

CAS 2021/A/8331 Victor Piturca v. Romanian Football Federation & U Craiova 1948 SA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition

Sole Arbitrator: Mr Espen Auberg, Attorney-at-Law, Oslo, Norway

Ad hoc Clerk: Mr Dennis Koolaard, Attorney-at-Law, Arnhem, the Netherlands

in the arbitration between

Mr Victor Pițurcă, Romania

Represented by Mr Mincu Paul Alexandru, Attorney-at-Law, Bucharest, Romania

- Appellant -

and

Romanian Football Federation, Bucharest, Romania

Represented by Mr Paul-Filip Ciucur, Attorney-at-Law, Bucharest, Romania

- First Respondent -

and

U Craiova 1948 SA, Craiova, Romania

Represented by Mr Dan Idita, Attorney-at-Law, Craiova, Romania

- Second Respondent -

* * * * *

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

I. THE PARTIES

1. Mr Victor Pițurcă (the “Appellant” or the “Coach”) is a football coach of Romanian nationality.
2. The Romanian Football Federation (the “First Respondent”, the “RFF” or the “FRF”) is the national football association of Romania, with its registered office in Bucharest, Romania. The RFF is affiliated to the *Fédération Internationale de Football Association* (“FIFA”).
3. U Craiova 1948 SA (the “Second Respondent” or the “Club”) is a football club with its registered office in Craiova, Romania. The Club is affiliated to the RFF.
4. The RFF and the Club are hereinafter jointly referred to as the “Respondents” and together with the Coach as the “Parties”.

II. INTRODUCTION

5. The present arbitration concerns a dispute about the execution/alleged failure to comply with a decision rendered by the National Dispute Resolution Chamber (“NDRC”) of the RFF (the “NDRC Decision”) in a domestic employment-related dispute between Fotbal Club U. Craiova S.A. (the “Original Debtor”) and the Coach, which was confirmed by the Appeal Committee of the RFF on appeal (the “AC Decision”).
6. Following an alleged sporting succession of the Original Debtor by the Club, the Coach requested the Disciplinary and Ethics Committee of the RFF (the “RFF Disciplinary Committee”) to sanction the Club for a failure to comply with the NDRC Decision, but this request was dismissed (the “DC Decision”). The RFF Appeal Committee confirmed the DC Decision on appeal (the “Appealed Decision”).
7. The Coach is challenging the Appealed Decision, whereas the Respondents are seeking a confirmation thereof.

III. FACTUAL BACKGROUND

8. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the Parties, the hearing and the evidence examined in the course of the proceedings.¹ This background information is given for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.

¹ Several of the documents submitted by the Parties and referred to in this Award contain various misspellings: for sake of efficiency, they are not all identified with a “[sic]”.

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

A. Background Facts

9. On 10 March 2011, the RFF NDRC issued the NDRC Decision in a contractual dispute between the Coach and the Original Debtor, with the following operative part:

“Dismisses the objection of lack of jurisdiction of the [RFF NDRC] in the resolution of the case as unfounded.

Dismisses the objections of inadmissibility and lack of interest as unfounded.

Admits in part the club brought forward by the [Coach] against the [Original Debtor].

Declares that the contractual relationship between [the Coach] and the [Original Debtor] is terminated as of 12.01.2011, at the unilateral will of the [Original Debtor], through no fault of the coach.

Orders the [Original Debtor] to pay the [Coach] the following amounts:

- *164,893 Euro net, by way of outstanding salary entitlements for the period 24.09.2010-12.01.2011;*
- *1,800,000 EUR net by way of the settlement allowance provided for in Article J(2)(a) of the Contract;*
- *5,000,000 euro net by way of damages due under Article L item a) of the Contract.*

Dismisses the other claims of [the Coach] as unfounded.”

10. On 20 April 2011, following appeals lodged against the NDRC Decision by the Original Debtor as well as the Coach, the RFF Appeal Committee issued the AC Decision, confirming the NDRC Decision, with the following operative part:

“Dismisses as unfounded the appeals brought by [the Original Debtor], with its registered office in [...] and [the Coach], residing in [...], against the [NDRC Decision]”

11. No appeal was lodged against the AC Decision before the Court of Arbitration for Sport (“CAS”).
12. At the end of the football season 2010/11, the Original Debtor was relegated from the first to the second league on sporting merits.
13. In 2014, the Original Debtor, after having been in a state of insolvency, was declared bankrupt and was disaffiliated from the RFF. The Original Debtor is currently still in the liquidation stage of the bankruptcy procedure.

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

14. On 14 July 2018, the Club became affiliated to the RFF and, according to the Coach, *“participated in the first football level organized by RFF respectively in the third league”*.
15. On 24 February 2020, the Coach requested the RFF Disciplinary Committee to sanction the Club for failing to comply with the financial obligations set forth in the NDRC Decision.
16. On 14 October 2020, the RFF Disciplinary Committee issued DC Decision, with the following operative part:

“Dismisses as unfounded the challenges of inadmissibility and limitation of the substantive right of action raised by [the Club].

Dismisses the claim brought by [the Coach] against the debtor [the Club] as unfounded.”

17. On 12 August 2021, following appeals lodged against the DC Decision by the Coach as well as the Club, the RFF Appeal Committee issued the Appealed Decision, confirming the DC Decision, with the following operative part:

“Dismisses the appeals as unfounded.”

18. On 26 August 2021, the grounds of the Appealed Decision were notified, providing, *inter alia*, as follows:

“In considering whether the appeal lodged by [the Coach] is well-founded or unfounded, the Appeals Board will take into account that the [RFF Disciplinary Committee] has been seised by the [Coach] with a request for enforcement of the final and irrevocable [NDRC Decision], a request also based on the provisions of Article 37 of the RSTJF.

According to art. 37 of the RSTJF, the enforcement of final and enforceable judgments shall be carried out at the request of the creditor as follows: a. the debtor shall be required to fully perform his obligations established by the judgment within 30 days from the date of the communication of the judgment that has become final and enforceable and to prove the execution by sending documents to the secretary of the commission in this regard; b. When the creditor of the unfulfilled obligation is notified, the secretary of the CNSL shall draw up a report indicating the existing situation and attaching the final and enforceable judgment given in the case, documents which shall be forwarded by the secretary of the [RFF Disciplinary Committee].

It is obvious that the procedure established by Art. 37 of the RSTJF creates a means of coercion, in sporting terms, for the enforcement of final/irrevocable decisions. in reality, it is not a direct enforcement procedure, but can lead, indirectly, to the enforcement of these decisions, the [RFF Disciplinary Committee] having to apply disciplinary sanctions to the debtor until such time as the respective debt is paid.

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

In order to successfully trigger such a disciplinary sanction procedure (and not direct enforcement), the creditor must prove, among other things, that several conditions have been met:

- *Proof of the creditor status of the debtor who would be subject to this disciplinary procedure, through the application of specific disciplinary sanctions*
- *The existence of a final/irrevocable enforceable judgment by which the debtor has been required to perform something towards the creditor*

Thus, Article 37 of the RSTJF requires the proof as a prerequisite of a binding relationship between creditor and debtor, having as legal source a final / irrevocable enforceable judgment.

In support of the request for enforcement, [the Coach] attaches the final [NDRC Decision], which orders the [Original Debtor] to pay to the [Coach] a total amount of 6,968,893.00 euros. From the operative part of this judgment it appears that the debtor of the payment obligation is [the Original Debtor] and not [the Club], the club which is the subject of the enforcement application filed on 24.02.2020.

Consequently, [the Coach] is not the creditor of [the Club], but of [the Original Debtor], since the binding relationship required by Article 37 of the RSTJF has not been proven.

It is true that the [Coach] maintains that the FRF's jurisdictional commissions apply, in the resolution of cases, only the FRF, UEFA, FIFA statutes, regulations and directives, but they are also required to apply the legislation in force in Romania.

With reference to the final judgment of the [NDRC Decision], the Appeals Board finds that there have been no changes to the subjects of the obligatory relationship, being the same creditor and the same debtor. At the same time, no change of debtor (from the [Original Debtor] to the [the Club]) has occurred, as required by law, nor has an express legal provision been identified establishing joint and several liability of [the Original Debtor] with [the Club].

