

Decision
of the
**Member of the FIFA Disciplinary
Committee**

Mr. Carlos Teran [VEN]

on 31 May 2019,

to discuss the case of:

Club Tartu Jalgpallikool Tammeka, Estonia

(Decision 180271 PST)

regarding:

failure to comply with art. 64 of the FIFA Disciplinary Code – Ed. 2017-

I. inferred from the file

1. On 26 November 2015, the Dispute Resolution Chamber decided that Tartu Jalgpalliklubi Tammeka (hereinafter also referred to as the Debtor) had to pay to the club NK Otok (hereinafter also referred to as the Creditor), within 30 days as from the date of notification of the relevant decision, the amount of EUR 139,666.66 plus interest at a rate of 5% as of 29 March 2013 until the date of effective payment.
2. The findings of the decision of the Dispute Resolution Chamber were duly communicated on 1 December 2015 directly to the Creditor and, via the Estonian Football Association, to the Debtor. Since the grounds of the mentioned decision were not requested, it became final and binding.
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 Debtor on 14 May 2018 and informed it that the case was going to be submitted to a member of the Disciplinary Committee for evaluation.
4. Furthermore, the Secretariat urged the Debtor to pay the outstanding amount or to provide its position by 28 May 2018 at the latest and informed it that if the outstanding amounts were paid by the mentioned deadline, the matter would not be submitted to a member of the FIFA Disciplinary Committee and hence, the disciplinary proceedings would be closed.
5. On 23 May 2018, following the above-mentioned correspondence (cf. points 3 & 4 *ut supra*) the Estonian Football Association (hereinafter also referred to as the EFA) informed FIFA that the club Tartu Jalgpalliklubi Tammeka was no longer an affiliated club since it had lost the membership status from the Estonian Football Association on 30 March 2016, after it was deleted from the Estonian Business Register on 28 March 2016 following its bankruptcy.
6. In this sense, on 13 June 2018, the Secretariat forwarded the aforementioned correspondence from the Estonian Football Association (cf. point 5 *ut supra*) to the Creditor and informed it that, in general, the decision making bodies of FIFA cannot deal with cases involving clubs which are not affiliated to their association any longer and that therefore, it was not possible to further proceed with the present case.
7. Following the correspondence from the Secretariat dated 13 June 2018, the Creditor sent a correspondence to the latter claiming that, there is a club, which was currently participating in the Estonian top division, that is actually the successor of the Debtor and provided evidence to prove its allegation. Namely, the Creditor informed the Secretariat of the following:

- Currently (i.e. 2018), there is a club known as Tartu Jalgpallikool Tammeka participating in the 1^o and top division of the Estonian national championship. This club and Tartu Jalgpalliklubi Tammeka are the same.
 - Both clubs, Tartu Jalgpalliklubi Tammeka and Tartu Jalgpallikool Tammeka, use for their business purposes the same name (i.e. Tartu JK Tammeka) and the only difference between their names is the word in the middle: "Jalgpalliklubi", which means "football club" and "Jalgpallikool", which means "football school".
 - According to the EFA's official website, the Debtor has participated in the Estonian top division since 2005 with no interruption under the name of Tartu JK Tammeka. The same website provides a list of all matches of the club known as Tartu JK Tammeka, as well as a list of all its squads since 2007 and there is no indication in this website regarding the disaffiliation of the Debtor or of the fact that it stopped participating in the national league in 2014.
 - Wikipedia and Soccerway websites also do not differentiate between the Debtor and Tartu Jalgpallikool Tammeka and just refer to Tartu JK Tammeka as one club.
 - Both the Debtor and Tartu Jalgpallikool Tammeka are registered in the same address (Tamme pst. 1 , Tartu, Estonia), use the same telephone number and the same website (i.e. www.jktammeka.ee).
 - Tartu Jalgpallikool Tammeka plays its home matches at Tamme Staadion in Tammellin District in Tartu, Estonia. This is the same stadium where the Debtor played its home matches.
 - The team colours of Tartu Jalgpalliklubi Tammeka and the Debtor are the same: Blue and white. Also, the logos are almost identical.
 - On 1 February 2014, EFA decided not to issue a license to the Debtor for Meistriliiga (i.e. name of the Estonian top division) and it granted the license to Tartu Jalgpallikool Tammeka, which immediately started participating in competitions organised by EFA and in the same division in which the Debtor was participating. Tartu Jalgpallikool Tammeka played its first match only three weeks later (i.e. end of February 2014).
 - According to the website Transfermarkt.com, on 14 February 2014 (i.e. the date Tartu Jalgpallikool Tammeka accepted the offer done by the EFA of participating in the Estonian top division), 17 players were transferred (i.e. on a loan) from the Debtor to Tartu Jalgpallikool Tammeka. On January 2015, all these players were engaged by the latter (i.e. from loan transfer to permanent transfer).
8. On 24 April 2019, the Secretariat forwarded the above-mentioned correspondence from the Creditor to the Estonian Football Association and requested the latter 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 club Tartu Jalgpallikool Tammeka and the Debtor, by 30 April 2019 at the latest.

