Arbitration CAS 2020/A/6745 Predrag Vujovic v. Andijon Futbol Sport PFK & Fédération Internationale de Football Association (FIFA), award of 1 December 2020

Panel: Mr José Juan Pintó (Spain), Sole Arbitrator

Football
Disciplinary proceedings against a bankrupt club
Degree of diligence of the creditor in bankruptcy proceedings

The degree of diligence of the creditor in bankruptcy proceedings is a relevant issue in the decision on whether to continue with disciplinary proceedings arising out of article 64 of the FIFA Disciplinary Code or to close them. A careless and negligent performance of the creditor may lead to the discontinuation of the disciplinary proceedings.

I. THE PARTIES

1. Mr. Predrag Vujovic (hereinafter, "the Player" or the "Appellant") is a Montenegrin professional football player.

2. Andijon Futbol Sport PFK (hereinafter, the "First Respondent" or "the New Club") is an Uzbek football club with seat in Andijon, Uzbekistan, affiliated to the Uzbekistan Football Association, which in turn is a member of the *Fédération Internationale de Football Association.*

3. The Fédération Internationale de Football Association (hereinafter, the "Second Respondent" or "FIFA") is an association submitted to Swiss Law which governs the sport of football worldwide, with seat in Zurich, Switzerland.

II. FACTUAL BACKGROUND

4. A summary of the most relevant facts and the background giving rise to the present dispute will be developed based on the parties' written submissions, the evidence filed with such submissions, and the statements made by the parties. Additional facts may be set out, where relevant, in connection with the legal discussion which follows. In the present Award the Sole Arbitrator refers only to the submissions and evidence considered necessary to explain his reasoning. The Sole Arbitrator, however, has considered all the factual allegations, legal arguments, and evidence submitted by the parties during the present proceedings.

5. On 15 February 2015, the Player and the Uzbek football club Andijon Professional Futbol Klubi (hereinafter, "the Old Club") entered into an employment contract valid as from 15

February 2015 until 30 November 2015 for a monthly salary of Uzbekistan Som (UZS) 20,000,000.

6. On 24 January 2017, the Player filed a claim for overdue payables against the Old Club before FIFA, requesting the amount of UZS 120,000,000, corresponding to 6 overdue monthly salaries due from June to November 2015. The Old Club failed to file a response to such claim in FIFA.

7. On 17 April 2017, bankruptcy proceedings against the Old Club were initiated by the Economic Court of the Andijon Region of the Republic of Uzbekistan.

8. On 1 May 2017, a decision issued by said national court (hereinafter, the "Court Decision") determined that *"the Old Club had been found to be a simplified bankruptcy and commercial liquidation proceeding"*.

9. On 10 May 2017, the FIFA Dispute Resolution Chamber (hereinafter, the "FIFA DRC") resolved the claim filed by the Player and ordered the Old Club to pay to the Appellant the amount of UZS 120,000,000 plus interest:

"III. Decision of the DRC judge

1- "The claim of the Claimant, Predrag Vujovic, is partially accepted.

2- The Respondent, Andijon Professional Futbol Klubi, has to pay to the claimant, within 30 days as from the date of notification of this decision, overdue payables in the amount of UZS 120,000,000, plus interest at the rate of %5 p.a. until the date of effective payment as follows:

a. 5% p.a. on the amount of UZS 20,000,000 as of 1 July 2015

b. 5% p.a. on the amount of UZS 20,000,000 as of 1 August 2015

c. 5% p.a. on the amount of UZS 20,000,000 as of 1 September 2015

d. 5% p.a. on the amount of UZS 20,000,000 as of 1 October 2015

e. 5% p.a. on the amount of UZS 20,000,000 as of 1 November 2015

f. 5% p.a. on the amount of UZS 20,000,000 as of 1 December 2015

3- In the event that the amount due to the Claimant, plus interest, is not paid by the Respondent within the stated time limit, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.

4- Any further claim lodged by the Claimant is rejected.

5- The Claimant is directed to inform the Respondent immediately and directly of the account number to which the remittance is to be made and to notify the DRC judge of every payment received".

10. On 19 July 2017, the FIFA DRC requested the Old Club to pay the amounts due to the Appellant by 29 July 2017 at the latest.

11. On 27 July 2017, the Old Club requested FIFA an extension of the deadline to comply with the payment obligation until 30 November 2017, alleging financial problems. In particular, this correspondence of the Old Club literally reads as follows in its pertinent part:

"Because of the available financial problems in club, FC "Andijan" asks you to grant delay on payment of the above-stated amounts till November 30, 2017".

