

Disciplinary Committee

FIFA[®]

Date: 25 May 2022

Sent to:
Chinese Football Association
c/o Ms. Guo Cai
info@thecfa.cn;
guo.cai@jinmao.com.cn

Cc:
Mr. Eric Garcin
c/o Mr. Charles Bringand &
Mr. Olivier Martin
c.bringand@martin-avocats.fr;
o.martin@martin-avocats.fr

Notification of the grounds of the Decision

Ref FDD-10563

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 07 April 2022.

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

FIFA-Strasse 20 P.O. Box 8044 Zurich Switzerland
Tel: +41 43/222 7777 - Email: disciplinary@fifa.org

Decision of the FIFA Disciplinary Committee

passed on 07 April 2022

DECISION BY:

José Ernesto MEJIA PORTILLO (Honduras), Member

ON THE CASE OF:

Chinese Football Association

(Decision FDD-10563)

REGARDING:

FIFA Disciplinary Code, art. 15 (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 April 2018, Mr. Eric Garcin (**the Claimant**) lodged a claim before FIFA against the Chinese Football Association (**the Respondent** or **the CFA**) for breach of contract without just cause, requesting *inter alia* to be awarded compensation in connection with the foregoing.
3. On 27 March 2020, the Single Judge of the Players' Status Committee decided as follows:
 - "1. The claim of the Claimant, Eric Garcin, is admissible.*
 - 2. The claim of the Claimant is partially accepted.*
 - 3. The Respondent, the Chinese Football Association, has to pay to the Claimant, within 30 days as from the date of notification of the present decision, compensation for breach of contract in the amount of USD 491,655.*
 - 4. In the event that the aforementioned sum plus interest is not paid by the Respondent within the stated time limits, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.*
 - 5. Any further claim lodged by the Claimant, is rejected.*

(...)"
4. The terms of the decision of the Single Judge of the Players' Status Committee (**Single Judge of FIFA PSC**) were duly communicated to the parties on 30 March 2020, whilst the grounds of said decision were notified on 29 May 2020 (**the FIFA Decision**).
5. Following the notification of the grounds of the FIFA Decision, the Respondent lodged an appeal before the Court of Arbitration for Sport (**CAS**), which issued an Award on 26 May 2021 (**the CAS Award**).
6. In this context, the Sole Arbitrator dismissed the appeal filed by the Respondent and confirmed the FIFA Decision. Furthermore, the Sole Arbitrator ordered the Respondent to paid to the Claimant the amount of CHF 6,000 as contribution towards the legal fees and other expenses incurred by the latter in connection with the arbitration proceedings.
7. Following the notification of the aforementioned Award, the Respondent appealed to the Swiss Federal Tribunal (**SFT**) requesting *inter alia* that the CAS Award be set aside and that the competence of the Single Judge of FIFA PSC and CAS to have adjudicated the matter in dispute be denied.

8. On 13 January 2022, SFT issued a decision whereby the appeal lodged by the Respondent was dismissed (**the SFT Decision**).
9. On 02 March 2022, as the outstanding amounts due to the Claimant by the Respondent were not paid, the former requested the initiation of disciplinary proceedings against the Respondent and for sanctions to be imposed.
10. On 16 March 2022, in light of the foregoing, and as the aforementioned amounts were not paid to the Claimant, the Secretariat to the FIFA Disciplinary Committee (**the Secretariat**) opened disciplinary proceedings against the Respondent. In this regard, the Respondent was informed that the case would be referred to the next meeting of the FIFA Disciplinary Committee on 07 April 2022, and was invited to provide its position within six days of the notification of the opening of the disciplinary proceedings.
11. On 22 March 2022, following the opening of the disciplinary proceedings, the Respondent provided its position¹.
12. On 23 March 2022, as a follow-up to its communication of 22 March 2022, the Respondent sent a further correspondence to the Secretariat which can be summarized as follows:
 - If a sanction is pronounced mechanically in the present case without looking into the issues as well as the conflict of interest raised by the Respondent within its position², there will be no effective remedy to redress the losses and harms suffered by the Respondent – this being so even if the CFA does prevail later at the European Court of Human Rights (**ECHR**).
 - Based on the Respondent’s assessment of the ECHR jurisprudence and the circumstances of the present case, the Respondent is confident that it would make a strong claim before the ECHR.
 - The Respondent reiterated its willingness to reach an amicable settlement with the Claimant, and stipulated that throughout the various proceedings, it has never stopped its efforts to reach an amicable solution.
 - The Respondent therefore requested that its good will is taken into account by the Disciplinary Committee, as well as “*the critical issues*” raised within its position, in order to reach a just and fair solution in the present case.
13. On 25 March 2022, the Respondent clarified *inter alia* that within its aforementioned correspondence, it meant to refer to art. 13 of the European Convention of Human Rights (**the Convention**) as opposed to art. 3 of the Convention, concerning the “*‘Right to an Effective Remedy’, because [of] the loophole currently existing in the football dispute resolution mechanism as [brought in its position] to the attention of FIFA bodies*”.
14. On 29 March 2022, the Claimant requested the Secretariat to keep it informed of the outcome of the present disciplinary proceedings, referencing *inter alia* the Respondent’s alleged failure to proceed