9. On 26 April 2019, the Estonian Football Association requested an extension of the deadline to provide its position.
10. Following the above, on 26 April 2019, the Secretariat informed the EFA that it had been granted with an extension of six (6) days and therefore, it was invited to provide its position by 6 May 2019 at the latest.
11. The Estonian Football Association provided the Secretariat, on 6 May 2019, with its position regarding the allegations of the Creditor. The position of the EFA can be summarized as follows:
 - Tartu Jalgpallikool Tammeka and the Debtor are not the same entity. The latter stopped participating in competitions organised by EFA on 2014 and was liquidated and disaffiliated from the EFA on March 2016.
 - In Estonia, a legal entity is identified by its registry number. The Debtor's code is 80078915 and the club was erased from the registry on 28 March 2016. On the other hand, the code of Tartu Jalgpallikool Tammeka is 80315611 and it is still registered at the present day. This proves that both clubs are two different legal entities.
 - The reason why Tartu Jalgpallikool Tammeka uses the name Tartu JK Tammeka (i.e. same name the Debtor used) to participate in the EFA championship is because this name and also the logo, are not registered as a trademark and therefore, it has the right to use both name and logo if it wishes to do so. In this sense, the EFA does not contest that different persons have been using similar name for the club over the past 30 years but this does not imply continuity in the legal sense.
 - The Debtor had license to play in the top division of the Estonian championship until 2013. To avoid leaving the top division from lacking one team, the EFA Board took the decision of allowing Tartu Jalgpallikool Tammeka to participate in the top division.
 - Regarding the Debtor's players, they all became free agents when the Debtor lost its license and they were free to choose which club they wanted to join. In this sense, Tartu Jalgpallikool Tammeka cannot be responsible of the fact that many of the players decided to join its team.
 - The stadium in which the Debtor and Tartu Jalgpallikool Tammeka play and played their matches is the only "UEFA" certified stadium in the city of Tartu and it is owned and operated by the city.
 - Both FIFA and the Creditor were informed about the fact that the Debtor was in the process of liquidation and as far as the EFA is aware, the Creditor did not inform in a timely manner to the liquidator about the debt.
 - There is no legal basis to "pass" a formal decision against Tartu Jalgpallikool Tammeka as they were never part of the proceedings before the Dispute Resolution Chamber and doing so would imply a violation of its right to be heard

12. On 14 May 2019, the Secretariat forwarded the correspondences from the Creditor (cf. point 7 *ut supra*) and from the EFA (cf. point 11 *ut supra*) to Tartu Jalgpallikool Tammeka and opened disciplinary proceedings against the latter for a potential violation of article 64 of the 2017 FIFA Disciplinary Code (FDC). In addition, Tartu Jalgpallikool Tammeka was informed that the case was going to be submitted to a member of the FIFA Disciplinary Committee for evaluation on 27 May 2019 and was invited to provide its position regarding the allegations made by the Creditor, by 20 May 2019 at the latest. However, the Secretariat also communicated to Tartu Jalgpallikool Tammeka that, should it pay the outstanding amounts due to the Creditor, in accordance with the decision passed by the Dispute Resolution Chamber on 26 November 2015, by the aforementioned deadline, then, upon confirmation of the Creditor that the amounts have been received, the disciplinary proceedings would be closed.
13. By means of a correspondence dated 20 May 2019, Tartu Jalgpallikool Tammeka (hereinafter also referred to as the Club) provided the Secretariat, the Creditor and the EFA with its position, which can be summarized as follows:
- The Club was never, directly or indirectly, a party in the dispute arisen between the Creditor and the Debtor concerning training compensation in connection with the transfer of the player Silvio Philips.
 - The player Silvio Philips has never been registered nor has concluded an employment contract with the Club.
 - None of the members of the Club's executive body has been overlapping with the Debtor's executive body or board of directors.
 - Both the Club and the Debtor were existing at the same time.
 - Most of the Club's staff are working on a voluntary basis and there were no professional football players.
 - The EFA refused on 2014 to provide the Debtor with a license and offered it to the Club, which decided to accept the offer in order to avoid losing a top division football team representing the "whole south region".
 - The Club agreed with the Debtor to receive its players on loan as amateurs.
 - Until 2017, the Club was participating in the top division of the Estonian championship as an amateur. It was only in 2017 when the first professional contract was signed and since then there has only been seven professional players.
 - The Club cannot be considered as a Respondent in the present case as the Club never transferred the player Silvio Philips and neither concluded a professional contract with him.