On the other hand, as it resulted from the claims of the parties and from the documents submitted in the case, [the Club] is registered with the claim resulting from the [NDRC Decision] in the creditor's estate of [the Original Debtor], the insolvency proceedings being in progress. The recovery, change, extinguishment, execution, etc. of the claim invoked will follow the legal regime set by the insolvency law, no legal provision in this matter "transferring" the payment obligation to [the Club].

Nor can the appellant's contention that [the Club] is the sporting successor of the [Original Debtor] be accepted. Even if there is such a takeover of the

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

sports record (which is not analysed and decided by the Board of Appeal in the present case), this takeover does not imply a transfer of claims to the [Club]. The way in which obligations are transferred is determined by Romanian law (the new civil code or, as the case may be, insolvency law) which must be applied by the jurisdictional committees, and this legislation does not allow the solution proposed by the [Coach] to be adopted.

Moreover, the [RFF Disciplinary Committee] has legally and thoroughly resolved the case on the merits in this respect, and the Appeals Board will have to adopt the reasoning on p. 4-5 of [the DC Decision]. In conclusion, since the requirements of Article 37 of the RSTJF are not met, the Appeals Board will dismiss the appeal lodged by [the Coach] as unfounded.

As regards the appeal brought by [the Club], the appeal concerns the decisions delivered in the operative part of [the DC Decision] on the objections of inadmissibility and time barring.

In that regard, the Board of Appeal finds, in summary, that the grounds for annulment relied on are as follows:

- *The board on the merits did not examine the case in the light of the principle of electra una via*
- *[The Coach] is a creditor of [the Original Debtor], and in the present case it is sought to obtain a ruling that [the Club] is the debtor*
- *[The Coach] has also lodged an application with another court to enforce [the NDRC Decision], constituting case No 12049/63/2007*
- *The board on the merits did not examine the case in the light of the provisions of Article 4(4). 1 and 4 with reference to Articles 46-48 of the RD*
- *The general limitation period was interrupted on 24.05.2011 and expired on 24.05.2016*

As regards the [RFF Disciplinary Committee's] decision on the objection of inadmissibility, it is legal and regular. The procedural path chosen by [the Coach], namely the submission of a request for enforcement based on the provisions of Article 85 of the RD in relation to Article 37 of the RSTJF, is a procedure recognised, as such, by the regulatory texts invoked, and is therefore not an "exception of nonadmissibility" leading to a decision of inadmissibility.

As regards the decision of the [RFF Disciplinary Committee] with regard to the exception of the statute of limitations of the right to request the application of disciplinary sanctions, the board of the merits correctly applied Article 46(1) of the RD, establishing that this right arose on 14 July 2018, and not from May 2011, by reference to the procedural framework established by the

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

claimant, namely his claim that the request for enforcement is formulated on the basis that the alleged debtor is [the Club], being the entity against which the application of disciplinary sanctions is requested.

For these arguments, the Appeals Board dismisses the appeal brought by [the Club] as unfounded.”

IV. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

19. On 16 September 2021, the Coach filed a Statement of Appeal with CAS, challenging the Appealed Decision, in accordance with Articles R47 and R48 of the 2021 edition of the CAS Code of Sports-related Arbitration (the “CAS Code”).
20. On 17 September 2021, the CAS Court Office invited the Appellant to complete his appeal further to Article R48 CAS Code.
21. On 22 September 2021, the Coach nominated an arbitrator, thus requesting that the dispute be referred to a three-member panel of arbitrators.
22. On 24 September 2021, the CAS Court Office initiated this arbitration proceeding and informed the Parties that the Club had also filed an appeal against the Appealed Decision. The Parties were invited to indicate whether they agreed with a consolidation of the present procedure with *CAS 2021/A/8330 U Craiova 1948 SA v. Victor Piturca*, further to Article R52 CAS Code.
23. On 4 October 2021, the Coach objected to a consolidation of the proceedings, while the Respondents did not respond within the deadline granted.
24. On 6 October 2021, the Coach filed his Appeal Brief in accordance with Article R51 CAS Code.
25. On 13 October 2021, the CAS Court Office noted that the Respondents were understood to agree to the appointment of a jointly appointed arbitrator as part of the panel.
26. On 17 November 2021, the CAS Court Office informed the Parties that the procedure *CAS 2021/A/8330 U Craiova 1948 SA v. Victor Piturca* was being terminated.
27. On the same date, 17 November 2021, the Club noted that the Coach had not paid the entire advance of costs and therefore requested that the appeal be deemed withdrawn.
28. On the same date, 17 November 2021, the CAS Court Office informed the Parties that the Respondents had not paid their shares of the advance of costs and that the Coach would therefore be invited to pay the Respondents’ shares and be granted a deadline by which to do so. Furthermore, it was indicated that the conditions triggering the termination of this proceeding for the non-payment of the advance of costs further to Article R64.2 CAS Code were not applicable at such stage of the proceedings.

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

29. On 13 December 2021, the Coach requested the appointment of a sole arbitrator instead of a three-member panel.
30. On 20 December 2021, the CAS Court Office informed the Parties that, despite being invited to, neither of the Respondents had responded with respect to the Coach's request for the appointment of a sole arbitrator and that it would therefore, in accordance with Article R50 CAS Code, be for the President of the CAS Appeals Arbitration Division or her Deputy, to decide on the number of arbitrators.
31. On 21 December 2021, the CAS Court Office informed the Parties that the Deputy President of the CAS Appeals Arbitration Division had decided to submit the present case to a sole arbitrator.
32. On 22 December 2021, the RFF filed its Answer in accordance with Article R55 CAS Code, *inter alia*, objecting to the admissibility of the appeal, the RFF's standing to be sued and the Coach's lack of standing to appeal. Despite requests for extension of its deadline to file an Answer, the Club did not file an Answer.
33. On 29 December 2021, the CAS Court Office granted the Coach a deadline to file a Reply with respect to the RFF's objection against the admissibility of the appeal, the RFF's standing to be sued and the Coach's lack of standing to appeal, further to Article R55 CAS Code.
34. On 24 January 2022, the CAS Court Office informed the Parties that it had not received a Reply from the Coach within the deadline granted.
35. On 27 January 2022, the Coach informed the CAS Court Office that the letter from the CAS Court Office dated 29 December 2021 "*remained unanswered by unintentional omission as it was received in the holiday season*" and submitted his Reply.
36. On 1 February 2022, the CAS Court Office informed the Parties that the Deputy President of the CAS Appeals Arbitration Division, pursuant to Article R54 CAS Code, had decided that the Sole Arbitrator appointed to decide the case was constituted as follows:

Sole Arbitrator: Mr Espen Auberg, Attorney-at-Law, Oslo, Norway
37. On 4 February 2022, the RFF objected to the admissibility of the Coach's Reply dated 27 January 2022.
38. On 8 February 2022, the CAS Court Office informed the Parties that it would be for the Sole Arbitrator to decide on the admissibility of the Coach's Reply.
39. On 9 February 2022, the CAS Court Office informed the Parties as follows:

"It is noted that the [Coach] and the [RFF] have made several evidentiary requests/requests for document production, as follows:

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

- [The Coach's] *Requests*:
 1. *The “Memorandum of Association” of [the Club], filed by the RFF on 27 July 2018 in front of FIFA Disciplinary Committee in the referenced case 150574 PST (Josh Mitchell vs. U Craiova 1948 S.A.).*
 2. *All the FIFA Decisions notified to the RFF, where [the Club] was sanctioned as the sporting successor of the non-compliant [Original Debtor].*
 3. *The complete file settled by its jurisdictional bodies (RFF Disciplinary Committee and RFF Board of Appeal) in which the appealed decision was issued.*

With respect to the above requests, on behalf of the Sole Arbitrator and further to Articles R44.3 and R57 [CAS Code], the [RFF] is ordered to produce the above documents by 21 February 2022 or to explain if such documents are not in its possession by the same date.

