TAS / CAS
TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

CAS 2023/A/10204 Márkó Futács v. Yeni Mersin Idmanyurdu Futbol A.S. & FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Hendrik Willem **Kesler**, Attorney-at-Law, Enschede, The Netherlands

Ad hoc Clerk: Mr Dennis **Koolaard**, Attorney-at-Law, Amsterdam, The Netherlands

in the arbitration between

Mr Márkó Futács, Hungary

Represented by Dr. Kristóf Wenczel, Attorney-at-Law, Hőrcsik Law Office (Wenczel & Partner), Budapest, Hungary

- Appellant -

and

Yeni Mersin Idmanyurdu Futbol A.S., Mersin, Türkiye

Represented by Mr Juan de Dios Crespo Pérez, Ms Emily Yu and Mr Umur Varat, Attorneys-at-Law, Ruiz-Huerta & Crespo Sports Lawyers, Valencia, Spain

- First Respondent -

and

Fédération Internationale de Football Association, Zurich, Switzerland

Represented by Mr Alexander Jacobs and Mr Saverio Spera, Senior Legal Counsel, Litigation Department, Zurich, Switzerland

- Second Respondent -

* * * * *

I. PARTIES

1. Mr Márkó Futács (the "Appellant" or the "Player") is a professional football player of Hungarian nationality.

2. Yeni Mersin Idmanyurdu Futbol A.S. (the "First Respondent" or the "Alleged Successor Club") is a football club with its registered office in Mersin, Türkiye. The Alleged Successor Club is registered with the Turkish Football Federation (the "TFF"), which in turn is affiliated to the *Fédération Internationale de Football Association*.

3. The *Fédération Internationale de Football Association* (the "Second Respondent" or "FIFA") is the international governing body of football with its registered headquarters in Zurich, Switzerland.

4. The Club and FIFA are hereinafter jointly referred to as the "Respondents" and together with the Player as the "Parties".

II. INTRODUCTION

5. These proceedings revolve around the non-compliance of the Turkish football club Mersin Idman Yurdu Spor Kulübü (the "Original Debtor") and the Alleged Successor Club with a settlement agreement (the "Settlement Agreement") concluded between the Player and the Original Debtor following an employment-related dispute.

6. Following a claim lodged against the Alleged Successor Club by the Player, the Dispute Resolution Chamber of the FIFA Football Tribunal (the "FIFA DRC") issued a decision (the "Appealed Decision") declaring the Player's claim inadmissible.

7. In the present appeal arbitration proceedings before the Court of Arbitration for Sport ("CAS"), the Player is challenging the Appealed Decision, requesting to be awarded an amount of EUR 330,000 from the Alleged Successor Club.

8. The Alleged Successor Club and FIFA request for a confirmation of the Appealed Decision and that the Player's appeal be dismissed.

III. FACTUAL BACKGROUND

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

A. Background Facts

10. On 13 June 2014, the Player and the Original Debtor entered into an employment agreement.

11. On 17 August 2017, following an employment-related dispute between the Player and the Original Debtor, the FIFA DRC passed a decision (the "First FIFA DRC Decision") ordering

the Original Debtor to pay the Player EUR 200,004 in outstanding remuneration, and EUR 133,336 as compensation for breach of contract, both plus interest.

12. On 23 August 2018, due to the non-compliance of the Original Debtor with the First FIFA DRC Decision, the FIFA Disciplinary Committee imposed sporting sanctions on the Original Debtor.

13. On 18 September 2018, the Player and the Original Debtor concluded the Settlement Agreement, by means of which the Original Debtor undertook to pay the Player an amount of EUR 330,000, agreeing in particular as follows:

> "***1.)*** *The Player requests from FIFA DRC to suspend their process for an indefinite period*
>
> ***2.)*** *The* [Original Debtor] *undertakes to pay the total debt according to a longer payment schedule as follows:*
>
> ***€ 5,000*** *(in words five thousand euro until 31st Jan 2019*
> ***€ 5,000*** *(in words five thousand euro until 31st June 2019*
> ***€ 5,000*** *(in words five thousand euro until 31st November 2019*
> ***€ 2,500*** *(in words two thousand-five hundred euro until the last calendar day of each month commencing within December 2019)*
>
> ***3.)*** *If any instalment is delaying the Player is entitled to request FIFA to continue the disciplinary process and sanctions without any prior notice*
>
> ***4.)*** *In case if the Club promote to a higher division for each season (in case of rise to professional leagues) the monthly instalments will be doubled.*"

14. On 8 October 2018, the Secretariat to the FIFA Disciplinary Committee informed the Player, the Original Debtor and the TFF that the proceedings against the Original Debtor were closed following the conclusion of the Settlement Agreement. They were further informed that "*any claim resulting from the breach of the aforementioned agreement signed by the parties will have to be lodged before the Players' Status Committee or Dispute Resolution Chamber, as applicable, or before the competent bodies at national or international level mutually agreed by the parties*".

15. On 30 June 2019, the Original Debtor was dissolved.

16. On 16 September 2019, the Player requested the FIFA Disciplinary Committee to re-open the disciplinary proceedings against the Original Debtor due to its alleged non-compliance with the Settlement Agreement.

17. On 27 September 2019, the Secretariat to the FIFA Disciplinary Committee reiterated the content of its letter dated 8 October 2018, indicating that "*according to the Circular no. 1628 of 9 May 2018, any claim resulting from the breach of the aforementioned agreement signed by the parties will have to be lodged before the Players' Status Committee or the Dispute Resolution Chamber, as applicable, or before the competent bodies at national or international level as mutually agreed by the parties*".

18. On 6 June 2023, the Player sent a payment notice to the Alleged Successor Club, indicating, *inter alia*, as follows:

> "*Please wire the sum of € 120.000, - (in words hundred twenty thousand euro) and additional monthly € 5.000,- (in words five thousand euro) until the last day of each month commencing with 30 June 2023 for 42 months) plus interest at the rate of 5% p.a. commencing from the effective date of each instalment in accordance with the Settlement Agreement* […]."

19. On 20 June 2023, the Alleged Successor Club replied to the Player's payment notice, denying that it was the sporting successor of the Original Debtor.

B. Proceedings before the Dispute Resolution Chamber of the FIFA Football Tribunal

20. On 14 August 2023, the Player lodged a claim against the Alleged Successor Club before the FIFA DRC, submitting the following requests for relief:

> "*Please declare the* [Alleged Successor Club] *as the (legal and/or sporting) successor of the* [Original Debtor] *in accordance with article 25-1 RSTP.*
>
> *Please oblige the* [Alleged Successor Club] *of payment of the net amount* *€ 330.000, -* *(in words three hundred thirty thousand euro) plus interest at the rate of 5% p.a. commencing from the effective date of the Settlement Agreement.*
>
> *For the avoidance of doubts, the entire amount set out in the Settlement Agreement has become due, due to the non-compliance with the payment notice by the Successor Club, sent on 6 June 2023.*
>
> *Alternatively, please oblige the* [Alleged Successor Club] *of payment of the net amount* *€ 135.000, -*[1] *(in words hundred thirty-five thousand Euro and additional monthly € 5.000, - (in words five thousand euro) for 39 additional months plus interest at the rate of 5% p.a. commencing from the effective date of each instalment in accordance with the Settlement Agreement.*" (emphasis in original)

21. The Alleged Successor Club, *inter alia*, denied that it was the sporting successor of the Original Debtor and requested that the Player's claim be declared inadmissible because it was time barred.

