

# Disciplinary Committee

Date: 20 January 2021

**FIFA**<sup>®</sup>

Sent to:  
VfL Osnabrück

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## Notification of the decision Ref FDD-6337

Dear Sirs,

Please find attached the grounds of the decision passed in the aforementioned case by a member of the FIFA Disciplinary Committee on 03 December 2020.

The German Football Association (in copy) is kindly requested to forward this decision to VfL Osnabrück.

We would appreciate your taking due note of this decision and ensuring its implementation.

Yours faithfully,

**FIFA**



Carlos Schneider  
Head of the FIFA Disciplinary Department

# Decision of the FIFA Disciplinary Committee passed on 3 December 2020

## DECISION BY:

Mr Thomas Hollerer, Austria (member)

## ON THE CASE OF:

Vfl Osnabrück

(Decision FDD-6337)

## REGARDING:

Failure to respect decisions (Article 15 FIFA Disciplinary Code)

## 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: Single Judge) has thoroughly considered in his discussion and 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 03 September 2020, the FIFA Administration provided the clubs NK Junak Sinj (hereinafter also referred to as "*the Debtor*") and VfL Osnabrück (hereinafter *Respondent*) with a proposal ordering to pay:

EUR 31,260.27 (CHF 33,634.96) plus 5% interest p.a. as of 30 days from the due date of each instalment until the date of effective payment.

3. This proposal was made in accordance with art. 13 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter, "*the Procedural Rules*") as well as FIFA Circular 1689, meaning that the aforementioned clubs had 15 days to either accept or reject the proposal. In addition, it was clearly indicated that should the parties accept the proposal or should they fail to provide an answer to the FIFA Players Status' Department within the stipulated deadline, the proposal would become binding.
4. On 30 September 2020, the FIFA Administration informed the parties that the proposal had become binding. Consequently, the VfL Osnabrück had to pay to NK Junak Sinj the above mentioned amount. In addition, it was specified that should the aforementioned amount not be paid within the given time limit, the Creditor could request the submission of the case to the FIFA Disciplinary Committee for consideration and formal decision.
5. On 5 November 2020, as the outstanding amounts due to the Creditor (cf. point 2 ut supra) were not paid, the latter requested the initiation of disciplinary proceedings against the Respondent.
6. In light of the foregoing, and since the aforementioned amounts were not paid to the NK Junak Sinj, the secretariat to the FIFA Disciplinary Committee (hereinafter: the Secretariat) opened disciplinary proceedings against the Respondent on 5 November 2020.

## II. RESPONDENT'S POSITION

7. 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 FIFA Disciplinary 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.

8. On 11 November 2020, the Respondent provided its position in relation to the disciplinary proceedings. The arguments brought forward by the Respondent can be summarised as follows :
- In its reply, the Respondent explained that the FIFA Proposal is based on fundamentally wrong facts, the decision is obviously against law and therefore null and void.
  - More in particular, the Respondent explained that the player was never registered as a professional with them and that therefore training compensation was not due.
9. The more detailed arguments made by the Respondent in support of his written submissions are set out below as far as they are relevant.

### **III. CONSIDERATIONS OF THE DISCIPLINARY COMMITTEE**

10. In view of the circumstances of the present matter, the member of the FIFA Disciplinary Committee (hereinafter also referred to as: Single Judge) decides to first address the procedural aspects of the present matter, namely, his 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 decision passed by FIFA as well as the potential sanctions resulting therefrom.

#### **A. Jurisdiction and applicable law of the FIFA Disciplinary Committee**

11. The Single Judge finds it worthwhile to emphasise that, on the basis of art. 53 par. 2 of the FIFA Statutes, the Disciplinary Committee may pronounce the sanctions described in the Statutes and the FDC on member associations, clubs, officials, players, intermediaries and licensed match agents.
12. With regard to the matter at hand, Single Judge points out that the disciplinary offense, i.e. the potential failure to comply with the decision of the Single Judge of the Players' Status Committee, was committed after the 2019 FDC entered into force. As a result, he deems that the merits as well as the procedural aspects of the present case should fall under the 2019 edition of the FDC (hereinafter: the 2019 FDC).
13. Having established the above, the Single Judge wishes to recall the content and scope of art. 15 of the FDC in order to duly assess the case at hand:
- 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 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.*

(...)

*3. If the club disregards the final time limit, the relevant association shall be requested to implement the sanctions threatened.*

14. Moreover, in line with art. 54 par. 1 h) of the FDC, cases involving matters under art. 15 of the FDC may be decided by one member of the Disciplinary Committee alone, as in the present case.
15. Finally, the Single Judge emphasises that equal to the competence of any enforcement authority, he cannot review or modify the substance of a previous decision, which is final and binding and, thus, has become enforceable.
16. His jurisdiction being established and the applicable law determined, Single Judge subsequently turns his attention to the decision of FIFA.

## **B. Merits of the dispute**

### **I. Nature of the Proposal from the FIFA Administration**

17. The Single Judge observed that the present disciplinary proceedings concerned the enforcement of a proposal from the FIFA Administration that became binding on the parties on 30 September 2020.
18. In this regard, Single Judge noted that this proposal was made by the FIFA Administration in accordance with art. 13 of the Procedural Rules and FIFA Circular 1689.
19. This provision provides that in disputes relating to training compensation and solidarity mechanism without complex factual or legal issues, the FIFA Administration is entitled to make a written proposal to the parties regarding the amounts owed and the calculation of these amounts. It is further stated that, upon receipt of a FIFA's proposal, the parties have 15 days to request, in

writing, a formal decision from the competent decision-making body. Moreover, a failure to request a formal decision, i.e. to reject the FIFA's proposal, will result in the proposal being regarded as accepted by all the parties and binding on them.

