CAS 2023/A/10098 Alexandru Pacurar v. Fotbal Club Rapid 1923 SA
CAS 2023/A/10099 Tiberiu Balan v. Fotbal Club Rapid 1923 SA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr Mario Vigna, Attorney-at-law, Rome, Italy

Arbitrators: Mr Stuart Gilhooly SC, Solicitor, Dublin, Ireland

Mr Michele A.R. Bernasconi, Attorney-at-law, Zurich, Switzerland

in the arbitrations between

Alexandru Pacurar, Romania

Represented by Mr Georgi Gradev and Mr Márton Kiss, Attorneys-at-law at SILA Lawyers, Sofia, Bulgaria

Appellant in CAS 2023/A/10098

and

Tiberiu Balan, Romania

Represented by Mr Georgi Gradev and Mr Márton Kiss, Attorneys-at-law at SILA Lawyers, Sofia, Bulgaria

Appellant in CAS 2023/A/10099

and

Fotbal Club Rapid 1923 SA, Romania

Represented by Mr Marian I. Mihail, Attorney-at-law at Mihail Law Office, Bucharest, Romania

Respondent in CAS 2023/A/10098 and CAS 2023/A/10099

TABLE OF CONTENTS

I. PARTIES

1. Mr Alexandru Pacurar ("Mr Pacurar") and Mr Tiberiu Balan ("Mr Balan") are both professional football players of Romanian nationality (together, the "Appellants").

2. Fotbal Club Rapid 1923 SA ("FC Rapid" or the "Respondent") is a football club with its registered office in Bucharest, Romania, and is affiliated with the *Federația Română de Fotbal* ("RFF").

3. The Appellants and the Respondent are jointly referred to as the "Parties".

II. INTRODUCTION

4. These appeals are brought by Mr Pacurar (CAS 2023/A/10098) and Mr Balan (CAS 2023/A/10099), respectively, against Fotbal Club Rapid 1923 SA, concerning two decisions issued by the Appeal Committee ("Appeal Committee") of the RFF on 14 September 2023.

5. In both matters, the Appeal Committee dismissed the respective claims as a consequence of being time-barred.

III. FACTUAL BACKGROUND

6. Set out below is a summary of the relevant facts and allegations, based on the Parties' written submissions and evidence provided during these proceedings. Additional facts and allegations found in the Parties' written submissions and evidence may be referenced, where appropriate, in the subsequent legal discussion. In any case, while the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in its Award only to those submissions and evidence it deems necessary to explain its reasoning.

7. On 7 December 2012, Fotbal Club Rapid SA (the "Principal Debtor") was subjected to insolvency proceedings.

8. On 11 July 2013, the Principal Debtor and Mr Pacurar entered into the Sports Activity Contract No. 3551 (the "Pacurar Employment Contract").

9. On 25 July 2013, the Principal Debtor and Mr Balan entered into the Sports Activity Contract No. 373 (the "Balan Employment Contract").

10. On 27 March 2014, the Principal Debtor, represented by a judicial trustee, entered into separate rescheduling agreements with the Appellants, as follows:

    - In Clause 2 of the rescheduling agreement to the Pacurar Employment Contract ("Pacurar Rescheduling Agreement"), the Principal Debtor agreed to pay Mr Pacurar the total amount of Romanian lei ("RON") 528,000 as fixed remuneration for the period from 1 July 2013 to 30 June 2014, as follows:

"*(i) RON 88,000 for the period from August to December 2013 in equal monthly installments of RON 14,666, starting as of July 1, 2014, until full payment; and*

(ii) RON 440,000, depending on the company's possibility, during the entire period of the reorganization plan but not later than July 1, 2017."

- In Clause 2 of the rescheduling agreement to the Balan Employment Contract ("Balan Rescheduling Agreement"), the Principal Debtor agreed to pay Mr Balan the total amount of RON 304,040 as fixed remuneration for the period from 1 July 2013 to 30 June 2014, as follows:

  "*(i) RON 84,480 for the period from August to December 2013 in equal monthly installments of RON 14,080 starting as of July 1, 2014, until full payment; and*

  (ii) RON 220,000 'equivalent to EUR 50,200 representing financial rights according to art 3 letter a) of the Civil Service Agreement… will be paid until 03/04/2015."

11. On 13 June 2016, the "*Bucharest Court*" ordered the entry into bankruptcy of the Principal Debtor. The Appellants' receivables were registered in the Principal Debtor's table of creditors, approved by the creditors' meeting and reduced as follows:

    (i) Mr Pacurar's credit under the Pacurar Rescheduling Agreement was reduced to RON 83,920;

    (ii) Mr Balan's credit under the Balan Rescheduling Agreement was reduced to RON 99,710.

