



TAS / CAS

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

CAS 2023/A/10091 Karpaty FC LLC v FIFA & HNK Cibalia Vinkovci & FC Karpaty Halych

ARBITRAL AWARD

issued by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Mark Andrew Hovell, Solicitor in Manchester,
United Kingdom

in the arbitration between

Karpaty FC LLC, Lviv, Ukraine
Represented by Mr Georgi Gradev, Mr Márton Kiss and Ms Yuliya Bogdanova,
Attorneys-at-law, Sofia, Bulgaria

– Appellant –

And

Fédération Internationale de Football Association, Zürich, Switzerland
Represented by Mr Miguel Liétard Fernández-Palacios, Director of Litigation,
Coral Gables, United States of America

– First Respondent –

HNK Cibalia Vinkovci, Vinkovci, Croatia
Represented by Mr Peter Lukasek, Attorney-at-law, at Advokátska kancelária Hubocká
& Partners s.r.o., Bratislava, Slovakia

– Second Respondent –

FC Karpaty Halych, Halych, Ukraine

– Third Respondent –

I. PARTIES

1. Karpaty FC LLC (the “Appellant” or “Karpaty”; also referred to as “TzOV FC Karpaty Lviv”) is a professional Ukrainian football club based in Lviv, Ukraine, playing in the Persha Liga, the second tier of professional football in Ukraine. It is affiliated to the Ukrainian Association of Football (“UAF”), which in turn is a member of the Fédération Internationale de Football Association (“FIFA”).
2. FIFA (or the “First Respondent”) is an association under Swiss law with its registered office in Zürich, Switzerland. FIFA is the world governing body of football. It exercises regulatory, supervisory, and disciplinary functions over national associations, clubs, officials and players, worldwide.
3. HNK Cibalia Vinkovci (the “Second Respondent” or “HNK”) is a professional Croatian football club based in Vinkovci, playing in the Prva NL, the second tier of professional football in Croatia, and is affiliated to the Croatian Football Federation (“HNS”).
4. FC Karpaty Halych (the “Third Respondent” or “FKH”) is a professional Ukrainian football club based in Halych, and is affiliated to the UAF.
5. FIFA, HNK and FKH are jointly referred to as the “Respondents”.
6. Karpaty and the Respondents shall each be referred to as a “Party” and collectively, as the “Parties”.

II. FACTUAL BACKGROUND

7. The following outline is a non-exhaustive summary of the factual background based on the Parties’ submissions and documents on the file. 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 the present Award only to the submissions and evidence he considers necessary to explain his reasoning.
8. On 17 May 2023, the FIFA Dispute Resolution Chamber (the “DRC”) issued a decision in a claim for training compensation brought by HNK against CPF Karpaty LTD (“CPF”), bearing case reference no. TMS 8894 (the “Original Dispute”) (the “DRC Decision”).
9. The DRC Decision found that:

“[...]

2. *The Respondent, CPF Karpaty LTD, has to pay the Claimant EUR 48,986 as training compensation plus 5% interest p.a. as from 31 August 2019 until the date of effective payment.*

[...]

4. *Pursuant to article 24bis of the Regulations on the Status and Transfer of Players if full payment (including all applicable interest) is not paid within 45 days of notification of this decision, the following consequences shall apply:*

1. *The Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration of the ban shall be of three entire and consecutive registration periods.*
2. *The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not paid by the end of the three entire and consecutive registration periods.*

5. *The consequences shall only be enforced at the request of the Claimant.*

[...]”

10. FIFA notified the DRC Decision to the relevant parties on 2 June 2023.
11. On 21 August 2023, more than 45 days after the DRC Decision was notified to the relevant parties, HNK requested FIFA to impose a transfer ban on Karpaty on the basis that it should be deemed to be the sporting successor of CPF, the original debtor to the DRC Decision.
12. In a letter dated 12 October 2023 bearing reference number FDD-16306, FIFA concluded that:

*“[...] on the basis of the investigations conducted by FIFA [...] it appears that **TzOV FC Karpaty Lviv is to be considered the sporting successor of CPF Karpaty Ltd.** Said club shall therefore be subject to the decision/confirmation letter issued by the Dispute Resolution Chamber on 26 January 2023 [sic]¹.*

*By way of consequence, please be informed that the **ban from registering new players** will now be **implemented on TzOV FC Karpaty Lviv**. As such, we kindly ask the Ukrainian Association of Football (in copy) to immediately implement such ban on TzOV FC Karpaty Lviv at national level.”*

¹ It is noted that the reference to 26 January 2023 in the Appealed Decision is erroneous and should be corrected to the date of the DRC Decision, i.e., 17 May 2023.

(the “Appealed Decision”)

III. SUMMARY OF THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

13. On 31 October 2023, Karpaty filed a Statement of Appeal with the Court of Arbitration for Sport (the “CAS”) in accordance with Articles R47 and R48 of the CAS Code of Sports-related Arbitration (the “CAS Code”) against the Respondents with respect to the Appealed Decision. It requested that the case be submitted for determination by a sole arbitrator and proposed the appointment of Mr Wouter Lambrecht, Attorney-at-law in Belgium. Karpaty also requested for an expedited procedure with an operative award by 31 December 2023 or alternatively, a stay of the Appealed Decision. It further requested FIFA and/or HNK to voluntarily disclose the full case file in TMS 8894, particularly the relevant statement of claim lodged by the HNK with FIFA. and its right to apply for provisional measures.
14. On 6 November 2023, FIFA and HNK, wrote separate letters to the CAS Court Office and both stated they:
 - a. opposed the request to produce the full case file in TMS 8894 and/or the Statement of Claim lodged by the Second Respondent before FIFA;
 - b. agreed to the appointment of a sole arbitrator but on the condition that they were appointed by the President of the Division and selected from the football list as per Article R54 para. 4 of the CAS Code;
 - c. agreed to establish English as the language of the proceedings;
 - d. opposed Karpaty’s request for an expedited procedure and reserved their respective rights to provide a response to a request for provisional measures (if raised by the Appellant); and
 - e. FIFA opposed the request to stay the execution of the Appealed Decision.
15. On 7 November 2023, the CAS Court Office rejected the Appellant’s request for the proceedings to be expedited.
16. On 15 November 2023, Karpaty filed its Appeal Brief in accordance with Article R51 of the CAS Code.
17. On 19 December 2023, the CAS Court Office informed the Parties that on behalf of the Deputy Division President of the CAS Appeals Arbitration Division, Mr Mark A. Hovell, Solicitor in Manchester, United Kingdom, had been appointed as Sole Arbitrator.

18. On 21 December 2023, Karpaty requested the Sole Arbitrator to (i) hold an online hearing and issue the operative part of the award by 23 January 2024, and (ii) not “authorize any request for a continuance from the First or Second Respondents”.
19. On 28 December 2023, the CAS Court Office, *inter alia*, requested FIFA to explain its position regarding the stay of the Appealed Decision.
20. On the same date, FIFA responded, commenting *inter alia* that “the sense of urgency portrayed by the Appellant is misleading”, a further 10-day extension would not have a significant impact on the proceedings, and it opposed Karpaty’s request to stay the Appealed Decision.
21. On 3 January 2024, HNK submitted that Karpaty’s appeal to the CAS was inadmissible on the basis that it “failed to exhaust all available remedies prior to filing the Appeal in line with Article R47 of the Code of Sports Related Arbitration and relevant FIFA regulations [...]” and requested the Sole Arbitrator to bifurcate proceedings to first deal with the issue of admissibility.
22. On the same date, Karpaty expressed its surprise at HNK’s bifurcation request, noting that they would “proceed to file a request for a stay shortly in reaction to the [HNK’s] delaying tactic”.
23. On 18 January 2024, Karpaty filed a Request for Provisional Measures in accordance with Article R37 of the CAS Code.
24. On 24 and 25 January 2024, FIFA and HNK filed their respective Replies to Karpaty’s Request for Provisional Measures.
25. FKH failed to file a reply within the granted time limit.
26. On 5 February 2024, the CAS Court Office communicated the operative part of the Order on the Karpaty’s Request for Provisional Measures (the “Order on Provisional Measures”) to the Parties, which found that:
 - “1. The application for provisional measures filed by the Karpaty FC LLC on 18 January 2024 in the matter CAS 2023/A/10091 Karpaty FC LLC v. FIFA & HNK Cibalia Vinkovci & FC Karpaty Halych, is dismissed.
 2. The costs of the present Order shall be determined in the final award or any other final disposition of this arbitration”.
27. On 14 February 2024, the Sole Arbitrator convened a Case Management Conference with the Parties. FKH did not attend the Case Management Conference. The Appellant stated that as FKH was not participating in the procedure before CAS, it did not require a hearing in this matter, but requested that an operative part of the Award be issued before 12 March 2024. Neither of the other Respondents requested an oral hearing.

