

## ARTICLE 21 FIFA DISCIPLINARY CODE: WHAT ARE THE BOUNDARIES OF FIFA'S COMPETENCE?

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*ABSTRACT: Article 21 FIFA Disciplinary Code (FDC) is, arguably, the cornerstone of FIFA's private legal order. The provision attempts to secure the long-term stability of the system insofar as it has, generally speaking, the aim of safeguarding the respect of decisions rendered by sports deciding bodies on the basis of the set of rules which FIFA itself has drafted. At the same time, the provision has (at least indirectly) the additional aim of protecting the satisfaction of creditors, thus revealing a somewhat hybrid nature. This polyhedric rule, currently 11-paragraph long after a series of amendments and enrichments, includes mechanisms of 'indirect enforcement' of decisions rendered at national level, covers the 'enforcement' of settlement agreements concluded in the context of disciplinary proceedings already opened for failure to respect financial decisions, determines the consequences of a sporting succession for a debtor club and guarantees the 'enforcement' of CAS awards of the Appeals and Ordinary Division. The broad wording and multifaceted purpose of the provision inevitably leads to several interpretative discussions. The aim of this paper is attempting to define its scope of application (ratione personae and ratione materiae), also on the basis of FIFA and CAS jurisprudence, as well as discussing (what the Authors consider to be) still open issues.*

*L'articolo 21 del Codice disciplinare FIFA (FDC) è probabilmente la pietra angolare dell'ordinamento giuridico privato della FIFA. La disposizione cerca di garantire la tenuta a lungo termine del sistema in quanto ha, in generale, l'obiettivo di salvaguardare il rispetto delle decisioni prese dagli organi decisionali sportivi sulla base dell'insieme di regolamenti che la stessa FIFA ha redatto. Allo stesso tempo, la norma ha (almeno indirettamente) l'ulteriore obiettivo di tutelare la soddisfazione dei creditori, rivelando così una natura in qualche modo ibrida. Questa norma poliedrica, attualmente composta di 11 paragrafi a seguito una serie di emendamenti e arricchimenti, include meccanismi di "esecuzione indiretta" di decisioni rese a livello nazionale, copre l'"esecuzione" di accordi transattivi conclusi nell'ambito di procedimenti disciplinari già aperti per il mancato rispetto di decisioni finanziarie, determina le*

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*conseguenze di una successione sportiva per un club debitore e garantisce l'“esecuzione” dei lodi del CAS della Divisione d'Appello e Ordinaria. L'ampia formulazione e lo scopo multiforme della disposizione portano inevitabilmente a diverse discussioni interpretative. Il presente contributo ha l'obiettivo di tentare di definire il suo ambito di applicazione (ratione personae e ratione materiae), anche sulla base della giurisprudenza della FIFA e del CAS, nonché di discutere (quelle che sono considerate nell'opinione degli Autori) questioni ancora aperte.*

**Keywords:** *FIFA private legal order – Article 21 FDC – Scope of application – Ratione personae – Ratione materiae – Article 3 FDC – Enforcement of decisions – CAS ordinary awards – Indirect enforcement.*

*Ordinamento giuridico privato della FIFA – Articolo 21 FDC – Ambito di applicazione – Ratione personae – Ratione materiae – Articolo 3 FDC – Esecuzione delle decisioni – Lodi ordinari CAS – Esecuzione indiretta.*

**SUMMARY:** 1. Introduction – 2. The nature of the proceedings and the scope of review of the FIFA Disciplinary Committee – 3. The scope of application of Article 21 FDC – 3.1 The scope *ratione personae* – 3.1.1 The interpretation of the CAS – 3.1.2 FIFA's own interpretation – 3.1.3 Open interpretative issues – 3.1.3.1 Article 3 FDC is the safest gatekeeper. Is it the most accurate? – 3.1.3.2 The status of the person seeking the enforcement – 3.2 The scope *ratione materiae* – 3.2.1 Decisions of a body, committee, a subsidiary or an instance of FIFA – 3.2.2 Decisions of the CAS (Appeal and Ordinary Division) – 3.2.3 Open interpretative issues – 3.2.3.1 The broad jurisdiction of the CAS Ordinary Division – 3.2.3.2 The (inter)national dimension of the dispute – 3.2.3.3 The indirect enforcement – 4. Conclusions

## 1. Introduction

At a time when it had not yet joined the system of international sports dispute resolution created by the Court of Arbitration for Sport (CAS), FIFA had already in place a mechanism attempting to ensure that 'sums of money' awarded by its associations tribunals were effectively paid to the beneficiaries. The provision of the FIFA Disciplinary Code (FDC) intended for this purpose was originally Article 70.<sup>1</sup>

<sup>1</sup> Article 70 (Ed. 2002): "1. Anyone who fails to pay another person (such as a player, a coach or a club) a sum of money in full, even though instructed to do so by a body of FIFA: a) will be sanctioned with a minimum fine of CHF 5,000 for failing to comply with the instructions issued by the body that imposed the payment (cf. Article 44 of the FIFA Statutes); b) will be given a final time limit by the judicial bodies of FIFA in which to settle the debt; c) if it is a club, it will be warned

This provision has gone through various amendments (and renumbering) in the last twenty odd years. In 2005, its scope was broadened with the possibility to impose a ban also against natural persons;<sup>2</sup> in 2006, the provision (at that point, Article 71) included CAS awards and non-financial decisions amongst the rulings whose disrespect would lead to sanctions;<sup>3</sup> in 2011 the provision (turned into Article 64) introduced, amongst others, the obligation for national associations to implement the respect of decisions rendered by National Dispute Resolution Chambers (NDRCs) recognised by FIFA;<sup>4</sup> in 2019, the provision (which had become by then Article 15) introduced, amongst others, the consequences of a sporting succession of the original debtor and removed the limitation of 'enforceable' CAS awards to the ones rendered in appeal (thus including the ones of the Ordinary Division); in 2023, the provision (now Article 21), amongst others, specified that FIFA can impose additional disciplinary measures after the failure to comply, explicitly indicated that the creditor is entitled to be notified also the grounds of the decision in proceedings started upon his request, outlined the mechanism to lift a ban imposed if the debtor provides evidence of payment and indicated that CAS ordinary awards would be 'enforced' only if the relevant procedure started after 15 July 2019.<sup>5</sup>

On 1 June 2025, the new FDC (adopted on 9 May 2025) entered into force and Article 21 FDC was amended again. A margin of appreciation for the deciding body to fine parties for failure to comply with a decision was explicitly established (from "will be" to "may be") and a new paragraph (five) was introduced to give normative support to the practice of evaluating the creditor's diligence in attempting to collect their credit when assessing cases of responsibility for debts incurred by clubs which faced insolvency or bankruptcy proceedings.