14. On 23 May 2019, the Creditor provided the Secretariat with a rebuttal to the arguments presented by Tartu Jalgpallikool Tammeka. Amongst others¹, it claimed that:

- The fact that the Debtor and the Club have no legal connection is irrelevant as the connection between both derives from the consistent jurisprudence of CAS and the FIFA Dispute Resolution Chamber, according to which a club is a sporting entity identifiable by itself that, as a general rule, transcends the legal entities which operate it. The identity of a club is constituted by elements such as its name, colors, fans, history, sporting achievements, trophies, stadium, etc.
- The fact that the Club was not informed of the present procedure is irrelevant since due to the connection of the Debtor with the Club, the decision of the Dispute Resolution Chamber, which is final and binding is directly applicable to the Club.

15. On 23 May 2019, the Secretariat acknowledged receipt of the above-mentioned correspondences from the Club and the Creditor and reminded the parties that the case was going to be submitted for evaluation to a member of the FIFA Disciplinary Committee on 27 May 2019.

II. and considered

16. That, in line with article 78 par. 2 of the FIFA Disciplinary Code, 2017 edition (hereinafter also referred to as the 2017 FDC), cases involving matters under article 64 of the 2017 FDC may be decided by one member of the Disciplinary Committee alone (hereinafter also referred to as *member of the Committee*).

17. In the case at hand, in view of the arguments raised by the parties, the member 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 Tartu Jalgpallikool Tammeka could be held liable for a potential violation of article 64 of the 2017 FDC.

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

18. The member of the Committee first emphasises that it is uncontested that Tartu Jalgpalliklubi Tammeka, subject of the initial decision of the DRC, is disaffiliated from the Estonian Football Association, as explained by the EFA itself.

¹ All other arguments provided by the Creditor in this correspondence were already mentioned and explained in its correspondence dated 30 August 2018 (cf. point 7 *ut supra*)

19. In these circumstances, the member of the Committee wishes to recall that, according to article 3 of the 2017 FDC, associations, members of associations, in particular the clubs, officials, players, etc. are subject to this code.
20. Clubs are affiliated to regional and/or national football associations and these national football associations are members of FIFA. As a consequence, football clubs are no direct members of FIFA. However, within the framework of Swiss association law, as well as in sports law in general, an approach has been established according to which football clubs are considered as "indirect members" of FIFA and therefore, they 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.
21. The aforementioned principle is embedded in article 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 article 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.
22. Since the Estonian Football Association has confirmed that Tartu Jalgpalliklubi Tammeka is no longer affiliated to the EFA, it has lost its indirect membership to FIFA and therefore, the Disciplinary Committee can no longer impose sanctions against Tartu Jalgpalliklubi Tammeka, reason why, on 13 June 2018, the Secretariat informed the parties that it did *"not appear to be in a position to further proceed with the case of the reference [...]"*.
23. Notwithstanding the above, the member of the Committee notes that the Creditor subsequently requested the enforcement of the DRC decision against Tartu Jalgpallikool Tammeka, which, in its view, is considered to be the successor and/or the same entity as the disaffiliated club, Tartu Jalgpalliklubi Tammeka.
24. In this regard, the member of the Committee considers that he is not prevented from reviewing and/or making a legal assessment and deciding if Tartu Jalgpallikool Tammeka is the same as – and/or the successor of – Tartu Jalgpalliklubi Tammeka, especially considering that the former is duly affiliated to the EFA, and as such, under the jurisdiction of the Committee.
25. As such, the member of the Committee deems that he is competent to assess the present matter and therefore to pass a formal decision of a substantive nature on the Creditor's request concerning the liability of Tartu Jalgpallikool Tammeka towards the debts of the Debtor in the frame of article 64 of the 2017 FDC.

