

**CAS 2022/A/9044 Christian Pougă v. CS Sporting Juniorul Vaslui & FIFA**

**ARBITRAL AWARD**

delivered by the

**COURT OF ARBITRATION FOR SPORT**

sitting in the following composition:

Sole Arbitrator: Prof. Luigi Fumagalli, Attorney-at-Law, Milan, Italy

Clerk: Ms Alexandra Veuthey, Attorney-at-Law, Lausanne, Switzerland

between

**Christian Pougă**, Boulogne-sur-Mer, France

Represented by Mr William Sternheimer, Ms Donna Bartley and Ms Ellen Kerr, Attorneys-at-Law in Lausanne, Switzerland, and London, United Kingdom

**Appellant**

and

**CS Sporting Juniorul Vaslui**, Vaslui, Romania

Represented by Ms Anca Mitiucă, Attorney-at-Law in Bucharest, Romania, and Ms Antonela Violeta Rusu, President of the Club

**First Respondent**

and

**Fédération Internationale de Football Association (FIFA)**, Zurich, Switzerland

Represented by Mr Alexander Jacobs and Mr Saverio Paolo Spera, FIFA Litigation Department

**Second Respondent**

## **I. INTRODUCTION**

1. This appeal is brought by Mr Christian Pouga against CS Sporting Juniorul Vaslui and the Fédération Internationale de Football Association. It aims to challenge the decision of the FIFA Disciplinary Committee of 26 August 2021, notified with grounds on 8 July 2022, dismissing the charges submitted by Mr Pouga against the club CS Sporting Juniorul Vaslui.

## **II. PARTIES**

### **A. The Appellant**

2. Mr Christian Pouga (“Mr Pouga” or the “Appellant” or the “Player”), is a professional football player of Cameroonian nationality.

### **B. The First Respondent**

3. CS Sporting Juniorul Vaslui (“Sporting Vaslui” or the “First Respondent”) is a professional football club affiliated to the Romanian Football Federation (the “RFF”), which is in turn a member association of FIFA.

### **C. The Second Respondent**

4. The Fédération Internationale de Football Association (“FIFA” or the “Second Respondent”) is the international governing body of football. FIFA is an association under Articles 60 et seq. of the Swiss Civil Code with its headquarters in Zürich, Switzerland.

## **III. FACTUAL BACKGROUND**

5. Below is a short summary of the relevant facts and allegations based on the Parties’ written and oral submissions and evidence. Additional facts and allegations 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 this Award only to the submissions and evidence he considers necessary to explain his reasoning.
6. On 9 August 2010, the Player and Sporting Club S.A. Vaslui (“SC Vaslui” or the “Original Debtor”) entered into an employment contract (the “Employment Contract”) valid as of the date of its signature until 30 June 2013.
7. On 10 June 2011, the Player unilaterally terminated the Employment Contract for an alleged just cause.

8. On 13 June 2011, the Player lodged a claim with the FIFA Dispute Resolution Chamber (the “FIFA DRC”) against SC Vaslui for outstanding remuneration in the amount of EUR 33,073 and compensation for breach of contract in the amount of EUR 356,111. SC Vaslui opposed the Player’s claim and filed a counterclaim.
9. On 12 March 2015, the FIFA DRC rendered the operative part of its decision (the “FIFA DRC’s Decision”) as follows:
  - “1. *The claim of the Claimant/Counter-Respondent 1, Christian Pougă, is partially accepted.*
  2. *The counterclaim of the Respondent/Counter-Claimant, Sporting Club S.A. Vaslui, is rejected.*
  3. *The Respondent/Counter-Claimant is ordered to pay the Claimant/Counter-Respondent 1, within 30 days as from the date of the notification of this decision, outstanding monies in the amount of EUR 59,386.61 plus 5% interest p.a. as from 11 June 2011 until the date of the effective payment.*
  4. *The Respondent/Counter-Claimant is ordered to pay the Claimant/Counter-Respondent 1, within 30 days as from the date of the notification of this decision, compensation for breach of contract in the amount of EUR 112,766 plus 5% interest p.a. as from 11 June 2011 until the date of the effective payment.*
  5. *In the event that the amounts due to the Claimant/Counter-Respondent 1 plus interest are not paid by the Respondent/Counter-Claimant within the stated time limit, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.*
  6. *Any further claims lodged by the Claimant/Counter-Respondent 1 are rejected.*
  7. *The Claimant/Counter-Respondent 1 is directed to inform the Respondent/ Counter-Claimant immediately and directly of the account number to which the remittances are to be made and to notify the Dispute Resolution Chamber of every payment received”.*
10. On 25 March 2015, the FIFA DRC notified the findings of its decision to the Player and SC Vaslui. Since the grounds of the decision were not requested, said decision became final and binding.

#### **IV. FIFA DISCIPLINARY PROCEEDINGS**

11. On 17 March 2020, the Player informed the Secretariat to the FIFA Disciplinary Committee (the “Secretariat”) that SC Vaslui had not complied with the FIFA DRC’s Decision. He requested the initiation of disciplinary proceedings against this club with respect to a potential violation of article 15 of the FIFA Disciplinary Code (FDC, 2019 edition).
12. On 27 May 2020, following a request for further information from the Secretariat, the

RFF indicated that SC Vaslui had been declared “*in bankruptcy*” on 21 January 2015, was undergoing bankruptcy proceedings and was no longer affiliated to the RFF.

13. On 5 June 2020, the Secretariat opened disciplinary proceedings against SC Vaslui with respect to a potential violation of Article 15 FDC (the “First Disciplinary Proceedings”).
14. On 9 June 2020, the RFF reiterated that SC Vaslui was “*not a member of Romanian Football Federation anymore*” and had been “*facing bankruptcy proceedings since January 2015*”.
15. On 16 June 2020, the Secretariat informed the Parties that the FIFA Disciplinary Committee (the “FIFA DC”) could not proceed further with the case, due to the fact that SC Vaslui was no longer affiliated to the RFF.
16. On 28 April 2021, according to the Appellant, a default notice was sent to Sporting Vaslui, considered to be the sporting successor of SC Vaslui, putting it on notice that it was in default of payment of the amounts due in accordance with the FIFA DRC’s Decision, and granting it until 8 May 2021 to remedy the default. The Club denies having received this communication.
17. On 26 May 2021, the Appellant reached out to FIFA again, asking that disciplinary proceedings be opened against Sporting Vaslui, with a view to enforcing against it the FIFA DRC’s Decision. He claimed, again, that Sporting Vaslui was the sporting successor of SC Vaslui.
18. On 1 June 2021, the Secretariat invited the RFF to provide its position regarding the allegations brought forward by the Player, in particular the potential connection between SC Vaslui and Sporting Vaslui. Additionally, the RFF was requested to confirm the divisions of the national league in which the two clubs had been participating in during the last five seasons.
19. On 21 July 2021, the RFF provided the Secretariat with the requested information and argued that the claim should be dismissed, as follows:

“1. *The Sporting Club SA Vaslui has been declared in bankruptcy on 21 January 2015 and currently this club is still in the bankruptcy procedure having next hearing on 07 September 2021.*

2. *We consider that in order to have a complete image of the participation in the football competitions of the two clubs, we present the situation starting with the competition year 2012/2013:*

➤ *Season 2012/2013*

*Sporting Club SA Vaslui – Romanian Top Division (Liga 1);*

*Sporting Juniorul Vaslui – Hagi Danone Cup (youth competition);*

- *Season 2013/2014*  
*Sporting Club SA Vaslui – Liga 1;*  
*Sporting Juniorul Vaslui – U13 Championship organized by County Football Association (CFA) Vaslui and RFF;*
- *Season 2014/2015*  
*Sporting Club SA Vaslui – None;*  
*Sporting Juniorul Vaslui – 2 teams U13 and U15 organized by CFA Vaslui and RFF;*
- *Season 2015/2016*  
*Sporting Club SA Vaslui – None;*  
*Sporting Juniorul Vaslui – 2 teams of U15 organized by CFA Vaslui and RFF;*
- *Season 2016/2017*  
*Sporting Club SA Vaslui – None;*  
*Sporting Juniorul Vaslui – U17 organized by CFA Vaslui, U15 organized by CFA Vaslui and RFF;*
- *Season 2017/2018*  
*Sporting Club SA Vaslui – None;*  
*Sporting Juniorul Vaslui– U17 and U19 organized by RFF;*
- *Season 2018/2019*  
*Sporting Club SA Vaslui – None;*  
*Sporting Juniorul Vaslui– U 17 and U19 organized by RFF.*
- *Season 2019/2020*  
*Sporting Club SA Vaslui – None;*  
*Sporting Juniorul Vaslui– Liga 4 organized by CFA Vaslui.*
- *Season 2020/2021*  
*Sporting Club SA Vaslui – None;*  
*Sporting Juniorul Vaslui – Liga 3 organized by RFF.*