20. In addition, the aforementioned principles were reflected in FIFA Circular 1689 of 21 August 2019, which expressly provided that should none of the parties reject the proposal from the FIFA Administration within 15 days of its notification via TMS, the proposal would become binding on the parties.

21. Against this background, Single Judge held that the aforementioned provision and circular provide that the proposal would become binding on the parties in the event that neither of them request of formal decision. In this regard, the Single Judge turned his attention to a CAS award, (CAS 2018/A/5746), that had already addressed the possible characterization of a letter from FIFA as a decision. In particular, it was emphasized that:

- The form of the communication has no relevance to determine whether there exists a decision or not;
- For a communication to be regarded as a decision, it must contain a ruling, whereby the body issuing the decision intends to affect the legal situation of the addressee of the decision or other parties;
- A decision is a unilateral act, sent to one or more determined recipients and is intended to produce legal effects;
- An appealable decision of a sport association or federation is normally a communication directed to a party and based on an "animus decidendi", i.e. an intention of a body of the association to decide on a matter;
- A simple information, which does not contain any ruling, cannot be considered a decision.

22. The foregoing implies that, in order to be considered a decision, a letter must contain a ruling intending to affect the legal position of one or more parties, as opposed to a purely informative letter that cannot be regarded as a decision.

23. Considering the above, Single Judge noted that the correspondence sent by the FIFA Administration on 30 September 2020 i) informed the parties that the FIFA's proposal had become binding on them and ii) ordered the Respondent to pay a specified amount to the Creditor within 30 days, falling which the matter could be submitted to the Disciplinary Committee for consideration and decision at the request of the Creditor.

24. Thus, the Single Judge considered it evident that, given its wording and the legal effects deriving from it, the aforementioned correspondence was to be regarded as a decision since it materially

and definitively affected the legal position of the Respondent and the Creditor, and was therefore enforceable before the competent authority.

25. The nature of a FIFA's proposal being determined, Single Judge then turned to the possible non-compliance of the Respondent with the proposal from the FIFA Administration.

## **II. Analysis of the facts in light of art. 15 FDC**

26. The Single Judge acknowledges that Respondent deems that FIFA Proposal is based on fundamentally wrong facts, the decision is obviously against law and therefore null and void. More in particular, the Respondent explained that the player was never registered as a professional with them and that therefore training compensation was not due.
27. As already established above, the decision of FIFA is final and binding. Consequently, the Single Judge 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 Single Judge has as a sole task, which is to analyse whether the Respondent complied with the final and binding decision rendered by FIFA (CAS 2012/A/2850).
28. As such, the Single Judge deems that the arguments raised by the Respondent could not justify the fact that the amounts due to the Creditor in accordance with the decision passed by FIFA on have not been paid.
29. In light of all the above, the Single Judge concludes that the Respondent failed to comply with the aforementioned decision, and is, consequently, withholding money from the Creditor. As a result, the Respondent is considered responsible of not complying with a financial decision under the terms of art. 15 of the 2019 FDC.
30. In view of the foregoing, the Single Judge concludes that the Respondent, by its conduct as described above, violated art. 15 of the FDC and should be sanctioned accordingly.

## **III. The determination of the sanction**

31. With regard to the applicable sanctions, the Single Judge observes, in the first place, that the Respondent is a legal person, and as such can be subject to the sanctions described under art. 6 par. 1 and 3 of the FDC.
32. In these circumstances, the Single Judge underlines that 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 100 and CHF 1,000,000.
33. This being established, it is emphasized that the Respondent withheld the amounts unlawfully from the Creditor. Even FIFA's attempts to urge the Respondent to fulfil its financial obligations failed to induce it to pay the amounts due to the Creditor.

34. In view of all the circumstances pertaining to the present case and by taking into account the outstanding amounts, the Single Judge regards a fine amounting to CHF 5,000 as appropriate. This amount complies with the Committee's established practice, namely to the fines imposed in cases in which similar amounts were due.
35. In application of art. 15 par. 1 b) of the FDC, the Single Judge considers a final deadline of 30 days as appropriate for the Respondent to settle the amounts due to be paid to the Creditor.
36. In accordance with art. 15 par. 1 c) of the FDC, the Respondent is hereby warned and 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.
37. For the sake of good order, the German Football Association (DFB) 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 Respondent. In this respect, and for the sake of clarity, the German Football Association is referred to art. 34 of the FDC in what concerns the calculation of time limits. Should the German Football Association fail to automatically implement said sanction and provide the Secretariat 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.



## Decision

1. VfL Osnabrück (hereinafter: the Debtor) is found guilty of failing to comply in full with the proposal made by the FIFA secretariat on 30 September 2020 (in accordance with Article 13 Rules Governing the Procedures of the Player's Status Committee and the Dispute Resolution Chamber).
2. The Debtor is ordered to pay to NK Junak Sinj (hereinafter: the Creditor) as follows:
  - **EUR 31,260.27** plus 5% interest *p.a.* as of 30 days from the due date of each instalment until the date of effective payment.
3. The Debtor is granted a final deadline of 30 days as from notification of the present decision in which to settle said amount. 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. The transfer ban will be implemented automatically at national and international level by the German 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. In addition, 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.
4. The Debtor is ordered to pay a fine to the amount of CHF 5,000. The fine is to be paid within 30 days of notification of the present decision.

FÉDÉRATION INTERNATIONALE  
DE FOOTBALL ASSOCIATION



**Thomas Hollerer**

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.

**NOTE RELATING TO THE LEGAL ACTION:**

According to art. 64 par. 5 of the FDC and art. 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.