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

CAS 2024/A/10474 FC Fotbal Club FCSB SA v. Galatasaray AS

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr. Lars Halgreen, Ph.D., Legal Director, Gentofte, Denmark

Arbitrators: Mr. Petros C. Mavroidis, Professor of Law at Columbia Law School, New York City, USA

Mr. Rod McKenzie, Solicitor, Glasgow, United Kingdom

in the arbitration between

Fotbal Club SB SA, Bucharest, Romania

Represented by Dr. Madalina Diaconu, Attorney-at-law, Neuchâtel, Switzerland

Appellant

and

Galatasaray AS, Istanbul, Türkiye

Represented by Dr. S. Petek Akyüz, Mr. Selcuk Uysal, and Mr. Tuncer Özgür Kilic,

Attorneys-at-law, Istanbul, Türkiye

Respondent

I. PARTIES

1. Fotbal Club FCSB SA (hereinafter "the Appellant" or "FCSB") is a first division football club in Romania, domiciled at Drumul Leordeni 106, sector 4, Bucharest, Romania, and is duly registered with the Romanian Football Federation.

2. Galatasaray AS (hereinafter "the Respondent" or "Galatasaray") is a first division football club in Türkiye, domiciled at 34415 Seyrantepe, Sariyer, Istanbul, Türkiye, and is duly registered with the Turkish Football Federation.

3. Together, the Appellant and the Respondent will be referred to as "the Parties".

II. FACTUAL BACKGROUND

4. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced. 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 Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

5. On 24 August 2021, the Parties concluded an agreement (hereinafter "the Transfer Agreement") regarding the definitive transfer of the football player Olimpiu Vasile Morutan (hereinafter "the Player") from the Appellant to the Respondent.

6. According to the terms of the Transfer Agreement, the Respondent undertook to pay the Appellant a transfer sum of EUR 3,500,000 payable in four instalments.

7. The Transfer Agreement also contained an additional provision in Art. 4.1 which could trigger the payment of an additional amount of EUR 1,000,000, if certain conditions were satisfied (the "Additional Amount"). The provision reads as follows: *"In case Galatasaray qualifies for the Group stage of UEFA Champions League in any of 2022/2023, 2023/2024, 2024/2025, 2025/2026 seasons (while the player is still under contract with Galatasaray), Galatasaray shall pay to FCSB a one-time bonus of EUR 1,000,000 (one million euros). For the avoidance of doubt, this amount is inclusive of any solidarity contribution sums, taxes, levies, bank fees, commissions of any nature of costs of currency exchange".* The Player was under contract with Galatasaray for a few days less than two years, and on 20 August 2023, he was transferred to and became under contract with the Turkish professional football club MKE Ankaragücü.

8. On 29 August 2023, the Respondent qualified to the UEFA Champions' League group stage in the 2023/24 season, after having won its last qualifying match against the Norwegian team, Molde, on the same day.

9. On 14 September 2023, the Appellant demanded that the Respondent pay the Additional Amount.

10. On 18 September 2023, Galatasaray recognized that the Player had contributed to the Appellant's qualification to the group stage of the 2023/24 UEFA Champions League. However, the Respondent refused to pay the Additional Amount, asserting that the Player was not under contract with the Respondent on the date of its said qualification on 29 August 2023, and that accordingly the conditions for payment of the Additional Amount had not been satisfied.

11. On 12 October 2023, the Appellant filed, before FIFA's Players Status Chamber, a claim against the Respondent requesting an order for payment of EUR 1,000,000, the Additional Amount, pursuant to the said provision in Art. 4.1 of the Transfer Agreement.

12. On 5 December 2023, the Single Judge of FIFA's Players' Status Chamber dismissed the claim of the Appellant concluding that the Additional Amount under Art. 4.1 had not become payable since the qualification to the Group Stage of the UEFA Champions League was reached by the Respondent on 29 August 2023, and thus after the transfer of the Player to MKE Ankaragücü on 20 August 2023, on or before which last date the Player ceased to be "under contract" with the Respondent. Hence, according to the Single Judge as adopted by the Players' Status Chamber, the relevant condition in Art. 4.1 of the Transfer Agreement had not been satisfied and, as a consequence, the Additional Amount had not become payable.