- [The RFF's] *Requests*:
 1. *“[T]o order the [Coach] ... to submit to the case file the decision of the Dolj Tribunal [the “Dolj Tribunal Decision”] related to the [Original Debtor] by which a state authority was obliged to pay to the [Original Debtor] approximately 13 million euros and also to clarify the role of [the Coach] with regard to that decision.”*

With respect to the above requests, on behalf of the Sole Arbitrator and further to Articles R44.3 and R57 of the Code, the [Coach] is ordered to produce the above decision and to clarify his role with respect to that decision by 21 February 2022.” (emphasis omitted by Sole Arbitrator)

40. On 18 February 2022, the Club provided the CAS Court Office with five documents that it requested “*to be examined – as part of the documentary evidence*”. The Club maintained the following in this respect:

“[A]ccording to such documentary evidence, [the Coach] enforced in the civil courts the [NDRC Decision], which he sent to the civil courts, thus removing it from the circuit of the sports-related courts, and he is imminently close to enforcing such a judgment. An order by the CAS for us to pay for the second time the amount which is the subject matter of the Judgment no. 41/10th of March 2011 manifestly represents an unjust enrichment of the [Coach].” (emphasis omitted by the Sole Arbitrator)

41. On 24 February 2022, the CAS Court Office informed the Parties that, despite its invitation to the Coach and the RFF to comment on the Club's letter dated 18

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

February 2022, it had not received any communication within the deadline granted and that it would therefore be for the Sole Arbitrator to consider.

42. On 25 February 2022, the Coach provided the CAS Court Office with four documents that it considered to be responsive to the Sole Arbitrator's order dated 9 February 2022, together with an explanation. The Coach maintained that an appeal was lodged against the Dolj Tribunal Decision. The Coach further indicated that he was one of the creditors enlisted in the bankruptcy procedure of the Original Debtor, which, pursuant to CAS jurisprudence, is an admissibility criterion in procedures regarding sporting succession. The Coach further maintained that if the Club would comply with its payment obligations with respect to the Original Debtor, the concept of legal subrogation applies. The bankruptcy proceedings are only relevant if the Coach is or was paid, but this is not the case.
43. On the same date, 25 February 2022, with respect to the documents submitted by the Club on 18 February 2022, the CAS Court Office informed the Parties, in light of the fact that neither of the other Parties had objected, that the Sole Arbitrator decided that such documents were admitted to the case file.
44. On 16 March 2022, the CAS Court Office informed the Parties that, despite an invitation to do so, the Respondents did not comment on the documents produced by the Coach on 25 February 2022. Furthermore, it was noted that the RFF had not complied with the Sole Arbitrator's order dated 9 February 2022 within the extended deadline granted.
45. On 25 March 2022, in the absence of a response from the RFF, the CAS Court Office granted the RFF a new deadline to comply with the Sole Arbitrator's order dated 9 February 2022, while noting the content of Article 9.6 of the IBA Rules on the Taking of Evidence in International Arbitration, which provides:

“If a Party fails without satisfactory explanation to produce any Document requested in a Request to Produce to which it has not objected in due time or fails to produce any Document ordered to be produced by the Arbitral Tribunal, the Arbitral Tribunal may infer that such document would be adverse to the interests of that Party.”

46. On the same date, 25 March 2022, the RFF provided the CAS Court Office with the documents it considered to be responsive to the Sole Arbitrator's order dated 9 February 2022, suggesting that the Coach and the Club assist in the translation thereof.
47. On 7 April 2022, following an objection from the Club, the CAS Court Office informed the Parties as follows:

“On behalf of the Sole Arbitrator, and further to Article R29 and R44.1 [CAS Code], in light of the circumstances of this case – including that all of the Parties are from Romania – and having considered the Parties' respective positions in this regard as applicable, the [RFF] is invited to produce by 22 April 2022 the documents requested in CAS' correspondence

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

dated 9 February 2022 and 25 March 2022 that are in the Romanian language in their original language, that the [RFF] did not already submit on 25 March 2022. Subsequently, all of the Parties will be invited to submit certified translations of any of the documents that they consider to be relevant to the proceeding. Only the documents for which certified translations have been provided will be taken into consideration by the Sole Arbitrator.” (emphasis omitted by the Sole Arbitrator)

48. On 21 April 2022, the RFF and the Club provided certain certified translations of the documents produced by the RFF on 25 March 2022 to the CAS Court Office.
49. On 10 May 2022, the Club informed the CAS Court Office that it agreed to the admissibility of the documents produced by the RFF on 25 March 2022, but that it considered it relevant that all documents and evidence relied upon in the proceedings at national level (i.e. case files 63/CR/2021 and 32/CD/2020) be produced.
50. On 11 May 2022, the Coach informed the CAS Court Office that he considered the documents produced by the RFF on 21 April 2022 relevant, but the documents produced by the Club on the same date not.
51. On 12 May 2022, the Club, *inter alia*, informed the CAS Court Office that the Coach specifically asserts that he intended to recover the amount in dispute twice, from the Club and from the Original Debtor, which it considered to be “*manifestly illegal and essentially unfounded*”. The Club also informed the CAS Court Office of a case (file no. 2258/P/2019) “*brought before the Special Section – Crimes within the Justice system – attached to the General Prosecutor’s Office, a case file directed against the [Coach] for fraud and prejudice to [the Original Debtor]*”.
52. On 16 May 2022, the CAS Court Office informed the Parties that the Coach and the RFF had not provided the CAS Court Office with any comments concerning the Club’s request dated 10 May 2022 within the deadline granted to do so.
53. On 18 May 2022, the Coach responded to the substance of the Club’s letter dated 12 May 2022, maintaining, *inter alia*, that “*given the fact that no payment was made, there is no certainty that such payment will be made and there is no denial that the [Club] is the successor club of the [Original Debtor]*”, that the Club makes a “*false statement regarding the fact that the [Coach] seeks a double payment. [...] [I]f the [Club] – as the sporting successor – will pay the [Coach], he will de jure subrogate in the [Coach’s] rights and will take its place in the insolvency procedure [...]*” and that “[...] *if [the Coach] will cash the debt from the original debtor, following the bankruptcy proceedings, he will no longer be able to enforce the same decision against the successor club ([the Club]) because the payment obligation will no longer exist*”.
54. On 2 June 2022, the CAS Court Office informed the Parties that Mr Dennis Koolaard, Attorney-at-Law, Arnhem, the Netherlands, had been appointed as *Ad hoc* Clerk.
55. On 7 June 2022, on behalf of the Sole Arbitrator, the CAS Court Office informed the Parties as follows:

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

“Document Production

It is recalled that on 10 May 2022, the [Club] requested production of ‘all the documents which formed the subject matter of case files 63/CR/2021 and 32/CD/2020.’

The Parties are informed on behalf of the Sole Arbitrator that the [Club’s] above request is dismissed. The reasons for the Sole Arbitrator’s decision will be provided in the final Award.

*In addition, for the avoidance of doubt, the Sole Arbitrator understands that all other requests for document production made by the Parties have been addressed, unless informed otherwise by **10 June 2022**.*

[The Coach’s] 27 January 2022 Reply concerning the [RFF’s] lack of standing to be sued

With reference to the CAS Court Office letter dated inter alia 8 February 2022, the Parties are informed that the [Coach’s] Reply concerning the [RFF’s] lack of standing to be sued dated 27 January 2022 is deemed inadmissible. The reasons for the Sole Arbitrator’s decision will be provided in the final Award.”

56. On 8, 10 and 14 June 2022 respectively, upon being invited by the CAS Court Office to express their preference, the RFF and the Club indicated that their preference was for a hearing to be held, whereas the Coach indicated that the Award should be issued solely based on the Parties’ written submissions.
57. On 15 June 2022, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to hold a hearing by videoconference, further to Articles R44.2 and R57 CAS Code.
58. On 23 June 2022, the Coach provided the CAS Court Office with two Awards issued in the proceedings *CAS 2020/A/6757 U Craiova 1948 S.A. v. Michael Baird & Fédération Internationale de Football Association (FIFA)* and *CAS 2020/A/7240 U Craiova 1948 S.A. v. Josip Mišić & Fédération Internationale de Football Association*. The Coach maintained that it had “*been definitely resolved by CAS, through which was established the quality of sporting successor of the [Club] in relation to [the Original Debtor]*”. The Coach requested that both Awards be admitted on file, because they had been issued recently, after the date for submitting evidence in the present matter.
59. On 4 July 2022, on behalf of the Sole Arbitrator, the CAS Court Office informed the Parties that, in light of the absence of objections from the Respondents against the admissibility of the two CAS Awards provided by the Coach on 23 June 2022, the two CAS Awards were admitted on file.
60. On 26 July and 16 August 2022 respectively, the Coach and the RFF returned a duly signed copy of the Order of Procedure provided to them by the CAS Court Office on

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

26 July 2022. Despite six requests before, during and after the hearing, the Club did not return a signed copy of the Order of Procedure.

