaffiliation and also before its last official match under the auspices of the UAF on 25 May 2019. Consequently, said element cannot be used to establish sporting succession. Moreover, the UAF indicated that as of the 2019-2020 season, no player moved from the Original Club to the Respondent.
- On the clubs' ownership: both clubs had different owners, founders, and shareholders since their foundation.
- On the club's stadium(s): the Claimant did not provide any evidence that the Dnper-Arena belongs to the Respondent nor that the former used the stadium based on an agreement with the Original Club. As a result, sporting succession cannot be established based on the use of the same stadium.
- There is no evidence that the Respondent was set up to escape the obligations of the Original Club or to continue the same activities as the latter, nor that the Respondent acquired right(s) or asset(s) from the Original Club.
- Similarly, the Respondent has never accepted to be the Original Club's sporting successor. In particular, the Respondent never made nor attempted to make reference to the Original Club's history and achievements as being its own.
- Both clubs simultaneously competed in various categories at national level. Moreover, both clubs even participated simultaneously in the same league.
- On the club's name(s): the only similarity in the name of both entities is the word "Dnipro" which refers to the name of the city where both clubs are located. Consequently, the Respondent's legal name is insufficient to consider the former the sporting successor of the Original Club. Further, the name of the Respondent stands as a reference to the Battalion of the Special Police Patrol Regiment Dnipro-1.
- On the club's colours and logos: both clubs have different team colours and logos.
- On the public perception of both clubs: The public has never considered both clubs as the same. In addition, when both clubs participated in the Second League simultaneously, the conflict between their supporters grew into regular fights and massive disorderliness as it was indicated by the UAF.
- On the clubs' staff: Mr Rusol's appointment as Sporting Director of the Respondent is completely irrelevant as an element of sporting succession because he left the

Original Club in January 2017 (two years before its disaffiliation) and joined the Respondent in January 2019 only.

14. In view of the above, the Respondent requested the FIFA Disciplinary Committee to dismiss all charges and to close the disciplinary proceedings opened against it.

### III. CONSIDERATIONS OF THE DISCIPLINARY COMMITTEE

15. 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 Respondent to comply with the DRC Decision as well as the potential sanctions resulting therefrom.

#### A. Jurisdiction of the FIFA Disciplinary Committee

16. First of all, the Committee began by analysing whether it was competent to assess if the Respondent can be considered as the (sporting) successor of the Original Club.
17. In these circumstances, the Committee commenced its analysis by highlighting that it was uncontested that the Original Club, *FC Dnipro Dnipropetrovsk* – the subject of the DRC Decision, was no longer affiliated to the UAF.
18. 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.
19. 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.
20. 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.
21. With the above in mind, the Committee noted that the UAF had confirmed that the Original Club was no longer one of its affiliated clubs. As such, 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 Respondent – *SC Dnipro-1* – as the sporting successor of the (disaffiliated) Original Club – *FC Dnipro Dinpropetrovsk* – and (ii) to hold the Respondent liable for the debts incurred by the Original Club, *i.e.* those contained in the DRC Decision.

22. In this regard, in view of art. 21.4 FDC and consistently with the pertinent jurisprudence of CAS<sup>2</sup>, the Committee considered that it was not prevented from reviewing and/or making a legal assessment of and, therefore, deciding, whether the Respondent may be considered as the same as – and/or the successor of – the Original Club (this, particularly considering that the Respondent is still affiliated to the UAF and, as such, under the jurisdiction of the Committee).
23. 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 Claimant's request concerning the liability of the Respondent towards the debts incurred by the Original Club.

## B. Applicable Law

24. 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.
25. 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.
26. 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;*

*(...)*

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<sup>2</sup> See for instance CAS 2018/A/5647; CAS 2020/A/7543; CAS 2021/A/7684

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."*

27. Finally, the Committee emphasized that it cannot review and/or modify as to the substance a previous (FIFA or CAS) decision, which is final and binding, but that its only task is to verify as to whether the Respondent had complied with the relevant decision by settling its debt towards the Claimant<sup>3</sup>.

### C. Merits of the dispute

28. Having established that it was competent to assess the present matter, the Committee next proceeded to analyse whether i) the Respondent 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*

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

30. 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>4</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

<sup>3</sup> See for instance CAS 2016/A/4595; CAS 2013/A/3323

<sup>4</sup> See for instance CAS 2007/A/1355; TAS 2011/A/2614 and TAS 2011/A/2646; TAS 2012/A2778

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>5</sup>.

31. 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>6</sup>.
32. 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 “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>7</sup>.
33. 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>8</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.
34. 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”*.
35. 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>9</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>10</sup>.

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<sup>5</sup> CAS 2013/A/3425.

<sup>6</sup> CAS 2007/A/1322.

<sup>7</sup> CAS 2011/A/2646.

<sup>8</sup> CAS 2016/A/4576.

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

<sup>10</sup> CAS 2020/A/6884.