Over time, the provision has grown in scope – now extending across three pages and eleven paragraphs and addressing a wide range of situations – yet one element has remained constant: it always had the aim of securing (together with other provisions in the RSTP dedicated to the safeguard of contractual stability) the long-term stability of FIFA's private legal order.<sup>6</sup>

Several years down the road, it is safe to say that the attempt was successful. The key element to the system's stability is as simple as

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and threatened with deduction of points or relegation to the next lower division if it has not paid by the final time limit. 2. If the club disregards the final time limit, the body will request the national association concerned to implement the threat. 3. If points are deducted, they shall be proportionate to the amount owed".

<sup>2</sup> Article 70, paragraph 4 FDC, ed. 2005.

<sup>3</sup> Article 71 paragraph 1 FDC, ed. 2006.

<sup>4</sup> Article 64, paragraphs 6 and 7, ed. 2011.

<sup>5</sup> Article 21 FDC, ed. 2023.

<sup>6</sup> On the private legal order of FIFA, see GOMSTIAN S., BALVERT A., HOCK B., KIRMAN O., 'Between the Green Pitch and the Red Tape: The Private Legal Order of FIFA' (23 January 2017), Yale Journal of International Law, Vol. 43, No. 1, 2018, TILEC Discussion Paper No. 2017-003. Available at SSRN: <https://ssrn.com/abstract=2903902> or <http://dx.doi.org/10.2139/ssrn.2903902>.

efficient: the decisions rendered by FIFA's tribunals (and by the CAS, to which these must be appealed) are, generally speaking, respected by the affected stakeholders because the system threatens the imposition of sanctions on wrongdoers.<sup>7</sup>

When it comes to 'enforcing' financial decisions,<sup>8</sup> however, the system shows a rather hybrid nature which derives from its twofold objective: on the one hand, protecting its overall stability by ensuring that decisions of its adjudicatory bodies (and the CAS) are respected; on the other (at least indirectly) protecting the satisfaction of creditors.<sup>9</sup>

In the following paragraphs, this paper will provide an overview of the main questions which have arisen (and might still arise) out of the current wording of the provision. The paragraphs referred to are (their full text is reproduced in the corresponding footnotes):

- a. Paragraph one, delimiting the scope of application of the provision;<sup>10</sup>
- b. Paragraph two, specifying that proceedings concerning financial decisions do not start *ex officio*.<sup>11</sup>
- c. Paragraph six and seven, providing for a mechanism of 'indirect enforcement' of decisions rendered at national level;<sup>12</sup>

<sup>7</sup> Whether the system will resist the consequences of the Diarra 'earthquake' remains to be seen. However, any discussion on the topic at this stage might be premature and, in any case, beyond the scope of this paper.

<sup>8</sup> See *infra* for a clarification on the term 'enforcement' in the context of FIFA disciplinary proceedings.

<sup>9</sup> FIFA has at times argued that the creditor in these types of procedure only holds an indirect interest and as such lacks standing to sue/appeal. However, its Disciplinary Code also establishes that proceedings to enforce financial decisions can only commence at the request of creditors (see CAS 2021/A/8308 *Christian Pouga v. FIFA*).

<sup>10</sup> Article 21, paragraph 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, committee, a subsidiary 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, a subsidiary or an instance of FIFA, or by CAS [...]*". (emphasis added)

<sup>11</sup> Article 21, paragraph 2: "*With regard to financial decisions passed by a body, a committee, a subsidiary or an instance of FIFA, or CAS, disciplinary proceedings may only commence at the request of the creditor or any other affected party who is entitled to be notified of the final outcome of the said disciplinary proceedings, including the motivated decision if so requested*". (emphasis added)

<sup>12</sup> Article 21, paragraph 6: "*Any financial or non-financial decision that has been issued against a club by a competent decision-making body within the relevant association shall be enforced by the association of the deciding body that has issued the decision in accordance with the principles established in this article and in compliance with the applicable disciplinary regulations. An association will be fined for failing to enforce the decision in accordance with this article. In the event of persistent failure to enforce the decision, additional disciplinary measures may be imposed on the association*".

Article 21, paragraph 7: "*Any financial or non-financial decision that has been issued against a natural person by a competent decision-making body within the relevant association shall be enforced by the association of the deciding body that has issued the decision or by the natural*

d. Paragraph ten, extending the competence of the FIFA Disciplinary Committee to settlement agreements concluded in the context of disciplinary proceedings already opened for non-compliance with a financial decision;<sup>13</sup>

e. Paragraph eleven, containing transitory provision for the application to CAS ordinary awards.<sup>14</sup>

The aim of this paper is to discuss all the interpretative issues that a provision with such a broad wording and multifaceted purpose can give rise to in terms of scope of application (*ratione personae* and *ratione materiae*).

Through the premise of the inquiry is essentially theoretical, the questions that it raises reveal practical aspects for the stakeholders which, in the Authors' opinion, are worth reflecting upon.

A couple of clarifications will precede the analysis of some of the features of the rule that lend themselves to interpretation.

## 2. *The Nature of the Proceedings and the Scope of Review of the FIFA Disciplinary Committee*

As a preliminary remark, FIFA does not enforce decisions in the public-law sense of the term. As consistently recalled by the CAS and the Swiss Federal Tribunal (SFT),<sup>15</sup> enforcement proceedings are a prerogative of the State, which remains beyond the power of private associations.

As seen, FIFA provides for a sanctioning system to ensure that certain types of decisions are respected, with a view of protecting, at once, creditors' satisfaction and the stability of the system itself.

Hence, in this paper the term 'enforcement' is used merely as a shorthand to denote this specific two-headed mechanism.

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*person's new association, if the natural person has, in the meantime, been registered or licenced at another association, or otherwise employed by a club affiliated to another association or by another association, in accordance with the principles established in this article and in compliance with the applicable disciplinary regulations. An association will be fined for failing to enforce the decision in accordance with this article. In the event of persistent failure to enforce the decision, additional disciplinary measures may be imposed on the association".* (emphasis added)

<sup>13</sup> Article 21, paragraph 10: "The Disciplinary Committee shall be competent to decide on cases related to the failure to respect settlement agreements concluded in the context of disciplinary proceedings opened against a debtor with respect to a final and binding financial decision issued by a body, a committee, a subsidiary or an instance of FIFA or by CAS. This shall include private agreements concluded after any decision passed by a body, a committee, a subsidiary or an instance of FIFA or by CAS and made in order to settle their dispute".

<sup>14</sup> Article 21, paragraph 11: "Disciplinary proceedings for failing to respect a final CAS decision rendered in the context of ordinary proceedings may be initiated provided that the respective CAS procedure started after 15 July 2019". (emphasis added)

<sup>15</sup> SFT 4P.240/2006, Decision of 5 January 2007, paragraph 4.2; TAS 2017/A/5382 Jules Accorsi c. FIFA & Fédération Centrafricaine de Football, paragraph 94.