¹ Please see section II. for the position of the Respondent in full.

² Please see section II. for the position of the Respondent in full.

with (*free English translation*) “the execution of the [CAS Award]” and CFA’s “clearly (...) dilatory and contemptuous approach towards [the Claimant] (...)”.

15. On 30 March 2022, the Respondent, in response to the Claimant’s earlier communication, provided its further comments, which can be summarized as follows:

- The Claimant, in the proceedings before the Single Judge of FIFA PSC and CAS “*in similar aggressive and defamatory [wording]*” accused the Chinese government and its judiciary (China’s court system) of not being independent and thus “*allegedly not able to provide sufficient protection for foreigners working in China*”.
- Although the Respondent was deeply offended by such unprofessional and defamatory remarks as contained in the legal representative of the Claimant’s formal submissions to FIFA and CAS, it did not previously respond to the political, defamatory remarks, nor did it draw FIFA or CAS’s attention to the foregoing as at that time it “*considered itself a participant in the legal proceeding and prepared to defend its legitimate interest by the means of law*”.
- Given the “*loophole in the legal mechanism*” as highlighted within its position in the present disciplinary proceedings, the Respondent considered that it now had no choice but to draw attention to the “*unprofessional, degrading, and impermissible political acts by the opposing side throughout the proceedings, including the current one*” – which the Respondent considered to be in breach of the FIFA Statutes and art. 22 of the FIFA Code of Ethics.
- The Respondent stated that it was preparing a formal complaint to the FIFA Ethics Committee in this regard.
- Further, the Respondent requested the FIFA Disciplinary Committee to take into account the behavior of the Claimant, and stipulated that the CFA’s attempts to reach an amicable solution with the Claimant *via* its legal representative have only been met with mocking and aggressive responses.
- The Respondent stated that it was therefore in the process of reaching out to the Claimant personally “*rather than through [its] unprofessional counsel*” for “*settlement in good faith*” and requested to be granted some “*time and space for doing so*”.

16. On 06 April 2022, the Respondent provided the Secretariat with a copy of its communication to the FIFA Ethics Committee, likewise dated 06 April 2022, and requested the FIFA Disciplinary Committee to take into account the issues therein raised. In continuation, the Respondent *inter alia* once more expressed its openness to the possibility “*to settle with the [Claimant] via a personal channel*” and stated that it was “*in the process of reaching out directly to [the Claimant]*” via a ‘personal friend’ of the Claimant in China.

17. On 07 April 2022, the Respondent provided the Secretariat with further information and/or documentation, in particular, four further Annexes, which it requested to be included as supplemental annexes to its position provided in the present case. In this respect the aforementioned annexes concerned the following:

- i) Settlement attempts with the Claimant on the day the CAS Award was rendered;
- ii) The meeting minutes of a settlement discussion with the legal representative of the Claimant on 24 November 2017, which was allegedly disrupted by the former's "*aggressive manner*";
- iii) Alleged political arguments made by the legal representative of the Claimant to FIFA "*accusing Chinese judiciary*";
- iv) Alleged political arguments made by the legal representative of the Claimant to CAS "*attacking Chinese system and Chinese judiciary*".

18. In this regard, the Respondent *inter alia* expressed its hope that the above-mentioned would provide the Disciplinary Committee with "*more perspectives to understand the full context*" of the case at hand.