22. On 18 October 2023, the FIFA DRC issued the operative part of the Appealed Decision, which provides as follows:

> "*1. The claim of the* [Player] *is inadmissible.*
>
> *2. This decision is rendered without costs.*"

23. On 20 November 2023, the grounds of the Appealed Decision were communicated to the Parties, providing, *inter alia*, as follows:

> - "[…] [T]*he Chamber referred to art. 23 par. 3 of the* [FIFA Regulations on the Status and Transfer of Players – the "FIFA RSTP"]*, which establishes that the decision-making bodies of FIFA shall not hear any dispute if more than two*

[1] The following footnote was added to the Player's requests for relief: "*3 x € 5.000,- until 30 Nov 2019, 42 x € 2.500,- (monthly instalments from Dec 2019 until May 2023) and 3 x 5.000,- monthly instalments from June 2023 to August 2023*".

years have elapsed since the facts leading to the dispute arose. The application of this time limit shall be examined ex officio in each individual case.

- *In this context, the Chamber recalled that the present claim was lodged in front of FIFA on 14 August 2023. Therefore, in line with art. 23 par. 3* [FIFA RSTP], *any amounts fallen due before 14 August 2021 are affected by the statute of limitations.*

- *The Chamber noted that, in the present case, the Player requested the payment of EUR 330,000 as outstanding amount under the Settlement Agreement stipulated with the* [Original Debtor] *on 18 September 2018.*

- *In this context, the DRC however noted that, while the Player in his claim referred to 30 June 2019 as the date in which the* [Original Debtor] *merged with another Turkish club thereby generating the sporting succession of the* [Original Debtor] *with the constitution of the* [Alleged Successor Club], *nonetheless the Player waited until 6 June 2023 before sending any formal notice to put the* [Alleged Successor Club] *in default.*

- *In this respect, the DRC also wished to emphasize that already on 8 October 2018 and on 27 November 2019 the FIFA Disciplinary Committee had clearly informed the Player about the relevant proceedings being closed and that any potential claim resulting from the breach of the Settlement Agreement should have been lodged before the (then existing) Players' Status Committee or the Dispute Resolution Chamber ex novo.*

- *To this extent, the Chamber considered in particular that (i) it was evident in the Player's understanding that the* [Original Debtor] *had apparently failed to comply with the Settlement Agreement as of the relevant first instalment, due on 31 January 2019, as well as that (ii) the* [Original Debtor] *was dissolved on 30 June 2019 and that (iii) to the Player's knowledge, the sporting successor of the* [Original Debtor] *– allegedly the* [Alleged Successor Club] *– was founded on the very same date.*

- *With the above in mind, the Chamber determined that aforementioned date shall be considered as the starting moment from which the Player should (or could) have filed his claim in front of FIFA, namely because the perception of the* [Alleged Successor Club] *as sporting successor of the* [Original Debtor] *had already been formed in said point in time. By not doing so, the members of the Chamber were unanimous in concluding that the Player has willingly postponed his decision to act in order to collect the alleged outstanding sums, thus losing his rights to file the relevant claim at hand due to the statute of limitations. Put differently, the DRC found that event which trigger* [sic] *the dispute in the matter at hand, insofar as the sporting successorship is raised by the* [Player], *is the date of constitution of the alleged successor, i.e., the* [Alleged Successor Club], *which unequivocally took place more than 2 years before the Player's claim was lodged with FIFA regarding the supposed breach fo* [sic] *the Settlement Agreement.*

- *Consequently, the DRC established that the Player's entire claim shall be considered inadmissible.*"

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

24. On 8 December 2023, the Player filed a Statement of Appeal with CAS in accordance with Articles R47 and R48 of the 2023 edition of the Code of Sports-related Arbitration (the "CAS Code"), challenging the Appealed Decision. In this submission, the Player named the Alleged Successor Club and FIFA as respondents and requested that the matter be referred to a sole arbitrator.

25. On 18 December 2023, the Player filed his Appeal Brief in accordance with Article R51 CAS Code.

26. On the same date, 18 December 2023, FIFA informed the CAS Court Office that it agreed to refer the matter to a sole arbitrator, provided that he or she be selected from the football list.

27. On 28 December 2023, the Alleged Successor Club informed the CAS Court Office that it agreed with the appointment of a sole arbitrator.

28. On 19 January 2024, the CAS Court Office informed the Parties that, pursuant to Article R54 CAS Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the arbitral tribunal appointed to hear the appeal was constituted as follows:

    Sole Arbitrator: Mr Hendrik Willem Kesler, Attorney-at-Law in Enschede, The Netherlands

29. On 24 January 2024, the CAS Court Office informed the Parties that Mr Dennis Koolaard, Attorney-at-Law in Amsterdam, The Netherlands, had been appointed as *Ad hoc* Clerk.

30. On 8 February 2024, the Alleged Successor Club filed its Answer in accordance with Article R55 CAS Code.

31. On 14 February 2024, FIFA filed its Answer in accordance with Article R55 CAS Code.

32. On 14 and 15 February 2024, following an inquiry from the CAS Court Office, the Alleged Successor Club indicated its preference for an in-person hearing to be held, the Player indicated his preference for a hearing to be held by video-conference and FIFA indicated that it did not consider it necessary for a hearing to be held.

33. On 19 February 2024, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to hold a hearing by video-conference.

34. On 26 and 27 February 2024 respectively, the Alleged Successor Club, the Player and FIFA returned duly signed copies of the Order of Procedure to the CAS Court Office, provided to them on 26 February 2024.

35. On 12 April 2024, a hearing was held by video-conference. At the outset of the hearing, the Parties confirmed that they had no objection to the constitution and composition of the arbitral tribunal.

36. In addition to the Sole Arbitrator, Mr Antonio De Quesada, CAS Head of Arbitration, and Mr Dennis Koolaard, *Ad hoc* Clerk, the following persons attended the hearing:

a) For the Player:

1) Dr. Kristóf Wenczel, Counsel;
2) Dr. Mihály Kovács, Counsel.

b) For the Alleged Successor Club:

1) Mr Juan de Dios Crespo-Pérez, Counsel;
2) Mr Umur Varat, Counsel.

c) For FIFA:

1) Mr Alexander Jacobs, Counsel;
2) Mr Saverio Spera, Counsel.

37. At the outset of the hearing, the Sole Arbitrator informed the Parties that the Player's request for a bifurcation of the proceedings was dismissed and that the reasons for such decision would be provided in the final Award.

38. No witnesses or experts were heard.

39. The Parties were given full opportunity to present their cases, submit their arguments and answer the questions posed by the Sole Arbitrator.

40. Before the hearing was concluded, the Parties expressly stated that they had no objection to the procedure adopted by the Sole Arbitrator and that their right to be heard had been respected.

V. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF

41. The Sole Arbitrator confirms that he carefully heard and took into account in his decision all of the submissions, evidence, and arguments presented by the Parties, even if they have not been specifically summarised or referred to in the present arbitral award.