This is not the only occasion in which the sports regulatory framework presents unique features. As with other peculiarities of the industry, its legality has been endorsed by the CAS on numerous occasions<sup>16</sup> and confirmed by the SFT.<sup>17</sup>

Moreover, when applying Article 21 FDC, the FIFA Disciplinary Committee does not review the merits of the underlining dispute (or, in other words, the merits of the decision that has not been complied with). The task of the FIFA Disciplinary Committee consists solely of assessing whether the FIFA's decision or the CAS award has been respected or not.<sup>18</sup>

These two features are the starting point for the interpretation of Article 21 FDC and the analysis of its practical implications.

### 3. *The Scope of Application of Article 21 FDC*

The debate, and ultimately the aim of this paper, revolves around defining the scope of application of Article 21 FDC *ratione personae* and *ratione materiae*. A closer examination of the provision reveals a number of interpretative challenges in each respect. While some of these have already been addressed by FIFA and the CAS, others, in the Authors' opinion, remain open for discussion.

#### 3.1 *The Scope Ratione Personae*

To determine the application of a provision *ratione personae* one has to investigate who is affected by it. With respect to Article 21 FDC, the question is: who is entitled to request the enforcement and against whom?

Already from a cursory look at paragraph one of the provision, the answer reveals to be far from straightforward. The wording "*Anyone who fails to pay another person (such as a player, a coach or a club)*" is anything but clear-cut. There seems to be uncertainty on both ends: while the 'active' (or creditor) end of the provision appears to be open to additions ("*such as*"), the 'passive' (or debtor) end of the provision appears to be completely undefined ("*anyone*").

<sup>16</sup> See, *inter alia*, CAS 2018/A/5622 *Londrina Esporte Clube v. FIFA*, paragraphs 70-71; CAS 2018/A/5900 *Al Jazira FSC v. FIFA*, paragraph 93; CAS 2020/A/7937 *Al Arabi Sports Club v. FIFA & Sérgio Dutra Junior*, paragraph 57; CAS 2022/A/8785 *El Zamalek SC v. FIFA*, paragraph 119.

<sup>17</sup> SFT\_4P.240/2006, Decision of 5 January 2007.

<sup>18</sup> See, *inter alia*, CAS 2006/A/1008 *Rayo Vallecano de Madrid SAD v. FIFA*, paragraph 14; CAS 2008/A/1610 *Samsunspor FC v. FIFA & Dejan Maksic*, paragraph 17; CAS 2010/A/2135 *Islamic Republic of Iran Football Federation v. Branko Ivankovic & FIFA*, paragraph 98; CAS 2013/A/3323 *Deportivo Petare FC v. FIFA*, paragraph 71; CAS 2015/A/4271 *Club Kabuscorp do Palanca v. Rivaldo Vitor Borba & FIFA*, paragraph 52; CAS 2016/A/4774 *Mersin Idam Yurdu SK v. Universal Stars Club & FIFA*, paragraph 69; CAS 2016/A/4910 *Sport Luanda e Benfica FC v. FIFA*, paragraph 41; CAS 2018/A/5802 *Al Masry Sporting Club v. FIFA*, paragraph 71. See also M.CAVALIERO, J. CAMBRLING, *Failure to Respect a Decision: Case Law When the Debtor is a Natural Person*, Football Legal, issue 6.

Article 3 FDC, defining the scope of personal application of the code, could provide (and has provided CAS panels) a helping hand: a) member associations; b) members of member associations, in particular the clubs; c) officials; d) players; e) match officials; f) football agents licensed by FIFA; g) match agents licensed by FIFA; h) single-entity leagues; i) anyone elected or assigned by FIFA to exercise a function, in particular with regard to a match, competition or other event organised by FIFA.<sup>19</sup>

This enumeration can certainly be decisive in most cases; however, it does not appear to offer an unequivocal answer in every situation.

The issue will be addressed further in the following paragraphs. Just to render a preliminary idea, one must consider that, when the decision in question is issued by FIFA's own association tribunals (or by the CAS in appeal), there seems to be no issue with respect to the competence as the gatekeeping function is performed by the FIFA deciding bodies in the first place (the CAS in appeal being competent only insofar as the first instance body was). However, this is not necessarily the case when it comes to the enforcement of CAS ordinary awards. In fact, a CAS ordinary award might be issued in favour of and/or against a party that is not listed under Article 3 FDC.

### 3.1.1 *The Interpretation of the CAS*

The issue of who can benefit from FIFA's enforcement system had emerged already under the aegis of the former Article 64 FDC.

In an award of 2016, concerning the right of an intermediary (to whom the relevant credit had been assigned) to invoke Article 64,<sup>20</sup> the panel pointed out that the provision "*only imposes certain restrictions in respect of the kind of debt (i.e. a debt based on an instruction of a body, a committee or an instance of FIFA or a subsequent CAS appeal decision)*" and that the list concerning the creditors is not exhaustive.<sup>21</sup> On that occasion, the panel found that only entities/persons which were members of FIFA could invoke Article 64 FDC since subject to the various regulations of FIFA. Hence, an (in)direct membership of FIFA (as well as having an interest worthy of protection) was deemed to be imperative for an entity/person to have standing to invoke Article 64 FDC.<sup>22</sup>

<sup>19</sup> In this respect, it is interesting to underline that in the procedure FDD-19382, the FIFA Disciplinary Committee analysed the scope of application of Article 3 FDC and found that "*such language allows for a non-exhaustive interpretation, thereby encompassing associations like the Respondent 1, which, according to the FAM Statutes, qualifies as a member of an association*" (Decision FDD-19382, paragraph 25). By means of this interpretation, the FIFA Disciplinary Committee enforced a decision of the FIFA Football Tribunal against a regional federation of a FIFA's member association, which owed money to a coach.

<sup>20</sup> The relevant section read the same as the current Article 21 FDC.

<sup>21</sup> CAS 2016/A/4426 *Ramon H. Castillo Segura v. FIFA*, paragraph 71 (the award wrongly refers to debtors when mentioning a player, a club or a coach).

<sup>22</sup> *Ibid.*, paragraphs 74-75.

In the same vein, in an award of 2021, a CAS award sought to clarify the scope of application of the provision *ratione personae* – as far as the party requesting the enforcement is concerned – by means of a reference to Article 3 FDC. In that case, the panel considered that, as a general rule, the creditor requesting the opening of disciplinary proceedings shall be an (in)direct member of FIFA to invoke Article 21 FDC and obtain the enforcement of a decision.<sup>23</sup>

In this respect, another CAS panel had previously clarified that the standing to request the opening of enforcement proceedings must be analysed at the moment of filing the request. In other words, if the party requesting the enforcement is an (in)direct member of FIFA (and thus falls under one of the categories listed in Article 3 FDC) when filing the claim, then it is irrelevant whether they do not keep the status of member throughout the procedure. However, should the creditor have lost their membership to FIFA when requesting the enforcement, then the request can be dismissed straight away.<sup>24</sup>

In view of the foregoing, CAS case law seems to be rather unanimous on the following points: (i) the provision needs to be interpreted as its wording is admittedly vague and open; (ii) the creditor has an interest worthy of protection, justifying its standing to appeal, also considering that disciplinary proceedings can only commence at its request; (iii) Article 3 FDC should be viewed as the gatekeeper *ratione personae*.

