CAS 2024/A/10867 Vladimir Milenkovic v. Bytomski Sport Polonia Bytom Sp. Z.o.o & FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Lars Halgreen, Legal Director, Ph.D, Gentofte, Denmark

in the arbitration between

Vladimir Milenkovic, Nis (Capljinac), Serbia

Represented by Mr. Filip Blagojevic, Attorney-at-law, Belgrade, Serbia

Appellant

and

Bytomski Sport Polonia Bytom Sp. z o. o, Bytom, Poland

Represented by Mr. Piotr Miekus and Mr. Mateusz Walczak, Attorneys-at-law, Warsaw, Poland

First Respondent

Fédération Internationale de Football Association, Zurich, Switzerland

Represented by Mr. Alexander Jacobs, Senior Legal Counsel at the FIFA Litigation Department, Miami, USA

Second Respondent

I. PARTIES

1. Vladimir Milenkovic (hereinafter "the Appellant" or "the Player") is a Serbian former professional football player, born on 22 June 1982, who retired from football as of 1 July 2016. His last professional club was the Serbian club, FC Timor Zajecar.

2. Bytomski Sport Polonia Bytom Sp. z o. o (hereinafter "the First Respondent" or "the Club") is a professional football club with its registered offices in Bytom, Poland. The First Respondent is registered with the Polish Football Association, which in turn is affiliated with the Fédération Internationale de Football Association ("FIFA").

3. The Fédération Internationale de Football Association (hereinafter the "Second Respondent" or" FIFA") is the world governing body of football, whose headquarters are in Zurich, Switzerland. FIFA is a legal entity registered under Swiss law.

4. The Appellant and the two Respondents are hereinafter jointly 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, pleadings and evidence adduced at the hearing. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.

A. Proceedings before the FIFA Dispute Resolution Chamber (hereinafter "FIFA DRC") in 2015 involving the Player's old club, KS Polonia Bytom football club (hereinafter "Original Bytom")

6. The Player had originally from 1 January 2010 been employed as a football player by Original Bytom and the two parties' employment contract was valid until 30 June 2012.

7. On 11 January 2011, however, the Player had lodged a claim with FIFA against Original Bytom for breach of contract, requesting outstanding remuneration and compensation for the remaining period on his contract.

8. On 12 March 2015, the FIFA DRC rendered a decision regarding the dispute and ordered Original Bytom to pay the Player both outstanding remuneration in the amounts of EUR 57,500 and PLN 11,277.42 plus interest and compensation for breach of contract in the amounts of EUR 118,581 and PLN 8,040 plus interest (hereinafter the "DRC Decision").

B. Proceedings before FIFA Disciplinary Committee involving Original Bytom

9. Original Bytom did not pay any of the amount awarded to the Player in the DRC Decision, and a complaint was brought by the Player against Original Bytom before the FIFA Disciplinary Committee, which on 27 October 2016 decided that Original Bytom should have points deducted, if the debt was not settled forthwith.

10. On 28 October and again on 8 December 2016, the Player requested the FIFA Disciplinary Committee to have points deducted from Original Bytom, as the debt had still not been settled.

11. On 20 February 2017, the FIFA Disciplinary Committee requested the Polish National Football Federation (hereinafter "the PZPN") to deduct six points from the first team of Original Bytom, but on 31 March 2017, the PZPN informed the FIFA Disciplinary Committee that Original Bytom "*has been going through the restructuring process for a long time, the aim of which is to stabilize its financial position and to pay off its creditor, including [the Player]".*

12. On 25 January 2018, the PZPN informed FIFA that Original Bytom was going to be disaffiliated soon, and on 31 January 2018, the Disciplinary Committee informed that the disciplinary proceedings against Original Bytom had been suspended, due to the fact that the efforts to restructuring and financially stabilize Original Bytom, had ended up in failure and that in the next few weeks Original Bytom would be withdrawn from the Polish football register of clubs.

13. On 26 February 2018, the Polish court supervisor concluded that the value of Original Bytom's assets was almost 10 times lower than the anticipated procedural costs. That assessment implied that there was no point in conducting an insolvency procedure against the club.

14. On 28 February 2018, the PZPN confirmed that Original Bytom was no longer affiliated to its association.

15. On 2 March 2018, the FIFA Disciplinary Committee informed "*that we do not appear to be in position to further proceed with the case of reference in which [Original Bytom] is involved".*

C. Proceedings before the FIFA Disciplinary Committee against the Club as the successor of Original Bytom.

16. On 13 July 2022, the Player, after having received no reply from the PZPN, brought the matter forward once again, and reported to the FIFA Disciplinary Committee that *"[Original Bytom] actually never ceased to exist*" and was allegedly participating in the fourth (4th.) division under the auspices of the PZPN, requesting an examination into the Club's possible legal succession of the liabilities of Original Bytom.

17. On 26 August 2022 the PZPN submitted information to FIFA about the circumstances and status of the Club and Original Bytom.

18. On 4 November 2022 the Player at the request of FIFA explained the respective chronology regarding the possible succession and his lack of awareness regarding the insolvency procedure against Original Bytom.

19. On 24 March 2023, disciplinary proceedings were opened against the Club with respect to a potential breach of Article 21 FDC (2023 edition) under case reference FDD-14399. The Club was provided with the Investigatory Report that had been prepared about the matter and on 30 March 2023, the Club submitted its position.

20. On 13 April 2023, the FIFA Disciplinary Committee issued a disciplinary decision (hereinafter "the FIFA Disciplinary Decision") with the following result: "*To close the disciplinary proceedings opened against [Original Bytom].*"

21. On 5 May 2023, the grounds of the FIFA Disciplinary Decision were notified to the Parties providing an extensive specification of the merits of the case, as set out below:

"C. Merits of the dispute

32. Having established that it was competent to assess the present matter, the Committee next proceeded to analyse whether the New Club had a connection with the Original Club and, should it be the case, whether it can be held liable for the debts of the latter.

i) The sporting succession criteria

33. To begin with, the Committee considered it relevant to recall the existing CAS jurisprudence with respect to the topic of sporting succession.

34. To that end, the Committee referred to decisions that had dealt with the question of the succession of a sporting club in front of CAS. [Footnote 3. See for instance CAS 2007/A/1355; TAS 2011/A/2614 and TAS 2011/A/2646; TAS 2012/A2778]. In particular, the Committee pointed out that it had been established that, on the one hand, a club is a sporting entity identifiable by itself that, as a general rule, transcends the legal entities which operate it, meaning that the obligations acquired by any of the entities in charge of its administration, in relation with its activity, must be respected. This said, on the other hand, it has been stated that the identity of a club is constituted by elements such as its name, colours, fans, history, sporting achievements, shield, trophies, stadium, roster of players, historic figures, etc. These elements allowing a club to distinguish itself from all other clubs. Hence, the prevalence of the continuity and permanence in time of the sporting institution in front of the entity which manages it has been recognised, even when dealing with a change of management completely different from themselves. [Footnote 4. CAS 2013/A/3425.]

35. In these circumstances, the CAS has held that a "new" club has to be considered as the "sporting successor" of another one in a situation where (i) the "new" club created

the impression that it wanted to be legally bound by the obligations of its predecessor (i.e. the "old" club), (ii) the "new" club took over the licence or federative rights from the "old" club and (iii) the competent federation treated the two clubs as successors of one another. [Footnote 5. CAS 2007/A/1322.]

36. By the same token, a "sporting succession" is the result of the fact that (i) a new entity was set up with the specific purpose of continuing the exact same activities as the old entity, (ii) the "new" club accepted certain liabilities of the "old" club, (iii) after the acquisition of the assets of the "old" club, the "new" club remained in the same city and (iv) the "new" club took over the licence or federative rights from the "old" club.[Footnote 6. CAS 2011/A/2646.]

37. Furthermore, the issue of the succession of two sporting entities (i.e. distinct clubs) might be different than if one were to apply civil law, regarding the succession of two separate legal entities. In particular, it is important to recall that according to CAS, a club is a sporting entity identifiable by itself that, as a general rule, transcends the legal entities which operate it. [Footnote 7. CAS 2016/A/4576.] Consequently, elements to consider are, amongst others, the name, the logo and colours, the registration address and/or the managing board of the club.

38. For the sake of completeness, it is likewise important to emphasise that the aforementioned established jurisprudence of the CAS is reflected within the 2023 edition of the FDC under art. 21.4. According to the aforesaid provision, "The sporting successor of a non-compliant party shall also be considered a non-compliant party and thus subject to the obligations under this provision. Criteria to assess whether an entity is to be considered as the sporting successor of another entity are, among others, its headquarters, name, legal form, team colours, players, shareholders or stakeholders or ownership and the category of competition concerned".

39. Against such background, it is likewise worth mentioning that the elements as referred to under art. 21.4 FDC (formerly art. 15.4 of the 2019 FDC) are non-exhaustive. [Footnote 8. CAS 2020/A/6884] More specifically, the CAS has considered that the existence of several elements in light of this provision can lead, in its combination, and so even if not, all elements are met in a specific case, to the conclusion that a club has to be considered (or not) as a "sporting successor". The overall package of the elements, collectively considered, being decisive. [Footnote 9. CAS 2020/A/6884]

ii) The assessment of the potential sporting succession

40. With the above in mind, the Committee subsequently turned to focus on the documentation at its disposal in light of the criteria set by the relevant CAS jurisprudence (reflected in art. 21.4 FDC) and as applied by the Committee (and CAS) in such situations.

41. In this sense, the Committee noted that the Respondent, by way of its position(s) as denoted supra. had declared that it was not the sporting successor of the Original Club and had submitted, in particular, that:

• the Respondent started to compete in the 4th League level for the season 2017-2018 whilst the Old Club last participation was in the 2nd League level for the season 2016 2017 whereby, based on the sporting results it was relegated to the 3rd League level. Therefore, the Respondent did not participate in the same category of competition as the Old Club.

• the Respondent uses and owns a separate trademark (coat of arms) as the Old Club since 30 November 2018.

• only nine players from the Old Club became players of the Respondent as free players.

• both entities operate in different addresses, have different legal forms and management.

• the Respondent applied to manage the Old Club's social media due to the discontinuation of activities by the latter, with particular regard to the number of observers, i.e. the so called "reach", which did not need to be built up from the outset. The individual companies agreed and assigned ownership of the respective social media accounts to the Respondent.

• Individuals from the Original Club's management concurred in the New Club's management; however, this was due to the limited managerial staff (namely specialists with the competence to run commercial companies) available in Bytom.

• the Respondent was incorporated on 25 July 2014, so it is impossible to conclude that it was established to replace the Old Club.

42. Taking into account the foregoing, the Committee once again deemed it appropriate to refer to the above-mentioned constant jurisprudence of CAS, according to which a club is a sporting entity identifiable by itself that, as a general rule, transcends the legal entities which operate it. In other words, the fact that a club may be operated through a different legal entity than its predecessor does not bear any relevance on whether or not sporting succession can be established.

43. Furthermore, and upon review of the information on file, the Committee noted that – in some respects and contrary to the submissions of the Respondent – the New Club shared a number of significant similarities with the Original Club, all of which indicated towards a sporting succession between the former and the latter. In particular, the Committee found that i) the names of the Original Club – KS Polonia Bytom – and the one of the New Club – BS Polonia Bytom [Footnote 10. According to its official website, the New Club calls itself as "BS Polonia Bytom", which appears to be the abbreviation name of "Bytomski Sport Polonia Bytom Sp. z o. o."] – are (very) similar and almost identical, ii) both clubs have the same colours, i.e. red, blue and black, iii) both clubs play in the same stadium; iv) both clubs' logos are similar; v) the New Club acquired the social media channels of the Original Club; vi) both clubs share similar management; and vii) a total of nine players from the Original Club were eligible to

play in the season 2017/2018 for the New Club, i.e., following the former's disaffiliation to the PZPN.

44. In this context, the Committee likewise noted, based on the information and documentation at its disposal and in accordance with publicly accessible information, that the Respondent could also be seen to share an intertwined history with the Original Club (as explicated under section I.B. par. 13 iii) supra.), and that in accordance with the Investigatory Report, it appears that the New Club recognises the Original Club's history as its own. In particular, the official website of the New Club, under the history section, states the following: "From 1920 to 1922: First Polonia […] From 1945 to 1953: Beginnings and first success […] From 1954 to 1965: At the top […] From 1965 to 1977: The breakup of the team and the crisis of the seventies […] From 1977 to 1987: Between the first and second divisions […] From 1987 to 1997: At the back of the league […] From 1997 to 1999: Merger with Szombierkami […] From 1999 to 2007: Decline and return to play in the Ekstraklasa […] From 2007 to 2011: Ekstraklasa times and relegation […] From 2011 to 2013: Difficult first league times and another relegation […]". Said website also gives a complete detailed explanation of the Original Club's history and sporting achievements.

45. The Committee thus pointed out that all aforementioned elements constitute important indicators towards the consideration of the Respondent as the sporting successor of the Original Club.

46. In addition, the Committee was assured by the stipulations of the Investigatory Report that the Respondent was clearly identified by the public as being connected to the Original Club. For instance, the New Club itself declared during the present proceedings that it applied to manage the Original Club's social media with particular emphasis to the number of observers and not to build up from the outset its fandom.

47. In light of all the above, the Committee recalled once more that, in line with the jurisprudence of the Committee and CAS as well as with art. 21.4 FDC, the identity of a club is constituted by elements such as its name, colours, logo, fans, history, players, stadium, etc., regardless of the legal entity operating it.

48. As such, on the basis of the information and documentation at hand, the Committee was comfortably satisfied that the New Club – Bytomski Sport Polonia Bytom Sp. z o. o.– was to be considered as the sporting successor of the Original Club – KS Polonia Bytom. iii) The potential liability of the New Club for the debts of the Original Club

49. Having determined that the New Club was the sporting successor of the Original Club, the Committee moved on to analyse whether the New Club was to be held liable for the debt(s) incurred by the former as recognised in the DRC and the related DisCo Decision.

50. In this sense, the Committee recalled that, according to art. 21.4 FDC, the sporting successor of a non-compliant party shall also be considered a non-compliant party and thus, be subject to the obligations under art. 21 FDC. Therefore, in the Committee's

view, in principle, whenever a club is considered the sporting successor of a non-compliant party that no longer exists or is no longer under FIFA's jurisdiction, it is automatically responsible for the debts of its predecessor.

51. Notwithstanding the above, the Committee pointed out that according to the CAS jurisprudence, a creditor is expected to be vigilant and to take prompt and appropriate legal 17 FIFA Disciplinary Committee Decision FDD-14399 action to assert its claim. [Footnote 11. CAS 2011/A/2646; CAS 2019/A/6461; CAS 2020/A/6884; CAS 2020/A/6745; CAS 2020/A/7290.] By way of consequence, in principle, no disciplinary sanction can be imposed on a club as a result of succession, should the creditor fail to claim its credit in the liquidation and/or bankruptcy proceedings of the former club, as there is a theoretical possibility that said creditor could have recovered its credit, instead of remaining passive. [Footnote 12. CAS 2011/A/2646; CAS 2019/A/6461; CAS 2020/A/6884; CAS 2020/A/6745; CAS 2020/A/7290.] However, the Committee likewise underlined that there is no blanket rule concerning whether or not a creditor has shown the required degree of diligence and that an assessment of the creditor's diligence has to be made based on the specific circumstances of each case. [Footnote 13.CAS 2019/A/6461.]

52. With the foregoing in mind, the Committee turned its attention to the specifics of the case at hand and, in consideration of the documentation and evidence presented before it, observed the following:

• On 28 October 2016, bankruptcy proceedings were initiated against the Original Club.

• On 23 January 2018, the Original Club was disaffiliated from the PZPN.

• On 31 January 2018, the Claimant was informed by FIFA regarding the financial situation of the Original Club.