12. On 24 April 2018, the Respondent was founded, under the name *Societatea Fotbal Club R SA*.

13. On 25 July 2018, at a public auction organised by the trustee of the Principal Debtor, the Respondent bought a portfolio of intellectual property rights containing, *inter alia*, the Principal Debtor's logo.

14. On 2 February 2019, the Respondent obtained the affiliation with the RFF.

15. In the summer of 2019, the Respondent was granted the right to use the name "*Fotbal Club Rapid*" in the competitions organised under the RFF, in consideration of the intellectual property rights acquired from the Principal Debtor.

16. On 22 October 2020, in relation to a claim initiated by the Brazilian player Mr Julio Cesar Da Silva, the FIFA Disciplinary Committee ("FDC") ruled in particular as follows ("FDC Decision"):

    "*In light of the above, and considering that the New Club shares with the Original Debtor the entirety of the elements identifying a sporting entity, this is, the name, the emblem, colours and history, in part, as a result of the acquisition of the Original Debtor's brand by the New Club, the Single Judge has no other alternative but to*

conclude that the New Club, FC Rapid 1923, is the sporting successor of the Original Debtor, FC Rapid Bucuresti".

17. The FDC Decision was notified to the relevant parties on 16 November 2020 and published on the FIFA website on 1 February 2021.

18. The FDC Decision was subsequently confirmed by CAS in procedure CAS 2020/A/7543, with an award dated 26 April 2022 ("Da Silva Award").

19. On 1 August 2022, Mr Pacurar and Mr Balan sent a payment notice to the Respondent, attaching the Da Silva Award and requesting payment of the outstanding amounts of, respectively, RON 528,000 and RON 304,040 from said club "*as the sports successor of the Old Club*".

20. On 23 August 2022, the Appellants filed their respective claims against the Respondent with the RFF National Dispute Resolution Chamber ("NDRC"):

- Mr Pacurar requested that the Respondent be ordered to pay RON 528,000 based on the Pacurar Rescheduling Agreement;

- Mr Balan requested that the Respondent be ordered to pay RON 304,040 based on the Balan Rescheduling Agreement.

21. On 5 July 2023, the NDRC issued the decisions n. 98 and 97 concerning Mr Pacurar and M. Balan, respectively (singularly the "First Instance Decision" and collectively the "First Instance Decisions") whereby it held that the Appellants' claims against the Respondent had to be rejected as they were time-barred.

22. On 17 July 2023, each Appellant appealed against the relevant First Instance Decision before the Appeal Committee.

23. On 14 September 2023, the Appeal Committee issued the decision no. 14 in proceedings 10/CR/2023 and the decision no. 13 in proceedings 9/CR/2023 concerning Mr Pacurar and Mr Balan respectively (the "Appealed Decisions"), whereby it confirmed the First Instance Decisions, ruling that the Appellants' claims against the Respondent were time-barred.

24. The operative part of both decision no. 14 and no. 13 state, in its relevant parts, as follows:

"*Dismisses the appeal as unfounded*".

25. In the grounds of each of the Appealed Decisions, the Appeal Committee stated in particular the following:

(i) pursuant to Article 25(3) of the Romanian Regulations on the Status and Transfer of Football Players (the "RJSTP"), "*[t]he right to request the execution of certain obligations, arising from the provisions of contracts concluded with players […] are prescribed within two years from the date on which the obligations became due*";

(ii) more than two years had passed from the relevant *dies a quo* i.e. 2 December 2019 – the date on which Mr Da Silva acted before the FIFA DC – as from that moment the situation of sport continuity with the Principal Debtor was known, and any other interested party could take action against the Respondent.

26. On 19 October 2023, the grounds of each Appealed Decision were notified to the Parties.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

27. On 3 November 2023, in accordance with Articles R47 and R48 of the CAS Code of Sport-related Arbitration (the "CAS Code"), Mr Pacurar and Mr Balan filed separate Statements of Appeal against the Respondent with respect to the decision no. 14 in 10/CR/2023 and the decision no. 13 in 9/CR/2023, respectively, rendered by the Appeal Committee. Consequently, the proceedings were docketed as *CAS 2023/A/10098 Alexandru Pacurar v. Fotbal Club Rapid 1923 SA* ("CAS 10098") and *CAS 2023/A/10099 Tiberiu Balan v. Fotbal Club Rapid 1923 SA* ("CAS 10099").

28. Each Statement of Appeal included a request to bifurcate the relative proceeding "*in order to address and resolve the issue of prescription of the Appellant's claim against the Respondent*".

29. On 6 November 2023, in accordance with Article R52(5) of the CAS Code, the Appellants submitted a request for the consolidation of the procedures in CAS 10098 and CAS 10099.

30. On 7 November 2023, the Respondent objected to: (i) the bifurcation of the proceedings because "*a preliminary ruling on prescription requires an analysis on a part of the other elements of a ruling on the merits of the case*" and (ii) the consolidation of the procedures under Article R52(5) of the CAS Code.

