

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

Mr Kia Tong Lim [SIN]

on 14 January 2020,

to discuss the case of:

Club Eskişehirspor Kulübü, Turkey

(Decision 190706 PST)

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*regarding:*

failure to comply with

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

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## I. inferred from the file

1. On 11 September 2015, the Dispute Resolution Chamber (DRC) decided that the club Eskişehirspor Kulübü (hereinafter also referred to as the Debtor) had to pay, within 30 days as from the date of notification of the decision:
  - a) To the player Henri Bienvenu Ntsama (hereinafter, the Creditor);
    - o EUR 280,000 plus 5% interest *p.a.* to be calculated in accordance with the decision passed by the DRC on 11 September 2015.
  - b) To FIFA a fine in the amount of CHF 60,000
2. On 18 January 2019, the parties concluded a settlement agreement.
3. On 19 April 2019, the Creditor lodged a new claim before the FIFA DRC and requested "*the execution*" of the decision passed by the Dispute Resolution Chamber on 11 September 2015.
4. On 16 August 2019, the DRC decided that the decision passed by the Dispute Resolution Chamber on 11 September 2015 would be "*immediately forwarded to the FIFA Disciplinary Committee for consideration and a formal decision*". In particular, the DRC informed the FIFA Disciplinary Committee that the Creditor "*received the amount of EUR 202,224 in partial compliance with the [aforementioned] decision*".
5. The grounds of the decision were duly communicated, amongst others, to the parties on 19 August 2019.
6. The parties did not lodge any appeal before the Court of Arbitration for Sport (CAS).
7. As the outstanding amount was not paid to the Creditor, the secretariat to the FIFA Disciplinary Committee opened disciplinary proceedings against the Debtor on 6 December 2019.
8. Additionally, the secretariat to the FIFA Disciplinary Committee informed the Debtor that the case would be submitted to a member of the Disciplinary Committee on 13 January 2020, and invited the Debtor to provide its position within six days of the notification of the opening of the disciplinary proceedings. Moreover, the secretariat to the FIFA Disciplinary Committee informed the Debtor that the member of the FIFA Disciplinary Committee would take a decision based on the documents in his possession, should the Debtor fail to submit any statement by the specified deadline.

9. No position was provided by the Debtor.

## II. and considered

1. 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 FIFA Disciplinary Code (hereinafter also referred to as *the FDC*) on member associations, clubs, officials, players, intermediaries and licensed match agents.
2. 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 (art. 15 par. 1 of the FDC – 2019 Ed.):
  - 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 clubs, 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 transfer ban will be pronounced until the complete amount due is paid or the non-financial decision is complied with. A deduction of points or relegation to a lower division may also be ordered in addition to a transfer ban in the event of persistent failure, repeated offences or serious infringements or if no full transfer could be imposed or served for any reason.

If the club disregards the final time limit, the relevant association shall be requested to implement the sanctions threatened (art. 15 par. 3 of the FDC).

3. Moreover, in line with art. 54 par. 1 h) of the FDC, cases involving matters under art. 15 of the FDC, such as the one at stake, may be decided by one member of the Disciplinary Committee alone (hereinafter also referred to as *member of the Committee*).
4. The member of the Committee emphasises 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.
5. Having said that, the member of the Committee notes that the grounds of the decision passed by the Dispute Resolution Chamber on 16 August 2019 were

duly communicated, amongst others to the parties, on 19 August 2019. In addition, the member of the Committee notes that no appeal was filed before the CAS. Therefore, the decision passed by the Dispute Resolution Chamber became final and binding.