A. The Appellant

42. The Player's Appeal Brief, in essence, may be summarised as follows:

- The Settlement Agreement – which was the sole and exclusive ground of the claim – is still today valid, applicable and ongoing. It is absolutely nonsense to make any reference to the statute of limitation. The FIFA DRC wrongly interpreted or entirely misinterpreted the validity of the Settlement Agreement since taking into consideration the full value of such agreement, the final due date of the last instalment should be 31 May 2030.

- All references to the statute of limitation should be ignored in case of an ongoing agreement. If the date of the merger has any significance regarding the statute of limitation, as a commencing date of the execution of a claim – as it was ruled in the Appealed Decision – it would only affect a certain part of the entire claim: the instalments due between 31 January 2019 and 14 August 2021. Even in this case, the instalments to be paid between 14 August 2021 and 31 May 2030 are not affected by

such argument. Regarding a claim in the future there is no sense to refer to the statute of limitation.

- The FIFA DRC most likely considered the Settlement Agreement as terminated or as an agreement which ceased to exist, but this is not the case.

- If FIFA calculates the starting point of the statute of limitation separately, by taking into account each individual instalment, only EUR 65,000 from the total amount shall be considered time barred. This interpretation is also supported by FIFA's Commentary to the FIFA RSTP.

- The Player acknowledges that his claim should have been formulated differently by only asking EUR 265,000 instead of the total amount of the claim, taking into consideration the already time barred instalments.

- It is the Player's sole and exclusive right to decide when to put the Alleged Successor Club in default. The Player sent a payment notice and put the Alleged Successor Club in default immediately when it was promoted and reached a professional status and changed its name. The FIFA DRC's argument in para. 28 of the Appealed Decision ("*Player waited until 6 June 2023 before sending any formal notice to put the* [Alleged Successor Club] *in default*") is unacceptable. This was the Player's discretion.

- The Player had no knowledge of the creation of the Alleged Successor Club until it changed its name to its current version. The former name did not create a motive for public perception which could have been capable of identifying the Alleged Successor Club as the sporting successor of the Original Debtor. In light thereof, the FIFA DRC wrongly determined "*the starting moment from which the claim should have filed in front of FIFA as the starting moment of the time limit, hence the statute of limitation, should have started from the date on which the name of the* [Alleged Successor Club] *had been changed to its current version; namely from 4 August 2022 which is the date of the registration of the new name of the* [Alleged Successor Club] *in the Turkish trade register*". Given this starting moment, the whole claim, amounting to EUR 330,000, plus interest, should be due and the instalments due before 14 August 2021 should not be considered as time barred.

- The FIFA DRC has already decided in two similar cases that the Alleged Successor Club is the sporting successor of the Original Debtor.

- Proceedings before the FIFA DRC are less favourable for the Player than those before the FIFA Disciplinary Committee due to the calculation of the time limit. The Original Debtor deliberately forced the Player to conclude the Settlement Agreement and requested to suspend the foregoing disciplinary proceedings in bad faith knowing that in case of insolvency, the case should be referred back to the FIFA DRC with less favourable conditions for the Player.

- It is not fair for the FIFA Disciplinary Committee to hear a claim even after five years lapsed, whereas the FIFA DRC would not be competent after two years.

- As set forth in the Settlement Agreement, the conclusion of such agreement should not be considered as a waiver of the right of the Player to initiate disciplinary proceedings against the Original Debtor. The FIFA DRC should not be in a position to hinder the right of the Player to enforce the First FIFA DRC Decision. Therefore, the Player should

also have the right to initiate disciplinary proceedings against the Alleged Successor Club without evaluating the Settlement Agreement before the FIFA DRC. Such claim should not be time barred because the statute of limitation for disciplinary cases is five years.

- The Alleged Successor Club is the sporting successor of the Original Debtor. To the Player's knowledge, currently an appeal is pending before CAS where the subject matter relates to the declaration of the Alleged Successor Club as the sporting successor of the Original Debtor. However, this procedure does not have suspensory effect. In light of this, the Player relies on the decisions of the FIFA Disciplinary Committee under reference numbers FDD-14109 and FDD-15539 and requests the Sole Arbitrator to recognise such decisions in the matter at hand and declare the Alleged Successor Club as the sporting successor of the Original Debtor. CAS is competent to decide on this question and there is no need to return the case to the FIFA DRC.

- Finally, no person should be a judge in a case where he has an interest. Mr Juan Crespo Ruiz-Huerta, an employee (external consultant) of the legal representative of the Alleged Successor Club is also an employee (external consultant) of FIFA. He is also the son of two senior partners of the legal representative of the Alleged Successor Club. From this the conclusion can be drawn that there is a conflict of interest between FIFA and the legal representative of the Alleged Successor Club, which raises doubts regarding the outcome of the Appealed Decision, even though he was not part of the panel of the FIFA DRC deciding on the case. This should be considered as a ground to annul the Appealed Decision. The whole claim should be entirely decided by CAS itself.

43. On this basis, the Player submits the following prayers for relief in his Appeal Brief:

> "*We hereby respectfully request the* ***COURT OF ARBITRATION FOR SPORT (APPEALS ARBITRATION DIVISION)*** *to deem this* ***APPEAL BRIEF*** *to be filed on behalf of* ***MÁRKÓ FUTÁCS*** *together with the documents and copies attached and, following the appropriate established procedures, to issue in due course a decision to bifurcate the proceedings for a* ***<u>PRELIMINARY AWARD ON JURISDICTION</u>*** *to be rendered by the CAS whereby:*
>
> - ***the Appeal is upheld;***
>
> - ***the Decision issue by the FIFA DRC on 18 October 2023, and whose grounds were notified on 20 November 2023, with case reference Nr. FPSD-11343 is set aside; and***
>
> - ***in so doing, hold that the FIFA DRC did have jurisdiction to entertain the claim lodged by the Player against the Club and the claim shall be deemed admissible;***
>
> - ***Alternatively, in the event that CAS decides not to bifurcate the proceedings for a preliminary award to be issued only in respect of FIFA DRC's lack of jurisdiction, the Appellant hereby respectfully requests the COURT OF ARBITRATION FOR SPORT (APPEALS ARBITRATION DIVISION) to deem this APPEAL BRIEF to be filed on behalf of MÁRKÓ FUTÁCS together with the documents and copies attached and, following the appropriate established procedures, to issue in due course an AWARD whereby:***