B) Whether Tartu Jalgpallikool Tammeka is liable for the debts incurred by Tartu Jalgpalliklubi Tammeka

26. Once having assessed the issue of competence, the member of the Committee moves on to analyse whether Tartu Jalgpallikool Tammeka has a connection with Tartu Jalgpalliklubi Tammeka and therefore, can be held liable for the debts of the latter.

a) Creditor's position

27. The Creditor claimed that Tartu Jalgpallikool Tammeka, which is affiliated to the EFA and currently participating in the Estonian first and top division, has to cancel the debts incurred by the Debtor, as it considers that there is a connection between the latter and the former.

28. In particular, the member of the Committee noted that the Creditor supported its allegation by pointing out that Tartu Jalgpallikool Tammeka and the Debtor had almost identical names and logos and that they shared the same colours (i.e. black and white), stadium and contact details (address, telephone number and website)

29. In addition, the Creditor provided different articles published in the official website of the Estonian Football Association. One of the articles communicated that, in 2014, the EFA had decided not to issue a license to Tartu Jalgpalliklubi Tammeka and at the same time, another article informed that Tartu Jalgpallikool Tammeka had accepted the proposal of the EFA and was going to participate in the "2014 Top Level Championships". Furthermore, the Creditor provided the standards of the Estonian Top division, which are available on the EFA's official website, from 2005 until 2018 as well as the club profile and squad of each season from 2007 to 2018, which was also taken out from the EFA's official website.

31. In this sense, the member of the Committee observed that in the standings from 2005, 2006 and 2007 there was a club named "JK Tartu Tammeka" participating in the Estonian first division, while as from 2007 this club/name seems to have been replaced/changed by "Tartu JK Tammeka", which participated in every single season thereon. In relation to the data sheets with the club's profile and squad, the member of the Committee noted that the club's profile (i.e. contact email address, stadium and address) was the same from 2007 to 2018. Also, the member of the Committee noticed that the squad from 2014, which is the year when Tartu Jalgpalliklubi Tammeka stopped participating in competitions organised by the EFA and at the same time, the year in which Tartu Jalgpallikool Tammeka joined the Estonian top division, was very similar to the squads from 2013 and 2015.

b) Position of the Estonian Football Association

30. In continuation, the member of the Committee takes note that, according to the EFA:

- i. The Debtor and Tartu Jalgpallikool Tammeka are not the same entity as they both have different registry number and the former was liquidated in 2016.
- ii. The name (i.e. Tartu JK Tammeka) and logo of the Debtor were not registered as a trademark or in any other way and therefore, there is no reason why Tartu Jalgpallikool Tammeka could not use this name and logo.
- iii. When the Debtor stopped participating in the Estonian championship, the EFA allowed Tartu Jalgpallikool Tammeka to participate in the top division to avoid leaving the said division with one team less.
- iv. Passing a decision against Tartu Jalgpallikool Tammeka that was never a party to the proceedings, would imply a violation of its right to be heard.

c) Position of Tartu Jalgpallikool Tammeka

31. The member of the Committee further noticed that Tartu Jalgpallikool Tammeka claimed, amongst others, that it was never involved in the dispute between the Debtor and the Creditor in relation to training compensation regarding the transfer of the player Silvio Philips, who, in addition, has never been registered nor has concluded an employment contract with Tartu Jalgpallikool Tammeka.

32. Furthermore, Tartu Jalgpallikool Tammeka underlined that it cannot be the successor of the Debtor as they both existed at the same time and that, if it accepted the offer of the EFA to participate in the top division of the Estonian championship was to avoid losing a top division football team representing the south region of Estonia.

d) Analysis of the evidence by the member of the Committee

33. With the above in mind, the member of the Committee went on to analyse all documents on file in order to assess the alleged link between Tartu Jalgpallikool Tammeka and Tartu Jalgpallikool Tammeka.

34. In this sense, with respect to the evidence provided by the Creditor (cf. point 30 & 31 *ut supra*), the member of the Committee acknowledged that:

- i. The Debtor and Tartu Jalgpallikool Tammeka shared the same contact details, address, team colours, stadium and had identical names and logos.
- ii. The team squad of Tartu Jalgpallikool Tammeka in its first season in the Estonian top division was very similar to the Debtor's squad in its last season in the same division.