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

36. With the above in mind, the Committee subsequently focused 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.
37. In this sense, the Committee noted that the Respondent, by way of its position as denoted *supra*, had indicated that it was not the sporting successor of the Original Club and had explained, in particular, that i) a new club cannot be considered as the sporting successor of another club solely on the basis of appearances and that, in any event, ii) there are no evidence that the following elements are shared by both clubs: headquarters, players, ownership, stadium, name, history, team colours and logos. Moreover, the Respondent explained i) that the federative rights of the Original Club have not been transferred to the Respondent, ii) that the Respondent and the Original Club competed simultaneously in the same league, and, iii) that the public has never considered both clubs as the same.
38. 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 predecessor does not bear any relevance on whether or not sporting succession can be established.
39. 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 Respondent only shares one similarity with the Original Club, namely its legal form. More importantly, the Committee noted that the clubs do not bear any similarity in relation to the following elements: name, history, title and sporting achievements, team colours and logos, registered address, stadium, website and social media, ownership/stakeholders, management, players, official/staff, sponsors, public perception, and football division.
40. In this context, and for the sake of completeness, the Committee likewise noted from the information and documentation at its disposal that the name of both clubs contains the name of the city in which they are located, i.e. Dnipro. In this respect, the Committee stressed that the use of the same city name within the name of different football clubs does not alone indicate that the clubs are necessarily connected and/or share a 'sporting succession similarity'. As a matter of fact, the use of the name of the city in which a club is located within the latter's name is a common aspect in the world of football, but also in sport in general. In addition, the Committee acknowledged that, according to the UAF, the name of the Respondent (as from its foundation) stands for the "Special Police Patrol Regiment 'Dnipro-1'".
41. Notwithstanding the above, the Committee wished to underline that the fact that both clubs play and/or used to play in the stadium "Dnepr-Arena" is not a significant element towards a potential succession. As a matter of fact, there are many professional football clubs around

the world that are sharing a stadium. More importantly, the Committee stressed that, according to the case file, the Respondent has been playing in a different stadium (namely the Avangard Stadium) as from the 2022-2023 season.

42. A further indication excluding a sporting succession is the fact that the Respondent was founded in 2015 as a *“non-profit Public organization”*, on 10 March 2017 it was *“reorganized and is functioning in the legal form of Limited Liability Company”*, started to participate under the auspices of the UAF as from the 2016-2017 season in the *“Football Association of Dnipropetrovsk region – the fifth tier of national football in Ukraine”*, it was promoted to the *“Professional Football League of Ukraine”* second and first division in the 2017-2018 and 2018-2019 seasons, respectively, and acquired its right to participate in the Ukrainian Premier League (i.e. the Ukrainian highest league) as from the 2019-2020 season through its sporting performance.
43. Likewise, the Original Club was relegated from the *“Ukrainian Premier League”* to the *“Professional Football League of Ukraine”*, second division, for the 2017-2018 season and then relegated to the *“Association of amateur football of Ukraine – the fourth tier of national football in Ukraine”* for the 2018-2019 season as a result of its (poor) sporting performance. In brief, the Committee found that nothing in the case file establishes that the federative rights of the Original Club have been transferred to the Respondent in order for the latter to replace the former in the Ukrainian Premier League.
44. With the above in mind, the Committee subsequently acknowledged that the Respondent and the Original Club were simultaneously existing competing in different categories at national level. More importantly and as confirmed by the UAF, the Respondent and the Original Club even competed in the same league, namely the *“Professional Football League of Ukraine”*, second division, for the 2017-2018 season. In this respect, the fact that both clubs participated simultaneously in the same league is a fundamental element that would exclude sporting succession.
45. In addition, the Committee was assured by the stipulations of the Investigatory Report that the Respondent was not identified by the public as being connected to the Original Club. For instance, and according to the UAF, when both clubs participated simultaneously in the Second League, the conflict between their supporters escalated.
46. In light of all the above, the Committee considered that the Claimant failed to provide sufficient and/or convincing elements enabling it to establish that the Respondent might be the sporting successor of the dissolved club. As a result, and based of the foregoing evaluations, the Committee concluded that, on the basis on the information and documentation at its disposal, it could not determine to its comfortable satisfaction that the Respondent, *SC Dnipro-1*, is the legal and/or sporting successor of the Original Club, *FC Dnipro Dnipropetrovsk*.
47. In view of the foregoing, and in line with the jurisprudence of the FIFA Disciplinary Committee, the Committee concluded that since it had resolved that, on the basis of the documents presented before it, the Respondent could not be regarded as the sporting successor of the

Original Club, the present proceedings must be declared closed in so far as they concerned the potential breach of art. 21 FDC.

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

**To close the disciplinary proceedings opened against SC Dnipro-1.**

FÉDÉRATION INTERNATIONALE  
DE FOOTBALL ASSOCIATION



**Mr. Anin YEBOAH**

Deputy Chairperson 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.