- ***the Appeal is upheld;***
- ***the Decision issued by the FIFA DRC on 18 October 2023, and whose grounds were notified on 20 November 2023, with case reference Nr. FPSD-11343 is set aside; and***
- ***in so doing, hold that the FIFA DRC did have jurisdiction to entertain the claim lodged by the Player against the Club and the claim shall be deemed admissible;***
- ***In the alternative:***
- ***should the CAS deem that the FIFA DRC did have jurisdiction to entertain, either the entire claim or partly as regards with the instalments due before 14 August 2021 concerning the Settlement Agreement is within the statute of limitations or even not affected by it***
  - ***to uphold the right of the Player to receive the net amount € 330,000 plus interest at the rate of 5% p.a. commencing from the effective date of the Settlement Agreement; or***
  - ***to uphold the right to receive the due amount (due instalments) pursuant to the Settlement Agreement until the date of the Award, namely the net amount of € 135,000 (as of today) plus interest at the rate of 5% p.a. commencing from the effective date of the Settlement Agreement and order the First Respondent to respect the Settlement Agreement by paying the monthly instalments of the Settlement Agreement until the due date of the last instalment; or***
  - ***alternatively, - in the unexpected case if the Hon. Panel / Arbitrator finds the statute of limitation applicable; - we are requesting the amount equal with the instalments due from 14 August 2021 (two years backwards for filing the claim). In this case we are requesting to uphold the right of the Player to receive the net amount € 265,000 [€ 70.000, - until today and € 195.000, - instalments in the future] plus interest at the rate of 5% p.a. commencing from the effective date of the Settlement Agreement of those instalments which are not considered time-barred, namely from 14 August 2021; and***
  - ***to declare the First Respondent as the legal and/or sporting successor of the Old Club and impose disciplinary sanctions on it.***
- ***In all events:***
- ***the Club is ordered to bear all procedural costs and other arbitration expenses of this procedure; and***
- ***the Club is also ordered to pay the legal fees and other expenses incurred by the Player in an amount to be determined at the discretion of the CAS.***" (emphasis in original)

B. The First Respondent

44. The Alleged Successor Club's Answer, in essence, may be summarised as follows:

- First and foremost, the Alleged Successor Club has made it extremely clear and in no uncertain terms as well as established with sufficient evidence that it is not the sporting successor of the Original Debtor, as alleged by the Player.

- Whether the Alleged Successor Club is the sporting successor of the Original Debtor is irrelevant, as the statutory period to file the claim has elapsed. The Player in the present case waited four years to file a claim in clear contravention of Article 23(3) FIFA RSTP.

- The Player and the Original Debtor entered into the Settlement Agreement on 18 September 2018. The first instalment was due for payment by the Original Debtor on 31 January 2019. Instead of filing a fresh claim against the Original Debtor before the FIFA DRC or the FIFA PSC, as advised by FIFA, the Player blindly requested the FIFA Disciplinary Committee to re-open an already closed disciplinary procedure against the Original Debtor.

- Even though the Player alleges that 30 June 2019 was the date the Alleged Successor Club became the sporting successor of the Original Debtor, the Player waited until 6 June 2023 to send a formal notice putting the Alleged Successor Club in default of the outstanding amount of EUR 330,000.

- It is important that the period between 31 January 2019 when the first instalment of the Settlement Agreement became due and 14 August 2023, when the Player filed his claim before the FIFA DRC, is more than four full years.

- There are three instances where the limitation period could reasonably be said to have commenced: i) when the first instalment became due for payment on 31 January 2019; ii) when the Original Debtor was dissolved on 30 June 2019; or iii) when the FIFA Disciplinary Committee advised the Player to commence proceedings against the Original Debtor on 27 November 2019.

- Pursuant to Article 130(1) of the Swiss Code of Obligations (the "SCO"), the prescriptive period commences as soon as the debt is due. This position is also supported by CAS jurisprudence. Contrary to the Player's argument, in cases of similar periodic obligations as seen in the present matter, the prescriptive period for the principal claim commences on the date on which the first instalment in arrears was due. When the principal claim prescribes, so too do all claims in respect of individual payments. This is confirmed by Article 133 SCO.

- The Player should or ought to have known that the Original Debtor was not going to fulfil its obligations under the Settlement Agreement when the first instalment was not paid on 31 January 2019, thereby triggering the maturity of the other instalments payable later.

- Furthermore, the Player's argument that the two-year deadline only applies to individual payments, rather than to the contractual relationship is baseless and should be disregarded not only for the reasons detailed above but also because none of the instalments in the Settlement Agreement were ever made. The Player's argument would have been plausible had the Original Debtor made payment of some of the first set of monthly instalments, leaving the remainder unpaid.

- It is incomprehensible that after the first instalment remained unpaid for 10 months and when the FIFA Disciplinary Committee advised the Player to lodge a fresh claim, the Player waited for almost four years to do so on the ground that each instalment in the Settlement Agreement had its own due date and that the last instalment was not due until 31 May 2030. If the Player believes that to be the case, then the question is why the Player did not continue to wait until 31 May 2030 to bring up the claim.

- The FIFA DRC determined that the event which triggered the dispute, insofar as sporting successorship is concerned, is the date of constitution of the alleged successor, which undisputedly took place more than two years before the Player lodged his claim before the FIFA DRC. This view is supported by CAS jurisprudence.

- The Player argued that he had no knowledge of the creation of the Alleged Successor Club until it changed its name to its current version and that the statute of limitation should hence have commenced as from 4 August 2022. This assertion is perplexing, because the Player stated that the alleged merger was approved by the TFF and gained wide media attention one year before the change of name.

- Finally, if the Player had immediately followed the directive of the FIFA Disciplinary Committee of 27 November 2019, the Player's claim against the Original Debtor would have been filed within the two-year limitation period. Yet, the Player not only waited for almost four years to commence such procedure, he also filed his claim against the wrong party, namely against the Alleged Successor Club instead of the Original Debtor.

- The two-year limitation period was also never interrupted at any time.

- If for any reason whatsoever the statute of limitation is deemed unexpired, the appeal should still be dismissed because the Alleged Successor Club lacks standing. There was no previous decision confirming the sporting succession alleged by the Player, hence the Alleged Successor Club has no standing to be sued. If the Original Debtor failed to honour the Settlement Agreement, the Player needs to start a new procedure against the Original Debtor.

- Whilst the *de novo* power of CAS is duly acknowledged, CAS cannot reasonably be expected to determine *de novo* the issue of sporting succession, standing to be sued or liability of a club under a settlement agreement, as these are matters that must first be examined and decided by the FIFA DRC.

- Mr Juan Crespo Ruiz-Huerta is indeed the son of Mr Juan de Dios Crespo Pérez, counsel to the Alleged Successor Club, but he is not involved in the present proceedings. Mr Juan Crespo Ruiz-Huerta does not work for the firm of counsel for the Alleged Successor Club, but he occasionally provides services for the firm. Mr Juan Crespo Ruiz-Huerta's appointment as independent Integrity Officer has nothing to do with the firm or this case. Counsel for the Player should refrain from making incorrect statements, otherwise appropriate steps will be taken.[2]

[2] The content of this paragraph was not included in the Alleged Successor Club's Answer, but it was submitted separately by email dated 19 December 2023. For the sake of efficiency, it is included in the present summary of the Alleged Successor Club's Answer.