• On 2 March 2018, the Claimant was informed by FIFA that the Respondent lost its affiliation to the PZPN.

• The Claimant argued that it was not explicitly informed about the bankruptcy procedure.

• It was undisputed by the parties that the Claimant had not registered its credit in the bankruptcy procedure of the Original Club.

• On 9 July 2021, the Polish Judicial and Economic Monitor announced the dissolution of the Old Club without liquidation proceedings and its deletion from the Register. In this sense, it seems that all persons whose legitimate interest could oppose to the Original Club's dissolution were invited to comment within three months from the date of the announcement.

• It was undisputed by the parties that the Claimant did not comment on the aforementioned proceeding of the Original Club.

• On 15 November 2021, the Original Club was dissolved.

53. In this context and in consideration of the foregoing, the Committee observed that the Claimant was informed about the Original Club's financial situation almost one year and three months after the initiation of the relevant proceedings. The Claimant did not dispute this fact, but rather stressed that it was not explicitly informed about the type of financial situation/proceedings that were ongoing against the Original Club.

54. In this respect, the Committee found that it was within the Claimant's power to take prompt and appropriate action in the context of the financial situation of the Original Club, in particular to register the credit awarded in the DRC Decision. Indeed, the Committee was, on the basis of the information and documentation at its disposal, of the opinion that there was no indication that the Claimant was legally prevented in any manner from registering his credit(s) within the bankruptcy proceedings of the Original Club, it likewise being the case that the Claimant had not ever even attempted to do so.

55. Furthermore, it appears from the case file that the Original Club's proceedings at national level lasted at least until 15 November 2021, i.e., almost four years and eleven months after the initiation of the relevant proceedings at national level, but also, more importantly, more than three (3) years after the Claimant had been made aware of the difficult financial situation of the Original Club. In this sense, the Committee pointed out that, although the Claimant got aware of the financial situation of the Original Club, the latter failed to anticipate and (try to) take part in the ongoing proceedings against the Original Club (the debtor club) in which it could theoretically have registered (and potentially recover) its credit.

56. As a result, the Committee was comfortably satisfied that the Claimant could have claimed its credit(s), or at the very least, have attempted to register them within the bankruptcy/dissolution proceedings of the Original Club. In other words, the Claimant appears to have remained passive and to not have performed the expected due diligence that the circumstances demanded, in particular to take the required legal actions at national level to recover the amount(s) owed to it by the Original Club, and had therefore contributed to the non-compliance by the Original Club, and subsequently by the New Club, with the DRC Decision issued on 12 March 2015 and the subsequent DisCo Decision issued on 27 October 2016.

57. In light of the above, although the New Club, Bytomski Sport Polonia Bytom Sp. z o. o., is to be considered as the sporting successor of the Original Club, KS Polonia Bytom, the Committee resolved that no disciplinary sanctions should be imposed upon the New Club and that all charges against the latter should be dismissed, the foregoing being due to the lack of diligence of the Claimant in collecting and/or registering his debt in the respective proceedings at national level."

22. Together with the decision of the FIFA Disciplinary Committee, the following note was made on the last page relating to any possible appeal of the decision to the CAS:

"*NOTE RELATING TO THE LEGAL ACTION:*

According to art. 58 (1) of the FIFA Statutes reads [sic] together with arts. 52 and 61 of the FDC, this decision may be appealed against before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision. Within another 10 days following the expiry of the time limit for filing the statement of appeal, the appellant shall file a brief stating the facts and legal arguments giving rise to the appeal with the CAS."

D. The Appellant's inadmissible appeal of the FIFA Disciplinary Decision to the CAS and the subsequent decision of the Swiss Federal Tribunal regarding the Appellant's right to be heard.

23. On 30 May 2023, the Appellant filed an appeal against the FIFA Disciplinary Decision with the CAS.

24. On 21 August 2023, the CAS Court Office informed the Appellant that his appeal was late, as the 21 days deadline from the date on which the grounds of the FIFA Disciplinary Decision had been notified to the Parties, had expired on 26 May 2023, and was thus submitted four days too late. Accordingly, the CAS Court Office notified the Appellant that his appeal was inadmissible. A subsequent request to grant an extension of the stipulated deadline in the matter was also denied by CAS, as the explanation that an illness on the part of the Appellant's attorney-at-law, which allegedly had prevented him from filing the appeal brief on time, was not accepted as a valid ground to resume the proceedings.

25. On 20 October 2023 and following a petition to the Swiss Federal Tribunal ("the SFT") by the Appellant claiming that his right to be heard under Swiss law had been violated, the SFT ruled that "*according to established case law, the right to be heard in adversarial proceedings in accordance with Art. 182 para. 3 and Art. 190 para. 2 lit. d IPRG does not include a right to a substantively correct decision, but merely ensures the right of the parties to participate in the decision-making process (BGE 127 III 576 E. 2b and 2d). This right was upheld in the present case."* [Swiss Federal Tribunal decision 4A_464_2023]

E. The Appellant's request in 2024 to re-open the FIFA disciplinary proceedings

26. On 24 July 2024, the Appellant requested before FIFA the re-opening of disciplinary proceedings against the Club for failure to comply with the DRC Decision of 12 March 2015, despite the result of the FIFA Disciplinary Decision from 2023. In support of his request, the Appellant submitted *inter alia* that no genuine insolvency procedure had been carried out against the Original Bytom, and that his subsequent research revealed that the procedure of automatic dissolution of the Original Bytom was also cancelled, as it never had ceased to exist.

27. On 1 August 2024, the Appellant filed further documents on the FIFA Legal Portal in support of his request.

28. On 27 August 2024, the Head of FIFA Disciplinary wrote a letter to the Appellant stating the following *dismissal* of the request (hereinafter referred to as the "Appealed Decision"):

"Ref. N°: FDD-18968

Notification of closure of proceedings

Dear Madam, Dear Sir,

We refer to the above-mentioned matter and your correspondence filed via the FIFA Legal Portal which has received our best attention.

On behalf of the Chairman of the Disciplinary Committee, it is noted that this matter had already been dealt with by the Disciplinary Committee under case ref. FDD-14399, as notified to the parties on 5 May 2023 (hereinafter: the Decision). Specifically, the Decision established the proceedings against Sport Polonia Bytom should be closed.

In light of the above, and after a careful analysis of all the facts and documents related to the present case, the Chairman of the Disciplinary Committee has decided that the Claimant, Vladimir Milenkovic, has not brought forward any new elements that may sustain the claim as to (re)open the disciplinary proceedings in accordance with article 71 of the FIFA Disciplinary Code, 2023 edition (FDC), and, consequently, the Decision shall prevail. This must be understood in line with the general legal principle of res judicata, in the extent that the Disciplinary Committee is not in a position to deal again with the merits of the present matter in line with article 30 par. 7 FDC.

As a consequence of the foregoing and on behalf of the Chairman of the Disciplinary Committee, we inform you that your request is deemed inadmissible, and the present disciplinary proceedings shall be closed.

Thank you for your kind attention to the above.

[sign.]"

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

29. On 12 September 2024, the Appellant filed his Statement of Appeal with the CAS challenging the Appealed Decision in accordance with Article 57 par. 1 of the FIFA Statute and Article R48 of the Code of Sports-related Arbitration ("the Code") (2023 edition). The Appellant requested that the present case was conducted in English and adjudicated by a Sole Arbitrator.

30. On 25 September 2024, the CAS Court Office acknowledged receipt of the Statement of Appeal, which was notified to the two Respondents. In his Statement of Appeal, the Appellant had requested the suspension of the deadline to file his Appeal Brief until a decision had been made on his application for Legal Aid, and against this background the CAS Court Office suspended the Appellant's deadline to file his Appeal Brief.

31. On 26 September 2024, the CAS Court Office acknowledged the Appellant's application for Legal Aid in the matter. Due to the application, the CAS Court Office suspended the Appellant's time limit to pay his share of the advance of costs, until a decision was made by the ICAS Legal Aid Commission.

32. On 1 October 2024, FIFA informed the CAS Court Office that it agreed that the present case should be adjudicated by a Sole Arbitrator selected from the CAS Football List, and that the language of the case should be English. FIFA's notification was acknowledged by the CAS Court Office on 2 October 2024.

33. On 21 November 2024, the CAS Court Office informed the Parties that an Order for Legal Aid had been rendered by the Athletes' Commission of the ICAS. Furthermore, the CAS Court Office informed the Appellant that he, pursuant to article R51 of the Code, should file his Appeal Brief by 2 December 2024, failing which the appeal should be deemed withdrawn. Finally, the CAS Court Office wrote that it had not yet received any communication from the Club as to the request from the Appellant that the case be adjudicated by a Sole Arbitrator.

34. On 25 November 2024, the Appellant made a request to the CAS Court Office for an extension of the deadline to file the Appeal Brief until 25 December 2024 due a heavy workload.

35. On 26 November 2024, the CAS Court Office informed the Parties that the Appellant's request had been (partially) granted, and only with an extension by 10 days. Unless the Respondents objected to an additional 20-days extension by 29 November 2024, the deadline would be automatically extended by a further 30 days.

36. On 3 December 2024, the CAS Court Office informed the Parties that the Deputy President of the Division had decided to grant an extension to the Appellant to file his Appel Brief until 20 December 2024.

37. On 20 December 2024, the Appellant filed his Appeal Brief.

38. On 23 December 2024, the CAS Court Office acknowledged receipt of the Appellant's Appeal Brief, a copy of which was sent to the two Respondents. Pursuant to Art. R55 of the Code, the Respondents were requested to submit their Answers to the CAS Court Office containing the stipulated required information within 20 days of the receipt of this letter.

39. On 6 January 2025, FIFA made a request to the CAS Court Office for an extension of the said deadline with an additional 30 days, also with reference to a heavy workload.

40. On 7 January 2025, the CAS Court Office informed the Parties that FIFA's request pursuant to Article R32 of the Code had been (partially) granted, and only with an extension by 10 days. Unless the Respondents objected to an additional 20-days extension by 10 January 2025, the deadline would be automatically extended by a further 30 days.

41. On 8 January 2025, the Club made a similar request to the CAS Court Office asking for a 30-day extension to file its Answer.

42. On 9 January 2025, the Appellant informed the CAS Court Office that he would accept that both Respondents were given an extension of 18 days to file their Answers in this matter.

43. On the same day, the CAS Court Office acknowledged receipt of the emails from the Club and the Appellant, and considering these submissions, the Respondents' deadline to file their Answers were extended until 10 February 2025.

44. On 6 February 2025, FIFA filed its Answer.

45. On 10 February 2025, the Club filed its Answer.

46. On 11 February 2025, the CAS Court Office acknowledged receipt of the Respondents' Answers, which was notified to the Appellant. The Parties were further invited to indicate by 18 February 2025 whether they preferred for a hearing and/or a case management conference pursuant to Articles R56 and R57 to be held.

47. On 12 February 2025, FIFA informed the CAS Court Office that it did not consider it necessary to hold neither a case management meeting, nor a hearing, as the Sole Arbitrator should be able to decide the matter based on the Parties' written submissions alone. Should it be decided to hold a hearing, FIFA asked that the hearing was held via videoconference.

48. On 13 February 2025, the CAS Court Office informed the Parties of FIFA's position on holding a management conference or a hearing in the matter.

49. On 17 February 2025, the Appellant requested an extension until 21 February 2025 to decide on the issue whether to hold a hearing in this case, which request the CAS Court Office granted the same day.

50. On the same day, the Club informed the CAS Court Office that it did not consider it necessary to hold neither a case management meeting, nor a hearing, as the case primarily concerned legal interpretation and the Sole Arbitrator should be able to decide the matter based on the Parties' written submissions, which letter was acknowledged by the CAS Court Office on 18 February 2025.

51. On 21 February 2025, the Appellant informed the CAS Court Office that he believed that a case management conference or a hearing would facilitate a more structured process for the Parties involved *inter alia* to determine various procedural matters including the testimony of witnesses called upon by the Appellant.

52. On 27 February 2025, the CAS Court Office acknowledged the Appellant's letter and his inclination to hold either a case management conference or a hearing in the matter for the reasons stated in his letter. Pursuant to Article R54 of the Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the Parties were further informed that the Panel to decide this matter had been constituted as follows:

Sole Arbitrator: Mr. Lars Halgreen, Ph.D. Legal Director in Gentofte, Denmark.

53. On 17 March 2025, the CAS Court Office informed the Parties that the Sole Arbitrator had decide to hold a hearing in the matter via videoconference on either 14, 15 or 16 April 2025. The Parties should inform the CAS of their availability to participate by 24 March 2025.

54. On 20 March 2025, after having received notices from the Parties as to their availability for the hearing, the CAS Court Office informed the Parties that a hearing was to be held by videoconference on 14 April 2025.

55. On 21 March 2025, the CAS Court Office enclosed for the Parties' attention an Order of Procedure to be signed and returned by the Parties on 28 March 2025. This Order was returned duly signed by all Parties before the said deadline without any objections or reservations made.

56. On 14 April 2025, the hearing took place in the present case, by videoconference. In addition to the Sole Arbitrator, and Mr Andrés Redondo Oshur, Counsel to the CAS, the following persons attended the hearing remotely:

For the Appellant:

Mr. Filip Blagojevic, Attorney-at-law

For the Club:

Mr. Piotr Miekus and Mr. Mateusz Walczak, Attorneys-at-law.

For FIFA:

Mr. Alexander Jacobs, Attorney-at-law

57. At the outset of the hearing, the Parties confirmed that they had no objections to the constitution of the Panel, i.e. the appointment of Mr. Lars Halgreen as Sole Arbitrator to adjudicate this matter.

58. Mr. Blagojevic asked if the Order regarding Legal Aid that had been granted in the case, was a part of the case file, and the Sole Arbitrator replied that this information was confidential and that he had not access to the Order, nor the information in it. Mr. Blagojevic stated that he believed that it would be important for his client's case that the Sole Arbitrator gained access to the content of the Order on Legal Aid.

59. After being asked by the Sole Arbitrator, Mr. Blagojevic confirmed that the persons that had previously been named as potential witnesses in the Appellant's submissions, would not appear at the hearing. Hence, there would not be any witness testimonies at the hearing from any of the Parties. The Appellant himself neither made a statement at the hearing.

60. The Parties made their submissions in support of their respective prayers and requests for relief, having amble time for closing and rebuttals and the legal representatives of the Parties in addition answered various clarifying questions posed by the Sole Arbitrator.

61. At the end of the hearing, the Parties expressly stated that their right to be heard and to be treated equally in these proceedings had been fully respected.

62. On 22 April 2025, and hence in continuation of the exchange at the hearing regarding the Order for Legal aid, the Appellant wrote the following to the CAS Court Office:

" Dear Madam/Sir,

In CAS 2024/A/10867, the Appellant was granted legal aid. During the hearing held on 14 April 2025, the Sole Arbitrator informed the Parties that he does not have access to the documents related to the Appellant's Request for Legal Aid, due to their confidential nature. At the hearing, the Appellant expressed his readiness to waive the confidentiality on this information, so that the Sole Arbitrator can have a look into those documents in camera.

The Appellant believes that certain information contained in the Request for Legal Aid (and the Order granting legal aid) is relevant for [further] clarifying one of the aspects the case – namely, that the Appellant was not at fault for not engaging local lawyer earlier.

Accordingly, the Appellant hereby expressly authorizes the CAS / the ICAS Athletes' Commission to grant the Sole Arbitrator access to the Request for Legal Aid and the corresponding Order, strictly for the purpose of assessing this particular aspect in camera.

Given that the hearing has been closed and the case is currently in the award drafting phase, we kindly ask that this matter be addressed with urgency.

Kind regards,

Filip Blagojevic"

63. On 23 April 2025, the CAS Court Office informed the Parties and the Sole Arbitrator of the Appellant's above request acknowledging receipt of Appellant's correspondence dated of 22 April 2025, a copy of which was enclosed herewith. It was stated in the letter that the relevant information concerning Legal Aid would thus be communicated to the Sole Arbitrator.