28. On 15 February 2024, FIFA filed its Answer pursuant to Article R55 of the CAS Code (the “FIFA Answer”).
29. On 19 February 2024, the CAS Court Office notified the reasoned Order on Request for Provisional Measures to the Parties.
30. On 21 February 2024, HNK filed its Answer pursuant to Article R55 of the CAS Code (the “HNK Answer”).
31. On 22 February 2024, Karpaty submitted further observations on FIFA’s Answer, in particular in relation to the regulatory basis on which FIFA issued the Appealed Decision.
32. On 26 February 2024, FIFA objected to the admissibility of Karpaty’s unsolicited observations to its Answer, whilst responding to those observations.
33. On 7 March 2024, the CAS Court Office responded to the Parties: (i) disregarding Karpaty’s observations and FIFA’s response due to the lack of exceptional circumstances, as required by Article R56 para. 1 of the CAS Code; (ii) allowing the production of CAS 2020/A/7265 to the CAS file; (iii) inviting FIFA to disclose the entire case file related to TMS 8894 to the CAS Court Office; and (iv) notifying the Parties that despite their request for this matter to be dealt with on the papers, the Sole Arbitrator did not deem himself sufficiently well informed to do so, and instead he was looking to convene an online hearing after April 2024.
34. On 12 March 2024, as requested by the Sole Arbitrator, FIFA disclosed the entire case file related to TMS 8894 to the CAS Court Office.
35. On 26 March 2024, the CAS Court Office notified the Parties that a remote hearing had been scheduled for 15 May 2024 at 10:00 CEST.
36. On 28 March 2024, the CAS Court Office circulated the Order of Procedure to the Parties. Karpaty, FIFA and HNK signed and returned the Order of Procedure on 29 March 2024, 2 April 2024 and 5 April 2024 respectively.
37. FKH failed to engage with the entirety of the arbitration proceedings and failed to acknowledge, sign or return the Order of Procedure.
38. On 15 May 2024, a hearing was held virtually. In addition to the Sole Arbitrator and Mr Björn Hessert, CAS Counsel, the following persons attended the hearing:
 - a. For the Appellant:
 - i. Mr Georgi Gradev, Counsel
 - ii. Ms Yuliya Bogdanova, Co-Counsel
 - iii. Mr Márton Kiss, Co-Counsel
 - b. For the First Respondent:

- i. Mr Miguel Lietard Fernandez-Palacios, Director of Litigation, FIFA
 - ii. Mr Saverio Spera, Senior Legal Counsel, FIFA
 - c. For the Second Respondent:
 - i. Mr Peter Lukasek, Counsel, Sports Law
 - d. No one attended the hearing on behalf of the Third Respondent.
39. The Parties present were given the full opportunity to present their cases, submit their arguments in closing statements and to answer the questions posed by the Sole Arbitrator.
40. Before the hearing was concluded, the Parties in attendance expressly stated that they had no objection to the procedure adopted by the Sole Arbitrator and that their right to be heard had been respected.
41. On 18 July 2024, a CAS panel rendered an award in separate proceedings also involving Karpaty, FIFA and FKH in CAS 2023/A/9809 Karpaty FC v. FIFA & Cristobal Marquez Crespo & FC Karpaty Halych (the “CAS 9809 Award”). In essence, the CAS panel in the CAS 9809 Award found that Karpaty was the sporting successor of CPF and established the consequences thereof.
42. As such, on 22 August 2024, the Sole Arbitrator invited the Parties to comment on the CAS 9809 Award.
43. On 26 August 2024, Karpaty commented on the CAS 9809 Award.
44. On 27 August 2024, FKH commented on the CAS 9809 Award.
45. On 30 August 2024, FIFA commented on the CAS 9809 Award.
46. On 12 February 2025, Karpaty submitted additional CAS jurisprudence to the CAS Court Office, namely CAS 2022/A/9288 FC Metalist LLC v. David Caiado Dias (the “CAS 9288 Award”), which it believed relevant to the matter in hand.
47. On 14 February 2025, the CAS Court Office sent a copy of the 9288 Award to the other parties, inviting them to provide their comments on the same.
48. On 19 February 2025, FIFA provided its comments on the CAS 9288 Award, thereby concluding the evidentiary proceedings for the purposes of Article R59 para. 5 of the CAS Code.

IV. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF

49. This section of the Award does not contain an exhaustive list of the Parties' contentions, its aim being to provide a summary of the substance of the Parties' main arguments. In considering and deciding upon the Parties' claims in this Award, the Sole Arbitrator has accounted for and carefully considered all of the submissions made and evidence adduced by the Parties, including allegations and arguments not mentioned in this section of the Award or in the discussion of the claims below.

A. The Appellant's position

50. In its Statement of Appeal, amended in its Appeal Brief, Karpaty made the following requests for relief:

"On a preliminary basis

1. *Annul the Appealed Decision issued by the FIFA administration on October 12, 2023 and issue the operative part of the award prior to the reasons.*
2. *Determine that the FIFA administration was not competent to rule on the issue of sporting succession between CPF Karpaty LTD and Karpaty FC LLC.*
3. *Refer the case back to the FIFA Disciplinary Committee and order it to join FC Karpaty Halych as a party to the disciplinary proceedings.*

On a subsidiary basis, only if the above is rejected

4. *Annul the Appealed Decision issued by the FIFA administration on October 12, 2023 and issue the operative part of the award prior to the reasons.*
5. *Determine that Karpaty FC LLC is not the sporting successor of CPF Karpaty LTD and, thus, is not subject to the decision issued by the Dispute Resolution Chamber in case TMS 8894 on May 17, 2023.*
6. *Determine that FC Karpaty Halych is the sporting successor of CPF Karpaty LTD and, thus, is subject to the decision issued by the Dispute Resolution Chamber in case TMS 8894 on May 17, 2023, or refer the case back to FIFA and order it to decide on this request.*
7. *Order FIFA to lift the transfer ban on Karpaty FC LLC immediately.*
8. *Order FIFA and/or HNK Cibalia Vinkovci to bear all costs incurred with this proceeding.*

6. *Order FIFA and/or HNK Cibalia Vinkovci to pay Karpaty FC LLC a contribution towards its legal and other costs in an amount to be determined at the Sole Arbitrator's discretion.*"

51. To support the Appeal, Karpaty made the following submissions:

a. *The Appealed Decision was "appealable"*

52. The Appealed Decision was capable of being appealed against on the basis that it is a ruling that subjects Karpaty to a transfer ban, therefore producing legal effects on Karpaty.

53. The Appealed Decision was "*internally final*" on the basis that there was "*no other judicial organ within FIFA to which [Karpaty could] appeal*". It had therefore exhausted all legal remedies prior to lodging this appeal.

b. *The FIFA administration was not competent to issue the Appealed Decision*

54. The Appealed Decision was "*adopted by the FIFA administration, which was not competent to rule the dispute between the Parties regarding the issue of sporting succession*" and accordingly the Appealed Decision was "*null and void*" (the "Competency Argument").

55. This is not merely a procedural flaw that "*CAS should repair without first allowing the competent body within FIFA to decide on this matter*".

56. The Appealed Decision exclusively cited Article 25(1) of the FIFA Regulations on the Status and Transfer of Players (the "RSTP") as FIFA's basis to extend the underlying DRC Decision to Karpaty. However, Article 25(1) of the RSTP is silent on the issue of which FIFA organ is competent to make determinations on sporting succession. FIFA has therefore "*impermissibly stretche[d] the provision of Article 25.1 RSTP to mean what it wants it to mean by deriving rights from the regulation's silence*".

57. It therefore follows that the FIFA Disciplinary Committee – and not the FIFA Administration – has the exclusive competence to evaluate sporting succession and CAS jurisprudence (*CAS 2017/A/5460*, *CAS/2019/A/6461* and *CAS 2021/A/7684*) was relied upon to that effect.

c. *FIFA should have joined FKH as a party in Original Dispute*

58. The Appealed Decision was invalid as FIFA did not join FKH as a co-defendant to the Original Dispute proceedings as requested by Karpaty on 25 September 2023.

