

Decision of the FIFA Disciplinary Committee

passed on 04 April 2024

DECISION BY:

Lord VEEHALA (Tonga), Member

ON THE CASE OF:

Alanyaspor

(Decision FDD-17959)

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.
2. On 26 January 2024, the Court of Arbitration for Sport (**CAS**) issued a CAS Award (ref. CAS 2023/A/9574 – **the CAS Award**) as follows:

“(…)

3. *Alanyaspor Kulubi Dernegi (the Respondent) is ordered to pay to [Mr. Davidson Da Luz Pereira] (the Claimant) the following amounts:*

- *EUR 296,000, plus annual interest of 5% as from 15 February 2022.*
- *EUR 20,000, plus annual interest of 5% as from 3 September 2022.*
- *EUR 20,000, plus annual interest of 5% as from 7 September 2022.*
- *EUR 10,000, plus annual interest of 5% as from 10 September 2022.*

(…)

5. *[The Respondent] is ordered to pay to [the Claimant] the amount of CHF 4,000 (four thousand Swiss Francs) as a contribution towards its legal costs and expenses incurred in connection with the present arbitration proceedings.*

(…)”.

3. On 12 March 2024, as the amount(s) due by the Respondent to the Claimant were not paid, the Claimant requested the initiation of disciplinary proceedings against the Respondent for the failure to comply with the CAS Award.
4. On 13 March 2024, in view of the foregoing, as it appeared that the Respondent had not complied in full with the CAS Award, the Secretariat to the FIFA Disciplinary Committee (**the Secretariat**) *inter alia* informed the Respondent that such conduct would constitute a potential breach of art. 21 of the FIFA Disciplinary Code, 2023 edition (**FDC**). In this respect, in accordance with art. 58 FDC as read in conjunction with Annexe 1 FDC, the Secretariat proposed the following sanction(s) to the Respondent on the basis of the existing case file (**the Proposal**):

“1. The Respondent, Alanyaspor, shall pay to Mr Davidson da Luz Pereira (the Creditor) as follows:

- *EUR 296,000, plus annual interest of 5% as from 15 February 2022.*
- *EUR 20,000, plus annual interest of 5% as from 03 September 2022.*
- *EUR 20,000, plus annual interest of 5% as from 07 September 2022.*

- EUR 10,000, plus annual interest of 5% as from 10 September 2022.

2. The Respondent is granted a final deadline of 30 days as from the present proposal becoming final and binding in which to pay the amount(s) due. 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 ban on registering new players will be issued until the complete amount due is paid.

3. The Respondent shall pay a fine to the amount of CHF 20,000.”

5. In particular, the Proposal stated that, in line with art. 58 FDC, the Respondent could reject the proposed sanction and submit its position before the Committee within five (5) days as of the notification of such communication. In such circumstances *“regular disciplinary proceedings [would] be conducted, and the FIFA Disciplinary Committee [would] decide on the case using the file in its possession”*.
6. On the same date (13 March 2024)¹, the Respondent rejected the Proposal of the Secretariat and requested an extension of the deadline to provide its position.
7. On 14 March 2024, following the above, the Secretariat *inter alia* informed the Respondent that an extension of the time-limit to provide its position until 25 March 2024 had been granted.
8. On 25 March 2024, the Respondent submitted its position².
9. On the same date (25 March 2024), the Secretariat acknowledged receipt of the Respondent’s position and informed the parties, in line with the contents of art. 58 FDC, that the present matter would be referred to the next meeting of the FIFA Disciplinary Committee.

II. RESPONDENT’S POSITION

10. The position submitted by the Respondent can be summarized as follows:

- The Respondent has filed an order before the Swiss Federal Tribunal (**SFT**) for the annulment of the CAS Award on the grounds of *“violation of Swiss Public Order”*, the proceedings for which remain ongoing.
- Since the dispute with regards to *“this file”* was pending before the SFT, the Respondent considered it clear that the CAS Award was not final and binding.
- As such, the Respondent submitted that the ongoing proceedings before the SFT should be considered as a *“preliminary issue”* and the decision of the SFT should be awaited (before the present proceedings could be conducted).

¹ *I.e.* within the 5-day deadline for the rejection of the proposed sanction(s) provided for pursuant to art. 58 FDC.

² The position of the Respondent is summarised under section II. *infra*.

- In this regard, the Respondent enclosed to its position an 'initial charge'/notification of appeal letter from the SFT dated 29 February 2024.