35. In addition, the member of the Committee noted that neither the Estonian Football Association or Tartu Jalgpallikool Tammeka contested the evidence provided by the Creditor nor the information contained in said evidence and that, indeed, the Estonian Football Association confirmed that Tartu Jalgpallikool Tammeka was using the same name, logo, stadium and address of the Debtor.
36. Furthermore, the member of the Committee remarked that both the Estonian Football Association and Tartu Jalgpallikool Tammeka confirmed that on 2014, the EFA refused to grant the Debtor a license to participate in the Estonian top division and, consequently, that license was offered to Tartu Jalgpallikool Tammeka, which accepted to participate in the Estonian top division.
37. In this sense, the member of the Committee understands that the fact that the Debtor was not granted the licence that was then granted to Tartu Jalgpallikool Tammeka, evidences that the latter, in fact, replaced the former in the Estonian top division.
38. In light of all the above, and since in the member of the Committee's view the identity of a club is constituted by elements such as its name, colours, logo, fans, history, roster of players, stadium, etc, regardless of the legal entity operating it, the member of the Committee deems that, on the basis of the information and documentation at his disposal, he has no other alternative but to conclude that Tartu Jalgpallikool Tammeka appears to be the successor of Tartu Jalgpalliklubi Tammeka, and, as such, is liable for the debts incurred by the latter – namely the one related to the decision passed by the Dispute Resolution Chamber on 26 November 2015 – and that therefore, Tartu Jalgpallikool Tammeka is found to have infringed article 64 of the 2017 FIFA Disciplinary Code.

III. has therefore decided

39. Tartu Jalgpallikool Tammeka is considered liable for the debts incurred by the club Tartu Jalgpalliklubi Tammeka.
40. Therefore, Tartu Jalgpallikool Tammeka is found to have infringed article 64 of the 2017 FIFA Disciplinary Code as it is guilty of failing to comply with the decision passed by the Dispute Resolution Chamber on 26 November 2015, according to which the club Tartu Jalgpalliklubi Tammeka was ordered to pay to the club NK Otok, EUR 139,666.66 plus interest at a rate of 5% as of 29 March 2013 until the date of effective payment.
41. Tartu Jalgpallikool Tammeka is ordered to pay a fine to the amount of CHF 15,000. The fine is to be paid within 45 days of notification of the present decision.

42. Tartu Jalgpallikool Tammeka is granted a final deadline of 45 days as from notification of the present decision in which to settle its debt to the Creditor.
43. If payment is not made to the Creditor and proof of such a payment is not provided to the secretariat to the FIFA Disciplinary Committee and to the Estonian Football Association by this deadline, a ban from registering new players, either nationally or internationally, for two (2) entire and consecutive registration periods will be imposed on the Debtor as from the first day of the next registration period following the expiry of the granted deadline. Once the deadline has expired, the transfer ban will be implemented automatically at national and international level by the Estonian Football Association and FIFA, respectively, without a further formal decision having to be taken nor any order to be issued by the FIFA Disciplinary Committee or its secretariat. The transfer ban shall cover all men eleven-a-side teams of the Debtor – first team and youth categories –. The Debtor shall be able to register new players, either nationally or internationally, only from the next registration period following the complete serving of the transfer ban or upon the payment to the Creditor of the total outstanding amount, if this occurs before the full serving of the transfer ban. In particular, the Debtor may not make use of the exception and the provisional measures stipulated in article 6 of the Regulations on the Status and Transfer of Players in order to register players at an earlier stage.

In this respect, and for the sake of clarity, the Estonian Football Association is referred to arts. 90 to 92 of the 2017 FDC in what concerns the calculation of time limits.

44. If Tartu Jalgpallikool Tammeka still fails to pay the amount due to the Creditor even after the complete serving of the transfer ban in accordance with point 5 above, the Creditor may demand in writing, for the imposition of the appropriate disciplinary measures, including but not limited to an additional transfer ban for two (2) additional entire and consecutive registration periods or a potential relegation of Tartu Jalgpallikool Tammeka's first team to the next lower division.
45. As a member of FIFA, the Estonian Football Association is reminded of its duty to implement this decision and provide FIFA with proof that the transfer ban has been implemented at national level. If the Estonian Football Association does not comply with this decision, the FIFA Disciplinary Committee will decide on appropriate sanctions on the member. This can lead to an expulsion from FIFA competitions.
46. Tartu Jalgpallikool Tammeka is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the Estonian Football Association of every payment made and to provide the relevant proof of payment.

47. The Creditor is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the Estonian Football Association of every payment received.

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



Carlos Teran
Member of the Disciplinary Committee

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.

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.

The full address and contact numbers of the CAS are the following:

Avenue de Beaumont 2
1012 Lausanne
Switzerland
Tel: +41 21 613 50 00
Fax: +41 21 613 50 01
e-mail: info@tas-cas.org
www.tas-cas.org