



TAS / CAS

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

CAS 2024/A/10488 Asociația Club Sportiv Sepsi SIC v. Romanian Basketball Federation & Municipal Sports Club Constanța

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: **Mr. Vladimir Novak**, Attorney-at-law, Brussels, Belgium.

in the arbitration between

Asociația Club Sportiv Sepsi SIC, represented by Mr. Sabin Liviu Gherdan, Attorney-at-law,
Gherdan & Associates Law Firm, Cluj-Napoca, Romania

Appellant

and

Federația Română De Baschet, represented by Ms. Carmen Emilia Tocală, President of the
Romanian Basketball Federation, Bucharest, Romania

First Respondent

and

Club Sportiv Municipal Constanța, represented by Mr. Sergiu-Valentin Gherdan, Attorney-at-law,
Gherdan Law Office, Bihor, Romania

Second Respondent

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I. PARTIES

1. Asociația Club Sportiv Sepsî SIC (“Sepsî SIC” or the “Appellant”) is a professional basketball club based in Sfântu Gheorghe, Romania. It is affiliated with the Romanian Basketball Federation.
2. Federația Română De Baschet (“Romanian Basketball Federation”, “RBF”, or the “First Respondent”) is basketball’s governing body in Romania and a member of the International Basketball Federation (“FIBA”).
3. Club Sportiv Municipal Constanța (“CSM Constanța” or the “Second Respondent”) is a professional basketball club based in Constanța, Romania.
4. The First Respondent and the Second Respondent are collectively referred to as the “Respondents”. The Appellant and the Respondents are collectively referred to as the “Parties”.

II. FACTUAL BACKGROUND

5. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions and evidence adduced. Additional facts and allegations found in the Parties’ submissions and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, the Award refers only to the submissions and evidence which the Sole Arbitrator considers necessary to explain his reasoning.
6. According to Article 5.3 of the Specific Rules of the Women’s Championship issued by the RBF, a team that did not compete with its own U13 and U14 teams during the 2022/2023 season would be ineligible to register foreign players for the following 2023/2024 season.
7. In the 2022/2023 season, CSM Constanța allegedly did not compete with its own U13 and U14 team.
8. During the 2023/2024 season, Sepsî SIC complained to the RBF about CSM Constanța allegedly failing to meet the noted requirement and on that basis being allegedly not ineligible to register foreign players.
9. The RBF permitted CSM Constanța to register foreign players and participate in the 2023/2024 edition of the Romanian Women’s Championship.
10. On 10 March 2024, the semifinals of the Romanian Women’s Basketball Cup were played between Sepsî SIC and CSM Constanța. The match concluded with a final score of 88-80 in

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favor of CSM Constanța, which subsequently won the Romanian Women's Basketball Cup Final.

11. Following the game, Sepsi SIC filed a protest pursuant to Article 21 of the General Regulations on the Organization of Basketball Competitions ("RGOC").
12. In its protest, Sepsi SIC requested the RBF to:
 - (a) Apply Article 23.30 of the RGOC, thereby awarding the game to Sepsi SIC with a score of 20-0 and deducting any points from CSM Constanța in the standings due to the non-eligibility of its foreign players; and
 - (b) Disqualify CSM Constanța from the 2023/2024 edition of the Romanian Women's Basketball Cup and annul all results obtained by CSM Constanța, claiming the team's lack of legal eligibility to participate in competitions organized by the RBF.
13. On 13 March 2024, the Central Commission of Competitions and Homologations of the Romanian Basketball Federation (the "CCCO") issued Decision no. 7/13.03.2024 (the "Appealed Decision") rejecting the protest as inadmissible pursuant to Article 21.3 RGOC and ratifying the game result.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

14. On 22 March 2024, the Appellant filed, pursuant to Article R47 of the Code of Sports-related Arbitration (the "CAS Code"), a Statement of Appeal with the Court of Arbitration for Sport in Lausanne, Switzerland (the "CAS"), against the Appealed Decision (the "Appeal"). The Appellant selected English as the language of the procedure, and requested the CAS President of the Appeals Division to consolidate the present matter with case CAS 2024/A/10364.
15. On 8 April 2024, the Appellant reiterated the request to consolidate the Appeal with case no. CAS 2024/A/10364, noting that as a result of consolidation, the arbitrators will be the same as the ones proposed by the Parties in case no. CAS 2024/A/10364. In subsidiary, conditioned on the consolidation request being rejected, the Appellant nominated Dr. Cristian Jura as arbitrator.
16. On 15 April 2024, the CAS Court Office acknowledged the receipt of the Statement of Appeal, denied the consolidation request, noting that consolidation is only possible with respect to appeals filed against the same decision pursuant to Article R54 of the CAS Code, and invited the Respondents to submit an answer to the Appeal ("Answer") within 20 days.
17. On 18 April 2024, the Second Respondent nominated Mr. Klaus Reichert S.C. as an arbitrator, objected to the consolidation of arbitration proceedings, and requested that the time limit for submitting the Answer be fixed after the Appellant's payment of its share of the advance of the costs of the arbitration as per Article R55.3 of the CAS Code.