### 3.1.2 FIFA's Own Interpretation

The FIFA Disciplinary Committee too applied Article 3 FDC as gatekeeper to determine who could request the enforcement of decisions. In fact, in the proceedings before the CAS mentioned in the previous subsection, FIFA often submitted the argument that only legal and natural persons falling under one of the categories listed in Article 3 FDC were allowed to request the enforcement under Article 21 FDC.<sup>25</sup>

Furthermore, it is interesting to note that in a case in which the party requesting the enforcement of a financial decision was an agency (which does not fall under any of the relevant categories),<sup>26</sup> the FIFA Disciplinary Committee considered that it had standing to sue since the request of enforcement came from two Football Agents holding a FIFA license.<sup>27</sup>

<sup>23</sup> TAS 2021/A/8527, *Aliou Deng c. FIFA*, paragraphs 64-67.

<sup>24</sup> CAS 2016/A/4426 *Ramon H. Castillo Segura v. FIFA*, paragraph 88.

<sup>25</sup> See for example TAS 2025/A/8527 *Aliou Dieng c. FIFA*, paragraph 41.

<sup>26</sup> FDD-17170, paragraph 30. A similar approach was adopted in FDD-18904.

<sup>27</sup> It would appear that the FIFA Disciplinary Committee adopted a similar approach in the decision FDD-14390. Although in this case the Disciplinary Committee did not delve into whether the agent or the agency had standing to sue, the mere fact that the decision refers to both the agent and the agency would suggest that the CAS ordinary award to be enforced recognized a credit in favor of an agency (FB Football Management) and that the enforcement was requested by a football agent.



While practically convenient, this approach might potentially lead to an asymmetry in the system. One could ask oneself what would have happened had the CAS ordered the agency to pay money to the club rather than the other way around. Since agencies are not *per se* subject to FIFA regulations, one would have to conclude that, by virtue of Article 3 FDC, the possibility of applying Article 21 FDC against the agency had to be excluded. One could then ask oneself whether the FIFA Disciplinary Committee would have opened a procedure against the individuals (the licensed agents) working for the agency. However, the contractual obligations were entered into by (and consequently bound) the agency and not the individuals working for it. The asymmetry then derives from the fact that it would be difficult to enforce the CAS ordinary award via the FIFA system in such a situation.

Finally, the Authors wish to emphasise that, although referring to Article 3 FDC as a gatekeeper appears to be a constant practice of FIFA, in a decision of 19 January 2023 the FIFA Disciplinary Committee decided to impose sanctions for failing to comply with an award on costs issued by the CAS in an ordinary procedure involving an agency and a club. In that specific case, the FIFA Disciplinary Committee limited its analysis to verifying whether the club had actually paid the amounts due in accordance with the Award on Cost, without assessing whether the agency passed the “gatekeeper test” pursuant to Article 3 FDC.<sup>28</sup>

### 3.1.3 *Open interpretative issues*

Article 21 FDC is, in itself, a provision with multifaceted implications; moreover, it intersects with other provisions and sets of FIFA regulations – notably the Regulations on the Status and Transfer of Players (RSTP and the Clearing House Regulations), making the effort of the interpreter all the more demanding.<sup>29</sup>

In this context, the Authors take the view that some questions – reported in the following paragraphs – concerning its scope *ratione personae* remain open.

#### 3.1.3.1 *Article 3 FDC is the Safest Gatekeeper. Is it the Most Accurate?*

Although Article 3 FDC appears to be the safest gatekeeper to establish who can invoke the application of Article 21 FDC, the purely disciplinary (i.e., vertical)

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<sup>28</sup> FDD-13653.

<sup>29</sup> In this sense, the Authors wish to underline the uncertainty surrounding the coexistence of the possibility to enforce settlement agreements based on Article 21(9) FDC with the enforcement of decisions passed by the FIFA Clearing House. In this regard, there is no doubt that decisions passed by the FIFA Clearing House correspond to decisions passed by a subsidiary of FIFA. Likewise, it is established that Allocation Statements issued by FIFA at the end of the review of an Electronic Player Passport correspond to decisions. Nonetheless, the FIFA Disciplinary Committee does not take into account settlement agreements reached by the parties in order to postpone a payment to the FIFA Clearing House in accordance with an Allocation Statement and corresponding Payment Notification.

nature of these proceedings should in principle allow the FIFA Disciplinary Committee to impose sanctions on its (in)direct members regardless of whether the party benefiting from them is listed under Article 3 FDC.

In fact, the FIFA Disciplinary Committee – which, as recalled above, does not enter into the merits of the dispute – might well limit itself to assess whether one of FIFA's (in)direct members complied with a FIFA's or CAS' decision or not, and sanction them in case of non-compliance.

Moreover, the Authors believe that, in principle, the wording of Article 21 FDC does not limit the possibility to invoke its application to persons that are subject to the code only. Three main arguments seem to support this conclusion:

(i) A literal interpretation. Article 21, paragraph 1, FDC provides a non-exhaustive list of persons that can be considered as creditor (*“such as a player, a coach or a club”*). Moreover, Article 21, paragraph 2, FDC employs a very broad wording by referring to *“the creditor or any other affected party”*.

(ii) A systematic interpretation. When the FIFA legislator intended to limit the possibility of benefitting from the opening of disciplinary proceedings against an (in)direct member, it clearly specified so in the code. For instance, Article 15, paragraph 4, FDC unequivocally provides that only *“Persons who are bound by this Code and have been the victim of potential discriminatory behaviour”* (emphasis added) have certain rights in connection with the relevant disciplinary proceedings.

(iii) Since, as a general rule, the individuals reporting facts that lead to the opening of disciplinary proceedings do not become a party to such proceedings, whether they fall under of the categories foreseen by Article 3 FDC is a moot issue. In fact, their role in the procedures is only secondary and does not impact the vertical dispute between FIFA and its (in)direct member that has allegedly breached Article 21 FDC. Moreover, the prerogative of the FIFA Disciplinary Committee to sanction breaches committed by FIFA's (in)direct members should not depend on whether the party benefitting from the compliance with a decision passes the test of Article 3 FDC.

One could argue that creditors not falling under any of the categories listed in Article 3 FDC (i.e., ‘non-FIFA affiliated’) might still be entitled to request the opening of disciplinary proceedings against the non-complying party. In this sense, the reference to *“other affected party”* might, for instance, entitle the successor of a defunct creditor<sup>30</sup> or another party affected by a non-financial decision to request the enforcement of a decision to the FIFA Disciplinary Committee.<sup>31</sup> This would seem to find justification in the task that

<sup>30</sup> In the past CAS has already decided that the spouse of a defunct coach (who was still alive when the claim was submitted to FIFA and passed during the proceedings) has standing to sue before FIFA as she was the coach's sole legal heir (CAS 2015/A/3910 *Ana Ku'e v. Tianjin TEDA FC*, paragraphs 145-151).

