

**Decision**  
of the  
**Deputy Chairman of the FIFA Disciplinary  
Committee**

Mr Alejandro Piera [PAR]

on 15 October 2019,

to discuss the case of:  
Parma Calcio 1913, Italy  
(Decision 170073 PST)

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*regarding:*

failure to comply with  
art. 64 FDC of the FDC (2017 ed.) / art. 15 of the FDC (2019 ed.)

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## I. inferred from the file

1. On 2 July 2015, the Dispute Resolution Chamber (DRC) decided that the club Parma FC (hereinafter: *the original Debtor*) had to pay to the club Tiendas Margos FC (hereinafter: *the Creditor*):

**EUR 9,896.25** within 30 days as from the date of notification of the decision plus interests as follows:

- 5% *p.a.* over the amount of EUR 1,440 as from 16 July 2012 until the date of effective payment;
  - 5% *p.a.* over the amount of EUR 8,200 as from 16 July 2013 until the date of effective payment;
  - 5% *p.a.* over the amount of EUR 256.25 as from 1 March 2013 until the date of effective payment.
2. The terms of the decision of the Dispute Resolution Chamber were duly communicated, amongst others, to the parties on 16 July 2015. No request for the grounds of the decision was received and, therefore, the decision from the Dispute Resolution Chamber dated 2 July 2015 became final and binding.
  3. On 13 January 2017, the secretariat to the FIFA Disciplinary Committee (hereinafter: *the Secretariat*) sent a letter forwarding to the Claimant a correspondence dated 2 July 2015 whereby the Italian Football Federation (hereinafter: *the FIGC*) informed FIFA that the original Debtor, the club Parma FC, was no longer affiliated to the association. As a consequence, the Secretariat informed the Claimant, on behalf of the Chairman of the FIFA Disciplinary Committee, that it did not appear to be in a position to further proceed with the case of the reference in which the original Debtor is involved, given that it cannot deal with cases involving clubs which are not affiliated to their Association any longer.
  4. On 3 September 2018 and again on 3 March 2019, the legal representative of the Creditor provided the Secretariat with a correspondence claiming, *inter alia*, that a club called Parma Calcio 1913 (hereinafter: *the new Club*) participating in the *Serie A* of the Italian Football League was the sporting successor of the original Debtor. In particular, the latter underlined that despite the new Club having partly changed its name, its legal form and shareholders, it remained the same as the original Debtor, given that the new Club uses the same colours, emblems and banners as the original Debtor, as attested by a printout provided from Wikipedia.

5. In addition, the Creditor provided some printouts from the new Club's website confirming, *inter alia*, that the club was founded in 1913, as well as pointing out the club's achievements over the last 100 years. Moreover, the new Club's website confirmed that the club had changed ownership several times in the last decades, and that after the last change of ownership it participated in the *Serie D* of the Italian League during the season 2015-2016 (amateur level), having now made it back to the *Serie A* (professional level).
6. On 2 April 2019, the Secretariat requested the FIGC to provide its comments regarding the allegations brought up by the Creditor and in particular, to provide its position regarding the potential connection between the new Club and the original Debtor.
7. On 5 April 2019, the FIGC sent a letter informing the Secretariat that the original Debtor had been declared bankrupt by the Court of Parma on 19 March 2015, as a consequence of which the club was disaffiliated from the FIGC on 30 June 2015. Moreover, the FIGC stated that the new Club had been newly founded and its affiliation to the FIGC dated from 28 July 2015. In this regard, the FIGC informed that the new Club started its participation in *Serie D* (amateur league) in the season 2015-2016 and promoted at the end of each of the following seasons to Serie C (professional league), Serie B and finally at the end of the season 2017-2018 promoted to Serie A, where it currently continues to compete.
8. In light of the above, the FIGC deems that the new Club is not to be considered the legal successor of the original Debtor since there is no continuity between the two sports entities, and therefore is not to be considered liable for the amounts due to the Creditor by the original Debtor.
9. As the aforementioned amounts had not been paid to the Creditor, the Secretariat forwarded the correspondences from the Creditor and from the FIGC to the new Club on 28 May 2019, thereby opening disciplinary proceedings against the latter for a potential failure to respect a decision passed by a body, a committee or an instance of FIFA or a CAS decision. In addition, the new Club was informed that the case would be submitted to a member of the FIFA Disciplinary Committee for evaluation on 10 June 2019, and was invited to provide its position regarding the allegations made by the Creditor.
10. On 3 June 2019, the new Club provided its position to the Secretariat, stating that it is not to be considered the legal successor of the original Debtor since there is no continuity between the two sports entities, and therefore the new