12. On 7 August 2017, the FIFA DRC informed the parties that the case would be forwarded to the FIFA Disciplinary Committee (hereinafter, the "FIFA DC") as the payment had not been done by the Old Club.

13. On 18 August 2017, the Economic Court of the Andijon Region resolved to liquidate the Old Club.

III. PROCEEDINGS BEFORE THE FIFA DISCIPLINARY COMMITTEE

14. On 2 February 2018, the FIFA DC initiated disciplinary proceedings against the Old Club in accordance with Article 64 of the FIFA Disciplinary Code.

15. On 7 February 2018, the New Club informed FIFA that the Appellant had signed an employment contract with the Old Club that became officially bankrupt according to a decision passed by the Economic Court of the Andijon Region and that had nothing to do with the New Club.

16. On 22 August 2018, the Secretariat of the FIFA DC (hereinafter, "the Secretariat") sent a letter to the Uzbekistan Football Association (hereinafter, the "UFA") asking for some information on the situation and the current status of the Old Club and specifically, if he was still affiliated to the UFA and participating in any of the competitions organized by the UFA.

17. On 26 August 2018, the UFA replied to the abovementioned request in the following terms:

"We refer to the above-mentioned case and the relevant FIFA correspondence with this regard dated 22nd of August 2018 the content of which has been duly noted.

Further, we would like to inform you that on the based on the documents the Uzbekistan Football Association is in possess, we herewith confirm that the Football Club "Andijon Professional Futbol Klubi" has gone bankruptcy and therefore is no longer registered with UFA.

Following this, we wish you to inform you that the new Football Club "Andijon Futbol Sport PFK" is registered with the UFA since the season 2016. The said club has also provided the required set of documents, such as the Statutes and the relevant State Registration in witness of its existence accordingly".

18. On 22 March 2019, the Secretariat forwarded to the Appellant the above-mentioned communication from the UFA and informed him of the following:

"[…]

In this respect, we have noted from the above-mentioned correspondence that the club Andijon Professional Futbol Klubi has been declared bankruptcy.

After an analysis of the specific circumstances of the case, we must inform you that, as a general rule, the FIFA Disciplinary Committee cannot deal with cases involving clubs that have been declared bankrupt and are no longer affiliated to their association.

Consequently, on behalf of the chairman of the FIFA Disciplinary Committee, we regret having to inform you that the present disciplinary proceedings are declared closed in accordance with art 107 of the FIFA Disciplinary Code, as we do not appear to be in position to intervene in the case of the reference in which the club Andijon Professional Futbol Klubi is involved, given the latter has been declared bankrupt […]".

19. On 14 May 2019, the Appellant filed a letter to FIFA requesting *inter alia,* the following:

"the player respectfully requests the FIFA Disciplinary Committee to immediately continue the execution of the FIFA DRC decision against the club which is currently competing in the Uzbek championship under the name Andijon Futbol Sport PFK".

20. On 20 May 2019, FIFA requested the UFA to provide its position and all the relevant information regarding the arguments raised by the Appellant, and in particular if the New Club had any potential connection with the Old Club.

21. On 5 September 2019, the Secretariat initiated disciplinary proceedings against the New Club in accordance with Article 64 of the FIFA DC and additionally informed the parties that the case would be submitted to the FIFA DC for evaluation on 19 September 2019.

22. On 1 October 2019, the Secretariat invited the parties to provide further information on the list of creditors of the Old Club's bankruptcy.

23. On 7 October 2019, the Appellant informed FIFA that he was not in possession of any new document in this respect.

24. On the same day, the New Club provided a copy of the Court Decision.

25. On 15 October 2019, the FIFA DC rendered a decision (hereinafter, the "Appealed Decision") closing the proceedings, in the following terms:

"1. All charges against the club Andijon Futbol Sport PFK are dismissed.

2. The disciplinary proceedings initiated against the club Andijon Futbol Sport PFK are hereby declared closed".

26. On 17 January 2020, FIFA DC notified the grounds of the Appealed Decision to the parties. The relevant part of these grounds reads as follows:

"25. In light of all the above, and in line with the jurisprudence of CAS as reflected in art. 15 par. 4 of the 2019 FDC, the Deputy Chairman of the Committee recalls that the identity of a club is constituted by elements such as its name, colours, logo, fans, history, players, stadium etc., regardless of the legal entity operating it. As a result, on the basis of the information and documentation at hand, there is no other alternative but to conclude that the New Club, Andijon Futbol Sport PFK, is the sporting successor of the original Debtor, Andijon Professional Futbol Klubi.

26. In this regard, the Deputy Chairman of the Committee notes that neither the original debtor nor the new Club have complied with the decision passed by the dispute Resolution Chamber judge on 10 May 2017 as neither club has paid the outstanding amounts to the creditor.