45. On this basis, the Alleged Successor Club submits the following prayers for relief in its Answer:

> "*1. To dismiss this appeal filed by the Player against the Club and FIFA.*
>
> *2. To confirm the decision passed by the FIFA DRC on 18 October 2023, with the reference No. FPSD-11343, communicated to the Parties with the grounds on the 20 November 2023.*
>
> *3. To condemn the Appellant to the payment of the whole CAS administration cost and the Arbitrators fees.*
>
> *4. To fix a sum of* ***CHF 20,000 (Twenty Thousand Swiss Francs)*** *to be paid by the Appellant to the Club to assist the payment of its legal fees covering the costs of its legal representation in front of the Court of Arbitration for Sport.*
>
> *5. Any other relief that the CAS may deem appropriate in the circumstances.*"

C. The Second Respondent

46. FIFA's Answer, in essence, may be summarised as follows:

- The Player contests the Appealed Decision primarily on the basis that the FIFA DRC allegedly wrongly interpreted the starting moment of the statute of limitations by arguing that the "*event giving rise to the dispute*" was the moment of incompliance with the Settlement Agreement on 31 January 2019 (as it related to the Original Debtor). The essence of the matter, in cases of potential sporting succession, is that the "*event giving rise to the dispute*" shifts to the moment that the potential sporting succession appears, and the creditor could objectively have sought recourse against this newly established entity. In the matter at stake, the Player himself provided abundant evidence that indicates that the Alleged Successor Club's appearance as potential sporting successor occurred in the summer of 2019 (i.e., four years before the Player's claim was lodged).

- The Player (i) was aware of the Original Debtor's disaffiliation and the Alleged Successor Club's appearance in the summer of 2019; (ii) was aware of the requirement to file his claim before the FIFA DRC (as opposed to the FIFA Disciplinary Committee); (iii) issued a formal default notice to the Alleged Successor Club on 6 June 2023; and (iv) ultimately filed a claim against the Alleged Successor Club before the FIFA DRC on 14 August 2023. It is also clear that the Player was aware that the Settlement Agreement had not been complied with already from the first instalment's due date of 31 January 2019.

- Essential for the matter at stake is that the present dispute concerns a potential case of sporting succession. This fundamentally affects the statute of limitation, since it alters the "*event giving rise to the dispute*" from being the moment of incompliance with the Settlement Agreement on 31 January 2019 to shifting to the moment of the Alleged Successor Club's appearance as a potential sporting successor, as approved by the TFF. As a result, the Alleged Successor Club's appearance around 30 June 2019 is therefore the starting point from which the Player should (and could) have objectively filed his claim before the FIFA DRC. This is simply because the existence of the Alleged Successor Club as the alleged sporting successor of the Original Debtor had already

materialised at that point, for which the Player has provided an abundance of indications. This analysis is supported by CAS jurisprudence.

- The Player is contradicting himself by arguing that he had no knowledge of the creation of the Alleged Successor Club until it changed its name on 4 August 2022. The Player is precluded from bringing forward the new argument that he only found out about the existence of the potential sporting successor following the name change on 4 August 2022 or that the statute of limitation should only be counted from such date.

- Beyond addressing the statute of limitations, the Player raises a series of general arguments attempting to undermine the Appealed Decision, including on (i) *pacta sunt servanda*; (ii) the validity of the Settlement Agreement; (iii) the Player's "*sole and exclusive right*" to default the Original Debtor; (iv) the alleged "*less favourable rules*" of the FIFA DRC compared to the FIFA Disciplinary Committee; (v) the Player never waiving his right to proceed with disciplinary proceedings; and (vi) the alleged "*obvious conflict of interest*" between FIFA and counsel for the Alleged Successor Club.

- First, the Player refers to the principle of *pacta sunt servanda*, Article 12bis FIFA RSTP and to the Commentary to the FIFA RSTP. It is unclear how a reference to these elements is useful to substantively address the Player's procedural inaction that led to the inadmissibility of his claim.

- Secondly, the validity of the Settlement Agreement is not questioned. The FIFA DRC has applied the statute of limitations to the "*event giving rise to the dispute*" as it relates to a claim against the potential sporting successor. The Player continues to insist on the statute of limitations as applied to the due dates of the different instalments. These are however considered separately for the purpose of the statute of limitations. Again, in a situation of a potential sporting successor, the relevant dates for the statute of limitations are not the individual instalments of the Settlement Agreement, but the date of affiliation of the potential sporting successor or the moment that the Player could reasonably have sought recourse against this newly established entity, as explained in CAS jurisprudence.

- Thirdly, for the purpose of the statute of limitations in cases concerning a sporting successor, the 2-year limitation period starts from the moment the potential sporting successor appears and is affiliated to the relevant federation. This means that at least within a 2-year window, the Player should have lodged the relevant claim against the alleged sporting successor, which he failed to do.

- Fourthly, although it is objectively correct to state that the statute of limitation for claims before the FIFA DRC is two years, as opposed to the five years before the FIFA Disciplinary Committee, the relevance of that is entirely unclear, since the matter at stake concerns a procedure before the FIFA DRC and not before the FIFA Disciplinary Committee.

- Fifthly, this position of the Player seems related to his substantive claim and is unrelated to any disciplinary proceedings. Also, it remains unclear how a party would be able to unilaterally modify the content of a Circular (Circular 1628) by means of an individual statement.

- Lastly, the argument regarding an alleged conflict of interest between FIFA and counsel for the Alleged Successor Club is nothing short of absurd. The Player did not challenge

the composition of the FIFA DRC that rendered the Appealed Decision. Furthermore, Mr Juan Crespo Ruiz-Huerta is not a member of the FIFA DRC. Independent integrity experts support the "*FIFA judicial bodies*", which are the Disciplinary, Appeal and Ethics Committees (and not the FIFA DRC).

47. On this basis, FIFA submits the following prayers for relief in its Answer:

"*(a) rejecting the requests for relief sought by the Appellant;*

(b) confirming the Appealed Decision;

(c) ordering the Appellant to bear the full costs of these arbitration proceedings and to contribute to FIFA's legal costs."

VI. JURISDICTION

48. The jurisdiction of CAS, which is not disputed, derives from Article 57(1) FIFA Statutes (May 2022 edition), as it determines that "[a]*ppeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question*", and Article R47 CAS Code. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by the Parties.

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

VII. ADMISSIBILITY

50. The appeal was filed within the deadline of 21 days set by Article 57(1) FIFA Statutes. The appeal complied with all other requirements of Article R48 CAS Code, including the payment of the CAS Court Office fee.

51. It follows that the appeal is admissible.

VIII. APPLICABLE LAW

52. The Player submits that at least the preliminary issue regarding the FIFA DRC's jurisdiction is to be resolved in accordance with FIFA regulations and Swiss law.

53. The Alleged Successor Club submits that, pursuant to Article R58 CAS Code and Article 57(2) FIFA Statutes, CAS shall primarily apply the various regulations of FIFA, notably the FIFA RSTP and the FIFA Disciplinary Code, and subsidiarily Swiss law.

54. FIFA submits that, pursuant to Article R58 CAS Code and Article 56(2) FIFA Statutes and considering that the Appealed Decision was issued by the FIFA DRC, the FIFA RSTP are applicable, with Swiss law to be applied subsidiarily should the need arise to fill a possible gap in the FIFA regulations.

55. Article R58 CAS Code provides as follows:

> "*The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.*"

56. Article 56(2) FIFA Statutes (May 2022 edition) provides the following:

> "*The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law.*"

57. The Sole Arbitrator finds that, in accordance with Article R58 CAS Code and considering the Parties' agreement, the present dispute is primarily governed by the various regulations of FIFA, in particular the FIFA RSTP (May 2023 edition). This is confirmed in Article 56(2) FIFA Statutes, which also provides for the additional application of Swiss law.