59. Neither the RSTP nor the FIFA Disciplinary Code (“FDC”) provide for rules on the joinder of parties, creating a *lacuna* which the Disciplinary Committee ought to fill by resorting to Swiss law, namely Articles 81 para.1 and 82 of the Swiss Civil Procedure Code (the “CPC”).
 60. Pursuant to Article 81 para.1 of the CPC, Karpaty were entitled to assert the rights it believed it would have against FKH if Karpaty were unsuccessful in the Original Dispute.
 61. Pursuant to Article 82 of the CPC, Karpaty were entitled to request for FKH to be joined as a third party to the Original Dispute and they did so in compliance with the requirements for such a request as set out at Article 82 para. 1 of the CPC.
 62. FIFA did not comply with Article 82 para. 2 of the CPC as it did not allow CPF or FKH to respond to Karpaty’s joinder request and the Appealed Decision is therefore invalid.
 63. Therefore, “*the proper way to proceed is to annul the Appealed Decision and, making use of the discretionary power established by Article 57 of the Code, refer the case back to the FIFA DC for a fresh hearing [...] and joining FKH as a third party*”.
- d. *The transfer ban should not be extended to Karpaty***
64. Subsidiarily, and in the alternative, FIFA was not entitled to extend the transfer ban to Karpaty.
 65. This is on the basis that CPF (at the time of writing the Appeal Brief) remained affiliated with the UAF and “[c]onsequently, the conception of sporting succession does not apply in this case”.
- e. *FKH is “more likely” to be the sporting successor***
66. Citing *CAS 2020/A/7183*, *CAS 2020/A/6873*, *CAS 2020/A/7183* and *CAS 2020/A/7092* this case demonstrates that when determining sporting succession, “*the judging body must take into account the objective and subjective elements of the offense [...] it does not seem possible to rely exclusively on appearances (which is purely objective) to conclude that the requirements for sporting succession are met*”. In that regard, appearance of succession (e.g. club logos, colours, etc.) are not determinative of actual succession.
 67. The Appealed Decision relied on the decision in case FDD-14550 which is problematic because (i) the decision in FDD-14550 was then under appeal before CAS (i.e. *CAS 2023/A/9808*) and, (ii) it was based exclusively on Karpaty’s appearances.

68. Factors that suggest that Karpaty is not the sporting successor include:
- a. Distinct management between CPF and Karpaty - there is nothing to suggest that Karpaty was set up to escape the debts of CPF;
 - b. Karpaty did not compete in the same division as CPF and neither did Karpaty replace CPF in the league. This serves as evidence that the federative rights of CPF were not transferred to Karpaty;
 - c. The UAF has never treated Karpaty as CPF's successor; and
 - d. The similarity of appearances is insufficient because:
 - i. the name "Karpaty" is a common name amongst clubs (44 clubs have "Karpaty" in their name);
 - ii. the green and white colours are representative of Karpaty's geographical location and are also common for clubs in the Karpaty region;
 - iii. CPF's logo is being temporarily used whilst Karpaty awaits the registration of two distinct logos. In any event, the logo never belonged to CPF so Karpaty has not inherited an asset;
 - iv. The stadium did not belong to CPF so that similarly was not an inherited asset, and had to be used because of the limited stadiums in the region;
 - v. CPF's history has never been accepted as Karpaty's;
 - vi. The way in which Karpaty represents itself on social media and online is not reflective of the public perception of Karpaty. "[O]bjective onlookers" consider FKH to be CPF's sporting successor, not Karpaty; and
 - vii. Karpaty has not acquired CPF's assets or players which "*are important to be present to demonstrate sporting succession*".
69. In contrast, as submitted previously, in FDD-14550, CPF transferred its youth academy to FKH, assigned a portion of its claim against River Plate regarding the transfer of Mr Jorge Carrascal, transferred 13 players to FKH, FKH had relations with CPF's owner, Mr Oleg Smaliychuk, and there were also similarities in appearance.
70. Karpaty therefore argue that FKH is CPF's sporting successor and the Appealed Decision should therefore be annulled.

f. *Comments on the CAS 9809 Award*

71. The CAS 9809 Award has no precedential value whatsoever, as CAS awards do not have a *stare decisis* effect.
72. The CAS 9809 Award was not unanimous – it was rendered by a majority decision.
73. In any event, the CAS 9809 Award is legally flawed, and contrary to well-settled CAS jurisprudence on similar matters.
74. The CAS 9809 Award failed to refer to FIFA Circular No. 1681 and did not analyse the purpose of Article 21 of the FDC (2023 edition), which addresses the consequences of failure to respect decisions.
75. Instead, the CAS 9809 Award “*completely ignored the overwhelming evidence of sporting succession between the principal debtor and the third respondent [i.e. FKHF], in a ruling against Karpaty based “mainly (if not solely) on ‘public perception’ which is a legally wrong approach”.*
76. Public perception is not determinative of a finding of sporting succession. CAS jurisprudence (CAS 2020/A/7183, CAS 2020/A/7092, CAS 2020/A/7481, CAS 2020/A/6873, CAS 2023/A/9755 and CAS 2022/A/9044) suggests that both subjective and objective elements must be considered in making a determination on sporting succession.
77. In any event, the evidence presented in the CAS 2023/A/9809 proceedings was not adduced in the present procedure.
78. The Sole Arbitrator is therefore not bound to follow the outcome in the CAS 9809 Award.

g. *Comments on the CAS 9288 Award*

79. The CAS 9288 Award clarifies how a third club exhibiting elements of sporting succession should be considered by a CAS panel, contrary to the approach taken by the Panel in the CAS 9809 Award.
80. Karpaty additionally noted that the CAS 9809 Award was decided by a majority and that the CAS panel had failed to consider the CAS 9288 Award, even though it had been issued first.

B. *The First Respondent’s position*

81. In its Answer, FIFA made the following prayers for relief:

“(a) *reject the Appellant’s appeal in its entirety;*

- (b) *confirm the Appealed Decision;*
- (c) *order the Appellant to bear all costs incurred with the present procedure.”*

82. The First Respondent’s submissions can be summarised as follows:

a. *The Appealed Decision was rendered in full compliance with the applicable rules*

83. The FIFA Administration was in fact competent to issue the Appealed Decision. This matter relates to the enforcement of a decision originally issued by the Football Tribunal, i.e. the DRC Decision.

84. Although only Article 25(1) of the RSTP was referenced in the Appealed Decision, the regulatory framework for making such decision was not restricted to Article 25(1) of the RSTP. Article 25(1) of the RSTP must be read together with Articles 24 of the RSTP and Article 21(7) of the FDC. Article 25(1) of the RSTP was specifically referenced in the Appealed Decision because it extended the effect of the DRC Decision to Karpaty. It was Article 21(7) of the FDC that “*legitimised the assessment of the sporting succession*”. Article 21(7) of the FDC states:

“Any financial decision issued by the Football Tribunal or FIFA imposing disciplinary measures, such as a ban from registering any new players – either nationally or internationally – or a restriction on playing in official matches, will be automatically enforced by FIFA and the relevant member associations. FIFA will be competent to deal with any issue relating to the enforcement of such decisions, including but not limited to the potential recognition of the sporting successor and the assessment of potential insolvency and/or bankruptcy proceedings.”

85. The reference to “*FIFA*” in Article 21(7) of the FDC is wide enough to include the FIFA Administration, who was therefore competent to issue the Appealed Decision. Where the legislator of the FDC intended to limit competency to the Disciplinary Committee exclusively, it has explicitly done so (*see: Articles 21(8) and (9) of the FDC*).

86. As such, Karpaty has simply failed to consider the entire regulatory framework relevant to the Appealed Decision.

b. *Karpaty’s due process rights were not violated*

87. Karpaty fails to refer to the correct provisions of Swiss law to fill the *lacuna* as regards mandatory joinders. Article 70(1) of the CPC provides:

“If two or more persons are in a legal relationship that calls for one single decision with effect for all of them, they must jointly appear as plaintiffs or be sued as joint defendants”.

88. The Appealed Decision does not have any effect on FKH. Simply being another party that should be considered as a sporting successor of CPF does not make FKH a mandatory joinder. Therefore, FIFA could not have violated Karpaty’s right to be heard.
89. There was no procedural flaw, and in any event, such a procedural flaw would be cured by the Sole Arbitrator’s *de novo* power of review rather than by annulling the Appealed Decision and returning the case to FIFA.

c. Karpaty is the sporting successor of CPF

90. Merely because Karpaty was not set up “*with the specific purpose of escaping the obligations entered into by [CPF]*”, does not preclude FIFA or the CAS from concluding its sporting succession of CPF.

“What matters for sporting succession to be configured is that a new club takes over another club’s ‘assets’ (in the broadest sense) which concurred to form its sporting identity”.