[…]

29. That having been established, the Deputy Chairman of the Committee subsequently observes from the correspondence dated 7 October 2019 from the Creditor's legal representative that the Creditor did not register his claim during the bankruptcy proceedings as he was allegedly only informed of the bankruptcy proceedings against the original Debtor on 25 August 2018.

30. In this sense, the Deputy Chairman of the Committee would like to highlight that it is the Creditor's responsibility to be diligent in recovering his debt. The alleged fact that the Creditor was not aware of the bankruptcy proceedings does not exonerate him from his obligation to be diligent and to proactively try to collect his debt.

[…]

32. As a result, the Deputy Chairman of the Committee concludes that the Creditor failed to perform the expected due diligence that the circumstances demanded, and hence, contributed to the non-compliance of the decision passed by the Dispute Resolution Chamber judge on 10 May 2017 (by the original Debtor and subsequently by the New Club).

33. Therefore, although the new Club, Andijon Futbol Sport PFK, is to be considered the supporting successor of the original debtor, Andijon Professional Futbol Club, the Deputy Chairman of the Committee resolves that no disciplinary sanctions shall be imposed on the new Club and all charges against the later shall be dismissed, as a result of the lack of diligence of the Creditor in collecting his debt in the insolvency proceedings".

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

27. On 4 February 2020, pursuant to Articles R47 and R48 of the Code of Sports-related Arbitration (hereinafter, the "CAS Code"), the Appellant filed its Statement of Appeal before the Court of Arbitration for Sport (hereinafter, the "CAS") against the Appealed Decision, with the following request for relief:

"a) To partially annul the decision of the FIFA Disciplinary Committee dated 15 October 2019.

b) To annul the conclusion of the FIFA Disciplinary Committee that no disciplinary sanctions shall be imposed on Andijon Futbol Sport PFK and that all charges shall be dismissed, due to the lack of diligence of the Appellant.

c) To accept the appeal of the Appellant.

d) To rule that Andijon Futbol Sport PFK is responsible to pay the amounts imposed by the FIFA DRC judge on 10 May 2017 to the Appellant.

e) To rule that the Appellant did not fail to perform due diligence and did not waive his rights to collect his debt.

f) To order FIFA to enforce the FIFA DRC judge decision dated 10 May 2017 against Andijon Futbol Sport PFK.

g) To order FIFA to impose disciplinary sanctions on Andijon Futbol Sport PFK for the non-compliance of said club with the FIFA DRC judge decision dated 10 May 2017.

h) To condemn the Respondents to pay the entire CAS administration costs and the arbitration fees and to reimburse the Appellant of any and all expenses he incurred in connection with this procedure.

i) To rule that the Respondents have to pay the Appellant a contribution towards legal costs".

Moreover, in its Statement of Appeal, the Appellant proposed to submit the case to a Sole Arbitrator.

28. On 18 February 2020, the CAS Court Office acknowledged receipt of the First Respondents letter informing of its intention to discuss and provide all the necessary documentation and correspondence to litigate against the Appellant.

29. On the same day, the CAS Court Office acknowledged that the Second Respondent did not agree to submit the matter to a Sole Arbitrator and informed the parties that upon receipt of the First Respondent position regarding the number of arbitrators, the President of the CAS Appeals Arbitration Division would decide.

30. On 19 February 2020, the Appellant filed before the CAS its Appeal Brief with the following requests for relief:

"a) To partially annul the decision of the FIFA Disciplinary Committee dated 15 October 2019.

b) To annul the conclusion of the FIFA Disciplinary Committee that no disciplinary sanctions shall beimposed on Andijon Futbol Sport PFK and that all charges shall be dismissed, due to the lack of diligence of the Appellant.

c) To accept the appeal of the Appellant.

d) To rule that Andijon Futbol Sport PFK is responsible to pay the amounts imposed by the FIFA DRC judge on 10 May 2017 to the Appellant.

e) To rule that the Appellant did not fail to perform due diligence and did not waive his rights to collect his debt.

f) To order FIFA to enforce the FIFA DRC judge decision dated 10 May 2017 against Andijon Futbol Sport PFK.

g) To order FIFA to impose disciplinary sanctions on Andijon Futbol Sport PFK for the non-compliance of said club with FIFA DRC judge decision dated 10 May 2017.

h) To condemn the Respondents to pay the entire CAS administration costs and the arbitration fees and to reimburse the Appellant of any and all expenses he incurred in connection with this procedure.

i) To rule that the Respondents have to pay the Appellant a contribution towards legal costs".