Club could not be held liable for the amounts due by the original Debtor to the Creditor, neither for the violation of art. 64 of the FDC (current art. 15 of the FDC 2019 edition).

11. In this regard, the new Club considers proven by its submission that a) the characteristic features of the two clubs are different; b) the new Club has never acquired any of the assets of the original Debtor; c) the new Club's wish to clearly distinguish itself from the original Debtor, which represented the failure of Italian football in the city of Parma, is clearly evident; d) the apparent similarities between both clubs derive from the connection with the city of Parma, which should not by itself determine any continuity between the clubs.
12. As the aforementioned amounts had still not been paid to the Creditor, the Secretariat opened again the disciplinary proceedings against the new Club for a potential failure to respect a decision passed by a body, a committee or an instance of FIFA or a CAS decision. In addition, the new Club was informed that the case would be submitted to a member of the FIFA Disciplinary Committee for evaluation on 19 September 2019, and was invited to provide its position within six days of the notification of the communication opening the disciplinary proceedings.
13. On 11 September 2019, the new Club sent its position informing FIFA that it had not paid the amounts due to the Creditor given that it does not consider itself to be the legal successor of the original Debtor for the reasons explained in its submission dated 3 June 2019, which the club enclosed for ease of reference.
14. On the same date, the FIGC sent a correspondence to FIFA reiterating its position submitted on 5 April 2019, where in essence it explained that the original Debtor had been declared bankrupt and lost its affiliation to the FIGC on 30 July 2015, whereas the new Club was a completely new entity which affiliation to the FIGC dates to 28 July 2015, and is not to be considered the legal successor of the original Debtor.
15. On 4 October 2019, the Secretariat informed the parties that the case had been submitted to the Deputy Chairman of the Disciplinary Committee, who decided that in order to duly assess the case, further information related to the bankruptcy of the original Debtor was required, in particular, the list of creditors, which the parties were requested to provide to the Secretariat.

16. On 7 October 2019, the FIGC provided FIFA with the list of creditors of the bankruptcy proceedings of the original Debtor before the Court of Parma. The same list was later on also provided by the new Club on 9 October 2019, whereas on that same date the Creditor informed the Secretariat that it did not have the said list.
17. Upon receipt of the list of creditors and further to checking that the Creditor is not included therein, the Secretariat informed the parties on 11 October 2019 that the matter would be submitted to a member of the FIFA Disciplinary Committee on 14 October 2019.

## **II. and considered**

1. In the case at hand, in view of the arguments raised by the parties, the Deputy Chairman of the FIFA Disciplinary Committee (hereinafter also referred to as *Deputy Chairman of the Committee*) decides to first assess as to whether he is competent to decide on the present matter, and should it be the case, as to whether Parma Calcio 1913 could be held liable and responsible for a potential failure to respect the decision passed by the Dispute Resolution Chamber (DRC) on 2 July 2015.

### **A) Applicable law**

2. First of all, the Deputy Chairman of the FIFA Disciplinary Committee would like to analyse which version of the FIFA Disciplinary Code (FDC) applies.
3. In this sense, the Deputy Chairman of the Committee underlines that the 2019 edition of the FDC (hereinafter: *the 2019 FDC*) entered into force on 15 July 2019 (art. 72 par. 1 of the 2019 FDC) and applies to all disciplinary offenses committed following said date (art. 4 par. 1 of the 2019 FDC).
4. With regard to the matter at hand, the Deputy Chairman of the Committee highlights that the disciplinary offense, i.e. the potential failure to comply with the DRC decision, was committed before the 2019 FDC entered into force. As a result, the Deputy Chairman of the Committee deemed that the merits of the present case fall under the 2011 edition of the FDC (hereinafter: *the 2011 FDC*).