II. RESPONDENT'S POSITION

19. On 22 March 2022, the Respondent provided its position which can be summarised as follows:

- The Respondent believed that it has suffered a severe injustice because the Single Judge of FIFA PSC wrongly assumed its competence, an issue which CAS then failed to cure.
- As SFT refused to review the issue of competence in the FIFA Decision, the Respondent was further deprived of its right to have SFT hear the issue of jurisdiction.
- Had FIFA and CAS respected the choice of national court by the parties, as recorded in the "Coach Service Contract", FIFA and CAS would never have ruled on the merits of the employment dispute and the Respondent would never have been subject to the present disciplinary proceedings.
- The "Coaching Service Contract" clearly reflected the parties' consensus to refer any arising disputes to a national court, with no intent being expressed in such contract to waive state jurisdiction.
- The Sole Arbitrator, when reaching a conclusion in favour of FIFA's competence, only mentioned the principle of the exclusion of state jurisdiction but omitted reference to the relevant reservation contained in the pertinent Chinese Football Association and FIFA Statutes.
- Further, had the Sole Arbitrator correctly applied art. 22 of the FIFA Regulations on the Status and Transfer of Players (**RSTP**), in addition to the relevant principles of the Chinese Football Association and FIFA Statutes, a conclusion would have been drawn that FIFA (and consequently CAS) would never have had jurisdiction to decide on the merits of the employment dispute at the basis of the present proceedings. In other word, the employment dispute between the Claimant and the Respondent should have been submitted to the Chinese national court in the first place.
- As SFT did not analyse the issue concerning the lack of competence of the Single Judge of FIFA PSC, a fundamental loophole has been created which leaves the Respondent, whom is wrongfully dragged into the FIFA-CAS dispute resolution mechanism, without meaningful judicial redress to cure such wrong despite any constant protest towards FIFA's competence at all levels of adjudication.

- The Sole Arbitrator who issued the CAS Award, namely Mr. Frans de Weger, was appointed as the Chair of the Dispute Resolution Chamber (**DRC**) officially in September 2021, however the reorganisation of the DRC as part of the newly created Football Tribunal was announced on 21 May 2021, five days before the rendering of the CAS Award on 26 May 2021.
- Mr. Frans de Weger's affiliation history with FIFA and the potential impact on the CAS Award in favour of FIFA's competence presents legitimate concerns. Mr. Frans de Weger's pursuit/consideration for the position of the FIFA DRC giving rise to a concerning conflict of interest with his role as the Sole Arbitrator whom decided on FIFA's competence in the present case.
- The doubts as to Mr. de Weger's propensity to rule in favour of maintaining the FIFA Decisions is reinforced by the illogical way in which he reasoned to conclude that the Single Judge of FIFA PSC correctly assumed competence as i) he blatantly disregarded the relevant clause in the "Coaching Service Contract" recording the parties' choice of national court, ii) he incorrectly applied the principles of the FIFA RSTP and iii) he incorrectly applied the doctrine of *lis pendens*.
- The Respondent therefore *inter alia* requested the "*unequivocal clarification regarding the timing and circumstances surrounding Mr. de Weger's nomination and eventual confirmation for his FIFA position, so as to ensure CFA's right to fair trial and due process fully respected while the case was heard*" and Mr. Weger's clarification as to "*his interpretation of the RSTP [and the principle of *lis pendens*] and state whether his approach in this CAS Award represents his position regarding FIFA's relation with national court pursuant to the RSTP principles*".
- Furthermore, Mr. de Weger's law firm runs a 'DRC database' for a fee, which presents confusion to the public as to the relationship of Mr. de Weger's firm (BMDW Advocaten) and the FIFA DRC.
- Given that in a dispute like the present one, where the Respondent has been left with no judicial means to correct (once wrongly assumed) FIFA's competence subsequently confirmed by CAS, the Respondent was contemplating proposing some of the key issues and concerns raised in its position to be included in the agenda for an open, transparent discussion for the next FIFA Congress.
- In sum, the Respondent requested the FIFA Disciplinary Committee to refrain from reaching any formalistic conclusion or pronouncing any solution on the Respondent prior to the clarification or proper solution to the following issues :
 - Whether the Sole Arbitrator in the pertinent CAS proceeding, i.e., Mr. Frans de Weger, had any involvement in the pursuit or being considered for his FIFA DRC position while CFA's case was being heard by him, and the potential impact, if any, on his decision making in the CAS Award concerned;
 - as the current Chair of FIFA DRC, Mr. de Weger's interpretation of and/or approach to the FIFA RSTP would directly impact on the just and efficient implementation of key FIFA principles fundamental to the healthy and sustainable operation of football's regulatory system. Thus, in the interest of the football community as a whole, the Respondent considered a clarification of Mr. de Weger's position on the interpretation of the RSTP and the principle of *lis pendens* in the present case was more than necessary and of public interest.