*Also we provide you with copies of documents from both clubs Sporting Club SA Vaslui and Sporting Juniorul Vaslui as follows:*

*For **Sporting Club SA Vaslui:***

- *Operating licence;*
- *Affiliation request to RFF;*
- *Fiscal identity certificate;*
- *Sportive Identification Certificate;*
- *Confirmation of affiliation to RFF;*

*The following information results from these documents:*

- 1. Name: Sporting Club SA Vaslui*
- 2. Adress: Decebal street, nr. 1, Vaslui city, county Vaslui*
- 3. Sports Identification Certificate number: VS/A3/00004/2005*
- 4. Identity Unique Code: 173412839*
- 5. Legal form: trading company*
- 6. Date of affiliation: 15 May 2006.*
- 7. Colors: yellow and green;*

***For Club Sportiv Sporting Juniorul Vaslui:***

- *Adress issued by County Football Association Vaslui*
- *Adress issued by Clubul Sportiv Sporting Juniorul Vaslui;*
- *Sportive Identification Certificate;*
- *Affiliation request to RFF*

*The following information results from these documents:*

- 1. Name: Club Sportiv Sporting Juniorul Vaslui.*
- 2. Adress: Podul Inalt street, no. 6.Vaslui, county Vaslui;*
- 3. Sports Identification Certificate number: VS/A2/00065/2013*
- 4. Fiscal Identity Code: 27837306*
- 5. Legal form: association.*
- 6. Date of affiliation: 2011 at County Football Asociation Vaslui and 2020 at RFF*
- 7. Colors: yellow and red;*

*Because there are several important differences between these two sports structures, such as name, the headquarters adress, the legal form, the club's colors, as not to mention the fiscal codes and sports registration certificates at the Ministry of Youth and Sports we appreciate that Club Sportiv Sporting Juniorul Vaslui participating in the 3th League is not the legal successor of the Sporting Club SA Vaslui.*

*Another important reason is that the new club was established before the start of the bankruptcy proceedings of the Sporting Club SA Vaslui and it has not replaced in any way the old club in the competitions organized by RFF but he acquired his place in the 3rd league by sporting merit."*

20. On 6 August 2021, the FIFA DC informed Sporting Vaslui, via the RFF, of the opening of disciplinary proceedings against it for the potential breach of Article 15 FDC (the "Second Disciplinary Proceedings"). In this regard, Sporting Vaslui was informed that the case would be referred to the next meeting of the FIFA Disciplinary Committee on 26 August 2021, and was invited to provide its position.
21. On 12 August 2021, Sporting Vaslui communicated its position to the Secretariat, and concluded that the claim should be dismissed. It then supplemented its submission by an additional exhibit six days later.
22. On 26 August 2021, the FIFA DC rendered the operative part of its decision (the "Appealed Decision"), as follows:  
  
*"1. All charges against the club CS SPORTING JUNIOR VASLUI are dismissed".*
23. On 30 August 2021, the FIFA DC notified the terms of its decision to Sporting Vaslui. It also informed the Player and the RFF of the outcome of the proceedings, by putting them in copy of the communication. It subsequently refused, however, to provide the Player with the reasoned decision, due to its lack of party status in the proceedings.
24. On 8 July 2022, FIFA notified the grounds of the Appealed Decision to the Player after being ordered to do so by an award issued on 7 June 2022 by the Court of Arbitration

for Sport (“CAS”) (CAS 2021/A/8308).

25. In the Appealed Decision, the FIFA DC made, *inter alia*, the following considerations:

(i) With respect to the applicable legal framework:

- The disciplinary offence, namely the potential failure to comply with the FIFA DRC’s Decision, was committed before the entry into force of the 2019 edition of the FDC.
- Nevertheless, the 2019 edition of the FDC is applicable to both the procedural aspects and merits of the present case, pursuant to Article 4(2) of the FDC, as confirmed by CAS jurisprudence (CAS 2020/A/6757; CAS 2020/A/6758; CAS 2020/A/6831).
- Article 15(4) of the FDC, which governs the failure to respect FIFA decisions in the context of a sporting succession, shall in particular apply.

(ii) With respect to the sporting succession criteria:

- In light of CAS jurisprudence, a “new” club has to be considered as the “sporting successor” of another one when (i) the “new” club created the impression that it wanted to be legally bound by the obligations of its predecessor, (ii) the “new” club took over the licence or federative rights from the “old” club and (iii) the competent federation treated the two clubs as successors of one another (CAS 2007/A/1322).
- By the same token, a “sporting succession” is the result of the fact that (i) a new entity was set up with the specific purpose of continuing the exact same activities as the old entity, (ii) the “new” club accepted certain liabilities of the “old” club, (iii) after the acquisition of the assets of the “old” club, the “new” club remained in the same city and (iv) the “new” club took over the licence or federative rights from the “old” club (CAS 2011/A/2646).
- A club is a sporting entity identifiable by itself that, as a general rule, transcends the legal entities which operate it. Consequently, elements to consider are, amongst others, the name, the logo and colours, the registration address and/or the managing board of the club (CAS 2016/A/4576, paras 134-139).
- The aforementioned CAS jurisprudence has been reflected under Article 15(4) of the FDC, which provides that “[t]he 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*".

- The elements referred to in Article 15(4) of the FDC are not exhaustive. The existence of several elements listed in this provision can lead, without all of them being met, to the conclusion that a club has to be considered (or not) as a "sporting successor". The overall package of the elements, collectively considered, being decisive (CAS 2020/A/6884, para 138).
- (iii) With respect to the assessment of the potential sporting succession:
- Sporting Vaslui shares several similarities with the Original Debtor, considering that it has a resembling name, the same stadium and, at least to some extent, similar colours and logos. However, these elements must be put into perspective.
  - The use of the home city name within the names of clubs is a common practice in football and does not necessarily indicate that the two clubs domiciled in the same city are connected.
  - The same is true for the use of the same stadium, given that "*suitable stadiums in a city may well be limited*" (CAS 2020/A/7092, para 120). In the present case, there is, in fact, only one suitable stadium in the area.
  - The club colours only share a partial likeness, since SC Vaslui's colours are yellow and green, whilst Sporting Vaslui's colours are yellow and red. This is evidenced by the official "application for affiliation to the RFF" and "certificate of affiliation" documentation provided by the RFF in its letter of 21 July 2021.
  - The logo of the SC Vaslui and the self-proclaimed "second logo" of Sporting Vaslui both bear the principal colours of green and yellow and the depiction of a football in the lower-half of the both-shield-shaped crests. This being said, Sporting Vaslui's logo lacked the depiction of the "smaller red shield with a castle" which predominantly featured in the Original Debtor's logo. Further, the Romanian trade registry authorised the registration of these two trades and Sporting Vaslui is not using the trade of SC Vaslui, which remains the property of the Original Debtor.
  - As explained by the RFF in its letter of 21 July 2021, both Sporting Vaslui and SC Vaslui were simultaneously competing in different categories prior to the disaffiliation of the Original Debtor. The former used to compete in the top-tier Romanian football league (Liga I) for the seasons 2012/2013 and 2013/2014, whilst the latter only took part in youth competitions, prior to "working its way up" to the third league (Liga III) by the season 2020/2021.
  - Sporting Vaslui acquired its right to participate in the third league organised by the RFF through its sporting performance, which led to its



promotion to this league, and not through a takeover of the participating rights of the Original Debtor.

- Moreover, several other elements tend to exclude a sporting succession, namely the fact that both clubs are headquartered at different addresses, were founded six years apart, have a different legal form, and have different ownerships/managements.
  - Ultimately, contrary to what the Player argued, there was no merger between Sporting Vaslui and the new club created by the fans of the Original Debtor after its bankruptcy, "Asociația Fotbal Club Atletico Vaslui" ("ASS FC Vaslui"). This is exemplified by their different registered addresses.
26. As a result, the FIFA DC determined, on the basis of the information and documentation at its disposal, that it could not be established to its comfortable satisfaction that Sporting Vaslui was the legal and/or sporting successor of the Original Debtor, SC Vaslui.
27. The FIFA DC concluded that it was, therefore, not necessary to enter into an assessment of the diligence of the Player in registering his credit in the relevant bankruptcy proceedings. It dismissed all charges against Sporting Vaslui, as it could not be considered as a non-compliant party within the meaning of Article 15 of the FDC, and therefore, could not be subject to the obligations laid down under the aforesaid article.

