

Disciplinary Committee

FIFA[®]

Date: 14 January 2022

Sent to:

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C.C

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Turkish Football Association
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Notification of the grounds of the Decision

Ref. N°: FDD-9485

Dear Sirs,

Please find attached the grounds of the decision passed in the aforementioned case by a member of the FIFA Disciplinary Committee on 18 November 2021.

The Turkish Football Association (in copy) is kindly requested to forward this decision to its affiliated club, Akhisar Belediyespor.

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 18 November 2021

DECISION BY:

Ms. Thi My Dung Nguyen, Vietnam (Member)

ON THE CASE OF:

Club Akhisar Belediyespor, Turkey

(Decision FDD-9485)

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 (**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 29 March 2018, the FIFA Dispute Resolution Chamber decided that:
 - The club Akhisar Belediyespor had to pay to the player Theofanis Gekas, within 30 days as from the date of notification of the decision, the amount of EUR 126,000 as outstanding remuneration, plus 5% interest *p.a.* on the said amount as from 10 June 2015 until the date of effective payment.
 - The player Theofanis Gekas had to pay to the club Akhisar Belediyespor, within 30 days as from the date of notification of the decision, the amount of EUR 660,000 as compensation for breach contract, plus 5% interest *p.a.* on the said amount as from 25 July 2015 until the date of effective payment.
 - The intervening party, Eskisehirspor Kulübü was jointly and severally liable for the payment of the aforementioned amount due by the player to the club Akhisar Belediyespor.
3. The grounds of the aforementioned decision were notified to the parties on 14 November 2018.
4. Following the notification of the grounds, the player Theofanis Gekas lodged an appeal before the Court of Arbitration for Sport (**CAS**), which issued an award on 6 July 2020.
5. In this context, CAS partially upheld the appeal lodged by the player and amended the decision rendered by the Dispute Resolution Chamber by ordering the club Akhisar Belediyespor (**the Respondent**) to pay to the player Theofanis Gekas (**the Claimant**) the following outstanding remuneration and bonus payments:
 - **EUR 65,000 net**, as outstanding salary for April 2015, plus 5% interest *p.a.* as from 25 April 2015 until the date of effective payment;
 - **EUR 70,000 as net** bonus for the Respondent's team not being relegated from the Turkish Super League in the sporting season 2014/2015, plus 5% interest *p.a.* as from the end of the relevant sporting season (i.e. 10 June 2015) until the date of effective payment;
 - **EUR 70,000 net**, as outstanding balance corresponding to bonus for 13 goals scored during the sporting season 2014/2015, plus 5% interest *p.a.* as from the end of the relevant sporting season (i.e. 10 June 2015) until the date of effective payment;
 - **EUR 4,000 net**, as bonus for two assists with reference to the sporting season 2014/2015, plus 5% interest *p.a.* as from the end of the relevant sporting season (i.e. 10 June 2015) until the date of effective payment;

- All the amounts above shall be net of taxes and social security contributions, if any, which are to be borne by the Respondent.
6. Furthermore, CAS also ordered the Respondent to pay to the Claimant the following amounts:
 - **EUR 495,000** as compensation for breach of contract, plus 5% interest *p.a.* as from 18 May 2015 until the date of effective payment;
 - **CHF 7,500** as contribution towards the legal fees and other expenses incurred by the Claimant in connection with the arbitration proceedings.
 7. On 26 October 2021, as the aforementioned amounts due by the Respondent were not paid, the Claimant requested the initiation of disciplinary proceedings against the Respondent for failure to comply with the CAS award dated 6 July 2020 (**the CAS Award**).
 8. On 1 November 2021, 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 latter was informed that the case would be referred to the next meeting of the FIFA Disciplinary Committee on 18 November 2021 and was invited to provide its position within six days of the notification of the opening of the disciplinary proceedings.
 9. On 7 November 2021, the Respondent filed its position.
 10. On 8 November 2021, the Respondent informed the Secretariat that it was negotiating with the Claimant and requested FIFA to grant additional time to reach a settlement agreement.
 11. On 13 November 2021, the Secretariat acknowledged receipt of the aforementioned correspondence. In this regard, the Respondent was reminded that the Disciplinary Committee could not grant a settlement agreement or more time to pay as this had to be negotiated and agreed directly with the Claimant. As a result, the Claimant was requested to inform the Secretariat whether there were ongoing negotiations with the Respondent.
 12. On 16 November 2021, the Respondent submitted an unsolicited additional statement.
 13. On the same day, the Claimant informed that he had not accepted the Respondent's offer and that no settlement agreement had been concluded.

