

Disciplinary Committee

FIFA[®]

Date: 12 September 2024

Sent to:
Saleh Chihadeh
c/o Kai Ludwig

Cc:
Future FC
c/o Nehad Hagag

Notification of the grounds of the Decision

Ref. no. FDD-18755

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 25 July 2024.

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 25 July 2024

DECISION BY:

Leonardo STAGG (Ecuador), member

ON THE CASE OF:

Saleh Chihadeh
(Decision FDD-18755)

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 (hereinafter also referred to as: **Committee**) has thoroughly considered in the deliberations 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 1 February 2023, the FIFA Dispute Resolution Chamber passed a decision involving the Egyptian club, Future FC (**the Creditor**), and the Palestinian player, Saleh Chihadeh (**the Respondent**), with the involvement of the Swiss club, FC Naters, with regards to proceeding FPSD-6827 (hereinafter: **the DRC Decision**).
3. Contextually, the Respondent was ordered to pay USD 565,041.50 as compensation for breach of contract without just cause plus 5% interest p.a. as from 19 July 2022 until the date of effective payment. The DRC Decision equally ruled as follows:

“Pursuant to art. 24 of the Regulations on the Status and Transfer of Players, if full payment (including all applicable interest) is not made within 45 days of notification of this decision, the following consequences shall apply:

1. The [Respondent] shall be imposed with a restriction on playing in official matches up until the due amounts are paid. The overall maximum duration of the restriction shall be of up to six months on playing in official matches.”

4. The Respondent appealed the DRC Decision to the Court of Arbitration for Sport (**CAS**), yet the appeal proceedings were terminated by way of a Termination Order issued on 1 November 2023.
5. On 18 December 2023, following a request by the Creditor, the Secretariat to the Disciplinary Committee (**the Secretariat**), on behalf of the latter, took due note that the Respondent had failed to pay the amounts ordered by the DRC Decision and imposed a ban from participating in any football-related activity up to six months on the Respondent. Said disciplinary proceedings were registered under ref. FDD-16999 (**the First Disciplinary Decision**).
6. On 26 June 2024, the Creditor made a new request to FIFA and informed that the Respondent had not yet paid the amounts due under the DRC Decision. Said proceeding was registered under ref. FDD-18755.
7. On 25 June 2024, the Secretariat initiated new disciplinary proceedings against the Respondent and proposed the following sanction to the Respondent in accordance with art. 58 of the FIFA Disciplinary Code, ed. 2023 (**FDC**) as read in conjunction with Annexe 1 FDC:

“1. The Respondent, Mr Saleh Chihadeh, shall pay to Future FC (the Creditor) as follows:

USD 565,041.50 as compensation for breach of contract without just cause plus 5% interest p.a. as from 19 July 2022 until the date of effective payment.

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 25,000."

II. RESPONDENT'S POSITION

8. The position of the Respondent is summarized hereafter. However, and for the sake of clarity, this summary does not purport to include every single contention put forth by the Respondent. Nevertheless, the Committee has thoroughly considered in its discussion and deliberations any and all evidence and arguments submitted, even if no specific or detailed reference has been made to these arguments in the following outline of their positions and in their ensuing discussion on the merits.
9. Following a request for a deadline extension duly granted, the Respondent rejected the proposal and filed the following submissions.
 - The proposed fine of CHF 25,000 is not mandatory under art. 25 par. 4 FDC and it is argued that this amount represents a significant burden for the Respondent compared to clubs or associations due to his lower income.
 - The Respondent's financial situation, earning just under CHF 4,000 per month, is highlighted, making the proposed fine and potential ban from football-related activities disproportionately severe.
 - Reference is made to case CAS 2008/A/1519 & 1520 Francelino da Silva Matuzalem vs. FIFA, where the proposed disciplinary measures would unduly restrict a player's ability to play and earn an income, potentially violating his economic freedom and his right to privacy.
 - It is argued that the imposition of further sanctions, such as the additional fine, would not improve the Respondent's financial situation and would be counterproductive, as he is already unable to meet the payment requirement of the DRC Decision.
 - The Responder further points out that he has already received a suspension for the same offense in the past, which raises the concern of double jeopardy (*ne bis in idem* principle) if additional penalties are imposed.
10. The Respondent filed the following request for relief:

- "1. Not to impose any fine on the Player;*
- 2. To refrain from imposing another ban on the Player".*

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 present matter, namely, the jurisdiction and the applicable law, before entering into the substance of the matter and assessing the possible failure of the Respondent to comply with the DRC Decision as well as the potential sanctions resulting therefrom.

A. Jurisdiction of the FIFA Disciplinary Committee

12. First of all, the Committee noted that at no point during the present proceedings had the Respondent challenged either the jurisdiction of the Disciplinary Committee or the applicability of the FIFA Disciplinary Code.
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 sanction(s) in case of corresponding violation(s).
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 FIFA Statutes and the FIFA Disciplinary Code 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 potential failure to comply with the DRC Decision, was committed after the 2023 edition of the FDC entered into force. As a result, 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 recalled the content and scope of the provision(s) at stake, namely that of art. 21 FDC, which read 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:

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.

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. (...)" (emphasis added)

17. Keeping in mind that the Respondent had already been found responsible for failing to comply with the DRC Decision (cf. the First Disciplinary Decision), but seemingly had still failed to comply in full with the DRC Decision following the expiry of the final deadline granted pursuant to the First Disciplinary Decision, the Committee pointed out in this respect that art. 21.1.f) FDC was of particular relevance to its assessment of the present matter.
18. Moreover, the Committee further emphasized, in particular, that in line with art. 57.1.h) FDC, cases involving matters under art. 21 FDC may be decided by a member of the Disciplinary Committee alone, acting as a single judge, as in the present case.
19. Finally, the Committee underlined that, equal to the competence of any enforcement authority, it cannot review or modify as to the substance a previous decision, which is final and binding, and thus has become enforceable.
20. The jurisdiction being established and the applicable law determined, the Committee subsequently turned its attention to the DRC Decision and the First Disciplinary Decision.