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18. On 19 April 2024, the Second Respondent challenged the nomination of Dr. Cristian Jura on the grounds of legitimate doubts as to the appointee's independence and impartiality. On the same day, the CAS Court Office noted the President of the CAS Appeals Arbitration Division, or her Deputy, will decide on referring proceedings in *CAS 2024/A/10364*, *CAS 2024/A/10406* and *CAS 2024/A/10488* to the same Panel pursuant to Article R50.3 of the CAS Code and reiterated that the Respondents were asked to jointly nominate an arbitrator but set aside the deadline for the joint nomination pending the decision on referring proceedings in *CAS 2024/A/10364*, *CAS 2024/A/10406* and *CAS 2024/A/10488* to the same Panel. Pursuant to Article R55.3 of the CAS Code, the CAS Court Office set aside the time limit for the Second Respondent to file its Answer that was set out in the CAS Court Office letter dated 15 April 2024, and informed it that a new time limit would be fixed upon the Appellant's payment of its share of the advance of the costs of the arbitration. The CAS Court Office noted that the Appellant's nomination of Dr. Cristian Jura was invalid as he was only on the Anti-Doping Division list of arbitrators and thus ineligible for the appointment in the present procedure.
19. On 2 May 2024, the First Respondent filed its Answer by email.
20. On 6 May 2024, the CAS Court Office acknowledged receipt of the First Respondent's Answer received by email and informed the Parties that the Answer would be notified to the other Parties upon receipt of the Second Respondent's Answer. On the same day, the CAS Court Office informed the Parties that the Deputy President of the CAS Appeals Arbitration Division decided in accordance with Article R50 of the CAS Code that the proceedings in *CAS 2024/A/10364*, *CAS 2024/A/10406* and *CAS 2024/A/10488* shall be referred to the same Panel. The CAS Court Office requested that the Appellant nominate another arbitrator from the list of CAS arbitrators within 10 days, failing which the Appeal would be deemed withdrawn.
21. On 7 May 2024, the Appellant asked the CAS Court Office to clarify whether the three cases would be consolidated and, if not, whether it had to pay three separate advances of costs pursuant to Article R64 of the CAS Code.
22. On 7 May 2024, the CAS Court Office noted that pursuant to Article R52 of the CAS Code, the consolidation of procedures is possible with respect to appeals filed against the same decision which was not the case at hand, and confirmed that the Appellant would be required to pay three separate advances of costs pursuant to Article R64 of the CAS Code.
23. On 16 May 2024, the Appellant requested that the three cases (*CAS 2024/A/10364*, *CAS 2024/A/10406* and *CAS 2024/A/10488*) be submitted to a Sole Arbitrator and, if not, nominated Mr. Attila Berzeviczi as an arbitrator.
24. On 17 May 2024, the CAS Court Office invited the Respondents to confirm by 24 May 2024 whether they agreed that the three cases at issue be submitted to a Sole Arbitrator.

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25. On 27 May 2024, the First Respondent informed the CAS Court Office that it agreed with the submission of the three cases to a Sole Arbitrator, provided that each of the three cases be submitted to a different Sole Arbitrator, and challenged the nomination of Mr. Attila Berzeviczi based on existing circumstances that give rise to legitimate doubt as to his independence and impartiality.
26. On 29 May 2024, the CAS Court Office reminded the Parties that on 6 May 2024, the Deputy President of the CAS Appeals Arbitration Division decided that the three proceedings at issue should be referred to the same Panel in accordance with Article R50 of the CAS Code. The CAS Court Office invited the First Respondent to clarify by 31 May 2024, whether it agreed that the cases be submitted to a Sole Arbitrator. The CAS Court Office also noted that the Second Respondent did not comment on the issue and was thus deemed to agree that the present cases be submitted to a Sole Arbitrator.
27. On 31 May 2024, the First Respondent informed the CAS Court Office that it did not oppose the Appellant's request that the present cases be submitted to a Sole Arbitrator.
28. On 3 June 2024, the CAS Court Office informed the Parties that a Sole Arbitrator would be appointed pursuant to Article R54.1 of the CAS Code.
29. On 3 September 2024, the First Respondent submitted an amended Appeal Brief. The CAS Court Office invited the Respondents to comment on the Appellant's submission by 10 September 2024.
30. On 10 September 2024, the Second Respondent objected to the Appellant's amendments to the Appeal Brief and noted that there were no exceptional circumstances that would justify admissibility of the Appellant's amendments pursuant to Article R56 of the CAS Code.
31. On 11 September 2024, the CAS Court Office acknowledged the Second Respondent's objection and noted that the Sole Arbitrator would decide on the issue once appointed.
32. On 27 September 2024, the CAS Court Office informed the Second Respondent that the Appellant paid the advance of costs in the present matter and invited the Second Respondent to submit an Answer within 20 days.
33. On 15 October 2024, the Second Respondent requested a 10-day extension to submit its Answer.
34. On the same day, the CAS Court Office granted the requested extension.
35. On 25 October 2024, the Second Respondent requested a 14-day extension to submit the Answer.

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36. On 25 October 2024, the CAS Court Office invited the Appellant to comment on the Second Respondent's request by 28 October 2024, and noted that the deadline to file the Answer remained suspended until further notice.
37. On 25 October 2024, the Appellant objected to the Second Respondent's request for an extension.
38. On 25 October 2024, the CAS Court Office informed the Parties it would be for the President of the CAS Appeals Arbitration Division, or her Deputy, to decide on the extension request in accordance with Article R32 of the CAS Code.
39. On 28 October 2024, the CAS Court Office informed the Parties that the Deputy Division President of the CAS Appeals Arbitration decided to grant a 7-day extension to the Second Respondent to submit its Answer and that the corresponding deadline was no longer suspended.
40. On 3 November 2024, the Second Respondent submitted its Answer and requested a 10-day deadline extension to provide full certified translations into English of the pertaining Exhibits 1 and 2 to the Answer.
41. On 4 November 2024, the Second Respondent provided an English translation of excerpts of Exhibits 1 and 2 to the Answer.
42. On 5 November 2024, the CAS Court Office informed the Parties that the Panel appointed to decide the present case was constituted as follows:

Sole Arbitrator: Mr. Vladimir Novak, attorney-at-law in Brussels, Belgium
43. On 5 November 2024, the CAS Court Office invited the Appellant to provide its comments on the Second Respondent's extension request by 7 November 2024, and invited the Parties to inform the CAS Court Office by 15 November 2024 whether (i) they preferred a hearing to be held in the matter or for the Sole Arbitrator to issue an award based solely on the Parties' written submissions and (ii) whether they requested a case management conference with the Sole Arbitrator in order to discuss procedural issues, the preparation of the hearing and any issues related to the taking of evidence.
44. On 7 November 2024, the Appellant disagreed with the Second Respondent's extension request.
45. On 13 November 2024, the Sole Arbitrator decided to grant the Second Respondent's extension request on the basis of Articles R29.2 and R32.2 of the CAS Code, extending the deadline to 20 November 2024.
46. On 15 November 2024, the Appellant requested a hearing and a case management conference to be held in the matter, and that it be granted a deadline to respond to the Second

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Respondent's Answer. On the same day, the Second Respondent informed the CAS Court Office that it did not request a case management conference nor a hearing to be held in the matter.

