CAS 2023/A/9656 Răzvan Horj v. Club Sportiv Petrolul 52 Association & Romanian Football Federation

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Mario Vigna, Attorney-at-Law in Rome, Italy

in the arbitration between

Răzvan Horj, Bucharest, Romania

Represented by Ms Anca Mituică, Attorney-at-Law, Bucharest, Romania

Appellant

v.

Club Sportiv Petrolul 52 Association, Ploiesti, Romania

Represented by Mr Mincu Paul Alexandru and Mr Marius Lazar Constantin, Attorneys-at-Law, Bucharest, Romania

First Respondent

and

Romanian Football Federation, Bucharest, Romania

Represented by Mr Adrian Stangaciu and Mr Paul Ciucur, Attorneys-at-Law, Bucharest, Romania

Second Respondent

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I. PARTIES

1. Mr Răzvan Horj (the "Appellant" or the "Player") is a professional football player of Romanian nationality.

2. Club Sportiv Petrolul 52 Association (the "First Respondent" or the "Club") is a professional football club based in Ploiesti, Romania, and affiliated to the Romanian Football Federation and the Romanian Professional Football League (the "PFL").

3. Romanian Football Federation (the "Second Respondent" or the "RFF") is the national football federation of Romania, which in turn is affiliated to the Union of European Football Associations (the "UEFA") and the *Fédération Internationale de Football Association* (the "FIFA").

4. The First Respondent and Second Respondent are jointly referred to as the "Respondents".

5. The Appellant and the Respondents are jointly referred to as the "Parties."

II. FACTUAL BACKGROUND

6. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced during these proceedings. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in this Award only to the submissions and evidence he considers necessary to his reasoning.

7. On 17 February 2022, the Club and the Player entered into an employment contract (the "Contract") for the period from 17 February 2022 to 30 June 2024 (written in Romanian and reported in this Award in English based on the uncontested translation filed by the Player) providing, *inter alia*, the following:

   (i) Under Clause IV, it was agreed that the activity would be conducted at "*THE Ilie Oana Stadium of Ploiesti Municipality str. Stadionului No 26, Prahova County and/or in the places where the Club organizes games/training/training camps/sports events*";

   (ii) Under Clause IX, the Club undertook to pay the Player as follows (boldface parts as in the original):

   - "*9.1 For the period **17.02.2022 - 30.06.2024**, the consideration for the sports activity is **EUR 3.500 net/month***";
   - "*9.5 if the Club promotes to the 1st Football League at the end of competition season 2021-2022, for the period **01.07.2022-30.06.2023, the consideration for the sports activity is in the amount of EUR 5,000 net/month***";
   - "*9.6 if the Club remains in the 1st Football League for the competition season 2023-2024, for the period **01.07.2023-30.06.2024, the consideration for the sports activity is in the amount of EUR 5,000 net/month***".

   (iii) In Clause XI Point 11.2.10, the Club undertook (boldface parts as in the original) "[t]*o ensure to the Player **a monthly rent in the amount of EUR 250 net***".

(iv) Clause XVII provides in particular that the Contract could be terminated:

> "*17.2.2. At the end of the period for which it was entered*.
>
> *17.2.3. By agreement of the Parties.*
>
> *17.2.4. In other situations provided under the law or by the FIFA, UEFA, FRF, or LPF regulations.*
>
> *17.2.5. By termination for convenience by the Club or upon 15 calendar-days' notice in the cases provided by articles 11.4.3, 11.4.5, 15.5 of the Contract.*"

8. On 21 October 2022, the Player, through his counsel, sent a notice to the Club (the "First Notice") stating in particular that (i) he had been excluded from the lot of players for all games that had taken place between 17 February 2022 and 21 October 2022 and (ii) on 13 October 2022, the Club's head coach Mr Nicolae Constantin and the Club's Sport Director Mr Claudiu Tudor had informed him that he could no longer train with the Club and, on both 13 and 14 October 2022, he had been denied access to the training sessions. Accordingly, he requested to be informed of the first team's training schedule for the period 22 October 2022 – 28 October 2022. The First Notice specified the following (English translation provided by the Appellant and not challenged by the Respondents): "*In case this request remain unanswered, we will understand that Sports Club Petrolul 52 Association expressed its intention to terminate without a just cause sports activity contract 339/17.02.2022*".

9. On 26 October 2022, the Club informed the Player of the daily training schedule for the period 27 October 2022 – 29 October 2022, which was to take place at VEGA Sports Ground under Mr Daniel Movila (License A Coach) and Mr Ghioca Raduta (Medical Assistant).

10. On 27 October 2022, the Player's counsel sent a second notice to the Club (the "Second Notice"). In the Second Notice, the Player pointed out that (i) he had never trained at VEGA Sports Ground before, (ii) the schedule provided to the Player did not coincide with the schedule of the rest of the first team and (iii) Mr Movila was neither the main coach nor the second coach of the Club. Therefore, he argued that the Club's behaviour had the purpose of excluding the Player from the first team and he concluded by requesting to be provided the first team's training schedule starting from 28 October 2022. The Second Notice also reiterated that, if the Club did not respond to this request, the Player would assume that the Club expressed its intention to terminate the Contract without just cause.

11. On 1 November 2022, the Club sent a communication to the Player informing him of the training sessions for 3 November 2022 – 6 November 2022, which were to take place at VEGA Sports Ground under Mr Daniel Movila (License A Coach) and Mr Ghioca Raduta (Medical Assistant).

12. On 3 November 2022, the Player's counsel sent a final notice to the Club (the "Third Notice"), requesting to be informed of the first team's training schedule starting from 4 November 2022 and reiterating that if the Club did not reply to said request, the Player would assume that the Club expressed its intention to terminate the Contract without just cause.

13. On 15 November 2022, the Player filed a claim with the National Dispute Resolution Chamber of the RFF (the "NDRC") against the Club, requesting the termination of the Contract pursuant to Article 18.1 lit. c) of the RFF Regulations on the Status and Transfer of Football Players (the

"RJSTP") "*as a result of the unilateral termination by Sports Club Petrolul 52 Association of sports activity contract No 339/17.02.2022*". The Player also requested (i) the imposition of a ban on the Club's transfers for two transfer windows, (ii) compensation "*equal to the value of the financial rights due to the player…for the period 4 November 2022 until the end date of the contractual relations, namely 30 June 2024*" and (iii) rent to the value of EUR 11,250 and EUR 1,589.28 for the period between 17 February 2022 – 31 August 2022.

14. On the same date, the Club filed a counterclaim with the NDRC, *inter alia*, requesting the NDRC to: (i) ascertain that the Player terminated the Contract without just cause when failing to comply with the Club's training schedule or, subsidiarily, (ii) declare the Contract terminated with just cause pursuant to Article 18.10(b) of the RJSTP due to the Player's "*unmotivated absence from the team's training sessions*".

15. On 18 January 2023, the NDRC issued its decision ("First Instance Decision") whereby it (i) ascertained the termination of the Contract "*for sporting just cause*" pursuant to Article 18.10 lit. a) of the RJSTP and (ii) condemned the Club to pay the Player compensation amounting to EUR 17,177 "*representing outstanding financial rights*" until the day of the First Instance Decision.

16. On 8 February 2023, the Player appealed the First Instance Decision before the Appeal Committee of the RFF (the "Appeal Committee") requesting, in particular, that compensation be awarded for the amounts due until the expiry of the Contract. In the course of the proceedings, notably on 28 February 2023, the Player filed a "Waiver Request" with the Appeal Committee and requested to "*waive the judgment of our request to apply the transfer ban for the next two transfer periods*".

17. Around the time while the litigation between the Club and the Player was ongoing, the Player allegedly joined CS Minaur Baia Mare ("CS Minaur"), another football club in Romania.

18. On 10 February 2023, the Club sent a notice to the Player which, *inter alia*, stated that the Player's actions of joining CS Minaur without its consent constituted a violation of the Contract and of Article 18.7 of the RJSTP.

19. On 23 March 2023, the Appeal Committee rejected the Player's appeal (the "Appealed Decision").

20. The operative part of the Appealed Decision reads as follows:

> "*Dismisses as groundless the appeal filed by Horj Razvan … against the Decision no. 20/18.01.2023, pronounced by CNSL in case nr. 156/CNSL/2022, against Asociatia Clubul Sportiv Petrolul 52, with registered office in Ploiesti, …*".

21. In the Appealed Decision, the Appeal Committee made, *inter alia*, the following considerations:

    (a) Article 18.9.1(a) of the RJSTP does not apply to this dispute since it requires a unilateral termination of the Contract for just cause, which occurred during the protected period, by the Club. Instead, the contractual relationship was terminated, at the Player's request, for sporting just cause according to the First Thesis to Article 18.10(a) of the RJSTP. Consequently, the claim of the Player to receive compensation equal to the value of financial rights due to the Player till the expiry of the Contract and that the Club should

be banned for two transfer periods and should be required to pay to the Player, was rejected;

(b) The Player's alternative claim in relation to the discrepancy in the amount owed to the Player, by way of outstanding financial rights, up to the date of the NDRC's Decision does not represent a genuine ground for appeal but a calculation error which can be rectified *ex officio* or on request by the NDRC, in accordance with the provisions of Article 36.14 of the RJSTP.

22. On 28 March 2023, the Player entered into an employment contract with CS Minaur. Article IV para. 1 of said contract provides the following (uncontested English translation filed by the Player, boldface parts as in the original): "*For the obligations assumed for the period **27.03.2023 - 30.06.2023**, the Club undertakes to pay the football player, in exchange for his professional services, a net monthly remuneration of RON 15,000 (fifteen thousand)*".

23. On 20 April 2023, the Appealed Decision was notified with grounds to the Player.

24. On 21 September 2023, the NDRC issued a decision condemning CS Minaur to pay to the Player, in particular, the amount of RON 52,755 net as outstanding salaries for (i) the period between 28 and 31 March 2023 as well as (ii) the months of April, May and June 2023.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

25. On 11 May 2023, in accordance with Articles R47 and R48 of the CAS Code of Sports-related Arbitration, 2023 edition ("CAS Code"), the Appellant filed a Statement of Appeal against the Respondents with respect to the Appealed Decision. In his Statement of Appeal, the Appellant requested to submit this matter to a sole arbitrator.