13. On 9 January 2024, the FIFA Players' Status Chamber decision of 5 December 2023, as rendered by the Single Judge and adopted by the Players' Status Chamber, (hereinafter "the Appealed Decision") was communicated, in accordance with the relevant FIFA rules, to the Parties via up-loading on FIFA's Legal Platform.

14. On 6 March 2024, an assistant manager of the Appellant, Ms. Simona Niculescu-Mizil, sent an e-mail on behalf of the Appellant to the General Secretariat of FIFA alleging that the employee of the Appellant, who was responsible for accessing the FIFA Legal Platform regarding disputes in which the Appellant was involved, had had a medical problem between 9 – 31 January 2024. Furthermore, said email went on to allege that the Appellant had experienced IT difficulties: "*We also point out that lately FCSB faced technical problems regarding the network, and it is possible that the technical team may have mistakenly accessed the platform and even deleted certain notifications received".* Finally, the Appellant asked FIFA to send, via the Appellant's email as well as via the FIFA Legal Platform, "*any procedural document that could have been communicated during this period".* A medical report dated 22 January 2024 bearing to relate to said alleged illness of the employee, Ms. Ana-Maria Ianuli, was attached to said e-mail to FIFA.

15. On the same date, FIFA replied to said e-mail from the Appellant and attached several notifications including a copy of the Appealed Decision, which had been so uploaded to the FIFA Legal Platform, during the period from 9-31 January 2024.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

16. On 18 March 2024, the Appellant filed, via e-mail and courier, with the CAS Court Office, what bore to be a Statement of Appeal (hereinafter "the Statement of Appeal"), attaching supporting documents, bearing to be pursuant to Article R47 of the Code of Sports-related Arbitration (the "Code") (2023 edition) with respect to the Appealed Decision. The Appellant nominated professor Petros C. Mavroidis of Columbia University, New York, USA, as its arbitrator, in these CAS proceedings.

17. On 26 March 2024, the CAS Court Office acknowledged receipt of the Statement of Appeal and noted that, notwithstanding FIFA's e-mail of 6 March 2024, the Appealed Decision had been duly notified via the FIFA Legal Platform to the Appellant on 9 January 2024. Therefore, the CAS Court Office requested that the Appellant provide proof of notification of the Appealed Decision in accordance with Art. R49 of the Code.

18. On 27 March 2024, the Appellant provided the missing information in the Statement of Appeal and requested a 10-day extension of the deadline to file its Appeal Brief in accordance with the Code.

19. On 28 March 2024, the CAS Court Office acknowledged receipt of the Appellant's letter of 27 March 2024, and noted that the request for a 10-day extension of the time limit to file the Appeal Brief was granted pursuant to Article R32 of the Code, however, without prejudice to the compliance with the requirements indicated in the CAS Court Office's letter of 26 March 2024 within the time limit granted and in case a procedure was opened in the matter.

20. On 1 April 2024, the newly appointed counsel of the Appellant, Ms. Diaconu, wrote to the CAS Court Office on behalf of her client, explaining that the Appellant was not able to present proof as to the up-loading of the Appealed Decision on FIFA Legal Platform on 9 January 2024, but "*the Appellant had no reason to doubt [this] fact…"*. The Appellant had not received the Appealed Decision before FIFA forwarded a copy of the decision with its grounds on 6 March 2024, and Ms. Diaconu referred to the arguments and exhibits already presented in the request for reinstatement in the Statement of Appeal, as she stressed that her client over the years had been in many FIFA and CAS proceedings but had never experienced a scenario like this before.

21. On 4 April 2024, the CAS Court Office opened the present procedure and notified the Statement of Appeal to Respondent.

22. On the same day, the CAS Court Office informed FIFA of the appeal, and provided FIFA with a copy of the Statement of Appeal. FIFA was requested to provide the CAS Court Office with an unmarked copy of the Appealed Decision together with the cover letter and corresponding proof of notification with which it was sent to the Parties.

23. On 5 April 2024, the Respondent forwarded the powers of attorney for its counsels and informed the CAS Court Office that it would prefer for a Sole Arbitrator to be appointed instead of a panel of three arbitrators.

24. On 9 April 2024, the Appellant filed the Appeal Brief with enclosures with the CAS Court Office.

25. On 15 April 2024, the CAS Court Office invited the Respondent to nominate an arbitrator from the list of CAS arbitrators in accordance with Art. R53 of the Code.