## **V. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

28. On 19 July 2022, the Appellant filed a Statement of Appeal with the CAS against Sporting Vaslui and FIFA, by which it challenged the Appealed Decision, in accordance with Article R48 of the Code of Sports-Related Arbitration (the "CAS Code"). He requested, *inter alia*, that the present matter be submitted to a Sole Arbitrator. He also sought the disclosure of the documents submitted by the RFF and Sporting Vaslui in FIFA disciplinary proceedings against the latter.
29. On 25 July 2022, the CAS Court Office acknowledged receipt of the Statement of Appeal. It invited, *inter alia*, the Respondents to comment on the Appellant's requests that a Sole Arbitrator be appointed and documents be produced.
30. On 22 July 2022, the First Respondent provided one of the documents requested by the Appellant, namely the statement of defence and related enclosures that it had filed in FIFA disciplinary proceedings.
31. On 28 July 2022, the Second Respondent indicated that it agreed with the Appellant's proposal to refer the matter to a Sole Arbitrator, as long as he was selected from the

football list. It declared that it would be willing to disclose the documents requested when ordered to do so by the Sole Arbitrator.

32. On 23 November 2022, the CAS Court Office informed the Parties, on behalf of the Deputy President of the CAS Appeals Arbitration Division, that the Panel appointed to decide on the present matter was constituted as follows:

Sole Arbitrator: Prof. Luigi Fumagalli, Attorney-at-law, Milan, Italy.

33. On 29 November 2022, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to grant the Appellant's request for disclosure of documents, and requested the Second Respondent to produce such documents, which it did.
34. On 28 December 2022, the Appellant filed its Appeal Brief within the prescribed time limit, previously suspended and extended, in accordance with Article R51 of the CAS Code.
35. On 20 January 2023, the CAS Court Office informed the Parties that the Sole Arbitrator would be assisted by Ms Alexandra Veuthey, Clerk with CAS.
36. On 9 February 2023, the Respondents filed their respective Answers within the prescribed time limit, previously extended, in accordance with Article R55 of the CAS Code. In its Answer, the First Respondent requested the Appellant to provide several documents and reserved the right to submit the translation of an exhibit in the following days.
37. On 13 February 2023, the CAS Court Office invited the Parties to indicate whether they preferred a hearing to be held in this matter or for the Sole Arbitrator to issue an award based solely on the Parties' written submissions.
38. On the same date, the First Respondent requested that a hearing be held in this matter.
39. On 17 February 2023, the Appellant expressed the same position. The First Respondent stated that a hearing was unnecessary and invited the Sole Arbitrator to decide based on the Parties' written submissions only.
40. On 21 February 2023, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to hold a hearing in this matter, by video-conference, and that he would be available to this purpose on 17 March 2023. It invited them to confirm their availabilities.
41. On 27 February 2023, the CAS Court Office confirmed that the Sole Arbitrator, in view of the Parties' availabilities, had decided to hold a hearing by video conference on 17 March 2023. It specified that the First Respondent's silence in this regard shall be deemed as acceptance.

42. On 2 March 2023, the CAS Court Office issued an order of procedure (the “Order of Procedure”) on behalf of the Sole Arbitrator and invited the Parties to return a signed copy of it, which they did.
43. On 2 March 2023, the Appellant provided the CAS Court Office with a list of their hearing attendees. The First Respondent did likewise eight days later.
44. On 17 March 2023, the hearing took place by video-conference.
45. The Sole Arbitrator was assisted at the hearing by Mr Giovanni Maria Fares, CAS Counsel, and Ms Alexandra Veuthey, CAS Clerk.
46. In addition, the following persons attended the hearing:

For the Appellant:

- Mr Christian Pouga (Appellant)
- Mr Charles Keou (Agent)
- Mr William Sternheimer (Counsel for the Appellant)
- Ms Donna Bartley (Counsel for the Appellant)
- Ms Ellen Kerr (Counsel for the Appellant)

For the First Respondent:

- Ms Anca Mituică (Counsel for the First Respondent)
- Mr Costinel Botez (Witness)
- Mr Christian Pouga (Appellant)

For the Second Respondent:

- Mr Alexander Jacobs (FIFA Senior Legal Counsel)
- Mr Saverio Paolo Spera (FIFA Senior Legal Counsel)

47. At the outset of the hearing, the Parties declared that they had no objections as to the constitution of the Panel and the presence of Mr Charles Keou as an observer. The Appellant, through his counsel, expressed his wish to rectify a factual error contained in his Appeal Brief. He stated that he had become aware of the bankruptcy of SC Vaslui on 7 April 2016 and not on 9 June 2020, but underlined that this did not affect his legal reasoning.
48. The First Respondent pointed out that the Appellant had failed to comply with its request for the production of documents, including evidence showing that he had filed a claim in the State bankruptcy proceedings and that he had received the Vaslui court judgment of 21 January 2015 inviting creditors to come forward. The Appellant retorted that these documents were irrelevant, while clarifying that he had not participated in the State proceedings and reiterating that he had only become aware of

such proceedings on 7 April 2016.

49. The Sole Arbitrator heard the declarations of the Appellant, who attended the hearing as a party and witness upon the First Respondent's request. The Appellant was invited by the Sole Arbitrator to tell the truth subject to the sanctions of perjury under Swiss Law and was made available for cross-examination. He explained that he had signed an employment contract with SC Vaslui in the summer of 2010, for one season, but that he had terminated his contract early and moved to Funchal, Portugal, because he did not get his salary. He stated that his former counsel had informed him that the FIFA DRC had accepted his claim in February 2015. He acknowledged that he had received information about the club's bankruptcy on 7 April 2016, which he realised while preparing for this hearing. He maintained that it was, in any case, too late to file a claim in the State bankruptcy proceedings and that he had decided to reopen the case in 2020. He underlined that he had not kept in touch with his former teammates nor followed the sports news after leaving Romania, and relied on his successive counsels for all legal matters. Finally, he indicated that he had stopped his career five years ago and left the football industry.
50. Furthermore, the First Respondent specified that Ms Antonela Violeta Rusu, President of Sporting Vaslui, would not be able to attend the hearing as a party. The First Respondent also renounced the testimony of Mr Costinel Botez, after the Appellant expressly admitted that this witness was a coach and not a "legal representative" of Sporting Vaslui.
51. The Parties thereafter were given a full opportunity to present their respective case, develop their arguments and submissions and answer the questions posed by the Sole Arbitrator. The Appellant recognised that there had been no formal merger between Sporting Vaslui and ASS FC Vaslui, but argued that this finding did not preclude the existence of a sporting succession. In support of his position, he showed a screenshot of the video of the press conference in which the deal between the two entities to collaborate and take forward SC Vaslui's brand was allegedly announced, to which no formal objection was raised. The First Respondent invoked new arguments and jurisprudence regarding the possibility for creditors to declare their claims in State bankruptcy proceedings after the time limit set by the judge under Romanian law and the assessment of creditors' diligence.
52. At the end of the hearing, the Parties confirmed that they were satisfied with the hearing and that their right to be heard had been fully respected. The Appellant specified that he would seek to file further submissions on the admissibility of late claims under Romanian law, should this new argument be regarded as relevant. He also requested that the operative part of the Award be notified in advance of the fully motivated award.

## VI. SUBMISSIONS OF THE PARTIES

### A. The Appellant

53. In its Appeal Brief, the Appellant sought the following relief:

- “(a) rule that the CAS has jurisdiction to hear the present appeal;
- (b) determine that CS Vaslui is the sporting successor of SC Vaslui;
- (c) accordingly, determine that CS Vaslui has failed to comply with the FIFA DRC Decision;
- (d) order CS Vaslui to pay to the Appellant the amount of EUR 271,616.49, plus any interest accumulated until the date of effective payment;
- (e) should CS Vaslui fail to comply with the above, impose on CS Vaslui a ban from registering any new players, either nationally or internationally, until the date of effective payment;
- (f) impose any other available sanction on CS Vaslui in order to ensure that the latter complies with the FIFA DRC Decision including, without limitation, a deduction of points and relegation to a lower division;
- (g) order CS Vaslui and/or FIFA to:
  - (i) reimburse the Appellant his legal costs and other expenses pertaining to this appeal; and
  - (ii) bear any and all costs pertaining to the arbitration”.