26. On 25 May 2023, in accordance with Article R51 of the CAS Code, the Appellant filed his Appeal Brief.

27. On 14 June 2023 and 11 December 2023 respectively, in accordance with Article R55 of the CAS Code, the Answer was filed by the First Respondent and Second Respondent. In its Answer, the First Respondent put forward some evidentiary requests, as follows (boldface parts as in the original):

> "*We request the Court:*
> *A. to order the second respondent – Romanian Football Federation to submit **a full and translated version of the case file** no. 156/CNSL/2022 (NDRC -first instance) and no. 1/CR/2023 (Appeal procedure before the Appeal Committee -RFF);*
> *B. To order the Appellant to submit his contract with his new team CS Minaur Baia Mare and the internal regulations of the Club for the season 2022-2023. The latter is asked because in Romania, Clubs have a practice to stipulate financial rights in this internal regulation.*
> *C. To order the Appellant to submit, if the case may be, the new contract with his current team, if he left CS Minaur Baia Mare.*"

28. On 19 December 2023, in accordance with Article R54 of the CAS Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the

Parties that Mr Mario Vigna, Attorney-at-Law in Rome, Italy, was appointed as Sole Arbitrator to decide the matter.

29. On 28 December 2023, the CAS Court Office sent a letter to the Parties on behalf of the Sole Arbitrator, informing them of the following:

(i) Applicable rules: the Appellant was invited to file a complete version of the RJSTP in Romanian accompanied by the translated English version;

(ii) Evidentiary measures: with reference to the First Respondent's evidentiary requests (see *supra* at para. 27), the Sole Arbitrator ordered as follows:

(a) As to the request *sub.* A, directed to the RFF: the Second Respondent was requested to provide "*a list of the documents of, respectively, the first instance and the appeal case files that (a) are not already part of the CAS case file and (b) are relevant to these proceedings*";
(b) As to the requests *sub.* B and C, directed to the Player: the Appellant was invited to address them "*by either providing the requested documents or filing his comments, if any*";

(iii) Standing to be sued of the RFF: the Sole Arbitrator pointed out that, "*for reasons of procedural efficiency, shall rule on this issue in the final award*".

30. On 12 January 2024, the Second Respondent informed the CAS Court Office that it did not possess the documents sought by the Club and the same would be in the possession of the PFL as "[t]*he judicial activity at League 1 level is being conducted at the PFL headquarters, with their own secretariat*".

31. On the same date, the CAS Court Office invited the First Respondent "*to request the relevant documents from the PFL, and to submit a copy of the original documents and the English translations to the CAS Court Office*".

32. On 14 January 2024, the Appellant produced the Romanian and translated English versions of the RJSTP.

33. On 29 January 2024, the CAS Court Office invited the First Respondent "*to provide an update on the current situation and proof of sending a request to the PFL*".

34. On 8 February 2024, the First Respondent informed the CAS Court Office that it had not received a response from the PFL regarding the concerned case files to date.

35. On 16 February 2024, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to hold a hearing for the matter by videoconference in accordance with Article R57 para. 2 of the CAS Code. Furthermore, it requested to be kept informed by the First Respondent as to *"if and when the PFL will provide an answer*".

36. On 28 March 2024, the CAS Court Office provided the Parties with an Order of Procedure, which was duly signed and returned by the Parties on 28 March 2024 (First Respondent and Second Respondent) and 6 May 2024 (Appellant) respectively.

37. On 30 April 2024, the CAS Court Office provided a final deadline "*failing which the information will be deemed inadmissible*" to both the Appellant and the First Respondent, to provide the pending documents sought by the Sole Arbitrator per, in particular, the CAS Court Office letters dated 28 December 2023 and 29 January 2024.

38. On 1 May 2024, the First Respondent informed the CAS Court Office that it had still not received any response from the PFL in relation to the concerned case files.

39. On 6 May 2024, the Appellant provided the CAS Court Office with (i) the employment contract he signed with CS Minaur ("New Contract"); and (ii) the decision rendered by the NDRC in the matter of *Horj Răzvan v. Minaur Baia Mare Sports Club* ("CS Minaur Decision") bearing File No. 607/CL/2023 (both documents were submitted in Romanian with no English translations). Furthermore, the Appellant commented on the First Respondent's request for documents to the PFL, as follows: "*v.)* (…) *both decisions that are appealed in the present matter were passed by the arbitration commissions of R.F.F., but with headquarters at the Professional Football League.*
vi.) The email address of the secretary of both commissions is: secretariat.comisii@lpf.ro
vii.) We observe that the request of the First Respondent was sent to office@lpf.ro, even though the First Respondent correctly sent all the correspondence regarding the file no. 156/CNSL/2022 (1/CR/2023 appeal) to the email address secretariat.comisii@lpf.ro".

40. On 7 May 2024, the CAS Court Office invited the First Respondent "*to forward its request to the email address suggested by the Appellant*".

41. On 21 May 2024, the Appellant submitted the translated English versions of (i) Article IV of the New Contract; and (ii) the CS Minaur Decision.

42. On 22 May 2024:

    (i) The CAS Court Office informed the Respondents that they would be granted an opportunity to comment on the Appellant's latest submissions at the hearing if they so wished;

    (ii) the First Respondent sent its comments to the email address suggested by the Appellant in his letter of 6 May 2024, pointing out that "*within the CAS letter from 12 January 2024, we were invited to request the relevant documents from the PFL (Romanian Professional Football League) not the Commissions (NDRC) from the PFL (office@lpf.ro)*" and adding that "*our letter addressed to the PFL contains requests for some documents that are not in the possession of the Commissions (NDRC)*".

43. On 30 May 2024, a hearing was held by video conference.

44. In addition to the Sole Arbitrator and Mr Björn Hessert, CAS Counsel, the following persons were in attendance at the hearing:

    (i) For the Appellant:

    - Mr Răzvan Horj;

    - Ms Anca Mituică, counsel;

- Mr Alexandru Molla, interpreter.

(ii) For the First Respondent:

- Mr Marius-Constantin Lazăr, legal counsel.

(iii) For the Second Respondent:

- Mr Adrian Stangaciu, head of the RFF's legal department;
- Mr Paul Ciucur, attorney for the RFF.

45. The Sole Arbitrator heard oral evidence from Mr Răzvan Horj, as a party to the proceedings. During the hearing, without objection from any of the Parties, the Second Respondent was granted permission to file (i) the documents deemed useful concerning the Player's registration as a professional during the 2023-2024 sporting season and (ii) the internal regulations of CS Minaur.

46. After their closing pleadings and before the end of the hearing, all Parties confirmed their satisfaction with how the Sole Arbitrator had conducted the hearing and raised no procedural objections thereto.

47. On 31 May 2024, the Second Respondent provided the following documents from its database about the registration of the Appellant as a professional player: (i) English version of the Player's overview; (ii) Romanian and translated English versions of a contract allegedly signed by the Appellant with the Romanian club ACS Avântul Bizonii Recea Cristur ("ACS Cristur") bearing File No. 20201/19.02.2024 from 19 February 2024 to 30 June 2027 ("ACS Cristur Contract"). As to the internal regulations of CS Minaur, the Second Respondent pointed out the following: "*it appears that the club did not uploaded* (sic) *in the Football Connect system such a document in conclusion, FRF is not in the possession of such document, if it exists*".

48. On 5 June 2024, the First Respondent filed some comments on the ACS Cristur Contract and the lack of registration of the internal regulations of CS Minaur. As to this last point, the First Respondent expressed the opinion that said regulations existed and thus requested the Sole Arbitrator "*to instruct the Second Respondent-RFF, given its football authority on a national level, to order CS Minaur Baia to communicate the Internal Regulation of the 2022-2023 football season*".

49. On 10 June 2024, the Appellant filed his comments on the documents produced by the Second Respondent. Notably, the Appellant alleged that the signature in the ACS Cristur Contract was forged and that the Appellant's registration with the Cluj County Football Association (of which ACS Cristur is a member) was an error. To support this argument, the Appellant provided the following documents (Romanian and translated English versions): (i) a letter whereby the Appellant requested ACS Cristur to inform Cluj County Football Association of the error and deregister the Player from its database; and (ii) letter whereby ACS Cristur requested the Cluj County Football Association to annul the registration of the Player with the club.

50. On 11 June 2024, the CAS Court Office, acting on behalf of the Sole Arbitrator, requested the Appellant to confirm: (i) whether the ACS Cristur Contract provided for any remuneration; and (ii) whether ACS Cristur made any payments to the Player.

51. On 18 June 2024, the Appellant confirmed that neither did he sign any sports activity contract nor did he receive any sum from ACS Cristur and to this end, also produced an affidavit by ACS Cristur.

52. On 19 June 2024, the CAS Court Office, on behalf of the Sole Arbitrator, closed the evidentiary proceedings in relation to the matter, pursuant to Article R59 para. 5 of the CAS Code.

IV. SUBMISSIONS OF THE PARTIES

A. The Appellant

53. In his Appeal Brief, the Appellant requested that the CAS:

- "*Admit the present Appeal and to annul the Decision no. 6 passed on 23 March 2023 by the Appeal Committee of R.F.F. and partially the Decision no. 20 passed on 18 January 2023 by National Dispute Resolution of RFF;*

- *As a consequence, based on 18 paragraph 9.1 letter a from R.S.T.F.P of R.F.F. and article 17 from FIFA RSTP to apply the ban of registration of any new players following two transfer periods and to establish the obligation to pay to the player a compensation equal to the value of the financial rights due to the player, based on article IX para. 9.5 - 9.6 of the contract calculated from 19 January 2023 until 30 June 2024, amounting Eur 87.096,77 net;*

- *Based on article 9.5. of the contract, to establish the obligation to pay to the player also the amount of 6871 euro, representing the difference of the financial rights due for the period 01.09.2022 – 18.01.2023, according to article 18.7 from R.S.T.F.P of R.F.F.;*

- *According to article 36.10 from R.S.T.F.P. of R.F.F. to order the First Respondent to pay the Appellant the arbitration costs generated by case no. 1/CR/2023 amounting 7169 Ron (2500 RON procedure fee and 4669 ron attorney fee);*

- *To order the Respondents to pay the Appellant a contribution toward its legal and other costs generated by this case represented by translation costs, amounting 4000 Ron, and attorney fee, amounting 8000 CHF*."

54. The Appellant's submissions, in essence, may be summarized as follows:

(i) As to the interpretation and application of Article 18 of the RJSTP:

(a) The NDRC correctly established that the termination of the contractual relationship arose pursuant to the First Thesis to Article 18.10(a) of the RJSTP and therefore that the Player's right to seek termination of the contractual relationship arose for just sporting reasons, due to the Club's contractual fault.