31. On 10 March 2020, the CAS Court Office informed the parties that the Deputy Division President had decided to submit the present case to a Sole Arbitrator.

32. On 31 March 2020, pursuant to Article R54 of the CAS Code and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that Mr. José Juan Pintó Sala, Attorney-at-law in Barcelona, Spain, had been appointed as Sole Arbitrator to settle the present dispute.

33. On 4 May 2020, the Second Respondent filed its Answer with the following requests for relief:

"Based on the foregoing, FIFA respectfully requests the Panel to issue an award on the merits:

(a) rejecting the requests for relief sought by the Appellant;

(b) confirming the Appealed Decision;

(c) ordering the Appellant to bear the full costs of these arbitration proceedings".

34. The First Respondent failed to file its Answer.

35. On 18 May 2020, the CAS Court Office informed the parties that the Sole Arbitrator, after consulting the parties, considered himself sufficiently well informed with the Parties' written submissions and that therefore did not consider necessary to hold a hearing and that an award would be rendered on the sole basis of the Parties' written submissions pursuant to Article R57 of the Code.

36. On 19 May 2020, the CAS Court Office, on behalf of the Sole Arbitrator, issued an order of procedure (the "Order of Procedure"), which was accepted and countersigned by the Player and FIFA. By signing the Order of Procedure, the Player and FIFA confirmed CAS jurisdiction to hear this appeal and that their right to be heard had been duly respected by the Sole Arbitrator.

V. SUMMARY OF THE PARTIES' SUBMISSIONS

37. The following summary of the parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the parties. The Sole Arbitrator, however, has carefully considered, for the purposes of the legal analysis which follows, all the submissions made by the parties, even if there is no specific reference to those submissions in the following section.

A. The Appellant

38. The Appealed Decision rightly determined that the New Club is the sporting successor of the Old Club. Such decision has not been appealed by the New Club and therefore it is final and binding. It is undisputed that the sporting succession existed and thus, the New Club shall be considered as a non-compliant party.

39. The Appellant objects the part of the Appealed Decision that concludes that the Appellant failed to perform the expected due diligence that the circumstances demanded, and hence, contributed to the non-compliance of the decision passed by the FIFA DRC on 10 May 2017. The applicable rules to the present case, that is to say the FIFA Regulations and Statutes, do not foresee any requirement that in order to establish a sporting succession, a creditor must have first registered his credit in the bankruptcy proceedings of the Old Club.

40. FIFA does not codify such requirement, hence the only element that needs to be proven by the creditor is the sporting succession. If the creditor succeeds, the sporting successor shall be considered automatically as non-compliant, irrespective of any other requirement not established by the FIFA Regulations.

41. Contrary to the situation resolved in the award CAS 2011/A/2646 to which FIFA refers to, the New Club in the present matter did not pay a *"considerable amount of money"* to acquire assets of the Old Club, being this a substantial difference between the referred case and the present matter.

42. Nevertheless, in a case like this one, FIFA shall not be afraid of interfering in national insolvency law and/or national court orders, because it is not enforcing a decision against a bankrupt club, but against a new club which is a separate entity not undergoing any bankruptcy or insolvency proceedings.

43. Furthermore, not all the cases of sporting succession take place due to the bankruptcy of the Old Club. Therefore the extra requirement created by the Appealed Decision violates the principle of equal treatment as it imposes an incredibly high burden on creditors claiming for sporting succession in cases of bankrupt clubs compared with creditors involved in a sporting succession in which no bankruptcy proceedings has taken place.

44. In conclusion, there was no requirement for the Appellant to register his credit in the bankruptcy proceedings of the Old Club in order to have the New Club being held liable for

the payment of the relevant amount, and thus the Appealed Decision must be overturned in this point.

1. The Player was not aware and could not reasonably be aware of the bankruptcy proceedings of the Old Club

45. The Appellant was not aware and could not reasonably have been aware of the bankruptcy proceedings of the Old Club. Therefore the FIFA DC wrongly determined that he did not act with due diligence in this respect.

46. The bankruptcy proceedings of the Old Club were not communicated to the Appellant, neither by such club, nor by the UFA nor by FIFA, even though an active claim before the FIFA DRC was being conducted. The Old Club acted in bad faith as it even requested FIFA on July 2017 an extension to settle the payment ordered by the FIFA DRC. Nobody informed the Appellant of the existence of the bankruptcy proceedings and therefore FIFA cannot oblige the Appellant to register his credit in said proceedings if there is no corresponding obligation for FIFA and its member associations to timely inform claimants in FIFA procedures that bankruptcy proceedings have been initiated. The Player could not even imagine that bankruptcy proceedings had been initiated when in July 2017, the Old Club requested an extension to proceed with the payment imposed by FIFA and FIFA agreed to grant it.