64. On the same day, the Sole Arbitrator received a copy of the Order concerning Legal Aid from the CAS Court Office, which under the circumstances and after the Appellant has waived his confidentiality shall be a part of the case file and the issue addressed by the Appellant taken into consideration by the Sole Arbitrator in his award, if deemed relevant for the outcome of the matter.

IV. SUBMISSIONS OF THE PARTIES

The position of the Appellant:

65. In the Appellant's Appeal Brief, the following requests for relief in these proceedings have been made:

"1. To uphold the appeal filed by Vladimir Milenkovic against the decision FDD 18968 issued on 27 August 2024 by the FIFA Disciplinary Committee.

2. To set aside the Decision FDD-18968 issued on 27 August 2024 by the FIFA Disciplinary Committee and replace it by the following decision:

"1. Bytomski Sport Polonia Bytom Sp. z. o. o., being the sporting successor of Klub Sportowy "Polonia" Bytom Spolka Akcyjna, is found guilty of failing to comply in full with the decision passed by the FIFA Dispute Resolution Chamber on 12 March 2015 according to which Klub Sportowy "Polonia" Bytom Spolka Akcyjna was ordered to pay to Vladimir Milenkovic the following amounts:

• outstanding remuneration in the amount of EUR 57,500 and PLN 11, 277.42, plus 5% until the date of effective payment as follows:

- 5% p.a. as of 16 June 2010 on the amount of EUR 1,500.

- 5% p.a. as of 1 July 2010 on the amount of PLN 3,237.42.

- 5% p.a. as of 16 July 2010 on the amount of EUR 8,000.

- 5% p.a. as of 1 August 2010 on the amount of PLN 1,340.

- 5% p.a. as of 16 August 2010 on the amount of EUR 8,000.

- 5% p.a. as of 1 September 2010 on the amount of PLN 1,340.

- 5% p.a. as of 16 September 2010 on the amount of EUR 8,000,

- 5% p.a. as of 1 October 2010 on the amount of PLN 1,340.

- 5% p.a. as of 16 October 2010 on the amount of EUR 8,000.

- 5% p.a. as of 1 November 2010 on the amount of PLN 1,340.

- 5% p.a. as of 16 November 2010 on the amount of EUR 8,000.

- 5% p.a. as of 1 December 2010 on the amount of PLN 1,340.

- 5% p.a. as of 16 December 2010 on the amount of EUR 8,000.

- 5% p.a. as of 1 January 2011 on the amount of PLN 1,340.

- 5% p.a. as of 16 January 2011 on the amount of EUR 8,000.

• compensation for breach of contract in the amount of EUR 118,581 and PLN 8,040, plus 5% p.a. on said amounts as from 8 January 2011 until the date of effective payment.

2. Bytomski Sport Polonia Bytom Sp. z. o. o. is granted a final deadline of 30 days as from notification of the present decision in which to settle its debt as the sporting successor of Klub Sportowy "Polonia" Bytom Spolka Akcyjna to Vladimir Milenkovic.

3. If payment is not made to Vladimir Milenkovic and proof of such payment is not provided to the secretariat to the FIFA Disciplinary Committee and to the Polish Football Association by this deadline, a ban from registering new players, either nationally or internationally, for three (3) entire and consecutive registration periods will be imposed on Bytomski Sport Polonia Bytom Sp. z. o. o. as following the expiry of the granted deadline. Once the deadline has expired, the transfer ban will be implemented automatically at national and international level by the Polish Football Association and FIFA respectively, without a further formal decision having to be taken nor any order to be issued by the FIFA Disciplinary Committee or its secretariat. The transfer ban shall cover all men eleven-a-side teams of Bytomski Sport Polonia Bytom Sp. z. o. o. – first team and youth categories –. Bytomski Sport Polonia Bytom Sp. z. o. o. shall be able to register new players, either nationally or internationally, only following the complete serving of the transfer ban or upon the payment to Vladimir

Milenkovic of the total outstanding amount, if this occurs before the full serving of the transfer ban. In particular, Bytomski Sport Polonia Bytom Sp. z. o. o. may not make use of the exception, and the provisional measures stipulated in Article 6 of the FIFA Regulations on the Status and Transfer of Players in order to register players at an earlier stage.

4. If Bytomski Sport Polonia Bytom Sp. z. o. o. still fails to pay the amount due to Vladimir Milenkovic even after the complete serving of the transfer ban in accordance with point 4 above, Vladimir Milenkovic may demand in writing to the secretariat to the FIFA Disciplinary Committee, for the imposition of further disciplinary measures";

or, in the alternative,

3. To refer the case back to the FIFA Disciplinary Committee for a formal consideration and decision on the requests and arguments filed by Mr. Vladimir Milenkovic within the relevant disciplinary proceedings.

4. To grant Mr. Vladimir Milenkovic a contribution towards his legal fees and other expenses incurred in connection with these arbitration proceedings, the amount of which will be specified at a later stage.

5. to condemn the Respondent to pay the entire CAS administration costs and the arbitration fees and to reimburse the Appellant of any and all expenses he incurred in connection with this procedure."

66. The Appellant's submissions in support of his requests for relief are as follows regarding the specific legal issues related to the prayers:

i. **"Standing to appeal**

80. According to the well-established CAS and SFT jurisprudence, standing to appeal is attributed to a party which can validly invoke the rights which it puts forward, on the basis that it has a legally protectible and tangible interest at stake […] This corresponds to the Swiss legal notions of "légitimation active" or "qualité pour agir", as confirmed by the case-law of the Swiss Federal Tribunal. More importantly, the CAS Award 5746 confirms that ***such an interest can*** *exist not only when a party is the addressee of a measure, but also* ***when it is a directly affected third party*** *(emphasis added) [Footnote 23: Para. 172 et seq. of said award, available on the CAS website.]*

81. In this context, the Appellant reminds that all procedures following the DRC Decision granting his claim against the Old Club have centred on the execution of this decision, an outcome that would undeniably impact the Appellant's legal and financial position. In this context, the Appellant finds it unnecessary to further elaborate on why he has an interest in this matter.

82. After all, CAS has already dealt with identical situations – a relevant example for purposes of determining standing to appeal is the CAS Award 6941. In that case, a

player obtained a DRC decision against PFC CSKA Sofia (the 'old' club in that case), which subsequently went bankrupt. The player pursued enforcement of the DRC decision through the DisCo, requesting sanctions against PFC CSKA-Sofia, the 'new' club that emerged following the 'old' club's bankruptcy. FIFA rejected the request, leading the player to appeal. CAS upheld the appeal and indirectly confirmed the player's standing to appeal as a directly affected party (albeit he was not a party in the disciplinary proceedings at FIFA).

83. The Panel set aside the DisCo decision and rendered its own essentially enforcing the DRC decision against the 'new' club, recognizing it as the sporting successor of the 'old' club. This decision emphasized that the concept of sporting succession applies not only in employment related disputes but also in disciplinary cases under Article 64 of FDC. Furthermore, CAS highlighted that national insolvency proceedings do not preclude the enforcement of FIFA decisions, particularly where there is no feasible possibility for a creditor to recover amounts owed through such processes.

84. It goes without saying that the Appellant should enjoy the same rights and treatment as the appellant in CAS 9641, given that his legal and financial interests are directly affected by the potential execution of the DRC Decision."

ii. ***Standing to be sued and sporting succession***

The Appellant refers in *paras 85-91* of his Appeal Brief to the reasons, according to which the decision to establish sporting succession by the Club of the obligations of Original Bytom was stated in the FIFA Disciplinary Decision and concludes as follows in para. 92:

"92. In light of the foregoing, the Appellant concurs with the FDD Decision in conclusion that the New Club – Bytomski Sport Polonia Bytom Sp. z o. o.– is to be considered as the sporting successor of the Original Club – KS Polonia Bytom.

iii. ***Absence of res judicata***

93. Having established the Appellant's standing to appeal and the Respondents' standing to be sued, the following question is whether the DisCo (and now CAS) was precluded from enforcing the DRC Decision and/or imposing a sanction from the First DisCo Decision on the New Club, considering that FIFA, after conducting an investigation, decided to close the disciplinary proceedings through the FDD Decision?

94. Before analysing the FDD Decision and res judicata, the Appellant will first explain why the concept of res judicata does not apply to this type of procedure in general, and particularly why it is not applicable in the present case. 5.1 No Res Judicata of Decision of Sport Bodies

95. In para 121. of the CAS Award 2019/A/6483, later affirmatively referred to in the CAS Award 2020/A/6873, the Panel addressed the res judicata effect of a decision issued by a tribunal of a sports body and ruled as follows (emphasis added):

"The Panel notes that according to Swiss law the principle of res judicata only applies to arbitral awards and court decisions. The types of decisions that enjoy res judicata effects are defined by law. It is not within the Parties' autonomy to extend the number or types of decisions that are vested with res judicata effect. If it were otherwise, a violation of the res judicata principle could not – contrary to jurisprudence of the SFT – constitute a violation of the ordre public. There is no provision in Swiss law that confers res judicata effects to decisions of association tribunals. Decisions of a judicial body of a sport federation, which are not arbitral tribunals, are mere embodiments of the will of the federations concerned (SFT 4A 374/2014, consid. 4.3.2 and SFT 4A_222/2015, consid. 3.2.3.1)."

96. In light of the foregoing conclusion(s) of CAS and SFT, with which the Appellant fully concurs, the DisCo decisions cannot have the effect of res judicata, contrary to the conclusions from the Challenged Decision. Therefore, applying res judicata by relying on the FDD Decision – which merely marks the formal conclusion of the procedure in its operative part – would constitute a violation of ordre public under Swiss law.

97. Accordingly, the DisCo erred in closing the Third DisCo Procedure instead of enforcing the DRC Decision / the First DisCo Decision and sanctioning the New Club.

Lack of Res Judicata in this type of procedures

98. As unanimously held by the CAS jurisprudence, there are three cumulative requirements for the principle of res judicata to apply:

a. Same parties

b. Identical Claim

c. The matter was resolved. Based on the same facts, existing at the time of first judgment.

99. For example, in CAS 2020/A/6912, the Panel stated (emphasis added):

"The res judicata is […] the general legal principle which prevents a judgment involving the same parties and the same object from being discussed over again by a court or tribunal. The application of the res judicata principle avoids the occurrence of two contradicting decision, which would be contrary to public policy. […] there is a res judicata situation when there is (i) a claim identical (from a substantive point of view) to another that has already been decided, (ii) the same parties were involved in such outcome, and (iii) the matter was solved based on the same facts existing at the time of the first judgment" (para. 80).

100. The Appellant underlines that these three requirements are ***cumulatively*** *required to be fulfilled for res judicata to be applied, i.e. even if one of these three elements is missing, renders the application of res judicata impossible. However, for sake of good order, the Appellant will disprove all requirements in this case.*

a. ***There are no 'same parties'***

101. The Appellant contends that there are no – and cannot be – 'same parties' to which res judicata could apply in any procedure where a creditor seeks sanctions against a party before the DisCo. Namely, unlike in the enforcement procedures before state courts, according to the unanimous practice of FIFA and CAS, creditors who report FDC violations (failure to respect decisions) are not considered a 'party' to FIFA disciplinary proceedings (to their evident misfortune).

102. For the sake of illustration, the undersigned counsel will present FIFA letters from other cases of the identical nature – disciplinary procedures arising from the non-enforcement of DRC decisions and involving the 'new' club. These letters clearly demonstrate FIFA's consistent practice of explicitly informing the creditors – designated as a third affected or interested party the above quoted CAS jurisprudence – that they are not considered a party to the DisCo procedure. This approach underscores FIFA's established procedural framework in this type of cases.

103. In FDD 13888, when the creditor requested the implementation of a transfer ban against the club-debtor, the DisCo responded

[…] In this regard, please be advised that even though you are entitled to file a complaint with regard to a conduct considered incompatible with the FDC and/or any other provisions of FIFA, it does not follow that you become a party to the proceedings (if any).

With the above in mind, we would also like to draw your attention to the fact that we will not be in a position to provide you with information with regard to your inquiries or regarding the state of the proceedings (if any). However, in the event that we would require any further information or documents from your part, we will contact you in due course.

104. Subsequently, when the same creditor submitted new information to FIFA following his own investigation, FIFA acknowledged receipt of the information but merely reiterated the same response (that filing a complaint does not follow that [the creditor] become a party to the proceedings and that FIFA will not be in a position to provide [him] with information with regard to [his] inquiries or regarding the state of the proceedings).

105. Following unsuccessful transfer ban implementation for three consecutive windows, a new case against the [same] club was opened [under no. FDD 18797]. FIFA once again acknowledged receipt of the creditor's information but reiterated that he did not qualify as a party to the proceedings.

106. Subsequently, the same club was promoted to a higher division, now operated by a different legal entity due to the specifics of Greek legislation. In the same procedure, FDD 18797, the creditor informed FIFA of this development, to which FIFA responded (original emphasis):

[I]n addition, ***we kindly ask the Claimant to provide to our services more evidence that would support the allegedly club sporting succession.***

Furthermore, please be advised that even though you are entitled to file a complaint with regard to a conduct considered incompatible with the FDC and/or any other provisions of FIFA, it does not follow that you become a party to the proceedings (if any).

107. The aforementioned correspondence, in anonymized form, is attached hereto as Exhibit 14.

108. Consistent with this approach, the Appellant had the same status. [Footnote 28: He was not recognized as a party, nor was he informed that FIFA had invited the New Club to submit its position in March 2023. He was not given access to the New Club's submission or evidence, let alone invited to provide comments on it.]. As a consequence, there was – as there always is – only one party (in singular) to the proceedings: the First Respondent, while the Appellant remained merely a 'third interested party' [Footnote 29: Reason for which he has standing to appeal in this case, as explained in section 3 above.] who had previously obtained a favorable DRC decision and sought its enforcement through the DisCo, who obtained a favorable DRC decision, then tried to enforce it through the DisCo.

109. Based on the aforementioned, it is quite clear that the first element of res judicata is distinguished from other type of procedures, such as regular (adversarial) litigations in which two (or more) parties are vested with equal rights.

b. There are no 'same claims'

110. At this point, the Appellant first refers to the following observation from para. 79 of CAS Award 6873, where the Panel stated (emphasis added): Whereas it cannot be denied that the Player is not directly impacted by the operative part of the Appealed Decision and being well aware of the fact that—apparently—the Player does not have a claim against FIFA to have a disciplinary measure imposed on another member, the Panel observes nevertheless that there is a number of elements. Subsequently, the same Panel pointed out that [T]he sole task of the FIFA Disciplinary Committee is to determine whether the debtor complied with the final and binding decision of the relevant body. Hence, the only question to be assessed by the FIFA Disciplinary Committee is simply whether or not the financial amounts as defined in the decision were paid by the debtor to the creditor (CAS 2019/A/6287 para. 143; CAS 2018/A/5779 para. 51).

111. In this sense, it is worth recalling that the DisCo Decision dated 27 October 2016 [rendered against the Old Club] has never been implemented, despite the fact that there were no obstacles preventing its execution during the First DisCo Procedure. Thus, the Appellant's request in this arbitration pertains to the execution of the DRC Decision against the New Club pursuant to Article 21(4) of the FDC, something which he effectively requested from FIFA in the past. However, this does not imply that the

Appellant had a 'claim' in the Second DisCo Procedure that could have been considered 'finally resolved,' as the Appellant did not have a claim against FIFA (as pointed out in para. 79 of CAS Award 6873). The Appellant could only notify FIFA of the FDC violation and request FIFA to apply the FDC to ensure the execution of the DRC Decision rendered in his favor, without having any influence over the sanctions or subsequent proceedings.