91. These “assets” include a wide range, from the “*fan base to media revenues*”. The key aspect of a sporting successor is the existence of sporting continuity between the clubs.
92. CAS jurisprudence and Article 21 of the FDC provide a guiding, non-exhaustive list of elements which can identify sporting continuity: (i) the name, (ii) the logo and emblem, (iii) the roster of players, (iv) the team colours, (v) the stadium, (vi) the trophies, (vii) the history (especially as portrayed on the club’s media channels), (viii) the category of competition, (ix) the transfer of federative rights, (x) the management, and (xi) the owners.
93. FIFA argues that Karpaty is CPF’s sporting successor, because (*inter alia*):
 - a. Karpaty has an identical name to CPF which has additional significance when coupled with an identity of logo and team colours (CAS 2020/A/7290). Karpaty does not deny having the same logo or colours as CPF but attempts to justify it;
 - b. Karpaty acknowledges CPF’s history as its own, bears the CPF’s year of foundation in its logo, boasts of CPF’s iconic sporting moments as being its own, presents itself as CPF and refers to the trophies and sporting achievements of CPF;

- c. Karpaty uses the same stadium and whilst it is quite a small city and there are limited stadiums, it should be considered;
 - d. 3 individuals that used to work for CPF are currently registered with Karpaty; and
 - e. Karpaty has “[..] maintained what contributes the most to characterisation of a football club, which is the identification of the sporting continuity among the neutral observers (and the fan base)”.
94. Two clubs having separate legal entities does not prevent the occurrence of a sporting succession. A sporting successor, by nature, transcends the legal entities which operate it. Any suggestion to the contrary misunderstands the widely accepted definition of a club, which goes beyond the legal entities that manage it.
95. Equally, public perception is more important than the club’s legal entities, based on CAS jurisprudence (*CAS 2020/A/7481* and *CAS 2020/A/8446*) and publicly available information from Facebook, Karpaty’s Wikipedia page and Karpaty’s official website.
96. Finally, Karpaty not taking over CPF’s position in the league cannot be determinative of its alleged lack of sporting succession. Whilst Karpaty did not replace CPF at the time it entered the league, it did replace CPF at the time CPF disappeared: “*after one season only from its coming to existence, [Karpaty] replaced [CPF] in exactly the same league where such club was last participating before disappearing*”. The UAF has previously confirmed that at the end of the 2020/2021 season, CPF was relegated and lost its professional status, whereas Karpaty obtained a license to participate in the same league for the following 2021/2022 season.
97. Karpaty should therefore be considered CPF’s sporting successor and the Appealed Decision is valid.

d. Comments on the CAS 9809 Award

98. FIFA agreed with the findings of the CAS 9809 Award.
99. There was no doubt that Karpaty had “*created the sense of continuity of the activities of Karpaty Lviv FC which exists and remains unbroken. Therefore, the Appellant should be considered the sporting successor of FC Karpaty Halych, meaning that while accepting the positive commercial attributes of the original debtor, FC Karpaty Halych, the Appellant must also assume the responsibility for discharging the old debtor’s liabilities.*”

e. Comments on the CAS 9288 Award

100. FIFA underscores that the CAS 9288 Award, which is entirely unrelated to the present matter, has no bearing on the resolution of this case. FIFA repeated from its Answer, that “*the assessment of a sporting succession can vary from case to case depending on the circumstances.*”
101. CAS jurisprudence does not adhere to a doctrine of binding precedent. Each case must be examined on its own merits.
102. Focusing on the CAS 9228 Award, FIFA noted that the Panel’s analysis in paragraphs 162 to 164 of the award does not alter one evident fact: *in casu*, according to publicly available information, FKH does not appear to have actively participated in any competitions since November 2021. This fact alone is sufficient to distinguish the present case from the CAS 9288 Award.
103. FIFA continues to endorse the majority view in the CAS 9809 Award, in which that CAS panel also factored the existence of FKH into its assessment and nevertheless found Karpaty to be the sporting successor of CPF. The mere rejection of the findings in the CAS 9809 Award on the basis that the decision was taken by majority is a simplistic approach that does not render the CAS panel’s conclusions wrong.
104. Karpaty continues to focus on FKH, a club based in Halych, approximately 100 km from Lviv, as the alleged sporting successor of CPF. By contrast, in CAS 2022/A/9288, both FC Metalist LLC and the other Metalist club (FC Metalist-1925) were based in the same city: Kharkiv (Ukraine).

C. The Second Respondent’s position

105. In its Answer, HNK requested that “*the Appeal be dismissed on the merits*”.
106. A summary of HNK’s position is produced below:
 - a. ***Karpaty’s appeal should be inadmissible***
107. The Appealed Decision, issued by FIFA Judicial Bodies, leads to a conclusion that the Appealed Decision is in fact a decision of the Disciplinary Committee.
108. It therefore follows that any decision of the Disciplinary Committee must first be appealed to the FIFA Appeal Committee, rather than directly to CAS, as Karpaty has done.
109. Karpaty must therefore exhaust all internal channels at FIFA before it can appeal to the CAS. The appeal is therefore inadmissible.
 - b. ***The FIFA Administration was competent to issue the Appealed Decision***

110. The Appealed Decision takes the form of a “*directive*” issued by the Head of FIFA Judicial Bodies. The effect is to “*enforce*” the DRC Decision by recognising Karpaty as the sporting successor.

c. HNK did not have standing to be sued

111. Karpaty has not directed its appeal against HNK (with the exception of its request for HNK to bear the arbitral costs and pay a contribution towards its legal fees). This is a vertical dispute, in that it relates to the enforcement of a transfer ban by FIFA against Karpaty.

112. Given that only FIFA has the power to impose disciplinary sanctions (which is what Karpaty are effectively appealing here), there is “*no need nor legitimate interest*” to direct an appeal against HNK, or anyone apart from FIFA, as set out in CAS jurisprudence (*CAS 2017/A/5359, CAS 2019/A/6646, CAS 2015/A/3910, CAS 2012/A/3032*).

d. Karpaty is the sporting successor of CPF

113. Karpaty is incorrect to suggest sporting succession must consider more elements than the appearance of a club; “*sporting succession can be based [...] on various factor without giving exclusivity or more weight to one over the other [sic]*”;

114. Karpaty “*points the finger*” at FKH without sufficiently explaining away the elements of sporting succession Karpaty has satisfied. For example, whilst there might be many clubs with ‘*Karpaty*’ in its name, Karpaty does not explain the other simultaneous connections with CPF’s corporate name, logo, colours (the suggestion that white and green represent the club’s geographical location but this does not explain the particular shade of green) and stadium.

115. Karpaty has failed to provide any evidence that it denied connection with the history of CPF, and there is instead evidence in the publicly available Karpaty information that it is trying to present itself as CPF’s successor.

116. Therefore HNK, “*takes a view that taken in their mutual connection, the sufficient presence of elements of sporting succession have been established in the present case and [Karpaty] was rightfully considered as a “new” club and sporting successor of the “old” club and shall bear all consequences of such succession, including the sporting sanction imposed based on the appealed decision*”.

e. Comments on the CAS 9809 Award

117. HNK agreed with the findings of the CAS 9809 Award.

118. The findings of the CAS 9809 Award must be applied in the present case, so as to ensure consistency.

119. Any elements of sporting succession as established, enable a conclusion, to the comfortable satisfaction, that Karpaty is liable as the sporting successor for overdue payables towards HNK.
120. Karpaty's "*pointing a finger*" towards FKH, has turned out to be fruitless, because Karpaty satisfies a "*prevailing number of elements of sporting succession [...] tying itself to the former club's history fan base and club symbols*".
121. It offered no comments on the CAS 9288 Award.

D. The Third Respondent's position

122. FKH made no submissions and failed to engage with the entirety of these arbitration proceedings. It offered no comments on the CAS 9809 Award either, nor on the CAS 9288 Award.

V. JURISDICTION OF THE CAS

123. The jurisdiction of CAS is derived from Article R47 para. 1 of the CAS Code, which provides that:

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

124. Further, Article 57 para. 1 of the FIFA Statutes (2022 edition) states that:

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

125. The Sole Arbitrator notes that the Parties have not contested the jurisdiction of CAS.
126. Further, the jurisdiction of CAS is confirmed by the Order of Procedure duly signed by the Appellant, the First Respondent and the Second Respondent.
127. It follows that CAS has jurisdiction to adjudicate and decide on the present dispute.