<sup>31</sup> This situation can arise if, for example, any individual informs FIFA that an official previously suspended by the FIFA Ethics Committee is not respecting the relevant decision and is active in football despite the ban.

FIFA has given itself of ensuring that CAS awards are complied with by all the members of the football pyramid, in accordance with its Statutes.<sup>32</sup>

Decisions of the FIFA Disciplinary Committee like those recalled above, whereby Article 3 FDC was considered as not referring to an exhaustive list<sup>33</sup> or where an Award on Costs was enforced in favour of an agency without the request coming from an agent holding a FIFA licence, reinforce the theory that persons other than those listed under Article 3 FDC might actually request the imposition of sanctions based on Article 21 FDC.

### 3.1.3.2 *The status of the person seeking the enforcement*

The issue concerning the application of Article 21 FDC *ratione personae* encompasses another important aspect that concerns the rights of the enforcement seeker.

In an award of 2020, the CAS sole arbitrator had to assess the creditor's standing to appeal in the context of a decision of the FIFA Disciplinary Committee which had dismissed the charges against the club towards which the satisfaction of the credit had been pursued as deemed not to be the sporting successor of the original debtor. On that occasion, FIFA argued *inter alia* that the creditor did not have standing to appeal as he was never party to the disciplinary proceedings and only holder of an indirect interest in the outcome of the proceedings (which have the aim of sanctioning non-compliance with FIFA decisions rather than protect an individual's credit).<sup>34</sup> The sole arbitrator noted on the one hand that "*the disciplinary system of FIFA, while having a very helpful and welcome side-effect on the interests of creditors in football, is [...] neither designed nor suited to enforce such claims*" but, on the other, that the creditor indeed had his own interest at stake. The sole arbitrator enquired whether this interest was severe enough to warrant a deviation from the general rule that a direct interest must exist. He found the interest to receive money related to long overdue salaries to be sufficiently high – even though indirect – to grant the creditor a standing to appeal.<sup>35</sup>

<sup>32</sup> According to Article 49(1) of the FIFA Statutes: "FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, member associations, confederations, leagues, clubs, players, officials, football agents and match agents". Moreover, Article 51(1) of the FIFA Statutes establishes that "The confederations, member associations and leagues shall agree to recognise CAS as an independent judicial authority and to ensure that their members, affiliated players and officials comply with the decisions passed by CAS. The same obligation shall apply to football agents and match agents that are licensed by FIFA".

<sup>33</sup> FDD-19382. Although in this case the FIFA Disciplinary Committee interpreted Article 3 FDC in a broad fashion with respect to the party having standing to be sued, one cannot exclude (and would be unjustified to do otherwise) that the same interpretation might be applied in the future with respect to the party having standing to sue.

<sup>34</sup> CAS 2020/A/6922 *Tiago Carpes de Bail v. FIFA*, paragraph 41.

<sup>35</sup> CAS 2020/A/6922 *Tiago Carpes de Bail v. FIFA*, paragraphs 89-93.

In a case of 2021, the sole arbitrator was called upon evaluating whether the creditor could request the grounds of a FIFA Disciplinary Committee's decision (denied by FIFA) for the same reason. The sole arbitrator found evident that the player, in his capacity as creditor, had a genuine interest in obtaining the *rationale* of the FIFA Disciplinary Committee's decision, also considering that he was the one who could initiate the proceedings as per the FDC.<sup>36</sup>

Following the outcomes of the aforementioned CAS proceedings, FIFA has now clarified in Article 21, paragraph 2, FDC that, in case of disciplinary proceedings for failure to respect a financial decision, the creditor “*is entitled to be notified the final outcome of said disciplinary proceedings, including the motivated decision if so requested*”.

The situation appears to be different when the opening of disciplinary proceedings is requested in relation to the non-compliance with a non-financial decision of FIFA or the CAS.<sup>37</sup> Hence, creditors (seeking the enforcement of financial decisions) and other interested parties (seeking the enforcement of non-financial decisions) do not have the same procedural rights.

Nonetheless, indeed situations may arise in which a party has a legitimate and direct interest that is affected by the decision of the FIFA Disciplinary Committee even if the decision to be enforced is a non-financial one.<sup>38</sup>

### 3.2 *The scope ratione materiae*

To determine the application of a provision *ratione materiae* one has to investigate what is covered by it. With respect to Article 21 FDC, the question is: what is it that can be enforced?

Here is where – at first sight – the provision appears to be clearer. At further scrutiny, however, it could lead to major interpretative issues.

The decisions that can be enforced before the FIFA Disciplinary Committee are (i) those of a body, a committee, a subsidiary or an instance of FIFA and (ii) CAS awards (Appeal and Ordinary Division).

<sup>36</sup> CAS 2021/A/8308 *Christian Pouga v. FIFA*, paragraph 68.

<sup>37</sup> In CAS 2023/A/9611 *Al Merrikh Sports Club v. FIFA*, the sole arbitrator recalled that Article 21, paragraph 2, FDC confers certain rights only to creditors and not to parties requesting the enforcement of a non-financial decision. In that case, the sole arbitrator analysed the standing to sue of the club requesting the opening of disciplinary procedures and, being it only “indirectly affected”, it lacked standing to appeal the decision of the FIFA Disciplinary Committee before CAS (paragraphs 82-90).

<sup>38</sup> For instance, in 2024 CAS has upheld the appeal filed by the Ivorian club Inova Sporting Club Association (ISCA), ordering the Fédération Ivoirienne de Football (FIF) to immediately reintegrate ISCA in the first-tier championship and to adapt the calendar accordingly. In the hypothetical scenario in which the FIF had failed to comply with the CAS award, one could reasonably consider that ISCA would have been directly affected by the outcome of a procedure opened for a violation of Article 21 FDC, since the non-implementation of the CAS award would have deprived it of its right to participate in the first-tier championship. In this sense, please see CAS Media Release of 12 September 2024 ([https://www.tas-cas.org/fileadmin/user\\_upload/Communique\\_du\\_TAS\\_aux\\_medias\\_10683.pdf](https://www.tas-cas.org/fileadmin/user_upload/Communique_du_TAS_aux_medias_10683.pdf)). This example is without prejudice to the analysis provided below with

### 3.2.1 *Decisions of a Body, Committee, a Subsidiary or an Instance of FIFA*

In principle, there is no issue when it comes to enforcing decisions of FIFA pursuant to Article 21 FDC.

Since the different bodies, committees, subsidiaries and instances of FIFA have very specific competences outlined in the different regulations of FIFA, there are no particular problems concerning the enforcement of this type of decisions *ratione personae*.<sup>39</sup>

Nonetheless, some issues might arise when the FIFA Disciplinary Committee is requested to enforce a settlement agreement reached by the parties, before or during the relevant disciplinary proceedings.