(b) The NDRC's interpretation that Article 18.10(a) of the RJSTP governs the possibility for the Player to unilaterally terminate the contract for just cause and is based on the Club's failure to fulfil certain obligations whereas Article 18.9.1(a) of the RJSTP governs the unilateral termination of the contract by the Club without just cause being based on an explicit manifestation of the Club's will to terminate, is incorrect.

(c) Although the provisions of Article 18.13 of the RJSTP do not refer to the penalties/consequences of contractual fault governed by Article 18.9.1 of the RJSTP, these two regulations which are inserted in the very content of the same Article 18, do not contradict each other, and they apply cumulatively where appropriate. Article 18.13 of the RJSTP does not regulate the consequences of termination, but only the fate of the contractual rights to which a player is entitled, as a result of the contract remaining in force throughout the period of settlement of the case at the national level, by reference to the mandatory provisions of Article 18.7 of the RJSTP. Consequently, the Player had the right to join another club only after 23 March 2023.

(d) Players and clubs may invoke just cause for the unilateral termination of contracts for the limited reasons set out in the regulations i.e. (i) for players under Article 18.10(a) of the RJSTP; and (ii) for clubs under Article 18.10(b) of the RJSTP.

(e) There exists a significant difference imposed by Article 18.7 of the RJSTP in contrast with the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP") which is represented by the fact that the contract remains in force in case of termination by agreement of the parties or by unilateral termination until the date of the decision of the RFF committees becomes final; only then has a player (as is the case of the Appellant) the right to conclude a new employment contract.

(f) The decisions rendered by the RFF bodies were consistent with previous decisions of the RFF bodies concerning the unilateral termination of contracts for breach of Articles 6(a) and (c) of the RJSTP until two strange cases, i.e. cases 160/CNSL/2022 and 161/CNSL/2022, were settled on 1 February 2023. Since then, the practice of the RFF bodies has changed despite there being no change to Article 18 of the RJSTP or the opinion of the Vice-President of the NDRC.

(g) In relation to termination under Article 18.1 of the RJSTP, although the concept of unilateral termination is used, which would involve a simple manifestation of will without justification from the holder of the right, the RJSTP makes it a prerequisite that a "just" cause exists. This implies that the cause could either be "ordinary" or "sporting". In the context of football employment agreements, in light of the fact that the RFF regulator has preceded the word "cause" with the word "just", it implies that, for a sporting cause to be "just" it is imperative that there is an improper performance of the contractual obligations by the other party.

(ii) As to the applicability of FIFA RSTP to the current dispute:

(a) As per Clause XIX, FIFA regulations and decisions also represent the "law" applicable to the Contract.

(b) The Appeal Committee erroneously failed to apply Article 17 of the FIFA RSTP to this dispute and, instead, stated that the relevant provisions are contained in the Internal Regulations of the Club and Article 36.3 of the RJSTP, which establishes the hierarchy of the application of regulations and rules, namely RFF, LPF, AJF, FIFA and UEFA. While the Appeal Committee refused to apply FIFA regulations to this case, it applied Article 17 of the FIFA RSTP in another case (i.e. Decision no. 53, Case no. 53/CR/2017, passed by the Committee on 10 October 2017).

(c) However, in the present case, in contrast to the hierarchy contained in Article 36.3 of the RJSTP, the Parties agreed on a different hierarchy of the application of regulations and rules in the Contract. FIFA regulations are therefore not only applicable and mandatory but also prevail over the national regulations, according to the will of the Parties which is captured in the Contract. Even the RFF Statutes, which is binding on all its members (including the Parties and the RFF judicial bodies), also require to not infringe, *inter alia*, FIFA regulations.

(d) Article 17 of the FIFA RSTP requires that "the party in breach", and not the party that terminates the contract, pay compensation to the other party. It also states that if one party seriously breaches its contractual obligations, this may lead to the counterparty having just cause to terminate the contract. Under these circumstances, the party that decides to terminate the contract unilaterally and prematurely will not suffer any consequences and, instead, it is the party that is in breach of its contractual obligations that will have to pay compensation to the other party. If the player is found to have had just cause to terminate their contract, they will generally be awarded compensation based on Article 17 para. 1 of the FIFA RSTP.

(e) A premature termination of the contract is also a penalty which, without compensation, would mean penalizing both contracting parties, but even more so the party that has performed its obligations, which would be deprived of its right to contractual stability. Termination of a contract cannot be seen as a penalty for one party and a benefit for the other party. Termination of a contract is not a sanction imposed on the defaulting party; rather, it is a protective measure for the party that had just cause to terminate the agreement.

(iii) As to the correct application of Article 17 of the FIFA RSTP and Article 18 of the RJSTP:

(a) In light of the hierarchy favored by the Club and the Player in their Contract to FIFA regulations, Articles 14 and 17 para. 1 of the FIFA RSTP should be applied to determine the consequence of the Club's actions. The FIFA RSTP state that what represents "just cause" is the lack of any fault for one of the parties, but "without just cause" is actually the fault of the other party. In the present case, the Club's behavior without a just cause generated the just cause of the Player for termination.

(b) Considering that Article 17 para. 1 of the FIFA RSTP requires the defaulting party to pay compensation to the other party, which is to be calculated with due consideration for the law of the country concerned, the only pertinent article in this aspect would be Article 18.9 of the RJSTP.

(c) Therefore, the Club should be banned from transferring any players following two transfer periods and should be obligated to pay the Player a compensation equal to the value of the financial rights owed to such player, based on Clause IX Points 9.5 and 9.6 of the Contract, calculated from 18 January 2023 (date of the first decision) until 30 June 2024 (date of termination of the contract by reaching the term), amounting to EUR 87,096.77 net (i.e. EUR 5,000 for 13 days of January 2023 and subsequent 17 months).

(d) The dismissal of the appeal concerning the amount awarded for the period from 1 September 2022 to 18 January 2023 in respect of financial entitlements was the result of a clerical error stemming from a misjudgment by the NDRC. Therefore,

for the period from 1 September 2022 to 17 January 2023 (the day prior to the NDRC Decision), the amount due as financial rights, according to Clause IX Point 9.5. and Clause XI Point 11.2.10 of the Contract is EUR 24,048.38 and not the EUR 17,177 granted.

(e) Article 18.10 of the RJSTP provides for the cause of termination while Article 18.9 of the RJSTP provides for the penalties applicable to the defaulting party. Article 18.13 of the RJSTP, by way of exception, is only applicable if the termination of the contract occurs for just cause provided for in the Second Thesis of Article 18.10(a) of the RJSTP. However, the general rule is that in the other three legs of Article 18.10(a) of the RJSTP, the defaulting party shall be subject to the penalties referred to in Article 18.9.1(a) of the RJSTP. In relation to the present case, the First Thesis to Article 18.10(a) of the RJSTP is applicable, implying that the general rule and not the exception is applicable.

B. The First Respondent

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

- "*We request the Court to reject the appeal of the Player as unfounded and to maintain the appealed Decision no 6 from 23.03.2023 of the RFF Appeal Committee. The provisions of the FIFA RSTP mentioned by the Player do not apply, but the provisions of RSTFP - RFF, as clearly noted by the NDRC and Appeal Committee of the RFF through their decisions. Moreover, given the fact that the Player, before the Appeal Committee waived his request on the ban for two consecutive transfer periods for the Club, it is clear that he could not ask it again before CAS, in this stage.*"

- "*Final, for the reasons mentioned above, there were no reasons for the player to terminate his contract with just cause*".

56. The First Respondent also included a subsidiary motion to be considered "[i]*n case CAS find* (sic) *that the Player is entitled to compensation*", as follows: "*In case the Court finds that the Player is entitled to compensation until the end of the contract, we request the Court to reduce the compensation amount asked, taking into consideration the circumstances of the case such as poor behavior of the party, his total refusal to respect the training program and the salary from his new team – CS Minaur Baia Mare or the other teams with whom he will sign until the end of this litigation*."

57. The First Respondent's submissions, in essence, may be summarized as follows:

(i) As to the Club and Player's actions before the termination of the Contract:

(a) The Player's career was on a downward trajectory as could be seen by his constant changing of clubs usually due to a lack of playing time. The Club signed the Player with the hope that his career would revive. The Player was not given playing time by the Club because he had not demonstrated sufficient improvement, and the coach and technical staff believed there were more capable players available in his position.

(b) At all times, however, the Club had ensured that the Player was registered at the RFF in order to play, provided with the attention of the technical staff and Club

facilities. The Club fulfilled all its obligations towards the Player, together with his registration for the new season, training camp participation and including him in all the activities of the team. The Player was provided a promotion bonus even though he did not play in most games. These actions clearly demonstrate that the Club's intentions were not to terminate the Contract with the Player but instead to keep him and motivate him in order to reach his sporting potential.

(c) That said, around October 2022, due to the fact that the Player did not agree with the technical staff's decisions regarding the first 11 and playing time, the Player asked the Club management to mutually terminate the Contract as he wanted to join his hometown football Club – CS Minaur. While the Club originally accepted his proposal to mutually terminate the Contract, the reason it fell through was due to the Player seeking an advance payment of salaries, which was not financially viable for the Club.

(d) In response to the various notices sent by the Player through his lawyer, the Club provided the schedule for the training sessions for 27 October 2022 – 29 October 2022 and Mr Nicolae Constantin (head coach of the Club) provided the training schedule for 31 October 2022 – 6 November 2022.

(e) The Player refused to respect the schedule and did not attend any of the training sessions.

(f) The Club further notified the Player of the training schedule for the remaining sessions until 6 November 2022, but he still did not attend any of the abovementioned sessions.

(g) The Club cannot be considered in breach of the contract by not communicating the training schedules to the Player after 7 November 2022 when in fact the Player did not attend any of the training sessions communicated by the Club and thereafter left the Club for CS Minaur.

(ii) As to the lack of just cause for the Player to terminate the Contract:

(a) The Player cannot debate the fact that he was not provided with the Club's training schedule, which in fact he was, and yet refused to participate in the Club's training sessions.

(b) There is no contractual obligation which requires the Club to make the Player play in the first 11 or train with the first team of the Club. The fact that he refused to respect a training program made specifically for him, with a legitimate reason, by the technical staff, is a clear contractual infringement by the Player. Moreover, the training was temporary and with all the insurance of all the necessary training facilities.