61. On 19 August 2022, a hearing was held by video-conference. At the outset of the hearing, the Parties confirmed that they had no objection to the constitution and composition of the arbitral tribunal.
62. In addition to the Sole Arbitrator, Ms Kendra Magraw, CAS Counsel, and Mr Dennis Koolaard, *Ad hoc* Clerk, the following persons attended the hearing:
 - a) For the Appellant:
 - 1) Mr Mincu Paul Alexandru, Counsel.
 - b) For the First Respondent:
 - 1) Mr Paul-Filip Ciucur, Counsel.
 - c) For the Second Respondent:
 - 1) Mr Dan Idita, Counsel;
 - 2) Mr Gigel Preoteasa, the Club's Secretary General and Interpreter.
63. No witnesses or experts were heard.
64. At the outset of the hearing, the Coach and the RFF confirmed that they had no objection to Mr Preoteasa serving as interpreter during the hearing, provided that the sound would be left on while interpreting. No objections were raised in this respect during the remainder of the hearing.
65. The Parties were given full opportunity to present their cases, submit their arguments and answer the questions posed by the Sole Arbitrator.
66. Before the hearing was concluded, the Parties confirmed that they had no objection to the procedure adopted by the Sole Arbitrator and that their right to be heard had been respected.
67. The Sole Arbitrator confirms that he carefully heard and took into account in his decision all of the submissions, evidence and arguments presented by the Parties, even if they have not been specifically summarised or referred to in the present arbitral Award.

V. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF

68. The following summary of the Parties' positions is illustrative only and does not necessarily comprise every submission advanced by the Parties. The Sole Arbitrator confirms, however, that he has carefully considered all the submissions made by the Parties, whether or not there is specific reference to them in the following summary.

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

A. The Appellant

69. The Coach's submissions, in essence, may be summarised as follows:

- The RFF Appeal Committee wrongly applied the *lex sportiva*, mainly the refusal to enforce the provisions of the FIFA regulations concerning the responsibility of the sporting successor and the applicable FIFA/CAS jurisprudence. The RFF disciplinary bodies refused to apply Article 15(4) FIFA Disciplinary Code, without proper legal basis.
- The RFF Appeal Committee states that Article 15(4) FIFA Disciplinary Code lacks support / contradicts national law and that the Coach was already involved in the insolvency proceedings of the Original Debtor. Both arguments are invoked without proper legal basis.

Failure to respect FIFA and RFF Statutes and regulations

- The RFF Appeal Committee primarily considered Romanian law, while it should primarily have applied the FIFA and RFF Statutes and regulations, and only in addition Romanian law.
- Pursuant to Articles 15(4) and (5) FIFA Disciplinary Code, the sanctions arising from a failure to respect decisions also applies to the sporting successor of a non-compliant party.
- Pursuant to Article 71(1) FIFA Disciplinary Code, associations are obliged to adapt their own disciplinary provisions to the general principles of the FIFA Disciplinary Code.
- Although the RFF Disciplinary Code has a similar disciplinary provision as Article 15 FIFA Disciplinary Code, it does not cover the situation of successor clubs. Therefore, it can be said that there are omissions in the RFF Disciplinary Code.
- Pursuant to Article 123 RFF Disciplinary Code, if there are omissions, the decision-making bodies "*will take the decision in accordance with the provisions of the FIFA and UEFA regulations*".
- Also, Article 15 FIFA Disciplinary Code forms part of the principle of *lex sportiva* and is mandatory for the RFF and its members.

The Coach's listing on the creditors' list of the Original Debtor

- As opposed to being a circumstance which would render the application inadmissible, the insolvency/bankruptcy/liquidation of the Original Debtor is considered, in the jurisprudence of CAS, to be a condition for the admissibility of the application against the sporting successor. Only the creditor's passiveness entitles the court to reject an application against a sporting successor.

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

- The criteria to assess whether an entity is to be considered a sporting successor and also a non-compliant debtor are clearly provided for in Article 15(4) FIFA Disciplinary Code. The fact that the Original Debtor still exists under a different legal entity does not render the application inadmissible. This is confirmed in CAS jurisprudence.
- The allegation in the Appealed Decision that the “*legislation does not allow the transfer of debt*”, cannot be considered as a correct evaluation of the case and motivation in this matter.
- Moreover, it is unclear why a transfer of debts between clubs is not allowed by Romanian legislation, while the RFF Statutes contain similar provisions that provide for the possibility of imposing sanctions on individuals beyond their personal liability, such as Article 22(3) RFF Statutes, when it concerns debts of disaffiliated members towards the RFF.

The enforcement of the NDRC Decision

- All prerequisites for enforcement of the NDRC Decision are satisfied, i.e.: i) the Coach has a decision regarding a financial right against a club; ii) there is a non-compliant party, as the creditor of the NDRC Decision was not paid; and iii) there is a sporting successor of the non-compliant party.
- The Club expressly recognised that it is the sporting successor of the Original Debtor.
- Furthermore, in the DC Decision and the Appealed Decision, the Club was declared to be the sporting successor of the Original Debtor. This aspect was never challenged or appealed. This element therefore obtained a *res judicata* effect.
- Even if the Sole Arbitrator considers it necessary to make his own assessment of whether the Club is the sporting successor of the Original Debtor, all prerequisites are satisfied. This has also been confirmed by FIFA Disciplinary Committee in a decision concerning the Club and the Original Debtor and another creditor.

70. On this basis, the Coach submits the following requests for relief in his Appeal Brief:

“I. To modify in part the Decision no. 62 passed on 12 August 2021 by the Board of Appeal of the Romanian Football Federation and to admit the request of Mr Victor Pițurcă with respect to the enforcement of the Decision no 41 from 10.03.2011 issued by the National Dispute Resolution Chamber (“NDRC”) of RFF, with the following consequence:

- *U Craiova 1948 S.A. is found guilty of failing to comply with the NDRC Decision no 41 from 10.03.2011 and fined with a penalty of 7.000 Lei (Romanian Currency);*

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

- *U Craiova 1948 S.A. is granted a final grace period of five days to pay Mr. Victor Pițurcă the following debt stipulated in the NDRC Decision no 41 from 10.03.2011:*
 - *164.893 EUR net (one hundred sixty-four thousand eight hundred and ninety three euros net) – as due salaries for the period 24.09.2010 – 12.01.2011;*
 - *1.800.000 EUR net (one million eight hundred thousand euros net) as signing fee;*
 - *5.000.000 EUR net (five million euros net) as compensation;*

II. To order the Respondents to pay the Appellant – Mr. Victor Pițurcă all the costs generated to him by the entire procedure (CAS costs, attorney fee, translations, etc);” (emphasis in original)

B. The First Respondent

71. The RFF’s submissions, in essence, may be summarised as follows:

The RFF’s lack of standing to be sued

- There is no legal provision that could entitle the Coach to sue the RFF, even as a second respondent. This is demonstrated by CAS jurisprudence. The Coach also brought no evidence whatsoever that might trigger the liability of the RFF for the Appealed Decision.
- Even though the Coach could argue that it is his interest to have a decision against the RFF in order to oblige the RFF to impose sanctions on the Club, instead of on the Original Debtor, it is obvious that such argument is false, because the RFF is in any event obliged to respect and enforce any CAS Award (irrespective of whether it is a party or not).
- Finally, pursuant to Article 28(12) and Article 57(2) RFF Statutes, the judicial bodies are independent from the RFF. Accordingly, the RFF cannot be held responsible and/or liable for a decision of the judicial bodies.

The Coach’s lack of legal interest to lodge this appeal

- Based on Article 29 of the Romanian New Civil Procedure Code (the “NCPC”), the Coach should have a particular and specific interest in the case. However, as noted in the DC Decision and Appealed Decision, the Coach already chose a procedural path against the Original Debtor, namely the insolvency case file no. 12049/63/2007 pending before the insolvency courts of law.
- Consequently, the Coach lacks any personal, direct and legitimate interest.

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

- Also, the Romanian Supreme Court ruled that a claimant only has a justifiable interest to annul a general norm in case his/her own actions are impossible to execute and cannot lead to the intended outcome. However, the Coach's interest and outcome can be reached by via the insolvency procedure.

