

Decision
of the
**Deputy Chairman of the FIFA Disciplinary
Committee**

Mr Alejandro Piera [PAR]

on 15 October 2019,

to discuss the case of:

Club Andijon Futbol Sport PFK, Uzbekistan

(Decision 171380 PST)

regarding:

failure to comply with

art. 15 of the FDC (2019 ed.) / art. 64 FDC of the FDC (2017 ed.)

I. inferred from the file

1. On 10 May 2017, the Dispute Resolution Chamber (DRC) judge decided that Andijon Professional Futbol Klubi (official name: Andijan professional football club LLC) (hereinafter also referred to as *the original Debtor*) had to pay to the player Predrag Vujovic (hereinafter also referred to as *the Creditor*) UZS 120,000,000 plus 5% interest *p.a.* until the date of effective payment to be calculated in accordance with the abovementioned decision. Furthermore, a fine of CHF 5,000, payable to FIFA, was imposed on the club Andijon Professional Futbol Klubi.
2. The grounds of the decision of the DRC judge were duly communicated on 17 May 2017 directly to the Creditor and, via the Uzbekistan Football Federation, to the original Debtor.
3. As the aforementioned amount was not paid to the Creditor, the secretariat to the FIFA Disciplinary Committee (hereinafter also referred to as *the Secretariat*) opened disciplinary proceedings against the original Debtor on 2 February 2018.
4. On 12 February 2018, the club Andijon Futbol Sport PFK (hereinafter also referred to as *the new Club*) informed the Secretariat that the club Andijon Professional Futbol Klubi was declared bankrupt according to a decision passed by the Economic Court of Andijan Region and provided a translation of the decision dated 1 May 2017 where the bankruptcy proceedings were opened as well as the decision dated 18 August 2017 where the original Debtor was declared bankrupt.
5. On 22 August 2018, the Secretariat requested the Uzbekistan Football Federation to confirm whether the original Debtor was still affiliated.
6. On 25 August 2018, the Uzbekistan Football Federation confirmed to the Secretariat that the club Andijon Professional Futbol Klubi was declared bankrupt in August 2017 and consequently disaffiliated. At the same time, the Uzbekistan Football Federation informed that a new club called "Andijon Futbol Sport PFK" was registered since the season 2016.
7. On 14 November 2019, the Secretariat requested the Uzbekistan Football Federation to provide its position regarding the potential connection between the new Club and the original Debtor.
8. On 21 November 2018, the Uzbekistan Football Federation informed the Secretariat that the new Club, Andijon Futbol Sport PFK, had not taken over any rights and obligations from the original Debtor, however, that due to the

same regional geographic location it uses a similar name. Furthermore, it uses the same colours and stadium and the *“history, sporting achievements and trophies ever obtained in past, until the date of the new club foundation are recorded to the name of the previous club”*. The squad is composed of 23 new players and 2 from the previous club squad.

9. On 22 March 2019, the Secretariat informed the parties that it was not in a position to deal with cases involving clubs that had been declared bankrupt and were no longer affiliated to their association. As a consequence, the disciplinary proceedings against the original Debtor were declared closed.
10. On 14 May 2019, the legal representative of the Creditor insisted on the Secretariat that a new Club called “Andijon Futbol Sport PFK” had been affiliated to the Uzbekistan Football Association since 2016 and that the case should not have been closed. He claimed that the decision passed by the Dispute Resolution Chamber judge on 10 May 2017 should have already been passed against the new Club as it is the sporting successor of the original Debtor, the disaffiliated Andijon Professional Futbol Klubi, or even the same club. Furthermore, the Creditor informed the Secretariat that:
 - the new Club was participating in the Uzbekistan first division;
 - the new Club used an almost identical name as the disaffiliated club (PFK stands for Professional Futbol Klubi);
 - Both played at the same stadium;
 - Both referred to the same founding year in the logo;
 - Both shared the same history;
 - Both used the same colours and a similar kit;
 - In the team of 2016 there were 12 players from the team of 2015.
11. On 20 May 2019, the Secretariat requested the Uzbekistan Football Federation to provide its comments regarding the allegations brought up by the Creditor and in particular, to provide its position regarding the potential connection between the new Club and the original Debtor.
12. No answer was provided by the Uzbekistan Football Federation.
13. On 5 September 2019, the Secretariat forwarded all the correspondences from the Creditor and from the Uzbekistan Football Federation to the new Club, thereby opening disciplinary proceedings against the latter for a potential failure to respect a decision passed by a body, a committee or an instance of FIFA or a CAS decision. In addition, the new Club was informed that the case would be submitted to the FIFA Disciplinary Committee for evaluation on 19 September 2019 and was invited to provide its position regarding the allegations made by the Creditor.