IX. PRELIMINARY ISSUE

A. The Player's request for bifurcation of the proceedings

58. As indicated above, at the outset of the hearing, the Sole Arbitrator informed the Parties that the Player's request for a bifurcation of the proceedings was dismissed and that the reasons for such decision would be provided in the final Award.

59. The Sole Arbitrator considered that it would not be procedurally efficient to bifurcate the proceedings, because the issues related to the admissibility of the Player's claims for individual instalments arising out of the Settlement Agreement, the Alleged Successor Club's standing are related to each other.

60. The Sole Arbitrator further noted that the Player requested for a "***PRELIMINARY AWARD ON JURISDICTION***" (emphasis in original). However, the jurisdiction of CAS is not disputed by the Player. Rather, the Player challenged the Appealed Decision insofar it ruled that the Player's claim was inadmissible. The wording of the Player's request for bifurcation was therefore misconceived.

61. Despite having been informed of the Sole Arbitrator's decision at the outset of the hearing, the Player did not raise any objection against the procedure adopted by the Sole Arbitrator and confirmed at the end of the hearing that his right to be heard had been respected.

X. MERITS

A. The Main Issues

62. The main issues to be resolved by the Sole Arbitrator are the following:

    i. Is there a conflict of interest between counsel for the Alleged Successor Club and FIFA?
    ii. Was the Player's claim against the Alleged Successor Club time barred?

iii. Is the Alleged Successor Club the sporting successor of the Original Debtor?

i. Is there a conflict of interest between counsel for the Alleged Successor Club and FIFA?

63. The Player maintains that because Mr Juan Crespo Ruiz-Huerta is an employee (external consultant) of counsel for the Alleged Successor Club as well as for FIFA, there is a conflict of interest which raises doubts regarding the outcome of the Appealed Decision, as a consequence of which the Appealed Decision is to be set aside.

64. The Sole Arbitrator finds that such argument is to be summarily dismissed. The Player failed to establish that Mr Juan Crespo Ruiz-Huerta had any involvement in this case, either in a capacity with counsel for the Alleged Successor Club or with FIFA. The Appealed Decision is issued by a panel of three FIFA DRC judges. The Player does not provide the slightest evidence to establish that these three judges would have been conflicted or could reasonably be seen to be conflicted by the mere fact that Mr Juan Crespo Ruiz-Huerta fulfils a role of "*independent integrity expert*" for FIFA.

65. In any event, even if there would have been a conflict of interest, *quod non*, such conflict of interest is repaired by means of the *de novo* nature of the present appeal arbitration proceedings before CAS.

66. Consequently, the Sole Arbitrator finds that there is no conflict of interest between counsel for the Alleged Successor Club and FIFA.

ii. Was the Player's claim against the Alleged Successor Club time barred?

67. At the outset, it is recalled that Article 23(3) FIFA RSTP provides as follows:

> "*The Football Tribunal shall not hear any case subject to these regulations if more than two years have elapsed since the event giving rise to the dispute. Application of this time limit shall be examined ex officio in each individual case.*"

68. On this basis, the Sole Arbitrator accepts that a statute of limitation of two years applies.

69. The Sole Arbitrator finds that the Player's argument that the applicable statute of limitation should not be two years, but five years, because the FIFA Disciplinary Code applies a statute of limitation of five years, is to be dismissed.

70. The Player did not substantiate why FIFA should not be permitted to vary the applicable statute of limitations between different types of disputes, i.e. vertical disputes in which FIFA itself has an interest and which infringements may not always be immediately apparant, and horizontal disputes in which FIFA merely rules on a disptue between two members as a dispute resolution body.

71. Consequently, the Sole Arbitrator finds that the applicable statute of limitation is two years as from the "*event giving rise to the dispute*".

72. Furthermore, the mere fact that the Player and the Original Debtor may have agreed that the Player could initiate disciplinary proceedings before the FIFA Disciplinary Committee is not binding on the FIFA Disciplinary Committee. Such arrangement is a *res inter alios acta* between

the Player and the Original Debtor, to which FIFA was not a party. The jurisdiction of the FIFA Disciplinary Committee is determined by the rules and regulations of FIFA and cannot be expanded by means of a contract to which FIFA is not a party.

73. Hence, the crucial issue to be decided by the Sole Arbitrator is what comprised the "*event giving rise to the dispute*". According to the Player, these are the individual due dates of the instalments set forth in the Settlement Agreement. According to the Alleged Successor Club and FIFA, in sporting succession cases like the one at hand, individual due dates are not relevant, but the "*event giving rise to the dispute*" shifts to the moment that the potential sporting succession appears and the creditor could objectively have sought recourse against this newly established entity.

a) Individual due dates

74. Turning first to the Player's contention that the event giving rise to the dispute are the individual due dates, the Sole Arbitrator observes that FIFA's Commentary to the FIFA RSTP provides the following in this respect:

> "*The two-year deadline is applied to individual payments, rather than to the contractual relationship. This means that if a player claims several outstanding monthly salary payments, the claim for each payment will be analysed individually (i.e. the date on which the payment was contractually due) to see whether it is time-barred or not. The same applies to any payment due in instalments; the due date of each individual instalment will be considered separately to establish whether it falls within the statute of limitations. This approach is applied consistently and without exception in the jurisprudence.*" (FIFA's Commentary to the FIFA RSTP, p. 478)

75. The Sole Arbitrator fully agrees with this interpretation, although he notes that despite the indication that no exceptions to such general rule exist, FIFA actually acknowledges that there are various exceptions as addressed in more detail below.

76. The Sole Arbitrator agrees with CAS jurisprudence determining that, in principle, the decisive moment is the date the relevant instalment falls due and not when formal notice is given (as the Player did in this case on 6 June 2023):

> "*Pursuant to the clear wording of* […] *Article 25 para. 5 of the RSTP, the statute of limitation requires the creditor to bring suit within two years and runs from the day his claim fell due and not when a formal notice is given, when the contract is terminated or when a dispute actually arises (as argued by the Player). The triggering moment is the maturity of the debt, which is 'the event giving rise to the dispute'. At that moment only, can the Player file a claim.*" (CAS 2015/A/4350, para. 74 of the abstract published on the CAS website)

77. Accordingly, given that the Player filed a claim against the Alleged Successor Club with the FIFA DRC on 14 August 2023, any amounts that fell due before 14 August 2021 are, in principle, time barred based on Article 23(3) FIFA RSTP.

78. This is actually confirmed in the Appealed Decision:

> "*In this context, the Chamber recalled that the present claim was lodged in front of FIFA on 14 August 2023. Therefore, in line with art. 23 par. 3 of the*

> *Regulations, any amounts fallen due before 14 August 2021 are affected by the statute of limitations.*"

79. Although FIFA argued during the hearing that such statement in the Appealed Decision was inaccurate, the Sole Arbitrator finds that this was a correct analysis. There may however be exceptions to such general rule.