112. Formally speaking, the Appellant's request for relief (claim) in this arbitration is distinct from the 'request' made in the Appellant's email dated 13 July 2023, which, following FIFA's investigation, initiated the FDD procedure 143999 (a procedure in which the Appellant did not participate at all, since he was not a party).

113. Based on the foregoing, the second element of the res judicata concept is also absent in this case.

c. Facts are <u>not</u> the same

114. As outlined in section 1 above, it is evident that the Appellant presented numerous new elements and documents when requesting FIFA to initiate the Third DisCo Procedure, demonstrating 'negative' facts he was not even obligated to prove preemptively in the Second DisCo Procedure (as elaborated in section 7 below).

115. First and foremost, the First Termination Order and the Legal Opinion of Mrs. Radke, confirmed that there was no procedure in which the Appellant could have, even theoretically, collect his claim. Moreover, the Appellant proved to FIFA that the First Termination Order was issued right after he was informed about the Old Club's disaffiliation. Furthermore, the Appellant proved how and why the old-club-new-club maneuver was done (inter alia, by digging Mr Bartyla's speech) and how the FA misinformed FIFA during the first and second DisCo procedure.

116. Therefore, the 'facts' based on which the FDD Decision (to close the proceedings) and the facts brought to the DisCo in July 2024 were certainly not the same. As outlined in the preceding paragraphs, the insolvency proceedings were not conducted against the Old Club, let alone completed, meaning the creditors were unable to recover their claims through the national court – a situation that was unknown to both the Player and FIFA in April 2023 (when the FDD Decision was passed).

117. As a result, none of the three res judicata elements – which must all be cumulatively fulfilled – are present in this case.

5.3 Res judicata – when applicable – only applies to operative part of ruling

118. Even if res judicata applied to FIFA decisions (quod non) it would be applicable only to the operative part of the decision. This view has been confirmed by both SFT <u>[Footnote 30: See, for example the SFT judgement 4A_536/2018, where the court stated that only the operative part of the judgment is vested with res judicata]</u> and CAS. Therefore, the principle of res judicata cannot apply to a decision, such as the FDD

Decision, which merely concludes the procedure in its operative part. In fact, FIFA routinely invites creditors of non-compliant parties to submit specific documents and information, with the failure to comply resulting in the closure of the procedures.

119. For the sake of illustration, on 17 October 2022, the DisCo invited the undersigned counsel to submit PoA and warned that should [FIFA] not receive an answer within the stipulated time, [FIFA] will assume that the intervention of [DisCo] is no longer required, and as a result, we will not further proceed with the present matter (p. 8-9, Exhibit 9). In the alternative scenario, in which the undersigned did not submit the PoA, FIFA would have closed the procedure. Clearly, this would not make the DisCo decision a res judicata with regard to the Appellant's right to seek the enforcement of the DRC Decision through a FIFA disciplinary procedure.

120. Also, for example, if a football agent seeking to enforce a CAS award against a club through FIFA is invited by FIFA to submit their agent license within three days and fails to do so, this does not mean they are barred from enforcing the CAS award through FIFA in the future.

121. In this sense, it is evident that a decision to close a procedure cannot result in res judicata – even if issued by a state court, let alone by the disciplinary body of a sports federation. The opposite approach would leave virtually no room to correct errors, which are not uncommon in any system, nor at FIFA. Every mistake or procedural misstep would become final and binding, perpetuating injustices without remedy. This would create an excessively formalistic and rigid system, that is, at its core, unjust and harsh. [Footnote 31: Moreover, such rigidity would undermine the very purpose of FIFA's disciplinary framework, which is to uphold fairness, transparency, and accountability in sports. It must strike a balance between ensuring procedural order and achieving substantive justice. That being said, the Appellant emphasizes that this argument is not intended to advocate for a system where parties are permitted to engage in procedural misconduct and subsequently claim unfairness or harshness of the system. Similarly, the Appellant does not propose a framework that tolerates interminable disputes, enabling one party to drag the other through prolonged procedures for years without consequence or sanction.] Rather, the Appellant's position is that unless the outcome of a procedure results from a contentious process in which all participants are afforded equal opportunity to assert their rights and present their cases, there must be room for correction. Preclusion cannot apply to a party that has not been granted the full set of procedural rights and opportunities enshrined under Article 6 of the ECHR

122. Likewise, on 2 March 2018 the DisCo closed the procedure by stating that [FIFA] was not in a position to further proceed with the case. Nonetheless, this did not prevent FIFA from conducting the Second DisCo Procedure and 'prosecuting' the New Club. [Footnote 32: The First DisCo Procedure was closed in March 2018, at a time when the New Club existed, was actively competing, and the 'insolvency procedure' had been ongoing for over a year. Technically, the player could have appealed the Disciplinary Committee's decision to close the procedure, but only if he had been aware of the information he possesses now—information that, at best, he could only have theoretically known in March 2018.] Although the First DisCo Procedure involved the

Old Club and the subsequent two procedures concerned the New Club, the underlining principle remains the same – if decisions that merely close the procedure in their operative part were to be vested with res judicata effect (quod non), there would be no procedural or factual distinction between FIFA's right [and duty] to sanction the New Club at the time the Second DisCo Procedure was initiated and the moment FIFA decided to reject the Appellant's request on the grounds of res judicata.

123. In any event, CAS has already dealt with this issue. The Appellant fully concurs with the following conclusions from paras. 86-88 of the CAS Award 6873 (emphasis added):

Moreover, in any manner, the binding effect of a judgment applies only to the operative part of the ***award*** *and not to its grounds, even if the latter may complement the meaning of the operative part. This is particularly true in cases where the operative part simply dismisses the claim. It follows that in matters of partial claims, the grounds of the first judgment have no binding effect on subsequent trials, even if the questions which arise are typically the same (Decision of the Swiss Federal Tribunal, 4A_536/2018, 16 March 2020, consid. 3.1.1 and references).*

In the present case, the operative part of the Appealed Decision is as follows: "(...)

All charges against the club FC Universitatea Cluj are dismissed.

The disciplinary proceedings initiated against the club FC Universitatea Cluj are hereby declared closed." The Panel observes that the operative part of the Appealed Decision makes no reference to the sporting succession issue. Therefore, the factual findings and legal grounds of the Appealed Decision with respect to this issue do not bind the Panel, which, pursuant to Article R57 of the Code, has full power to review the facts and the law.

124. The Appellant reminds that the operative part of the FDD Decision makes no reference to the due diligence issue. Mutatis mutandis, the factual findings and legal grounds of the FDD Decision with respect to this issue did not bind the DisCo and they certainly do not bind CAS now.

125. The Appellant also emphasizes that, unlike the DisCo decision in CAS 6873, where the operative part of the award also dismissed the charges against FC Cluj, the FDD Decision did not take such an approach, as it merely closed the procedure. A fortiori, the FDD Decision is not vested with res judicata, which is why the DisCo should have proceeded with the enforcement of the DRC Decision.

Conclusion on res judicata and wrong application of FDC*.*

126. Having established the foregoing, the Appellant asserts that there are several independent reasons, each of which, on its own, would have been sufficient to prevent the DisCo from invoking res judicata and denying him justice in enforcing the DRC Decision, apart from new facts.

127. For the sake of good order, the Appellant holds that the only principle, unlike res judicata, that might possibly be invoked by a debtor (the sole actual party) in a DisCo procedure is ne bis in idem, however, this principle applies in cases where the debtor is acquitted in the operative part of the decision, either because it complied with the decision (in cases of 'failure to respect decisions') or due to the absence of culpability, depending on the offense in question. However, this stems from broader penal principles, which dictate that a party cannot be sanctioned twice for the same offense.

128. However, this was not the case here, as the FDD Decision merely closes the procedure and does not acquit the club in its operative part. Moreover, the FDD Decision did not impose any sanction on the club, meaning that a sanction arising from a new procedure would not constitute a double penalty for the same offense. Likewise, no club has honored the DRC Decision in the meantime, and therefore, no obstacle to enforcing the DRC Decision exists (as outlined in the Creditor's letter of 24 July 2024. [Footnote 33: Thus, there is no "finality" in this case that the New Club can invoke to its advantage, as the FDD Decision does not absolve it of the Old Club's debts, nor has it complied with the DRC Decision in the meantime.]

129. What is more, the Appellant particularly emphasizes that the fact that decisions of a [quais]judicial body of a sport federation are mere embodiments of the will of the federations concerned (as correctly noted in para. 121 of the CAS Award 6483) provides FIFA with far greater flexibility than arbitral tribunals or state courts to prevent maneuvers and bad-faith tactics aimed at 'tricking the system,' such as those employed by the [same] club, formally operated by two different entities.

130. In this sense, FIFA was not only prohibited from invoking res judicata due to a general prohibition, but it also should not have done so. Unlike arbitral tribunals and state courts, FIFA, as a private association, is 'fortunate' to have the flexibility to address and prevent manipulative maneuvers, making the invocation of res judicata in this case both invalid and illegitimate.

131. After all, this case hinges on a fundamental question: whose interest should prevail – the Player's interest in collecting his claim after a decade of pursuit, or the club's interest in exploiting the system to evade accountability? The answer is self-evident.

132. Finally, the Appellant emphasizes that the Challenged Decision not only erred in its [factual] conclusion that the Appellant has not brought forward any new elements that may sustain the claim as to (re)open the disciplinary proceedings; a conclusion that remained unexplained and that is wrong for the reasons explained above. The DisCo also erred in its [legal] conclusion that Article 30(7) and 71 of FDC are applicable in this type of situations and can lead to non-enforcement of the DRC procedure based on res judicata.

133. First, Article 30(7) states that the FIFA judicial bodies shall not deal with cases that have been previously subject to a final decision by another FIFA body involving the same party or parties and the same cause of action. In such cases, the claim shall be deemed inadmissible. As explained above, decisions that merely close the procedure

are not final in the sense that they prevent another procedure be conducted. Additionally, this case does not involve a 'claim'. Moreover, this case does not involve multiple parties but only one party, which can be prosecuted repeatedly for the FDC violations until it either complies with the FIFA decision or is acquitted of the obligation to comply.

134. With regard to Article 71, this article refers to a situation where a party discovers facts or proof that would have resulted in a more favourable decision. Clearly, this refers to a situation where a party (which excludes the creditors who are not deemed as parties of FIFA disciplinary procedures) that was sanctioned can use new proof or fact to obtain a more favorable decision. Clearly, creditors are not party, nor can they obtain a more favorable decision in the vast majority of situations. Indeed, a creditor seeking the enforcement of a decision is typically less concerned with the specific choice of sanction – whether the debtor is penalized with a transfer ban, monetary fine, or point deduction.

Appellant's due diligence

135. Moreover, Article 71 and the concept of review can be used only as an advantage of a 'prosecuted party', i.e. defendant. For instance, application of Article 71 cannot result in a scenario where a party that has been finally acquitted in one procedure (in the operative part of a ruling) is subsequently sanctioned in a repeated procedure. A simple example illustrates this: a club receives a 9-point deduction, appeals, and CAS reduces the sanction to 6 points. Later, a club ranked below discovers new evidence or aggravating circumstances that might justify a stricter sanction. Can such a club request a review to obtain a 'more favorable decision'? Absolutely not. Regardless of how one would feel about such situation, fundamental principles of penal law—such as the principle of double jeopardy—cannot be ignored. 136. On the other hand, there is no conceivable right of the New Club that would be violated if FIFA had enforced the DRC Decision and sanctioned it for non-compliance. As there is no right to evade compliance with a FIFA decision through illegitimate maneuvers and the delivery of misinformation to FIFA, the New Club cannot claim to have been harmed.

137. At the outset of this section, the Appellant notes that FDC does not require (nor has it ever required) a creditor to file a claim in the bankruptcy proceedings of an old entity as a precondition for having a DRC decision enforced against the sporting successor, as also pointed out in CAS 6873. In this sense, the concept of due diligence, as applied by FIFA and certain CAS panels is, if not directly contra legem, at the very least problematic. Indeed, this concept places an undue burden on players, who, in reality, only rarely succeed in recovering their claims through local insolvency procedures (which involves further costs and constant engagement) . Even when they do, they often recover only a negligible portion of their claims. Unfortunately, the present case does not represent an uncommon situation.

138. Be it as it may, the Appellant further submits that the cases which do not involve insolvency proceedings, such as this one, do not call for any assessment of the creditor's due diligence. Not only that the CAS jurisprudence supports this stance, but also FIFA

holds the same view. Namely, as a party to CAS 6745, FIFA itself explicitly acknowledged that the cases involving bankruptcy proceedings are certainly different from the ones that do not involve bankruptcy and therefore different approaches shall govern those cases.

139. As evidenced by the First Termination Order (Exhibit 7.20) and the Second Termination Order (Exhibit 12) and clarified by the Legal Opinion of Mrs. Radke (Exhibit 13), the present case does not involve bankruptcy proceedings, rendering a discussion on the Appellant's diligence unnecessary.

140. For the sake of precaution, the Appellant underlines that the CAS jurisprudence tends to show an understanding for players who, through no fault of their own, fail to register their claims in insolvency procedures.

141. Namely, in CAS 2020/A/6941, the Panel, inter alia, held (emphasis added):

94. […] it needs to be established that the recovery of the credit would have been feasible via the bankruptcy proceedings; in other words, ***there must be certainty that, in case the creditor had acted otherwise, the successor of the original debtor would not have to face the consequences of non-compliance with the FIFA DRC decision*** *(CAS 2019/A/6461 par. 60, 62).*

100. Since the Panel determined that, in view of the particular circumstances of this case, the Appellant's conduct during the CSKA bankruptcy procedure is not relevant […] ***the Panel does not need to ascertain whether his conduct was negligent or not in asserting his claim*** *against [the 'old club'] in the context of the national bankruptcy proceedings*

142. ***A fortiori****, considering that neither the Appellant nor any other creditor was ever invited to register their claim, let alone had a realistic chance of collecting it, "feasible theoretical possibility" did not exist in this case and the New Club remains liable to satisfy the FIFA DRC decision. This is all the more so when having in mind that, as of February 2018, the value of the Old Club's assets was almost ten times lower than the costs of potential procedure.*

143. In addition to the foregoing, the [already referred to] CAS Award 6745 states the following (emphasis added):

The bankruptcy proceedings of the Old Club were not communicated to the Appellant, neither by such club, nor by the [club's national federation] nor by FIFA, even though an active claim before the FIFA DRC was being conducted. The Old Club acted in bad faith *as it even requested FIFA on July 2017 an extension to settle the payment ordered by the FIFA DRC. Nobody informed the Appellant of the existence of the bankruptcy proceedings and therefore FIFA cannot oblige the Appellant to register his credit in said proceedings if there is no corresponding obligation for FIFA and its member associations to timely inform claimants in FIFA procedures that bankruptcy proceedings have been initiated […]* ***the fact that the Appellant did not register his***

credit in the bankruptcy proceedings of the Old Club should not prevent from ruling that the New Club is liable to pay the Appellant the amount established in the FIFA DRC decision.

144. Furthermore, this CAS ruling also negatively evaluated the double standards in the DisCo practice, referencing the Decision dated 31 May 2019, where the DisCo simply determined that the new club was responsible for the debts of the old club, without making any other statement regarding the diligence of the creditor and concluded that it is not demonstrated why the Appellant should be supposedly required to register his credit, whereas a professional club from Croatia is not required to do so in a similar case. The treatment to be given in this case should not be different from the one given to the creditor in the above-mentioned decision and FIFA should have enforced the FIFA DRC decision dated 10 May 2017 against the New Club. Mutatis mutandis, FIFA needs to enforce the DRC Decision against the New Club.