5. Notwithstanding the above, the Deputy Chairman of the Committee held that the procedural aspects of the present matter are governed by the 2019 FDC.

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

6. In view of the circumstances of the case, the Deputy Chairman of the Committee will now analyse as to whether he is competent to assess if the new club is the successor of the original debtor.
7. For the sake of good order, it is worth emphasising that, in line with art. 54 par. 1 lit h) of the 2019 FDC, cases involving matters under art. 15 of the 2019 FDC (former art. 64 of the 2011 FDC) may be decided by one member of the Disciplinary Committee alone, i.e. the Deputy Chairman of the Committee in the case at hand.
8. In this context, the Deputy Chairman of the Committee first emphasises that it is uncontested that the original Debtor, Parma FC, subject of the initial decision of the DRC, had been disaffiliated from the FIGC.
9. In these circumstances, the Deputy Chairman of the Committee wishes to recall that, 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 FDC on member associations, clubs, officials, players, intermediaries and licensed match agents.
10. Clubs are affiliated to regional and/or national football associations and these national football associations are members of FIFA. Consequently, football clubs are considered as "indirect members" of FIFA and therefore, are subject to and bound by the FIFA Statutes and all other FIFA rules and regulations as well as by all relevant decisions passed by the FIFA bodies.
11. The aforementioned principle is embedded in article 14 par. 1 lit d) of the FIFA Statutes which requires the member associations "*to cause their own members to comply with the Statutes, regulations, directives and decisions of FIFA bodies*" as well as in article 60 par. 2 of the FIFA Statutes that states that the member associations, amongst others, "*shall take every precaution necessary to ensure their own members, players and officials comply with these decisions*". The foregoing is only possible to the extent that the so-called "members" are still affiliated to the member associations of FIFA.

12. Since the FIGC has confirmed that the original Debtor is no longer affiliated to the association, it has lost its indirect membership to FIFA and therefore, the Disciplinary Committee could not impose sanctions against Parma FC. However, the Deputy Chairman of the Committee notes that the Creditor subsequently requested the enforcement of the DRC decision against Parma Calcio 1913, which, in its view, is considered to be the successor and/or the same entity as the disaffiliated club, Parma FC.
13. In this regard, and in line with the jurisprudence of the Court of Arbitration for Sport, the Deputy Chairman of the Committee considers that he is not prevented from reviewing and/or making a legal assessment and deciding if the new Club, Parma Calcio 1913, is the same as – and/or the successor of – the original Debtor, Parma FC<sup>1</sup>, especially considering that the former is still duly affiliated to the FIGC, and as such, under the jurisdiction of the Committee.
14. As such, the Deputy Chairman of the Committee deems that he is competent to assess the present matter and therefore to pass a formal decision of a substantive nature on the Creditor's request concerning the liability of the new Club, Parma Calcio 1913, towards the debts of the original Debtor in the frame of art. 64 of the 2011 FDC.

### **C) The liability and responsibility of Parma Calcio 1913**

#### **a. Whether Parma Calcio 1913 is liable for the debts incurred by Parma FC**

15. After having established that the Deputy Chairman of the Committee is competent to assess the present matter, he moves on to analyse whether the new Club, Parma Calcio 1913, has a connection with the original Debtor, Parma FC, and therefore can be held liable for the debts of the latter.
16. In this sense, the Deputy Chairman of the Committee found it worthwhile to recall the existing jurisprudence from CAS on this particular topic.
17. To that end, the Deputy Chairman of the Committee would first like to refer to the decisions that had dealt with the question of the succession of a sporting club in front of the CAS<sup>2</sup> and in front of FIFA's decision-making bodies<sup>3</sup> which have established that, on the one side, a club is a sporting entity identifiable by itself that, as a general rule, transcends the legal entities which operate it. Thus the obligations acquired by any of the

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<sup>1</sup> CAS 2018/A/5647 Civard Sprockel v. FIFA & PFC CSKA Sofia, para. 135

<sup>2</sup> CAS 2007/A/1355; TAS 2011/A/2614 and TAS 2011/A/2646; TAS 2012/A/2778

<sup>3</sup> FIFA DRC 12150569

entities in charge of its administration in relation with its activity must be respected; and on the other side, that the identity of a club is constituted by elements such as its name, colours, fans, history, sporting achievements, shield, trophies, stadium, roster of players, historic figures, etc. that allow it to distinguish from all the other clubs. Hence, the prevalence of the continuity and permanence in time of the sporting institution in front of the entity that manages it has been recognized, even when dealing with the change of management completely different from themselves (CAS 2013/A/3425).