26. On 16 April 2024, the Respondent requested a 10-day extension of the deadline to file the Answer, which the CAS Court Office granted on the same day pursuant to Article R32 of the Code.

27. On 24 April 2024, FIFA forwarded a clean version of the Appealed Decision to the CAS Court Office and renounced its right to request its possible intervention in the matter.

28. On 25 April 2024, the CAS Court office invited FIFA to provide a copy of the cover letter or other proof of notification of the Appealed Decision to the Parties, as this had not been enclosed in FIFA's reply.

29. On the same day, the Parties were informed by the CAS Court Office of FIFA's reply, and it was furthermore stated that the Respondent had failed to nominate an arbitrator within the said deadline, and that an arbitrator would instead be appointed by the President of the CAS Appeals Arbitration Division, or her Deputy.

30. On 6 May 2024, the Respondent asked for the deadline for submitting its Answer be set aside until the Appellant had paid its share of the advance of costs in the matter.

31. On 1 July 2024, the CAS Court office informed the Parties that the Appellant had paid its share of the advance of costs in the present case and set a new deadline for the submission of the Respondent's Answer in accordance with the requirements in Article R55 of the Code.

32. On 5 July 2024, the Respondent requested a 20-day extension of the deadline to file its answer.

33. On 5 July 2024, the CAS Court Office forwarded the Arbitrator's Acceptance Statement with various remarks made by Professor Mavroidis. The Parties were invited to submit their potential challenges against the nomination of Professor Mavroidis as an arbitrator in the matter within 7 days from receipt of the letter.

34. On 15 July 2024, the CAS Court Office informed the Parties that no challenges had been made against Professor Petros C. Mavroidis as an arbitrator in the matter in accordance with Art. R34 of the Code.

35. On 26 July 2024, the Respondent requested an additional extension of the deadline to file its Answer due to a heavy workload in the summer transfer window.

36. On 29 July 2024, the Respondent nevertheless filed its Answer with the CAS Court Office.

37. On 8 August 2024, the CAS Court Office in a letter to the Parties acknowledged the receipt of the Appellant's payment of the total advance of costs for the proceedings. Pursuant to Article R54 of the Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office moreover informed the Parties that the Panel appointed to decide the above-referenced case had been constituted as follows:

President: Mr Lars Halgreen, Ph. D., Legal Director in Gentofte, Denmark

Arbitrators: Mr Petros C. Mavroidis, Professor of Law now at Columbia Law School, New York City
Mr Rod McKenzie, Solicitor in Glasgow, United Kingdom.

38. On 30 August 2024, the CAS Court Office sent the following letter to the Parties stating *inter alia*:

"The Panel has carefully examined the account of the relevant facts that the Appellant has presented in its Statement of Appeal about the timeliness of the appeal. The Panel understands from these accounts that the employee of the Appellant normally responsible for accessing the FIFA Legal Portal fell sick for a few days around the time that the Decision of the FIFA's Players' Status Chamber from 5 December 2023 was uploaded on the FIFA Legal Portal on 9 January 2024. Furthermore, the Panel understands that the Appellant did not contact FIFA until 6 March 2024, informing FIFA of the employee's sickness in January and of the technical problems that the Club had faced "lately" regarding its network.

On the basis hereof, the Panel invites the Appellant to clarify the following, if possible:

1. Once the employee responsible for accessing the FIFA Legal Portal returned to work after sickness around 31 January 2024, did he or she have any difficulties accessing the FIFA Legal Portal?

2. If not, why was the Decision from 5 December 2023, uploaded on 9 January 2024, not accessible at that time?

3. If the technical difficulties were already present around mid-January 2024, why did the Appellant not contact FIFA until 6 March 2024?

The Panel invites the Appellant to provide a statement clarifying these matters within 10 days of receipt of this letter. Upon receipt of the Appellant's clarifications, the Respondent will be equally provided a deadline of 10 days to submit its position regarding the issue of the timeliness of the appeal including the Appeal Brief. (…)".

39. On 10 September 2024, the Appellant requested an extension of 5 days to answer the questions posed by the Panel.

40. On 11 September 2024, the CAS Court Office invited the Respondent to file its position on the Appellant's request by 13 September 2024. Its silence would be deemed acceptance. In the event of an objection, it would be for the Panel to rule on the Appellant's request.