31. On 24 November 2023, the Parties were informed that the Deputy President of the CAS Appeals Arbitration Division had decided to submit the two procedures CAS 10098 and CAS 10099 to the same panel in accordance with Article R50(3) of the CAS Code.

32. On 23 April 2024, the CAS Court Office notified the Parties that the Panel appointed to decide the matter would be constituted by Mr Mario Vigna as president, Mr Stuart Gilhooly SC, jointly nominated by the Appellants and Mr Michele A. R. Bernasconi, nominated by the Respondent.

33. On 3 May 2024, the Panel rejected the Appellants' requests for bifurcation "*on the basis that reasons of procedural economy do not justify the need to bifurcate*".

34. On 6 June 2024, the Appellants filed their respective Appeal Briefs pursuant to Article R51 of the CAS Code.

35. On 17 July 2024, in accordance with Article R55 of the CAS Code, the Respondent filed its Answers addressing, respectively, CAS 10098 and CAS 10099.

36. On 25 July 2024, the Panel, acting pursuant to Article 57(2) of the CAS Code, informed the Parties that it "*deem[ed] itself sufficiently well-informed to decide these cases based solely on the Parties' written submissions, without the need to hold a hearing*".

37. On 26 July 2024, the CAS Court Office provided the Parties with the Orders of Procedure for CAS 10098 and CAS 10099, which were duly signed and returned by the Appellants on the same day and by the Respondent on 5 August 2024. Furthermore, it requested that the Parties inform the CAS Court Office, within three days, "*whether they agree that the Panel issues one award encompassing both proceedings*" pointing out that "*[t]he Parties' silence in this regard will be deemed acceptance of a single award*".

38. On the same date, the Appellants communicated their agreement to the issuance of a single award encompassing both proceedings. The Respondent did not provide its comments on this matter within the granted time limit.

39. On 23 September 2024, the Respondent brought to the Panel's attention the award in the cases CAS 2023/A/9836, CAS 2023/A/9837, CAS 2023/A/9838, and CAS 2023/A/9839, which was issued after the final exchange of written submissions in the present proceedings.

40. On 24 September 2024, the Panel invited the Appellants to comment on the aforementioned legal authority and the Respondent's observations.

41. On the same date, the Appellants submitted their observations in reply.

V. SUBMISSIONS OF THE PARTIES

42. The following summary of the Parties' positions is illustrative and does not necessarily encompass every argument raised. Nevertheless, the Panel has considered all Parties' submissions in full, even if they are not explicitly mentioned in the following discussion.

A. The Appellants

43. In his Appeal Brief in CAS 10098, Mr Pacurar requested that the CAS:

> "*1. Annul the Appealed Decision.*
>
> *2. Determine that the Respondent is the sporting successor of FC Rapid Bucuresti (S.C. Football Club Rapid Bucuresti S.A.).*
>
> *3. Order the Respondent to pay the Appellant RON 528,000 plus interest based on the agreement between FC Rapid Bucuresti (S.C. Football Club Rapid Bucuresti S.A.) and the Appellant dated March 27, 2014.*
>
> *4. Order the Respondent to bear all costs incurred with this proceeding.*
>
> *5. Order the Respondent to pay the Appellant a contribution towards his legal and other costs in an amount to be determined at the Sole Arbitrator's* [sic] *discretion*".

44. In his Appeal Brief in CAS 10099, Mr Balan requested that the CAS:

"*1. Annul the Appealed Decision.*

2. Determine that the Respondent is the sporting successor of FC Rapid Bucuresti (S.C. Football Club Rapid Bucuresti S.A.).

3. Order the Respondent to pay the Appellant RON 304,040 plus interest based on the agreement between FC Rapid Bucuresti (S.C. Football Club Rapid Bucuresti S.A.) and the Appellant dated March 27, 2014.

4. Order the Respondent to bear all costs incurred with this proceeding.

5. Order the Respondent to pay the Appellant a contribution towards his legal and other costs in an amount to be determined at the Sole Arbitrator's [sic] *discretion*".

45. The Appellants' submissions in both CAS 10098 and CAS 10099, in essence, may be summarised as follows:

(i) The claims were not time-barred:

(a) The claims are not subject to the two-year statute of limitations set out in Article 25.3 of the RJSTP, but to the three-year statute of limitations set out in Article 2517 of the Romanian Civil Code ("RCC"):

- The Respondent was only established on 24 April 2018. Therefore, it was not reasonably possible for the Appellants to seek relief against the Respondent on "*the date on which the obligations became due*" or within the two-year limitation period; with specific reference to Mr Pacurar and thus to CAS 10098, this would apply to at least the first six instalments;