47. On 20 November 2024, the Second Respondent submitted full certified translations into English of Exhibits 1 and 2 to the Answer.
48. On 26 November 2024, the Sole Arbitrator put the following questions to the Appellant with a deadline of 6 December 2024:
 1. *“whether the respective decisions under appeal in each CAS proceeding (the “Appealed Decisions”) [the Appealed Decision and Decisions no. 3/16.02.2024 and no. 6/04.03.2024 by the CCCO] have been issued within a protest procedure;*
 2. *whether the decisions of the Central Commission for Competitions and Homologations of the Romanian Basketball Federation (“RBF”) may be directly appealed to the CAS and if so under what rules (specifying how any rule includes the decisions of the said commission);*
 3. *the interplay between the jurisdictional provisions in the RBF General Regulations on the Organisation of Basketball Competitions and the RBF Statutes and which of the two should apply to the Appealed Decisions; and*
 4. *whether the Appealed Decisions were required to be initially appealed to the Appeals Commission”.*
49. On 3 December 2024, the Appellant requested an extension to respond to the Sole Arbitrator's questions until 13 December 2024.
50. On 4 December 2024, the CAS Court Office invited the Respondents to provide their comments on the Appellant's extension request by 6 December 2024. The Appellant's time limit to respond to the Sole Arbitrator's questions was meanwhile suspended.
51. On 6 December 2024, the Second Respondent disagreed with the Appellant's extension request.
52. On 9 December 2024, the CAS Court Office acknowledged receipt of the Second Respondent's objection to the Appellant's request for an extension and noted that the First Respondent did not provide its comments within the set deadline. On the same day, the CAS Court Office informed the Parties that, pursuant to Article R32 of the CAS Code and considering the circumstances, the Appellant's request for an extension was granted and that the deadline to file its response to the Sole Arbitrator's questions was extended until 13 December 2024.

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53. On 13 December 2024, the Appellant responded to the Sole Arbitrator's questions. The Appellant requested a 7-day deadline extension to provide full certified translations into English of Exhibits 10, 11, 12 and 14 to its response. On the same day, the CAS Court Office invited the Respondents to provide their position on the request by 16 December 2024.
54. On 16 December 2024, the Second Respondent objected to the filing of the exhibits filed by the Appellant and to the Appellant's extension request. The Second Respondent also requested to be granted a deadline to respond to the Appellant's submission of 13 December 2024.
55. On 18 December 2024, the CAS Court Office informed the Parties that the Sole Arbitrator (i) invited the Appellant to comment, by 23 December 2024, on the Second Respondent's objection to the admissibility of the exhibits filed by the Appellant on 13 December 2024, and (ii) granted the Respondents a deadline of 10 days to respond to the Appellant's submission of 13 December 2024, and to inform whether they would prefer a hearing to be held on the issue of jurisdiction.
56. On 19 December 2024, the Appellant provided full certified translations into English of Exhibits 10, 11, 12 and 14 to its submission of 13 December 2024.
57. On 23 December 2024, the Appellant submitted its comments on the Second Respondent's objection to the admissibility of the exhibits relating to its submission of 13 December 2024.
58. On 30 December 2024, the CAS Court Office informed the Parties that the Sole Arbitrator deemed the exhibits filed by the Appellant on 13 December 2024 and the English translations thereof filed on 19 December 2024 admissible, pursuant to Articles R56 and R29 of the CAS Code respectively, and stated that the reasons therefor would be provided in the final award.
59. On 15 January 2025, the Appellant informed the CAS Court office that Mr. Sergiu-Valentin Gherdan's mandate to represent the Second Respondent in the present matter ceased on 31 December 2024 and that the Second Respondent's director, Mr. Andrei Talpeș, was revoked of his position effective 1 January 2025. The Appellant requested that the CAS Court Office inquire about the Second Respondent's representation in the matter at hand.
60. On 16 January 2025, the First Respondent submitted a response to the Appellant's submission of 13 December 2024 and requested that a hearing be held on the issue of jurisdiction. On the same day, the CAS Court Office invited the Second Respondent to comment on the Appellant's letter raising questions about the Second Respondent's representation by 21 January 2025.
61. On 17 January 2025, the Second Respondent's attorney, Mr. Sergiu-Valentin Gherdan, informed the CAS Court Office that (i) his power of attorney in respect of the Second Respondent remained valid and in force with regard to the present dispute, and (ii) that the Second Respondent did not request a case management conference nor a hearing to be held in the matter.

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62. On 21 January 2025, the Second Respondent confirmed that attorney Sergiu-Valentin Gherdan would continue to represent the Second Respondent in the present dispute.
63. On 4 February 2025, the CAS Court Office informed the Parties that the Sole Arbitrator decided to bifurcate the present arbitral proceedings and that a hearing solely on the issue of CAS jurisdiction was not required and a preliminary award on jurisdiction would be rendered in accordance with Article R55(5) of the CAS Code.

IV. SUBMISSIONS OF THE PARTIES ON THE ISSUE OF JURISDICTION

A. The Appellant's Submission

64. The Appellant submitted that the CAS had jurisdiction to decide the present dispute.
65. The Appellant referred to Article 22.8 of the RBF's Statutes ("Statutes"), which provides as follows:

"Appeals against a final decision of one of the RBF committees will be submitted to BAT and/or CAS, unless otherwise provided by RBF/FIBA Statutes".

66. The Appellant also referred to Article R47 of the CAS Code, which 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".

67. The Appellant argued that they had exhausted the legal remedies available prior to filing the Appeal and that the Statutes granted the right of an affiliated sports entity to challenge the Appealed Decision before the CAS.

B. The First Respondent's Submission

68. The First Respondent submitted that the CAS lacked jurisdiction to decide the present dispute.
69. The First Respondent referred to Article 22.8 of the Statutes and contended that the exception stipulated therein applied, and thus Article 8.1 and Article 8.1.14 of the Statutes should govern the jurisdictional issue:

"8.1. Affiliated members of RBF have the following obligations:[...]