6. In view of what has been explained under paragraph II./4. above, the member of the Committee is not allowed to analyse the case decided by the Dispute Resolution Chamber as to the substance, in other words, to check the correctness of the amount ordered to be paid, but has as a sole task to analyse if the Debtor complied with the final and binding decision rendered by the Dispute Resolution Chamber.
7. In this sense, the member of the Committee notes that, in accordance with the decision passed by the DRC on 16 August 2019, the decision of the DRC dated 11 September 2015 is to be enforced. Therefore, in order to comply with the decision passed on 16 August 2019, the Debtor has to pay the amounts stipulated in the DRC decision dated 11 September 2015.
8. With that in mind, the member of the Committee observes that according to the decision passed by the DRC on 16 August 2019, only an amount of EUR 202,224 had been paid to the Creditor. Therefore, an amount of EUR 77,776 plus 5% interest *p.a.* remained outstanding to the Creditor as well as the fine in the amount of CHF 60,000 to FIFA.
9. In this regard, the member of the Committee points out that since the DRC decision was passed on 16 August 2019, the Debtor has not claimed that any further payments have been made to the Creditor or to FIFA. The amount of CHF 60,000 has not been received by FIFA and neither has the Creditor confirmed receipt of any further payments.
10. Consequently, the Debtor did not fully comply with the decision passed by the DRC on 16 August 2019 (as read together with the decision passed by the DRC on 11 September 2015), and is withholding money from the Creditor. Thus, it is considered guilty of non-complying with a financial decision, under the terms of art. 15 of the FDC.
11. The fine to be imposed under the above-referenced art. 15 par. 1 a) of the FDC in combination with art. 6 par. 4 of the FDC shall range between CHF 300 and CHF 1,000,000. The Debtor withheld the amount unlawfully from the Creditor. Even FIFA's attempts to urge the Debtor to fulfil its financial obligations failed to induce it to pay the total amount due.
12. In view of all the circumstances pertaining to the present case and particularly taking into account the outstanding amount due, the member of the Committee regards a fine amounting to CHF 15,000 as appropriate. This

amount complies with the Committee's established practice, namely the fines imposed in cases in which similar amounts were due.

13. In application of art. 15 par. 1 b) of the FDC, the member of the Committee grants a final deadline of 30 days for the amount due to be paid to the Creditor and to FIFA.
14. In accordance with art. 15 par. 1 c) of the FDC, the Debtor is hereby notified that, in the case of default within the period stipulated, a transfer ban (at national and international level) will be automatically imposed until the complete amount due is paid to the Creditor.
15. For the sake of good order, the Turkish Football Association is hereby reminded of its obligation to automatically implement the transfer ban upon expiry of the final deadline without having received any proof of payment from the Debtor. In this respect, and for the sake of clarity, the Turkish Football Association is referred to art. 34 of the FDC in what concerns the calculation of time limits. Should the Turkish Football Association fail to automatically implement said sanction and provide the secretariat to the FIFA Disciplinary Committee with the relevant proof of implementation of the transfer ban at national level, disciplinary proceedings – which may lead to an expulsion from all FIFA competitions – may be opened against it.

### **III. has therefore decided**

1. The club Eskişehirspor Kulübü (hereinafter, the Debtor) is found guilty of failing to comply in full with the decision passed by the Dispute Resolution Chamber on 16 August 2019 as read together with the decision passed by the Dispute Resolution Chamber on 11 September 2015 according to which it was ordered to pay:
  - a) To the player Henri Bienvenu Ntsama (hereinafter, the Creditor);
    - EUR 280,000 plus 5% interest *p.a.* to be calculated in accordance with the decision passed by the Dispute Resolution Chamber on 11 September 2015.
  - b) To FIFA a fine in the amount of CHF 60,000

In particular, the Debtor only paid a partial amount to the Player (EUR 202,224).

2. The Debtor is ordered to pay a fine to the amount of CHF 15,000. The fine is to be paid within 30 days of notification of the present decision.

3. The Debtor is granted a final deadline of 30 days as from notification of the present decision in which to settle its debt to the Creditor and to FIFA.
4. 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 Turkish Football Federation by this deadline, a ban from registering new players, either nationally or internationally, will be imposed on the Debtor. Once the deadline has expired, the transfer ban will be implemented automatically at national and international level by the Turkish Football Federation 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 upon the payment to the Creditor of the total outstanding amount. 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.
5. As a member of FIFA, the Turkish Football Federation 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 Turkish Football Federation 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.
6. The Debtor is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the Turkish Football Federation of every payment made and to provide the relevant proof of payment.
7. The Creditor is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the Turkish Football Federation of every payment received.

FÉDÉRATION INTERNATIONALE  
DE FOOTBALL ASSOCIATION



Kia Tong Lim  
Member of the FIFA Disciplinary Committee

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### **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:

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1012 Lausanne  
Switzerland  
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