14. On 1 October 2019, the Secretariat, upon request of the Deputy Chairman of the Disciplinary Committee, invited the parties to provide further information related to the bankruptcy of the original Debtor, in particular, the list of creditors. Additionally, the parties were informed that the case would be submitted again to a member of the FIFA Disciplinary Committee on 14 October 2019.
15. On 7 October 2019, the legal representative of the Creditor informed the Secretariat that it did not possess the list of creditors and that until 5 September 2019 not a single document had been provided to the Creditor regarding the bankruptcy of the original Debtor. The Creditor is not in possession of the list of creditors and believes that this is irrelevant in order to decide whether the "sporting succession" exists, especially as the new Club is not undergoing any bankruptcy proceedings.
16. On the same day, the new Club provided a decision dated 1 May 2017 where the bankruptcy proceedings were opened against the old entity and a decision dated 18 August 2017 where the original Debtor was declared bankrupt.

II. and considered

1. In the case at hand, in view of the arguments raised by the parties, the Deputy Chairman of the FIFA Disciplinary Committee (hereinafter also referred to as *Deputy Chairman of the Committee*) decides to first assess as to whether he is competent to decide on the present matter, and should it be the case, as to whether Andijon Futbol Sport PFK could be held liable for a potential failure to respect the decision passed by the Dispute Resolution Chamber (DRC) judge on 10 May 2017.

A) Applicable law

2. First of all, the Deputy Chairman of the FIFA Disciplinary Committee would like to analyse which version of the FIFA Disciplinary Code (FDC) applies.
3. In this sense, the Deputy Chairman of the Committee underlines that the 2019 edition of the FDC (hereinafter: *the 2019 FDC*) entered into force on 15 July 2019 (art. 72 par. 1 of the 2019 FDC) and applies to all disciplinary offenses committed following said date (art. 4 par. 1 of the 2019 FDC).

4. With regard to the matter at hand, the Deputy Chairman of the Committee highlights that the disciplinary offense, *i.e.* the potential failure to comply with the DRC decision, was committed before the 2019 FDC entered into force. As a result, the Deputy Chairman of the Committee deemed that the merits of the present case fall under the 2017 edition of the FDC (hereinafter: *the 2017 FDC*).
5. Notwithstanding the above, the Deputy Chairman of the Committee held that the procedural aspects of the present matter are governed by the 2019 FDC.

B) Jurisdiction of the FIFA Disciplinary Committee to decide on the present matter

6. In view of the circumstances of the case, the Deputy Chairman of the Committee will now analyse as to whether he is competent to assess if the new Club is the successor of the original Debtor.
7. For the sake of good order, it is worth emphasising that, in line with art. 54 par. 1 lit h) of the 2019 FDC, cases involving matters under art. 15 of the 2019 FDC (former art. 64 of the 2017 FDC) may be decided by one member of the Disciplinary Committee alone, *i.e.* the Deputy Chairman of the Committee in the case at hand.
8. In this context, the Deputy Chairman of the Committee first emphasises that it is uncontested that the original Debtor, Andijon Professional Futbol Klubi, subject of the initial decision of the DRC, had been disaffiliated from the Uzbekistan Football Association.
9. In these circumstances, the Deputy Chairman of the Committee wishes to recall that, according to art. 53 par. 2 of the FIFA Statutes, the Disciplinary Committee (hereinafter also referred to as *the Committee*) may pronounce the sanctions described in the Statutes and the FDC on member associations, clubs, officials, players, intermediaries and licensed match agents.
10. 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.