VI. ADMISSIBILITY

128. Under Article R49 of the CAS Code, the time limit for appeal shall be “*twenty-one days from the receipt of the decision appealed against*” unless otherwise provided for in the statutes or regulations of the federation concerned.
129. Article 57(1) of the FIFA Statutes (2022 edition) also provides that appeals must be filed within 21 days of receipt of the decision being appealed and Article 57(2) of the FIFA Statutes provides that “[r]ecourse may only be made to CAS after all other internal channels have been exhausted”.
130. Karpaty was notified of the Appealed Decision on 12 October 2023.
131. Karpaty filed the Statement of Appeal on 31 October 2023, hence within the deadline of 21 days.
132. Karpaty completed its appeal as per the terms of Articles R47, R48 and R51 of the CAS Code, including payment of the CAS Court Office fee.
133. However, HNK contested the admissibility of this Appeal on the basis that the Karpaty failed to exhaust all internal remedies available at FIFA, before appealing to the CAS (see paragraphs 21-22 and 108-110 above).
134. The position of HNK was that the matter at hand should have gone to the FIFA Appeal Committee before coming to the CAS, but the Appealed Decision “*is still a decision rendered pursuant to FIFA Disciplinary Code by FIFA Judicial Bodies*”.
135. The Sole Arbitrator therefore considered the FDC. In particular, Articles 60 and 61 of the FDC, which consider the jurisdiction of the FIFA Appeal Committee:

“60. Jurisdiction

1. The Appeal Committee is competent to decide on appeals against any of the Disciplinary Committee’s decisions that FIFA regulations do not declare as final or referable to another body, as well as on cases referred by the chairperson of the Disciplinary Committee or their deputy for consideration and decision.

...

61. Admissibility of appeals

1. An appeal may be lodged with the Appeal Committee against any decision passed by the Disciplinary Committee, unless the disciplinary measure issued is:
a)...
e) decisions passed in compliance with Article 21 of this Code.

...”

136. In this context, there appear to be two issues to consider. Firstly, was the Appealed Decision a decision of the Disciplinary Committee? Secondly, was that decision passed in compliance with Article 21 of the FDC?
137. The Sole Arbitrator notes that this first issue is dealt with in the merits below, as Karpaty does not agree that FIFA could render the Appealed Decision, rather it must have been the Disciplinary Committee itself. Article 21(7) of the FDC provides that FIFA, generally, as opposed to a specific organ at FIFA is competent to deliver decisions such as the Appealed Decision, and the Sole Arbitrator notes FIFA’s submissions in that regard (see paragraphs 83-86 above). However, this issue is dealt with in further detail below, but the Sole Arbitrator’s conclusion is that FIFA’s administration was competent to render the Appealed Decision. If there is no decision from the Disciplinary Committee, then the jurisdiction of the FIFA Appeal Committee is not triggered and the Appeal to CAS is therefore admissible.
138. Further, the Sole Arbitrator notes that the reference to sporting succession now appears in both in Article 25(1) of the RSTP and in Article 21(4) of the FDC, and that the Appealed Decision only refers to the RSTP, yet HNK (the Party challenging admissibility) states that the Appealed Decision is in accordance with the FDC. Ultimately, the Sole Arbitrator notes that sporting succession started its written regulatory life in the FDC and has recently been referenced in the RSTP too. If HNK takes the position that the Appealed Decision “*is still a decision rendered pursuant to FIFA Disciplinary Code*”, then it must be referring to a decision taken pursuant to Article 21(4) of the FDC. It then follows that such a decision is not one that goes before the FIFA Appeal Committee (see Article 61(1)(e) of the FDC above).
139. On these bases, the Sole Arbitrator dismisses HNK’s submissions contesting the admissibility of Karpaty’s Appeal. The Appeal against Appealed Decision did not need to go to the FIFA Appeal Committee before coming to the CAS.
140. It follows that the Appeal is admissible.

VII. APPLICABLE LAW

141. Article R58 of the CAS Code provides as follows:

“Law Applicable to the merits. 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.”

142. Article 56(2) of the FIFA Statutes (2022 edition) provides as follows:

“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”.

143. It is submitted by the Appellant and the First Respondent that the Sole Arbitrator shall therefore primarily apply the various regulations of FIFA (the RSTP and the FDC), and Swiss law shall be applied subsidiarily should the need arise to fill a possible gap in the FIFA regulations.

144. The Second and Third Respondents have not disputed this position and as such the Parties agree this is the applicable law, and the Sole Arbitrator is not minded to depart from that position.

VIII. MERITS

A. The main issues

145. The Sole Arbitrator notes that Karpaty itself flagged up the CAS 9809 Award in its Statement of Appeal and labelled it as a “*pertinent case*”. The Sole Arbitrator further notes that the decision is not binding *per se* on him, that perhaps different evidence was before that CAS panel and that it was a majority decision, however, the CAS 9809 Award does consider whether Karpaty was the sporting successor of CPF or not, whether FKH was the more likely successor and whether it was possible to have a successor at all, if CPF remained “alive”.

146. The Sole Arbitrator therefore found the CAS 9809 Award helpful and determined to request each of the Parties to provide him with their comments on this decision, so he could consider those too.

147. The Sole Arbitrator further considered the CAS 9288 Award, along with the submissions made thereon by both Karpaty and FIFA. The Sole Arbitrator supports the position that each sporting succession cases should be determined on its own facts, but additionally noted that the CAS panels in both CAS 2023/A/9809 and CAS 2022/A/9288 did consider the evidence that was put forwards by both appellants when they were effectively arguing that they were not the old club’s successor, rather a third club was. The main difference is that in the CAS 9809 Award the submissions failed, whereas in the CAS 9288 Award, they succeeded. What is important, is that any Panel should consider the third club submissions and evidence, as the Sole Arbitrator determines to do below.

148. Having reviewed these comments, the Parties submissions and evidence advanced in writing and at the hearing, he considers that the main issues to be resolved are as follows:

- a. HNK's standing to be sued;
- b. Whether the FIFA administration was entitled to render the Appealed Decision;
- c. If so, should the matter at hand be returned to FIFA to consider whether FKH is the sporting successor of CPF?;
- d. If not, is Karpaty the sporting successor of CPF?;
- e. If so, what are the consequences thereof for Karpaty?

a. HNK's standing to be sued

149. The Sole Arbitrator notes that the Second Respondent submitted that Karpaty had not directed its prayers for relief against it (with the exception of its request for HNK to bear the arbitral costs and pay a contribution towards its legal fees). The Second Respondent argued that the matter at hand is a vertical dispute that it relates to the enforcement of a transfer ban by FIFA against Karpaty. As such it lacked the standing to be sued.

150. The Sole Arbitrator notes that the CAS panel in the CAS 9809 Award considered, *ex officio*, the issue of standing of FKH in their case, as opposed to HNK. There is a difference between the two matters, as Karpaty's prayers for relief in the present matter are, in part, directed against FKH (as these contain a request for the Sole Arbitrator to "...determine that FC Karpaty Halych is the sporting successor of CPF Karpaty LTD..."). However, that CAS panel in the CAS 9809 Award cited the appropriate test to determine standing:

"73. ... in order to determine whether a party has standing to be sued in the context of a certain dispute, one must ask whether said party 'stands to be sufficiently affected by the matter at hand in order to qualify as a proper respondent within the meaning of the law' (cf. CAS 2020/A/7356; CAS 2017/A/5227; CAS 2015/A/3910)."

151. The Sole Arbitrator was a little surprised that HNK would raise the issue of its own standing. Whilst the Appealed Decision considers whether Karpaty is to be additionally liable for the DRC Decision, the principal beneficiary of such an award is HNK. It no longer only has CPF that it can seek to enforce the DRC Decision against, it has Karpaty too. If Karpaty then looks to have the Appealed Decision overturned on appeal at CAS, then HNK could find itself with only CPF to seek redress against. HNK would surely want to be a party to the CAS appeal, to look to ensure the Appeal is dismissed. It could well be affected by the outcome of the present Appeal and should be heard during this process as a respondent.

152. The Sole Arbitrator understands the Second Respondent’s submissions that the Appealed Decision is a vertical matter, between FIFA and the Appellant, however, its affect is to make the Appellant responsible for the DRC Decision. The DRC Decision is more a horizontal decision and one that clearly interests the Second Respondent. Had the Appellant not included the Second Respondent as a party to this matter, then it may well have complained that it would be affected by the Appeal and its right to be heard violated. Ultimately, the Sole Arbitrator determines that HNK has standing to be sued in this matter.

b. Was the FIFA administration entitled to render the Appealed Decision?

153. The Sole Arbitrator notes that the Appealed Decision, unlike the decision that was the subject of appeal in the CAS 9809 Award, was not issued by the FIFA Disciplinary Committee, rather it was in the form of a letter on FIFA headed notepaper signed by the Head of Judicial Bodies (Adjudicatory). The name and the address of the sender was at the bottom of the letter. This referred to the “*Disciplinary Committee*”, with FIFA’s address.

154. FIFA did not argue that this was from the FIFA Disciplinary Committee, but rather confirmed that it was from the FIFA Administration.