54. The Appellant’s submissions, in essence, may be summarised as follows:

- (i) With respect to the applicable legal framework:
  - This matter is governed by the 2019 edition of the FIFA FDC and, subsidiarily, Swiss law.
  - Article 15(4) of the FDC, which concerns the failure to respect FIFA decisions in the context of a sporting succession, shall in particular apply.
  - Certain general principles of law that have become part of the so-called *lex sportiva* are also of potential relevance. They include the principles of the primacy of fact, good faith, legal certainty and the concept of sporting succession.
- (ii) With respect to the applicable standard of proof:
  - The FDC is silent with respect to the applicable standard of proof.
  - CAS jurisprudence has established that in matters related to sporting succession, the standard of proof is the balance of probabilities (CAS 2018/A/5618, para 64).
  - In the Appealed Decision, the FIFA DC wrongly referred to the

“comfortable satisfaction” standard, which is higher than the balance of probabilities standard.

(iii) With respect to the sporting succession criteria:

- The *lex sportiva* concept of sporting succession is founded on the principle that it would be contrary to the principle of good faith to permit an entity to take over the assets of a club but not its liabilities.
- The FIFA Statutes and jurisprudence clearly distinguish between the terms “club” and “team”.
- Pursuant to Article 15(4) of the FDC, the “*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*”.
- It is clear that these criteria are not exhaustive. However, from Article 15(4) of the FDC and the available jurisprudence, it is apparent that the following elements are key when determining the sporting succession of clubs: the perception among the fans and the football community as a whole, whether any players and staff members moved between the clubs, the colours, logo and how the new club presents its history; and the stadium where the club plays its home fixtures (as per the numerous references mentioned).

(iv) With respect to the assessment of the potential sporting succession:

- On 21 January 2015 the “Tribunal of Vaslui” ordered the commencement of bankruptcy proceedings against SC Vaslui, in which 46 creditors were registered.
- After the relegation of the Original Debtor to Liga II and its later liquidation, the Original Debtor’s fans decided to create a new club, ASS FC Vaslui, which enrolled in Liga IV.
- In the summer of 2019, Sporting Vaslui, a youth team based in the city of Vaslui, registered a senior team in Liga IV. In January 2020, Sporting Vaslui merged – or, in accordance with the rectification stated at the hearing, joined forces – with ASS FC Vaslui and took over the Original Debtor’s brand and competition record. This decision was made public by the representatives of the two entities at a press conference that took place on 28 January 2020, which was filmed and subsequently accounted for by various newspapers.
- On that occasion, the First Respondent’s representatives announced that “*After almost six years of fighting, hoping and waiting, the day has come!*”

[...] *this winter we managed to fulfil our most important wish, ASS FC Vaslui and Sporting Vaslui have made a deal, and from this return we will go together to take Vasluian football, again, to the higher leagues*".

- Further, the Original Debtor's former Sport Director stated that *"The two sports entities, Sporting Vaslui and ASS FC Vaslui, have joined hands to carry on the "yellow-green" spirit. At Vaslui, the "yellow-green" spirit lived only through the two entities [...] Let us celebrate the 18<sup>th</sup> anniversary of the founding of FC Vaslui and its return to the Romanian football map"*.
- Sporting Vaslui does not have an official website, but its Wikipedia page clearly refers to the continuity between SC Vaslui and Sporting Vaslui. Indeed, the record of successes of the two teams is compiled without any distinction.
- As a result, the football community legitimately considers the First Respondent to be the sporting successor of the Original Debtor.
- The staff of SC Vaslui is *"deeply linked"* to Sporting Vaslui. For instance, Mr Cătălin Popa, the former Sporting Director of the Original Debtor club, has held the same position with the First Respondent club. Likewise, Mr Costinel Botez, a coach of SC Vaslui in 2014, who was involved in ASS FC Vaslui first as a manager in 2014-2015 and then a Sporting Director in 2015-2017, is currently one of the managers of Sporting Vaslui. Also, some representatives of Sporting Vaslui and ASS FC Vaslui jointly spoke at the abovementioned press conference.
- The Original Debtor had always played its home matches at the Municipal Stadium of Vaslui, which is now the official Stadium of the First Respondent.
- The logos of SC Vaslui and Sporting Vaslui follow a clear pattern of evolution in terms of elements to be found within them, such as shapes and colours. The importance of the colours green and yellow are part of the spirit of SC Vaslui, and have been reused by ASS FC Vaslui and by Sporting Vaslui. The image of the football also remains. The absence of the castle in the latest logo is not relevant as that castle is the coat of arms of the city of Vaslui and is not specific to the football club.
- The shirts of both clubs are also very similar, with a yellow background and green lettering. Sporting Vaslui wrongly argues that its logo contains a rooster's head on a red and yellow background. Such feature is, in fact, the former kit of the Romanian meat production and distribution business, S.C Safir S.R.L, which sponsored SC Vaslui.
- Sporting Vaslui falsely contends that its colours are red and yellow, based on its Statutes and the colours of its former sponsor-kit. Notwithstanding

this, it is clear that Sporting Vaslui represents its key colours as yellow and green, as demonstrated by the press conference above.

- The fact that two clubs' legal entities have co-existed at the same time is clearly not a barrier to a finding of sporting succession. Such a theory goes against the fundamental principle of sporting succession, which transcends legal corporate identity (and does not require the acquisition of federative rights). In any event, it is clear that whilst Sporting Vaslui was founded in 2009, it was not until January 2020 that it became the sporting successor of SC Vaslui, as evidenced by the press conference above.
- Consequently, the Appellant undoubtedly met his burden of proving that, on the balance of probabilities, Sporting Vaslui is the sporting successor of SC Vaslui.

(iv) With respect to the Appellant's due diligence:

- The FDC does not impose due diligence as a condition of the sporting succession provision, notwithstanding the opinion of the First Respondent. Therefore, it would be contrary to the principle of legal certainty to incorporate such a requirement.
- In any event, the Appellant clearly applied due diligence in the pursuit of his receivable. On 13 June 2011, he lodged a claim against the Original Debtor with the FIFA DRC, three days only after the termination of his employment contract, whereas FIFA took four years to issue a decision. He left Romania at that time, and thus could not have known that bankruptcy proceedings had been opened against his former club on 21 January 2015, let alone that he could have asserted his claim with the Romanian authorities until 20 February 2015. He only realised such facts when he was notified with the letter from the RFF dated 9 June 2020 in the context of FIFA disciplinary proceedings – or, as rectified at the hearing, when informed by his former counsel on 7 April 2016.
- Once he identified the sporting successor of SC Vaslui, the Appellant also sent it a default notice, granting it a deadline to remedy the default and even offering to waive interest on the amount due. He never received a reply.

(v) Consequences:

- Correspondingly, Sporting Vaslui is responsible for the payment of the sums payable stated in the FIFA DRC's decision, namely EUR 59,386.61 for outstanding remuneration and EUR 112,766 as compensation for breach of contract, with 5% annual interest as from 11 June 2011 until the date of the effective payment.



- The FIFA DC wrongly dismissed all charges brought by the Player against Sporting Vaslui. Hence, the Appealed Decision should be set aside and the relief sought by the Player granted.

## **B. The First Respondent**

55. In its Answer, the First Respondent requested relief as follows:

- “➤ *To dismiss as unfounded the appeal filed against the Decision passed by FIFA – Disciplinary Committee on August 26, 2021 and confirm entirely the appealed decision.*
- *Pursuant to art. R 64.5 of the CAS Code we ask you to compel the Appellant to pay the costs incurred by Club Sportiv Sporting Juniorul Vaslui with the present case, representing attorney fee amounting 5000 euros”.*

56. The First Respondent’s submissions, in essence, may be summarised as follows:

- (i) With respect to the applicable legal framework:
  - This matter is governed by the 2019 edition of the FDC, in particular Article 15, and subsidiarily, Romanian law.
  - Romanian law is relevant with respect to the insolvency proceedings.
- (ii) With respect to the sporting succession criteria:
  - In line with the jurisprudence of FIFA and CAS, which is now reflected in Article 15(4) of the FDC, *“the identity of a club is constituted by elements such as its name, colours, logo, fans, history, players, stadium, etc., regardless of the legal entity operating it”* (FIFA DC decision no 160360 of 25 September 2019, para 24).
  - As rightly stated in the Appealed Decision, a “new” club has to be considered as the “sporting successor” of another one when (i) the “new” club created the impression that it wanted to be legally bound by the obligations of its predecessor, (ii) the “new” club took over the licence or federative rights from the “old” club and (iii) the competent federation treated the two clubs as successors of one another (CAS 2007/A/1322).
- (iii) With respect to the assessment of the potential sporting succession:
  - The First Respondent is a professional football club which currently participates in “League III” of the Romanian football national championship. It has never had any contractual relations with the Appellant and has a different address, tax identification number and legal form from the Original Debtor.
  - The First Respondent was founded in December 2009, under the initial name “Club Sportiv Safir Vaslui”, as evidenced by its Statutes. Its first

purpose was the preparation and participation of junior sports-persons in football and handball regional competitions.