(c) As per CAS jurisprudence, sending a player to train separately from the rest of the team does not automatically lead to the conclusion that his rights have been violated and is *de facto* not a reason for termination without just cause.

(iii) As to the correct interpretation of Article 18 of the RJSTP:

(a) As was correctly held by both the NDRC and the Appeal Committee, the Player terminated the Contract with just cause based on the First Thesis to Article 18.10(a) of the RJSTP, and the provision of Article 18.9.1(a) of the RJSTP does not apply to this dispute. The latter would only apply in case the Club terminated the contract with just cause.

(b) Given that the Player was the party to terminate the Contract, as noted by the NDRC, Article 18.13 of the RJSTP is applicable (which is clear and unambiguous in its meaning), implying that the Player was entitled to receive the outstanding contractual rights due till the date of the final decision to terminate the Contract. Any other interpretation taken would lead to the infringement of the principle of judicial security.

(iv) In accordance with Article 18.7 of the RJSTP, the Player and the Club were obliged to respect and comply with the contractual provisions in the Contract until a final decision was taken by the adjudicating bodies of the RFF. However, the Player refused to participate in the Club's training sessions and joined CS Minaur without the Club's permission and is therefore in breach of the RJSTP.

(v) The Player cannot request that sporting sanctions be imposed on the Club as he waived said request before the Appeal Committee.

C. The Second Respondent

58. In its Answer, the Second Respondent requested the following relief:

"*A. to establish that the Romanian Football Federation, as Second Respondent, lacks standing to be sued in this procedure;*

B. to dismiss the Appeal and, consequently, to maintain and consider the challenged Decisions (namely, the Decision no. 20 passed on 18 January 2023 by the N.D.R.C. of the R.F.F. and Decision no. 6 passed on 23 March 2023 by the Appeal Committee of R.F.F.) undisturbed;

C. to order the Appellant to pay all costs, expenses and a contribution to the legal fees relating to the arbitration proceedings before CAS encumbered by the Second Respondent."

59. The Second Respondent's submissions on its lack of standing to be sued, in essence, may be summarized as follows:

(i) The RFF has no standing to be sued in this dispute:

(a) It is a horizontal, purely contractual matter between the Player and the Club.

(b) The Appellant never filed his claim against the RFF, either before the NDRC or before the Appeal Committee; rather, he involved the RFF for the first time before the CAS.

(ii) The Player lacks any personal, direct and legitimate interest against the RFF:

- The *ratione personae* condition for a person to have legal standing involves one procedural and one substantive aspect. In particular, the procedural aspect is in

relation to who is generally entitled to bring an arbitration case to the CAS and against whom, which can be assessed in the rules or the contract between the parties.

- The logic behind a party lodging a legal claim against any party is to gain some practical benefit as a result of the said litigation. The Romanian Supreme Court's interpretation is that a claimant only has a justifiable interest to annul a general norm in case his/her own actions are impossible to execute and cannot lead to the intended outcome. However, the Appellant herein can act in his own interest and an outcome can be reached by resolving the dispute solely against the First Respondent.

- Therefore, the Appellant lacks any interest with regard to the appeal directed against the RFF and also with regard to the request that the RFF impose sporting sanctions against the Club.

V. JURISDICTION

60. Article R47 para. 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*".

61. The Appellant argues that the jurisdiction of the CAS stems from Article 36.18 of the RJSTP, according to which:

> "*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*".

62. Clause XVIII of the Contract, *inter alia*, provides that:

> "*18.2. The Parties undertake not to refer any disputes to the courts of law except after exhausting all the means of the competent courts of FRF/LPF and/or AJF, FIFA, UEFA, or the Court of Arbitration for Sport (TAS).*
>
> *18.3. Any disputes arising from the performance of this Contract shall settled in the following procedural order:*
>
> *18.3.1. Amicably;*
>
> *18.3.3. By bringing the dispute before the competent bodies of the Prahova County Football Association, the Romanian Football Federation, the Professional Football League, or the Court of Arbitration for Sport (TAS), as applicable*".

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

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

VI. 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. Under Article 36.18 of the RJSTP (see *supra* at para. 61), decisions adopted by RFF appeal bodies, such as the Appeal Committee, can be appealed within 21 days after their notification.

67. In addition, the Appealed Decision states that "[t]*he Decision can be appealed before TAS, within 21 days from the notification.*"

68. The grounds of the Appealed Decision were notified to the Parties on 20 April 2023. The Player lodged his Appeal on 11 May 2023, i.e. within the 21 days allotted under Article 36.18 of the RJSTP.

69. The Appeal complied with the requirements of Articles R47 and R48 of the CAS Code. It follows that the appeal is admissible.

VII. APPLICABLE LAW

70. 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*".

71. Clause XIX of the Contract states as follows:

> "*19.1. The regulations of the sports law applicable to this Contract are the Statutes, the Regulations, the Resolutions, and the Decisions of FIFA, UEFA, FRF, LPF, as well as the decisions of the Board of Directors or of the General Meeting of Members/President's Decisions, as applicable.*
>
> *19.2. The Club and the Player must comply with the Statutes, Regulations, Resolutions, and Decisions of FIFA, UEFA, FRF/LPF, as well as the decisions of the Board of Directors/General Meeting of Members/President's Decisions which the parties accept as being binding, with their signature.*
>
> *19.3 Law No 69/2000 on physical education and sports, as further amended and supplemented, shall also apply to this Contract and, as applicable, the Romanian civil law in force*".

72. Clause XX para 1.1 of the Contract reads as follows:

> "*In case of litigation regarding the applicable law, the Romanian law shall prevail*."

73. 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.*
>
> *(...)*
>
> *6. If the provisions of these regulations prove to be insufficient, the relevant FIFA or UEFA regulations shall apply*".

74. Under Article 26.3 of the RJSTP: "*In the exercise of its jurisdiction, the NDRC shall apply the RFF Statutes and Regulations. If their provisions prove insufficient, the FIFA/UEFA Statutes and Regulations shall apply by analogy*".

75. Moreover, pursuant to Article 36.3 of the RJSTP: "*The Appeal Committee shall settle the case based on the agreements and contracts between the parties, as well as the RFF/PFL/CFA/FIFA/UEFA Statutes, Regulations and rules*".

76. From the above rules, the Sole Arbitrator notes that paras. 3 and 6 of the Preamble to the RJSTP clearly require all disputes to be resolved by applying the RJSTP, and if insufficient, FIFA and UEFA rules and regulations.

77. Moreover, the Sole Arbitrator points out that under the RJSTP the two hearing bodies at the national level, i.e. the NDRC and the Appeal Committee, are not bound to make reference to exactly the same set of rules. Indeed, while the NDRC is required to apply the RFF regulations and subsidiarily FIFA and UEFA regulations, on the other hand, the Appeal Committee should settle disputes based on the will of the parties simultaneously with all other regulations of the RFF and, *inter alia*, FIFA/UEFA.

78. That said, pursuant to Article R58 of the CAS Code, the Sole Arbitrator recalls that he must primarily apply the "*applicable regulations*", being the Parties' choice of law relevant only "*subsidiarily*".

79. In the present case, the "*applicable regulations*" undoubtedly include the regulations of the RFF (in particular the RJSTP) as the rules of the association that issued the Appealed Decision (see e.g. CAS 2015/A/3896, at para. 72).

80. In this respect, contrary to what was argued by the Appellant, who considers that the rules of FIFA shall take precedence over those of RFF, the Sole Arbitrator is of the view that in the hierarchy of the "*applicable regulations*" the RFF regulations take precedence, with FIFA and UEFA regulations to be applied in case there are issues concerning the employment relationship at stake that cannot be fully and satisfactorily solved by referring to the RFF regulations, as provided for in para. 6 of the Preamble to the RJSTP.

81. Furthermore, the Sole Arbitrator notes that the reference to FIFA regulations also leads to the application, as a further source of law to be applied in a subsidiary manner, of Swiss law, pursuant to Article 56(2) FIFA Statutes (Ed. 2022) (See CAS 2017/A/5465).

82. Additionally, as Article R58 of the CAS Code also refers to the subsidiary application of the law chosen by the parties, and given that in the present case the parties have specifically referred to "*Romanian civil law*", this law shall apply on a subsidiary level, if needed.

83. In view of the foregoing, the Sole Arbitrator concludes that the rules applicable to the merits of this case shall be as follows, with each subsequent set applying only in subsidiary manner to those listed above it:

    (i) The RFF regulations;

    (ii) The FIFA and UEFA regulations;

    (iii) Swiss law;

    (iv) Romanian civil law.

84. Lastly, the Sole Arbitrator finds the relevance of Clause XX para 1.1 of the Contract (see *supra* at para. 72), to be of limited significance in this case. In fact, under Article R58 of the CAS Code, it is unequivocally clear that the Sole Arbitrator is required to apply the regulations governing the dispute, which, in this instance, are primarily the RJSTP. Where the RJSTP are insufficient to address certain matters, the FIFA and UEFA regulations shall apply, as indicated in the RJSTP Preamble, with Swiss law and then Romanian civil law serving as a subsidiary source where necessary. Accordingly, the Sole Arbitrator concludes that this case does not present any "litigation regarding the applicable law" which would need to be solved based on Clause XX of the Contract.

VIII. PROCEDURAL MATTERS

85. In its Answer (see *supra* at para. 27) the First Respondent submitted some evidentiary requests, including in particular:

    (i) A copy of the entire case file from the previous instances before the RFF adjudicatory bodies;

    (ii) The Player's contract with CS Minaur, along with the "*internal regulations of the Club for the season 2022-2023*".

86. Regarding the first item, the Sole Arbitrator notes that the request was initially directed to the Second Respondent, which informed the CAS Court Office that it was not in possession of the requested documentation and that the request had to be redirected to the PFL (see *supra* at para. 30).

87. The Sole Arbitrator also acknowledges that the First Respondent demonstrated its attempt to obtain the relevant information from the PFL, but subsequently informed the CAS Court Office that it had not received a response (see *supra* at paras. 34 and 38).

88. Nonetheless, the Sole Arbitrator is of the view that this lack of information in no way prejudiced the First Respondent's case or its right to be heard. The Sole Arbitrator observes that the First Respondent did not clarify or argue what specific information it expected to obtain from the case file that would differ from the documents already in the record and available to the Parties. Furthermore, the First Respondent did not reiterate this request during the proceedings or at the hearing, where it expressed satisfaction that its right to be heard had been duly respected.