41. On 17 September, the CAS Court Office noted in that no communication was received from the Respondent regarding the Appellant's request for an extension of 5 days to answer the Panel's questions. Therefore, its silence was deemed acceptance and the Appellant's request was granted.

42. On 1 October 2024, the CAS Court Office noted that no communication was received from the Appellant regarding the Panel's questions within the set deadline. Therefore, the Panel would proceed based on the file as it stands and would issue an award on admissibility in due course.

IV. SUBMISSIONS OF THE PARTIES

43. The following summary of the Parties' positions and submissions is illustrative only and does not necessarily include every contention put forward by the Parties. However, in its deliberations, the Panel has thoroughly considered all of the evidence and arguments submitted by the Parties, even if no explicit or detailed reference to this evidence or these arguments is made in what immediately follows.

A) The Position of the Appellant

44. In the Appellant's Appeal Brief, the following requests for relief in these proceedings have been made:

"1. Declare the present Appeal admissible.

2. Annul the FIFA Football Tribunal Decision ref. PSD-12183 of 5 December 2023, the Appealed Decision, in its entirety.

3. Oblige the Respondent to pay to the Appellant an amount of EUR 1,000,000 as conditional transfer fee, as provided in Art. 4.1 of the Transfer Agreement.

4. Subsidiarily to request for relief no. 3, oblige the Respondent to pay to the Appellant a conditional transfer fee equivalent to an amount which would be equitably determined by the CAS Panel.

5. Oblige the Respondent to pay to the Appellant contractual penalties equivalent to 1,5% per month on the above-mentioned amounts, since the 14 September 2023 until the effective date of payment, as provided in Art. 4.6 of the Transfer Agreement.

6. Oblige the Respondent to bear the costs of these arbitration proceedings. 7. Oblige the Respondent to cover the Appellant's legal fees and other expenses incurred in connection with these arbitration proceedings".

45. With respect to the Appellant's first request for relief, i.e. the question of the appeal's admissibility, the Appellant has made the following submissions and legal arguments in support of its plea in its Statement of Appeal (emphasis in original):

"According to the legal doctrine, based on the principle of good faith, a request for reinstatement in the time-limit to appeal is admissible, if the applicant establishes that

1) it was unable to act timely with no fault on its behalf, and

2) the request for reinstatement is submitted together with the statement of appeal promptly after the hindrance has ceased.

(See RIGOZZI/HASLER, at Art. R49, in ARROYO. Arbitration in Switzerland. The Practitioner's Guide, 2nd ed. Vol II Wolters Kluwer 2018 p. 1605.)

These criteria are now reflected in ***Art. 148 CPC*** *(see also HAAS, CAS Bulletin 2011/2 p. 12). According to the Swiss legal doctrine on Art. 148 CPC, the request for reinstatement must be reasoned and accompanied by the relevant evidence. The tribunal has a certain margin in deciding on a case-by-case basis.*

1. <u>On the absence of (significant)fault on behalf of the Appellant.</u>

Importantly, according to Art. 148, the Appellant's default result from ***no fault or from a slight degree of fault*** *(faute légère).* ***Art. 148 is thus less stringent*** *than the similar provisions provided in criminal procedure (Art. 94 CPP) or in the Law on the Federal Tribunal (LTF, Art 50), which require no fault at all on the Appellant's behalf (4A 163/2015, c. 4.1).*

A slight degree of fault *in this domain means* ***that the Appellant acted in a way which, even if it is not fully acceptable or excusable, is not particularly reprehensible*** *(4A 163/2015, c. 4.1).*

Moreover, according to the Federal Tribunal, ***<u>a sickness which intervenes at the end of the time limit to appeal, and which prevents the appellant from filing its appeal or from having timely recourse to an external service provider, constitutes a non-fault hindrance, justifying the reinstatement (</u>****5A 280/2020, c. 3).*

This is similar to the present case, where the employee responsible for the FIFA Legal Portal fell sick on 8 January 2024 and was absent stating (sic) with 9 January, which unfortunately was the date on which the Appealed Decision was uploaded on the FIFA Legal Portal.

According to the Federal Tribunal, the only circumstances when a sickness as mentioned above is not a valid reason for reinstatement is when the sickness leave lasts <u>for several months</u>, prompting the appellant's obligation to take measure (sic) in order to replace the sick employee or service provider (5A 292/2013). This is obviously not the case here, when the FCSB employee was sick for only several days. Also, is not considered as a slight degree of fault the situation, when a lawyer fails to act in time because the notification intervened during her holidays. Again, this is not the case in our situation.

