

Disciplinary Committee

FIFA[®]

Date: 03 June 2024

Sent to:

Mr. Mohammed Rharsalla Kadfi
c/o Mr. Dev Kumar Pamar

Cc:

- SK Slovan Bratislava futbal a.s
c/o Mr.Georgi Gradev

- Moroccan Football Association
- Slovakian Football Association

Notification of the grounds of the Decision

Ref. no. FDD-18173

Dear Madam, Dear Sir,

Please find attached the grounds of the decision passed in the aforementioned case by a member of the FIFA Disciplinary Committee on 16 May 2024.

The Moroccan Football Association and Slovakian Football Association (in copy) are kindly requested to forward this decision to the player Mr. Mohammed Rharsalla Kadfi.

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 16 May 2024

DECISION BY:

Thi My Dung NGUYEN (Vietnam) , Member

ON THE CASE OF:

Mohammed Rharsalla Kadfi (Morocco)

(Decision FDD-18173)

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 16 December 2021 the FIFA Dispute Resolution Chamber (**DRC**) passed a decision (under ref. FPSD-2775 / **the DRC Decision**) regarding an employment-related dispute concerning the player Mr. Mohammed Rharsalla Kadfi (**the Respondent** or **the Player**), by means of which the Respondent was ordered to pay to the club Slovan Bratislava (**the Claimant**) the amount of EUR 69,075.42.
3. In particular, the DRC Decision provided, under point 6 (3), that "[the Respondent] *shall be banned from playing in official matches up until the due amount is paid. The overall maximum duration of the restriction shall be of up to six months on playing in official matches*". In addition, point 6 (4) of the DRC Decision indicated that "[t]he present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not made by the end of the three entire and consecutive registration period."
4. On 18 August 2023, the Court of Arbitration for Sport (**CAS**) issued an award (ref. CAS 2022/A/8593 / **the CAS Award**). In particular, the operative part of the said award read as follows:

"1. The appeal filed on 7 January 2022 by [the Claimant] against the decision rendered by the FIFA Dispute Resolution Chamber on 16 December 2021 is partially granted.

2. Points 1, 3, 4, 6(1), 6(2), and 7 (in the portion relating to the enforcement against [the Claimant]) of the operative part of the decision rendered by the FIFA Dispute Resolution Chamber on 16 December 2021 are set aside.

3. Point 3 of the operative part of the decision rendered by the FIFA Dispute Resolution Chamber on 16 December 2021 is replaced by the following:

"[The Respondent] has to pay to SK Slovan Bratislava the amount of EUR 99,052,62 plus interest at 5% p.a. as from 18 August 2023".

4. The rest of the decision rendered by the FIFA Dispute Resolution Chamber on 16 December 2021 is confirmed.

(...)"

5. No challenge was lodged before the Swiss Federal Tribunal against the CAS award.

6. On 9 October 2023, following the request of the Claimant and as the amount(s) due to the former in accordance with the CAS Award had not been paid, the FIFA Administration informed the parties that *"a ban from playing in official matches up until the due amounts are paid has been implemented by FIFA [on the Respondent] as of today. The overall maximum duration of the restriction shall be of a maximum of six months"*.
7. The restriction from playing in official matches imposed on the Respondent in accordance with the DRC Decision confirmed by the CAS Award, elapsed on 9 April 2023.
8. On 11 April 2024, the Claimant *inter alia* informed the Secretariat to the FIFA Disciplinary Committee (the **Secretariat**) that the Respondent had not paid the amount(s) due in accordance with the CAS Award - which had confirmed (with amendment) the DRC Decision - and therefore requested the initiation of disciplinary proceedings against the Player, with particular consideration being afforded to the fact that the restriction from playing in official matches imposed on the Player had expired.
9. On the same day, the Secretariat proposed the following sanction(s) to the Respondent in accordance with art. 58 FIFA Disciplinary Code (**FDC**) as read in conjunction with Annexe 1 FDC (**the Proposal**):

"1. The Respondent, Mr. Mohammed Rharsalla Kadfi, shall pay to SK Slovan Bratislava [the Claimant] as follows:

- *EUR 99,052.62 plus interest at 5% p.a. as from 18 August 2023.*

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, the present matter will, upon request of the Creditor, be submitted to the FIFA Disciplinary Committee so that a ban on any football-related activity may be imposed on the Respondent.

3. The Respondent shall pay a fine to the amount of CHF 10,000."

10. On 12 April 2024, (i.e. within the 5 days period provided for under Art. 58 FDC), the Respondent requested an extension of the deadline to provide his position.
11. On 16 April 2024, the Secretariat partially granted the Respondent's request, extending the deadline to provide his position until 24 April 2024.
12. On 24 April 2024, the Respondent provided the Secretariat with his position¹.

¹ The position submitted by the Respondent is summarised in the next section.

13. On 25 April 2024, the Secretariat informed the parties that the present matter would be referred to the next meeting of the FIFA Disciplinary Committee on 16 May 2024.