- The colours of the First Respondent, as established under its Statutes, are red and yellow. Its logo depicts a rooster’s head on a red and yellow background, and is inspired by the *“name of its two initial members”*.
- Starting with the 2019/2020 season, the First Respondent registered its first team in “League IV” organised by the Vaslui County Football Association. At the end of the 2019/2020 season, the First Respondent was promoted to “League III” organised by the RFF, due to its sporting results.
- Since 20 August 2020, the First Respondent has been a member of the RFF.
- The First Respondent never bought or inherited any sporting rights regarding the participation in competitions from other entities, including ASS FC Vaslui or SC Vaslui.
- With the exception of a few members who joined the First Respondent in 2015, its members have remained the same since 2009.
- The Appellant wrongly indicates that Mr Cătălin Popa was the President of the First Respondent. In fact, *“no such discussions/negotiations or contractual relations ever took place”* between the First Respondent and Mr Popa. From March 2015 until the present day, Ms Antonela Violeta Rusu has been the only President of the First Respondent, as confirmed by a decision issued by the Court of Vaslui on 9 March 2015.
- Mr Costinel Botez, a coach licenced by the RFF, is not a legal representative of the First Respondent nor a manager of the club, as mentioned by the Appellant. In August 2020, he was hired as main coach for the First Respondent, but not in any other function. His contract ended on 30 June 2021.
- The Vaslui City Stadium, which is the property of Vaslui City Hall, is the only regional stadium that fulfils the necessary conditions for the football competitions organised by the RFF and the Vaslui County Football Club Association. Therefore, like any other football clubs from Vaslui, the official matches of the First Respondent are played in the Vaslui City Stadium, as has been the case since 2010.
- Since 2010, the First Respondent has displayed its official colours – red and yellow – on its teams’ official equipment. It retains separate sets of official equipment in red, yellow and white.
- The logo presented by the Appellant is the First Respondent’s second logo (the Respondent’s “first logo” in addition to its “second” both being

visible on its teams' equipment). It is different from the Original Debtor's logo, as the Romanian Trade Registry authorised the registration of these two trades.

- The First Respondent is “*not using the trade ASS FC Vaslui [...] and has never had any discussions in order to achieve this trade*”.
- The Original Debtor, which is in bankruptcy, is still the owner of the trade, brand and competitions record “*of ASS FC Vaslui*”, as it has been since January 2015. The foregoing was confirmed by a judicial receiver of the Original Debtor, who in an address dated 9 August 2021 declared that “*the trade ASS FC Vaslui*” has not been sold and is the property of the Original Debtor.
- The First Respondent and ASS FC Vaslui have never merged, as originally indicated by the Appellant. On the contrary, in August 2018, ASS FC Vaslui, as a supporters' football club, merged with another football club, Club Sportiv Municipal Vaslui (“CSM Vaslui”). It yielded to this club its right to participate in the “League IV” and “*its entire activity*”. This is evidenced by ASS FC Vaslui new registered address, as well as the decisions of the general assemblies of the said clubs and the decision of Vaslui City Council that were taken at that time.
- The press articles provided by the Appellant were published on two consecutive days, 28 January and 29 January 2020, and were then taken over by other specialised publications. They contain inaccurate information and are contradicted by other official documents. They may even refer, as stated at the hearing, to different clubs, and in any case seem inconsistent with the video screenshot shown during the oral pleadings.
- Consequently, it is clear that the First Respondent is not the sporting successor of SC Vaslui and lacks standing to be sued in these proceedings.

(iv) With respect to the Appellant's due diligence:

- In the context of bankruptcy, it appears relevant to analyse the diligence of the creditor in recovering his debt in order to assess whether a sanction can be imposed on the new club (FIFA DC decision no 160360 of 25 September 2019, para 27).
- The Appellant did not show the required degree of diligence when it came to recover the amounts he was owed.
- The Appellant could not ignore the opening of the bankruptcy proceedings of the Original Debtor pursuant to the “Decision no. 18” passed by the Court of Vaslui on 21 January 2015, which set up “*the deadline for lodging the debts arising in the course of the proceedings on February 20, 2015*”.

- The Appellant was most likely informed of this decision shortly, even if he failed to provide the requested documents or consistent explanations in this regard. He also appears to have received the decision via fax by FIFA on 8 March 2016.
  - The Appellant then remained passive for at least four years until his claim to FIFA DRC 17 March 2020. He never filed a “judicial receiver request” with Romanian courts, either within the initial time limit or subsequently, as would have been allowed by the Romanian Civil Code and Insolvency Code. As a result, he never acquired the quality of creditor under Article 2(7) of the Romanian Insolvency Law no. 85/2006.
  - The Appellant also sent a default notice to the First Respondent at the wrong email address.
- (v) Consequences:
- In consequence, Sporting Vaslui is not responsible for the payment of the sums payable stated in the FIFA DRC’s decision.
  - The FIFA DC correctly determined that no disciplinary sanctions could be imposed on Sporting Vaslui, dismissing all charges against it. The Appealed Decision should be upheld.

### **C. The Second Respondent**

57. In its Answer, the Second Respondent requested the following relief:
- “(a) Reject the Appellant’s appeal in its entirety;*
  - (b) Confirm the decision rendered by the Committee on 26 August 2021;*
  - (c) Order the Appellant to bear all costs incurred with the present procedure”.*
58. In the alternative, the Second Respondent requested to be exonerated from paying any arbitration costs or contribution to legal expenses, should the Appellant succeed in (part of) his appeal based on a document, argument or factual consideration not submitted in front of the FIFA DC.
59. The Second Respondent’s submissions, in essence, may be summarised as follows:
- (i) With respect to the applicable legal framework:
    - The FIFA Statutes and regulations, namely the 2019 edition of the FDC, constitute the applicable law to the matter at hand and Swiss law shall be applied subsidiarily, should the need arise to fill a possible gap in the FIFA regulations.
    - Article 15(4) of the FDC, which governs the failure to respect FIFA

decisions in the context of a sporting succession, shall in particular apply.

- (ii) With respect to the applicable standard of proof:
  - Article 35 of the FDC states that the comfortable satisfaction standard applies to disciplinary proceedings.
  - Hence, this standard should apply to the present case.
- (iii) With respect to the sporting succession criteria:
  - The driving motive behind the concept of sporting succession was the need to protect stakeholders' credits (often players) when a football club ceases its activity, in light of the so-called *lex sportiva*. It is justified by the promotion of contractual stability, the protection of competitions and the need to deter fraudulent conducts by the successor club, which should not be allowed to exploit its predecessor's supporters' affiliation and other assets to maximise financial gains without facing its liabilities as well. It presupposes a sporting continuity between the two entities (as per the numerous references mentioned).
  - The CAS jurisprudence and the FIFA legislator attempted to provide guidance by listing a number of elements which should, in principle, ease the task of the deciding body called upon to identify sporting continuity in each case. These elements are: (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, (viii) the category of competition, (ix) the transfer of federative rights, (x) the management, and (xi) the owners.
  - These elements do not need to be all present in order for a sporting succession to occur and, most importantly, they do not have the same weight in the deciding body's assessment. Some of them are deemed to be crucial, some play a more significant role than others and some are almost irrelevant (CAS 2020/A/7092).
- (iv) With respect to the assessment of the potential sporting succession:
  - Crucial circumstances concur in excluding a sporting continuity and thus, a sporting succession between SC Vaslui and Sporting Vaslui. These include, principally, the fact that the two clubs coexisted for several years and that Sporting Vaslui earned the promotion to professional football through sporting merits without, in any case, ever reaching SC Vaslui's standing.
  - During the seasons 2012/2013 and 2013/2014, SC Vaslui was competing in Liga I, whereas Sporting Vaslui was participating in a youth competition (Hagi Danone Cup) and the U13 Championship. As from the season 2014/2015, SC Vaslui stopped competing, whereas Sporting

Vaslui obtained a slow sporting progression, from the U13/U15 Championships to a promotion in Liga III as from the 2020/2021 season. This means that Sporting Vaslui is not a new entity created concurrently with, or immediately after, the bankruptcy involving SC Vaslui, and that it never even made it to the (top tier) league where SC Vaslui was when it was declared bankrupt.