II. RESPONDENT'S POSITION

14. The position submitted by the Respondent on 7 November 2021 can be summarized as follows:
 - There is no "*faulty behaviour*" on the part of the Respondent, but due to emergent events beyond its control, the latter is facing financial difficulties.

- At the time the employment contract was concluded, the Respondent was playing in the Turkish Super league, namely in the Turkish first division. However, within three years, the Respondent was relegated to the third division, which resulted in a considerable drop in its income.
 - In particular, its income “has been drops 50 times since 2014” and a third relegation could lead the Respondent into bankruptcy, putting the Respondent's various creditors at risk with the potential result that they would never recover their credits.
 - Therefore, any sanction including a deduction of point would be “such an unfair and heavy penalty on the Respondent”, which could lead to the closure of the club.
 - The amounts determined in the main agreement were fair at the time, but with the double relegation, the Respondent is now unable to meet all its financial obligations.
 - However, the Respondent already settled its debts towards other players. In particular, it has paid almost EUR 1,500,000 in compensation over the last two years.
 - The Respondent is willing to pay the Claimant the amounts owed as soon as possible and according to a reasonable payment schedule.
 - In view of the above, the Respondent argued that it never deliberately disrespected a CAS award, so the Disciplinary Committee has no reason to impose sanctions.
15. In the unsolicited correspondence filed by Respondent on 16 November 2021, the latter merely reiterates that it is facing financial difficulties, but that despite this, it is making “the best effort to meet the current debts and made considerable payments as financial situations allows”.
16. 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

17. 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

18. 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).
19. Notwithstanding the above and for the sake of good order, the Committee found it worthwhile to emphasize that, 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

20. 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, the Committee deemed that the merits as well as the procedural aspects of the present case should fall under the 2019 edition of the FDC.
21. 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.
22. 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 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.*
23. 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 FDC may be decided by one member of the Disciplinary Committee alone, as in the present case.
24. 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, which is final and binding, and thus has become enforceable.

25. Its jurisdiction being established and the applicable law determined, the Committee subsequently turned its attention to the CAS Award.

C. Merits of the dispute

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

26. The above having been established, the Committee noted that CAS, by means of its Award dated 6 July 2020, upheld the appeal filed by the Claimant and ordered the Respondent to pay to the Claimant as outlined above.
27. This being recalled, the Committee observed that the CAS Award was enforceable since it had not been challenged before the Swiss Federal Tribunal.
28. In view of what has been explained *supra*, the Committee is not allowed to analyse the case decided by the Court of Arbitration for Sport as to the substance, in other words, to check the correctness of the amounts ordered to be paid, but has as a sole task to analyse if the Respondent complied with the enforceable award rendered by the aforementioned Tribunal on 6 July 2020.
29. In this regard, the Committee noted that the Respondent claimed to be in financial difficulties as a result of the club's double relegation from the Turkish First Division to the Third Division over the past three years, which has caused a significant drop in its income and put the Respondent in a difficult financial situation.
30. The Committee also observed that the Respondent considered that it was not at fault since it never intentionally ignored the CAS Award and was willing to pay the amounts owed to the Claimant according to a reasonable payment schedule.
31. Taking into account the foregoing, the Committee firstly considered the supposed financial situation of the Respondent and deemed it necessary to emphasize that clubs have the duty to be aware of their actual financial strength, constitute provision in anticipation of possible issues, such as a decrease in the income or a relegation (i.e. a contingency that any club may face), and finally conclude contracts that can be fulfilled. In other words, the principle of *pacta sunt servanda* – more relevant in the context of contractual dispute *per se* – is of paramount importance for FIFA and a key issue to be protected, amongst others, by the Regulations on the Status and Transfer of Players.
32. Further, the Committee wished to refer to the content of art. 2 of the Swiss Civil Code, according to which “[e]very person is bound to exercise his rights and fulfil his obligations according to the principle of good faith”. Therefore, the sole fact that Respondent may be undergoing financial problems does not exonerate it from its obligations to pay the outstanding amounts owed to the Claimant, as confirmed by CAS on numerous occasions¹.