The RFF Appeal Committee's observance of the RFF Statutes and regulations

- The RFF has no interest in the outcome of the litigation between the Coach and the Club.
- However, without prejudice to all the above, two things cannot be overlooked:
 - There are no legal or regulatory provisions in place to allow a debt towards a legal entity to be imposed to another legal entity;
 - The fact that there is a big chance that the Coach recovers the full amount of his credit from the Original Debtor through the bankruptcy procedure.
- Because of this, no sanction can be imposed on the Club, even if it has to be considered as the sporting successor of the Original Debtor, "*until the bankruptcy proceedings are not finalised and the sums that will be at that point in the bankruptcy account of the [Original Debtor] will not be distributed to the creditors*".

72. On this basis, the RFF submits the following requests for relief in its Answer:

- A. to establish that the Romanian Football Federation, as Second Respondent, lacks standing to be sued in this procedure;*
- B. to establish that the Appellant lacks interest to sue in this procedure;*
- C. to consider this appeal inadmissible with respect to the principle "electa una via";*
- D. to dismiss the appeal lodged by the Appellant against the challenged Decision Decision no. 62 from 12 August 2021 rendered by the Board of Appeal of the Romanian Football Federation;*
- E. to maintain and consider the challenged Decision undisturbed;*
- F. to order the Appellant to pay all costs, expenses and a contribution to the legal fees relating to the arbitration proceedings before CAS encumbered by the First Respondent." (emphasis in original)*

C. The Second Respondent

73. The Club did not file an Answer (and therefore no requests for relief), but its oral submissions at the hearing roughly resembled the submissions of the RFF.

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

VI. JURISDICTION

74. Article R47 CAS Code provides as follows:

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

75. Article 57(7) RFF Statutes provides as follows:

“Decisions rendered by the FRF Board of Appeal may be appealed only to the Lausanne Court of Arbitration for Sport, in accordance with the law.”

76. The jurisdiction of CAS is confirmed by the Order of Procedure duly signed by the Coach and the RFF. While the Club did not sign the Order of Procedure, it did not raise any objection to the jurisdiction of CAS.

77. It follows that CAS has jurisdiction to adjudicate and decide on the present dispute.

VII. ADMISSIBILITY

78. Article R49 CAS 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.”

79. Article 75(4) RFF Statutes provides as follows:

“The appeal must be lodged with the Lausanne Court of Arbitration for Sport within 21 days from the communication of the decision.”

80. The Appealed Decision was issued on 12 August 2021 and notified on 26 August 2021. The Coach filed his Statement of Appeal on 16 September 2021. Accordingly, the appeal was filed within the time limit for appeal of 21 days. The appeal complied with all other requirements of Article R48 CAS Code, including the payment of the CAS Court Office fee.

81. It follows that the appeal is, in principle, admissible.

82. However, the Respondents (the First Respondent in its Answer and the Second Respondent in oral argument at the hearing) object to the admissibility of the appeal on the basis of the principle *“electa una via non datur recursus ad alteram”*. According to the Respondents, since the Coach already chose a procedural path, namely the one regulated by Romanian Insolvency Law against the Original Debtor,

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

pending before the Brasov Tribunal, he is barred from starting proceedings against the Club before the RFF disciplinary bodies with the goal of obtaining the same debt.

83. The Sole Arbitrator finds that the mere fact that the Coach pursues enforcement of the NDRC Decision before domestic courts against the Original Debtor does not bar him from lodging a disciplinary complaint against the Club and/or trying to enforce the NDRC Decision against the Club before the competent bodies of the RFF.
84. Indeed, as matters stand, there is no certainty that the Coach can enforce the NDRC Decision against the Original Debtor through the insolvency proceedings, whereas waiting to lodge a disciplinary complaint until the proceedings against the Original Debtor are terminated would potentially time bar the Coach from initiating legal action against the Club because of the applicable statute of limitations.
85. In any event, as acknowledged by the Coach throughout the proceedings, he does not seek to collect the amount awarded to him in the NDRC Decision twice, but argues that if the Club would pay him, the Club would assume the Coach's position as creditor of the Original Debtor in the liquidation proceedings.
86. The Sole Arbitrator finds that this question does not have to be answered in a definite manner in the context of the admissibility of the Coach's appeal, because the Respondents' argument is a matter of substance, that may potentially result in the dismissal of the Coach's appeal but does not result, if upheld, in the inadmissibility thereof.
87. Consequently, the Sole Arbitrator finds that the Coach's appeal is admissible.

VIII. APPLICABLE LAW

88. Article R58 CAS 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.”

89. The Coach maintains that the applicable rules and regulations are the Statutes, regulations and directives of FIFA and the RFF.
90. The RFF submits that the present case is governed by the RFF Statutes and regulations and, where applicable, Romanian law.
91. The Sole Arbitrator finds that, pursuant to Article R58 CAS Code, the present dispute is primarily to be decided based on the RFF Statutes and the various rules and regulations of the RFF. Since the Appealed Decision is issued by the RFF Appeal

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

Committee, Romanian law is subsidiarily applicable. The RFF Statutes and regulations refer to the application of rules and regulations of FIFA and UEFA, and also of Romanian law. The interchange between these different sets of rules in the specific matter at hand is discussed in more detail below.

IX. PRELIMINARY ISSUES

A. The Club’s request for document production

92. On 7 June 2022, on behalf of the Sole Arbitrator, the CAS Court Office informed the Parties as follows:

“Document Production

It is recalled that on 10 May 2022, the [Club] requested production of ‘all the documents which formed the subject matter of case files 63/CR/2021 and 32/CD/2020.’

The Parties are informed on behalf of the Sole Arbitrator that the [Club’s] above request is dismissed. The reasons for the Sole Arbitrator’s decision will be provided in the final Award.” (emphasis in original)

93. As background, it is recalled that pursuant to Article R55 CAS Code, the Club was invited, within a deadline of twenty days from receipt of the Appellant’s Appeal Brief, to submit an Answer to CAS, including, *inter alia*, “any exhibits or specification of other evidence upon which the Respondent intends to rely”.

94. For whatever reason, the Club did not file an Answer in the present proceedings.

95. On 10 May 2022, after its deadline to file an Answer had already expired, the Club requested the production of “*all the documents which formed the subject matter of case files 63/CR/2021 and 32/CD/2020*”.

96. The Coach and the RFF did not respond to the Club’s request.

97. Article R56 CAS Code provides as follows:

“Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to [...] specify further evidence on which they intend to rely after the submission of the appeal brief and or the answer.”

98. The Sole Arbitrator finds that the Club’s request submitted on 10 May 2022 is a request to produce new exhibits and that the silence of the Coach and the RFF cannot be considered as their consent to the Club’s request.

99. The only remaining ground based on which the Club’s request could be granted is the existence of exceptional circumstances, further to Article R56 CAS Code.

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

100. The Sole Arbitrator finds that the Club failed to establish exceptional circumstances based on which its late request to produce new documents would have to be granted. In particular, the Sole Arbitrator does not see any reason why the Club could not have raised its request in its Answer (had it filed one) or before.

101. Consequently, the Club's request for document production was dismissed.

B. The admissibility of the Coach's Reply concerning the RFF's alleged lack of standing to be sued

102. On 7 June 2022, on behalf of the Sole Arbitrator, the CAS Court Office informed the Parties as follows:

“With reference to the CAS Court Office letter dated inter alia 8 February 2022, the Parties are informed that the [Coach's] Reply concerning the [RFF's] lack of standing to be sued dated 27 January 2022 is deemed inadmissible. The reasons for the Sole Arbitrator's decision will be provided in the final Award.”

103. As background, it is recalled that on 29 December 2021, following receipt of the RFF's Answer, the CAS Court Office invited the Coach to file, within 15 days, his Reply to the RFF's arguments concerning the RFF's alleged lack of standing to be sued, the Coach's alleged lack of standing to appeal and the alleged inadmissibility of the appeal.

104. While not an objection to jurisdiction, the Sole Arbitrator considered it appropriate that the Coach was granted an opportunity to respond to the afore-mentioned elements of the RFF's Answer, and that the letter from the CAS Court Office dated 29 December 2021 was therefore in accordance with Article R55 paragraph 5 CAS Code, which states as follows:

“When an objection to CAS jurisdiction is raised, the CAS Court Office or the Panel, if already constituted, shall invite the parties to file written submissions on the matter of CAS jurisdiction. The Panel may rule on its jurisdiction either in a preliminary decision or in an award on the merits.”