In this regard, it must be recalled that since the 2023 edition of the FDC, the FIFA Disciplinary Committee is again competent to “*decide on cases related to the failure to respect settlement agreements concluded in the context of disciplinary proceedings opened against a debtor with respect to a final and binding decision*” issued by FIFA or the CAS.<sup>40</sup>

This amendment to the rule encourages parties to reach settlement agreements, knowing that in case of failure to respect them, the creditor will be in a position to request their enforcement directly to the FIFA Disciplinary Committee without having to file a new claim before the FIFA Football Tribunal (or the different forum chosen by the parties), as it was as of 23 May 2018, when it was decided that the FIFA Disciplinary Committee was not competent anymore to enforce settlement agreements and/or payment plans reached by the parties.<sup>41</sup>

The new approach of the FIFA Disciplinary Committee, although extremely pragmatic in some circumstances, can nonetheless give rise to potential complications. Parties might in fact include in their settlement agreement different types of compensations which would not be taken into account by the FIFA Football Tribunal (e.g. payments in cryptocurrencies instead of fiat currency) or establish obligations that would go beyond the competence of FIFA, similar to what can occur with CAS ordinary awards.<sup>42</sup>

Furthermore, the FIFA Disciplinary Committee might be required to interpret the settlement agreement, particularly if there is a dispute between the parties regarding the validity of the agreement or as to whether the agreement was actually complied with or not. This exercise would imply that the FIFA

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respect of the position of the FIFA Disciplinary Committee regarding the international dimension of the matter.

<sup>39</sup> Concerning subsidiaries of FIFA, see footnote 29.

<sup>40</sup> In this sense, the FIF Circular 1867 of 7 December 2023, clarifies that the FIFA Disciplinary Committee is also competent to enforce agreements concluded after any decision passed by FIFA or by CAS, provided that the agreement in question was concluded following the entry into force of the 2023 edition of the FDC, i.e. as from 1 February 2023.

<sup>41</sup> See FIFA Circular 1628 of 9 May 2018.

<sup>42</sup> See *infra*.

Disciplinary Committee performs tasks going beyond the simple verification as to whether the debtor paid the amounts due in accordance with a decision of FIFA or CAS, since interpreting the content of an agreement requires further analysis and, to a certain extent, adjudicate the merits of a contractual dispute. This is all the more true in light of the jurisprudence of the SFT, according to which, even if the wording of a contract is clear, one cannot limit oneself to a literal interpretation of the text and shall take into consideration other elements, such as the conditions of the contract, the objectives sought by the parties or from other circumstances than the text, to appreciate the parties' real intention, pursuant to Article 18 of the Swiss Code of Obligations.<sup>43</sup>

Therefore, although the FIFA Disciplinary Committee is once again competent to enforce settlement agreements, the obligations arising therefrom may nonetheless preclude enforcement under Article 21 FDC and require referral to the FIFA Football Tribunal (or the competent body chosen by the parties) where a genuine contractual dispute exists that requires a substantial analysis of the merits.

This has occurred in the past when the CAS found that the FIFA Disciplinary Committee does not have an unlimited power and – in specific circumstances, such as cases where the validity of the settlement agreement is questioned because of *culpa in contrahendo* – it lacks jurisdiction to decide whether a settlement agreement is valid and binding or if the parties complied with it.<sup>44</sup>

In view of all the foregoing, although the enforcement of FIFA decisions pursuant to Article 21 FDC appears to be straightforward, issues can emerge when it comes to the enforcement of subsequent settlement agreements which can fall outside of the competence of the FIFA Disciplinary Committee *ratione materiae*.

### 3.2.2 Decisions of the CAS (Appeal and Ordinary Division)

In order to 'seal' the stability of the system, FIFA granted its Disciplinary Committee also the power to enforce CAS awards. At least with respect to the ones rendered by the Appeals Division, this appears to be an inevitable corollary of the intention to grant FIFA the power to enforce its own decisions (i.e., whether appealed or not).

The enforcement of CAS appeal awards does not present any issues neither from a practical nor interpretative standpoint, since the competence of the CAS cannot extend beyond that of FIFA, whose deciding body rendered the decision in first instance. Hence, it is very unlikely that the enforcement of a CAS appeal award would lead to issues for the application of Article 21 FDC *ratione materiae*.

<sup>43</sup> SFT 127 III 444 paragraph b); CAS 2017/A/5172 *Real Club Celta Vigo v. Olympique Lyonnais*, paragraph 69.

<sup>44</sup> CAS 2016/A/4473 *Liberia Football Association v. FIFA*, paragraphs 62-75.

With respect to awards rendered by the Ordinary Division, the situation is less straightforward, even though the FIFA Disciplinary Committee has on several occasions proceeded to enforce such awards.

By way of illustration, a few examples (some of which have been already mentioned in the section dedicated to the scope of application *ratione personae*) may be recalled: (i) in a decision of January 2023, the FIFA Disciplinary Committee ordered a club to pay the amounts indicated in an Award on Costs in an ordinary procedure with an agency;<sup>45</sup> (ii) in a decision of March 2023, the FIFA Disciplinary Committee ordered a player to pay sums awarded to an intermediary by means of a CAS ordinary award;<sup>46</sup> (iii) in a decision of December 2023,<sup>47</sup> the FIFA Disciplinary Committee – after having affirmatively assessed the existence of sporting succession – ordered the successor club to pay sums awarded to a player by means of CAS ordinary award rendered against the predecessor; (iv) in a decision of February 2024,<sup>48</sup> the Committee ordered a club to pay sums awarded to an intermediary agency by means of a CAS ordinary award. On that occasion, the FIFA Disciplinary Committee analysed the standing to sue – pointing out that the agency's will was expressed by two individuals which were FIFA licensed Football Agents – and concluded that the club had failed to respect the CAS (ordinary) award.

The reason why the enforcement of CAS ordinary awards might reveal to be potentially problematic will be addressed in the next subsection.

### 3.2.3 Open Interpretative Issues

The three main interpretative issues that arise in connection with the applicability of the provision *ratione materiae* concern (i) the enforcement of CAS ordinary awards, (ii) the international dimension of the underlying dispute and (iii) the indirect enforcement. Each of them will be assessed in turn in the following subsections.

#### 3.2.3.1 The Broad Jurisdiction of the CAS Ordinary Division

As seen previously, Article 21 FDC equates the enforcement of CAS appeals awards and CAS ordinary awards. Appeals and ordinary procedures at CAS have, however, different scopes which are clearly defined in the Code of Sports-related Arbitration (the CAS Code).<sup>49</sup>

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<sup>45</sup> FDD-13653.

<sup>46</sup> FDD-14271.

<sup>47</sup> FDD-16120.

<sup>48</sup> FDD-17170.