C. Merits of the dispute

I. Analysis of the facts in light of art. 21 FDC

21. As already established above, the DRC Decision is final and binding. Consequently, the Committee is not allowed to analyse the case decided by FIFA as to the substance, i.e. to check the correctness of the amount ordered to be paid. The Committee has as a sole task, which is to analyse whether the Respondent complied with the final and binding decision rendered by FIFA.

22. In this respect, the Committee acknowledged that the Respondent argues (i) that the proposed CHF 25,000 fine is a significant burden given his monthly income of just under CHF 4,000, (ii) he references a previous case where similar measures were seen as overly restrictive, potentially violating economic freedom and privacy, (iii) further sanctions would worsen his financial situation, and (iv) he has already been suspended for the same offense, raising concerns of double jeopardy.
23. In these circumstances, the Committee further remarked from the documentation at its disposal that, subsequent to the First Disciplinary Decision, and, importantly, after the opening of the present disciplinary proceedings against the Respondent, the latter had neither provided any proof of payment. Similarly, neither had the Creditor confirmed receipt of any of the outstanding amount(s) due nor had it provided any communication(s) to the Secretariat which could have confirmed that an extension of the deadline for payment had been agreed upon with the Respondent.
24. Against this background, the Committee concluded that the Respondent had failed to pay to the Creditor the outstanding amounts due to it in accordance with the DRC Decision.
25. As a result, the Committee concluded that the Respondent, by his described conduct(s), was to be considered guilty of persistent failure to comply with (a) financial decision(s) under the terms of art. 21 FDC – specifically, with the DRC Decision.

II. The determination of the sanction

26. With regards to the applicable sanction(s), the Committee observed in the first place that the Respondent was a natural person, and as such was subject to the sanctions described under art. 6 (1) and (2) FDC.
27. In these circumstances, the Committee pointed out that, despite the DRC Decision, the Respondent had nevertheless (still) withheld the relevant amount(s) due unlawfully from the Claimant, even after the period of six months expired following the First Disciplinary Decision.
28. The above notwithstanding, and as previously emphasised by the Committee, the Respondent had failed to settle his debt(s) towards the Creditor, the relevant amount(s) due remaining, to the present date, outstanding to be paid. As such, the Committee was settled in its determination that further measures were to be imposed upon the Respondent – the Committee being resolute in this respect, given that, in keeping with the provision(s) of art. 21.1.f) FDC, the Respondent had undoubtedly demonstrated “persistent default or failure to comply in full with the [DRC Decision]”.
29. This being established, for the sake of good order, the Committee recalled once more 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:
 - will be fined and will receive any pertinent additional disciplinary measure (lit. a);

- will be granted a final deadline of 30 days in which to pay the amount(s) due (lit. b);
 - (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 (lit. f).
30. Therefore, in alignment with the above, taking into account all of the circumstances pertaining to the present case and, in particular, the persistent failure of the Respondent to comply in full with its financial obligations in accordance with the DRC Decision, the Committee determined that, in accordance with arts. 6.2 and 21.1.f) FDC, a ban from taking part in any kind of football-related activity was to be imposed upon the Respondent for a period of six (6) months if the amounts remained unpaid within the deadline of 30 days granted to the Respondent. In particular, the Committee considered that such sanction was to be considered proportionate to the offence(s) committed by the Respondent and justified in view of the circumstances of the case at hand. Indeed, the Committee underscored in this regard, that the facts have shown that the previous disciplinary measures imposed upon the Respondent (pursuant to the First Disciplinary Decision) were insufficient and did not induce the latter to settle his debt(s) towards the Claimant.
31. In continuation, the Committee subsequently recalled, 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. 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 1,500 as appropriate – the foregoing taking into account the provisions of art. 21.1.a) FDC.
32. Further, given the amounts due by the Respondent, the Committee exceptionally considered that a final deadline of 30 days to pay the amount(s) due to the Claimant was to be considered as justified and appropriate in the present case.
33. The Respondent is hereby warned and notified that, in case of default within the period stipulated, the aforementioned ban from taking part in any kind of football-related activity for a period of six (6) months will be automatically imposed against him.
34. Finally and for the sake of completeness, the Committee recalled, as established by the pertinent jurisprudence of the CAS5, that the aforementioned sanction – a ban from taking part 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

- 1. The Respondent, Saleh Chihadeh, is found responsible for failing to comply in full with the FIFA decision rendered on 27 March 2023 (Ref. FDD-16999 - FPSD-6827).**
- 2. The Respondent is ordered to pay to Future FC as follows:**
 - USD 565,041.50 as compensation for breach of contract without just cause plus 5% interest p.a. as from 19 July 2022 until the date of effective payment.**
- 3. The Respondent 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 Future FC, be resubmitted to the FIFA Disciplinary Committee so that a ban on any football-related activity may be imposed on Future FC for a period of up to 6 (six) month(s).**
- 4. The Respondent is ordered to pay a fine to the amount of CHF 1,500.**
- 5. The fine is to be paid within 30 days of notification of the present decision.**

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



Leonardo STAGG (Ecuador)

Member of the FIFA Disciplinary Committee

NOTE RELATING TO THE LEGAL ACTION:

According to art. 58 (1) of the FIFA Statutes as read together with art. 52 of the FDC, 2023 edition, this decision may be appealed against before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to 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 CAS.

NOTE RELATING TO THE PAYMENT OF THE AMOUNT DUE:

The Respondent 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, Future FC, 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.