*145. **A fortiori**, especially considering the conduct of the Polish FA in the DisCo procedures involving the club – and the fact that the procedure in Poland, unlike the one referred to in CAS 6745, did not even exist in a way that would allow any creditor, let alone the Appellant (who was persistent in urging the DisCo to undertake the measures) to register their claim – it is evident that no lack of diligence can reasonably be invoked against the Appellant. On the contrary, the entire context of this matter calls for stricter sanctions on the New Club and the initiation of a disciplinary procedure against the Polish FA.*

146. Finally, the Appellant concludes from the [additional] Legal Opinion of Mrs. Radke (Exhibit 13.2) that, even if there had been a stage for registering claims against the Old Club (quod non) and even if he was timely informed about it in 2018 (quod non), his claim would most likely have been deemed time-barred, due to the statute of limitations, given that he filed a claim on 8 January 2011, while the relevant statute of limitations periods are two and three years respectively.

147. In other words, filing a claim with FIFA and pursuing a disciplinary procedure before the DisCo would become meaningless for recovering the credit within a state court insolvency procedure unless such a claim is regarded as equivalent to filing a claim in a state court or arbitral tribunal. This is especially relevant given the average duration of litigations and procedures, combined with the statute of limitations for salary claims under national legislation.

148. Having established the above, the Appellant concludes that the DRC Decision must be enforced against the New Club and that his alleged passivity in no way worsened the position or situation of the New Club.

Burden of Proof

149. In light of the foregoing set of circumstances, the Appellant was surely not expected to hire a local lawyer to prove, in advance, a negative fact – that the bankruptcy procedure was not carried out against the Old Club and that he had no realistic chance

of recovering his credit in such procedure. Logically, the Appellant could not anticipate that FIFA would be provided with misleading information by the FA and the New Club that would need to be clarified and/or rebutted in advance.

150. Article 41 (1) of FDC (2023 Edition) stipulates:

"The burden of proof regarding disciplinary infringements rests on the FIFA judicial bodies".

151. Thus, the burden was not on the Player, who was not even a party to the procedure, to prove that the procedure was not carried out, rather this duty was on FIFA. In this case, both the New Club and the FA were acting in bad faith when providing information to FIFA regarding both the bankruptcy and automatic dissolution proceedings. The New Club cunningly omitted to inform FIFA that the one and only insolvency procedure against the Old Club was canceled in April 2018, without entering the merits stage.

152. FIFA, in turn, relied on the information provided by the New Club and the FA.

153. However, the Player later checked on the status of the insolvency proceedings and informed FIFA about it. The Player, who was not obliged to pre-emptively prove a negative fact (that insolvency proceedings have not been concluded), referred to a Polish lawyer [Footnote 34: As demonstrated during the Legal Aid procedure, the Appellant was not even in a position to cover the legal fees of Mrs. Radke, which is why the undersigned counsel personally covered these costs on his behalf.] to obtain documentation, information and explanation regarding the status of the procedures initiated against the Old Club in Poland.

154. In light of the above, the Player cannot be faulted for the mistakes made in the Second DisCo Procedure without his fault or active participation.

155. Finally, it is important to recognize the Appellant's dire, if not extreme, financial and personal situation, which warranted the granting of Legal Aid in this arbitration. Faced with overwhelming circumstances, including his inability to understand either Polish or English, an inability to afford a local lawyer, and the costs of administrative fees and translation costs, the Appellant was placed in an untenable position. Expecting him to bear the additional burden of proving negative facts – facts he was never obligated to pre-emptively establish – would not only unreasonable but also unjust, particularly given his non-party status. Under these circumstances, any perceived shortcomings in obtaining complete information earlier are entirely understandable and cannot be held against him.

156. In summary, what the Appellant requests here is that CAS 'revives' the DisCo Decision 160696 POL ZH, which was rendered ineffective as a direct consequence of the misinformation deliberately provided to FIFA by the FA and the New Club. Otherwise, this situation would not only leave the Appellant unjustly deprived of his rightful claims but would also open the door for similar abuses in the future. It would demonstrate that a club and its federation, through coordinated misrepresentation,

could successfully evade enforcement of decisions, leaving creditors powerless and undermining the credibility of the system designed to protect them.

157. Moreover, foreign players – who often do not speak the local language, rarely return to the country after their (short) stints with clubs and end up unpaid despite winning the litigious cases – would be forced to engage and pay local lawyers periodically to investigate and challenge the misinformation provided by local federations. This would impose an unfair financial and logistical burden on players, who find themselves in these situations when they remain unpaid and unable to enforce their decisions against insolvent clubs. Such a scenario is certainly not one desired or intended by FIFA or CAS.

Final Conclusions and summery

158. As it stems from the aforementioned, after obtaining the DRC Decision, the Appellant actively pursued the disciplinary procedure before FIFA. In October 2016, due to non-compliance with the DRC Decision, the DisCo sanctioned the Old Club, but the sanction was never enforced.

159. Following the end of 2016/2017 and the Old Club's relegation to the 4th division, the New Club emerged and continued competing as the same club, in a maneuver aimed at circumventing the Old Club's debts, as admitted by then-Mayor of Bytom and former Chairman of the Old Club.

160. Between October 2016 and February 2018, one of the Old Club's creditors unsuccessfully sought to initiate insolvency proceedings against the Old Club. The process ended in its early stages without an insolvency procedure being conducted or any creditor being officially registered. From July 2021 to November 2023, another proceeding aimed at dissolving the Old Club was undertaken, but it had no practical effect and was ultimately abandoned.

161. In light of the aforementioned, the following conclusions are drawn:

1) the Appellant has standing to appeal/sue and the Respondents' have standing to be sued (sections 3 and 4 above)

2) the First Respondent is the sporting successor of the Old Club (section 4 above).

3) the FDD Decision 14399 that merely closes the procedure in its operative part (due to wrong assumptions) cannot be considered as res judicata for various different reasons (section 5 above).

4) the due diligence concept is inapplicable in this case (section 6)

5) no lack of diligence can be attributed to the Appellant, let alone one that could justifiably be held against him (section 6,)

6) the facts and evidence presented by the Appellant reveal an entirely different factual and procedural background from that purported by the New Club, the FA, and the FDD Decision 14399, underscoring the necessity of enforcing the DRC Decision against the New Club (sections 1 and 5.2 (c)).

7) Not entertaining the Appellant's request to enforce the DRC Decision would constitute a denial of justice.

8) The Appellant was under no obligation to pre-emptively prove the 'negative facts' that he ultimately succeeded in establishing. Moreover, he was neither financially nor logistically positioned to conduct a private investigation on his own (section 7 above)."

Position of the Club:

67. In the Club's Answer, the following requests for relief in these proceedings are made:

"1. That the Appeal is rejected in totum;

2. That the Appealed Decision is confirmed in totum,

3. That res judicata is declared on the dispute between the Parties, preventing the Appellant to take any further proceedings in the matter before FIFA's jurisdiction bodies and/or the CAS.

On the subsidiary basis:

1. *in the event the Sole Arbitrator shall decide that the Appealed Decision should be changed in any way, the Sole Arbitrator is requested to return the case to the FIFA Disciplinary Committee.*

In any event:

1 *That the Appellant is ordered to bear the costs of the arbitration.*

2. *That the Appellant is ordered to pay a contribution towards the Respondent's legal fees and other expenses in the present arbitration, in an amount deemed proportionate by the Sole Arbitrator (if any)."*

68. The Club's submissions in support of its requests for relief are as follows regarding the specific legal issues related to the prayers:

"*Preliminary remarks*

2. The Respondent hereby submits its Answer to the Appeal Brief filed by the Appellant before the CAS.

3. The Appellant is appealing against the decision rendered by the FIFA Disciplinary Committee on 27 August 2024 in case reference no. FDD-18968. In this decision, the Chairman of the FIFA Disciplinary Committee explicitly ruled that the Appellant had not presented any new elements warranting the reopening of disciplinary proceedings, thereby confirming that the previous decision in FDD-14399 dated 13 April 2023 and notified with grounds to the parties on 5 May 2023, remains final and binding.

*4. Specifically, **FIFA determined that the proceedings initiated against Bytomski Sport Polonia Bytom Sp. z 0.0. (the Respondent) should be closed, as the Appellant had failed to bring forth any substantive new evidence that would justify reopening the case in accordance with Article 71 of the FIFA Disciplinary Code, 2023 edition ("FDC"), Furthermore, FIFA reaffirmed the fundamental principle of res judicata, emphasizing that the Disciplinary Committee is not in a position to reconsider the matter in light of Article 30 para. 7 of the FDC**.*

*5. **It is essential to underline that the previous disciplinary proceedings under case reference no. FDD-11763 were initiated at the explicit request of the Appellant himself. That disciplinary process led to the issuance by the FIFA Disciplinary Committee of the Investigatory Memo dated 13 January 2023, which in turn resulted in the opening of the disciplinary procedure against the Respondent under case reference no. FDD-14399 and the issuance of the decision dated 13 April 2023.***

*6. Throughout those proceedings, the Appellant had every opportunity to present his arguments, provide supporting evidence, and fully engage with FIFA's procedural framework. **The fact that FIFA concluded that no legal basis existed for the enforcement against Bytomski Sport Polonia Bytom Sp. z 0.0. (the Respondent) was the direct result of the Appellant's failure to substantiate his claim properly at that stage**.*

*7. **Instead of appealing the decision at the appropriate time, the Appellant now attempts to circumvent well-established procedural finality by initiating a new round of proceedings on substantially identical grounds.***

*8. **It needs to be highlighted as a preliminary remark that from a procedural perspective, the present appeal is a clear abuse of process.***

9. The Appellant seeks to manipulate the legal framework by reopening a dispute that was already resolved through due process. FIFA rightfully determined that the Appellant failed to act diligently in enforcing his claim, and his attempt to rectify this failure by means of successive legal challenges is wholly inappropriate. The principle of legal certainty and procedural efficiency dictates that disputes cannot be endlessly re-litigated, and the present appeal must therefore be dismissed in its entirety.

The Principle of Res Judicata

10. Under Swiss law and established CAS jurisprudence, the principle of res judicata serves to prevent the repeated litigation of the same matter. The standard triple identity test is applied to determine whether res judicata applies, requiring:

a. identity of claims (substantive similarity in the subject matter).

b. Identity of parties (same litigants involved in both cases).

c. Identity of cause of action (resolution based on the same facts and circumstances).

11. In this instance, all three conditions are unquestionably met. The subject matter of both FDD14399 and the present appeal (and the Appealed Decision) is fundamentally identical, as both relate to the Appellant's attempt to enforce a FIFA Dispute Resolution Chamber (DRC) decision dated 12 March 2015 against Bytomski Sport Polonia Bytom Sp. z o.o., even though the actual debtor was KS Polonia Bytom. Additionally, the parties involved in the previous disciplinary proceedings under FDD-11763, FDD-14399, and the current appeal (and the Appealed Decision) are the same.

12. While the Appellant argues that "There are no 'same parties" and that "the Appellant remained merely a 'third interested party'" ***it must be emphasized once again that the previous disciplinary proceedings under case reference no. FDD-11763 were initiated at the explicit request of the Appellant himself****. That disciplinary process led to the issuance by the FIFA Disciplinary Committee ofthe Investigatory Memo dated 13 January 2023, which in turn resulted in the opening of the disciplinary procedure against the Respondent under case reference no. FDD-14399 and the issuance of the decision dated 13 April 2023.*

13. Therefore, ***while the disciplinary proceedings under case reference FDD-14399 and the subsequent decision dated 13 April 2023 were only against the Respondent, it should be emphasized that the entire disciplinary procedure was preceded by an explanatory procedure, which was conducted under file reference: FDD-11763. During these proceedings, relevant explanations and positions were presented by both the Appellant and Bytomski Sport Polonia Bytom Sp. z o.0., as well as the Polish Football Association (the "PZPN").***

14. In this context, the Respondent also wishes to emphasize that the Panel in procedure CAS 2019/A/6483 clarified that the requirement for "identity of parties" must be understood "when both proceedings involve the same parties" (emphasis added). As such, taking into consideration that the same parties were involved in the disciplinary proceedings before the FIFA Disciplinary Committee under FDD-11763 in conjunction with FDD-14399 and in the Appealed Decision rendered by the FIFA Disciplinary Committee under Ref. No: FDD-18968, we insist that the requirement for "identity of parties" was clearly met in casu.

15. ***All of this constituted substantial evidence on the basis of which the FIFA Disciplinary Committee made the appropriate decision to close the disciplinary proceedings****. What is particularly important is that the Appellant did not then avail*

himself of his right of appeal to CAS/TAS, in which he could have effectively demonstrated that he had exercised due diligence in pursuing his claims.

16. The Respondent also wishes to draw the Panel's attention to the legal doctrine regarding res judicata issue. In this context, as stated in legal doctrine: ***"res judicata prevents a party from bringing a new claim against the same counterparty, based on a claim that was previously contested and decided in a litigation."*** *[Footnote 1: Mavromati, Despina. Res judicata in sports disputes and decisions rendered by sports federations in Switzerland. TAS/CAS Bulletin (2015/1), p. 2-3] (emphasis added). Moreover, according to Swiss doctrine,* ***"res judicata*** *('L'autorité de la chose jugée', 'la force de chose jugée au sens materiel' or 'materielle Rechtskraft')* ***is a general principle which prevents a judgment involving the same parties and the same object from being discussed anew by the court****. The existence of two contradicting decisions in the same legal order is contrary to public policy, and such a situation can only be avoided by applying the principle of res judicata. It is therefore impossible to take a subsequent decision about the same object, among the same parties and relying on the same facts."[Footnote 2: Mavromati, Despina. Res judicata in sports disputes and decisions rendered by sports federations in Switzerland. TAS/CAS Bulletin (2015/I), p. 2-3] (emphasis added).*

17. In casu, (i) the Appealed Decision, i.e., the FIFA Disciplinary Committee decision reference no. FDD-18968 dated 27 August 2024 and FDD-14399 dated 13 April 2023 concerned the same parties, (ii) the object of both claims was the same (i.e., the Appellant's attempt to enforce the FIFA DRC decision dated 12 March 2015 the Respondent), and (iii) as already stated above, the FIFA Disciplinary Committee had already taken a decision on 13 April 2023.

18. The FIFA Disciplinary Committee decision of 13 April 2023 explicitly ruled that the Appellant failed to exercise due diligence in pursuing his claims, reinforcing the finality of the matter. The Appellant was well aware of his right to appeal at the time but failed to do so.

19. Consequently, ***the principle of procedural finality must be upheld, and the current attempt to resurrect the case must be declared inadmissible****.*

20. From a procedural perspective, the present appeal constitutes an abuse of process. ***The Appellant seeks to manipulate the legal framework by reopening a dispute that was already resolved through due process. FIFA rightfully determined that the Appellant failed to act diligently in enforcing his claim, and his attempt to rectify this failure by means of successive legal challenges is wholly inappropriate.***

21. The principle of legal certainty and procedural efficiency dictates that disputes cannot be endlessly re-litigated, and the present appeal must therefore be dismissed in its entirety.

The appellant has not presented any new evidence or events justifying a reconsideration of the case.

22. The Respondent acknowledges that Article 71 of the FDC provides the following:

"I. A review may be requested before the competent judicial body after a legally binding decision has been passed if a party discovers facts or proof that would have resulted in a more favourable decision and that, even with due diligence, could not have been produced sooner.

2. A request for review shall be made within ten days of discovering the reasons for review.

3.The limitation period for submitting a request for review is one year after the decision has become final and binding".

23. Simultaneously, Article 30 para. 7 of the FDC provides the following:

"The FIFA judicial bodies shall not deal with cases that have been previously subject to a final decision by another FIFA body involving the same party or parties and the same cause of action. In such cases, the claim shall be deemed inadmissible".

24. The Respondent once again highlights that as rightly observed by the FIFA Disciplinary Committee, the same matter had already been considered by that body under reference number FDD-14399, which concluded with the issuance of a Decision dated 13 April 2023, of which the parties were notified on 5 May 2023.