47. Moreover the Player had no possibility to be aware of the existence of the bankruptcy proceedings as at the time of the initiation of such proceedings, he was already playing in Serbia, where the bankruptcy of a club in Uzbekistan would certainly not hit the headlines of the newspapers. Even if the Player had actively tried to find out whether the Old Club went bankrupt, he would not have discovered any information as there is no public available information whatsoever on the bankruptcy of the Old Club.

48. The fact that the Player has made no conscious decision in not participating in the bankruptcy proceeding in Uzbekistan as FIFA alleges and the fact that he simply had no reason to assume that he had to act in a certain way makes the present case fundamentally different to the CAS 2011/A/2646, a case that has been invoked by FIFA to support its reasoning in this case. In the mentioned case, the player knew from the very beginning that there were bankruptcy proceedings initiated and mentioned that he would register his credit in such proceedings, and this is a fundamental difference between this case and the one at stake.

49. Therefore, the fact that the Appellant did not register his credit in the bankruptcy proceedings of the Old Club should not prevent from ruling that the New Club is liable to pay the Appellant the amount established in the FIFA DRC decision.

2. The decision of the FIFA DC is inconsistent with the jurisprudence of such Committee

50. In the decision of the FIFA Disciplinary Committee dated 31 May 2019 in the case of a Estonian Club, club Tartu Jalgpallikool Tammeka, which was considered by the Croatian club NK Ortok to be the sporting successor of a previous Estonian Club, the FIFA DC simply determined that

the new club was responsible for the debts of the old club, without making any other statement regarding the diligence of the creditor.

51. Therefore, it is not demonstrated why the Appellant should be supposedly required to register his credit, whereas a professional club from Croatia is not required to do so in a similar case. The treatment to be given in this case should not be different from the one given to the creditor in the above-mentioned decision and FIFA should have enforced the FIFA DRC decision dated 10 May 2017 against the New Club.

B. The First Respondent

52. Despite having been duly notified of the existence of these proceedings, the First Respondent failed to submit its Answer to the Appeal within the granted time limit and also did not participate in any other way in the present arbitration proceedings.

C. The Second Respondent (FIFA)

1. The FIFA DC rightfully assessed the sporting succession by the New Club

53. The part of the Appealed decision concerning the issue of the sporting succession between the two clubs and therefore the conclusion reached by the FIFA Disciplinary Committee that *"there is no other alternative but to conclude that the new Club, Andijon Futbol Sport PFK, is the sporting successor of the original Debtor, Andijon Professional Futbol Klubi"* has not been appealed against so it has become final and binding and there is no room for further analysis on it.

2. Differences between the sporting succession and the assessment of the creditor's diligence during the bankruptcy proceedings

54. The FIFA DC never relied on his stance in the Old Club's bankruptcy to establish a situation of sporting succession as suggested by the Appellant. The Appealed decision relied on other elements, and on a second stage concludes that the New Club was not responsible to pay the amounts indicated by the FIFA DRC due to the Appellant's lack of diligence in the bankruptcy proceedings.

55. The FIFA DC undertook two levels of assessment, which reflects that the concepts of sporting succession and the creditors' diligence in bankruptcy proceedings operate in different levels and pertain to different realms. This approach was also used in the award CAS 2011/A/2646.

56. The principle of equal treatment invoked by the Appellant is not violated in situations like the one at stake by the two-level assessment required in these cases as opposed to those in which no bankruptcy proceedings are concerned. As it has been confirmed by CAS in several occasions, *"similar cases have to be treated similarly, but dissimilar cases could be treated differently"*. The cases involving bankruptcy proceedings are certainly different from the ones that do not involve bankruptcy and therefore different approaches shall govern those cases.

57. In other words, contrary to what the Appellant considers, there is no lack of normativity in the FIFA Disciplinary Code in this respect, and consequently there is no procedural flaw in the Appealed Decision.

3. The Appellant's expected diligence

i. Preliminary remarks

58. In the case at stake, the Appellant's credit towards the Old Club arose at the end of each month for which his salary was unpaid, therefore at least a year and a half before the insolvency proceedings involving the Old Club was initiated.

59. This is why the FIFA DC analysed the Appellant's stance in relation to the bankruptcy proceedings and finally concluded that his inaction amounted to a substantial waiver of his right to collect his debt within the bankruptcy proceeding.

ii. The creditor's diligence plays a crucial role

60. In situations involving bankruptcy proceedings, once the FIFA DC has determined the existence of supporting succession, it shall analyse the creditor's stance in the bankruptcy proceedings.