11. The aforementioned principle is embedded in art. 14 par. 1 lit d) of the 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. 60 par. 2 of the FIFA Statutes that 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 is only possible to the extent that the so-called *“members”* are still affiliated to the member associations of FIFA.
12. Since the Uzbekistan Football Association has confirmed that the original Debtor, Andijon Professional Futbol Klubi, is no longer affiliated to the Uzbekistan Football Association, it has lost its indirect membership to FIFA and therefore, the Disciplinary Committee could not impose sanctions against Andijon Professional Futbol Klubi. However, the Deputy Chairman of the Committee notes that the Creditor subsequently requested the enforcement of the DRC decision against Andijon Futbol Sport PFK, which, in its view, is considered to be the successor and/or the same entity as the disaffiliated club, Andijon Professional Futbol Klubi.
13. In this regard, and in line with the jurisprudence of the Court of Arbitration for Sport, the Deputy Chairman of the Committee considers that he is not prevented from reviewing and/or making a legal assessment and deciding if the new Club, Andijon Futbol Sport PFK, is the same as – and/or the successor of – the original Debtor, Andijon Professional Futbol Klubi¹, especially considering that the former is still duly affiliated to the Uzbekistan Football Association, and as such, under the jurisdiction of the Committee.
14. As such, the Deputy Chairman of the Committee deems that he is competent to assess the matter and therefore to pass a formal decision of a substantive nature on the Creditor’s request concerning the liability of the new Club, Andijon Futbol Sport PFK, towards the debts of the original Debtor in the frame of art. 64 of the 2017 FDC.

¹ CAS 2018/A/5647 Civard Sprockel v. FIFA & PFC CSKA Sofia, para. 135

C) The liability and responsibility of Andijon Futbol Sport PFK

a) Whether Andijon Futbol Sport PFK is liable for the debts incurred by Andijon Professional Futbol Klubi

15. After having established that the Deputy Chairman of the Committee is competent to assess the present matter, he moves on to analyse whether the new Club, Andijon Futbol Sport PFK, is the sporting successor of the original Debtor, Andijon Professional Futbol Klubi, and therefore, can be held liable for the debts of the latter.
16. In this sense, the Deputy Chairman of the Committee found it worthwhile to recall the existing jurisprudence from CAS on this particular topic.
17. To that end, the Deputy Chairman of the Committee would first like to refer to the decisions that had dealt with the question of the succession of a sporting club in front of the CAS² and in front of FIFA's decision-making bodies³ which have established that, on the one side, a club is a sporting entity identifiable by itself that, as a general rule, transcends the legal entities which operate it. Thus, the obligations acquired by any of the entities in charge of its administration in relation with its activity must be respected. On the other side, it has been ruled 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. that allow it to distinguish from all the other clubs. Hence, the prevalence of the continuity and permanence in time of the sporting institution in front of the entity that manages it has been recognized, even when dealing with the change of management completely different from themselves⁴.
18. In these circumstances, CAS already considered that a "new" club had to be considered as the "sporting successor" of another one in a situation where a) the "new" club created the impression that it wanted to be legally bound by obligations of its predecessor, *i.e.* the "old" club, b) the "new" club took over the license or federative rights from the "old" club and c) the competent federation treated the two clubs as successors of one another⁵. By the same

² CAS 2007/A/1355; TAS 2011/A/2614 and TAS 2011/A/2646; TAS 2012/A2778

³ FIFA DRC 12150569

⁴ CAS 2013/A/3425

⁵ CAS 2007/A/1322 FC Politehnica Timisoara SA v. FIFA & RFF & Politehnica Stintia 1921 Timisoara Invest SA

token a “sporting succession” is the result of the fact that 1) a new entity was set up with the specific purpose of continuing the exact same activities as the old entity, 2) the “new” club accepted certain liabilities of the “old” club, 3) after the acquisition of the assets of the “old” club, the “new” club remained in the same city and 4) the “new” club took over the license or federative rights from the “old” club⁶.

19. Further, the issue of the succession of two sporting clubs might be different than if one were to apply civil law, regarding the succession of two separate legal entities. Consequently, elements to consider are amongst others the name, the logo and colours, the registration address and/or the managing board of the club⁷.

20. For the sake of completeness, the Deputy Chairman of the Committee wishes to point out that this established jurisprudence from CAS has now been reflected in the 2019 FDC, under art. 15 par. 4 which states that *“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”*.

21. With the above in mind, the Deputy Chairman of the Committee subsequently analyses the documentation at his disposal in the light of the criteria set by the relevant jurisprudence of CAS (now reflected in art. 15 par. 4 of the 2019 FDC) and applied by the Committee in such situations.

22. In this sense, the Deputy Chairman of the Committee first notes that in its position provided on 12 February 2018 the new Club claimed that the two clubs had nothing in common.