- In accordance with art. 48 FDC, the Respondent requested the Disciplinary Committee to pronounce a provisional measure and to suspend the current disciplinary proceedings until the issues raised above are clarified.
 - The Respondent relayed its openness to reaching a settlement with the Claimant and asked the Disciplinary Committee to refrain from implementing any sanction without affording the Respondent adequate opportunity to communicate such issues and voice its concerns for redress.
20. The Committee once again reiterated that it had considered all the facts, allegations, legal arguments and evidence provided by the Respondent, and in the present decision, had only referred to those observations and evidence for which it considered necessary to explain its reasoning.

III. CONSIDERATIONS OF THE DISCIPLINARY COMMITTEE

21. 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

22. 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 (FDC).
23. Notwithstanding the above and for the sake of good order, the Committee found it worthwhile to emphasize that, on the basis of arts. 53 and 54 FDC, it was competent to evaluate the present case and to impose sanctions in case of corresponding violations.
24. In addition, and on the basis of art. 53 (2) of the FIFA Statutes, the Committee may pronounce the sanctions described in the Statutes and the FDC on member associations, clubs, officials, players, intermediaries and licensed match agents.

B. Applicable legal framework

25. With regard to the matter at hand, the Committee pointed out that the disciplinary offense, *i.e.* the potential failure to comply with the CAS Award, was committed after the 2019 FDC entered into force. As a result, it deemed that the merits as well as the procedural aspects of the present case should fall under the 2019 edition of the FDC.
26. Having established the above, the Committee wished to recall the content and scope of art. 15 FDC in order to duly assess the case at hand.
27. 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 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, or an instance of FIFA, or by CAS:*
 - a) *will be fined for failing to comply with a decision; in addition:*
 - 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;*

(...)
 - c) *in the case of associations, 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, additional disciplinary measures may be imposed;*

(...)
3. *If the sanctioned person disregards the final time limit, FIFA and/or the relevant association shall implement the sanctions threatened.*
28. Moreover, for the sake of good order, it is worth emphasizing that in line with art. 54 (1) (h) FDC, cases involving matters under art. 15 of the aforementioned code may be decided by one member of the Disciplinary Committee alone, as in the present case.
29. Finally, the Committee emphasized that, equal to the competence of any enforcement authority, it cannot review or modify as to the substance a previous decision or award, which is final and binding, and thus has become enforceable.
30. Its jurisdiction being established and the legal framework determined, the Committee subsequently turned its attention to the CAS Award dated 26 May 2021.

C. Merits of the dispute

I. Analysis of the facts in light of art. 15 FDC

31. 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 26 May 2021, which resulted from a decision of a Single Judge of FIFA PSC issued on 27 March 2020, by means of which the Respondent was ordered to pay to the Claimant as outlined above.
32. Moreover, the Committee noted that the CAS Award at hand had been appealed against to SFT, which, however, issued a decision on 13 January 2022 dismissing the said appeal. Accordingly, the Committee held that the CAS Award was now final and therefore had to be respected by all parties bound by it.