8.1.14. To acknowledge FIBA and CAS decisions and undertake to execute them within the deadlines mentioned in their content. For any disputes, the Appeals Commission is the jurisdictional body that decides definitively and enforceably in accordance with the

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provisions of the Statutes and RBF regulations. If they disagree with the Appeals Commission's decision, they shall follow these appeal paths:

a). In disputes other than disciplinary cases, they shall address BAT and ultimately CAS; [...]”.

70. On this basis, the First Respondent argued that the present dispute was a non-disciplinary one, meaning the initial jurisdiction for appeals resided with the BAT, rendering the present Appeal before the CAS premature.

C. The Second Respondent’s Submission

71. The Second Respondent submitted that the CAS lacked jurisdiction to decide the present dispute.

72. First, the Second Respondent referred to Article 21.3 of the RGOC which governs protest proceedings and provides as follows:

“21.3. The decision of the competent authority is also considered as a decision in the field of game rules and is not subject to review or further appeal”.

73. The Second Respondent asserted that as the CAS is bound by these applicable regulations pursuant to Article R58 of the CAS Code, any contention by the Appellant suggesting that the applicable regulations should be otherwise disregarded or interpreted contrary to their clear and explicit stipulations is both inadmissible and devoid of merit. Consequently, the Second Respondent noted that the aforementioned protest decisions are excluded from the jurisdiction of the CAS.

74. Second, in the alternative, the Second Respondent contended that the Appellant failed to exhaust internal legal remedies. The Second Respondent referred to Article 8.1 and Article 8.1.14 of the Statutes and noted that if the present dispute were considered a non-disciplinary one, the reasoning echoes that of the First Respondent whereby jurisdiction would rest with the BAT. Conversely, should the present dispute be considered a disciplinary one, the initial jurisdiction for appeals would reside with the National Sports Discipline Commission under the Ministry of Sports or with the Romanian domestic courts, as per the provisions of the Romanian law no. 551/2004. On this basis, the Second Respondent asserted that regardless of the nature of the present dispute the noted provisions preclude the jurisdiction of the CAS.

75. Third, in further alternative, the Second Respondent contended that the Appellant improperly utilized the protest proceeding to address the Second Respondent’s eligibility for the 2023/2024 season and foreign player registrations, and failed to exhaust the available legal domestic remedies.

76. The Appellant had no ground to protest the results of the game based on Article 21.1.C of the RGOC, given that at the date of playing all the games between the Appellant and the Second

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Respondent there were no disciplinary sanctions issued against CSM Constanța or its foreign players, nor was there any decision excluding CSM Constanța from the affiliated members of the RBF or prohibiting CSM Constanța from participating in RBF competitions.

77. The Second Respondent indicated that the Appellant sought to challenge administrative decisions – namely, the registration of CSM Constanța’s foreign players on 14 October 2023 – but failed to adhere to the time limit requirements set out in Article 21.12 RGOC, which mandates the following:

“21.12. The decision pronounced in the first instance by CCCO for decisions made by regional and municipal councils can be appealed within 48 hours of the decision, to the RBF Appeals Commission. Decisions made by the RBF Appeals Commission are final and enforceable”.

78. The Second Respondent also emphasised that the Appellant had not, at the time of the Second Respondent’s submission, formally challenged the RBF’s decision allowing CSM Constanța to participate in the 2023/2024 season of the championship and Cup, nor had it contested the absence of disciplinary sanctions or the registration of foreign players.
79. In addition, the Second Respondent noted that the Appellant did not challenge the 6 October 2023 decision by the RBF that no sanctions would be imposed on any team taken on a Zoom conference call and attended by the representatives from all teams designated for the 2023/2024 season in the first Romanian women’s basketball league.
80. Fourth, in further alternative, the Second Respondent held that decisions of the CCCO require an appeal to the Appeals Commission before these can be appealed before the CAS. The Second Respondent referred to Articles 22.1 to 22.4 of the Statutes and Articles 17.26, 21.13, 21.14, 22.30, 23.39, and 23.40 of the RGOC in addition to Article 21.12 referenced above.
81. The said Articles of the Statutes provide as follows:

“22.1. The jurisdictional bodies within the RBF are:

22.1.1. Litigation Resolution Commission

22.1.2. Discipline and Sports Ethics Commission

22.1.3. Appeals Commission

22.2. The assemblies and central bodies with jurisdictional attributes of the RBF are independent courts. The adoption of decisions by these committees or bodies is in accordance with the Statutes and regulations of RBF, FIBA, and FIBA Europe.

22.3. Competent to hear cases or appeals to the RBF are:

22.3.1. In the first instance:

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- *Central Discipline and Sports Ethics Commission*
- *Litigation Resolution Commission*

22.3.2. Decisions issued in the first instance by these committees may be appealed to the Appellate Body.

22.4. Decisions issued by the Appeals Committee of the RBF are final and binding”.

82. The noted RGOC Articles provide as follows:

“17.26. Any objections to the decisions of the CCLTO must be addressed to the Appeals Commission within the legal term and with the payment of an appeal fee of 300 Euros.

(...)

21.13. Any person can contest the decision made in the first instance by the RBF's jurisdictional commissions, the Central Discipline Commission, the Central College of Basketball Referees, the Central Commission of Commissioners, and the Commission for Competitions, Accreditations, Transfers, and Approvals, at the Appeals Commission.

21.14. For this appeal to be considered, a written memorandum must be submitted to the RBF headquarters within the specified term, and an appeal fee of 300 Euros, which is non-refundable, must be paid. If the appeal fee has not been paid by the date of the Appeals Commission meeting, the action will be dismissed for non-payment of the fee, without discussing the merits of the request.

(...)

22.30. The Appeals Commission is the RBF's court of law that resolves all objections against decisions pronounced in the first instance by the Commission for Competitions, Accreditations, Transfers, and Approvals, the Central Discipline Commission, the Central College of Basketball Referees, and the Central Commission of Commissioners. The procedure for hearing and resolving appeals is provided in the Discipline Regulation.

(...)

23.39. Cases not provided for in these regulations may be judged by the RBF's jurisdictional commissions.

23.40. An appeal against sanctions dictated according to the provisions of the present RGOC can be addressed to the Appeals Commission”.

83. In this context, the Second Respondent claimed that even if the Sole Arbitrator considered that decisions issued in the protest procedure are subject to further review or appeal and that

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the Appellant had not used the protest proceeding improperly, the noted provisions would prohibit the Appellant from filing a direct appeal to the CAS.