- In this context, therefore, it is difficult to fathom how Sporting Vaslui could have artificially taken over, and hence financially benefitted from, any of the SC Vaslui's assets, which would justify a parallel responsibility for its liabilities (in the same vein, see CAS 2020/A/7092, para 109).
- This finding is further corroborated by other aspects, most of them listed among the criteria of Article 15(4) of the FDC and/or identified as predominant by CAS, and which were not taken in due consideration by the Appellant, such as the legal form, the players, the ownership and management, as well as the registered address (as per the numerous references mentioned).
- Sporting Vaslui, according to its Statutes, is a non-for-profit private law entity, whereas SC Vaslui was a trading company. They have a completely different roster, with none of their players being registered for both teams, and their board of directors are unconnected, according to the Court of Vaslui decision provided by the First Respondent. They also have a different registered address, which is not disputed.
- In fact, only two minor elements unequivocally link the two clubs, namely their stadium and the name of their home town. As for the team colours, they may be both identified as yellow and red based on the documents provided by the RFF, but Sporting Vaslui also claimed the registration of the trademark of the emblem and the colours green, white, yellow and black on 24 September 2020. Ultimately, the relevant logos share the colour as the only similarity.
- For the sake of clarity, there was no merger involving Sporting Vaslui and ASS Vaslui as it seems to be (misleadingly) contended in the Appeal Brief. From the documents on file, in fact, it appears that a takeover was indeed decided in 2018, however involving two different entities, ASS FC Vaslui and CSM Vaslui.
- The newspaper articles provided by the Appellant are of no avail, as they seem to refer to a press conference involving different clubs.
- Consequently, it is clear that the First Respondent is not the sporting successor of SC Vaslui.

- (v) With respect to the Appellant's due diligence:
  - As correctly done in the Appealed Decision, there is no need to dwell on the Appellant's diligence in the bankruptcy proceedings affecting SC Vaslui, as this is a plain case of absence of sporting succession. As such, it does not require establishing to what extent the Player has diligently attempted to collect his credit from SC Vaslui.
- (vi) Consequences:
  - Accordingly, Sporting Vaslui is not responsible for the payment of the sums payable pursuant to the FIFA DRC's decision.
  - The FIFA DC rightly determined that no disciplinary sanctions could be imposed on Sporting Vaslui, dismissing all charges against it. The Appealed Decision should be upheld.

## VII. JURISDICTION

60. Article R47 of the CAS Code (2021) 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”.*

61. Articles 56.1, 57.1 and 57.2 of the FIFA Statutes (May 2022) respectively provide:

Art. 56.1: *“FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, member associations, confederations, leagues, clubs, players, officials, football agents and match agents”*

Art. 57.1: *“Appeals against final decisions passed by FIFA's legal bodies [...] shall be lodged with CAS within 21 days of notification of the decision in question”*

Art. 57.2 *“Recourse may only be made to CAS after all other internal channels have been exhausted”.*

62. Article 57.1 of the FDC (2019) states that:

*“An appeal may be lodged with the Appeal Committee against any decision passed by the Disciplinary Committee, unless the disciplinary measure pronounced is: [...] e) decisions passed in compliance with article 15 of this Code”.*

63. Given that the Appealed Decision relates to a decision passed pursuant to Article 15 of

the FDC, the Appellant was not permitted to appeal the FIFA DC's decision to the Appeal Committee and has thus exhausted all internal remedies.

64. In addition, the Parties did not object to the jurisdiction of the CAS in their submissions and expressly confirmed its jurisdiction by signing the Order of Procedure. It follows from all the above that CAS has jurisdiction to decide on the present dispute.

### **VIII. ADMISSIBILITY**

65. Article R49 of the 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. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document”.*

66. Article 57 of the FIFA Statutes (see *supra* para 61) provides a time limit of 21 days after notification to lodge an appeal against a decision adopted by one of FIFA's legal bodies, such as the FIFA DC.

67. Article 51 of the FDC specifies that *“if the motivated decision is requested within the time limit [...], the time limit for lodging an appeal begins only on notification of the motivation”.*

68. The Appealed Decision was notified with grounds to the Appellant by email on 8 July 2022.

69. The Appellant timely lodged its Statement of Appeal with the CAS Court Office on 19 July 2022, *i.e.* within the twenty-one days allotted under the aforementioned provision. The Statement of Appeal complies with the formal requirements set by Article R49 of the CAS Code.

70. Moreover, the Respondents did not raise any objections as to admissibility issues. The Second Respondent even expressly stated in its Answer that *“[t]he admissibility of the Appellant's appeal in this case is not contested [...].”*

71. Consequently, the Sole Arbitrator considers that the appeal is admissible.

### **IX. APPLICABLE LAW**

72. Article R58 of the 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 the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*

73. Article 56(2) of the FIFA Statutes so provides:

*“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”.*

74. The Sole Arbitrator notes that the FIFA DC refers, in the Appealed Decision, to the 2019 edition of the FDC, to which it attributes in principle a retroactive effect, based on Article 4(2) FDC and CAS jurisprudence (see CAS 2020/A/6757; CAS 2020/A/6758; 2020/A/6831, which all rule out the possibility of a *reformatio in pejus*, in the absence of previous provisions and/or more favourable jurisprudence addressing sporting succession). The Parties refer to the same edition, with the Appellant and Second Respondent also relying on some general principles of law (“*lex sportiva*”) and/or Swiss law, and the First Respondent quoting Romanian law in some instances.

75. Accordingly, the Sole Arbitrator retains that this dispute must be primarily decided in accordance with the 2019 edition of the FDC, which encompasses the most salient aspects of *lex sportiva* and, additionally, Swiss law. He will not need to resort to provisions from other jurisdictions, as will be explained in the appropriate context.

## **X. PRELIMINARY QUESTIONS**

### **A. Notification of the operative part**

76. At the hearing, the Appellant requested that the operative part be notified in advance of the fully motivated award.

77. The Sole Arbitrator, in the exercise of his discretion, decided instead to issue the award with the grounds (without a prior publication of the operative part), as he thought essential to explain the reasons in support of his decision at the moment it is issued.

### **B. Production of documents**

78. At the hearing, the First Respondent reproached the Appellant for not having produced evidence showing when he had received the Vaslui court judgment of 21 January 2015 entailing a call to creditors, and diligently filed a claim thereof. It underlined that the only document in its possession was a fax from FIFA dated 8 March 2016. The

Appellant questioned the relevance of these documents, and clarified that he had not participated in the State bankruptcy proceedings, which he had learned about too late, on 7 April 2016. He offered to provide the communication from his former counsel attesting to this.

79. The Sole Arbitrator notes that the First Respondent's request for production of documents became partly moot due to the Appellant's admission that he had not filed any claim in the State bankruptcy proceedings. He further notes that the exact date on which the Appellant was informed of these proceedings should, in principle, be ascertained in accordance with the general rules on the burden of proof, which require the person claiming a fact to prove it (CAS 2014/A/3546, para 7.3). He would thus be inclined to assume, in the absence of evidence to the contrary, that the relevant date is between 8 March 2016 and 7 April 2016.
80. The Sole Arbitrator considers, in any event, that this controversy has no practical bearing, for reasons that will be developed further (see section XI.C below).