III. CONSIDERATIONS OF THE DISCIPLINARY COMMITTEE

11. In view of the circumstances of the present matter, the Committee decided to first address the procedural aspects of the case at hand, 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

12. First of all, the Committee noted that at no point during the present proceedings had the Respondent challenged its jurisdiction or the applicability of the FDC.
13. Notwithstanding the above and for the sake of good order, the Committee found it worthwhile to emphasize that, on the basis of arts. 56 and 57 FDC, it was competent to evaluate the present case and to impose sanctions in case of corresponding violations. In this respect, the Committee also stressed that, in line with art. 58 FDC, where a party rejects the proposed sanction from the Secretariat (as *in casu*), the matter shall be referred to it for a formal decision to be rendered.
14. Furthermore, the Committee likewise underlined that on the basis of art. 51 (2) of the FIFA Statutes, the Committee may pronounce the sanctions described in the Statutes and the FDC on member associations, clubs, officials, players, football agents and match agents.

B. Applicable legal framework

15. With regard to the matter at hand, the Committee pointed out that the disciplinary offense, *i.e.* the Respondent's potential failure to comply with the CAS Award, was committed after the entry into force of the 2023 edition of the FDC. In this respect, 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.
16. The above being understood, in order for it to duly assess the case at hand, the Committee next wished to recall the content and scope of the provision(s) at stake, name that of art. 21 FDC, which reads as follows:

"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 ban on registering new players will be issued until the complete amount due is paid or the nonfinancial decision is complied with. A deduction of points or relegation to a lower division may also be ordered in addition to a ban on registering new players in the event of persistent failure (i.e. the ban on registering new players has been served for more than three entire and consecutive registration periods following the notification of the decision), repeated offences or serious infringements or if no full registration ban could be imposed or served for any reason.

(...)

2. With regard to financial decisions passed by a body, a committee, a subsidiary or an instance of FIFA, or CAS, disciplinary proceedings may only commence at the request of the creditor or any other affected party who is entitled to be notified of the final outcome of the said disciplinary proceedings, including the motivated decision if so requested.

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. (...)"

17. Moreover, for the sake of good order, the Committee further emphasised that in line with art. 57 (1) (h) FDC, cases involving matters under art. 21 FDC may be decided by one member of the Disciplinary Committee alone, as in the present case.
18. Finally, the Committee underlined that, equal to the competence of any enforcement authority, it cannot review or modify as to the substance of a previous decision which is final and binding, and thus, has become enforceable.
19. 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. 21 FDC

20. The above having been determined, as a starting point, the Committee observed that the present disciplinary proceedings referred to a potential failure of the Respondent to comply with the CAS Award, by means of which the Respondent had been ordered to pay to the Claimant the amount(s) as outlined above.
21. In this respect, the Committee subsequently remarked from the case file at its disposal that the Respondent had lodged an appeal against the CAS Award before the Swiss Federal Tribunal, as demonstrated by the abovementioned letter from the SFT dated 29 February 2024 enclosed to its position.
22. In addition, the Committee acknowledged the Respondent's submissions in this respect that since its appeal against the CAS Award was pending before the SFT i) the CAS Award consequently could not be considered as final and binding; ii) the "*ongoing proceedings*" before the SFT should be treated as a "*preliminary issue*", and; iii) the SFT decision "*awaited*".
23. With the foregoing in mind, the Committee subsequently proceeded to analyse the pertinent provisions of Swiss Law concerning this particular topic in so far as they were relevant to the submissions of the Respondent.
24. To that end, the Committee recalled that CAS arbitration proceedings are governed by Chapter 12 of the Swiss Federal Act on Private International Law (**PILA**)³ which provides that, as the seat of CAS tribunals is in Lausanne, setting aside proceedings against CAS awards may only be filed before the Swiss Federal Tribunal. In accordance with art. 190 PILA, an arbitral award can be set aside on certain specific grounds - the only grounds permitted being those as provided under art. 190 (2) PILA.
25. Furthermore, the Committee observed that in accordance with art. 103 (1) of the Bundesgerichtsgesetz (**BGG**)⁴, the filing of an action to set aside a CAS award does not stay the enforcement of said award. In this respect however, the Committee remarked that it is possible to request a stay of enforcement by seeking to obtain an order granting suspensive effect pursuant to art. 103 (3) BGG, although likewise wished to point out that there was nothing within the case file to suggest that the Respondent had made such a request in the case at hand.
26. As such, recalling again that pursuant to art. 103 (1) BGG, an appeal to the Swiss Federal Tribunal does not, in principle, grant suspensive effect to the appealed CAS Award in question, the Committee consequently found no basis upon which to justify the closure, or suspension of, the present disciplinary proceedings against the Respondent.

³ If, at the time the arbitration agreement was entered into, at least one of the parties thereto did not have its domicile, its habitual residence or its seat in Switzerland (art. 176 (1) PILA).

⁴ The Federal Supreme Court Act.

27. Consequently, the Committee deemed that the arguments raised by the Respondent could not justify its non-compliance with the CAS Award and further noted that, the Respondent, subsequent to the CAS Award, had not provided any proof of payment. Similarly, neither had the Claimant confirmed receipt of any of the outstanding amount(s) due.
28. Therefore, in view of the foregoing, the Committee concluded that the Respondent, by its conduct as described above, 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. 21 FDC.
29. As a result, the Committee considered that the Respondent had to be sanctioned for the abovementioned violation.