89. Concerning the second item, the Sole Arbitrator notes that, in relation to his employment relationship with CS Minaur, the Player submitted (i) his employment contract with CS Minaur and (ii) the CS Minaur Decision (see *supra* at para. 39).

90. In its Answer, the First Respondent clarified its request for the Player to submit the internal regulations of CS Minaur, explaining that "*in Romania, Clubs have a practice to stipulate financial rights in this internal regulation*".

91. However, the Player did not submit CS Minaur's internal regulations, contending instead that he received no payment from CS Minaur other than what was provided under the New Contract and the CS Minaur Decision

92. Furthermore, after the hearing, the RFF stated that no such document was uploaded in the "*Football Connect system*" and was therefore not in its possession, casting doubt on its existence (see *supra* at para. 47).

93. Thereafter, the First Respondent submitted further correspondence to the CAS Court Office, reiterating its request that the RFF obtain the internal regulations from CS Minaur on the grounds that (i) they likely exist, and (ii) they are relevant to the case, as Romanian clubs typically include financial provisions within them.

94. In light of the above circumstances, the Sole Arbitrator is of the view that said request must be dismissed. In fact, the First Respondent failed to prove that said internal regulations actually exist, while faced with declarations submitted by both the Player and the RFF that would point to the opposite direction. Furthermore, even if such regulations existed, the First Respondent has not demonstrated their relevance to the matter at hand.

95. Notably, the Sole Arbitrator highlights that the First Respondent's assertion regarding the existence and relevance of these internal regulations stems from the fact that "*it is a common practice for Clubs to put financial rights in the Internal Regulations*". However, in this case, the Player resorted to the NDRC in order to recover the amounts due to him by CS Minaur, and the CS Minaur Decision only awards the amounts provided under the New Contract. Clearly, if such regulations contained economic provisions in favour of the Player, the latter would have sought to claim said amounts when he brought his case against CS Minaur.

96. Accordingly, said evidentiary request is irrelevant and must be dismissed accordingly.

IX. MERITS

97. The main issues that need to be determined by the Sole Arbitrator in these proceedings are as follows:

(a) Does the RFF have standing to be sued?
(b) Did the Player terminate the Contract unilaterally with just cause or did the Club terminate the Contract unilaterally without just cause?
(c) How should the compensation due to the Player be calculated?
(d) Should the Club receive a transfer ban?
(e) Whether the Appellant is entitled to recover the costs incurred before the Appeal Committee.

A. The Second Respondent has standing to be sued

98. The Sole Arbitrator notes that, as per the constant jurisprudence of the CAS and as confirmed by the Swiss Federal Tribunal, the determination of a party's standing to be sued – "*légitimation passive*" in French – is an issue pertaining to the merits of the dispute and not to jurisdiction (see CAS 2020/A/7092, at para. 56; CAS 2011/A/2474, at para. 21; SFT 128 III 50, SFT 126 III 59 and SFT 114 II 345).

99. While the Appellant summoned RFF as the Second Respondent, the RFF argues that it has no standing to be sued in these proceedings since, in particular: (i) the present case concerns a purely contractual horizontal dispute; (ii) the RFF has no personal, direct and legitimate interest in this case, and is in any case, bound to comply with CAS decisions and enforce it on its members and (iii) the procedural and substantive aspect of the *ratione personae* condition is not fulfilled.

100. At the outset, the Sole Arbitrator notes that neither the RFF Statutes nor the RJSTP specify which party or parties have standing to be sued in case an appeal is lodged against a decision rendered by one of RFF's adjudicatory bodies. As a result, reference shall be made to FIFA/UEFA regulations, which, as specified above (see Section VII above) apply to the dispute on a subsidiary basis to RJSTP. However, FIFA/UEFA regulations are also silent on this matter, which would result in the applicability of Swiss law (see supra at para. 81).

101. With respect to whether the present case concerns a purely contractual horizontal dispute:

(a) The Sole Arbitrator recognizes that the sports adjudicating bodies are at times entrusted with deciding disputes involving the direct or indirect member of the relevant sports association (in this case, the RFF) that are to be considered "horizontal" dispute, namely "*a dispute between federations, clubs, players, agents or coaches, which does not directly involve* [the Federation's] *disciplinary power and in which* [the Federation] *is neutral vis-à-vis the litigating parties*" (see CAS 2021/A/7757-7762, at para. 87);

(b) The Sole Arbitrator recalls that one of the Appellant's requests for relief before CAS was to apply Article 18.9.1(a) of the RJSTP in order to apply the ban of registration of players following two transfer periods on the Club (see *supra* at para. 53).

(c) In this respect, the Sole Arbitrator is of the view that, while the dispute has a horizontal element, as it stems from the contractual relations between the Player and the Club,

such a request also invariably involves a "vertical element" (the CAS defined the "vertical issues" as those "*involving, for instance, the application of sporting sanctions, purely disciplinary issues, eligibility or registration matters*" see CAS 2021/A/8433, at para. 52) i.e. the possible imposition of sporting sanctions on the Club by the concerned association, in this case, the RFF (see CAS 2021/A/8331, at paras. 123-124).

(d) In any event, contractual relationships between the direct or indirect members of an association are subject to the regulatory authority of the association and, therefore, the disputes that arise from said relationships are actually related to their membership in the association. This is even more so in cases – like those governed by the RJSTP – in which the Second Respondent has issued rules expressly aiming at regulating such contractual relationships (see CAS 2021/A/7757 & 7762, at para. 86).

(e) Therefore, the current dispute cannot be deemed as purely "horizontal" since it certainly involves a vertical element.

102. With respect to whether the RFF has a personal, direct and legitimate interest in this case:

(a) The Sole Arbitrator acknowledges that in a purely horizontal dispute (although not applicable in this case), the RFF acts as an adjudicating body, determining the Parties' contractual relations without having a direct interest in the outcome. In such situations, the Parties may choose not to include the RFF as a respondent in proceedings before the CAS. However, this does not imply that in cases, as the one at hand, in which the RFF is included as respondent, it lacks an absolute standing to be sued.

(b) In fact, the Sole Arbitrator notes that a party has standing to be sued if it is either personally bound by the disputed right or holds a *de facto* interest in the outcome of the appeal (CAS 2017/A/5359, at para. 62). Consequently, when determining the proper party to be summoned in CAS appeal proceedings, CAS panels should analyse the interests involved and assess the role assumed by the relevant association in the specific context (CAS 2021/A/8225, at para. 78).

(c) Therefore, when a decision issued by a national association's legal body in a horizontal dispute is appealed before the CAS, it is incorrect to claim that: (i) no relief is sought against the association, and (ii) the association is not personally bound by the right in dispute. In fact:

- as to the first point, any appellant to the CAS invariably seeks the annulment or, at least, modification of a decision adopted by the national association, in this case, the RFF (and this case makes no exception: see the motions for relief submitted by the Appellant), and

- as to the second point, Article 37 of the RJSTP provides that there will be disciplinary consequences for the party which does not respect the decision adopted by an RFF body and, therefore, the CAS award will necessarily have an impact on the disciplinary rights and obligations of RFF *vis-à-vis* the concerned.

(d) In short, the Sole Arbitrator is of the view that the fact itself that a decision passed by an RFF body could be set aside or modified by the CAS confers sufficient legal interest to RFF to be summoned by the Appellant. Any association, by definition, has in

principle a legal interest to preserve its own decisions in order to keep its regulatory system in the way its own bodies have shaped and interpreted it.

(e) Then, it may well happen that, in a given case, RFF is not interested in defending the decision adopted by its own body; in this situation, RFF may simply decide not to take part in the CAS proceedings and not to exert its rights as a party to the case, but it certainly will still have standing to be sued.

(f) On the other hand, a party appealing an association body's decision in a purely horizontal dispute may well decide not to summon such association before the CAS (CAS 2020/A/7144, at para. 99). In this respect, the Sole Arbitrator confirms the well-established CAS jurisprudence, according to which an appellant challenging a decision relating to a horizontal dispute is at liberty of not summoning the decision-making body, here, the RFF. The CAS will anyway render its appellate decision (CAS 2019/A/6452, at para. 130; CAS 2020/A/6748, at paras. 69-73; and CAS 2014/A/3690, at para. 95). At the same time, however, this does not mean that the RFF cannot be validly summoned as a respondent, as in the present case.

(g) The Sole Arbitrator wishes to point out that RFF's standing to be sued cannot be present at RFF's will. In other words, if RFF were to be considered as generally not having standing to be sued in CAS appeals concerning horizontal disputes (as it has asked the Sole Arbitrator to find), then in future cases RFF would never have a standing to remain (if summoned) or intervene (if not summoned) in such CAS appeal proceedings, even if it so wished.

(h) To conclude, the Sole Arbitrator holds that even if the present case was to be considered a purely horizontal dispute, the RFF has a legitimate, *de facto* and direct interest in this case. Additionally, the fact that the RFF Statutes require the RFF to comply with CAS decisions and enforce them on its members does not imply that the RFF does not have a legitimate, *de facto* and direct interest in this dispute.

103. With respect to whether the procedural and substantive aspect of the *ratione personae* condition is fulfilled:

(a) The Sole Arbitrator starts his examination by underlining that it is a basic (and obvious) principle that arbitration is based on consent. Arbitration can be started by an entity against another only if an agreement exists between them to arbitrate a given dispute. As a result, in order to determine the existence of CAS jurisdiction in the case at hand, the first task of the Sole Arbitrator is to *verify* whether an agreement exists between the parties concerned, specifically between the RFF and the Appellant (jurisdiction *ratione personae*) covering the dispute at stake (jurisdiction *ratione materiae*) and providing for CAS arbitration (see CAS 2019/A/6274, at paras. 61-64).

(b) The Sole Arbitrator recalls that the question of jurisdiction *ratione personae* in CAS arbitration involves in fact one procedural aspect and one substantive aspect, which are not always clearly distinguished. The procedural aspect concerns the existence of an arbitration agreement giving a party the right to bring a case. Expressed differently, the procedural aspect of the jurisdiction *ratione personae* relates to who is entitled to bring an arbitration case to the CAS. The substantive aspect deals with the standing to sue, defined as the existence in the persons of the appellant of an underlying right deriving from the applicable law and/or regulations, the protection of which they can

request from the CAS. Concerning the different issues raised in relation to these questions of jurisdiction *ratione personae*/standing to sue, for a CAS panel to deal with a case, both elements must therefore be present. (CAS 2011/A/2474, at paras. 22-25).