84. Instead, the Second Respondent held that the above Articles set out the explicit requirement for CCCO decisions to be appealed to the Appeals Commission, which the Appellant did not do.
85. Thus, the Appellant's failure to appeal the Appealed Decision to the Appeals Commission would mean that the Appellant had not exhausted the available legal remedies, rendering the Appeal to CAS premature.

D. The Appellant's Response To The Sole Arbitrator's Questions

86. The Appellant provided answers to the following questions:
87. *“(1) whether the respective decisions under appeal in each CAS proceeding (the “Appealed Decisions”) have been issued within a protest procedure;”*
- The Appellant confirmed that the Appealed Decision was issued by the CCCO as part of a protest procedure.
 - Contrary to the Second Respondent's claim that the Appellant utilized the protest procedure to address an unfiled grievance, the Appellant emphasized that no alternative legal procedure was available.
 - The Appellant noted that the exhibit submitted by the Second Respondent merely indicated that their foreign players *“play from”* a specific date and did not constitute an official decision by the CCCO.
 - In support of this claim, the Appellant referred to Article 2.5 of the Regulations for the Organization and Functioning of the CCCO, according to which:

“2.5 Communication:

(...)
 - *b) Decisions are published on the official FR Baschet website by the relevant departments. Publication constitutes official communication and notice to interested parties”.*
 - In this context, the Second Respondent emphasized that a decision regarding CSM Constanța's right to register foreign players was never published on the official website of the RBF and could thus not be appealed.

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88. “(2) *whether the decisions of the Central Commission for Competitions and Homologations of the Romanian Basketball Federation (“RBF”) may be directly appealed to the CAS and if so under what rules (specifying how any rule includes the decisions of the said commission);*”

- The Appellant claimed the CCCO decisions were erroneously classified as “field of play” decisions, by referring to the CAS OG 24/15 and CAS OG 24/16 decisions, which provide as follows:

“According to the field of play principle, if a decision is demonstrated to be a "decision made on the playing field by the judges, referees, umpires and other officials, who are responsible for applying the rules of a particular game" (CAS 2021/A/8119), the same should not be reviewed by the Panel. This wise principle seeks to avoid a situation in which the arbitrators are asked to substitute their judgement of that of a judge, referee, umpire or other official, on a decision taken in the course of a competition that relates to a sporting activity governed by the rules of a particular game”.

- The Appellant noted that even if such decisions were to be considered “*field of play*” decisions as set out in Article 21.3 RGOC, Article 22.8 of the Statutes provides for the right to challenge such decisions before the CAS.
- The Second Respondent’s argument based on Article 8.1.14 of the Statutes is unfounded for two reasons.
 - First, while the cited provision pertains specifically to the procedure for appealing decisions made by the Appeals Commission, the present dispute involves an appeal against a decision issued by the CCCO.
 - Second, given that Articles 8.1.14 and 22.8 of the Statutes contradict each other, the Appellant held that the latter should prevail, considering it is included in the chapter dedicated specifically to dispute resolution mechanisms, thus serving as the primary rule.
- The Appellant considered the CCCO decisions to be final and thus not contestable before the Appeals Commission. Consequently, the Appellant concluded that Article 22.8 of the Statutes is applicable.
- Third, the Appellant argued that, even if Article 8.1.4 of the Statutes were considered applicable, neither the BAT or the National Sports Discipline Commission have jurisdiction for the following reasons:
 - a) Article 1.1 of the BAT Rules regarding BAT’s jurisdiction states that

“these Rules shall apply and the BAT shall have jurisdiction whenever the parties to a dispute have agreed in writing to submit the dispute to the BAT –

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including by reference to its former name FIBA Arbitral Tribunal (FAT) provided that FIBA and its divisions are not directly involved in the dispute”

meaning that BAT does not permit FIBA and its divisions to be directly involved in the dispute and since RBF is a member of FIBA, it cannot resort to BAT;

- b) BAT competence is limited to pecuniary matters;
- c) there is no arbitration agreement between Sepsi SIC and CSM Constanța and the BAT Arbitration Rules do not contain an article such as R47 CAS Code;
- d) the provisions regarding the jurisdiction of the National Sports Discipline Commission are inapplicable, as the current matter is not of a disciplinary nature. Even if it were, the National Sports Discipline Commission is presently non-operational and has not issued any decisions since its establishment in 2004.

89. *“(3) the interplay between the jurisdictional provisions in the RBF General Regulations on the Organisation of Basketball Competitions and the RBF Statutes and which of the two should apply to the Appealed Decisions;”*

- The Appellant highlighted Article 4.3.27 of the Statutes which provides that the RBF has the following responsibility:

“Develop and adopt regulations/standards for the implementation of this Statute, as well as regulations/standards with an organizational profile, technical and financial rules and regulations necessary for the activities of the carrying out its own activities in compliance with the legislative provisions in force and this Statute. It shall monitor their implementation and exercises control whenever necessary;”

- Based on the above the Appellant observed that the regulations adopted by the RBF must align with all legal provisions and the Statutes, and that it is not permissible to use internal regulations to derogate from or amend the Statutes.
- It follows that in cases where the RGOC contain provisions that contradict the Statutes, the provisions of the latter shall take precedence.
- Further, the Appellant argued that any other conclusion cannot be accepted based on the fact that the provisions of the Statutes may only be amended in accordance with the procedure outlined in Article 21 of Ordinance No. 26/2000, which sets out a comprehensive process that requires the approval of RBF members through a vote in the General Assembly.

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- The Appellant thus again concluded that the provisions applicable to jurisdiction in the present dispute are those set out in Article 22.8 of the Statutes.

90. “(4) *whether the Appealed Decisions were required to be initially appealed to the Appeals Commission*”.