61. In the similar case CAS 2011/A/2646 the Panel studied the creditor's behaviour with respect to the bankruptcy proceedings and concluded that his decision not to claim his credit within those proceedings was to be considered a lack of diligence of the creditor in recovering his credit and therefore held that the creditor could have had a chance of recovering his credit but inexcusably failed to do so.

62. In bankruptcy proceedings, the creditor's action plays a crucial role as it makes the entity and the relevant national judge be aware of the exact amount of existing debt and possibility of creating the conditions for the credit to be satisfied.

63. The FIFA DC has acted in accordance with the relevant jurisprudence by analysing the creditor's diligence prior to deciding whether to sanction the New Club.

iii. The Appellant was not diligent vis à vis the Old Club bankruptcy proceedings

64. In bankruptcy proceedings, the creditor shall have a special duty of care and perform the investigations required into the debtor's monetary soundness if there are signs that a poor financial situation may be affecting him. This duty of care does not only affect the preliminary phase but also obliges the creditor to act diligently during all the different phases of the bankruptcy proceedings.

65. The FIFA DC's reasoning in the Appealed decision does not only fulfil CAS jurisprudence, taking into account especially the Club Rangers de Talca award, but also finds comfort in Swiss

law, as article 3(2) of the Swiss Civil Code provides as a general principle that no person may invoke the presumption of good faith if he has failed to exercise the diligence required by the circumstances.

66. In the circumstances of the case at stake, a simple expectation to receive news from the existence of bankruptcy proceedings cannot be equated by any means to the systematic research effort or *"measure of prudence of a reasonable person"* that the concept of diligence entails. The Appellant should not have simply sat on his lack of information in this regard but should rather have verified the status of his debtor, especially when he had clear indictors of the Old Club's possible financial distress.

67. Although the Player had lodged a claim before the FIFA DRC, as pointed out by the CAS, proceedings before FIFA and bankruptcy proceedings might run in parallel as the credit is not protected by an ongoing case before the FIFA DRC. No matter how practically onerous it can be, a cautions creditor that acts with diligence has the duty to activate himself to protect his claim. The player could have tried to reach the Uzbekistan Football Federation to know what was the status of the club or even through his lawyer try to discover the financial situation of the Old Club or if an insolvency proceeding had been opened as the fact that the club has suddenly stop paying his salaries with no reason was a sufficient hint that the club was not under a normal situation.

68. Despite the fact that the Appellant had multiple options to assess whether he could wait for his credit to be satisfied without risks or if a bankruptcy scenario was likely to be on the horizon, he did nothing in that sense and remained with no information until FIFA was aware of the bankruptcy proceeding that effected the Old Club.

69. The Appellant's overall conduct with respect to the protection of his credit and the control of his debtor's financial situation was not in conformity with the level of *"prudence, activity or assiduity, as is properly to be expected"*. The expected diligence did fall within his possibilities and consequently failing to do so has consequences.

4. Arguments concerning the consistency of the FIFA jurisprudence

70. The Appellant considers that he has been treated differently than other creditors in similar circumstances by FIFA.

71. FIFA has ruled in several cases denying the claim of a debtor alleging the lack of diligence in the local bankruptcy proceeding. Even before the Appealed Decision was rendered, the FIFA DC has reasoned in analogous cases in which despite of the sporting succession existing between two clubs, it has denied de creditor's claim for the very same reason that supports the Appealed Decision. Those referred cases are the decisions 160652 and 180078 of the FIFA DC. More recently there are also a large amount of cases that contain the same reasoning as the one in the case at stake.

72. In light of the above mentioned, it is possible to conclude that not only the FIFA DC applies a consistent reasoning in similar cases but also that FIFA, following the conclusions of the CAS

2011/A/2646, has continued to make the stakeholders aware of what is requested from creditors in similar circumstances in order for them to see their claims accepted and their credit satisfied by the FIFA DC and therefore the Appellant is obviously not treated differently and more heavily than other creditors.

VI. JURISDICTION

73. The CAS jurisdiction derives from Article R47 of the CAS Code, that provides as follows;

"An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body.

An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned".

74. Article 58 para 1 of the FIFA Statutes reads as follows:

"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of notification of the decision in question".

75. The appeal giving rise to these proceedings has been filed against a decision of FIFA in the sense of article 58 of its Statutes. In addition, the jurisdiction of the CAS has not been contested by the Parties. It follows, therefore, that CAS has jurisdiction in this appeal.