(c) On the other hand, the question of jurisdiction *ratione materiae* concerns the question of whether the dispute at stake is covered under the parties' agreement to arbitrate, namely, via an arbitration clause (CAS 2013/A/3301, at para. 69).

(d) In this respect, the Sole Arbitrator notes that Article 36.18 of the RJSTP (see *supra* at para. 61): (i) provides for the existence of an agreement to arbitrate between the Appellant and the RFF (jurisdiction *ratione personae*) via CAS arbitration; and (ii) covers the present dispute, which was caused due to a decision rendered by one of the RFF's judicial bodies. The Parties did not challenge this point. As a result, the CAS would have jurisdiction *ratione personae* and *ratione materiae* over this dispute.

(e) Consequently, the argument raised by the Second Respondent with respect to the non-existence of the *ratione personae* is dismissed.

104. In light of the above, the Sole Arbitrator rejects RFF's claim of not having the standing to be sued and holds that the Appellant was entitled to summon RFF as the Second Respondent in this case.

B. The Appellant unilaterally terminated the Contract with just cause and First Respondent unilaterally terminated the Contract without just cause

105. Preliminarily, the Sole Arbitrator remarks that the present dispute mainly revolves around the determination of whether or not the Player terminated the Contract unilaterally with just cause or whether the Club terminated the Contract unilaterally without just cause.

106. In this respect, the Appealed Decision confirmed the findings of the First Instance Decision and held that the Player terminated the Contract with just cause based on the First Thesis to Article 18.10 lit. a) of the RJSTP, under which:

"*The players and the clubs can invoke just cause and sporting just cause in order to unilaterally breach the contracts and/or the registration for the following reasons:*

a) The Players:

- *if the club does not provide to the player the conditions stipulated at art.6, letter a and c of the present regulation, respectively the material, technical and organizational conditions, medical assistance and recovery adequate for training and matches; the club does not execute in good faith (bona fide) the contractual obligations toward the professional football players. The competent legal body will analyze on a case by case basis if the clubs complied or not to the conditions stipulated at art.6, letter a) and c), as per the players' requests, following to decide if the termination of the contract/registration is called for.*"

107. Notably, the Appealed Decision concurred with the NDRC in finding that the Club incurred violations of Articles 6(a) and 6(c) of the RJSTP, for (i) setting up an individual training program, without a technical basis based on objective reasons and criteria; (ii) discontinuous

character of the training schedule communicated to the Player, which was also done only at the express request of the Player; and (iii) failure to communicate any training schedule as of 7 November 2022.

108. Accordingly, the Appealed Decision confirmed that the Player was entitled to compensation equal to the amounts due under the Contract until the date of issuance of the First Instance Decision based on Article 18.13 of the RJSTP, under which "(i)*f the contractual relationship terminate on the basis of a final decision, at the request of the player, he is entitled to receive the outstanding contractual rights due until the date of when the decision of termination of the contractual relationship is final and may sign a new contract with another club, subject to the compliance of the other regulations provisions, except for the termination of the contract by the agreement of the parties*".

109. The Player, however, argues that the compensation due by the Club should actually be calculated until the end of the Contract based on Article 18.9 of the RJSTP, under which:

> "*If the unilateral termination without just cause of the contract falls within the protected period, the culpable party shall face the following sanctions, unless the contract provides otherwise:*
> *a) The club:*
> *- shall be banned from transferring players as transferee club in the next two transfer periods. The club shall be obliged to pay to the player a compensation representing the total value of the financial rights owed to the player until the end of the contract, excepting the match bonuses and the objective bonuses, unless the contract is terminated for just cause as provided at article 18, point 10 letter a, thesis 2, in that case being applicable the provisions of the align 13 of the present article.*"

110. In fact, the Player argues that his right to seek termination with just cause stemmed from the Club's contractual fault (recognized by the NDRC and the Appeal Committee), which constitutes a unilateral termination without just cause by the Club.

111. In this respect, the Appealed Decision confirmed that the First Thesis to Article 18.10(a) of the RJSTP relates to the possibility of the Player unilaterally terminating the Contract with just cause due to the Club's non-performance of contractual or regulatory obligations whereas Article 18.9.1(a) of the RJSTP relates to the unilateral termination of the Contract by the Club without just cause based on an explicit indication of the Club's will to terminate the contractual relations. Consequently, the penalty to pay compensation representing the total amount of the financial rights due to the player until the expiration of the Contract becomes applicable only in the event of a unilateral termination of the Contract without just cause by the club, which is not the case in this dispute.

112. The Club sides with the determinations of the Appeal Committee and requests that the Appealed Decision be confirmed. It also adds that the Player and the Club were obliged to respect and comply with the contractual provisions in the Contract until a final decision was taken by the RFF committees as per Article 18.7 of the RJSTP, but the Player did not comply with this provision and instead joined a new club, i.e. CS Minaur.

113. In light of the Parties' respective arguments, the Sole Arbitrator must determine if:

(a) The termination of the Contract was a case of the Player terminating with just cause under the First Thesis to Article 18.10(a) of the RJSTP;

(b) Article 18.9.1(a) of the RJSTP could apply to the present case if it is a case of the Club terminating without just cause, and if so, would it apply alternatively to Article 18.10(a) of the RJSTP or could the two provisions be applicable simultaneously;

(c) in case Article 18.9.1(a) is not applicable, whether Article 18.13 of the RJSTP be applicable in order to determine the amount of compensation payable by the Club to the Player.

114. As to the first point, considering the factual situation and evidence presented by the Parties during the hearing, the Sole Arbitrator agrees with the Appealed Decision with respect to the fact that the Club is in violation of Articles 6(a) and 6(c) of the RJSTP, entitling the Player to terminate the Contract with just cause pursuant to the First Thesis to Article 18.10(a) of the RJSTP.

115. In fact, the Sole Arbitrator notes that any football player has the right and obligation not only to participate in collective football training but also to be provided with the necessary access and facilities to train and compete with his teammates. As summarised in CAS 2017/A/5465: "*not allowing a professional football player to train with his teammates could be – absent specific circumstances such as injury recovery - equivalent to a severe breach of said player's personality rights by the club which employs him (and implicitly of the employment agreement concluded between the two)*" (CAS 2017/A/5465, at para. 98; see also CAS 2020/A/7370, at paras. 62, 69 and 72 and CAS 2016/A/4560, at para. 95). In fact, even if there are instances (e.g. injuries) in which a club may deem necessary specific separate trainings, said separation should only last for the period of recovery, considering that "*Football is a team sport and the majority of training needs to be as part of a team or squad and with a football. Also, any instructions regarding training should be reasonable*" (CAS 2015/A/4286, at para. 95).

116. The Club's actions, namely the: (i) setting up of an individual training program, without a technical basis based on objective reasons and criteria; (ii) discontinuous character of the training schedule communicated to the Player, which was also done only at the express request of the Player; and (iii) failure to communicate any training schedule as of 7 November 2022, are infringing the rights of the Player. There was also no justified reason (such as injury, etc.) nor timeline provided by the Club to force the Player to train individually.

117. It is a well-established principle that valid reasons (or "just cause") for the termination of an employment contract between a club and a football player are considered to be, in particular, any circumstances under which, if existing, the terminating party can in good faith not be expected to continue the employment relationship (CAS 2014/A/3626, at para. 87 and CAS 2020/A/6992, at para. 132).

118. Furthermore, the Sole Arbitrator observes that the Player's denial of access to the Club's premises for 6 days (i.e. from 13 October 2022 to 18 October 2022), the Player's exclusion from group training with the Club's first team for no justified reason for an additional period of 16 days (i.e. from 22 October 2022 to 6 November 2022) coupled with unsatisfactory responses to the Player notices sent by (see *supra* at paras. 8, 10 and 12) outweigh the fact that the Player was still granted access to some club facilities, that he still received his salary and that a coach and medical assistant supervised him (See, CAS 2019/A/6171, at paras. 147-151).

119. Such circumstances support the finding that the Player could in good faith no longer be expected to continue the employment relationship and that he had just cause to terminate the Contract.

120. Accordingly, the Sole Arbitrator holds that the Player had just cause to terminate the Contract pursuant to the First Thesis to Article 18.10(a) of the RJSTP.

121. As to the second point, with respect to Article 18.9.1(a) of the RJSTP, the Sole Arbitrator primarily remarks that this provision is only applicable in the event of a "*unilateral termination without just cause of the contract*" which "*falls within the protected period*".

122. The question before the Sole Arbitrator therefore is whether it could also be said that it was in fact the Club which terminated the Contract without just cause during the Player's protected period.

123. In this regard, the Sole Arbitrator recalls that, in the First Instance Decision, the NDRC disregarded the application of this clause, determining that Article 18.9.1(a) of the RJSTP relates to the unilateral termination of the Contract by the Club without just cause based on an explicit indication of the Club's will to terminate the contractual relations, which did not occur in this case.

124. The Sole Arbitrator considers that the aforementioned approach is flawed.

125. In fact, it is clear that, if one party creates or provides a valid reason for the other party to prematurely terminate the contractual relationship by committing a serious breach of contractual obligations, this will be regarded as equivalent to that party having terminated the contract without just cause. In the present case, the Player validly terminated the Contract pursuant to the First Thesis to Article 18.10(a) of the RJSTP, and the termination arose solely due to the Club's actions in violation of Articles 6(a) and 6(c) of the RJSTP, as well as of the Club's obligations under the Contract.

126. Therefore, the Sole Arbitrator holds that the Club's actions should be regarded as equivalent to the Club having unilaterally terminated the Contract without just cause as per Article 18.9.1(a) of the RJSTP.

127. At this stage, the Sole Arbitrator needs to determine if there is any provision under the RFF regulatory framework which prohibits reading a valid unilateral termination by one party under the First Thesis to Article 18.10(a) of the RJSTP simultaneously with a unilateral termination without just cause by the other party pursuant to Article 18.9.1(a) of the RJSTP.

128. In this respect, the Sole Arbitrator notes that the First Thesis to Article 18.10(a) of the RJSTP is silent on the consequences post the exercise of the termination right by a player i.e. with respect to financial rights due to such player and whether or not the club should be penalised through a ban, etc. It is therefore imperative to seek recourse under other provisions of the RJSTP.