- The Appellant noted that Article 21.3 RGOC, which addresses the concept of a protest, explicitly stipulates that “*decisions rendered by the competent body are considered final under the rules of the game and are not subject to further review or appeal*”.
- The Appellant reiterated the arguments noted in response to question (1), according to which Article 22.8 of the Statutes provides for the right to challenge final decisions before the CAS.
- The Appellant called attention to the fact that the Second Respondent appealed a protest decision to the Appeals Commission (Decision no.5/04.03.2024 of the CCCO) which rejected that appeal as inadmissible, on the grounds that it lacked jurisdiction to adjudicate the matter pursuant to Article 21.3 RGOC.
- The Appellant noted that it appealed another Decision (no. 1/09.02.2024) issued by the CCCO to the Appeals Commission, which, through its decision dated 19 February 2024, dismissed the appeal as inadmissible on the grounds that it lacked jurisdiction to adjudicate the matter.
- The Appellant highlighted that it challenged before the national courts another decision of the Governing Board of the RBF issued on 3 June 2024, by which the results of the Second Respondent were homologated. The case was registered under no. 18462/300/2024.

91. Finally, the Appellant asserted the Respondents’ lack of consistency regarding the applicable jurisdiction by highlighting:

- A dispute between coach Amăriucăi Bogdan and the RBF, which was the subject of case no. 9048/300/2023 before the national courts and case no. 2023/A/9561 before the CAS. The Appellant contended that the First Respondent relied on contradictory provisions of the Statutes and RBF Regulations to invoke the lack of jurisdiction of national courts in case no. 9048/300/2023 and the lack of CAS jurisdiction in favour of the jurisdiction of national courts in case no. 2023/A/9561;
- The case registered under no. 1584/305/2024 in front of the national courts in Romania, where both Respondents invoked that according to the Statutes the national courts do not have jurisdiction to render a decision in a dispute regarding the basketball activity.

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92. The Appellant concluded that the lack of consistency as to which body has jurisdiction to resolve such disputes is a clear evidence of how the Respondents are attempting to circumvent the rules of the Statutes and to use these circumstances to try to deny the Appellant's right to defend its rights both at national level and before CAS.

E. The First Respondent's Response To The Appellant's Response To The Sole Arbitrator's Questions

93. First, the First Respondent maintained that pursuant to Articles 8.1 and 8.1.14 of the Statutes, the initial appeal jurisdiction in the case of non-disciplinary disputes resides with the BAT.
94. Second, the First Respondent held that the Appellant attempted to mislead the CAS by invoking specific provisions from the RGOC and Statutes in a truncated manner, without considering Article 21.16 RGOC which provides as follows:

"21.16. The resolution of disputes arising from basketball activities will be done only through FRB's jurisdictional commissions as follows:

a) A protest is submitted to FRB, following the procedure outlined in ROJB cap. C and RGOC cap. 21.

b) If the response is considered unsatisfactory, the team/sports structure may address internal sports courts, specifically the Appeals Commission.

c) If the response is still unsatisfactory, the team/sports structure may address international sports bodies (FIBA Europe, FIBA World, TAS, BAT, etc.). Affiliated members can address international sports courts or international bodies (FIBA, TAS, BAT, etc.), but only after exhausting all national sports jurisdiction channels.

d) Failure to follow the procedure and directly addressing international bodies in any form results in a fine of 5,000 Euro, regardless of the response from the respective international bodies.

e) In the case of recurrence, the right to register and participate in European cups or in FRB's national competitions will be revoked".

95. Based on a conjoint interpretation of Articles 8.1.14 and 22.8 of the Statutes and Articles 21.3 and 21.16 RGOC, the First Respondent concluded that:
- The protest is addressed for resolution to the CCCO.
 - The decision of the CCCO (a central commission of the RBF) is not subject to review within the same internal commission.

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- The decision of the CCCO can be challenged before the BAT and, as ultimate judge, at the CAS.

96. The First Respondent also emphasized that, contrary to the Appellant's claims, it never invoked the jurisdiction of national courts in cases concerning basketball activities. The relevant annex included in the Appellant's submission of 13 December 2024 is a response from the First Respondent in another case that notes that the respective appellant has chosen to address the national courts, which cannot equate to the First Respondent invoking the jurisdiction of the national courts.
97. For completeness, the Second Respondent did not respond to the Appellant's response to the Sole Arbitrator's questions even though it was invited to do so.

V. JURISDICTION

98. As a preliminary remark, the Sole Arbitrator first provides further explanations on why an oral hearing was not deemed necessary in this case in accordance with Article R57 of the CAS Code.
- First, the Sole Arbitrator decided to bifurcate the present arbitral proceedings and to issue a preliminary award on jurisdiction.
 - Second, the question of jurisdiction is a legal one, and its assessment does not require oral explanations of the Parties or examination of witnesses at an oral hearing.
 - Third, the jurisdictional issue was sufficiently addressed in the Parties' written submissions. Moreover, the Parties were afforded additional opportunity to address any pertinent jurisdictional points by responding to the Sole Arbitrator's questions in this regard.
99. Article 186 of the Swiss Federal Act on Private International Law ("PILA") provides as follows:
- "(1) The arbitral tribunal shall decide on its own jurisdiction.*
- (1bis) It shall decide on its jurisdiction notwithstanding any pending action before a state court or another arbitral tribunal on the same subject-matter between the same parties, unless there are substantial reasons to stay the proceedings.*
- (2) Any plea of lack of jurisdiction must be raised prior to any defence on the merits.*
- (3) The arbitral tribunal shall, in general, decide on its jurisdiction by means of a preliminary award".*
100. The autonomy of the CAS to rule on its own jurisdiction is well-established:

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“According to Article 186 paragraph 1 Swiss PILA, the Arbitration Court has priority when deciding on its jurisdiction on the dispute. This arbitration principle of the so-called ‘Kompetenz-Kompetenz’ is internationally recognized and applies to CAS arbitration and is constantly affirmed in many CAS awards. More precisely, the principle of Kompetenz-Kompetenz means that it is up to the arbitral tribunal to decide whether a person called before it is bound or not by the arbitration agreement, and whether the submitted dispute lies within its jurisdiction or with the jurisdiction of the state courts (...). The arbitral tribunal thus has priority, the so-called own competence” (See Mavromati/Reeb, “The Code of the Court of Arbitration for Sport, Commentary, Cases and Materials”, p. 27).

101. Article R47 of the CAS Code 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”.

102. The Parties have not concluded a specific arbitration agreement and are in dispute as to whether the applicable regulations at hand provide for the jurisdiction of the CAS in the present case.