155. Karpaty submitted that the Appealed Decision exclusively cited Article 25(1) of the RSTP as FIFA’s basis to extend the underlying DRC Decision to Karpaty. However, Karpaty pointed out that Article 25(1) of the RSTP is silent on the issue of which FIFA organ is competent to make determinations on sporting succession.

156. FIFA responded by acknowledging that only Article 25(1) of the RSTP was referenced in the Appealed Decision, however, it pointed out that the regulatory framework for making such decision was not restricted to Article 25(1) of the RSTP, rather that Article 25(1) of the RSTP must be read together with Articles 24 of the RSTP and Article 21(7) of the FDC. Article 25(1) was specifically referenced in the Appealed Decision because it extended the effect of the DRC Decision to Karpaty. However, it was Article 21(7) FDC that “*legitimised the assessment of the sporting succession*”. Articles 24 and 25 of the RSTP provide that (a) the consequence of non-compliance with a decision of the Football Tribunal for a club is a transfer ban and (b) such consequence also applies to the sporting successor; however (c) their enforcement must be requested by the creditor. Article 21(7) of the FDC, for its part, provides that FIFA takes care of the subsequent automatic enforcement of such measures, including the underlying assessment of sporting succession.

157. The Sole Arbitrator notes that Article 21(7) of the FDC states (emphasis added):

“Any financial decision issued by the Football Tribunal or FIFA imposing disciplinary measures, such as a ban from registering any new players – either nationally or internationally – or a restriction on playing in official matches, will

be automatically enforced by FIFA and the relevant member associations. FIFA will be competent to deal with any issue relating to the enforcement of such decisions, including but not limited to the potential recognition of the sporting successor and the assessment of potential insolvency and/or bankruptcy proceedings.”

158. FIFA further submitted that the reference to “FIFA” in Article 21(7) of the FDC is wide enough to include the FIFA Administration, who was therefore competent to issue the Appealed Decision. Where the legislator of the FDC intended to limit competency to the Disciplinary Committee exclusively, it has explicitly done so (see: Articles 21(8) and (9) of the FDC).
159. The Sole Arbitrator notes that Karpaty only refer to the RSTP in its submissions on this point. However, questions of sporting succession are now dealt with across two sets of FIFA Regulations, the RSTP and the FDC. Karpaty cannot simply ignore what is set out in the FDC, especially as nowhere in the RSTP is there reference to who carries out the assessment as to whether one club is the sporting successor of another club. That is set out in Article 21(7) of the FDC – “FIFA will be competent...”
160. Whilst Karpaty did not specifically argue that this reference to “FIFA” should be interpreted as being a reference to the FIFA Disciplinary Committee alone, it did argue that the FIFA Administration should not be able to make such assessments. The Sole Arbitrator therefore has considered whether the reference to “FIFA” does allow the FIFA Administration to make the assessment.
161. In its submissions, FIFA directed the Sole Arbitrator to the previous edition of the FDC (the 2019 edition, which changed in 2023 to the current edition) and to the FIFA Circular no. 1833, that accompanied the new edition.
162. The Sole Arbitrator could see that in the previous edition, the relevant Article was Article 15 (4) of the 2019 edition of the FDC:

“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.”
163. The two Articles are not the same. The latest edition states who carries out the assessment, i.e. “FIFA”. However, the latest edition of the FDC did also contain other amendments and these were explained in FIFA Circular no. 1833. Of particular interest is the references to “the Disciplinary Committee” at times (such as Articles 21(8) and (9) of the FDC) and then references to the more generic “FIFA”, in other Articles, including Article 21(7) of the FDC.

164. This does not appear to be some form of mistake by the legislator, rather an intentional distinction, where some tasks are solely for the Disciplinary Committee and others for FIFA as a whole, to include its judicial bodies, but also its administration.
165. The Sole Arbitrator notes that it is not unusual for more than one creditor of an old club, to turn to FIFA, when a new club appears, to seek a decision that the new club is the sporting successor of the old club. These creditors can then look to FIFA to make the new club responsible for awards they may have against the old club.
166. There is some sense in FIFA sending the first of such creditor's case through the FIFA Disciplinary Committee for a grounded decision, but then if additional creditors come forward and are asking for the same determination (that the same new club is the sporting successor of the original debtor club), then FIFA's Administration could consider the first decision, along with any additional submissions and evidence from the specific parties, and then decide if it is sufficiently well informed to issue its own decision on sporting succession, as was done in the case at hand. This would be a procedurally economic process to follow for broadly similar cases.
167. As such, the Sole Arbitrator determines that the FIFA Administration was entitled to assess whether Karpaty was the sporting successor of CPF or not and to issue the Appealed Decision.
168. The Sole Arbitrator can also see that having the same regulation in both the RSTP and the FDC has caused confusion for two of the Parties in the matter at hand. FIFA might consider looking to address the primacy of their regulations and the references used in decisions that flow from its Administration to be clear that it has made an assessment pursuant to the FDC.
- c. *Should the matter at hand be returned to FIFA to consider whether FKH is the sporting successor of CPF?*
169. The Sole Arbitrator notes that, despite Karpaty directing this Appeal against FKH, as one of the Respondents, it had included the following prayers of relief before the CAS:
- “2. *Determine that the FIFA administration was not competent to rule on the issue of sporting succession between CPF Karpaty LTD and Karpaty FC LLC.*
3. *Refer the case back to the FIFA Disciplinary Committee and order it to join FC Karpaty Halych as a party to the disciplinary proceedings.*”
170. Karpaty submitted that the Appealed Decision was “invalid” as FIFA did not join FKH as a co-defendant to the Original Dispute proceedings, despite being

requested to do so by Karpaty on 25 September 2023. Further, neither the RSTP nor the FDC provides rules on the joinder of parties, creating a *lacuna* which FIFA ought to have filled by resorting to Swiss law, namely Articles 81(1) and 82 of the CPC.

171. FIFA denies that it was obliged to involve a third party, such as FKH, into disciplinary proceedings at the request of a party that is not the creditor, relying upon Article 21 of the FDC. Further, it argued that Karpaty had referred to the wrong provisions of the CPC. Article 70(1) of the CPC regulates the mandatory joinder in clear terms:

“If two or more persons are in a legal relationship that calls for one single decision with effect for all of them, they must jointly appear as plaintiffs or be sued as joint defendants”.

172. The Sole Arbitrator notes that the same issue was considered by the CAS panel in the CAS 9809 Award:

“68. In the present case, these arbitration proceedings are international and in their signed Order of Procedure, the Parties have expressly agreed that they were governed by Chapter 12 of the Swiss Private International Law (‘PILA’) ‘to the exclusion of any other procedural law’. Under these circumstances, it is doubtful that the reference to Articles 81 and 82 CCP is relevant and founded.

*69. Nevertheless, the Panel observes that the FIFA regulations do not stipulate that FIFA has the obligation to involve a third party (as in casu is Karpaty Halych) into disciplinary proceedings. In addition, it is well established that there is a mandatory joinder where several persons are jointly the holders or the passive subjects of a single right, so that each party to the legal relationship cannot unilaterally enforce it or modify its content before the courts or be sued individually for these purposes. Actions for the creation, modification or extinction of a right must involve all the parties to the legal relationship in question, to the extent that it is essential for the proceedings to culminate in a single judgment having the force of *res judicata* for all the parties (SFT 4A_201/2014 consid. 3.2). The Panel finds that the Appellant failed to establish both the legal relationship between the latter and Karpaty Halych necessarily calling for a single decision, as well as the effects that the Appealed Decision has on the Third Respondent that would justify its mandatory joinder during the first instance proceedings. Either the Panel will conclude that the New Club is the sporting successor of the Original Debtor, in which case the Appealed Decision must be upheld. Such a decision will not affect Karpaty Halych or any other club. Or the Panel will overturn the Appealed Decision and its award will be final only as far as the New Club is concerned. It will then be up to the Player to proceed against any other successor, whether that successor is Karpaty Halych or any other potential sporting successor. Further, the Panel recalls that, pursuant to Article 21 of the FDC, disciplinary proceedings against the Appellant were initiated at the request of the creditor, and that in accordance*

with such provision, the FIFA DisCo could not have initiated disciplinary proceedings against Karpaty Halych given the absence of a request by the Player in this regard.

70. Against that background, the Panel concludes that the arguments of the Appellant regarding the alleged violation of its right to fair proceedings are unsubstantiated and therefore, they should be dismissed, and that the case shall not be referred back to the FIFA DisCo for a new decision as requested under point 1 of the Appeal Brief's request for relief."