129. In particular, the Sole Arbitrator observes that Article 18.9.1(a) of the RJSTP obliges the Club to "*to pay to the player a compensation representing the total value of the financial rights owed to the player until the end of the contract, excepting the match bonuses and the objective bonuses*" but also points out that said mechanism will apply "*unless the contract is terminated for just cause as provided at article 18, point 10 letter a, thesis 2, in that case being applicable the provisions of the align 13 of the present article*".

130. In relation to Article 18.9.1(a) of the RJSTP, the Sole Arbitrator observes that:

(a) At a first sight, said provision solely refers to instances of unilateral termination of a contract, taking place without just cause;

(b) Notwithstanding the above, the wording of Article 18.9.1(a) of the RJSTP envisages a situation where, except when a contract might be terminated for just cause pursuant to the Second Thesis to Article 18.10(a) of the RJSTP (i.e. termination when "*the players have not been used effectively, in the last competition season, in at least 10% of the total number of official games of the club team where they are registered, except for the games where they have been suspended by the club or by the competent disciplinary committee or they were unable to play for medical reasons, this fact following to be proven.*" – in which case Article 18.13 of the RJSTP applies), a club is obliged to pay compensation representing the total value of the financial rights owed to the player until the end of the contract;

(c) This would resultantly imply that in case a contract is terminated for any of the reasons *except* the Second Thesis to Article 18.10(a) of the RJSTP i.e. the First Thesis (see *supra* at para. 106), Third Thesis ("*the outstanding financial rights have not been paid for a period of more than 60 days from the due date of the said financial rights*") or Fourth Thesis ("*the contracts concluded with the clubs expire outside the transfer period, in which case, the players can request the termination of the contracts during the last transfer period before the expiration date*") to Article 18.10(a) of the RJSTP, a player is entitled to claim compensation till the expiry of the contract;

(d) The mere fact that a clause only relating to unilateral termination *without* just cause provides for a specific exception relating to a situation of unilateral termination *with* just cause, would imply that the legislators of the RJSTP envisaged a situation for simultaneous application of both Articles 18.10(a) and 18.9.1 of the RJSTP.

(e) The aforementioned interpretation is also corroborated by the RFF's statements during the hearing; in fact, the latter provided clarity on the rationale behind the creation of the exception and explained that it was due to the fact that the Second Thesis of Article 18.10(a) of the RJSTP is the only Thesis concerned with "dissatisfaction" of the Player, i.e. in such a case, there is no fault of the club concerned while, in contrast, the First Thesis, Third Thesis and Fourth Thesis of Article 18.10(a) of the RJSTP are situations of "abuse", which are deemed as the fault of such club.

(f) In light of the above, the Sole Arbitrator is satisfied with the possibility of simultaneous application of Articles 18.10(a) and 18.9.1 of the RJSTP.

131. Notwithstanding the reasoning provided above, the Sole Arbitrator cares to point out that, even if it were to give credit to the First Respondent's argument on filling the *lacuna* left by Article 18.10(a) of the RJSTP with Article 18.13 of the RJSTP, it would not reach a different result, since:

(a) Nothing in the wording of Article 18.13 of the RJSTP precludes or restricts the Player from seeking compensation under other provisions of the RJSTP;

(b) The use of language in Article 18.9.1(a) of the RJSTP itself provides for the applicability of Article 18.13 of the RJSTP only in the event of a termination right exercised pursuant to the Second Thesis to Article 18.10(a), which is not the case here.

(c) During the hearing, the RFF clarified that Article 18.13 of the RJSTP would only be applicable if the termination by a player was exercised pursuant to the Second Thesis to Article 18.10(a) of the RJSTP, which is not the case here.

132. In light of all the above, the Sole Arbitrator concludes that the Appealed Decision wrongly excluded the possible application of Article 18.9 of the RJSTP in a case where, as in the present matter, a player terminates the employment agreement with the club with just cause due to situations of "abuse" caused by the club's misconduct. Accordingly, in said instances, Article 18.9 of the RJSTP must be relied upon when calculating the compensation due to the player, as will be shown below.

C. Calculation of compensation to be awarded to the Player

133. Firstly, the Sole Arbitrator notes that the Contract does not contain any provision with regard to the consequences of its premature termination. It follows that the Player and the Club did not beforehand agree upon an amount of compensation for breach of the Contract.

134. That said, the Sole Arbitrator recalls that the Appellant requested compensation: (i) equal to the value of the financial rights due to the Player until expiry of the Contract (based on Clause IX Points 9.5 and 9.6 of the Contract) calculated from 19 January 2023 until 30 June 2024, amounting to EUR 87,096.77 net and (ii) of EUR 6.871, representing the difference of the financial rights due for the period 1 September 2022 – 18 January 2023.

135. The First Respondent, on the other hand, and as a subsidiary motion, requested that, if any amount was to be awarded to the Player as compensation, said amount be reduced taking into consideration the circumstances of the case such as poor behaviour of the Player, his total refusal to respect the training program and the salary he received from his new team – CS Minaur.

136. At this juncture, as has already been established in this Award, the Sole Arbitrator reiterates that the Player is the party that exercised a valid termination right to end the Contract pursuant to the First Thesis to Article 18.10(a) of the RJSTP, whereas the Club is the party that (through its actions) caused the exercise of such termination right as per Article 18.9.1(a) of the RJSTP (see *supra* at para. 121).

137. Consequently, the Sole Arbitrator is not in agreement with the compensation awarded in the Appealed Decision, which was: (i) based on the finding that only the First Thesis to Article 18.10(a) of the RJSTP was applicable to the dispute; and (ii) resulted in awarding compensation only until the date of the NDRC Decision (i.e. 18 January 2023).

138. In this respect, the Sole Arbitrator recalls that, under Article 18.9.1(a) of the RJSTP "*If the unilateral termination without just cause of the contract falls within the protected period…The club shall be obliged to pay to the player a compensation representing the total value of the financial rights owed to the player until the end of the contract, excepting the match bonuses and the objective bonuses…*".

139. Preliminarily, and although the circumstance was never disputed between the Parties, the Sole Arbitrator notes that the Contract was clearly terminated within the protected period.

140. In fact, according to Article 18.8 of the RJSTP:

> "*a) If the contract is concluded prior to the player's 28th birthday (at the date of the contract signing), the unilateral termination of the contract is forbidden during the first three years of contract, this being considered a protected period;*
> *b) If the contract is concluded after the player's 28th birthday date, the unilateral termination of the contract is forbidden during the first two years of contract, this being considered a protected period.*"

141. Considering that the Contract was entered into on 17 February 2022, when the Player was 26 years old, and terminated on 18 January 2023, i.e. less than one year later, Article 18.8.a) shall apply, and the termination falls within the protected period as defined therein.

142. That said, the Sole Arbitrator notes that a previous CAS award involving a Romanian player seeking compensation against a Romanian club, shed light on the interpretation of this clause, as follows:

> "29.…*As a result, the Sole Arbitrator is of the opinion that pursuant to Article 18.9.1 of the RSTJF, the Club is obliged to pay the Player a compensation representing the total amount of financial rights that the Player is entitled to up to…the expiry date of the Contract.*"
>
> (…)
>
> 32. *With respect to the calculation of the compensation, the Sole Arbitrator notes that it appears that Article 18.9.1 of the RSTJF does not provide for any degree of discretion to the deciding body when calculating the compensation. The rules are very clear: if the Club is responsible for the termination of the Contract, the calculation grounds are represented by the total amount of the financial rights due to the Player until the expiration of the contract term*." (CAS 2011/A/2662)

143. Therefore, the Sole Arbitrator observes that the only interpretation of Article 18.9.1(a) of the RJSTP in relation to compensation is to award an amount of the financial rights due to the Player until the expiration of the contract term.

144. The Sole Arbitrator notes that, in the present case, under Clause IX Point 9.1 of the Contract, the Player was entitled to a salary of EUR 3,500 net per month for the 2021-2022 season. Moreover, the Club undertook to pay rent in the amount of EUR 250 net per month (see Clause XI Point 11.2.10 of the Contract).

145. The Sole Arbitrator further notes that the first installments (in regard to both the salary and the rent) due to the Player till 18 January 2023 were already integrated by the NDRC in the granted amount of EUR 17,177 net for outstanding contractual rights. This amount has already been paid by the Club, as confirmed by the Player during the hearing.

146. Therefore, the remaining net amount payable to be Player should begin from 19 January 2023 until the remainder of the Contract. In this respect, the Sole Arbitrator observes that, for the 2022-2023 and 2023-2024 sporting seasons, Clause IX Points 9.5 and 9.6 of the Contract provides for an increased salary of EUR 5,000 net per month (see *supra* at para. 7).

147. Accordingly, the Sole Arbitrator finds that the net salary to be paid for the remainder of the Contract must be fixed at EUR 87,096.77 net (EUR 5,000 for 13 days of January 2023 and subsequent 17 months), corresponding to the agreed monthly salary for those seasons.

148. The Sole Arbitrator also remarks that the Appellant has not claimed the rent of EUR 250 net per month payable under Clause XI Point 11.2.10 in his prayer for relief and, accordingly, the Sole Arbitrator cannot award any amount on this point in order not to violate the legal principle of *ne ultra petita*.

149. The Sole Arbitrator points out that the Player also claimed the difference of EUR 6,871, representing the difference of the financial rights due for the period 1 September 2022 – 18 January 2023. In this regard:

    (a) The Appeal Committee dismissed this request since it was a calculation error which could be rectified *ex officio* or on request by the NDRC, in accordance with the provisions of Article 36.14 of the RJSTP.

    (b) In response to the Sole Arbitrator's invitation during the hearing to comment, the Appellant mentioned that he had not yet filed a specific request under existing RJSTP provisions.

    (c) Resultantly, the Sole Arbitrator believes that the Player shall seek existing recourse under the RJSTP provisions to claim the difference of EUR 6,871, and his request before the CAS in this regard shall be dismissed.

150. That said, the Sole Arbitrator is left with the issue of whether or not the awarded compensation of EUR 87,096.77 net needs to be decreased or increased in light of any mitigating or aggravating factors related to the circumstances of this case, notably in light of the Player joining CS Minaur and any subsequent clubs.

151. In this regard, the Sole Arbitrator is cognizant that neither Article 18.9.1(a) of the RJSTP nor the rest of the RJSTP provisions make any reference to compensation payable to the non-defaulting party for breach of contract or concerning any mitigating or aggravating factors.