25. The Head of Disciplinary, Américo Espallargas, after a thorough analysis of all the facts and documents pertaining to the matter, determined that the Appellant, Vladimir Milenkovic, ***had not presented any new elements that could substantiate his claim for the reopening of disciplinary proceedings pursuant to Article 71 of the FDC****. Accordingly, the Decision dated 13 April 2023 shall prevail.*

26. In this context, the Respondent reaffirms that the factual and legal circumstances have not changed since the issuance of the initial decision by the FIFA Disciplinary Committee, i.e., the decision issued by the FIFA Disciplinary Committee on 13 April 2023 under reference number FDD-14399.

*27. It must be underscored that the Appellant has failed to present any new facts or evidence that would justify reconsideration under Article 71 of the FDC. Instead****, the Appellant is attempting to reintroduce arguments and materials that were available long before the decision dated 13 April 2023 but which he failed to submit at the appropriate time due to his own lack of diligence.***

28. The duty of due diligence must be reflected in appropriate case preparation, which includes securing proper legal representation and gathering all necessary evidence in a timely manner. There were no obstacles preventing the Appellant from seeking assistance from a Polish lawyer who could have clearly outlined the legal and financial status of Klub Sportowy "Polonia" Bytom S.A., particularly given that:

a. The Appellant is a foreign national, unfamiliar with Polish insolvency and corporate law, making legal assistance even more crucial.

b. The case involves specialized legal and financial knowledge.

c. The Appellant failed to seek legal advice until his latest request to reopen the disciplinary proceedings before the FIFA Disciplinary Committee, despite having ample opportunity to do so earlier.

29. The considerable lapse of time since the judgment by the FIFA DRC issued against KS Polonia Bytom S.A. in 2015 should have prompted the Appellant to act without delay in assessing his legal position and taking appropriate measures. However, his inaction during this extended period further demonstrates that his failure to effectively pursue his claim was entirely self-inflicted.

30. Moreover, it must be stated with the utmost firmness that all prerequisites for the application of the doctrine of res judicata have been met. There is no doubt as to the identity of the parties to the proceedings, which should be understood broadly as the entities participating in the disciplinary process before FIFA. It is equally undisputed that the claim is identical, and the matter was adjudicated on the same facts that existed at the time of the issuance of the first decision. ***The Appellant is not bringing forward any genuinely new factual elements; rather, his argumentation merely reflects a shift in legal strategy. Such actions do not warrant a reconsideration of the case****.*

31. In addition, the Appellant's reliance at this stage on the statements made by the former Mayor of Bytom, Mr. Damian Bartyla, is wholly without merit. These statements were made as early as September 2017, meaning that there were no procedural obstacles preventing the Appellant from submitting them as evidence in the initial FIFA proceedings. Moreover, the statements in question were publicly available and do not constitute newly discovered evidence that could justify 5 reopening the case under Article 71 of the FDC. Since these statements existed long before the 13 April 2023 decision (or even before June 2022 when the Appellant requested the opening of the disciplinary proceedings against the Respondent), they categorically fail to meet the threshold for reconsideration. This further reinforces the fact that the Appellant has not presented any new factual circumstances or developments that would warrant a reopening of the proceedings.

32. ***The Appellant is further relying on the legal opinion of Mrs. Justyna Radke and presenting it as new facts of the case. However, in reality, this opinion contains no new elements, circumstances, or events that occurred after the issuance of the decision by the FIFA Disciplinary Committee on 13 April 2023.***

33. ***The opinion merely analyzes pre-existing facts and legal principles that were already known and could have been raised during the original disciplinary proceedings.***

*34. **Under no reasonable interpretation can a legal opinion issued after the fact - which does not rely on any newly discovered evidence - justify a reconsideration under Article 71 of the FDC. This attempt to introduce legal commentary post-factum further exemplifies the Appellant's failure to act with due diligence at the appropriate time.***

35. Additionally, the Appellant has in no way demonstrated when he became aware of the circumstances which, in his opinion, justify the submission of a request for the reconsideration of the case - a point of particular importance in light of Article 71 para. 2 of the FDC, which explicitly states:

"A request for review shall be made within ten days of discovering the reasons for review"

36. Yet, the Appellant fails to specify the date and manner in which he allegedly discovered any new evidence. Instead, his arguments remain vague and unsubstantiated, lacking any precise demonstration of why this request was made only after the issuance of the FIFA Disciplinary Committee's decision of 13 April 2023. This glaring omission alone disqualifies the request from being considered under Article 71 of the FDC.

37. Accordingly, FIFA was entirely correct in dismissing the Appellant's request for reconsideration. There exists no valid legal basis upon which the present appeal can be sustained. The principles of legal certainty and procedural efficiency dictate that disputes cannot be endlessly re-litigated, particularly where the Appellant's own negligence is the cause of his failure to present evidence in a timely manner. For these reasons, the appeal must be dismissed in its entirety.

Failure to exercise due diligence by the Appellant

38. It is a fundamental principle of law that a creditor must take reasonable and timely steps to assert and protect his legal rights. Swiss law and CAS jurisprudence firmly establish that due diligence is a prerequisite for the effective enforcement of claims (cf. CAS 2011/A/2646; CAS 2019/A/6461; CAS 2020/A/6884; CAS 2020/A/6745; CAS 2020/A/7290.). A party seeking redress must proactively pursue all available legal avenues, rather than remaining passive and then blaming third parties - such as the Respondent or the PZPN - for his own inaction.

39. The Appellant's continued attempts to resurrect this case do not stem from any new legal or factual developments but rather from his own inaction and lack of diligence. By neglecting to take proper legal steps at the appropriate time, the Appellant has caused the very procedural obstacles he now attempts to use as a justification for reopening the proceedings. His failure to act with reasonable diligence renders his current arguments entirely devoid of merit.

40. It is undisputed that the FIFA DRC rendered its decision on 12 March 2015, establishing the Appellant's claim against KS Polonia Bytom S.A. However, despite the

fact that KS Polonia Bytom S.A. remained actively engaged in professional football for over two years thereafter, the Appellant took no substantive legal action to enforce his claim within this period. The Appellant himself acknowledged that his pursuit of his entitlements before FIFA lasted until 2 March 2018, yet he has failed to provide any valid explanation as to why he did not attempt enforcement earlier while the Club was still operational.

41. In Swiss procedural law, the concept of negligence is understood as a failure to exercise reasonable care when acting in one's own interest (cf. CAS 2011/A/2646; CAS 2019/A/6461; CAS 2020/A/6884; CAS 2020/A/6745; CAS 2020/A/7290.). In this case, the Appellant had a clear obligation to take swift action after the 2015 FIFA DRC decision yet remained inactive for several years. It is well established that an applicant must actively monitor legal developments affecting his claim - failure to do so precludes the party from later invoking alleged lack of awareness as an excuse (cf. CAS 2011/A/2646).

42. Furthermore, the Appellant was well aware of the financial difficulties of KS Polonia Bytom S.A. at the time but failed to take adequate steps to monitor its legal status or ensure timely collection of his debt. In cases involving financial instability of a debtor, it is incumbent upon creditors to remain vigilant and take immediate legal action to preserve their rights. The Appellant's inactivity in this regard is inexcusable and is the sole reason for his failure to recover his claims.

*43.**In addition to his failure to act in the immediate aftermath of the FIFA DRC decision, the Appellant also neglected to monitor the insolvency status of KS Polonia Bytom S.A., despite clear public announcements and available legal mechanisms to protect his interests.***

44. On 9 July 2021, an official announcement in the Monitor Sądowy i Gospodarczy (eng. Court and Economic Monitor) stated that proceedings had been initiated for the dissolution of Klub Sportowy "Polonia" Bytom S.A. without liquidation proceedings. This announcement explicitly invited all interested parties - including creditors - to submit objections within three months of the announcement date. Despite this clear call to action, the Appellant failed to make any attempt to register his claim, seek legal representation in Poland, or otherwise safeguard his interests in the proceedings.

45. A creditor is expected to monitor the legal status of their debtor and actively assert their rights. The Appellant's failure to take any steps to oppose the dissolution or claim his debt within the prescribed period is a clear indication of his negligence. ***Instead of taking responsibility for this failure, he now attempts to shift the burden onto the Respondent and the PZPN, despite their having no legal obligation to enforce his claim on his behalf.***

46. Furthermore, records from the National Court Register show that, as early as 28 October 2016, the assets of KS Polonia Bytom S.A. were placed under court-ordered security measures in bankruptcy proceedings, with a temporary court-appointed administrator, Adam Laskowski, overseeing the matter (reference no. XGu 497/16/1).

These proceedings were a matter of public record, and a reasonably diligent creditor would have acted immediately to file their claim within the bankruptey framework. The Appellant, however, failed to take advantage of this opportunity, once again demonstrating his lack of due diligence.

Evidence no. [1]: A full extract from the National Court Register of Klub Sportowy "Polonia" Bytom S.A., obtained on 10 February 2025.

A copy ofthe announcement in the Monitor Sądowy i Gospodarczy from 9 July 2021.

47. Beyond failing to register his claim in the existing insolvency proceedings, the Appellant also neglected to exercise his own right to initiate bankruptcy proceedings against the Club, ***despite having a clear legal basis to do so****.*

48. Under Article 20 para. 1 of the Polish Bankruptcy Law (Act of 28 February 2003 on Bankruptcy), a creditor has the right to petition for the debtor's bankruptcy if their claim remains unpaid.

This provision states:

PL: „Wniosek o ogłoszenie upadłości może zgłosić dłużnik lub każdy z jego wierzycieli osobistych"

ENG: "An application for the declaration of bankruptcy may be submitted either by the debtor or by any of his personal creditors"

49. The Appellant, as a personal creditor with the FIFA DRC decision confirming his claim, could have filed for the bankruptey of KS Polonia Bytom S.A. at any time after the debt became due. Had he exercised this option, he would have had the opportunity to participate in the distribution of the bankruptcy estate, potentially recovering a portion of his claim.

50. One of the most striking aspects of this case is the Appellant's failure to obtain legal counsel in Poland before 2023, despite having every opportunity to do so. Given that he is a foreign national with no apparent knowledge of Polish insolvency and corporate law, it would have been entirely reasonable - and indeed expected - that he engaged a Polish lawyer well before 2023 to advise him on the available legal avenues for recovering his claim.

51. However, rather than seeking legal guidance at an appropriate time - such as immediately after the 12 March 2015 FIFA DRC decision or at any point before the 9 July 2021 announcement regarding the dissolution proceedings of KS Polonia Bytom S.A. - the Appellant only sought a legal opinion from a Polish lawyer after March 2023, i.e., after the first decision issued by the FIFA Disciplinary Committee rejecting his request.

52.This delay further underscores his lack of due diligence and directly contributed to his current procedural obstacles. Had the Appellant hired a Polish lawyer earlier, he

would have been fully informed of the ongoing insolvency proceedings and the legal mechanisms available to him including filing a bankruptcy petition himself. ***Instead, he chose to remain passive for nearly a decade, only seeking legal counsel when it was already too late.***

53. ***The Appellant's failure to take any action for an extended period is particularly concerning. Between March 2018 and June 2022 - a span of over four years - he did not undertake a single step to recover his claim. This prolonged inaction is further evidence of his failure to act with the diligence expected of a creditor. During this entire period, he could have at least contacted a Polish lawyer to assess his situation and explore potential options. However, he chose not to do so, instead waiting until after the FIFA Disciplinary Committee had issued its decision before finally seeking legal guidance. The Appellant cannot now claim ignorance of Polish legal procedures as an excuse for his failure to act. The Respondent strongly emphasizes that ignorance of the law does not absolve a party of their responsibility to act in a timely manner.***

54. ***The Appellant had every opportunity to consult a Polish lawyer before 2023, file for bankruptcy proceedings, register his claim in the dissolution process, or take other legal actions-but he failed to do so. His failure to act in a diligent and responsible manner is entirely self-inflicted and cannot be attributed to the PZPN or the Respondent.***

55. ***Rather than acknowledging his own failings, the Appellant attempts to assign responsibility to the PZPN and the Respondent, alleging that they were somehow at fault for his inability to enforce his claim. This argument is entirely without merit.***

56. First, the Polish FA was under no legal obligation to ensure the Appellant's claim or request was satisfied. As a national football federation, the PZPN is not responsible for enforcing individual financial claims against clubs. It is the sole responsibility of the creditor - in this case, the Appellant - to take legal action to recover his debt.

57. Second, the Respondent (i.e., Bytomski Sport Polonia Bytom Sp. z o.o.) was never a party to the FIFA DRC proceedings and cannot be held accountable for the Appellant's failure to enforce his claim against KS Polonia Bytom S.A. The Respondent is a legally distinct entity and has no obligation to cover the debts of a separate, financially insolvent club. The Appellant's attempt to impose liability on the Respondent is a clear abuse of process.

58. Instead of taking the appropriate steps at the appropriate time, the Appellant waited years before attempting to resurrect his case through repeated disciplinary proceedings.

59. Given the above, the Appellant's inaction, failure to monitor the Club's legal status, and delay in seeking legal counsel have all contributed to his failure to recover his claim. He had multiple legal avenues available to him, yet he took none of them. His

belated attempt to shift blame onto the Respondent and the PZPN is entirely unjustified and must be dismissed outright."

On the issue of Sporting Succession

In paras 60-75 in its Answer, the Club has made several submissions claiming that that the Club should not be deemed to be the sporting nor the legal successor of Original Bytom, and the Club thus disagrees with the findings in the FIFA Disciplinary Decision on this issue.

The position of FIFA

69. In FIFA's Answer, the following requests for relief in these proceedings are made

"a) reject the Appellant's requests for relief.

b) confirm the Appealed Decision in its entirety.

c) entirely subsidiarily, and if there would be a finding that there is no res judicata in the matter at stake, to refer the case back to the Disciplinary Committee for a decision on the substance.

In any event

d) order the Appellant to bear the full costs of these arbitration proceedings; and

e) order the Appellant to make a contribution to FIFA's legal costs and expenses."

70. FIFA's submissions in support of its requests for relief are as follows regarding the specific legal issues related to the prayers:

"FIFA's answer to the Appellant's arguments:

38. For the sake of completeness, and prior to addressing the Appellant's legal position, FIFA hereby rejects all of the Appellant's arguments in his Appeal Brief, unless otherwise stated or expressly accepted in this Answer.

A. Background: the SFT Decision

39. Prior to addressing the legal specifics of the matter at stake, and to provide the Sole Arbitrator with a complete overview, it is important to briefly address the background and the facts that lead to the to the present proceedings.

40. The bottom-line of the present proceeding is plainly that the Appellant failed to timely appeal the Disciplinary Decision dated 13 April 2023 before the CAS. The inadmissibility of the Appellant's appeal before the CAS was confirmed by the SFT Decision. As a result, it is undisputed that the Disciplinary Decision became final and binding on 26 May 2023.

41. By means of his request before the Disciplinary Committee, aimed at essentially re-opening disciplinary proceedings against the Successor Bytom, the Appellant was seeking to heal his own procedural failures with regard to the merits of the Disciplinary Decision. By means of said Disciplinary Decision, it was confirmed that, whereas the Successor Bytom was confirmed as sporting successor, no disciplinary sanctions were imposed on the Successor Bytom and all charges dismissed due to the Appellant's lack of diligence in collecting and/or registering his debt in the respective proceedings at national level.

42. By means of the present appeal, the Appellant is seeking the reconsideration and re-opening of such final and binding decision by the Disciplinary Committee. B. Article 30(7) FDC: general rule on res judicata

43. As a first point, and as already stated repeatedly, the matter at stake seeks to revisit the Disciplinary Decision which became final and binding on 26 May 2023 when the Appellant belatedly filed his appeal before CAS and the SFT Decision confirming its inadmissibility.