105. The Coach failed to file his Reply within the deadline given by the CAS Court Office, but sent an email with an enclosed letter on 27 January 2022 regarding the afore-mentioned elements of the RFF's Answer, requesting that such submission be taken into consideration.

106. The Sole Arbitrator notes that, in his letter dated 27 January 2022, the Coach acknowledged that he did not file his Reply in a timely manner:

“I must admit that the CAS letter from 29.12.2021 remained unanswered by unintentional omission as it was received during the holiday season.”

107. It is therefore not in question that the Coach's Reply was filed late, but rather whether the Coach's Reply should nonetheless be admitted on file.

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

108. Pursuant to Article R56 CAS Code, as referred to above, the parties shall not be authorized, after the submission of the appeal brief and of the answer, to, *inter alia*, supplement or amend their requests or their arguments, unless the parties agree otherwise or the President of the Panel, in this case the Sole Arbitrator, orders otherwise on the basis of exceptional circumstances.
109. By email dated 4 February 2022, the RFF requested that the Coach's Reply submitted on 27 January 2022 should not be taken into consideration in the present procedure as it was submitted late; the Club did not take any position in this respect.
110. Following the RFF's objection to the admissibility of the Coach's Reply, there is clearly no agreement of the Parties.
111. The only remaining ground based on which the Coach's Reply could be admitted on file is due to exceptional circumstances, in accordance with Article R56 CAS Code.
112. The Sole Arbitrator finds that the Coach's reliance on the argument that the CAS Court Office letter dated 29 December 2021 was issued during the holiday season is not a valid excuse for failing to submit the Reply within the time limit granted.
113. Even if the offices of the Coach's legal representative were closed during the holiday season – of which no evidence was provided – the CAS Court Office letter 29 December 2021 should surely have been noted before the expiry of the 15-day deadline to file a Reply. The Coach presented no excuse as to why it was allegedly not possible to take note of the CAS Court Office letter dated 29 December 2021 on or around 13 January 2022, several days after the end of the holiday season.
114. Consequently, the Coach's Reply filed on 27 January 2022 was deemed inadmissible.

X. THE MERITS

A. The Main Issues

115. The main issues to be resolved by the Sole Arbitrator are the following:
 - i. Does the RFF have standing to be sued?
 - ii. Does the Coach have standing to challenge the Appealed Decision?
 - iii. Did the Club violate Article 85 RFF Disciplinary Code?
116. The Sole Arbitrator will address these issues in turn.
 - i. *Does the RFF have standing to be sued?*
117. The question of who has standing to be sued is a question of the merits, implying that if the RFF's standing to be sued is denied, then the appeal, albeit admissible, must be dismissed with respect to the RFF (CAS 2020/A/7144, para. 87 of the abstract published on the CAS website, with further references to SFT 128 III 50 of 16 October 2001, at 55; SFT 4A_424/2008 of 22 January 2009, para. 3.3; CAS 2008/A/1639, para. 3).

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

118. The RFF claims that there is no legal provision that entitles the Coach to sue the RFF, as the RFF cannot be held liable for the decisions of its judicial bodies.
119. According to CAS doctrine “*a party has standing to be sued only if it has some stake in the dispute because something is sought against it, and is personally obliged by the dispute at stake*” (MAVROMATI/REEB, *The Code of the Court of Arbitration for Sport: Commentary, Cases and Materials*, 2015, p. 411, nr. 65).
120. The Sole Arbitrator notes that the RFF was not a party in the proceedings before the RFF Disciplinary Committee or the RFF Appeal Committee. The present appeal arbitration proceeding concerns the Coach’s claim before the RFF’s disciplinary bodies that the Club should be sanctioned for failing to comply with the NDRC Decision.
121. The Sole Arbitrator agrees with what has been stated in legal doctrine about the different approaches regarding vertical and horizontal disputes, as also endorsed in CAS jurisprudence:

“Recent jurisprudence points towards a more nuanced approach, according to which there is room to differentiate in respect of the standing to be sued pursuant to article 75 SCC depending on what kind of decision is being appealed. Various reasons speak in favour of this (flexible) approach’ (HAAS U., Standing to Appeal and Standing to be sued, in International Sport Arbitration, Bern 2018, p. 53-88, para. 49).

This flexible approach consists in differentiating between decisions entailing a vertical element (“vertical disputes”) and decisions entailing a horizontal element (“horizontal disputes”) whilst acknowledging that some decisions may entail both vertical and horizontal elements.

According to Prof. Haas:

‘43. [...] Vertical disputes, are characterized by the fact that the association issuing the decision thereby shapes, alters or terminates the membership relation between itself and the member concerned. Vertical disputes typically arise in disciplinary, eligibility or registration contexts’.” (CAS 2020/A/7144, paras. 91-93 of the abstract published on the CAS website)

122. As set forth in CAS jurisprudence, in horizontal disputes the party with standing to be sued is normally the contractual counterpart of the claimant/appellant, whereas in vertical disputes the party with standing to be sued is, in principle, only the federation that issued the challenged decision:

“The criteria for awarding legal standing to be sued should not differ in vertical or horizontal disputes. In vertical disputes the association has (sole) standing to be sued because it is the party primarily concerned and the best representative of the interests of all other stakeholders affected by the dispute. The other stakeholders – in principle – only have a general and

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

abstract interest that the associations' rules and regulations be applied to their respective co-member in an equal, consistent and correct way. This general interest – in principle – will be represented and taken care of by the association. Thus, there is no need – in vertical disputes – to direct the appeal against any other party than the association. Applying the same principles to horizontal disputes leads inevitably to the conclusion that the (sole) party having standing to be sued is the Respondent.” (CAS 2015/A/3910, as cited in CAS 2017/A/5359, para. 65 of the abstract published on the CAS website)

123. As the RFF is the entity competent to potentially impose sanctions on the Club on the basis of the RFF Disciplinary Code, the present appeal arbitration proceeding is primarily of a vertical nature. Indeed, the presence of the RFF as a party in these proceedings is a mandatory prerequisite for the potential imposition of sanctions on the Club. On this basis, the Sole Arbitrator finds that the RFF has standing to be sued.
124. To the extent the RFF argues that it cannot be held liable for decisions of its judicial bodies, the Sole Arbitrator finds that such argument is to be dismissed. The RFF NDRC, the RFF Disciplinary Committee and the RFF Appeal Committee are all internal bodies that form part of the RFF organisation as a whole. The Coach cannot call the RFF Appeal Committee or its individual members as respondents in the present proceedings. Rather, the entity with standing to be sued is the RFF.
125. Consequently, the Sole Arbitrator finds that the RFF has standing to be sued.

ii. Does the Coach have standing to challenge the Appealed Decision?

126. CAS jurisprudence provides as follows with respect to standing to sue or the standing to appeal:

“According to CAS jurisprudence, a party has standing to sue or to appeal if it has a direct and legitimate interest, be it financial or sportive, in the relevant decision being annulled (CAS 2013/A/3140, para. 8.3; see also: CAS 2008/A/1674; CAS 2010/A/2354; DE LA ROCHEFOUCAULD E., Standing to sue, a procedural issue before the CAS, CAS Bulletin 1/2011, p. 12 ff.). Similarly, according to the Swiss Federal Tribunal, the party appealing a decision “must have an interest worthy of protection to the annulment of the decision under appeal. The interest worthy of protection is the practical usefulness that the Appellant would derive from his appeal being admitted, preventing him from economic, moral, material or other injury, which the decision under appeal would cause him (...). The interest must be present, namely it has to exist not only at the time the appeal is filed but also when the judgment is issued” (4A_620/2015, consid. A.1.1.)” (CAS 2018/A/6044, para. 78 of the abstract published on the CAS website)

127. The RFF maintains in its submissions that the Coach “lacks any personal, direct and legitimate interest” to lodge the present appeal, because the Coach’s interest in enforcement of the NDRC Decision can be achieved by following the insolvency procedure against the Original Debtor.