173. The Sole Arbitrator concurs with the position taken by the CAS panel in the CAS 9809 Award. It is for the creditor to turn to FIFA and request it considers whether a certain club is the sporting successor of another, and if Karpaty succeeds with this Appeal, then HNK may then request FIFA to consider the position of FKN. The Sole Arbitrator additionally concurs with the CAS panel's position taken as regards the "*Hapoel Tel Aviv case*" (see: CAS 2020/A/6778, 6779, 6827, 6828, 6829, 6936, 6937, 6967 & 7146). That case was totally different from the case at hand. The old club, rather than the new club, was disciplined by FIFA and the wrong parties appeared before CAS, hence the matter was sent back to FIFA.

174. The Appeal before CAS is heard *de novo* and Karpaty has brought FKH into these proceedings as a Respondent. The Sole Arbitrator notes that the CAS panel in the CAS 9809 Award considered the usual criteria to assess whether Karpaty was the sporting successor of CPF or not and at the same time considered Karpaty's evidence and submissions that it was FKH that was the more likely successor. As such, any procedural rights of Karpaty that might have been violated at first instance proceedings before FIFA, are cured by the present *de novo* appeal procedure before CAS.

175. The Sole Arbitrator will take the same approach below:

d. Is Karpaty the sporting successor of CPF?

176. The Sole Arbitrator notes that there have been dozens of cases over recent years that have examined whether a new club should be treated as the sporting successor of an old club. Whilst the FDC (and the RSTP) sets out certain criteria that can be considered and may help determine this question (namely "*its headquarters, name, legal form, team colours, players, shareholders or stakeholders or ownership and the category of competition concerned*"), this list is not exhaustive and other criteria, such as fans and public perception, transfer of assets and rights, sporting history, coaches, stadiums and logos are also considered. All of these were considered in the CAS 9809 Award.

177. As such, FIFA or any CAS panel can consider a large number of elements before taking a decision. The Regulations do not place any weight on any particular element compared with another. *Some CAS panels, such as in CAS 2020/A/7092,*

helpfully set out what level of weight it placed on each element considered. That was not to bind any future CAS panel, rather to state that on the facts and evidence before it, which criteria it found the most persuasive when making the assessment.

178. It is also not simply a numbers game. So, for example, if there are 6 elements or criteria that point to succession, but only 5 against, must a panel find for succession? The Sole Arbitrator does not think so. There could be a case where relatively few criteria are met, but these are the key ones in the case at hand. For example, if an owner deliberately “pre-packed” their club (a practice where a company is put into formal insolvency and the original owner buys the key assets and business back, without them being marketed to other potential buyers and then leaves the unwanted assets and liabilities behind, to carry on the business the next day, “clean” of those liabilities), one may see the same owner, the best players and the new club in the same league as before, but there could be a new legal form, a new name, a different logo, team colours, it could play at a different stadium, it might abandon the history, etc. That would still seem an obvious successor, in the context of an owner looking to retain the club, now clean of its problems.
179. Another element or criterion that rarely gets mentioned is “time”. In the above pre-pack example, the fact that the old club was put into the insolvency procedure on one day and the new one arose the next day, makes it all the more likely that the two occurrences are linked. Whereas, if an old professional club goes out of business and a new club is set up by the fans of the old club with none of the assets of the old club, but is in the same city, as an amateur club, starting at the very bottom of the footballing pyramid, should it be seen as the sporting successor if it is successful and gains promotion to the professional leagues say 5 years later?
180. The Sole Arbitrator notes that there have been some recent cases (the CAS 9809 Award was one, another was CAS 2023/A/9807) where the old club remains in existence. Karpaty has challenged FIFA’s ability to discipline it, when CPF is still in existence. Some may ask how can a club that is still in existence have a successor? The Sole Arbitrator notes the wording in Article 21(4) of the FDC (emphasis added): “*The sporting successor of a non-compliant party shall also be considered a non-compliant party...*”, which states that both the old club and the new club can be non-compliant and therefore anticipates that the old club may still be in existence. The Sole Arbitrator agrees with the CAS panel in the CAS 9809 Award that it is not a prerequisite that the old club ceases to exist and dismisses the Appellant’s argument.
181. In the case at hand, the Sole Arbitrator notes that CPF was formed in 1963, won the former USSR Cup in 1969, placed third in the Ukrainian championship in 1998 and completed for a place in the group stages of the Europa League in 2010. It used the name “FC Karpaty Lviv”, playing in green and white and using a logo with a golden lion on a green and white shield. From 2018 onwards, CPF started to experience financial problems and was taken to FIFA by a number of creditors.

It assigned its logo to the NGO “Ultras Karpaty” and started to use a different logo.

182. In 2020, the Appellant was formed under the legal name “LIMITED LIABILITY COMPANY FOOTBALL CLUB KARPATY”, and began to play in the Ukrainian amateur league, under the trading name “FC Karpaty Lviv”, with green and white colours and used the logo to that was previously used by CPF, pursuant to a license from the Ultras Karpaty. As noted by the CAS panel in the CAS 9809 Award, the Appellant made certain representations on its website regarding the reason for its formation:

“... as part of a public initiative to revive Karpaty Lviv. The captains of all generations of Karpaty called for the resumption of the club's activities from scratch, the veterans of the team, who in 1963 participated in the creation and formation of the club, won the USSR Cup in 1969. The legendary Lviv football player Stepan Yurchyshyn became the head coach of Karpaty, the head coach was a well-known player of one of the best squads of the team Andriy Tlumak”

183. At the end of that same season, CPF was relegated from the Second Professional League and lost its professional status.
184. At that time FKH changed its logo to one that resembled CPF’s original logo (in that it had a golden lion, but no shield) and CPF assigned a claim it had against River Plate to FKH, along with its youth academy. In 2021, CPF looked to change its name from “FC Karpaty Lviv” to “CPF Karpaty Ltd”.
185. The Appellant had gained promotion and started the 2022/23 season in the Second Professional League.
186. The Sole Arbitrator will follow the path used in the CAS 9809 Award and now will examine the respective elements that constitute the sporting identity of the clubs in question i.e., CPF, the Appellant and FKH, as presented by the Parties and subsequently, he will proceed with his overall assessment.

i. Name

187. Whilst the Appellant states that it is one of many clubs that uses the name “Lviv” in its name, as a result of being based in that City, and there are 8 that use both “Karpaty” and “Lviv”, it is undisputed that CPF used the name “Karpaty Lviv” until March 2021 and the Appellant has used it since its formation in July 2020.
188. FKH, on the other hand, has remained operating under its original name, Karpaty Halych.

ii. Logo

189. It appears undisputed that the Appellant is using the exact same logo that CPF used. CPF transferred ownership to its fans, who licensed the same to the Appellant. It bears the words “*Karpaty Lviv FC 1963*” and appears to have been used since its formation, until the 2020/21 season.
190. The logo used by FKH does have the same golden lion on it, but it does not have the shield with the green and white stripes, not the words “*Karpaty Lviv FC 1963*”.

iii. Team Colours

191. The Sole Arbitrator notes that CPF, the Appellant and FKH all use the colours green and white.

iv. Stadium

192. The Appellant moved from the Shkoliar Stadium to the Ukrayina Stadium, both situated in Lviv, for the start of the 2021/22 season. Neither are owned by the Appellant, rather by the local municipality. CPF also played at the Ukrayina Stadium, until it ceased playing in the 2021/22 season.
193. FKH is located in a different city and plays in a different stadium.

v. Player & coaches

194. Only 1 professional player moved from CPF, after it ceased activities, to join the Appellant. 3 amateur players did too. Whereas, 13 professionals joined FKH. These were free agents, as CPF had ceased activities.
195. Additionally, a youth coach went to FKH.

vi. Sporting History

196. The Respondents directed the Sole Arbitrator (as those involved in CAS 9809 did to the CAS panel) to various statements made by the Appellant. These were set out in the CAS 9809 Award and are repeated here:

- **Press release of 15 October 2020**

“Six captains announced the revival of the legendary team.

In recent years, we have been concerned about the situation with Karpaty Lviv, to which we have given a part of our lives in different periods [...]. We cannot stand aside in this situation. Among us are those who back in 1963 took part in the creation and formation of the club, led the team to victory in the Cup of the former USSR in 1969, won bronze medal in the championship of independent Ukraine in 1998 and fought for a place in

the group stage of the Europa League in 2010. We see no other way out of this situation than the revival of the legendary team from the beginning. Teams with the heart of a lion and always loyal fans [...] ‘Karpaty’ in Lviv – to be!”.

- **Press release of 15 July 2021**

“KARPATY WILL PLAY IN THE TRADITIONAL COAT OF ARMS, AND IN TWO YEARS THEY WILL PLAY IN THE PREMIER LEAGUE

[...]