VII. ADMISSIBILITY

76. Pursuant to Article 58, paragraph 1 of the FIFA Statutes, in connection with Article R49 of the CAS Code, the Appellant had 21 days from the notification of the Appealed Decision to file its Statement of Appeal before the CAS.

77. The grounds of the Appealed Decision were communicated to the Appellant on 17 January 2020, and the Statement of Appeal was filed on 4 February 2020, *i.e.* within the time limit required both by the FIFA Statutes and Article R49 of the CAS Code.

78. Consequently, the appeal filed by the Appellant is admissible.

VIII. APPLICABLE LAW

79. Article R58 of the CAS Code reads as follows:

"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

80. Article 57.2 of the FIFA Statutes states the following:

"The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law".

81. In accordance with these provisions, the Sole Arbitrator considers that the present dispute shall be resolved on the basis of the applicable FIFA Regulations (and in particular the FIFA Disciplinary Code ed. 2017) and additionally Swiss Law.

IX. MERITS

A. The Appealed Decision and the scope of this appeal

82. Before entering into the merits of the present case, the Sole Arbitrator deems it appropriate to firstly point out, for the sake of good order, that:

(i) The Appealed Decision arises out of disciplinary proceedings started as per article 64 of the FIFA Disciplinary Code.

(ii) The Appealed Decision establishes that the New Club is the sporting successor of the Old Club and that thus it shall be considered a non-compliant party subject to the obligations of article 64 of the FIFA Disciplinary Code.

(iii) The First Respondent did not challenge the Appealed Decision.

(iv) In the Appealed Decision, the FIFA DC Deputy Chairman found that no disciplinary santion shall be imposed on the New Club despite being the sporting successor of the Old Club, and that the charges against the New Club shall be dismissed as a result of the lack of diligence of the Player in collecting his debt in the insolvency proceedings of reference.

(v) The operative part of the Appealed Decision thus reads as follows:

1. *All charges against the club Andijon Futbol Sport PFK are dismissed.*

2. *The disciplinary proceedings initiated against the club Andijon Futbol Sport PFK are hereby declared closed.*

83. The aforementioned considerations are relevant in the Sole Arbitrator's view to establish which the scope of the present appeal is. In this appeal, the discussion shall be and can only be focused on whether FIFA's decision to dismiss charges against the First Respondent and to close the relevant disciplinary proceedings is correct or not. The issue of the sporting succession has not be appealed by the First Respondent, so on the basis of the effect of *res iudicata*, the decision on

this is final and binding and no further discussions are admissible in this respect, and the same happens with the existence of the debt towards the Player as declared by the FIFA DRC.

84. Therefore, on the basis that the obligation of payment by the Old Club and the sporting succession between the Old Club and the New Club are undisputable, the controversial fact that generates the present arbitration procedure resides in whether the disciplinary proceedings were duly closed or not by the FIFA DC.

B. The dismissal of charges against the New Club and the closing of the disciplinary proceedings

85. For the reasons mentioned above, it is a fact that the New Club is the sporting successor of the Old Club for the purposes of these proceedings. The Appellant also agrees on it, but dissents on the effects of this succession in this specific case. While the Appellant holds that the sporting succession declared by the FIFA DC implies an automatic consideration of the New Club as non-compliant in the terms of article 64 of the FIFA Disciplinary Code, FIFA considers that such an automatism shall not apply in cases in which bankruptcy proceedings of the former club take place, as the deciding body shall bear in mind the spirit of such bankruptcy proceedings, the respect to the liquidation resolution adopted by the national court decision body and the attitude and diligence of the creditor in the collection of his credit in the bankruptcy proceedings.

86. The Sole Arbitrator agrees with FIFA in the fact that the degree of diligence of the creditor in the bankruptcy proceedings is a relevant issue in the decision on whether to continue with the disciplinary proceedings arising out of article 64 of the FIFA Disciplinary Code or to close them, and that a careless and negligent performance of the creditor may lead to the discontinuation of the disciplinary proceedings. This has been also confirmed by the CAS in the award CAS 2011/A/2646.

87. The Sole Arbitrator shall thus analyze whether in the case at stake, the Player's conduct towards the collection of his credit justifies and shall lead to the closing of the disciplinary proceedings or not examined.