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

128. The Sole Arbitrator finds that this argument is to be qualified as a challenge of the Coach's standing to appeal.
129. A complex question (mentioned above already in the context of the admissibility of the appeal) is whether the Club may substitute for the Coach in the liquidation proceedings of the Original Debtor. If this would not be possible, the Club may have a legitimate argument in saying that the Coach should first try to enforce the NDRC Decision against the Original Debtor, before potentially turning to the Club, in accordance with the principle "*electa una via non datur recursus ad alteram*".
130. Furthermore, in view of the afore-mentioned conclusion that the present proceeding is primarily of a vertical nature, another somewhat delicate question is whether the Coach has standing to challenge the Appealed Decision, because the question of whether or not sanctions are to be imposed on the Club is primarily a matter between the RFF and the Club.
131. While this specific argument was not raised by the RFF or the Club, the Sole Arbitrator notes that it has been held in CAS jurisprudence that the question of standing to sue is to be reviewed *ex officio*:
- "The question of standing to sue or to be sued shall be reviewed ex officio by CAS' panels (cf. CAS 2012/A/2906)." (CAS 2018/A/5799, para. 113 of the abstract published on the CAS website)*
132. CAS panels have at times been reluctant to accept the standing of victims to appeal disciplinary decisions involving offenders:
- "[...] the mere fact that an individual is a victim does not as such establish a standing to appeal a sanction imposed on the offender. Such an interpretation would have far reaching consequences and could lead to the possibility of appeals from a potentially very large group of persons. Under such an interpretation, for instance, any player who is injured by a dangerous tackle or is bitten by another player would be able to appeal if he were unhappy with the sanction imposed on the offender." (CAS 2015/A/3874, para. 182 of the abstract published on the CAS website)*
133. However, the Coach's position as creditor of the Original Debtor pursuant to the NDRC Decision that should, according to the Coach, have been settled by the Club, may afford the Coach a sufficiently personal and specific interest to be entitled to challenge the Appealed Decision.
134. In view of the complexity of these issues, because the Sole Arbitrator finds that the Club did not violate Article 85 RFF Disciplinary Code and that the Coach's appeal is therefore in any event to be dismissed as will be set forth in more detail below, and for the sake of efficiency, the Sole Arbitrator does not consider it necessary to answer the afore-mentioned questions.
135. In this respect, the Sole Arbitrator agrees with the view set forth in CAS jurisprudence:

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

“Intriguing as the discussion may be, the Panel finally considers that it is not required to adjudicate and decide on the issue of the Claimants’ standing to sue, because it finds that the Claimants’ claim shall, in any event, be dismissed on the merits, as set out in more detail below.

The plea relating to the lack of standing to sue, is – according to settled jurisprudence of the CAS (cf. CAS 2009/A/1869; CAS 2015/A/3959; CAS 2015/A/4131) and the SFT (see SFT 128 II 50, 55) – a question related to the merits of the case. Accordingly, the Panel finds that the issue of the Claimants’ standing to sue does not necessarily have to be addressed first. Indeed, an arbitral tribunal is free to determine how to address the sequence of the different substantive questions at stake in legal proceedings. The Panel notes that this approach is consistent with CAS jurisprudence (CAS 2016/A/4903, para. 81-82 of the abstract published on the CAS website).” (CAS 2017/O/5264, 5265 & 5266, paras. 188 and 189 of the abstract published on the CAS website)

136. Consequently, the Sole Arbitrator does not consider it necessary to determine whether the Coach has standing to challenge the Appealed Decision.

iii. Did the Club violate Article 85 RFF Disciplinary Code?

137. The Coach requested the RFF to sanction the Club in accordance with Article 85 RFF Disciplinary Code. This provision, headed “*Refusal or omission to apply the judgment*”, provides as follows:

“1. The club which does not pay another person or the FRF / LPF / AJF shall perform the obligations laid down in [...] within 30 days from the date of communication of the decision, a sum of money, in whole or in part, although there is in this respect a final decision of a jurisdictional body of the FRF / LPF / AJA and/or TAS:

- a. will be obliged to pay a penalty from 3,000 to 7,000 lei and will be granted a term of grace of 5 days for the full execution of payment obligations;*
- b. it will be prohibited the right to transfer and / or legitimize players as a transferring club and points will be deducted. The decrease of points is applied on those accumulated in championship of the highest category team, following that, every 15 days payment delay calendars, calculated from the expiry date of the grace period, to the team in question to be deducted 2 points each.*
- c. The sanctions shown in letter b) are applied for 90 days, after which the club team respectively will be excluded from all ongoing competitions and relegated to the category lower.*

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

2. *If the club does not fulfil its payment obligation within 30 days of demotion the highest category team, the club will be excluded from all FRF / LPF / AJF competitions.”*

138. As a starting point, the Sole Arbitrator notes that the NDRC Decision pronounces that the Original Debtor is to pay a certain amount to the Coach. There is no reference to the Club being required to pay the Coach, which is logical because the Club did not yet exist in its current form at that point in time.
139. The Coach relies on the concept of “sporting succession” in arguing that the NDRC Decision equally applies to the Club and that the Club is therefore liable to pay an amount of EUR 6,968,893 to the Coach and that it must be sanctioned for failing to do so.
140. While one may question whether it is appropriate for a disciplinary body to make such determination as opposed to an adjudicatory body like the RFF NDRC, the Sole Arbitrator finds that, in order to potentially determine that the Club is required to comply with the NDRC Decision, a link is required between the Original Debtor and the Club. Such link could potentially be established on the basis of the concept of “sporting succession”.
141. However, the concept of “sporting succession” is not recognised in the RFF Disciplinary Code as such, which sets apart the dispute in the matter at hand from the precedents relied upon by the Coach, i.e. *CAS 2020/A/6757 U Craiova 1948 S.A. v. Michael Baird & Fédération Internationale de Football Association (FIFA)* and *CAS 2020/A/7240 U Craiova 1948 S.A. v. Josip Mišić & Fédération Internationale de Football Association*, which decisions are based directly on the FIFA Disciplinary Code.
142. The non-recognition of the concept of “sporting succession” in the RFF Disciplinary Code is acknowledged by the Coach, but he argues that the concept is nonetheless applicable based on the subsidiary application of the FIFA Disciplinary Code and/or based on the application of general principles set forth in the *lex sportiva*. More specifically, based on Article 123 RFF Disciplinary Code, the Coach maintains that the absence of a reference to the concept of “sporting succession” in the RFF Disciplinary Code is an omission that is to be filled by direct application of the regulations of FIFA.
143. While the Sole Arbitrator finds that it is not *per se* impossible to hold the Club liable for a violation of Article 85 RFF Disciplinary Code through the indirect application of the FIFA Disciplinary Code, it is certainly a complicating factor that there is no direct legal basis in the RFF Disciplinary Code to hold one legal entity liable for a debt incurred by another legal entity.
144. Indeed, in order to sanction someone a clear legal basis is required: *nulla poena sine lege scripta et certa*. This legal maxim is applied in CAS jurisprudence, although sometimes a distinction is made between the application thereof in criminal law and in a disciplinary context:

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

“The purpose of disciplinary sanctions is to influence the behaviour of its members, in particular to encourage them not to engage in certain unwanted activity by threatening to sanction them. In order to achieve this goal, there must be clarity for all stakeholders on what constitutes misconduct. Furthermore, equal treatment of all members is only possible if there is legal certainty with respect to the contents of the rule. In order to protect the aforementioned interests, criminal law follows the principles of nullum crimen, nulla poena sine lege scripta et certa, pursuant to which no sanction may be imposed unless there is an express provision describing in sufficient clarity and specificity, not only the misconduct but also the applicable sanction. The Panel finds that this principle is applicable by analogy to disciplinary proceedings.

[...]

While acknowledging the applicability of the above criminal principle in general terms, this Panel wishes to emphasize that not the same high criminal law standards with respect to legal certainty (“Bestimmtheitsgrundsatz”) apply to disciplinary proceedings. In the view of the Panel it suffices that the misconduct covered by the respective rule and the sanction applicable to such misconduct be determinable by interpretation” (CAS 2017/A/5272, paras. 62 and 64 of the abstract published on the CAS website).