- The Appeal Committee correctly endeavoured to find the objective moment in time when the Appellants could have sought relief against the Respondent, which required that "*the situation of sports continuity was known by the respondent*" – an approach also in line with CAS jurisprudence and Article 2523 of the RCC;

- Since the Appeal Committee implicitly ruled out the application of Article 25.3 of the RJSTP to the present case where the claim is directed not at the Principal Debtor but at its potential sporting successor, the limitation period should start running from an objective point in time when the Appellant could have reasonably and objectively sought relief against the Respondent. Therefore, the Appeal Committee should have resorted to the general statute of limitations under Romanian law (i.e. Article 2517 of the RCC) to fill this gap in the RJSTP;

(b) Alternatively, the Appellants complied with Article 25.3 of the RJSTP, in conjunction with Article 2523 of the RCC as the *dies a quo*, i.e., the first objective moment in which the Appellants could have reasonably known about the sporting succession was not on 2 December 2019 (as held by the

Appeal Committee) but on 1 February 2021, when FIFA published the FDC Decision on its website, or, at the earliest, on 16 November 2020, when FIFA notified the FDC Decision to the interested parties:

- The event that triggers the limitation period needs to be an objective moment in time, which can be traced and ascertained by the parties involved;

- The random fact that another, distinct creditor had initiated disciplinary proceedings against the Respondent at FIFA cannot be considered an objective event that gives rise to the Appellants' claims, given that the Appellants did not know or could not have known this fact at the relevant time;

- The time when the Respondent has been created as a legal entity (or has been affiliated with the RFF) is not and cannot be an objective moment in time because it was not known to the Appellants at the relevant time that the Respondent was created;

(c) Alternatively, the limitation period of their respective claims was interrupted pursuant to Article 2537(2) of the RCC, meaning that the objective moment in time to determine the two-year limitation period begins upon the conclusion of bankruptcy proceedings of the Principal Debtor:

- Considering that the Appellants were registered in the Principal Debtor's table of creditors within the context of its bankruptcy proceedings, there is still an existing theoretical possibility that the Appellants, being registered creditors, would eventually receive at least partial payment of the amount(s) due, post the conclusion of such bankruptcy proceedings;

- In such proceeding where a claim is directed at the potential sporting successor, the objective moment in time to determine the two-year limitation period is the closure of the relevant bankruptcy proceedings against the Principal Debtor;

- Since the bankruptcy proceedings remain ongoing in this case, the limitation period to claim the debt from the Principal Debtor remains interrupted pursuant to Article 2537(2) of the RCC. A new limitation period commences from the moment the enforcement of the outstanding debt is possible, i.e. after the closure of the bankruptcy proceedings, pursuant to Article 2541(5) of the RCC;

- It follows that the limitation period for the Appellants to file a claim against the Respondent starts upon the conclusion of such bankruptcy proceedings if the due amount (partly or in full) is not recovered from such proceedings.

(ii) Respondent is the sporting successor of the Principal Debtor:

(a) The mere fact that the Principal Debtor and the Respondent appeared as two separate legal entities is not decisive in ruling out a sporting succession, which might differ on the basis of the applicable civil law. In this respect, as per CAS jurisprudence, a club is a sporting entity identifiable by itself that, as a general rule, transcends the legal entities which operate it;

(b) The identity of a club is constituted by elements such as its name, colours, fans, history, sporting achievements, shield, trophies, stadium, roster of players, historical figures, etc., that allow it to distinguish itself from all the other clubs. Hence, the prevalence of the continuity and permanence in time of the sporting institution in front of the entity that manages it has been recognized, even when dealing with the change of management companies completely different from themselves;

(c) As opposed to the concept of legal succession, in the context of sporting succession, it is relevant to determine this concept in light of the eyes of the general public;

(d) The similarity in the name, logo, colours, stadium, training grounds, management, history and the acquisition of certain assets of the Principal Debtor establishes clear commercial, structural, sporting, and historical links between the two entities.

B. The Respondent

46. The Respondent, in both its Answers in CAS 10098 and CAS 10099, "*asks the Court to dismiss the appeal, uphold the Appealed Decision[s] and order the Appellant[s] to bear the costs of the current arbitration as well as the Respondent's expenses incurred in connection with these arbitration proceedings*".