In the present situation, it was actually ***the combination of two hindrances*** *which caused the Appellant to miss the notification that FIFA had performed of the Appealed*

Decision on 9 January 2024: on the one hand, the temporary sickness of the responsible employee, who had the access codes for the FIFA Legal Platform, and the technical difficulties encountered by the IT team in her absence. ***Both of these circumstances, documented by the attached exhibits, prove the Appellant's absence of fault or, at the very best, its absence of a severe degree of fault.***

2. <u>On the timely filing of the request and statement of appeal</u>

Secondly, it is established that the present request for reinstatement was submitted (together with the statement of appeal) promptly after the hindrance had ceased and the Appellant became apt to appeal.

The CAS being silent in this respect, we must refer again to the provisions of the CPC, which inform and supplement CAS's procedural rules.

According to Art. 148 CPC, the Appellant should proceed ***within 10 days*** *of the date when the Appellant was no longer hindered to proceed.*

In the present case, as already established, the Appellant acted promptly after being notified of the Appealed Decision, by FIFA's email of 6 March 2024. The 10-day time limit ended on a Saturday (16 march), thus expiring on the next working day, i.e. ***<u>18 March 2024.</u>***

For all the above-mentioned reasons, the Appellant respectfully requests that its application for reinstatement be approved by the Court*".*

46. As for the Appellant's submissions and legal arguments in support of the remaining requests for relief, these claims may be summarized in that the Appellant mainly reiterated its previous position from the proceedings before the FIFA Players' Status Chamber, arguing that the conditional bonus provision in Art. 4.1. of the Transfer Agreement should not be based on a purely literal interpretation, but instead that the provision ought to be interpreted considering the Parties' intentions and in its proper context according to a good-faith principle under Swiss law. Pursuant hereto, it should be recognized that the **true meaning** of the conditional bonus provision must have been to financially reward the Appellant in relation to its former player who contributed positively to his new team's qualification to the UEFA Champions League during and in relation to any one or more of the seasons specified in Art. 4.1. of the Transfer Agreement.

B) The Position of the Respondent

47. In the Respondent's Answer, the following requests for relief have been made:

"1. Reject the Appellant's requests in their entirety and dismiss any and all prayers for relief provided in Appeal Brief and decide that the Respondent has no debt to the Appellant.

2. Decide the Appellant's request for contractual penalties equivalent to 1.5% per month from 14 September 2023 until the effective date of payment, as stipulated in Art. 4.6 of the Transfer Agreement, is inadmissible.

3. Condemn the Appellant to bear the procedural costs of the present proceedings.

4. Condemn the Appellant to pay 15.000,00-Euro (Fifteen Thousand Euros) to the Respondent as its legal costs and expenses incurred".

48. In support of its requests for relief, the Respondent has, *inter alia*, made the legal submissions and arguments outlined hereunder.

49. The clause in Art. 4.1 of the Transfer Agreement is very clear and does not require further interpretation. The wording specifically states that the triggering condition is that the Player is still under contract with the Respondent, when the Club qualifies for the Group Stages of the UEFA Champions League during any of the specified seasons.

50. It is undisputed that the Player transferred to MKE Ankaragücü on 20 August 2023, and the Respondent did not qualify for the group stages of the UEFA Champions League until 29 August 2023. Hence, the contractual condition for the Respondent to pay an additional EUR 1,000,000 has never been fulfilled.

51. For these reasons, all the claims raised against the Respondent in these appeal proceedings should be dismissed.

52. The Panel notes that the Respondent, however, has not made an express claim or objection that the appeal should be held inadmissible, because the Statement of Appeal has been filed too late.

V. JURISDICTION OF THE CAS

53. Article R47 of the Code provides as follows:

"An appeal against the decision of a federation, association or sports-related body may be filed with the 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. […]".

54. The Appellant relies on Article 57 of the Statutes of FIFA as conferring jurisdiction on the CAS. The jurisdiction of the CAS is not contested by the Respondent in its Answer. Thus, the Panel rules that CAS has jurisdiction in the matter at hand.