145. The FIFA Disciplinary Code is certainly not directly applicable in the matter at hand, because the matter is of domestic nature and is primarily governed by the RFF Disciplinary Code, which has been confirmed in CAS jurisprudence:

“By referring to the application of the FIFA Disciplinary Code, as well as the regulations of CAF, the Appellant seems to imply that these rules are directly applicable to the case at hand. The Panel considers that this approach is erroneous. Indeed, in the context of international football, the National Federations, such as SAFA, and their members, such as the NSL, have certainly the general obligation to respect the regulations of their supervisory bodies (such as CAF and FIFA, see art. 2.6 and 13.1.1 of the SAFA Constitution), but this does not mean that all the regulations implemented by these bodies are directly applicable to the National Federations and their members. On the contrary, FIFA leaves a certain discretion to the National Federations to deal with their affairs, in particular with regard to the purely national matters. [...]” (CAS 2014/A/3276, para. 114 of the abstract published on the CAS website)

146. The translation of Article 123 RFF Disciplinary Code into English provided by the Coach, which remained uncontested by the Respondents, headed *“The purpose of the disciplinary regulation. Omissions”*, provides, *verbatim*, as follows:

“1. This Regulation shall govern each subject to which the text or meaning relates its provisions.

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

2. *If there are any commissions [sic] in this regulation, the bodies taking a the decision shall be taken in accordance with the provisions of the FIFA and UEFA regulations.*
 3. *In the judgment of the cases, the decision-making bodies shall be guided by the solutions pronounced already in the doctrine of sport and jurisprudence.*
 4. *In solving the cases, the provisions of the common law are applied in addition.*
 5. *In the absence of the rules and practice referred to in this Article, the decision-making bodies will take decisions in relation to the general regulations assimilated from the common law, taking into account take into account [sic] the principle of specificity of sports law.”*
147. The Sole Arbitrator finds that Article 123 RFF Disciplinary Code is clear in the sense that, in case of omissions in the RFF Disciplinary Code, the application of FIFA and UEFA regulations take precedence over the application of domestic law and the concept of *lex sportiva*.
148. However, the Sole Arbitrator finds that the Coach failed to establish that the lack of reference to the concept of “sporting succession” in the RFF Disciplinary Code is an omission rather than a deliberate choice of the RFF.
149. An “omission” is defined by the Merriam-Webster online dictionary as “*something neglected or left undone*”.
150. The concept of “sporting succession” was introduced in Article 15(4) FIFA Disciplinary Code on 15 July 2019 and provides as follows:
- “The sporting successor of a non-compliant party shall also be considered a non-compliant party and thus subject to the obligation 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.”*
151. Article 71(1) of the same 2019 edition of the FIFA Disciplinary Code provides as follows:
- “The associations are obliged to adapt their own disciplinary provisions to the general principles of this Code for the purposes of harmonising disciplinary measures. [...]”*
152. The applicable edition of the RFF Disciplinary Code entered into force on 15 July 2014, i.e. prior to the entry into force of the 2019 edition of the FIFA Disciplinary Code.

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

153. Notwithstanding Article 71(1) FIFA Disciplinary Code, the RFF has apparently not deemed it necessary to enact a new edition of the RFF Disciplinary Code and introduce the concept of “sporting succession” in its rules. At the time of the entry into force of the RFF Disciplinary Code in July 2014, the introduction of the concept of sporting succession in the FIFA Disciplinary Code could not have been foreseen by the RFF.
154. There are no indications that the lack of provisions introducing the concept of sporting succession in the RFF Disciplinary Regulations is the result of omissions by the RFF. On the contrary, Article 15(4) FIFA Disciplinary Code regulates a particular situation and cannot be considered as a general principle of the FIFA Disciplinary Code, or at least insufficient evidence has been provided in this respect by the Coach to warrant such conclusion. It is therefore up to the national associations, including the RFF, to determine whether they want to include provisions on sporting succession in their national disciplinary regulations, if this is possible under the relevant domestic legislation. Since the RFF has not included any provision on sporting succession, it must be considered as a deliberate choice of the RFF not to introduce the concept of sporting succession, which falls within the discretion afforded to it by FIFA, rather than an omission.
155. Considering these circumstances, the Sole Arbitrator finds that sanctioning the Club for a violation of Article 85 RFF Disciplinary Code by supplementing it with Article 15(4) FIFA Disciplinary Code, a rule that was introduced by FIFA about 5 years later and over which the RFF had no direct influence, is in violation of the principle *nulla poena sine lege scripta et certa*.
156. The Sole Arbitrator took note of recent jurisprudence of the SFT where the following was held:

“[...] *The mechanism of sporting succession does not constitute, strictly speaking, a sanction but a principle by virtue of which the sporting successor is required to answer for the various commitments and obligations of the club it has succeeded. In this case, the sanction that could be imposed on a club in the event of refusal to comply with a decision that already existed at the time of the facts in dispute, since it was provided for by art. 64 para. 1 of the old [FIFA Disciplinary Code (“FDC”)] edition. As for the mechanism of sporting succession, although this has certainly been codified in art. 15 par. 4 of the 2019 edition of the FDC, it had already been established for several years by CAS case law (cf. in this regard, VITUS DERUNGS, Insolvency of Football Clubs and Sporting Succession: Financial Claim Proceedings before FIFA and the Court of Arbitration for Sport, 2022, n. 115). Moreover, the Appellant himself concedes, in his appeal brief, that the mechanism in question had its source in the said case law when the relevant facts took place. Under these conditions, it is inappropriate to argue, for the first time before the Federal Court, that it was neither foreseeable nor understandable for him to anticipate the sanctions likely to be pronounced against him.*” (SFT 4A_246/2022, consid. 6.3.2 – Free translation into English)

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

157. Different from the situation described in the afore-cited decision of the SFT, the Sole Arbitrator finds that the Club could not have reasonably foreseen that the concept of sporting succession could be applicable to it. The concept of sporting succession has never been incorporated in the rules and regulations of the RFF and the CAS jurisprudence issued before the introduction of the concept of sporting succession in the FIFA Disciplinary Code concerned situations governed by the various rules and regulations of FIFA, not in a domestic Romanian context.
158. The Sole Arbitrator also considers it to be problematic to decide that the Club is liable to comply with the NDRC Decision and sanction it for failing to do so in one and the same decision, depriving the Club of the possibility to voluntarily comply with the NDRC Decision once it is determined that the Club is bound by such decision, before sanctions are imposed on it.
159. The Coach argues that dismissing his appeal would result in a discriminatory treatment between domestic and international creditors, for the latter can profit from the competence of the FIFA Disciplinary Committee and the concept of sporting succession, while he could not. The Sole Arbitrator cannot deny that the treatment of domestic and international creditors may potentially be different. However, this is a consequence of the fact that their legal relationships with the Club are governed by different regulatory frameworks, i.e. the FIFA Disciplinary Code versus the RFF Disciplinary Code, and the RFF's choice not to incorporate the concept of sporting succession in its own rules. By entering into an employment relationship with the Club, the Coach accepted that his legal relationship with the Club would be primarily governed by the rules and regulations of the RFF, as opposed to those of FIFA.
160. Consequently, the Sole Arbitrator finds that the Club did not violate Article 85 RFF Disciplinary Code and that the DC Decision and the Appealed Decision are to be confirmed.
161. To conclude, the Sole Arbitrator wishes to emphasise that he did not decide on the question whether the Club is the sporting successor of the Original Debtor and whether the RFF NDRC could potentially decide that the Club is jointly liable with the Original Debtor to settle the Original Debtor's debt to the Coach, but that he solely decided that, under the present circumstances, the Club did not violate Article 85 RFF Disciplinary Code, with the consequence that no sanction is to be imposed on the Club.

B. Conclusion

162. Based on the foregoing, the Sole Arbitrator finds that:
- i. The RFF has standing to be sued.
 - ii. It is not necessary to determine whether the Coach has standing to challenge the Appealed Decision.
 - iii. The Club did not violate Article 85 RFF Disciplinary Code.
 - iv. The Appellant's appeal against the Appealed Decision is dismissed.
 - v. The Appealed Decision is confirmed.
163. All other and further motions or prayers for relief are dismissed.

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

XI. COSTS

(...).

* * * * *

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 16 September 2021 by Victor Pițurcă against the decision rendered on 12 August 2021 by the Appeal Committee of the Romanian Football Federation is dismissed.
2. The decision rendered on 12 August 2021 by the Appeal Committee of the Romanian Football Federation is confirmed.
3. (...).
4. (...).
5. All other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 25 April 2023

THE COURT OF ARBITRATION FOR SPORT

Espen Auberg
Sole Arbitrator

Dennis Koolgaard
Ad hoc Clerk