47. The Respondent submissions in both CAS 10098 and CAS 10099, in essence, may be summarised as follows:

(i) The Appellants' claim was time-barred:

(a) The relevant statute of limitations is the two-year one set out in Article 25.3 of the RJSTP and not the general three-year one set out in Article 2517 of the RCC, as per the *specialia generalibus derogant* principle. This legal principle is in line with both Article 23.2 of the FIFA Regulations on the Status and Transfer of Players ("FIFA RSTP") and Article 26.4 of the RJSTP;

(b) The statute of limitations passed before the start of the 2020-2021 season, as the relevant moment is the one when the Respondent became publicly perceived as the sporting successor of the Principal Debtor. More than two years have passed from the relevant *dies a quo*, i.e. the moment in time the Appellants could have known of the existence of the Respondent as a sporting successor, that as a matter of fact is "*the summer of 2018*" and, as a matter of law is "*2 February 2019, the moment the Respondent as a legal entity was definitively affiliated with the RFF*";

(c) The Appellants began proceedings against the Respondent only on 23 August 2022, and therefore the statute of limitations of two years (and even three years) lapsed long before this date. Per CAS jurisprudence, the purpose of rules concerning statute of limitations is to preserve and ensure legal certainty as well as the stability of the law and legal relations;

(ii) The FIFA RSTP do not apply to the present dispute:

(a) The present proceedings should be governed entirely by Romanian law. Article 25.1 of the FIFA RSTP, regarding new claims against sporting successors, is not applicable in the present matter, as the dispute is governed entirely by Romanian law which does not allow such a transfer of liabilities;

(b) The principle of sporting succession is inapplicable *de plano* to the present case.

(iii) Even if the claims were not time-barred and the sporting successor principle was applicable, the Appellants were not diligent in pursuing their claims:

(a) the Appellants remained passive towards the Respondent for more than four years after the date of the incorporation of the latter;

(b) While the diligence criterion is only explicitly mentioned in disciplinary proceedings concerning sporting succession, even in a contractual dispute, the alleged creditor has to display a minimum interest in recovering debt from an apparent new debtor.

VI. JURISDICTION

48. Article R47(1) of the CAS Code provides as follows:

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

49. Since each Appealed Decision was rendered by the Appeal Committee, reference should be made to Article 36.18 of the RJSTP, which provides as follows:

> "*The decisions of the RFF/PFL Appeal Committee are final and enforceable at domestic level since the date of delivery and are subject to appeal before the Court of Arbitration for Sport within 21 days from notification*".

50. The Parties did not dispute the jurisdiction of the CAS and confirmed it by signing the Order of Procedure.

51. It follows that CAS has jurisdiction to decide the present dispute.

VII. ADMISSIBILITY

52. 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*".

53. Under Article 36.18 of the RJSTP (see *supra* at para. 49), decisions adopted by RFF appeal bodies, such as the Appeal Committee, can be appealed within 21 days after their notification.

54. The grounds of each Appealed Decision were notified to the Parties on 19 October 2023. Mr Pacurar and Mr Balan lodged their respective Statements of Appeal on 3 November 2023, *i.e.* within the 21 days allotted under Article 36.18 of the RJSTP.

55. Both Appeals complied with the requirements of Articles R47 and R48 of the CAS Code.

56. It follows that the Appellants' Appeals are both admissible.

VIII. APPLICABLE LAW

57. 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision*".

58. The Preamble to the RJSTP, *inter alia,* states as follows:

> "*3. The provisions of these regulations are binding for all clubs affiliated to the RFF and CFA, for PFL member clubs, for players, coaches, and players' agents. Any and all disputes shall be settled on the basis of these rules.*"

59. Under Article R58 of the CAS Code, the Panel must apply the "applicable regulations", which in this case are the RFF regulations, particularly the RJSTP, as the matter concerns Parties exclusively from Romania, without any cross-border element.

60. The Panel also notes that pursuant to Article R58 of the CAS Code, the Parties' choice of law is relevant only "subsidiarily" (see e.g. CAS 2015/A/3896, para. 72; CAS 2020/A/7605, para. 169).

61. While there were no written agreements executed between each Appellant and the Respondent indicating the choice of law, the Appellants and the Respondent, in their respective submissions, have indicated that Romanian law should be "subsidiarily" applied.

62. Therefore, the Panel concludes that the "applicable regulations" are the RFF regulations, (in particular, the RJSTP) and Romanian law shall apply "subsidiarily".

IX. MERITS

63. At the outset, the Panel notes that the issue that is common and central to the present cases is the one concerning the Appellants' claims against the Respondent being time-barred.

64. The Panel also observes that the Respondent's status as the sporting successor of the Principal Debtor is undisputed.

65. That said, the Appellants contend that the Appeal Committee erred in considering their respective claims time-barred on three alternative grounds: (i) the Appeal Committee wrongly relied on the two-year statute of limitations provided for in Article 25.3 of the RJSTP, instead of applying the three-year statute of limitations established under Article 2517 of the RCC; (ii) the Appeal Committee wrongly identified the *dies a quo* of the Appellants' claims as 2 December 2019 i.e. the date on which Mr Da Silva acted before the FDC, instead of 1 February 2021 i.e. the date on which the FDC Decision had been published on FIFA's website – or, at the earliest, as notified to the parties on 16 November 2020; and lastly, (iii) their claim is not time-barred, since the limitation period of their respective claims was interrupted pursuant to Article 2537(2) of the RCC, meaning that the objective moment in time to determine the two-year limitation period begins only upon the conclusion of bankruptcy proceedings of the Principal Debtor.