80. One of such potential exceptions is if the Alleged Successor Club would have acknowledged or admitted its debt, as recognised in FIFA's Commentary to the FIFA RSTP:

> "*One exception is noted in the jurisprudence, i.e. circumstances in which a party acknowledges or admits a debt. Such instances have been recognised by CAS as a valid ground on which a claim should be ruled admissible in spite of the (original) event giving rise to the dispute having occurred more than two years prior to the claim being lodged. Some decisions of the FT also reflect this approach.*" (FIFA's Commentary to the FIFA RSTP, p. 480)

81. However, this exception is not applicable in the matter at hand. The Club simply remained silent with respect to the Player's claims. Indeed, the Player did not argue that the Alleged Successor Club ever acknowledged or admitted its debt towards the Player.

82. As argued by the Alleged Successor Club, a further exception could potentially be an unequivocal declaration from the Alleged Successor Club to the Player that it was not going to settle any amounts arising out of the Settlement Agreement, including amounts that would fall due in the future. In such case, it could potentially be argued that all claims that would normally only fall due in the future could be enforced immediately.

83. However, the Sole Arbitrator notes that there is no evidence on file suggesting that such unequivocal declaration was ever issued by the Alleged Successor Club, as a consequence of which the Alleged Successor Club's argument is to be dismissed.

84. The Alleged Successor Club's reliance on Article 133 SCO to argue that when the principal claim prescribes, so too do all claims in respect of individual payments is misconceived.

85. Article 133 SCO provides as follows:

> "*When the principal claim prescribes, so too do all claims for interest and other accessory claims.*"

86. In the matter at hand, there is no principal claim, i.e. all instalments set forth in the Settlement Agreement are equal. Interest would in principle only start to run as from each individual due date and it appears there are no accessory claims of the Player.

87. Consequently, in principle, any instalments deriving from the Settlement Agreement that fell due before 14 August 2021 are time barred, but instalments that fell due as from such date are not.

b) The specificity of sporting succession cases

88. The Alleged Successor Club and FIFA argue that the afore-mentioned analysis does not apply in sporting succession cases, because they submit that in such cases the "*event giving rise to the*

dispute" shifts to the single moment that the potential sporting successor appears and the creditor could objectively have sought recourse against this newly established entity.

89. During the hearing, FIFA made reference to FIFA's Commentary to the FIFA RSTP, which provides the following, specifically in the context of Article 23(3) FIFA RSTP and sporting succession:

> "[…] [T]*he interpretation of CAS of the event giving rise to the dispute is not uniform. Two recent awards dealt with this matter, both concerning the issue of sporting succession. In both cases, the relevant clubs had ceased to be affiliated to their member association and thus FIFA declined to further intervene (conseequently rendering the claims inadmissible). In the first case, the sole arbitrator held that the event giving rise to the dispute, i.e. the non-payment of salaries, had not been interrupted by the filing of the previous claim against the predecessor club on account of the fact that such previous claim had been ruled inadmissible (i.e. not decided on the merits). The DRC decision was hence confirmed. On the contrary, in the second case, the panel overturned the DRC decision and ruled that the claim filed by the player against the successor club was barred by the statute of limitations as the event givening rise to the dispute* <u>*was the establishment of the successor club*</u>." (emphasis in original – FIFA's Commentary to the FIFA RSTP, p. 480)

90. The Sole Arbitrator considers this commentary compelling insofar it explains that a situation of sporting succession may shift the "*event giving rise to the dispute*" to a date after instalments have fallen due. Indeed, this reasoning makes sense for instalments that fell due before there was any sporting succession, because in such situation a creditor could only claim his credit after he has recourse against the newly established entity. This is also confirmed in CAS jurisprudence:

> "*Notably and in the context of sporting succession, CAS panels have found that the event giving rise to the dispute occurred after the termination. One such case is CAS 2020/A/7154, where the panel found that, while 'the event giving rise to the dispute was initially the Player's unilateral termination of his employment contract with PAE', the establishment of the sporting successor had become the event giving rise to the dispute (CAS 2020/A/7154, paras. 72, 74). In reaching this finding, the panel found it determinative that, once the sporting successor had been established, the player 'could objectively have sought recourse against the newly established entity'' (CAS 2020/A/7154, para. 73). Given that the sporting successor had not been established at the time of the termination, the player could not have sought any relief at that time. Thus, the panel dismissed the argument that the date of termination was the date triggering the limitation period.*
>
> *In CAS 2020/A/7290 – a case concerning the same entity – a sole arbitrator found that the date giving rise to the dispute was not the date of termination, but rather the date in which the sporting successor became affiliated to the Hellenic Football Federation (CAS 2020/A/7290, para. 74). Again, it was determinative that the date of affiliation was the date in which the player could have brought a claim against the succeeding entity before the FIFA Football Tribunal (CAS 2020/A/7290, para. 73).*
>
> *The Sole Arbitrator notes that the two aforementioned cases reach a slightly different conclusion based on similar facts (i.e., the establishment of the sporting successor*

as a corporate entity and the affiliation of said sporting successor to a federation as the possible dates triggering the limitation period). Yet, the reasoning behind reaching these decisions is similar. Particularly, both panels reasoned that the date on which the claimant could have reasonably and objectively sought relief, when the claim being brought could not have been raised at the date of termination, ought to be considered the event giving rise to the dispute." (CAS 2023/A/10143, paras. 62-64)

91. However, this is not the situation in the matter at hand. The pertinent question here is whether the Player should have claimed all his entitlements arising out of the Settlement Agreement (past and future entitlements) within two years of the appearance of the Alleged Successor Club. The Sole Arbitrator finds that such situation is fundamentally different from the situation where sporting succession takes place after instalments have fallen due.

92. The Sole Arbitrator finds that no compelling reasoning was set forth by the Alleged Successor Club or FIFA why, in a case of sporting succession, amounts that would normally only fall due in the future would have to be claimed within two years of the sporting succession.

93. The Sole Arbitrator finds that, in case of ongoing contracts providing for payment obligations in different instalments, the *dies a quo* is the later of i) the due date of the individual instalment concerned; or ii) the moment of sporting succession.

94. Put differently, the Sole Arbitrator finds that a situation of sporting succession may potentially shift the "*event giving rise to the dispute*" to a date **after** instalments have fallen due, but it cannot shift the "*event giving rise to the dispute*" to a date **before** instalments have fallen due.

c) The date of the alleged sporting succession

95. In view of the above conclusion, the Player's claims for instalments that fell due before 14 August 2021 are in principle inadmissible.

96. However, in line with the exception relied upon by FIFA for cases of sporting succession, it may be that claims that fell due before 14 August 2021 are not to be considered time barred because of the shift of the "*event giving rise to the dispute*" from the moment the instalments fell due to the moment that the potential sporting succession appeared and the creditor could objectively have sought recourse against this newly established entity.

97. The Player submits that the "*FIFA DRC wrongly determined the starting moment from which the claim should have been filed in front of FIFA as the starting moment of the time limit, hence the statute of limitation, should have started from the date on which the name of the Club had been changed to its current version; namely from 4 August 2022*".

98. If the Player's argument would be followed, not only claims that fell due as from 14 August 2021 would be admissible, but also claims that fell due two years before 4 August 2022, i.e. the entirety of the Player's claim in the amount of EUR 330,000.