103. At the outset, the Sole Arbitrator notes that the applicable regulations (the Statutes and the ROG) do not appear to include clear-cut dispute resolution rules nor an unambiguous provision on the CAS jurisdiction. This is regrettable as the effectiveness of the dispute resolution processes depends on the clarity and cohesion of the jurisdictional provisions themselves. Instead, there are several jurisdictional provisions scattered throughout the Statutes and the ROG that require a holistic assessment, which is provided in the paragraphs that follow. In undertaking that analysis, the Sole Arbitrator notes that it is not the role of the CAS to rewrite the rules or stretch the interpretation one way or another but to objectively assess whether the applicable regulations provide the CAS with jurisdiction or not. That said, the Sole Arbitrator is of the opinion that relevant stakeholders would benefit from clearer jurisdictional provisions going forward.

104. The Appealed Decision was issued under the “protest” procedure (related to the alleged violation of applicable eligibility rules) stipulated in Article 21 ROG. This was also confirmed in the Appellant’s response of 13 December 2024 to the Sole Arbitrator’s questions (Appellant’s submission of 13 December 2024, paragraph 9).

105. Article 21.1 ROG provides as follows (emphasis added):

“21.1. The sports structures participating in the FRB competitions are responsible for complying with the FRB, FIBA competition rules. A team can file a protest if its interests were negatively affected by:

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a) An error in recording the score, in timing the game or shot clock operations that were not corrected by the referees.

b) A decision to lose the game by forfeit, cancellation, postponement, non-resumption, or non-play of the game.

c) Violation of the applicable eligibility rules”.

106. Article 21.3 RGOC provides as follows (emphasis added):

“The decision of the competent authority is also considered as a decision in the field of game rules and is not subject to review or further appeal”.

107. Accordingly, it follows from Article 21 RGOC, reviewed as a whole, that decisions on the violation of applicable eligibility rules are deemed to be decisions “*in the field of game rules*” to be reviewed under the specific “protest” procedure.

108. Moreover, Article 21.3 RGOC indicates a clear and conscious choice that such field of game decisions be subject to the evaluation of the competent authority (in this case the CCCO) and otherwise not subject to review or further appeal.

109. That this is not a local specificity of the Romanian regulations is obvious from the review of the FIBA Official Basketball Rules (Appendix C – Protest Procedure C.5), which contain rules that largely mirror those in Article 21 RGOC:

C.1: “*A team may file a protest if its interests have been adversely affected by: [...]*

c) a violation of the applicable eligibility rules”.

C5: “*The decision of the competent authority is also considered as a decision in the field of game rules and is not subject to review or further appeal. Exceptionally, decisions on eligibility may be appealed as provided for in the applicable regulations*”.

110. Accordingly, there appears to be a clear and conscious international regulatory policy choice that field of game rules decisions – which include those related to an alleged violation of the applicable eligibility rules – are not subject to further review or appeal. Accordingly, Article 21.3 RGOC on its face precludes the CAS jurisdiction in the matter at hand.

111. It is notable that the FIBA rules provide that “*Exceptionally, decisions on eligibility may be appealed as provided for in the applicable regulations*” (emphasis added). Article 21.3 RGOC does not include this sentence from the FIBA rules and thus on its face stipulates that all field of game rules decisions are not subject to review or further appeal. That said, the wording of Article 21.16 RGOC appears to be at odds with the wording in Article 21.3 RGOC insofar as Article 21.16 RGOC refers to the possibility to (i) submit a protest to RBF (see Article 21.16(a)) and (ii) in the case of “unsatisfactory” response one may then address the Appeals

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Commission (see Article 21.16(b)) and (iii) subsequently international sports bodies (see Article 21.16(c)).

112. In any event, the issue of a potential contradiction between Article 21.3 ROGC which does not permit further review or appeal within a protest procedure and Article 21.16 ROGC, which alludes to such a possibility (or alternatively a potential determination whether Article 21.16 ROGC referring to basketball activities is “*lex generalis*” while Article 21.3 ROGC dealing with solely the protest procedure within a narrower context is “*lex specialis*” derogating from Article 21.16 ROGC) is not directly relevant to the issue of jurisdiction at hand because Article 21.16 ROGC in any event requires that an appeal from a protest be first made to the Appeals Commission, which did not occur in the present case. Accordingly, even if one were to read the ROGC as ultimately permitting further review of decisions related to eligibility (which, as a conceptual matter, is recognized as an exceptional possibility in the FIBA rules), the Appellant in that scenario did not exhaust all available internal remedies (specifically an appeal to the Appeals Commission) prior to bringing the matter before the CAS. This therefore precludes the CAS jurisdiction at hand.
113. For completeness, the Sole Arbitrator discusses below additional pertinent jurisdictional clauses in the ROGC and the Statutes and explains why these do not call into question the above finding that the CAS lacks jurisdiction in the present matter.
- **Article 21.12 ROGC.** Pursuant to Article 21.12, “[t]he decision pronounced in the first instance by CCCO for decisions made by regional and municipal councils can be appealed within 48 hours of the decision, to the RBF Appeals Commission. Decisions made by the RBF Appeals Commission are final and enforceable” (emphasis added). The Sole Arbitrator notes that this provision refers to a scenario where the CCCO acts as an appeal body in the first instance against decisions made by regional and municipal councils. The Parties did not refer to any decision made initially by regional and municipal councils nor is there any indication in the file that this was the case. In any event, Article 21.12 requires that an appeal be first made to the Appeals Commission, which did not occur in the present case.
 - **Article 21.13 ROGC.** Pursuant to Article 21.13, “[a]ny person can contest the decision made by central RBF commissions/councils for the application of regulations by RBF’s central bodies, specifically the Central Basketball Referees’ Council, the Central Commission of Commissioners, and the Central Commission of Competitions and Homologations [i.e., CCCO], except for those provided by this regulation. Any person can contest the decision made in the first instance by jurisdictional commissions to the Appeals Commission” (emphasis added). The Sole Arbitrator notes that this provision allows “any person” to challenge the decisions of the CCCO “*except for those provided by*” the ROGC. Given that Article 21.3 ROGC precludes further review/appeal of field of game rules decisions, it takes precedence over Article 21.13 ROGC. In any event, even if one were to read the ROGC as ultimately permitting

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further review of decisions related to eligibility under Article 21.16 ROGC (which, as a conceptual matter, is recognized as an exceptional possibility in the FIBA rules), Article 21.13 ROGC requires that an appeal be first made to the Appeals Commission, which did not occur in the present case.