66. The Respondent, on the other hand, contends that the Appeal Committee correctly applied the two-year statute of limitations under Article 25.3 of the RJSTP, although identifying the wrong *dies a quo*. In this respect, the Respondent contends that the *dies a quo* of the Appellants' claims corresponds to the moment in time the Appellants could have known of the existence of the Respondent as a sporting successor, that: (i) as a matter of fact, is the summer of 2018; and (ii) as a matter of law, is 2 February 2019, the moment the Respondent as a legal entity was definitively affiliated with the RFF.

67. In light of the Parties' respective submissions, the Panel must address the following issues:

A. Whether the applicable statute of limitations is: (i) two years, as stipulated in Article 25.3 of the RJSTP; or (ii) three years, as contained in Article 2517 of the RCC.

B. The correct *dies a quo* from which point the applicable statute of limitations would commence.

A. The applicable statute of limitations

68. Article 25.3 of the RJSTP provides as follows:

> "*The right to seek the performance of obligations resulting from the provisions of the contracts signed with the players, coaches, sports activity participants or between clubs, from transfer agreements or sports activity contracts or other written agreements, training compensations, promotion compensations, transfer fees, solidarity contributions or additional acts to any of these, are subject to a two-years limitation period running from the due date.*"

69. Article 2.517 of the RCC provides as follows:

> "*The limitation period is 3 years, unless the law provides otherwise*."

70. This case concerns the undisputed non-performance of obligations in contracts executed between the Appellants (players) and the Principal Debtor (club). Such cases are undoubtedly covered by Article 25.3 of the RJSTP.

71. The Panel recalls that the "applicable regulations" to this dispute is the RJSTP (see *supra* at para. 62). Article 25.3 of the RJSTP is unambiguously and directly applicable to this dispute, and therefore there is no need to refer to the provisions of the RCC, which is only applicable "subsidiarily" (see *supra* at para. 62).

72. In any case, regarding the three-year period under Article 2517 of the RCC as argued by the Appellants, the Panel notes that this period is limited by the phrase *"… unless the law provides otherwise*." In the Panel's view this means that Article 2517 of the RCC sets the default general limitation period for civil actions at 3 years, except when other specific laws provide for different timeframes.

73. From a legal standpoint, the RJSTP are a special set of regulations governing disputes related to football, including sports contracts. As such, the RJSTP are binding on the parties involved in football-related disputes and take precedence over the more general provision of the RCC.

74. In light of the above, the Panel considers that Article 25.3 of the RJSTP constitutes an example of the principle of *specialia generalibus derogant* inasmuch it derogates from the general three-year period established by Article 2517 of the RCC (see TAS 2016/A/4474, para. 335).

75. For the sake of argument, it should be noted that a similar conclusion would be reached even if the RJSTP were not to be considered capable of derogating from the general term. Indeed, it must be emphasised that Article 2519 of the RCC reads: "*The term of prescription may be shortened or extended by the agreement of the parties, provided that: a) The extension does not exceed 10 years; b) The reduction is not less than one year. Such agreements concerning the term of prescription are valid only if they are concluded after the right of action has come into existence*".

76. From a legal standpoint, this means that parties to a contract have the power to modify the limitation period through mutual agreement, subject to the restrictions mentioned,

i.e. the extension can be up to 10 years, and the reduction cannot be less than 1 year. Additionally, any agreement to modify the limitation period must be made after the right of action has arisen.

77. However, the Panel observes that, through their membership within the RFF, the Appellants have clearly accepted that disputes involving players' contract would have been subject to Article 25.3 of the RJSTP.

78. In light of the above considerations, the statute of limitation is a two-year period, as provided in the quoted Article 25.3 of the RJSTP.

B. The correct *dies a quo*:

79. It is settled jurisprudence that in cases of sporting succession, if a club is considered to be a "sporting successor" of a non-compliant club, it shall also be considered a non-compliant party (CAS 2020/A/7092, para. 65).

80. Given that the Respondent's status as the sporting successor of the Principal Debtor is not disputed by the Parties, it follows that the Respondent could, in principle, be held liable for the actions of the Principal Debtor, assuming the Panel concludes these claims are not time-barred.

81. Accordingly, the Panel must determine when the two-year limitation period begins, i.e. what constitutes the *dies a quo* in this case, to assess whether the Appellants submitted their claims within the prescribed period and in compliance with Article 25.3 of the RJSTP.

82. With respect to the commencement of the two-year limitation period "*running from the due date*" stipulated in Article 25.3 of the RJSTP, the Panel notes that the "due date" is not specifically related to issues such, in this case, of sporting succession. Therefore, the RJSTP being silent on the *dies a quo* in such a situation, reference must be made to Romanian law.