99. In this respect, the Parties made reference to various dates:

- 31 January 2019: The date the first instalment of the Settlement Agreement fell due.
- 30 June 2019: The date the Alleged Successor Club merged with the Original Debtor and therefore the date that the Original Debtor was dissolved.

- 13 July 2019: The date the TFF approved the merger and that the Alleged Successor Club became affiliated with the TFF.
- 27 September 2019: The date the FIFA Disciplinary Committee advised the Player to commence proceedings before the FIFA DRC.
- 4 August 2022: The date the Alleged Successor Club changed its name.
- 20 May 2023: The date the Alleged Successor Club was promoted to the 3rd division of Turkish football.
- 6 June 2023: The date the Player issued a formal default notice to the Alleged Successor Club.
- 14 August 2023: The date the Player filed a claim against the Alleged Successor Club before the FIFA DRC.

100. The question whether the Alleged Successor Club is indeed the sporting successor of the Original Debtor is addressed in more detail below, but the Sole Arbitrator notes that the Player submitted, *inter alia*, as follows in his claim before the FIFA DRC:

> "*There was no time gap between the disappearance of the Club after the end of the 2018/2019 season and the surfacing of the Successor Club which took part in the 2019/2020 season of the fifth division of the Turkish Football League (SporToto Bölgesel Amatör Lig). The Successor Club started its activity immediately after the merger under the new name and with new colours.*" (Player's claim before the FIFA DRC, p. 10)

101. In the present appeal arbitration proceedings before CAS, the Player suddenly argues that there was a temporal gap between the disappearance of the Original Debtor due to its merger and the date the Alleged Successor Club changed its name roughly three years later.

102. The Sole Arbitrator finds that this argument of the Player is not made in good faith. Indeed, because the Original Debtor ceased to exist due to the merger into the Alleged Successor Club, the Sole Arbitrator finds that, if there was a sporting succession, at least in the present case, this must have been the moment the sporting succession took place. As from such moment, the Player could potentially have opened proceedings against the Alleged Successor Club before the FIFA DRC.

103. The Sole Arbitrator agrees with the Alleged Successor Club and FIFA that the change of name of the Alleged Successor Club is immaterial for determining the "*event giving rise to the dispute*" in this case. If there was sporting succession, this already took place before the Alleged Successor Club changed its name.

104. Consequently, if there was any sporting succession of the Original Debtor by the Alleged Successor Club, such sporting succession occurred more than two years before the Player filed a claim against the Alleged Successor Club before FIFA. The Sole Arbitrator therefore finds that the alleged sporting succession has no impact on the admissibility of the Player's claim before the FIFA DRC.

d) Conclusion

105. Consequently, the Sole Arbitrator finds that the FIFA DRC correctly declared the Player's claim for instalments that fell due before 14 August 2021 inadmissible. However, claims for instalments that fell due as from 14 August 2021 are not time barred and are therefore admissible.

iii. Is the Alleged Successor Club the sporting successor of the Original Debtor?

106. Whereas the Player claims that the Alleged Successor Club is the sporting successor of the Original Debtor, this is disputed by the Alleged Successor Club. FIFA did not specifically address this issue.

107. The Player relies on two decisions issued by the FIFA Disciplinary Committee in submitting that the Alleged Successor Club is the sporting successor of the Original Debtor (FDD-14109 and FDD-15539).

108. However, as rightly argued by the Alleged Successor Club, such decisions do not have an *erga omnes* effect, i.e. the mere fact that the FIFA Disciplinary Committee decided in two cases that the Alleged Successor Club is indeed the sporting successor of the Original Debtor does not necessarily mean that this is automatically also the case in the matter at hand. There may be specific facts or circumstances warranting a different outcome in another case regarding the same issue of sporting succession. At least, a regulatory provision determining that a decision on sporting succession should have an *erga omnes* effect is lacking.

109. Article R57 CAS Code provides, *inter alia*, as follows:

> "*The Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance.*"

110. On this basis, the Sole Arbitrator finds that he is afforded the discretion to issue a new decision himself, or to refer the case back to the previous instance.

111. The Sole Arbitrator considers it appropriate for the FIFA DRC to decide on the question of sporting succession (and therefore on the question of the Alleged Successor Club's standing to be sued) in first instance, because the FIFA DRC can conduct its own investigation of the situation, potentially with the involvement of the TFF. Indeed, as becomes apparent from the two decisions issued by the FIFA Disciplinary Committee concerning sporting succession by the Alleged Successor Club, FIFA conducts its own investigation in this respect, and it does so separately for each case. The Sole Arbitrator does not have such investigative tools at his disposal.

112. The Sole Arbitrator also notes that there is only scarce information on file to determine whether the Alleged Successor Club is indeed the sporting successor of the Original Debtor. The Sole Arbitrator also took note of the contention of the Player that appeal proceedings are currently pending before CAS regarding the FIFA decision(s) that ruled on the question of sporting succession by the Alleged Successor Club, which contention remained undisputed by the Alleged Successor Club and FIFA.

113. Furthermore, in view of the explicit request of the Alleged Successor Club and the Player's indication during the hearing that it was not necessary to remit the case back to the FIFA DRC, but that he could live with such decision, the Sole Arbitrator considers it appropriate to remit the case back to the FIFA DRC.

114. Consequently, the case is remitted back to the FIFA DRC for further adjudication and a decision, whereby the FIFA DRC is bound by the Sole Arbitrator's decision with respect to the admissibility of the Player's claims.

B. Conclusion

115. Based on the foregoing, the Sole Arbitrator holds that:

i) There is no conflict of interest between counsel for the Alleged Successor Club and FIFA.
ii) The Player's claims for instalments that fell due before 14 August 2021 are inadmissible, but claims for instalments that fell due as from 14 August 2021 are not time barred and are therefore admissible.
iii) The case is remitted back to the FIFA DRC for further adjudication and a decision, whereby the FIFA DRC is bound by the Sole Arbitrator's decision with respect to the admissibility of the Player's claims.

116. All other and further motions or prayers for relief are dismissed.

XI. COSTS

(…).

* * * * * * * * *

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 8 December 2023 by Mr Márkó Futács against the decision issued on 18 October 2023 by the Dispute Resolution Chamber of the Football Tribunal of the *Fédération Internationale de Football Association* is partially upheld.

2. The decision issued on 18 October 2023 by the Dispute Resolution Chamber of the Football Tribunal of the *Fédération Internationale de Football Association* is set aside.

3. The case is remitted back to the Dispute Resolution Chamber of the Football Tribunal of the *Fédération Internationale de Football Association* for further adjudication and a decision, whereby it is bound by the Sole Arbitrator's decision with respect to the admissibility of Mr Márkó Futács' claims:

   Mr Márkó Futács' claims for instalments that fell due before 14 August 2021 are inadmissible, but claims for instalments that fell due as from 14 August 2021 are not time barred and are therefore admissible.

4. (…).

5. (…).

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

Seat of arbitration: Lausanne, Switzerland
Date: 24 February 2025

THE COURT OF ARBITRATION FOR SPORT

Hendrik Willem **Kesler**
Sole Arbitrator

Dennis **Koolaard**
Ad hoc Clerk