¹ CAS 2018/A/5779; CAS 2016/A/4402; CAS 2014/A/3533; CAS 2005/A/957.

33. This having been established, the Committee also noted that the Respondent was allegedly willing to settle its debt by means of a reasonable payment schedule and had requested FIFA, in the course of the present proceedings, to grant additional time to reach a settlement with the Claimant.
34. Against such background, the Committee recalled 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 player Theofanis Gekas, 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.
35. 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. Similarly, the Claimant did not confirm the receipt of the outstanding amounts.
36. Against this background, the Committee concluded that the Respondent had failed to pay to the Claimant the outstanding amounts due to him in accordance with the CAS Award and was therefore in breach of art. 15 FDC.
37. In view of the foregoing, the Committee concluded that the Respondent, by its conduct as described above, violated art. 15 FDC and had to be sanctioned accordingly.

II. The determination of the sanction

38. 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.
39. 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.
40. 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.
41. 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 30,000 as appropriate. This amount complies with the Committee's established practice, namely to the fines imposed in cases in which similar amounts were due.
42. In application of art. 15 (1) (b) FDC, the Committee considered a final deadline of 30 days as appropriate for the amounts due to be paid to the Claimant.

43. Finally, in accordance with art. 15 (1) (c) 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 amounts due are paid. 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.

44. 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 Respondent. In this respect, and for the sake of clarity, the Turkish Football Association is referred to art. 34 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.

IV. DECISION OF THE DISCIPLINARY COMMITTEE

- 1. The club Akhisar Belediyespor is found responsible for failing to comply in full with the award issued by the Court of Arbitration for Sport on 6 July 2020 (CAS 2018/A/6041).**
- 2. The club Akhisar Belediyespor is ordered to pay to Mr Theofanis Gekas as follows:**
 - EUR 65,000 net, as outstanding salary for April 2015, plus 5% interest *p.a.* as from 25 April 2015 until the date of effective payment;
 - EUR 70,000 net, as bonus for the Respondent's team not being relegated from the Turkish Super League in the sporting season 2014/2015, plus 5% interest *p.a.* as from the end of the relevant sporting season (i.e. 10 June 2015) until the date of effective payment;
 - EUR 70,000 net, as outstanding balance corresponding to bonus for 13 goals scored during the sporting season 2014/2015, plus 5% interest *p.a.* as from the end of the relevant sporting season (i.e. 10 June 2015) until the date of effective payment;
 - EUR 4,000 net, as bonus for two assists with reference to the sporting season 2014/2015, plus 5% interest *p.a.* as from the end of the relevant sporting season (i.e. 10 June 2015) until the date of effective payment;
 - EUR 495,000 as compensation for breach of contract, plus 5% interest *p.a.* as from 18 May 2015 until the date of effective payment;
 - CHF 7,500 as contribution towards the legal fees and other expenses incurred by the Claimant in connection with the arbitration proceedings.
- 3. The club Akhisar Belediyespor 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 Turkish 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 club Akhisar Belediyespor is ordered to pay a fine to the amount of CHF 30,000. The fine is to be paid within 30 days of notification of the present decision.**

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



Thi My Dung Nguyen

Member of the FIFA Disciplinary Committee

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.

NOTE RELATING TO THE PAYMENT OF THE AMOUNT DUE:

As a member of FIFA, the Turkish 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 Turkish 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.

The Respondent, Akhisar Belediyespor, is directed to notify the Secretariat to the FIFA Disciplinary Committee as well as the Turkish Football Association of every payment made and to provide the relevant proof of payment.

The Creditor, Mr Theofanis Gekas, is directed to notify the Secretariat to the FIFA Disciplinary Committee as well as the Turkish Football Association of every payment received.

NOTE RELATING TO THE BAN FROM REGISTERING NEW PLAYERS:

The transfer ban shall cover all men eleven-a-side teams of the Respondent – first team and youth categories –. The Respondent 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 Respondent 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.

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.