44. The object of the Appellant's present appeal concerns the exact same aspects that were already addressed in the Disciplinary Decision, which the Appellant is now seeking to revisit, namely: (i) the dismissal of the imposition of disciplinary sanctions on the Successor Bytom for its alleged failure to comply with the DRC Decision in accordance with Article 21 FDC and (ii) the finding that the Appellant failed to act diligently in collecting and/or registering his debt in the respective proceedings at national level. The Appellant seeks a decision confirming that the Successor Bytom is "found guilty of failing to comply in full with the decision passed by the FI FA Disput e Resolution Chamber on 12 March 2015 with the consequent imposition of a 30-day deadline to pay and the imposition of a ban from registering new players for three (3) entire and consecutive registration periods if payment is not made within such deadline.[Footnote 5: Appeal Brief, request for relief.]

45. This is plainly a matter of res judicata.

46. The Appellant however submits that such principle of res judicata does not apply and that [t]he Player is entitled to file a complaint regarding conduct incompatible with the FDC, regardless of the outcome of previous procedures […]." [Footnote 6: Exhibit 4 at p. 2.]

47. In that regard, reference is made to Article 30(7) FDC which stipulates:

"The FIFA judicial bodies shall not deal with cases that have been previously subject to a final decision by another FIFA body involving the same party or parties and the same cause of action. In such cases, the claim shall be deemed inadmissible."

48. The foregoing provision is, precisely, a special rule incorporating the principle of res judicata to the framework of proceedings before the FIFA Judicial Bodies. As a result of this, it is clear that Article 30(7) FDC essentially establishes three (3)

requirements for a finding of inadmissibility on the basis of res judicata: (1) there is a final decision by another FIFA body, (2) involving the same party or parties, and (3) with the same cause of action. All three requirements are met in this case:

(1) There is a final decision by the FIFA Disciplinary Committee dated 13 April 2023, which became final and binding on 26 May 2023.

(2) The final decision by the FIFA Disciplinary Committee involves the same party, the Successor Bytom, in addition to the Player as complainant.

(3) The final decision by the FIFA Disciplinary Committee involves the same party (Successor Bytom) with the same cause of action: the application of Article 21(4) FDC for an alleged failure to comply with the DRC Decision dated 12 March 2015, against the Successor Bytom as sporting successor of the non-compliant party (Original Bytom) and its consequent liability to comply with the DRC Decision.

49. More broadly, the Appellant has extensively argued that res judicata does not apply to the matter at stake by stating for example that "the disco decisions cannot have the effect of res judicata" relying on CAS jurisprudence CAS 2020/A/6873 and CAS 2020/A/6912, by making submissions on the "triple identity-test" and by arguing that – even if res judicata applied, it would only apply to the operative part of the decision.

50. As a first and fundamental point, the Appellant has misleadingly – but understandably - failed to provide the Sole Arbitrator with a full overview of the case and his failed appeal to the CAS against the Disciplinary Decision dated 13 April 2023 (with consequent SFT Decision). The res judicata in this case applies to the Disciplinary Decision (which became final and binding on 26 May 2023, following the Appellant's failed appeal) on the basis of Article 30(7) FDC, and it does not concern the so-called "res judicata effect", as explained below.

51. Res judicata is a substantive concept meaning "a matter already judged", which is intended to prevent that the same dispute between the same parties is re-litigated (before the same or other adjudicating bodies) once it has been finally decided (which would be contrary to public policy). [Footnote 7: E.g. CAS 2019/A/6436, para. 57; CAS 2020/A/7212, para. 90., CAS 2020/A/6912, para. 110 et al.]

52. The so-called res judicata effect, which has been defined by CAS jurisprudence as described below, is a procedural concept concerning the extent of an application of res judicata. More specifically, it concerns the question whether a previous ruling (e.g. of the Disciplinary Committee) prevents the appeal (e.g. the CAS) to review a dispute in whole or in part.

53. The so-called "res judicata effect" is clearly addressed in the CAS jurisprudence cited by the Appellant with reference CAS 2020/A/6873. In that case, FIFA had argued that the relevant appealed decision from the Disciplinary Committee was final and binding in so far as it concerns the issue of the sporting succession between the old and new clubs (which the Appellant did not challenge). [Footnote 8: CAS 2020/A/6873,

para. 55.] The Panel however decided that the Appealed Decision was not vested with res judicata effect, that the operative part makes no reference to sporting succession (the binding effect of a judgment only applying to the operative part of an award and not the grounds) and that the factual findings and legal grounds of the appealed decision with regard to that issue do not bind the Panel, and that it has full power to review the facts and the law de novo according to Article R57 CAS Code.

54. The fundamental difference with this case, is that the Sole Arbitrator is not addressing the potential procedural res judicata effect of the Disciplinary Decision in a subsequent CAS appeal (the Appellant having failed with his appeal), but the existence of the substantive res judicata in view of the final and binding Disciplinary Decision and the inability of the FIFA Judicial Bodies to deal with "cases that have been previously subject to a final decision by another FIFA body involving the same party or parties and the same cause of action. [Footnote 9: Article 30(7) FDC.]

55. Interestingly, effective guidance can be found in the case CAS 2020/A/6912 cited by the Appellant when it comes to substantive res judicata. [Footnote 10: Also, in e.g. CAS 2019/A/6436, para. 85] The Panel applied the same res judicata test as codified in Article 30(7) FDC:

"Therefore, since the matter referred to the same dispute and the same allegation regarding the sporting succession (on the basis of the same evidence and involving the same parties), it is evident that the principle of res judicata was applicable on the matter and the FDC was right to keep the disciplinary proceedings closed, since the FIFA Disciplinary Committee was not allowed to deal again with the same matter. ***The only possible way to challenge the understanding / findings of the FDC was to appeal from the FDC Decision of 16 March 2016, but such appeal has not occurred****." [Footnote 11: CAS 2020/A/6912, para. 134.] (emphasis added)*

56. An identical conclusion applies here: same dispute and same allegation (with the same evidence and same parties), rightfully leading to the Disciplinary Committee to keep the disciplinary proceedings closed and not accepting to deal again with the same matter.

57. Additionally, the same conclusion applies in the sense that "the only possible way to challenge the understanding/finding of the FDC" was to appeal the Disciplinary Decision, "but such appeal has not occurred".

58. As a result, the matter at stake is res judicata in the sense of Article 30(7) FDC, and the Appellant's complaint was rightfully deemed inadmissible.

C. Article 71 FDC: review of a legally binding decision

59. Having determined that the Appellant's claim to the Disciplinary Committee was inadmissible, the only possible avenue for the Appellant to seek reconsideration of the findings of a final and binding decision, would be to request the review of such decision in accordance with Article 71 FDC.

60. In the matter at stake, the Appellant has sought to justify his request titled "Creditors letter" dated 24 July 2024 alleging that FIFA had erroneously assessed the Player's due diligence on the basis of an incorrect understanding of the insolvency proceedings of the Old Bytom and that after receiving the Disciplinary Decision, a legal opinion by a local lawyer confirmed that no proceedings existed in which he could have recovered his credit ("new information"). [Footnote 12: Exhibit 4 at p. 2.] The Appellant further asserted that "[…] if FIFA has been given correct information, it would have come to a completely different conclusion". [Footnote 12: Exhibit 4 at p. 6.]

61. As such, the Appellant has argued that "Disciplinary procedures at FIFA […] do not exclude the possibility of the complainant reporting the same club for the FDC violations more than once, especially if new information justifies sanctions." [Footnote 12: Exhibit 4 at p. 2.] (emphasis added)

62. In the final conclusion of the Appellant's letter addressed to FIFA dated 24 July 2024, it is alleged that: (1) there were no bankruptcy proceedings where the Player could have recovered his credit, (2) the dissolution without liquidation procedure (started in 2021 and ended in 2023) is irrelevant, (3) the Player is not at fault for FIFA being misled about the insolvency procedure of the Old Bytom (in procedure FDD-11763/14399), (4) the Player was not invited to comment on the information provided by the Successor Bytom (in procedure FDD-11763/14399), and (5) the establishment of the New Bytom was aimed at circumventing FIFA decisions. [Footnote 12: Exhibit 4 at p. 9.]

63. As a first observation, and as already repeatedly mentioned, the Appellant's arguments in his letter dated 24 July 2024 are exclusively directed at elements that had already been addressed and decided in the final and binding Disciplinary Decision. The Appellant seeks to reintroduce those arguments on the basis that alleged "new information" came to light.

64. In that regard, reference is made to Article 71 FDC which stipulates:

1. A review may be requested before the competent judicial body after a legally binding decision has been passed if a party discovers facts or proof that would have resulted in a more favourable decision and that, even with due diligence, could not have been produced sooner.

2. A request for review shall be made within ten days of discovering the reasons for review.

3. The limitation period for submitting a request for review is one year after the decision has become final and binding.

65. It is clear from the plain wording of Article 71 FDC that there are both substantive elements (discovery of proof or facts that would have led to a more favourable decision and that could not have been produced sooner) and formal procedural elements (request for review within ten days of discovering the reasons for review and a one-year

limitation period to file the request from the moment the decision became final and binding).

66. In the matter at stake, and regardless of whether there are any merits to whether "facts or proof" were discovered that would have resulted in a "more favourable decision" – quod certe non, it is already clear that the Appellant has failed to comply with the one-year limitation period for submitting his request.

67. More specifically, the one-year limitation period extends to "one year after the decision has become final and binding". The Disciplinary Decision which the Appellant seeks to revisit, became final and binding on 26 May 2023, while the "Creditors' Letter" to seek the review was only filed on 24 July 2024. In other words, on 26 May 2024 the limitation period for the Appellant to seek a review of the Disciplinary Decision expired.

68. The Appellant's request for review was manifestly late.

69. Additionally, and in any event, it is clear that the Appellant did not provide any new elements that would justify re-opening the disciplinary proceedings in accordance with Article 71 FDC. The Appellant could have produced the legal opinion by a local lawyer, allegedly confirming that no proceedings existed in which he could have recovered his credit, for the purpose of the Disciplinary Decision (and it was likely intended for his CAS appeal that was late and inadmissible). There is plainly no "new information" that was not self-fabricated.

70. The Appellant's request for review was late and, on top of that, there are no new bona fide "facts or proof" that were discovered that would have resulted in a "more favourable decision".

Arbitration costs

71. FIFA considers that the present appeal should be rejected in its entirety which therefore entails that it should not be condemned to cover any part of the arbitration costs derived from the present proceedings.

Conclusions

72. The key element that provides context for the origin of this case is clear and has been often repeated: The Appellant is seeking to heal his procedural failure of failing to timely appeal the Disciplinary Decision.

73. The Disciplinary Decision is final and binding.

74. Notwithstanding the final and binding nature of the Disciplinary Decision, the Appellant attempted to re-open disciplinary proceedings against the Successor Bytom under the guise of "new information".

75. The Appellant's approach is unacceptable.

76. Firstly, and in accordance with Article 30(7) FDC, the Disciplinary Committee cannot deal with a case that was already subject to a final decision by another FIFA body (the Disciplinary Decision dated 13 April 2023) involving the same party or parties (Successor Bytom, in addition to the Player as complainant) and the same cause of action (the application of Article 21(4) FDC for an alleged failure to comply with the DRC Decision dated 12 March 2015 against the Successor Bytom). This is a matter of res judicata, and not of the res judicata effect as the Appellant has misleadingly suggested.

77. Secondly, it is not possible for the Appellant to seek the review of the Disciplinary Decision on the basis of Article 71 FDC which contains (i) substantive elements (discovery of proof or facts that would have led to a more favourable decision) and (ii) formal procedural elements (request for review within ten days and a one-year limitation period to file the request).

78. It has been established that the Appellant failed on a substantive and procedural level; his request was well-beyond the one-year limitation period and there are no new bona fide "facts or proof" that were discovered that would have resulted in a "more favourable decision" and that were not self-fabricated.

79. The Appellant's appeal shall be rejected, and the Appealed Decision confirmed in its entirety."

V. JURISDICTION

71. Article R47 of the Code provides as follows:

"An appeal against the decision of a federation, association or sports-related body may be filed with the 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. […]"

72. The Appellant relies on Article 49 (1), Article 50 (1) and Articles 52 (1) of the Statutes of FIFA as conferring jurisdiction on the CAS. The jurisdiction of the CAS has not been contested by the Respondents and has been confirmed by the signature of the Order of Procedure by all Parties. Thus, the Sole Arbitrator rules that CAS has jurisdiction in the matter at hand.

VI. APPLICABLE LAW

73. Article R58 of the Code provides as follows:

"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-

related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision."

74. In addition, Article 49(2) of the FIFA Statutes stipulates the following:

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

75. Considering the above and the fact that the Appealed Decision was communicated by the Head of FIFA Disciplinary on behalf of the Chairman of FIFA's Disciplinary Committee, the Sole Arbitrator is satisfied to primarily apply the various statutes and regulations of FIFA and, subsidiarily, Swiss law should the need arise to fill a possible gap or lacuna in the various regulations of FIFA.

VII. ADMISSIBILITY

76. Article R49 of the Code provides as follows:

"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties".

77. The Appealed Decision was communicated on 27 August 2024 to the Appellant via the FIFA Legal Portal in the form of a letter titled *Notification of closure of proceedings* and signed by the FIFA Head of Disciplinary on behalf of the Chairman of FIFA's Disciplinary Committee. The Sole Arbitrator finds that a letter of this nature containing a decision to reject a request to reopen the previous FIFA proceedings in FDD-14399 shall be considered an *appealable decision* according to CAS jurisprudence.

78. According to Art. 58 (1) of the FIFA Statutes the Appealed Decision may therefore be appealed against before the CAS within 21 days of receipt of notification of this decision.

79. As the notification to close/not to re-open the previous proceedings in FDD-14399 was communicated to the Appellant on 27 August 2024, and the Appellant filed his appeal on 12 September 2024, the appeal was filed within the 21-days' time limit and is thus admissible.

80. The Sole Arbitrator notes that the Appellant's Appeal Brief and both the Respondent's Answers were filed within the deadlines set out by the CAS Court Offices pursuant to the Code, and all submissions filed by the Parties in this matter are therefore admissible, and no claims of inadmissibility have been raised in this respect by any of the Parties.

VIII. MERITS

81. Keeping in mind the submissions of the Parties, the Sole Arbitrator considers that in deciding the merits of this matter, the following issues need to be addressed:

A) What is the final legal status of the FIFA Disciplinary Decision (FDD-14399), which was appealed to the CAS by the Appellant on 30 May 2023?

B) Do the FIFA Statutes in Article 30 (7) FDD provide FIFA bodies with the legal opportunity to re-open proceedings when a final decision has been reached, and if so, what are the requirements?

C) Does the Appellant have the right to a review of the FIFA Disciplinary Decision according to Article 71 FDC?

A. What is the final legal status of the FIFA Disciplinary Decision, which was appealed to the CAS by the Appellant on 30 May 2023?

82. To address the legal issues raised by the Parties in these proceedings in relation to the Appealed Decision, the Sole Arbitrator will start his examination with a review of the final legal status of the FIFA Disciplinary Decision (FDD-14399) rendered on 13 April 2023, which grounds were notified by FIFA to the Parties on 5 May 2023.

83. The FIFA Disciplinary Decision came with a note relating to legal action, as mentioned in para 21 above, stating *inter alia* that *"According to art. 58 (1) of the FIFA Statutes (...), this decision may be appealed against before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision. (...).*

84. The Appellant, which had been the Claimant in the FIFA disciplinary proceedings against the Club as the sporting successor of Original Bytom, filed an appeal on 30 May 2023 with the CAS. However, according to Article 58(1) of the FIFA Statutes and Article R49 of the CAS Code, the time limit to lodge an appeal is 21 days from receipt of the decision. As a result, on 21 August 2023, the CAS Court Office *ex officio* sent a letter indicating that the Appellant's appeal was inadmissible.