### **C. New arguments and jurisprudence**

81. At the hearing, the First Respondent argued for the first time that the Appellant could have filed his claim in State bankruptcy proceedings after the time limit initially set by the judge in order to show his diligence and collect his debt, pursuant to the Romanian Civil Code and Insolvency Code. It invoked arbitral and State jurisprudence to support its position.
82. The Sole Arbitrator acknowledges that parties are, in principle, entitled to invoke new jurisprudence in order to deepen or supplement their written submissions, in application of the principle "*iura novi curia*", but specifies that they have to evidence the content of foreign law (CAS 2021/A/7694, para 95; CAS 2011/A/2321, para 6.10; CAS 2017/A/5111, para 114). He observes that, in this case, the First Respondent did not even provide an outline of this argument in writing nor supply a copy of the provisions of Romanian law that it intended to rely upon, and thus arguably did not meet the applicable requirements.
83. This finding is, in any event, irrelevant to the outcome of the dispute, as the matter of the Appellant's diligence does not arise in this case (see section XI.C below).

## **XI. MERITS**

84. The present case revolves around the decision of the FIFA DC to discharge the Romanian club Sporting Vaslui from any liability concerning the debts incurred by SC Vaslui towards the Appellant in 2015. The Appealed Decision concluded that no disciplinary sanctions should be imposed on Sporting Vaslui, dismissing all charges

against it.

85. The Appellant argued that the FIFA DC wrongfully evaluated the elements at its disposal and that the Sole Arbitrator should find that Sporting Vaslui is the sporting successor of SC Vaslui and, as such, responsible to fulfil the latter's financial obligations pursuant to Article 15(4) of the FDC. It maintained that the comfortable satisfaction standard was wrongly applied to the case, which should have been decided on the balance of probabilities. It also asserted that he was under no formal obligation to claim his receivable in the State bankruptcy proceedings, and that he applied in any case due diligence in the pursuit of his receivable, in light of the circumstances. In particular, he left Romania straight after the termination of his employment contract and was not notified of the said proceedings in due time.
86. Sporting Vaslui submitted that the FIFA DC reached the correct conclusion, and that the appeal should be dismissed on the grounds of its evident lack of connection with SC Vaslui. It claimed that it has no connection with this club, apart from its stadium, and that it did not itself inherit its sporting rights, having risen through the ranks solely on the basis of its sporting results. It also emphasised that the Appellant could not ignore the existence of State bankruptcy proceedings, and that he failed to act diligently by not asserting its claim within the time limit set by the Vaslui Court for this purpose or, at least, as soon as possible.
87. FIFA concurred with Sporting Vaslui. It underlined the evident lack of sporting continuity between SC Vaslui and Sporting Vaslui and the consistent application of the comfortable satisfaction standard in disciplinary cases. It contended that the appeal merely shed light on a few minor similarities between SC Vaslui and Sporting Vaslui, but overlooked crucial circumstances which concur in excluding a sporting succession between the two clubs. It notably pointed out to the fact that the two clubs coexisted for several years and that Sporting Vaslui earned the promotion to professional football through sporting merits without, in any case, ever reaching SC Vaslui's standing. It deduced that there was no need to address the Appellant's diligence in the State bankruptcy proceedings.
88. The Sole Arbitrator notes, as a preliminary matter, that the Parties did not address the question of the Appellant's standing to sue, which was left open in the CAS award rendered on 7 June 2022 in CAS 2021/A/8308, that paved the way to the present proceedings by ordering FIFA to share its reasoned decision. He is cognisant, however, that the standing to sue may be reviewed *ex officio*, to the extent necessary (CAS 2012/A/2906, para 76; CAS 2016/A/4903, para 81-82; CAS 2017/O/5264-5266, para 189; CAS 2020/A/7092, para 58). He considers that this question does not need a definite answer here, in view of the outcome of the case (see section XII. below).
89. Against this background, the Sole Arbitrator identifies the following issues:

- What is the applicable standard of proof?
- Is the First Respondent the sporting successor of SC Vaslui?
- If so, did the Appellant act with due diligence?

**A. Standard of proof**

90. The Parties concur that the Appellant bears the burden of proving the existence of a sporting succession, but hold different views as to the applicable standard of proof, by relying respectively on CAS jurisprudence and the FDC.
91. The Sole Arbitrator notes that a CAS award rendered in a succession of club matter in 2018 states as follows:
- “63. The relevant FIFA regulations appear to be the RSTP and the FIFA Rules Governing the Procedures of the Players’ Status Committee and Dispute Resolution Chamber pursuant to which the PSC Decision was rendered. Neither the RSTP nor the Rules enacted pursuant to those regulations prescribe a standard of proof.*
- 64. In the absence of a party stipulated standard of proof, the standard which applies to this procedure and to which the Sole Arbitrator has had regard, is the balance of probabilities. The balance of probabilities standard has historically been considered to require that the CAS be satisfied that there is a 51% chance of a relevant scenario having had occurred or, put another way, that a matter is more likely to have occurred than not to have occurred (CAS 2009/A/1926 & 1930; CAS 2012/A/2972)”.*
92. The Sole Arbitrator understands that this award finds its roots on different regulations, since at the time, the issue of sporting succession was not yet governed by the FDC.
93. The Sole Arbitrator considers, however, that CAS previous jurisprudence can be maintained. He sees no reason to change its practice, both in light of the principles of equality of treatment between clubs and those of general interpretation under Swiss law (on this latter point, see CAS 2021/A/8308, paras 61 ff, which recalls that the regulations of major sports associations must be interpreted using the methods of statutory interpretation, which include the analysis of a text according to its letter, its context, its purpose and its preparatory works).
94. In reaching this conclusion, the Sole Arbitrator does not overlook that Article 64(3) of the FDC, in its 2019 version, now provides that *“the standard of proof to be applied in FIFA disciplinary proceedings is the comfortable satisfaction of the competent judicial body”*. However, he retains that this article is intended to apply to general disciplinary cases and not to the more specific issue of club succession.
95. The Sole Arbitrator will hence rely on the balance of probabilities standard, while pointing out that the application of a higher standard, such as comfortable satisfaction,

would have led to the same result.

## **B. Sporting succession**

96. The key issue in the present case is whether Sporting Vaslui is the sporting successor of SC Vaslui, and should be held accountable for its past failures pursuant to Article 15 of the FDC. The Appellant considers that this question should be answered in the affirmative, as most of the relevant criteria listed point to that direction, whereas the two Respondents hold the opposite view.

97. The Sole Arbitrator recalls that Article 15 FIFA of the FDC states as follows (emphasis added):

*“1. Anyone who fails to pay another person (such as a player, a coach or a club) or FIFA a sum of money in full or part, even though instructed to do so by a body, a committee or an instance of FIFA or a CAS decision (financial decision), or anyone who fails to comply with another final decision (non-financial decision) passed by a body, a committee or an instance of FIFA, or by CAS:*

- a) will be fined for failing to comply with a decision; in addition:*
- b) will be granted a final deadline of 30 days in which to pay the amount due or to comply with the non-financial decision;*
- c) in the case of clubs, upon expiry of the aforementioned final deadline and in the event of persistent default or failure to comply in full with the decision within the period stipulated, a transfer ban will be pronounced until the complete amount due is paid or the non-financial decision is complied with. A deduction of points or relegation to a lower division may also be ordered in addition to a transfer ban in the event of persistent failure, repeated offences or serious infringements or if no full transfer could be imposed or served for any reason.*
- d) in the case of associations, upon expiry of the aforementioned final deadline and in the event of persistent default or failure to comply in full with the decision within the period stipulated, additional disciplinary measures may be imposed;*
- e) in the case of natural persons, upon expiry of the aforementioned final deadline and in the event of persistent default or failure to comply in full with the decision within the period stipulated, a ban on any football-related activity for a specific period may be imposed. Other disciplinary measures may also be imposed.*

*2. With regard to financial decisions passed by a body, a committee or an instance of FIFA, or CAS, disciplinary proceedings may only commence at the request of the creditor or any other affected party, who will have the right to be notified of the final outcome of the said disciplinary proceedings.*

*3. If the sanctioned person disregards the final time limit, FIFA and/or the relevant association (in cases involving clubs or natural persons) shall implement the sanctions imposed. A transfer ban or a ban on taking part in any football-related activity may only be lifted before it has been fully served upon payment of the due amounts, with other disciplinary measures being reserved.*