18. In these circumstances, CAS already considered that a “new” club had to be considered as the “sporting successor” of another one in a situation where a) the “new” club created the impression that it wanted to be legally bound by obligations of its predecessor, *i.e.* the “old” club, b) the “new” club took over the license or federative rights from the “old” club and c) the competent federation treated the two clubs as successors of one another<sup>4</sup>. By the same token a “sporting succession” is the result of the fact that 1) a new entity was set up with the specific purpose of continuing the exact same activities as the old entity, 2) the “new” club accepted certain liabilities of the “old” club, 3) after the acquisition of the assets of the “old” club, the “new” club remained in the same city and 4) the “new” club took over the license or federative rights from the “old” club<sup>5</sup>.
19. Further, the issue of the succession of two sporting clubs might be different than if one were to apply civil law, regarding the succession of two separate legal entities<sup>6</sup>. Consequently, elements to consider are amongst others the name, the logo and colours, the registration address and/or the managing board of the club.
20. For the sake of completeness, the Deputy Chairman of the Committee wishes to point out that this established jurisprudence from CAS has now been reflected in the 2019 FDC, under art. 15 par. 4, which states that *“The sporting successor of a non-compliant party shall also be considered a non-compliant party and thus subject to the obligations under this provision. Criteria to assess whether an entity is to be considered as the sporting successor of another entity are, among others, its headquarters, name, legal form, team colours, players, shareholders or stakeholders or ownership and the category of competition concerned”*.
21. With the above in mind, the Deputy Chairman of the Committee subsequently analyses the documentation at his disposal in the light of the

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<sup>4</sup> CAS 2007/A/1322 FC Politehnica Timisoara SA v. FIFA & RFF & Politehnica Stintia 1921 Timisoara Invest SA

<sup>5</sup> CAS 2011/A/2646 Club Rangers de Talca v. FIFA

<sup>6</sup> CAS 2016/A/4576 Ujpest 1885 v. FIFA, para. 134 – 139.

criteria set by the relevant jurisprudence of CAS (now reflected in art. 15 par. 4 of the 2019 FDC) and applied by the Committee in such situations.

22. In this sense, the Deputy Chairman of the Committee first notes from the documents provided by the Creditor on 3 September 2018 and 9 March 2019 that:

- a. both clubs have similar names – Parma FC the original Debtor and Parma Calcio 1913 the new Club;
- b. both clubs share the same colours;
- c. the crest and the logos of both clubs are almost identical;
- d. the new Club's official website refers to the same foundation date, history and sporting achievements as those of the original Debtor;
- e. both clubs played at the same stadium;
- f. the clubs have different registered offices.

23. In light of all the above, the Deputy Chairman of the Committee recalls that, in line with the jurisprudence of CAS, which is now reflected in art. 15 par. 4 of the 2019 FDC, 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, Parma Calcio 1913, is the sporting successor of the original Debtor, Parma FC.

24. 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 on 2 July 2015 as neither club has paid the outstanding amounts to the Creditor.

25. As such, following the jurisprudence of the FIFA Disciplinary Committee, the Deputy Chairman of the Committee concludes that, in principle, the sporting successor, *i.e.* the new Club, of a non-compliant party, *i.e.* the original Debtor, shall also be considered a non-compliant party and is thus subject to the obligations under art. 64 of the 2011 FDC.