II. RESPONDENT'S POSITION

14. The position submitted by the Respondent can be summarised as follows:

- He has already served a ban imposed by FIFA for his failure to comply with the CAS Award;
- Imposing an additional ban would exceed FIFA's initial decision and violate the Player's personality rights as established by CAS jurisprudence;
- His earnings do not suffice to repay the debt specified in the CAS Award. Additionally, his new contract terms also indicate a significant reduction in salary in the event of another ban;
- A new ban would have a disproportionate impact on his ability to earn money and comply with the CAS award.
- The Respondent has expressed his willingness to repay the debt multiple times, trying to reach various settlement agreements with the Claimant.

III. CONSIDERATIONS OF THE DISCIPLINARY COMMITTEE

15. 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

16. 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.

17. 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.

18. In addition, and 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

19. With respect 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.
20. Having taken into account the foregoing, the Committee proceeded to recall that according to the Respondent, imposing an additional ban would surpass the maximum limit established in FIFA's initial decision and, consequently, affect the Respondent's personally rights.
21. Against this background, the Committee pointed out that the present proceedings had been initiated against the Player upon the request of the Claimant, since the latter had, on 11 April 2024, *inter alia* informed the Secretariat that it had not been paid the amount(s) due to it in accordance with the CAS Award confirming with amendments the DRC Decision. This, despite the restriction from playing in official matches imposed on the Player having been served for its entire duration.
22. In this respect, and whilst keeping in mind the arguments submitted by the Respondent, the Committee deemed it pertinent to refer to the Commentary on the RSTP which, in particular, clarified the following:
- "If a player fails to respect the decision in question, they will be suspended from playing in official matches. Bearing in mind the principle of proportionality, the total maximum duration of the restriction on participation in official matches is six months";*
- "For the sake of good order, if the debtor fails to comply with the monetary decision even after the maximum period for the consequences has elapsed, the creditor can refer the matter to the FIFA Disciplinary Committee to enforce sanctions for failure to comply with a decision."*
23. As such, and with particular consideration being afforded to the fact that the restriction from playing in official matches imposed on the Player pursuant to the confirmed (with amendment) DRC Decision had expired, the Committee was resolute in its determination that the present proceedings undoubtedly fell under art. 21 FDC and were both timely and of a disciplinary nature, given that i) they related to a potential failure to comply with a CAS award (confirming with amendment a FIFA decision) *i.e.* the CAS Award and the DRC Decision in the case at hand, and; ii) at the time of their initiation on 11 April 2024, the relevant restriction imposed against the Player from playing in official matches had elapsed.
24. Having established the above, the Committee next wished to recall the content and scope of the provision(s) at stake, namely that of art. 21 of the FDC.
25. 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;

(...)

f) in the case of natural persons, 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 any football-related activity for a specific period may be imposed. Other disciplinary measures may also be imposed.

26. Moreover, for the sake of good order, it is worth emphasizing 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.
27. Finally, the Committee underlined that, equal to the competence of any enforcement authority, it cannot review or modify the substance of a previous decision, which is final and binding, and thus has become enforceable.
28. 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

29. To begin with, the Committee observed that the present disciplinary proceedings referred to a potential failure by the Respondent to comply with a CAS Award dated 18 August 2023, which resulted from a decision of the FIFA DRC issued on 16 December 2021, by means of which the Respondent was ordered to pay to the Claimant as outlined above.
30. The above having been established, the Committee once again recalled that no challenge was lodged before the Swiss Federal Tribunal against the CAS Award, which therefore became final and binding.
31. In this context, the Committee recalled that it is not allowed to analyse the case decided by CAS or the DRC as to the substance, in other words, to check the correctness of the amounts ordered to be paid, but has as a sole task to analyse if the Respondent complied with the relevant final and binding decision or award.

32. In these circumstances, the Committee observed that the Respondent has acknowledged the debt owed to the Claimant, emphasising that he is willing to pay the amounts due, but has not been able to do so due to his lack of financial means (partially resulting from the sporting sanctions imposed upon him).
33. Taking into account the foregoing, whilst expressing sympathy with regards to the Respondent's financial and personal situation, the Committee pointed out that the former however pertained to the substance of the CAS Award and as such, fell outside the scope of competence of the FIFA Disciplinary Committee, whose sole task is to determine whether the Respondent complied with the final and binding decision of the relevant body².
34. In this respect, the Committee wished to refer to the content of art. 2 of the Swiss Civil Code, according to which "*[e]very person is bound to exercise his rights and fulfil his obligations according to the principle of good faith*". Therefore, the sole fact that Respondent may be undergoing financial problems does not exonerate it from his obligations to pay the outstanding amounts owed to the Claimant, as confirmed by CAS on numerous occasions³.
35. This having been established, the Committee also noted that the Respondent was allegedly willing to enter into a payment plan with the Claimant in order to settle his debt.
36. Against such background, the Committee recalled that the particulars of any potential payments of the amounts due must be determined independently between the parties and that any possible payment plan must be agreed upon directly with the Claimant, *in casu* SK Slovan Bratislava, which at its own discretion may accept or reject the payment plan proposed. In other words, the Claimant is completely free to choose, unencumbered and at its own volition, as to whether it may accept or reject any potential payment plan proposed by the Respondent.
37. Notwithstanding the above, 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 or grant the Respondent any further time to settle his debt.
38. Against this background, the Committee concluded that the Respondent had failed to pay to the Claimant the outstanding amounts due to it in accordance with both the CAS Award and the DRC Decision and was therefore in breach of art. 21 FDC.
39. In view of the foregoing, the Committee concluded that the Respondent, by his conduct as described above, is considered guilty of non-compliance with a financial decision under the terms of art. 21 FDC.