33. In this context and on reading the Respondent's position, the Committee noted that the Respondent sought at length to challenge the competence of the Single Judge of FIFA PSC who had rendered the FIFA Decision and raised a number of objections and allegations against the Sole Arbitrator who then issued the award at hand given that the Respondent had challenged the FIFA Decision before CAS.
34. However, the Committee found that the above statements and other allegations made by the Respondent clearly fell outside the scope of the present disciplinary proceedings. Indeed, the Committee noted that the CAS Award was binding on the parties and thus enforceable following the SFT's decision to dismiss the appeal of the Respondent.
35. Therefore, as already outlined, it is settled jurisprudence that with regard to art. 15 FDC, the Committee is not allowed to analyse a FIFA decision or CAS award that had become final and binding, but has as sole task to analyse whether the Respondent complied with the relevant final and binding decision or award³.
36. This meant that in the present case, the Committee could not review the CAS Award – nor the FIFA Decision issued on 27 March 2020 – as to the substance, i.e. to verify the competence of the Single Judge of FIFA PSC, the correctness of the amounts ordered to be paid or any contention with respect to the Sole Arbitrator, but had the sole task of analysing whether the Respondent complied with the CAS Award issued on 26 May 2021. Put differently, the Committee was limited to verifying whether the Respondent has paid the amounts due to the Claimant in accordance with the CAS Award.
37. In view of the foregoing, the Committee concluded that there was no evidence on file that the Respondent settled its debt to the Claimant pursuant to the CAS Award. The only element put forward by the Respondent with regard to its debt was its intention to propose and conclude an amicable settlement agreement with the Claimant.
38. Against such background, the Committee deemed it useful to recall that the particulars of any potential payments of the amounts due must be determined independently between the parties and that any possible payment plan and/or settlement agreement has to be agreed upon directly with the Claimant, *in casu* the coach Eric Garcin, which at his own discretion may accept or reject the settlement and/or payment plan proposed. In other words, the Claimant is completely free to choose, unencumbered and at his own volition, as to whether he may accept or reject any potential settlement and/or payment plan proposed by the Respondent.
39. Having demonstrated the aforementioned, the Committee observed that subsequent to the opening of the disciplinary proceedings against the Respondent, the latter did not provide any proof of payment or that a settlement agreement had been reached. Similarly, the Claimant did not confirm that the debt had been duly settled by the Respondent.
40. In view of the above, the Committee concluded that the Respondent had failed to pay the outstanding amounts due to the Claimant in accordance with the CAS Award dated 26 May 2021 and was therefore in breach of art. 15 FDC.

³ CAS 2016/A/4595 ; CAS 2013/A/3323.

41. As a result of the foregoing, the Committee considered that the Respondent, by its conduct as described above, infringed art. 15 FDC and had to be sanctioned accordingly.

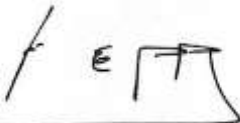
II. The determination of the sanction

42. 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 art. 6 (1) and (3) FDC.
43. In these circumstances, the Committee underlined that the fine to be imposed under the above-referenced art. 15 (1) (a) FDC in combination with art. 6 (4) FDC shall range between CHF 100 and CHF 1,000,000
44. This being established, it is emphasized that the Respondent withheld the amounts unlawfully 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.
45. In view of all the circumstances pertaining to the present case and by taking into account the outstanding amounts, the Committee regarded a fine amounting to CHF 20,000 as appropriate. This amount complies with the Committee's established practice, namely to the fines imposed in cases in which similar amounts were due. In addition, the Committee decided to exceptionally grant the Respondent 60 days to settle its debt to the Claimant.
46. Finally, in accordance with art. 15 (1) (d) FDC, the Respondent is hereby warned and notified that, in the case of default within the period stipulated, and upon the request of the Claimant, the case will be resubmitted to the Disciplinary Committee in order to impose harsher sanctions on the Respondent. These sanctions may lead, *inter alia*, to an expulsion from FIFA competitions.

IV. DECISION OF THE DISCIPLINARY COMMITTEE

- 1. The Chinese Football Association is found responsible for failing to comply in full with the award issued by the Court of Arbitration for Sport on 26 May 2021 (Ref. CAS 2020/A/7203).**
- 2. The Chinese Football Association is ordered to pay to Mr. Eric Garcin as follows:**
 - USD 491,655 as compensation for breach of contract plus interest in accordance with the Award.**
 - CHF 6,000 as a contribution towards the legal fees and other expenses incurred in connection with the arbitration proceedings.**
- 3. The Chinese Football Association is granted a final deadline of 60 days as from notification of the present decision in which to settle said amounts. 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 the request of Mr. Eric Garcin, be resubmitted to the FIFA Disciplinary Committee to impose harsher sanctions on the Chinese Football Association.**
- 4. The Chinese Football Association 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



José Ernesto MEJIA PORTILLO (Honduras)
Member of the FIFA Disciplinary Committee

NOTE RELATING TO THE LEGAL ACTION:

According to art. 58 (1) of the FIFA Statutes reads together with art. 49 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, the Chinese Football Association, 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, Mr. Eric Garcin, is directed to notify the secretariat to the FIFA Disciplinary Committee of every payment received.

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 case number above mentioned.