83. In this respect, the Panel notes that under Article 2523 of the RCC:

> "*The limitation period shall begin to run from the date when the holder of the right of action knew or, according to the circumstances, ought to have known that it had arisen.*"

84. In disputes involving sporting succession, the Panel notes that the starting point of the limitation period should begin from an "*objective moment in time*" that could be traceable and ascertainable by the parties involved (CAS 2020/A/7290, paras. 68-76; CAS 2020/A/7154, para. 71). Therefore, the Appellants' – subjective – knowledge is not relevant to establish the moment in which the limitation period begins to run (CAS 2020/A/7154, para. 75).

85. The Panel recalls that the Appeal Committee had determined the "*objective moment in time*" to be the date of 2 December 2019, *i.e.* the day on which Mr Da Silva acted before the FDC. In this regard, the Appellants argue that the random fact that another, distinct creditor had initiated disciplinary proceedings against the Respondent at FIFA cannot

be considered an objective event that gives rise to the Appellants' claims, given that the Appellants did not or could not have known this fact at the relevant time, and instead this "objective moment" was on 1 February 2021, when FIFA published the FDC Decision on its website, or, at the earliest, on 16 November 2020, when FIFA notified the FDC Decision to the interested parties. The Respondent, on the other hand, contends that such an objective event is when the Respondent was publicly perceived as the sporting successor of the Principal Debtor that: (i) as a matter of fact, is the summer of 2018; and (ii) as a matter of law, is 2 February 2019, the moment the Respondent as legal entity was definitively affiliated with the RFF.

86. Considering the Parties' submissions, the Panel notes that the issue before it is whether the date of 2 December 2019, as determined by the Appeal Committee, correctly reflects the "*objective moment in time*" when the Appellants could have known of the Respondent's existence as the sporting successor to the Principal Debtor; or, conversely, whether such moment corresponds to a different point in time.

87. The Panel is of the view that the Appellants are ultimately correct in stating that the random fact that another, distinct creditor had initiated disciplinary proceedings against the Respondent at FIFA cannot be considered an objective event that gives rise to the Appellants' claims.

88. However, the Panel rejects the Appellants' claim that the statute of limitations began either on 1 February 2021, when the FDC Decision was published, or on 16 November 2020, when it was notified. Contrary to what the Appellants maintain, the Panel is not convinced that such dates actually represent the first time the Appellants could objectively have known about the sporting succession between the two entities in question. In the Panel's view, all the factors that urged Mr Da Silva to take action against the Respondent clearly existed prior to his request to the FIFA Secretariat to open disciplinary proceedings against the Respondent. Therefore, the Appellants were not prevented at that time from finding out about the Respondent's status as a sporting successor of the Principal Debtor.

89. In this respect, the Panel is of the view that the dates of notification and publication of the FDC Decision are irrelevant for the purpose of establishing said *dies a quo* and, rather, one should look at the relevant circumstances to consider a club as a "sporting successor".

90. The Panel is cognisant of the fact that, to determine whether or not a club has to be considered a "sporting successor", there should be an analysis on a case-by-case basis (see CAS 2020/A/7290, para. 86).

91. In particular, in the Da Silva Award, which confirmed that the Respondent must be considered the sporting successor of the Principal Debtor, the CAS held the following:

> "*53. The Sole Arbitrator acknowledges that CAS jurisprudence has consistently endorsed the understanding that 'a club is a sporting entity identifiable by itself that, as a general rule, transcends the legal entities which operate it' (inter alia CAS 2018/A/5618) and that therefore, the obligations assumed by such club must be respected regardless of the legal vehicle used to manage the club. The provided criteria under Article 15.4 FDC (2019 Edition), such as the name, the crest, the*

history, the fanbase, the history or the roster of players, among others, are addressed by such regulations to demonstrate the continuity of a club throughout time irrespective of the ownership structure behind it. However, the list of these criteria is not exhaustive (Article 15 '...among others...'), and other elements can give value to establishing the existence of a sporting succession.

54. When a case of sporting succession is confirmed, the new club - considered to be the sporting successor - can be held liable to assume the financial obligations of the former club (i.e., often an old club that no longer exists and/or is no longer affiliated to the national association it belonged) due to a final and binding decision. This is the case even if the new club (i.e., the sporting successor) was not a party to any agreement with the creditor and not named in the decision the creditor seeks to enforce (e.g., for unpaid salaries), like the case at stake."

92. Further, in CAS 2020/A/7290 (paras. 73-76), it was held that in a case involving succession of clubs, the "*event giving rise to the dispute*" to be considered when trying to determine whether or not a claim introduced by a player against the new club is time-barred, is not the contractual violation by the old club, but the new club's date of affiliation to its national federation, as it is from that specific moment in time that the player is in the position to initiate proceedings against the new club.