² CAS 2018/A/5779

³ CAS 2018/A/5779; CAS 2016/A/4402; CAS 2014/A/3533; CAS 2005/A/957

II. The determination of the sanction

40. With regard to the applicable sanctions, the Committee observed in the first place that the Respondent is a natural person, and as such was subject to the sanctions described under arts. 6 (1) and 6 (2) FDC.
41. 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); and
 - (ii) will be granted a final deadline of 30 days in which to pay the amount due (lit. b);
 - (iii) (in the case of natural persons 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 any football-related activity for a specific period may be imposed. Other disciplinary measures may also be imposed (lit. f).
42. Consistently with the above, and with respect to the fine to be imposed, the Committee underlined that, in line with art. 6 (4) FDC, it shall range between CHF 100 and CHF 1,000,000.
43. This being established, the Committee emphasized that the Respondent withheld the amounts unlawfully from the Claimant. Even FIFA's attempts to urge the Respondent to fulfil his financial obligations failed to induce him to pay the total amounts due.
44. In view of all the circumstances pertaining to the present case, whilst taking into account (i) the outstanding amounts and (ii) the Respondent's current salary based on the information contained in the Transfer Matching System (**TMS**), the Committee regarded a fine amounting to CHF 500 as appropriate.
45. In addition, the Committee considered that a final deadline of 30 (thirty) days to pay the amounts due to the Claimant was justified and in line with art. 21 (1) (a) FDC.
46. Further, in accordance with art. 21 (1) (f) FDC, the Committee decided that upon expiry of the aforementioned deadline, and in the event of persistent default or failure to comply in full with the CAS Award as read in conjunction with the DRC Decision, the present matter will, upon the request of the Claimant, be resubmitted to the Disciplinary Committee in order to impose a ban on any football-related activity on the Respondent for a period of six (6) months, such sanction being proportionate to the offence committed and taking into account the circumstances of the case at hand.
47. Finally, and for the sake of completeness, the Committee recalled, as established by the pertinent jurisprudence of the CAS⁴, that the aforementioned sanction – *a ban from taking part*

⁴ CAS 2017/A/4947

in any kind of football-related activity for a period of six (6) months – would not affect the Respondent's fundamental right to freely exercise a profession, i.e. his economic freedom. Indeed, the Committee wished to point out that the Respondent would "only" be prevented from taking part in football-related activities for a limited period of time, whilst retaining, in principle, the ability to exercise any other economic activity.

IV. DECISION OF THE DISCIPLINARY COMMITTEE

- 1. Mr. Mohammed Rharsalla Kadfi is found responsible for failing to comply in full with the award issued by the Court of Arbitration for Sport on 18 August 2023 (Ref. CAS 2022/A/8593).**
- 2. Mr. Mohammed Rharsalla Kadfi is ordered to pay to SK Slovan Bratislava futbal a.s. as follows:**
 - EUR 99,052.62 plus interest at 5% p.a. as from 18 August 2023.**
- 3. Mr. Mohammed Rharsalla Kadfi is granted a final deadline of 30 days as from notification of the present decision in which to pay the amount 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, the present matter will, upon request of SK Slovan Bratislava futbal a.s., be resubmitted to the FIFA Disciplinary Committee so that a ban on any football-related activity may be imposed on Mr. Mohammed Rharsalla Kadfi.**
- 4. Mr. Mohammed Rharsalla Kadfi is ordered to pay a fine to the amount of CHF 500.**
- 5. The fine is to be paid within 30 days of notification of the present decision.**

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



Thi My Dung NGUYEN (Vietnam)

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, Mr. Mohammed Rharsalla Kadf, is directed to notify the Secretariat to the FIFA Disciplinary Committee of every payment made and to provide the relevant proof of payment.

The Creditor, SK Slovan Bratislava futbal a.s., is directed to notify the Secretariat to the FIFA Disciplinary Committee of every payment received.

NOTE RELATING TO THE BAN ON ANY FOOTBALL-RELATED ACTIVITY:

The ban covers the participation, in any capacity, in a competition or activity authorised or organised by FIFA or any association, club or other member organisation of an association, or in competitions authorised or organised by any professional league or any international or national-level competition organisation or any elite or national-level sporting activity funded by a governmental agency.

The ban may be lifted upon full payment of the amount(s) due.

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