85. The Appellant's subsequent petition to the SFT was unsuccessful vis-à-vis the grounds explained in para. 24 above, and hence the petition did not lead to a *reversal* of the decision by the CAS Court Office that the appeal of 30 May 2023 filed by the Appellant was deemed inadmissible.

86. Against this background, the Sole Arbitrator must conclude that the FIFA Disciplinary Decision became *final and binding* on the Parties, (at the latest) when the ruling of the SFT was pronounced on 26 May 2023.

B. Do the FIFA Statutes provide FIFA bodies with the legal opportunity to re-open proceedings when a final decision has been reached, and if so, what are the requirements?

87. The Appealed Decision *inter alia* stated in its rejection to re-open the proceedings in FDD-14399 as follows:

"On behalf of the Chairman of the Disciplinary Committee, it is noted that this matter had already been dealt with by the Disciplinary Committee under case ref. FDD-14399, as notified to the parties on 5 May 2023 (hereinafter: the Decision). Specifically, the Decision established the proceedings against Sport Polonia Bytom should be closed."

88. The black-letter provision dealing with the prohibition of re-examinations of cases that have already been dealt with in the FIFA system, is found in Article 30 (7) FDC, which reads:

"The FIFA judicial bodies shall not deal with cases that have been previously subject to a final decision by another FIFA body involving the same party or parties and the same cause of action. In such cases, the claim shall be deemed inadmissible."

89. This provision incorporates in FIFA proceedings, in the view of the Sole Arbitrator, the well-established legal principle of *res judicata,* which basically also in accordance with Swiss law means that a legal matter that has already been judged, should not be opened again and re-litigated before the same or other adjudicating bodies, when a final decision on the same matter has been reached.

90. As convincingly submitted by the Respondents, the Sole Arbitrator agrees that the "*res judicata principle*" is a fundamental and substantive legal concept, which shall preserve the legal certainty of decisions that have already been adjudicated and are now final.

91. The requirements for establishing *res judicata* pursuant to Article 30 (7) FDC are hence three-fold, namely that (1) there is a final decision by another FIFA body; (2) that the decision involves the same party or parties; and finally (3) it involved the same cause of action.

92. During these proceedings the Appellant has maintained that none of these conditions have been fulfilled to establish *res judicata* pursuant to Article 30 (7). After having carefully examined the submissions and arguments presented by the Appellant in this regard, the Sole Arbitrator has, however, reached the opposite conclusion, *namely that the three-fold requirements in Article 30 (7) FDC have indeed been all been established in this case for the following reasons*.

93. As for the first condition, the Sole Arbitrator has already maintained under A. above that a final decision was reached, because of the inadmissible appeal of 30 May 2023 by the Appellant, which was *not* overturned via the Appellant's petition to the SFT.

94. Moreover, the Sole Arbitrator finds that although the first requirement of the FIFA provision on the issue of *res judicata* refers to "a final decision by ***another*** FIFA body", this wording must logically go beyond what would already follow from the application of the traditional *res judicata* doctrine under Swiss law, namely that "the ***same*** FIFA body", (*in casu* the FIFA Disciplinary Committee) had reached a final decision in the same matter. The underlying consideration embedded in the provision of preserving legal certainty is obviously even more relevant, when a final decision has been reached by that same FIFA body to which the new request has been made. Thus, the first condition to establish *res judicata* either according to Swiss law or pursuant to a common-sense interpretation of Article 30 (7) has, in the view of the Sole Arbitrator, been satisfactorily fulfilled in this matter.

95. With respect to the fulfilment of the second and third conditions, the Sole Arbitrator puts particular emphasis on the last three paragraphs (55-57) in the FIFA Disciplinary Decision, which read as follows:

> *"55. Furthermore, it appears from the case file that the Original Club's proceedings at national level lasted at least until 15 November 2021, i.e., almost four years and eleven months after the initiation of the relevant proceedings at national level, but also, more importantly, more than three (3) years after the Claimant had been made aware of the difficult financial situation of the Original Club.* ***In this sense, the Committee pointed out that, although the Claimant got aware of the financial situation of the Original Club, the latter failed to anticipate and (try to) take part in the ongoing proceedings against the Original Club (the debtor club) in which it could theoretically have registered (and potentially recover) its credit.***
>
> *56.* ***As a result, the Committee was comfortably satisfied that the Claimant could have claimed its credit(s), or at the very least, have attempted to register them within the bankruptcy/dissolution proceedings of the Original Club****. In other words, the Claimant appears to have remained passive and to not have performed the expected due diligence that the circumstances demanded, in particular to take the required legal actions at national level to recover the amount(s) owed to it by the Original Club, and had therefore contributed to the non-compliance by the Original Club, and subsequently by the New Club, with the DRC Decision issued on 12 March 2015 and the subsequent DisCo Decision issued on 27 October 2016.*
>
> *57. In light of the above,* ***although the New Club, Bytomski Sport Polonia Bytom Sp. z o. o., is to be considered as the sporting successor of the Original Club, KS Polonia Bytom****, the Committee resolved that no disciplinary sanctions should be imposed upon the New Club and that all charges against the latter should be dismissed****, the foregoing being due to the lack of diligence of the Claimant in collecting and/or registering his debt in the respective proceedings at national level."* *[Emphasis added]*

96. The wording of these passages clearly and unequivocally demonstrates in the view of the Sole Arbitrator that FIFA's Disciplinary Decision involved **the same two parties**, namely the Appellant referred to as the "Claimant", and the Club referred to as the "New Club" in the FIFA decision.

97. Likewise, the highlighted sections of the decision underscore that the case involved the **same cause of action**, as the Appellant wishes to address in his request to re-open the case again, namely the application of Article 21(4) FDC for an alleged failure to comply with the DRC Decision dated 12 March 2015, against the Club as the sporting successor of the non-compliant party (Original Bytom) and its consequent liability to comply with the first DRC Decision.

98. All the conditions in Art. 30 (7) FDC are thus at face value fulfilled, establishing *res judicata* which makes the Appellant's request to re-open closed proceedings rightfully inadmissible for all FIFA bodies, including the FIFA Disciplinary Committee itself.

99. In reaching this conclusion, the Sole Arbitrator also dismisses all submissions or arguments made by the Appellant that he, notwithstanding the legal understanding of Art. 30 (7), still should be allowed to file a new complaint regardless of the outcome of the prior procedures. This claim is deemed without merit and cannot be substantiated by any other legal theory under Swiss law or CAS jurisprudence.

100. The Sole Arbitrator is furthermore of the firm opinion that the Appellant has wrongfully mistaken the so-called "res judicata *effect*" with the application of the *genuine* res judicata principle itself. The Sole Arbitrator fully concurs with the fundamental difference between the two concepts, as submitted by FIFA in its Answer, cited in para 54 above:

"The fundamental difference with this case, is that the Sole Arbitrator is not addressing the potential procedural res judicata effect of the Disciplinary Decision in a subsequent CAS appeal (the Appellant having failed with his appeal), but the existence of the substantive res judicata in view of the final and binding Disciplinary Decision and the inability of the FIFA Judicial Bodies to deal with "cases that have been previously subject to a final decision by another FIFA body involving the same party or parties and the same cause of action".

101. The same understanding of the two *res judicata* concepts has also been established in CAS jurisprudence, (CAS 2020/A/6912), where the Panel applied the same *res judicata* three-fold test as found in Article 30 (7) FDC. To accept the Appellant's line of reasoning would thus be an unjustified way to circumvent the *res judicata* principle codified in Art. 30 (7) FDC.

102. The many arguments which the Appellant has brought forward during these proceedings to procure a re-opening of the FIFA Disciplinary Committee's closed case file FDD 14399, cannot at the end of the day hide the fact that the only legally viable way to contest the findings in the FIFA Disciplinary Decision would have been through a timely appeal to the CAS back in May 2023.

103. Regrettably as it may have been for the Appellant that his appeal in 2023 was filed too late, such circumstances cannot allow for a closed and final case later to be opened by FIFA through a new request almost a year after the original proceedings were finally closed.

104. It was in fact the same set of (unfortunate) circumstances that were present in the above-mentioned CAS case (CAS 2020/A/6912), and which led the Panel to the following precise conclusion as to the "real" remedy available to challenge a decision from FIFA:

"Therefore, since the matter referred to the same dispute and the same allegation regarding the sporting succession (on the basis of the same evidence and involving the same parties), it is evident that the principle of res judicata was applicable on the matter and the FDC was right to keep the disciplinary proceedings closed, since the FIFA Disciplinary Committee was not allowed to deal again with the same matter. ***The only possible way to challenge the understanding / findings of the FDC was to appeal from the FDC Decision of 16 March 2016, but such appeal has not occurred."*** *[Emphasis added.]*

105. Accordingly, the Sole Arbitrator fully agrees with the legal rationale expressed by the Panel in the above CAS case with almost identical facts as the present one. Against this background, the Sole Arbitrator must conclude that the Chairman of the FIFA Disciplinary Committee made the only judicially feasible decision pursuant to Art. 30(7) FDC, when he rejected the Appellant's request to re-open the closed proceedings in FDD 14399, since *res judicata* had already been established in the matter.

C. Does the Appellant have a right to a review of the FIFA Disciplinary Decision according to Article 71 FDC?

106. Having established that the FIFA Disciplinary Code does not have the legal remedy pursuant to Art. 30(7) FDC to re-open already closed and final proceedings, the Sole Arbitrator will now examine, if any other provisions in the FIFA Disciplinary Code (2023 edition) may provide the Appellant with a right to have the FIFA Disciplinary Decision reviewed.

107. As cited in the Appealed Decision, a review may be possible pursuant to Art 71 FDC, when various requirements are met:

"1. A review may be requested before the competent judicial body after a legally binding decision has been passed if a party discovers facts or proof that would have resulted in a more favourable decision and that, even with due diligence, could not have been produced sooner.

2. A request for review shall be made within ten days of discovering the reasons for review.

3. The limitation period for submitting a request for review is one year after the decision has become final and binding."

108. The provision, which serves as a form of "legal backstop" to rectify any possible wrongful decisions in the FIFA system, holds several requirements, which all must be fulfilled for a review of a legally binding decision to be established.

> i. *(…), if a party discovers facts or proof that would have resulted in a more favourable decision and that, even with due diligence, could not have been produced sooner.*

109. The first subsection of Article 71 FDC refers to the disclosure of evidence that – even with due diligence – could not have been produced sooner than at the time when the final decision was made.

110. First, the Sole Arbitrator must point out that the burden of proof according to well-established CAS jurisprudence lies with the Party that wishes to rely on a fact or a set of factual circumstances. In this case, it is most definitely the Appellant that must carry the burden of proof on any new fact or proof that would have resulted in a more favorable decision. There is nothing in the wording, nor in the context of the provision, that suggests that the burden of proof in this case has reversed or shifted towards FIFA or the Club.

111. That being established, the Sole Arbitrator has very carefully examined all the arguments and the allegedly new evidence which the Appellant has relied upon in these proceedings. These submissions do, however, not pass muster as convincing evidence in these CAS proceedings in the view of the Sole Arbitrator.

112. The Appellant has for example relied heavily on the legal opinion of Mrs. Radke and presenting it as *new facts* of the case. However, upon reading Mrs Radke's opinion, it is the impression of the Sole Arbitrator that this opinion de facto contains no new elements, circumstances, or events that occurred after the issuance of the decision by the FIFA Disciplinary Committee on 13 April 2023.

113. As pointed out by the Club in para 33-34 of its Answer, the Sole Arbitrator concurs with the view that the opinion merely "*analyses pre-existing facts and legal principles that were already known and could have been raised during the original disciplinary proceedings*. *Under no reasonable interpretation can a legal opinion issued after the fact - which does not rely on any newly discovered evidence - justify a reconsideration under Article 71 of the FDC. (…)"*

114. At the hearing, the Appellant also chose not to call Mrs. Radke as a witness or a legal expert on Polish law, (or as a matter of fact any other witnesses) so that the Panel could have heard more about the reasoning behind the Appellant's claims. Likewise, the Appellant decided not to come forward himself to give a statement as a Party in the matter, being undoubtedly the person with the best qualifications to tell why he had *not* done more – as a creditor – to protect his interests and made or registered his claim with the Club or Original Bytom. This assumed *lack of diligence* was after all the main reason for the result in para 57 of the FIFA Disciplinary Decision as cited above in para. 94.

115. Although the Sole Arbitrator understands from the Appellant's submissions and the information contained in the Order for Legal Aid that the Appellant indeed has fallen upon hard times, especially financially, this fact cannot change how legal evidence in a CAS case should be examined.

116. Judging from the evidence on file in this case, combined with the missing statements from the Appellant himself and any other witnesses at the hearing, the Sole Arbitrator is therefore *not* comfortably satisfied that the Appellant has presented *"facts or proof that would have resulted in a more favorable decision"*, as no hard evidence to support the Appellant's claims have in fact been procured at these CAS proceedings.

117. This leads the Sole Arbitrator to conclude that the requirements according to Art. 71 (1) FDD have not been successfully met by the Appellant.

> ii. (..) *shall be made within ten days of discovering the reasons for review.*

118. The second subsection of Article 71 FDC stipulates an additional demand for a speedy request within ten days of discovering the reasons for the review. The *prima facie* evidence in this case clearly shows that the Appellant has neither been able to fulfill this requirement.

119. In the opinion of the Sole Arbitrator, there is good reason to assume that the potential "*reasons for review"* were all present at the time in May 2023, when the Appellant filed his unsuccessful appeal against the FIFA Disciplinary Decision. Once again, the Appellant is unable to remedy the dismissal of his original appeal by filing a request for a review pursuant to Article 71 FDC almost a year after the CAS Court Office noticed the Appellant that his appeal was filed too late to be admitted. This would amount to an unacceptable circumvention of a fixed deadline specifically stated in the provision, for which there is no legal basis.

> iii. *The limitation period for submitting a request for review is one year after the decision has become final and binding."*

120. The third subsection of Article 71 FDC contains an absolute deadline of one year for requesting a review regardless of whether the first two requirements are met. This limitation period of one year is yet another instrument to secure legal certainty as to the final and binding decisions that may have made, so that the Parties involved can be assured that such final and binding decisions are not to be re-opened for review indefinitely. A limitation period of one year is also a perfectly logical and reasonable deadline in the view of the Sole Arbitrator.

121. As established above, the FIFA Disciplinary Decision was final and binding on *26 May 2023* at the time of the SFT's ruling. The Appellant's request to FIFA to re-open the proceedings was made on *24 July 2024*. Hence, the third requirement in Article 71 FDD is neither fulfilled in the matter at hand, and the Appellant's request for review was rightfully dismissed for being non-compliant with all the demands in the said provision.

IX. CONCLUSION

122. Based on the findings stated above, the Sole Arbitrator must conclude that the Appellant does not have a rightful claim to have the FIFA proceedings in FDD 14399 re-opened pursuant to Art. 30 (7) FDD, nor to have the final decision of the FIFA Disciplinary Committee reviewed pursuant to Art. 71 FDD.

123. Consequently, all the Appellant's requests for relief in this matter are *dismissed* and the Appealed Decision is *upheld*.

124. This conclusion logically leads to the result that all prayers of relief or submissions as to the FIFA Disciplinary Decision itself are *moot,* because this decision still remains final and binding as of 26 May 2023 due to the outcome of these CAS proceedings.

X. COSTS

(…)

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The request filed by Vladimir Milenkovic on 12 September 2024 is dismissed.

2. The decision announced on 27 August 2024 by the FIFA Head of Disciplinary to dismiss Vladimir Milenkovic's request to re-open the proceedings in FDD-14399 is upheld in its entirety.

3. (…).

4. (…).

5. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 25 July 2025

THE COURT OF ARBITRATION FOR SPORT

Lars Halgreen
Sole Arbitrator