<sup>49</sup> According to Article S20 CAS Code: “(A) *The Ordinary Arbitration Division constitutes Panels, whose responsibility is to resolve disputes submitted to the ordinary procedure [...]* (C) *The Appeals Arbitration Division constitutes Panels, whose responsibility is to resolve disputes concerning the decisions of federations, associations or other sports-related bodies insofar as the statutes or regulations of the said sports-related bodies or a specific agreement so provide [...]*”.

Disputes submitted to the CAS Ordinary Division may involve matters of principle relating to sport or matters of pecuniary or other interests relating to the practice or the development of sport and may include, more generally, any activity or matter related or connected to sport,<sup>50</sup> whereas the scope of CAS panels in appeal is limited to issues that fall within the competence of the first instance proceedings (thus, if FIFA at first instance is not competent, nor is the CAS when the relevant decision is appealed before it).<sup>51</sup>

In other words, and considering that the scope of the CAS competence in ordinary procedures is broader than FIFA's, depending essentially only on (i) a valid arbitration clause and (ii) a more or less nuanced relation to sport matters, the CAS in an ordinary procedure might be competent to entertain the same claim which FIFA (and, consequently, the CAS in appeal) would refuse to entertain.<sup>52</sup>

Article 21 FDC, for its part, does not specify the types of CAS ordinary awards that can be enforced. The only restriction envisaged in the provision is that the related procedure must have started at the CAS after 15 July 2019. It follows that any CAS ordinary award can be enforced before FIFA. This entails that FIFA's competence at the enforcement level is potentially broader than at adjudicatory level: indeed, nothing prevents, in theory, the enforcement of decisions which FIFA could not have rendered in first instance due to a lack of competence.<sup>53</sup>

Such an asymmetry in the delimitation of competence between the deciding and the enforcing stage emerges clearly from the provision. Though there is, in principle, no incompatibility between the two stages, it is difficult to predict how FIFA would treat occurrences whereby it is demanded to enforce a decision it would have not rendered in first instance as beyond its jurisdiction.

### 3.2.3.2 *The (Inter)National Dimension of the Dispute*

Another important element to take into account when analysing the scope *ratione materiae* of Article 21 FDC is the nature of the dispute. Considering that, as explained, the FIFA Disciplinary Committee does not enter into the merits of the

<sup>50</sup> Article R27 CAS Code.

<sup>51</sup> See, *inter alia*, CAS 2019/A/6594.

<sup>52</sup> In CAS 2019/A/6594, the Panel left this possibility open by concluding that its findings concerned CAS appeals arbitration proceedings only and thus they “do not preclude CCFC from bringing its set-off claim in an ordinary arbitration proceeding before CAS” (paragraph 190). It remains open for discussion (beyond the scope of this paper) whether a CAS ordinary panel would indeed be competent to entertain some border-line cases such as a set-off claim entirely unrelated to sport (see S. SPERA, *Set-off claims and the competence of sports adjudicating bodies: a tragical case study*, Football Legal, issue 22).

<sup>53</sup> In CAS 2019/A/6594, the panel in appeal denied competence to hear one party's set-off claim in relation to the other party's alleged civil responsibility because FIFA did not have it in the first place. But assuming that the case would have been brought to a CAS panel in ordinary proceedings (on the basis of a valid arbitration clause), and assuming that such panel were to retain competence and award a sum of money, that decision could have been enforced before FIFA even if FIFA would have not had competence to assess it in the first place.



dispute and limits itself to assessing whether the decision from FIFA or the CAS has been complied with, it can be argued that the international or purely domestic character of the underlying dispute is immaterial. Moreover, this would be confirmed by the fact that since 2019, paragraph 1 of Article 21 (then Article 15) does not refer anymore to “*a subsequent CAS appeal decision*” leaving, at least in principle, the door open to the enforcement of any CAS awards (provided that FIFA is competent to sanction the non-complying party). This interpretation is also sustained by the overarching obligations of all (in)direct members of FIFA to comply with decisions issued by the CAS.

The foregoing would be confirmed by the case-law. In fact, in the past the FIFA Disciplinary Committee has, for example, enforced a CAS ordinary award in favour of a Venezuelan football player by imposing disciplinary sanctions against the debtor, which was a club also from Venezuela.<sup>54</sup>

Nevertheless, in another procedure, the FIFA Disciplinary Committee decided not to open proceedings against the Sudanese Football Association since the CAS award to be enforced concerned a purely domestic matter, involving the federation and one of its members.<sup>55</sup>

In the face of a such a wavering approach, one might lean towards suggesting FIFA's intervention in any such cases, as this would guarantee that a *super partes* authority imposes disciplinary sanctions in case of non-compliance. Indeed, in the aforementioned case concerning the Sudanese Football Association, absent FIFA's intervention, it became very difficult to enforce the relevant CAS award through disciplinary proceedings, as the Confédération Africaine de Football (CAF) does not have in its regulations an equivalent to Article 21 FDC<sup>56</sup> (and since it is very unlikely that the Sudanese Football Association will enforce a decision against itself).

Moreover, one might argue that the wording of Article 21 FDC, as well as its purpose (i.e. ensuring that CAS awards are eventually complied with), would require the FIFA Disciplinary Committee to be competent to enforce CAS awards regardless of whether the underlying dispute has an international dimension or not. This would seem to be warranted by the fact that FIFA requires that confederations, national associations and their members comply with the decisions issued by the CAS.<sup>57</sup> This statutory provision would justify FIFA's application of Article 21 FDC also to CAS ordinary awards concerning national disputes.

On the other hand, and as pointed out previously with respect to CAS ordinary awards, FIFA might be hesitant to foster asymmetries in the system in terms of its own competence.

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<sup>54</sup> FDD-16120.

<sup>55</sup> CAS 2023/A/9611 *Al Merrikh Sports Club v. FIFA*. See also J. BLONDIN, “CAS 2023/A/9611 *Al Merrikh Sports Club v. FIFA*”, *Football Legal*, issue 21.

<sup>56</sup> Article 149 CAF Disciplinary Code gives the possibility to enforce decisions of the CAF bodies only.

<sup>57</sup> Article 51, paragraph 1, FIFA Statutes (2024 edition).

These doubts, coupled with FIFA's uncertainties so far, appears to ultimately leave the interpretative issue still open.

### 3.2.3.3 *The indirect enforcement*

One last issue concerns the power to indirectly enforce decisions rendered by "*a competent decision-making body within the relevant association*" pursuant to paragraphs 6 and 7 of Article 21 FDC. In essence, the FIFA Disciplinary Committee is competent to impose sanctions on member associations that do not ensure that decisions rendered by their own bodies (a typical example being a National Dispute Resolution Chamber – NDRC) are complied with.

Nonetheless, the wording of these paragraphs can cause practical issues when it comes to the indirect enforcement of decisions taken at national level.

Indeed, Article 21 presents an important difference with the former Article 15 (and, until 2019, Article 64) since it does not specify anymore that the national adjudicatory body must be "*duly recognised by FIFA*". The provision simply states that FIFA can indirectly enforce decision rendered "*by a competent decision-making body within the relevant association*".