**b. Whether Parma Calcio 1913 is responsible to pay the amounts imposed by the DRC**

26. First and foremost, the Deputy Chairman of the Committee recalls that the original Debtor went bankrupt. In this context, it appears relevant for the legal assessment of this case, to analyse the diligence of the Creditor in recovering its debt in order to assess as to whether a sanction can be imposed on the new Club, *i.e.* whether the Creditor also contributed to create the breach of art. 64 of the 2011 FDC as it could be that its credit

would have been paid in the bankruptcy proceedings and therefore no sanction may be imposed<sup>7</sup>.

27. In this context, the Deputy Chairman acknowledges that bankruptcy proceedings before national courts are complex, lengthy and differ from one country to another and that their outcomes are hardly predictable. However, the Deputy Chairman deems it of paramount importance that the creditor seeking to recover its debt participates in the bankruptcy proceedings at national level.

28. In this regard, the Deputy Chairman recalls that the equality of creditors is one of the general principles governing bankruptcy proceedings. In other words, similarly situated creditors should be treated similarly.

29. However, the Deputy Chairman observes that clubs that are subject to a dispute of an international dimension have the possibility, under certain conditions, of filing a claim before FIFA's competent deciding body, in particular its Dispute Resolution Chamber (DRC), and can therefore benefit, in principle, from a faster procedure than the one before civil courts<sup>8</sup>. Moreover, these clubs can then request the enforcement of the decision before the FIFA Disciplinary Committee.

30. That being said, the Deputy Chairman remarks that clubs that are subject to a dispute that is not of an international dimension, cannot profit from the above-described procedures before FIFA. On the contrary, the Deputy Chairman notes that these clubs cannot take advantage of the dispute resolution system offered by FIFA and can only claim their debts against a bankrupt club in the relevant proceedings at national level.

31. As a result, the Deputy Chairman considers that the utmost obligation of any creditor of a club involved in bankruptcy proceedings is to register and participate in these proceedings at national level to collect its debts.

32. Should however a new club appear and the Creditor claim that this new club should be considered as the successor of the insolvent one, the Deputy Chairman considers that the Disciplinary Committee may only decide whether the new club is the successor of the former/insolvent club and whether it should be liable for the debts of the former/insolvent club provided that the creditor that has benefited from FIFA's dispute resolution system properly took part in the bankruptcy proceedings.

33. The Deputy Chairman finally points out that should a club submit a complaint directly to the Disciplinary Committee without having previously taken part in the bankruptcy proceedings, this would result in unequal treatment towards the other creditors of the bankrupt club who

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<sup>7</sup> 2011/A/2646 Club Rangers de Talca v. FIFA

<sup>8</sup> Cf. art. 22 of the Regulations on the Status and Transfer of Players

participated in the proceedings at national level, which cannot be accepted under any circumstances.

34. Bearing the above in mind, it appears that the circumstances of the case reflect a lack of diligence by the Creditor in recovering its debt, as it never joined the bankruptcy proceedings before the Court of Parma in order to be included in the original Debtor's list of creditors.

35. As a result, the Deputy Chairman of the Committee considers that in the current factual circumstances of the case the Creditor was not diligent. Therefore, he finds that the new Club cannot be held liable for the debts incurred by the original Debtor – namely the one related to the decision passed by the Dispute Resolution Chamber on 2 July 2015 – and consequently concluded that the new Club, Parma Calcio 1913, is not responsible for complying with the financial decision taken by Dispute Resolution Chamber on 2 July 2015, under the terms of art. 64 of the 2011 FDC.

#### D) Sanctions

36. In light of the aforementioned conclusion that the new Club cannot be held liable for the debts incurred by the original Debtor in relation to the Creditor, given the latter's lack of diligence in recovering its debt by not being part of the original Debtor's bankruptcy list of creditors, the Deputy Chairman considers that all charges against the new Club shall be dismissed, and the disciplinary proceedings initiated against the club Parma Calcio 1913 shall be closed, in accordance with art. 55 of the 2019 FDC.

### III. has therefore decided

1. All charges against the club Parma Calcio 1913 are dismissed.
2. The disciplinary proceedings initiated against the club Parma Calcio 1913 are hereby declared closed.

FÉDÉRATION INTERNATIONALE  
DE FOOTBALL ASSOCIATION



Alejandro Piera  
Deputy Chairman 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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