The club’s coat of arms is a (sic) non – governmental organization that unites Karpaty fans, which has transferred to the club the right to use the Karpaty logo. We thank the fans for their trust. In the coming days, we will submit information about the coat of arms to the football authorities.

[...]

Football club ‘Karpary’ expresses its gratitude to the Lviv Football Association and its head Oleksandr Shevchenko for their maximum assistance in the revival of Lviv ‘Karpaty’.

We invite Lviv fans to the team’s matches to jointly revive the legend of Lviv – the Karpaty football team”.

- **Press release of 17 August 2021**

“On this day, August 17, 1969, Lviv ‘Karpaty’ became the first in our football and still the only team of the lower league to win the Cup of the country. Then it was the USSR Cup. Now the Lviv club is being revived in a new way. And the ‘Lviv Cup’ at Ukrainian stadiums will again sound menacing”.

197. The Appellant did not advance any evidence relating to FKH and similar statements relating to the sporting history of CPF.

vii. Legal form, shareholders & officers

198. It is undisputed that there are no common shareholders or officers of the two LLCs, being CPF and the Appellant.

199. However, the Appellant submitted media reports that stated that Mr Smaliychuk, one of the owners of CPF, had some involvement with FKH during 2021.

viii. Assets & Rights

200. The Sole Arbitrator notes that there was no sale of CPF's business and assets, it still retains the majority of these and is still in existence. It appears that FKH did however acquire a debt due to CPF from River Plate. Karpaty also submitted that FKH took over the academies of CPF. On the other hand, Karpaty dealt with third parties (the Ultras and the Municipality) to obtain the logo of CPF and a right to play at the stadium CPF used to play at.
201. The Sole Arbitrator also notes the comment made by the CAS panel in the CAS 9809 Award:

“Additionally, it remains undisputed that each of the clubs in question maintain their own federative rights and particularly, the federative rights of the Original Debtor [CPF] were never acquired by neither the Appellant nor Karpaty Halych.”

ix. Fans & Public Perception

202. FIFA submitted that Karpaty selected the identical name to CPF which has additional significance when coupled with an identity of logo and team colours; based on publicly available information from Facebook, Karpaty's Wikipedia page and Karpaty's official website it acknowledges CPF's history as its own, bears the CPF's year of foundation in its logo, boasts of CPF's iconic sporting moments as being its own, presents itself as CPF and refers to the trophies and sporting achievements of CPF; in summary it has “[..] maintained what contributes the most to characterisation of a football club, which is the identification of the sporting continuity among the neutral observers (and the fan base)”.
203. Whereas Karpaty submitted that CPF's history has never been accepted as Karpaty's; and the way in which Karpaty represents itself on social media and online is not reflective of the public perception of Karpaty. “[O]bjective onlookers” consider FKH to be CPF's sporting successor, not Karpaty. The only reason the Ultras invited their members to support Karpaty, was because it had entered into the trademark licence with them.

x. Category of competition

204. The position of the 3 teams has been set out in the CAS 9809 Award and is uncontested by the Parties:

“100...during the sporting season 2020/2021, [CPF] participated in the third tier of Ukrainian football, which is also the lowest professional football division in the country. Following the end of said season and due to its sporting results,[CPF] was relegated to the highest amateur division of Ukrainian football, without however having demonstrated any football activities ever since. Further, it was admitted by the Appellant during the hearing that [FKH] has not presented

any football activity since 2022, following the imposition of a military law in Ukraine.

101. On the other hand, the Appellant, which was established in October 2020 (i.e., during the season 2020/2021) participated during said season in the fourth division of Ukrainian football, at the end of which it was promoted to the national categories where it has been participating until today.”

205. The above sets out the position of both the Appellant and FKH as regards the normal criteria used to assess sporting succession. The Sole Arbitrator notes that the Appellant argues that from this he should determine that FKH is the sporting successor of CPF.

206. The Sole Arbitrator notes and agrees with the position taken in the CAS 9809 Award on this issue:

“104...it is the understanding of the Panel that, prior to the cessation of its activities, the owner of [CPF], Mr. Smaliychuk, contemplated, to say the least, to merge Karpaty Halych with [CPF], due to the latter’s financial distress. In attempting such endeavor, Mr. Smaliychuk decided to progressively change certain distinctive features of [CPF], such as the name and the logo which, however, were never transferred to [FKH] but were subsequently adopted by the Appellant. In view of the evidence submitted by the Appellant, the Panel is comfortably satisfied that there was at least an attempt on behalf of Mr. Smaliychuk to transfer the activities of [CPF] to [FKH]. However, such attempt remained incomplete and, in any case, the sole transfer of individual assets (such as players or a monetary claim), however substantial it may be, it is just a single pointer of whether sporting succession has occurred and it cannot prevail over the overall picture which indicates that, ultimately, the activities of [CPF] were assumed by the Appellant and it was only the personal activities of Mr. Smaliychuk that were transferred to [FKH].”

207. Ultimately, whilst there may have been some consideration to merge CPF and FKH, there was no evidence that this completed, rather there is evidence that neither club is actively competing at present.

208. However, the Sole Arbitrator notes that the Appellant adopted the name of CPF, it took a licence of its exact logo from its main fans group, the Ultras (who in turn endorsed the club), it made references on its inception of being formed to revive CPF’s legacy, it chose to play in the same stadium CPF had last played in, it did so in the same green and white colours and it made references to CPF’s history on its own social media sites.

209. The Sole Arbitrator notes, on the other hand, that there are other clubs using the “Karpaty” name, the Appellant claims that the licence of the logo is only temporary, it did not receive any of CPF’s assets, it is a separate legal entity from CPF, with different shareholders and officers, the stadium is one of few that it

could play at, it earned its place in the third tier by promotion, rather than taking CPF's licence and it only engaged 1 professional player that had been with CPF.

210. If the assessment was a numbers game, then perhaps the Appellant would feel that there are more criteria pointing away from sporting succession than there are pointing to it. However, it is not simply a numbers game. Some criteria carry more weight than others. Further, whilst it has now become fairly easy for a new club to cite CAS jurisprudence that seems to support its position, as regards certain criteria, each assessment needs to be made on the factual background of each case.
211. The key to the question whether Karpaty is the sporting successor of CPF, is, in the determination of the Sole Arbitrator, "time". What is noticeable to the Sole Arbitrator is that Karpaty was established as CPF was experiencing financial difficulties. It states it was incorporated to revive CPF's legacy. It took CPF's name ("FC Karpaty Lviv") and CPF then changed its name. It was able to take the exact logo that CPF used, as CPF stopped using it and passed it to the fans. It was not clear why the Appellant would take the logo on a temporary basis. It could have utilised an unregistered logo of its own, if it had wanted to. Perhaps by taking the logo under licence from the Ultras, it would also be able to count on their support. It decided at that time to move to the stadium that CPF had last played in. It was established using the same colours as CPF. All of these things happened within a short period of time, whilst the Appellant appropriated the sporting history of CPF through its own social media postings. As the old club faded away, the new club was set up with enough key components of the old club, to be the sporting successor. It would not have taken the Appellant much to avoid succession, but it embraced it, doubtless to attract the fan base of CPF.
212. The Sole Arbitrator agrees with the CAS panel in the CAS 9809 Award. The Appellant is the sporting successor of CPF. To conclude, the Sole Arbitrator notes the finding of that CAS panel:

"103...Given the importance that is attached to the public perception in cases of sporting succession, the question therefore arises as for the reasons the Appellant went to such lengths to appear as the successor of [CPF] if it did not want to appear as such in the minds of the public. On the contrary, it remains undisputed between the Parties that [FKH] never sought to appropriate the sporting history of [CPF], nor did it attempt to portray itself as its successor."

e. What are the consequences of the sporting succession for Karpaty?

213. Article 21 (4) of the FDC provides, *inter alia*, as follows:

"The sporting successor of a non-compliant party shall also be considered a noncompliant party and thus subject to the obligations under this provision".

214. As such, the Sole Arbitrator concludes that the Appellant, as the sporting successor of the CPF, shall comply with the ruling in the Appealed Decision.

B. Conclusion

215. The Appeal of Karpaty is dismissed and the Appealed Decision upheld in full.

216. All other prayers or requests for relief are dismissed.

IX. COSTS

(...).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 31 October 2023 by Karpaty FC LLC against the decision issued on 12 October 2023 by the Fédération Internationale de Football Association is dismissed.
2. The decision issued on 12 October 2023 by the Fédération Internationale de Football Association is confirmed.
3. (...).
4. (...).
5. (...).
6. All other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 27 March 2025

THE COURT OF ARBITRATION FOR SPORT

Mark Andrew Hovell
Sole Arbitrator