VI. APPLICABLE LAW

55. Article R58 of the Code provides as follows:

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

56. The Panel notes that the applicable rules of law in adjudicating this matter shall be decided pursuant to Article R58 of the Code. The Appellant has submitted that the Panel must decide the present dispute in accordance with primarily, the FIFA Statutes and Regulations, in particular the RSTP March 2023 edition, and, subsidiarily, Swiss law. The Respondent has agreed with the Appellant on the issue of the applicable law in its Answer.

57. Hence, the Panel agrees and shall decide the dispute accordingly.

VII. ADMISSIBILITY OF THE APPEAL

58. Article R49 of the 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. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties".

59. According to Article 57 par. 1 of the FIFA Statutes, a decision made by FIFA's Players Status Chamber may be appealed against before the Court of Arbitration for Sport (CAS) within *21 days of receipt of the notification of the decision*. Thus, this deadline for filing an appeal supersedes the rule in Article R49 of the Code, since Article 57 par 1 of the FIFA Statutes takes precedence in this football-related matter, although the deadline would have been the same according to the CAS rules.

60. As the Appealed Decision, passed on 5 December 2023 was communicated to the Parties via up-loading the decision to the FIFA Legal Platform on 9 January 2024, the Panel first of all needs to consider, for the sake of clarity, whether the appeal filed with CAS by the Appellant on 18 March 2024 was **manifestly late**, since the deadline for filing an appeal on time according to Article 57 par 1 FIFA Statutes in this matter ended

on 30 January 2024. i.e. the Appellant's appeal was attempted to be filed too late *viz*. 46 days after the "statutory deadline".

61. An enforcement of the admissibility rule embedded in Article 57 par. 1 of the FIFA Statutes under those circumstances is in no way a case of excessive formalism, when the time limit was breached in such a profound manner.

62. The Panel also notes that the way in which a sports federation chooses to communicate its decisions and other forms of notifications to its members is up to the federation itself if the rules are clear and unambiguous. In this context, the Panel believes this to be the case as Article 10 of the Procedural Rules Governing the Football Tribunal procedural rules state that notification via the FIFA Legal Portal is valid.

63. The Panel refers moreover to professor Ulrich Haas in his article on the "Time Limit for Appeal" (https://www.tas-cas.org/fileadmin/user_upload/Bulletin202_2011.pdf, page 14 of the PDF and page 11 of the Article): "*If the regulations of the federation or association stipulate a certain manner or form in which the decision must be communicated to the party concerned (e.g. by registered letter, registered letter with acknowledgement of receipt, fax, etc.), then those regulations must in principle be complied with".*

64. Hence, the Panel finds both that the appeal was "manifestly late" and that there are no legal grounds available for the Appellant to validly protest the way in which FIFA has chosen to communicate the Appealed Decision to the Parties in these proceedings, nor in general, via an upload on its Legal Platform on 9 January 2024. Consequently, the only way for the appeal to CAS to be admissible would be for the possible *reinstatement of the time limit* to appeal either through the Statutes of FIFA themselves, the Code or Swiss law in general.

65. The Appellant has not referred to any rules or provisions in the FIFA Statutes or the Code that regulate or even mention the issue of reinstatement of the time limit to file an appeal after the deadline according to Article 57 par. 1 of the FIFA Statutes and/or Article R49 of the Code has passed. The Panel agrees with the Appellant that both regulations are silent on the matter and do not provide any criteria by which the prayers made by the Appellant for a reinstatement of a new time limit to file an appeal falls to be considered and determined.

66. The Appellant has, as cited in paragraph 45, primarily based its request for an admissible reinstatement of a new time-limit to appeal, if the Appellant can establish that 1) it was unable to act timely (in accordance with the relevant regulatory provisions), with no fault on its behalf, and 2) the request for reinstatement is submitted together with the statement of appeal promptly after the hindrance has ceased. The Appellant submits that these principles are embedded in **Art. 148 CPC** (Swiss Civil Procedure Code) under Swiss law.

67. The Panel, in considering this matter, bore in mind that the requirements advanced by the Appellant for such a prayer to be held established are cumulative and that the Appellant requires to establish both if its application is not to be dismissed.