II. The determination of the sanction(s)

30. As a preliminary remark, the Committee emphasized that the Respondent had unlawfully withheld the amounts 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.
31. 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 arts. 6 (1) and 6 (3) FDC.
32. Notwithstanding the above, the Committee recalled that art. 21 FDC foresees specific sanctions for anyone who fails to pay another person a sum of money in full or in part, even though instructed to do so by a body, a committee, a subsidiary or an instance of FIFA or a CAS decision, in so far that the latter:
 - (i) will be fined and receive any pertinent additional disciplinary measure (lit. a);
 - (ii) will be granted a final deadline of 30 days in which to pay the amount(s) due (lit. b);
 - (iii) (in the case of clubs, as *in casu*) 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 ban on registering new players will be issued until the complete amount due is paid or the non-financial decision is complied with (lit. d).
33. Therefore, in alignment with the above, the Committee recalled that with respect to the fine to be imposed, in accordance with art. 6 (4) FDC such fine shall range between CHF 100 and CHF 1,000,000.
34. In this respect, the Committee pointed out that Annexe 1 FDC provides for a list of specific disciplinary measures that may be taken into consideration in cases concerning failures to respect financial decisions. As such, after analysing the circumstances pertaining to the present case and whilst taking into account the outstanding amount(s) due in light of Annexe 1 FDC, the Committee regarded a fine amounting to CHF 20,000 as appropriate.

35. Furthermore, in application of art. 21 (1) (b) FDC, the Committee granted a final deadline of 30 days to the Respondent in for it order to pay the amounts due to the Claimant.

36. Finally, and in accordance with art. 21 (1) (d) FDC, the Respondent is hereby warned and notified that, in the case of default within the period stipulated, a registration ban (at national and international level) will be automatically imposed until the complete amounts due are paid. For the sake of good order, the Committee recalled that a deduction of points or relegation to a lower division may later be ordered in addition to the registration ban in the event of persistent failure (*i.e.* the ban on registering new players has been served for more than three entire and consecutive registration periods following the notification of the present decision).

IV. DECISION OF THE DISCIPLINARY COMMITTEE

- 1. Alanyaspor is found responsible for failing to comply in full with the award issued by the Court of Arbitration for Sport on 26 January 2024 (Ref. CAS 2023/A/9574).**
- 2. Alanyaspor is ordered to pay to Mr. Davidson Da Luz Pereira as follows::**
 - EUR 296,000, plus annual interest of 5% as from 15 February 2022.**
 - EUR 20,000, plus annual interest of 5% as from 03 September 2022.**
 - EUR 20,000, plus annual interest of 5% as from 07 September 2022.**
 - EUR 10,000, plus annual interest of 5% as from 10 September 2022.**
 - CHF 4,000 as a contribution towards the legal costs and expenses incurred in connection**
- 3. Alanyaspor is granted a final deadline of 30 days as from notification of the present decision in which to pay the amount(s) due. 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 ban on registering new players will be issued until the complete amount due is paid.**
- 4. Alanyaspor is ordered to pay a fine to the amount of CHF 20,000.**
- 5. The fine is to be paid within 30 days of notification of the present decision.**

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



Lord VEEHALA (Tonga)

Member of the FIFA Disciplinary Committee

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.

NOTE RELATING TO THE PAYMENT OF THE AMOUNT DUE:

The Respondent, Alanyaspor, is directed to notify the Secretariat to the FIFA Disciplinary Committee as well as the Turkish Football Association of every payment made and to provide the relevant proof of payment.

The Creditor, Mr. Davidson da Luz Pereira, is directed to notify the Secretariat to the FIFA Disciplinary Committee as well as the Turkish Football Association of every payment received.

NOTE RELATING TO THE REGISTRATION BAN:

The registration ban mentioned in para. 3. of the present decision will be implemented automatically and immediately at national and international level by the Turkish Football Association 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 such case, the Turkish Football Association is reminded of its duty to implement this decision and provide FIFA with proof that the registration ban has been implemented at national level, any failure to do so being subject to potential sanctions (which can lead to an expulsion from FIFA competitions) being imposed by the FIFA Disciplinary Committee.

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

The Respondent shall only be able to register new players, either nationally or internationally, upon the payment to the Creditor of the complete amount due. In particular, the Respondent may not make use of the exception and the provisional measures stipulated in art. 6 of the Regulations on the Status and Transfer of Players in order to register players at an earlier stage.

A deduction of points or relegation to a lower division may be ordered in addition to the registration ban in the event of persistent failure (i.e. the ban on registering new players has been served for more than three entire and consecutive registration periods following the notification of the decision), repeated offences or serious infringements or if no full registration ban could be imposed or served for any reason.

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 the abovementioned case number.