152. On this point, the Player argued that reference can be made to Article 17 para. 1 of the FIFA RSTP, which provides in particular that "[i]*n case the player signed a new contract by the time of the decision, the value of the new contract for the period corresponding to the time remaining on the prematurely terminated contract shall be deducted from the residual value of the contract that was terminated early*", since (i) said regulations were expressly agreed as applicable in the Contract and in any case (ii) FIFA provisions are to be considered prevailing over the provisions of the RFF as also mandated under the RFF Statutes.

153. The Sole Arbitrator notes that while the First Respondent does not advocate for the applicability of the FIFA RSTP, it did not stipulate the relevant provisions in the RJSTP which provide for a reduction in compensation on grounds of a player mitigating his damages after signing a contract with a new club. In contrast, while the Appellant advocated in favor of applying the FIFA RSTP, in his Appeal Brief, he failed to mention his mitigated damages after signing the New Contract with CS Minaur.

154. The Sole Arbitrator is cognizant that there exists settled jurisprudence on "mitigated compensation", which requires any player to make reasonable efforts to seek other employment

possibilities and, in case he finds a new club, the damage has to be reduced for the amount the player was able to earn elsewhere (CAS 2008/A/1519 & 1520, at para. 66; CAS 2021/A/8087, at para. 100; CAS 2015/A/4346, at paras. 96-101, 103). The Sole Arbitrator recognises the importance of awarding compensation to the non-breaching party based on the principle of "positive interest," whereby the injured party should be placed in the position it would have occupied had the contract been properly performed and not terminated prematurely (see e.g. CAS 2008/A/1519-1520 and CAS 2021/A/7757-7762). Accordingly, it is appropriate that the Player be compensated solely by receiving the amount he was contractually entitled to but has not yet received, with a deduction for any remuneration already paid to the Player for the same period.

155. In line with the aforementioned jurisprudence, and while there is a certain margin of appreciation regarding the applicability of football regulations within a national framework, in this case, the Sole Arbitrator is of the view that the only logical interpretation in order to apply settled jurisprudence on "mitigated compensation" is to treat this as a "gap" in the RJSTP that needs to be resolved by reference to the FIFA RSTP and Swiss law, which is part of the subsidiary laws and regulations to this dispute (see *supra* at para. 80).

156. That said, the Sole Arbitrator notes that, pursuant to Article 8 of the Swiss Civil Code, that subsidiarily applies to this dispute (see *supra* at para. 83) and as per settled jurisprudence of the CAS, any party wishing to prevail on a disputed issue, or wishing to draw legal consequences from factual circumstances it alleges, must discharge its respective burden of proof. This means that it must meet the onus to substantiate its allegations and affirmatively prove the facts or circumstances on which it relies its argumentation on that issue (CAS 2013/A/3082, at para. 54).

157. Furthermore, from a procedural point of view, said burden shall meet a specific standard of proof i.e. a certain degree of persuasion over the relevant adjudicating body. There is no need to reach an absolute certainty, as "*it suffices if the judge / arbitral tribunal has no serious doubt about the existence of the alleged facts or if any remaining doubt appears to be tenuous*" (see CAS 2021/A/8277, at para. 92).

158. In the present case, the Club had the burden of proof to establish that the Player mitigated his damages. In this regard, the Club filed for evidentiary requests and thereby requested production of, *inter alia*, the New Contract signed with CS Minaur (see *supra* at para. 29). The Player in response disclosed that though he was party to the New Contract, he had received only a sum of RON 52,755 net, attained through a decision before the NDRC. Based on the available evidence in the submissions, the Sole Arbitrator is convinced, to the relevant standard of proof, that the Player mitigated his damages by RON 52,755 net.

159. As to the ACS Cristur Contract, the Sole Arbitrator is of the view that the Club did not prove, to the necessary degree of proof, that the Player received any amount from ACS Cristur under the ACS Cristur Contract. In fact, the Sole Arbitrator took note of the following:

    (i) The Player's testimony at the hearing, where he consistently argued that he received no amount by ACS Cristur;

    (ii) The Player's request that ACS Cristur inform the relevant district football association (Cluj County Football Association) that the Player never negotiated or signed the ACS Cristur Contract;

(iii) The communication sent by the President of ACS Cristur to the "Competition Commission" of the Cluj County Football Association requesting "*to annul the registration of the player Răzvan Horj on the grounds that there is no valid sports activity contract concluded between the subscriber and the player*";

(iv) The affidavit filed by the President of ACS Cristur on behalf of said club, stating that no amount was ever paid to the Player;;

(v) The lack of any counterevidence from the First Respondent.

160. Therefore, the Player mitigated his damages through his employment relationship with CS Minaur, in the amount of RON 52,755 net, which should be deducted from the compensation granted *supra* at para. 138.

161. That said, the Sole Arbitrator notes that the Appellant's mitigated damages are expressed in Romanian lei, whereas the Appellant's desired compensation is expressed in euros and therefore, a conversion needs to be made. As to the applicable exchange rate, the Sole Arbitrator notes that the Player received this sum from the NDRC on 21 September 2023. On that day, the official exchange rate, as determined by the European Central Bank, was 1 RON = 0.201175 EUR (see https://fxtop.com/, which is a reliable currency converter according to the Swiss Federal Tribunal, ATF 135 III 88, consid. 4.1 and cited in CAS 2013/A/3309, at para. 158). As a consequence, the amount of RON 52.755 on 21 September 2023 was equivalent to EUR 10,612.98.

162. In light of the above, the amount due and payable to the Player amounts to EUR 76,483.79 (EUR 87,096.77 *less* EUR 10,612.98) plus 5% p.a. interest as of 19 January 2023.

D. The CAS cannot impose sanctions on the Club

163. The Appellant, in his Appeal Brief, argued for the application of the sanctions provided under Article 18.9.1(a) of the RJSTP, in particular a transfer ban.

164. The Club, on the other hand, contends that the Player cannot ask the CAS for the Club's ban for two transfer periods as it was explicitly waived before the Appeal Committee (see *supra* at para. 55). More specifically, the Club argued that on 28 February 2023, the Player submitted a request before the Appeal Committee, whereby it waived his claim on the Club's ban of transferring players for two transfer periods. The circumstance was also confirmed by the Appellant at the hearing.

165. In this respect, the Sole Arbitrator is mindful that, as also shown by CAS jurisprudence, the *de novo* power of the CAS is limited by the scope of the previous litigation and, in particular, by the issues arising from the challenged decision (CAS 2007/A/1396 & 1402, at para. 46). The *de novo* powers of the CAS in this regard are therefore limited, as can be best summarized by the following excerpt in CAS 2012/A/2874:

> "*In light of the above, the Panel finds that, in principle, it is limited to the scope of the previous litigation. New claims advanced in appeal, hitherto not claimed in the previous litigation, are in principle inadmissible. However, the Panel finds that claims that could, for legitimate reasons, not have been advanced in the previous litigation, but were likely to have been claimed in the absence of such legitimate reasons at that time, do fall under the de novo*

competence of CAS Panels and should hence be considered as admissible." (CAS 2012/A/1874, at para. 83).

166. In this regard, the Sole Arbitrator notes that there was nothing precluding or barring the Player from seeking the claim before the Appeal Committee, especially because the claim was rejected by the first-instance body i.e. the NDRC and could have been appealed.

167. The Sole Arbitrator is therefore unable to render a decision to impose (or not impose) a ban on the Club as it exceeds the reliefs sought before the previous instance, in this case, the Appeal Committee and is therefore inadmissible.

168. Furthermore, in any case, the Sole Arbitrator would be doubtful as to the Player's standing to put forward such a request. In fact, as also pointed out by previous CAS panels, the possibility to impose a sanction on the breaching party, provided under the relevant regulations, only lies with the prerogatives of the Federation (in this case the RFF) and thus the Player, as injured party, has no legally protected interest to require the imposition of a sanction (see e.g. CAS 2014/A/3707 and CAS 2018/A/6044).

169. In light of the above, the Appellant's request to impose sanctions on the Club is inadmissible and, in any case, shall be dismissed.

E. The Appellant is not entitled to recover the costs incurred before the Appeal Committee

170. In his prayers for relief, the Player requested "*to order the First Respondent to pay the Appellant the arbitration costs generated by case no. 1/CR/2023 amounting 7169 Ron (2500 RON procedure fee and 4669 ron attorney fee)*" i.e. the costs concerning the proceedings before the Appeal Committee.

171. In this respect, the Sole Arbitrator recalls that, as per CAS jurisprudence "*it is not for CAS to reallocate the costs of the proceedings before previous instances*" (see CAS 2013/A/3054, at para. 89; the approach was confirmed in CAS 2016/A/4387).

172. Accordingly, the Sole Arbitrator concludes that the Player's request in this respect must be dismissed.

X. CONCLUSIONS

173. In light of the above circumstances and after considering all the evidence and arguments presented by the Parties, the Sole Arbitrator concludes that the Appealed Decision shall be set aside and replaced to the extent specified in this Award.

174. On the merits, the Sole Arbitrator finds that:

(a) The Second Respondent, the RFF, has standing to be sued in this case;

(b) The Player had just cause to unilaterally terminate the Contract under the First Thesis to Article 18.10(a) of the RJSTP, due to the Club's conduct, which amounted to a breach without just cause under Article 18.9.1(a) of the RJSTP;

(c) The Player is entitled to compensation from the Club until the expiry of the Contract, pursuant to Article 18.9.1(a) of the RJSTP. However, this compensation shall be offset

against the damages mitigated by the Player through signing the New Contract with CS Minaur, in accordance with Article 17 para. 1 of the FIFA RSTP;

(d) The Player is not entitled to recover the costs he incurred before the Appeal Committee.

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

XI. COSTS

(…).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Appeal filed by Răzvan Horj against the decision rendered by the RFF Appeal Committee on 23 March 2023 is partially upheld.

2. The decision rendered by the RFF Appeal Committee on 23 March 2023 is set aside.

3. Club Sportiv Petrolul 52 is ordered to pay to Răzvan Horj the amount of EUR 76,483.79 as compensation plus 5% *p.a.* interest as from 19 January 2023 until the date of effective payment.

4. (…).

5. (…).

6. All further or other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 10 March 2025

THE COURT OF ARBITRATION FOR SPORT

Mario Vigna
Sole Arbitrator