***4. 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. [...]***

98. The Sole Arbitrator concurs with the Parties that, based on Article 15 of the FDC, not only the Original Debtor shall be subject to disciplinary sanctions, but also its “sporting successor”. Accordingly, this article does not leave any discretion for the adjudicatory body, in that it implies that if a club is considered to be a “sporting successor” of a non-compliant club, it shall also be considered a non-compliant party. Likewise, the article is not intended to provide an exhaustive list, and contains elements of varying importance, according to CAS jurisprudence. In other words, the existence of several elements listed or otherwise considered relevant, may lead, without not all of them being met, to the conclusion that a club has to be considered as a “sporting successor”. The overall package of elements and their respective weight is decisive (CAS 2020/A/6884, para 138; CAS 2020/A/7092, para 148).
99. Drawing from this regulatory basis, the Parties’ reasoning regarding the existence of a sporting succession is rooted on the following list of criteria that can be considered in making such assessment:
- Headquarters;
  - Name;
  - Legal form;
  - Team colours;
  - Players;
  - Shareholders, stakeholders, ownership, management;
  - Category of competition concerned.
100. The Parties further refer to some additional criteria:
- Press conference and public information;
  - Founding year;
  - Acquisition of sporting assets and federative rights;
  - Emblem, logo;
  - Stadium.
101. The Sole Arbitrator understands that the motivations behind the creation of the concept of “sporting succession” were the need to protect players’ entitlements, to ensure

contractual stability and fair competition and to discourage fraudulent behaviour on the part of successor clubs, by preventing them from benefiting from their predecessor's results, fan base and media revenues, without assuming the associated liabilities. It is, therefore, not surprising, as FIFA points out, that some CAS panels have put particular emphasis on the transfer of federative and sporting rights to the new club and the coexistence of the two entities. However, these elements alone are not decisive and do not absolve the arbitrators from conducting an overall examination (see e.g. TAS 2011/A/2614, para 63; CAS 2011/A/2646, paras 9 and 20; CAS 2018/A/5618, para 67; CAS 2019/A/6461, paras 52 and 58; CAS 2020/A/6831, para 129; CAS 2020/A/7092, para 109; CAS 2020/A/7183, paras 112 and 118; CAS 2020/A/7543, para 112).

102. The Sole Arbitrator observes that Sporting Vaslui shares several similarities with SC Vaslui, including a resembling name, the same stadium and at least to some extent, compatible colours and logos. However, he considers, in accordance with the Appealed Decision, that the significance of these similarities must be put into perspective, in view of CAS jurisprudence and the circumstances of the case.
103. Indeed, the inclusion of the name of the home city in the name of clubs is a common practice in football, which in itself does not necessarily indicate that two clubs domiciled in a certain city are related. Similarly, the use of the same stadium is a minor element in the assessment of a potential sports succession, since the number of suitable stadiums in a city is usually limited and sometimes, as in this case, there is no alternative (CAS 2020/A/7092, para 120). Further, the colours of the Original Debtor are yellow and green, whereas those of the First Respondent are yellow and red, or possibly green, white, yellow and black, depending on whether one refers to its statutes and application for affiliation to the RFF or to its claim for registration of a trademark filed on 24 September 2020. Finally, the logo of the First Respondent does not include the representation of the "small red shield with a castle", which was the main feature of the logo of the Original Debtor, and was registered separately in the Romanian trade register.
104. The Sole Arbitrator notes that all other criteria, most of which are listed in Article 15 of the FDC and/or deemed preponderant by jurisprudence, separate Sporting Vaslui and SC Vaslui and exclude the existence of a sporting succession, starting with the category of competition and the acquisition of federative rights. He can only recall, as FIFA convincingly demonstrated on the basis of the information provided by the RFF, that the two clubs coexisted for several years and that Sporting Vaslui gained access to professional football on its own sporting merits, without ever benefiting from SC Vaslui's results and assets or attaining its standing. In particular, SC Vaslui used to compete in the top-tier Romanian football league (Liga I) for the seasons 2012/2013 and 2013/2014, whilst Sporting Vaslui, at such time, participated in the Hagi Danone Cup (youth competition) and the U13 Championship organised by County Football Association (CFA) Vaslui and the RFF, respectively – prior to starting a continuous

progression up to the third league (Liga III) by the season 2020/2021.

105. The Sole Arbitrator wishes to point out, in keeping with his reasoning, that Sporting Vaslui is not a new entity created concurrently with or immediately after the bankruptcy involving SC Vaslui. Both clubs have absolutely no players in common, as can be seen from an examination of their respective rosters for the period under consideration, which tends to rule out both sporting continuity and a malicious desire of “*getting rid of certain underperforming players or of players earning high salaries, while continuing to rely on certain players to achieve sporting success of the newly established club*” (CAS 2020/A/7092, para 100). The same is true regarding their board of directors since, notwithstanding the Appellant’s contention and the media releases provided by him, the former managers of his club did not, at the pivotal moment of bankruptcy, find employment with Sporting Vaslui. It is clear from the Court of Vaslui’s decision dated 9 March 2015 that the First Respondent was from that moment overseen by other persons, namely Ms Antonela-Violeta Rusu (President), Mr Daniel-Irinel Iureanu (Vice-president) and Ms Harbuz Elena (Member). The documents on file do not contain any mention of the (then or subsequent) involvement of Mr Cătălin Popa, let alone Mr Costinel Botez, who seems to have been mainly a coach of both teams.
106. The Sole Arbitrator is further strengthened in his position by the fact that the registered office of Sporting Vaslui is located at a different address from that of SC Vaslui at the time, and that the two entities are distinguished by different legal forms, namely a non-for-profit private law entity for the former, and a trading company for the latter. In this respect, it is of utmost importance to point out that the aspects related to the legal form of clubs can play a relevant role within the assessment of a sporting succession, by shedding light on their different objectives (CAS 2016/A/4918, para 157).
107. Finally, the Sole Arbitrator does not see in what way the press conference of 28 January 2020 and related media reports could support the Appellant’s position. It is important to clarify that ASS FC Vaslui, the Original Debtor’s supporters’ club, and Sporting Vaslui have never merged, as argued by the Appellant in his Appeal Brief. On the contrary, in August 2018, ASS FC Vaslui merged with another club, CSM Vaslui, as he himself acknowledged at the hearing after considering the additional evidence on file. It is thus difficult to understand, in the absence of additional clear evidence, which entities took part in this conference, and to believe that the representatives of ASS FC Vaslui and Sporting Vaslui could publicly state on that occasion that they had “*joined hands*” to take over the torch of the Original Debtor “*after six years of efforts*”. In any case, such information would have only limited probative value when confronted to the above-mentioned decision of the Court of Vaslui (in the same vein, see CAS 2018/A/5977, para 149, which states that even press releases published by clubs cannot be simply accepted as conclusive evidence and can be rebutted).
108. In view of all the above, the Sole Arbitrator finds that, with the exception of some



minor traits, all relevant elements assessed indicate the absence of a sporting continuity and sporting succession between SC Vaslui and Sporting Vaslui. He concludes that Sporting Vaslui is not the sporting successor of SC Vaslui, and cannot thus be sanctioned for its past failures.

### **C. Diligence**

109. The Sole Arbitrator observes that the Appellant and the First Respondent devoted a large part of their oral submissions to the subsidiary question of the Appellant's diligence. In particular, they disagreed on the date on which he was informed of the opening of the State bankruptcy proceedings, and on whether he could, or should, have declared his claim within the time-limit initially set for the appeal to creditors or at a later date. Conversely, FIFA considered that there was no need to address this issue, as there was no sporting succession.
110. The Sole Arbitrator, in line with his reasoning, endorses FIFA's stance, and declares that this issue is moot. This also applies to all requests for further briefing of production of documents made in this respect.

## **XII. CONCLUSION**

111. Based on the foregoing, and after having taken into due consideration all the specific circumstances of the case, the evidence produced and the arguments submitted by the Parties, the Appealed Decision is upheld, as the Sole Arbitrator concludes that:
  - i) The balance of probabilities standard is applicable to this case;
  - ii) The First Respondent is not the sporting successor of the Original Debtor and no disciplinary sanctions can be imposed on it;
  - iii) The issues of the Appellant's standing to sue and diligence in the insolvency proceedings can remain undecided.
112. All other and further motions or prayers for relief are dismissed.

## **XIII. COSTS**

(...).

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## **ON THESE GROUNDS**

### **The Court of Arbitration for Sport rules that:**

1. The appeal filed on 18 July 2022 by Mr Christian Pougă against the decision rendered by the FIFA Disciplinary Committee on 26 August 2021 is dismissed.
2. The FIFA Disciplinary Committee's decision of 26 August 2021 is upheld.
3. (...).
4. (...).
5. All further or different motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 4 July 2023

### **THE COURT OF ARBITRATION FOR SPORT**

Luigi Fumagalli  
Sole Arbitrator

Alexandra Veuthey  
Clerk