This new wording can potentially give rise to complications.

Indeed, it suggests that the FIFA Disciplinary Committee will be competent to indirectly enforce decisions rendered by any national competent body regardless of whether this passes the test imposed by FIFA by means of the National Dispute Resolution Chamber Recognition Principles issued in February 2024. In fact, by virtue of the broad wording of paragraphs 6 and 7 of Article 21 FDC, FIFA has extended the possibility of having an indirect enforcement of decisions rendered by national decision-making bodies (including NDRCs) that do not comply with the principles established by FIFA.

This, on the other hand, does not seem to align with the goal of the new NDRC recognition system also implemented by FIFA, which is aimed at ensuring that the FIFA Football Tribunal can declare itself not competent to hear a dispute only if the parties agreed to submit it before an NDRC that guarantees "*fundamental procedural principles, in particular the principle of equal representation between employers and employees*".<sup>58</sup>

This could lead to conflicting situations whereby FIFA, on the one hand, does not recognise an NDRC because it does not comply with the minimum requirements but, on the other hand, requires the enforcement of its decisions from a member association.

Moreover, by applying paragraph 7 of Article 21 FDC, the FIFA Disciplinary Committee could impose sanctions on the player's new association for failing to enforce a decision issued by the NDRC of another association that was not recognised by FIFA for not respecting basic procedural principles. Since, as highlighted above, one of the main reasons for NDRCs not being recognised is

<sup>58</sup> National Dispute Resolution Chamber Recognition Principles, Article 1, paragraph 2.

the lack of equal representation between players and clubs (with the former generally having a stronger position within the NDRC), one cannot exclude that an indirect enforcement on the player via his new association would contradict the spirit of the system implemented to specifically recognise only those NDRCs that meet some minimum standards.

In the Authors' opinion, the indirect enforcement in those situations could face credible challenges.

The existing asymmetry between the FDC and the National Dispute Resolution Chamber Recognition Principles creates uncertainties regarding FIFA's approach in applying paragraphs 6 and 7 of Article 21 of the FDC. In particular, considering that the FIFA Disciplinary Committee is not competent to analyse the merits of the dispute already adjudicated by an NDRC, which means that it is also not competent to examine whether the procedures before the NDRC met the criteria established by FIFA, it could put itself in a position where it is required to enforce a decision issued by a body that does not respect the principle of equal representation between employers and employees and which is the result of an unfair or arbitrary procedure. Although these issues could be cured if the NDRC decision is appealed before the CAS, in view of its *de novo* power of review,<sup>59</sup> the same would not apply in case no appeal is brought against the national decision.

#### 4. Conclusions

Assuming that the entire functioning of FIFA's private legal order will not be affected by the, currently only partially foreseeable, repercussions of the 'Diarra judgment',<sup>60</sup> Article 21 FDC already poses interesting (although less disruptive) questions.

Its applicability, both *ratione personae* and *ratione materiae*, does not have clear-cut boundaries. As discussed, it is not always easy to identify who can effectively request the intervention of FIFA and against whom. This can prove particularly problematic with respect to those categories of individuals who, albeit not listed under Article 3 FDC, might wish to enforce a CAS ordinary award before FIFA.

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<sup>59</sup> The *de novo* nature of the review of CAS Panels "cures any alleged irregularities in the previous instance proceedings" (CAS 2023/A/99230 *Eduardo Musa Costa Bravo & Confederação Brasileira de Skate (CBSK) v. World Skate*, paragraph 153).

<sup>60</sup> Court of Justice, judgement of 4 October 2024, Case C-650/22, *FIFA v. BZ*, ECLI:EU:C:2024:824. At the time of writing, it is not even certain what permanent repercussions the *Diarra* judgment will have on the global transfer system to start with. It is to a certain extent foreseeable that, in the (virtual) absence of automatic joint liability, clubs which are awarded money as compensation for breach of contract from players will find it harder to recover their dues as compared to the previous system, whereby the new club was effectively paying compensation to the damaged club and might increasingly seek to rely on Article 21 FDC. It is also to a certain extent foreseeable that the ECJ may take an unfavourable view of a system that allows sanctions against players to serve as a substitute for mechanisms of joint liability. However, it is premature to determine whether any of these developments will materialise; in any case, they remain an issue for the future.

Similarly, one might question whether FIFA can, and would, enforce decisions it would have not rendered itself in first instance (as concerning claims going beyond its jurisdiction). This occurrence might materialise, once again, with respect to the enforcement of CAS ordinary awards given the broader scope of competence that the CAS Ordinary Division has when compared to the FIFA Football Tribunal.

When drafting settlement agreements, parties might also want to ponder whether including forms of payments that FIFA might not ‘recognise’ if it were to analyse them in first instance. Although nothing is said about what kind of settlement agreements can be enforced before the FIFA Disciplinary Committee, caution might be warranted in this sense.

Similarly, although FIFA explicitly enforces decisions rendered by NDRCs, nothing is said within Article 21 FDC about whether the NDRC must be recognised or not. Considering that, in first instance, the recognition is a requirement to ‘accept’ a deviation from the otherwise default competence of the FIFA Football Tribunal (provided that the claim is international and employment related, that is), the enforcement of a decision of a non-recognised NDRC before the FIFA Disciplinary Committee is questionable.

All these doubts arise due to the fact that Article 21 FDC has a polyhedric nature and it attempts to serve, at least indirectly, two objectives which do not have entirely overlapping scopes. These two objectives, although not mentioned explicitly, are (i) the protection of FIFA’s private legal order (i.e., ‘sealing’ the stability of the system, via the creation of a mechanism that attempts to ensure that FIFA’s decisions are respected) and (ii) the protection of creditors’ satisfaction (evident from, *inter alia*, the fact that proceedings can commence only at the latter’s request).

The scope of these two objectives overlaps when the decision to enforce is issued by a FIFA’s tribunal or the CAS in appeal. In this case, the gatekeeping function in terms of competence is exercised by FIFA itself in first instance. They do not necessarily overlap, however, when the decision to enforce is a CAS ordinary award. In this case, the protected interest appears to be solely the creditor’s satisfaction as the relevant decision is issued outside of FIFA’s realm. The same can be said of the enforcement of decisions rendered by NDRCs (less so of settlement agreements, if they are reached following a decision of the FIFA Football Tribunal).

It is clear that it is the second objective that can create interpretative issues. Protecting creditors’ interest is a laudable task that presents the drawback of potentially extending the limits of FIFA’s competence beyond what is established in the applicable regulations. This, by definition, cannot be said of the objective of preserving the stability of the system.

What prompted this paper was thus the desire to bring to light a certain misalignment between the two coexisting (and perfectly legitimate) aims of Article 21 FDC in order for the reader (the sports law practitioner or, in the most

desirable scenario, the football regulator) to be aware that there are areas of uncertainty in the applicability of the provision. While this certainly demands caution, it might perhaps even justify further clarification.

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