93. In this respect, the Panel notes, that throughout the 2017-2018 season, the Respondent: (i) played all its home games in the Giulești Stadium, the traditional stadium of the Principal Debtor; (ii) recorded the highest spectator attendance in Romania across all levels, with 36,000 fans attending a 4th division match; (iii) bought a portfolio of intellectual property rights containing, *inter alia*, the Principal Debtor's logo; and importantly; (iv) was promoted from regional to the national football level.

94. It follows that the first moment on which any concerned party (including the Appellants) could and should have known about the existence of the Respondent as sporting successor corresponds to its affiliation to the RFF, and thus the beginning of the 2017/2018 season, *i.e.*, by way of approximation, the summer of 2017.

95. Resultantly, the Panel concludes that the *dies a quo* is the summer of 2017, which reflects an objective moment in time where any party should have known (or could reasonably know) that the Respondent is the sporting successor of the Principal Debtor. In consideration of this *dies a quo*, the Panel finds that the Appellants' claims are time-barred.

96. Notwithstanding the above, even if the Panel were to consider the date the Respondent was definitely affiliated (as a matter of law) with the RFF, *i.e.* 2 February 2019 (as also maintained by the Respondent) as the *dies a quo*, the Appellants' claims would still be time-barred.

97. Nor could the Appellants rely on an interruption of the relevant limitation period based on Romanian law and, in particular, Article 2537(2) of the RCC, under which: "*... the limitation period is interrupted […] by registering the claim in the insolvency proceedings*".

98. In fact, even if the limitation period for the Appellants' claims against the Principal Debtor were interrupted, the Panel sees no reason to apply this interruption to a new different club, such as the Respondent. Indeed, the Respondent is a separate legal entity, distinct from the Principal Debtor, and remains outside the scope of the bankruptcy proceedings, regardless of the sporting succession between the two.

99. The Panel, in particular, is of the view that Article 2537(2) of the RCC – although only applicable to the present dispute as a subsidiary source of law – operates exclusively with respect to the Appellants' outstanding claims against the Principal Debtor, the latter being the subject of the insolvency proceedings. The interruptive effect cannot extend to the same claims when directed towards other subjects, such as guarantors, co-debtors or, in this case, sporting successors, for which the limitation period continues to run, absent other legal grounds justifying such interruption.

X. CONCLUSIONS

100. In view of all the above, the Panel finds that the Appeal Committee, in the Appealed Decisions correctly identified the applicable law to the present disputes to be the RJSTP and, only subsidiarily, the RCC (as also required by Article R58 of the CAS Code). Specifically, the Panel agrees with the Appeal Committee's application of the two-year statute of limitations provided under Article 25.3 of the RJSTP, instead of the three-year one provided under Article 2.517 of the RCC.

101. Conversely, the Panel does not agree with the *dies a quo* identified by the Appeal Committee as the day on which the player Mr Julio Cesar acted before FIFA i.e. 2 December 2019. Instead, the Panel finds that the *dies a quo* of the Appellants' claims towards the Respondent must be set to the objective moment in time when the Appellants could have (or should have) known of the Respondent's recognition as the sporting successor of the Principal Debtor – which is when the latter became affiliated with the RFF and corresponding to the summer of 2018 or 2 February 2019, respectively, as set out above.

102. The Panel further concludes that while the Appeal Committee's identification of the *dies a quo* should be amended to reflect the Respondent's affiliation with the RFF, the Appealed Decisions must ultimately be upheld, as the Appellants' claims remain time-barred.

103. Finally, the Panel holds that all other motions and arguments of the Appellants are rendered moot and shall be dismissed.

104. Consequently, the Appeals in both CAS 10098 and CAS 10099 are rejected.

XI. COSTS

(…).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

I. As to the case CAS 2023/A/10098 *Alexandru Pacurar v. Fotbal Club Rapid 1923 SA*:

1. The appeal filed by Alexandru Pacurar against decision no. 14 rendered by the RFF Appeal Committee on 14 September 2023 is dismissed.
2. Decision no. 14 rendered by the RFF Appeal Committee on 14 September 2023 is confirmed.
3. (…).
4. (…).
5. All further or different motions or prayers for relief are dismissed.

II. As to the case CAS 2023/A/10099 *Tiberiu Balan v. Fotbal Club Rapid 1923 SA*:

1. The appeal filed by Tiberiu Balan against decision no. 13 rendered by the RFF Appeal Committee on 14 September 2023 is dismissed.
2. Decision no. 13 rendered by the RFF Appeal Committee on 14 September 2023 is confirmed.
3. (…).
4. (…).
5. All further or different motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 16 January 2025

THE COURT OF ARBITRATION FOR SPORT

Mario Vigna
President of the Panel

Stuart Gilhooly
Arbitrator

Michele A.R. Bernasconi
Arbitrator