- **Article 22.30 ROGC.** Pursuant to Article 22.30 ROGC, “[t]he Appeals Commission is the court of law of FRB that resolves all objections against decisions made in the first instance by jurisdictional commissions. The procedure for hearing and resolving appeals is provided in the Disciplinary Regulations” (emphasis added). The Sole Arbitrator notes that this provision refers to the possibility to appeal to the Appeals Commission in relation to decisions “made in the first instance” by jurisdictional commissions. It follows from Article 21 ROGC that the CCCO acts as a first instance body in relation to decisions made by regional and municipal councils which, as explained above, was not argued as applicable in this case. In any event, Article 22.30 ROGC requires that an appeal be first made to the Appeals Commission, which did not occur in the present case.
- **Article 8.1.4 of the Statutes.** Pursuant to Article 8.1.4 of the Statutes, “[f]or any disputes, the Appeals Commission is the jurisdictional body that decides definitively and enforceably in accordance with the provisions of the Statutes and FRB regulations. If they disagree with the Appeals Commission's decision, they shall follow these appeal paths: a). In disputes other than disciplinary cases, they shall address BAT and ultimately CAS; b). For disciplinary cases, they shall first address the National Sports Discipline Commission within MS and ultimately CAS; c). Any other appeal path chosen outside those mentioned in letters a) and b) is sanctioned under these Statutes and FRB regulations; d). Exceptions from sanctions are cases where Romanian legislation expressly provides otherwise”.

The Sole Arbitrator notes that Article 8.1.4 of the Statutes establishes the Appeals Commission as the final domestic jurisdictional body “in accordance with the provisions of the Statutes and FRB regulations” (emphasis added). By making the possibility to file an appeal to the Appeals Commission subject to (i.e., “in accordance with”) the rules in the FRB regulations, there is no inherent contradiction between that provision and Article 21.3 ROGC which precludes review or further appeal in relation to field of game rules decisions. But even if it were possible to appeal the field of game rules decision pursuant to Article 21.16 ROGC, the fact of the matter is that Article 21.16 ROGC as well as Article 8.1.4 of the Statutes require an appeal before the Appeals Commission as a prerequisite of any subsequent appeal to the CAS. Such appeal before the Appeals Commission was not lodged in this case.

- **Article 22.8 of the Statutes.** Pursuant to Article 22.8 of the Statutes, “[a]ppeals against a final decision of one of the FRB committees will be submitted to BAT and/or CAS, unless otherwise provided by FRB/FIBA Statutes”. The Sole Arbitrator notes

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that Article 22.8 of the Statutes is not a standalone jurisdictional provision of the Statutes but is included as part of Article 22 of the Statutes. It follows that Article 22.1 of the Statutes refers to the “*jurisdictional bodies within FRB*” as the Dispute Resolution Committee (22.1.1), the Central Disciplinary and Sports Ethics Committee (22.1.2), and the Appeals Committee (22.1.3) and these bodies are also expressly mentioned in Article 22.3 of the Statutes. Reading Article 22.8 of the Statutes within the scheme of Article 22 of the Statutes as a whole (and notably in conjunction with Articles 22.1 and 22.3 of the Statutes), an appeal to BAT and/or CAS appears permitted against final decisions of the jurisdictional bodies explicitly referenced in Article 22.1 of the Statutes *i.e.*, the Dispute Resolution Committee (22.1.1), the Central Disciplinary and Sports Ethics Committee (22.1.2), and the Appeals Committee

In any event, Article 22.8 of the Statutes provides for the jurisdiction of the CAS “*unless otherwise provided by FRB/FIBA Statutes*”. It follows that Article 8.1.4 of the Statutes explicitly prescribes that “for any disputes”, the Appeals Commission is the jurisdictional body that decides definitively and enforceably in accordance with the provisions of the Statutes and FRB regulations prior to appealing to the CAS. Accordingly, the Appellant cannot escape the requirement to go to the Appeals Commission as stipulated in Article 8.1.14 of the Statutes by pleading Article 22.8 of the Statutes because Article 22.8 of the Statutes clearly allows other provisions of the Statutes to “state otherwise”.

For completeness, the Appellant relies on Article 22.8 of the Statutes by arguing that the Appealed Decision is “final” as per Article 21.3 ROGC. In doing so, the Appellant cannot have its cake and eat it too by applying the ROGC – those regulations either preclude any further appeal whatsoever under Article 21.3 or permit it under Article 21.16 but subject to an initial appeal to the Appeals Commission to exhaust all available internal remedies as also requested by Article 21.5 of the Statutes.

114. In light of the foregoing, the Sole Arbitrator finds that the CAS lacks jurisdiction in the present matter.
115. For completeness, the Sole Arbitrator notes that the jurisdictional postures adopted by the Respondents in other matters are unrelated to the issue at hand *i.e.*, whether the CAS has jurisdiction in relation to the Appealed Decision. This is a function of the applicable regulations which, as explained in detail above, either do not permit an appeal of field of games decisions or only subject to an initial appeal before the Appeals Commission which did not occur in this case. Of note, for completeness, the fact that the Appeals Commission declined jurisdiction in another dispute does not relieve the Appellant from an obligation to appeal the Appealed Decision to the Appeals Commission prior to approaching the CAS. Such appeal did not occur in this case.

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VI. COSTS

(...)

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ON THESE GROUNDS

The Court of Arbitration for Sport decides that:

1. The Court of Arbitration for Sport does not have jurisdiction to decide on the appeal filed on 22 March 2024 by Asociatia Club Sportiv Sepsi SIC against Decision no. 7/13.03.2024 issued by Central Commission of Competitions and Homologations of the Romanian Basketball Federation.
2. (...).
3. (...).

Seat of arbitration: Lausanne, Switzerland

4 June 2025

THE COURT OF ARBITRATION FOR SPORT

Dr Vladimir Novak
Sole Arbitrator