88. The Sole Arbitrator deems it undisputed that the Appellant did not participate in the Old Club's bankruptcy proceedings initiated in Uzbekistan on 17 April 2017 and therefore did not file his credit in said proceedings. However, the Sole Arbitrator also considers proven that (i) the Player left Uzbekistan well before the Old Club was declared bankrupt and (ii) the Appellant did not get aware about said bankruptcy proceedings until FIFA forwarded him the letter sent by the UFA on 22 March 2019, that is to say well after the FIFA disciplinary proceedings started. On the contrary, the fact the the Old Club, on 27 July 2017 (that is to say, months after the beginning of the bankruptcy proceedings in Uzbekistan) requested FIFA an extension of the deadline to comply with the payment obligation until 30 November 2017 logically created on the Player the impression of the Old Club's willingness to pay, and not that bankruptcy proceedings were being conducted and that in short, a Court decision approving the liquidation of the Old Club would be issued (which happened on 18 August 2017). It is important to contextualize that when the Old Club, in said communication of 27 July 2017, requested the

extension to make the payment, the bankruptcy proceedings were already open in Uzbekistan from at least on 17 April 2017 in accordance with the documentation produced to the file. Therefore in said communication of 27 July 2017 the Old Club could have perfectly informed (and in good faith should have informed) the Appellant and FIFA of the existence of said bankruptcy proceedings, thus enabling the Player to take the appropriate decisions in this respect, but the Old Club failed to do this, and created the legitimate expectation on the Player that at some point it would be paying the amounts due, as an extension of payment was being requested.. The Sole Arbitrator considers that this is a clear reprehensible conduct by the Old Club and that cannot jeopardize the Player's position. Holding the contrary would mean, in the Sole Arbitrator's opinion, to infringe the doctrine of *estoppel* which has been extensively acknowleged by the CAS in *inter alia*, the awards CAS 2008/O/1455 and CAS 2002/O/410.

89. As mentioned above, the Sole Arbitrator finds that FIFA is completely right when it points out the importance of analyzing the duty of care in acting in a diligent way the creditor has especially in situations in which a bankruptcy proceeding has occurred. However, in the case at stake, the Sole Arbitrator considers that we are not in a situation of negligence of the Player contributing to the impossibility of receiving the amounts granted by the FIFA DRC Decision. To the contrary, what the Sole Arbitrator finds is that, the Appellant acted in a proactive way by filing a claim against the club before FIFA, requesting the payment of the debt once it was clear that the club had no intention of making said payment.

90. The Sole Arbitrator shall also stress that as recalled by FIFA and CAS jurisprudence, *"similar cases must be treated similarly, but dissimilar cases could be treated differently"* (CAS 2012/A/2750). Therefore, the Sole Arbitrator considers necessary to highlight that the case at stake differs from the one in the award CAS 2011/A/2646 because in such proceedings, the player knew from the very beginning that there was a bankruptcy proceeding initiated and communicated the Panel that his intention was to register his credit in such proceedings. As stated by the Panel in such award, *"in accordance with the evidence taken in these proceedings (i.e. the letter of the bankruptcy's receiver -"síndico"- dated 6 March 2012, not challenged by FIFA), the Player apparently decided not to claim for his labour debt in the bankruptcy proceedings, in spite of (i) being aware of these proceedings and (ii) having announced his intention to do so. This, in the Panel's opinion, is to be considered as a lack of dilligence of the Player in recovering his credit that shall have an impact in the present case".*

91. In light of the foregoing and specifically of the fact that the Sole Arbitrator is not convinced that the Player lacked diligence in the collection of his credit, the Sole Arbitrator decides that the appeal filed by the Appellant shall be partially upheld. The Sole Arbitrator confirms the findings of the Appealed Decision with respect to the sporting succession, which have not been challenged by the First Respondent, but annuls the operative part of the Appealed Decision (dismissal of charges against the New Club and closing of the proceedings) and, in accordance with article R57 of the CAS Code, decides to refer the case back to the FIFA Disciplinary Committee to resume the disciplinary proceedings. As a consequence, the remaining requests for relief raised by the Appellant in his submissions cannot be entertained at this stage as the case is sent back to the previous instance, so that the disciplinary proceedings keep moving ahead in accordance with the FIFA Disciplinary Code.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 4 February by Predrag Vujovic against the decision issued on 15 October 2019 by the Disciplinary Committee of the *Fédération Internationale de Football Association* is partially upheld.

2. The decision issued on 15 October 2015 by the Disciplinary Committee of the *Fédération Internationale de Football Association* with Ref 171380PST is confirmed in the sense that Andijon Futbol Sport PFK shall be considered as the sporting successor of Andijon Professional Futbol Klubi and is subject to the obligations under article 64 of the FIFA Disciplinary Code, but is partially annulled in what concerns the dismissal of charges against Andijon Futbol Sport PFK and the closing of the disciplinary proceedings.

3. The aforementioned case shall be referred back to the FIFA Disciplinary Committee so that the disciplinary proceedings resume.

4. (…).

5. (…).

6. All other or further motions or prayers for relief are dismissed.