68. The Appellant has not made any references to CAS jurisprudence, where Art. 148 CPC has been applied – successfully or not. The Panel has neither found such jurisprudence to exist. Even if the Panel was willing to engage in a discussion whether Art. 148 CPC could be a sufficient legal basis for an admissible reinstatement of a new time-limit, once the deadline pursuant to Art. 57 par 1 of the FIFA had passed, clearly the onus of establishing that the claimed circumstances in which a timely appeal could not be made and the adequacy of the reasons for a continuing delay after the latest proscribed date for filing such an appeal rests with the Appellant, as per the unambiguous language of Art 148 CPC.

69. In this respect, the Panel puts significant emphasis on the fact that the questions that the Panel posed to the Appellant on 30 August 2024 asking for clarification of the events surrounding the sickness of the Appellant's employee on 9 January 2024, when the Appealed Decision was uploaded, and the subsequent alleged malfunctions of the Appellant's IT systems, remain unanswered.

70. The Panel notes that the Appellant is a well-reputed Romanian top-tier football club, which – by its own admission – has been involved in many previous legal cases before FIFA and the CAS. The Panel could most certainly compile a list of measures which might have been put in place by the Appellant in the circumstances referred to, such as sickness among key staff members and severe IT problems, materially impacting on its ability to comply with FIFA regulatory requirements in proceedings that it might want to initiate, but it is not for the Panel to speculate about what substitution procedures might have been adopted by the Appellant. Rather, the Panel's tasks in this context are to decide if the measures and procedures asserted by the Appellant as having been adopted are established by credible and reliable evidence and that they were and continued to be adequate under the relevant criteria.

71. The Panel is of the view that since the Appellant has not brought forward any reasonable explanations why the Appellant did not contact FIFA or CAS to explain about the said problems until **approx. two months** after the employee responsible for checking the FIFA Legal Platform fell sick, the Appellant has failed to lift its burden of proof under Art. 148 CPC "*that it was unable to act timely with no fault on its behalf*". The explanations that the Appellant has presented so far to answer these critical questions and the simple adequacy of such to explain the very long delay in contacting FIFA do not pass muster, in the opinion of the Panel. No explanation is offered as to why another employee, or an officer or contractor was not engaged during the relevant period in January to undertake the tasks of the ill employee. There is no pre-arranged plan offered showing the measures which would be taken if this key employee fell ill or went on holiday. Such a plan would typically include for how access would be achieved to relevant passwords etc. judged from the perspective of "no fault". However, the Panel was told nothing of the Appellant's measures to keep an accessible record of passwords, logins and the like. If no separate record of such information is kept, then no evidence was provided of unsuccessful attempts for such information might be used to ensure that the Appellant had continuous access to the essential FIFA information only notified on the platform. In any event the employee's illness abated and she was fit to resume her duties from 30 January. There is no information as to why the matter of gaining access to the pending FIFA DRC decision was not addressed in any way between 30

January and 5 March apart from the vague and unsubstantiated explanation about IT-problems. An entire month (February) was at the end of the day allowed to pass with no enquiry by the Appellant to FIFA. This time span creates in and of itself a presumption that the Appellant simply missed the deadline for no good reason. In this regard and as mentioned above, by asking the questions embedded in the letter of 30 August 2024, the Panel gave effectively the Appellant the opportunity to rebut this presumption. It did not. If the technical difficulties encountered were a separate factor contributing to (or even explaining) the Appellant's inaction, surely then the Appellant would have mentioned as much in a response to the Panel's invitation. It did not provide any evidence though to the effect that the technical difficulties continued well after 30 January when its employee returned from sickness. Consequently, the Panel was left with no choice other than to find that the Appellant had missed the statutory deadline for filing its appeal in a lawful manner.

72. In view of the above, the Panel concludes that the Appellant's appeal must be dismissed as inadmissible for having been filed too late according to the 21-day deadline in Art. 57 par. 1 of the FIFA Statutes, and that the Appellant has failed to prove that its request for reinstatement of the time limit for a new appeal has the required legal foundation to be admitted.

73. All further motions or prayers for relief are therefore also dismissed.

VIII. COSTS

(…).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by FC Fotball Club FCSB SA on 18 March 2024 is inadmissible.

2. (…).

3. (…).

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

Seat of arbitration: Lausanne, Switzerland
Date: 17 January 2025

THE COURT OF ARBITRATION FOR SPORT

Lars Halgreen
President of the Panel

Petros C. Mavroidis
Arbitrator

Rod McKenzie
Arbitrator