23. Having said that, the Deputy Chairman of the Committee observes from the documents provided by the Creditor and by the Uzbekistan Football Association that:

- The names are almost identical;
- Both clubs share the same colours;
- Both club played at the same stadium;

⁶ CAS 2011/A/2646 Club Rangers de Talca v. FIFA

⁷ CAS 2016/A/4576 Ujpest 1885 v. FIFA, para. 134 – 139.

- Both clubs have identical history and sporting achievements;
- Both clubs use the same founding year;
- Some of the current players also played for the original Debtor.

24. Finally, the Deputy Chairman of the Committee underlines that none of the above information was contested by the new Club.

25. In light of all the above, and in line with the jurisprudence of CAS as reflected in art. 15 par. 4 of the 2019 FDC, the Deputy Chairman of the Committee recalls that the identity of a club is constituted by elements such as its name, colours, logo, fans, history, players, stadium, etc., regardless of the legal entity operating it. As a result, on the basis of the information and documentation at hand, there is no other alternative but to conclude that the new Club, Andijon Futbol Sport PFK, is the sporting successor of the original Debtor, Andijon Professional Futbol Klubi.

26. In this regard, the Deputy Chairman of the Committee notes that neither the original Debtor nor the new Club have complied with the decision passed by the Dispute Resolution Chamber judge on 10 May 2017 as neither club has paid the outstanding amounts to the Creditor.

27. As such, following the jurisprudence of the FIFA Disciplinary Committee, the Deputy Chairman of the Committee concludes that, in principle, the sporting successor, *i.e.* the new Club, of a non-compliant party, *i.e.* the original Debtor, shall also be considered a non-compliant party and is thus subject to the obligations under art. 64 of the 2011 FDC.

b) Whether Andijon Futbol Sport PFK was responsible to pay the amounts imposed by the DRC

28. First and foremost, the Deputy Chairman of the Committee recalls that the original Debtor went bankrupt. In this context, it appears relevant for the legal assessment of this case, to analyse the diligence of the Creditor in recovering his debt in order to assess as to whether a sanction can be imposed on the new Club, *i.e.* whether the player also contributed to create the breach of art. 64 of the 2017 FDC as it could be that his credit would have been paid in the bankruptcy proceedings and therefore no sanction may be imposed⁸.

29. That having been established, the Deputy Chairman of the Committee subsequently observes from the correspondence dated 7 October 2019 from the Creditor's legal representative that the Creditor did not register his claim

⁸ 2011/A/2646 Club Rangers de Talca v. FIFA

during the bankruptcy proceedings as he was allegedly only informed of the bankruptcy proceedings against the original Debtor on 25 August 2018.

30. In this sense, the Deputy Chairman of the Committee would like to highlight that it is the Creditor's responsibility to be diligent in recovering his debt. The alleged fact that the Creditor was not aware of the bankruptcy proceedings does not exonerate him from his obligation to be diligent and to proactively try to collect his debt.
31. Bearing the above in mind, and taking into consideration that the Creditor did not register his claim during the bankruptcy proceedings (nor even tried to join said proceedings), it appears that the Creditor decided not to participate in the bankruptcy proceedings – or at least remained passive –, therefore waiving his right to collect his debt within the frame of the bankruptcy proceedings.
32. As a result, the Deputy Chairman of the Committee concludes that the Creditor failed to perform the expected due diligence that the circumstances demanded, and hence, contributed to the non-compliance of the decision passed by the Dispute Resolution Chamber judge on 10 May 2017 (by the original Debtor and subsequently by the new Club).
33. Therefore, although the new Club, Andijon Futbol Sport PFK, is to be considered the sporting successor of the original Debtor, Andijon Professional Futbol Klubi, the Deputy Chairman of the Committee resolves that no disciplinary sanctions shall be imposed on the new Club and all charges against the latter shall be dismissed, as a result of the lack of diligence of the Creditor in collecting his debt in the insolvency proceedings.

III. has therefore decided

1. All charges against the club Andijon Futbol Sport PFK are dismissed.
2. The disciplinary proceedings initiated against the club Andijon Futbol Sport PFK are hereby declared closed.

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



Alejandro Piera
Deputy Chairman of the FIFA Disciplinary Committee

LEGAL ACTION

According to article 49 together with article 57 par. 1e) of the FDC and article 58 par. 1 of the FIFA Statutes, 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.

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