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

CAS 2022/A/8720 Bucaspor 1928 Kulubu Ci Sportif Hizmetleri Anonim Sirketi v. Mohamed Dahmane & FIFA

ARBITRAL AWARD

delivered by

COURT OF ARBITRATION FOR SPORT

seating in the following composition:

President:	Mr. Sofoklis P. **Pilavios**, Attorney-at-law, Athens, Greece
Arbitrators:	Mr. Ulrich **Haas**, Professor of Law in Zurich, Switzerland and Attorney-at-Law in Hamburg, Germany Mr. Jose Juan **Pinto Sala**, Attorney-at-law, Barcelona, Spain

in the arbitration between

Bucaspor 1928 Kulubu Ci Sportif Hizmetleri Anonim Sirketi, Izmir, Turkey
Represented by Messrs. Juan De Dios Crespo, Juan Crespo Ruiz – Huerta and Mrs. Emily Yu, Ruiz – Huerta & Crespo Abogados, Valencia, Spain

- Appellant -

and

Mr. Mohamed Dahmane, France/Algeria
Represented by Mr. Willem – Alexander Devlies, ATFIELD, Brussels, Belgium

- First Respondent -

and

Fédération International de Football Association, Zurich, Switzerland
Represented by Mr. Miguel Lietard Fernandez – Palacios, Director of Litigation and Mr. Roberto Najera Reyes, Senior Legal Counsel, FIFA, Zurich, Switzerland.

- Second Respondent -

I. PARTIES

1. Bucaspor 1928 Kulubu Ci Sportif Hizmetleri Anonim Sirketi (the "Appellant" or the "New Club") is a professional football club with its registered office in Izmir, Turkey. It is affiliated with the Turkish Football Federation (the "TFF"), which in turn is affiliated with the *Fédération Internationale de Football Association*.

2. Mr. Mohamed Dahmane (the "Player" or the "First Respondent") is a professional football player of French and Algerian nationality.

3. *Fédération Internationale de Football Association* (the "Second Respondent" or "FIFA") is a private association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the world governing body of international football. It exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and football players worldwide; The Player and FIFA shall be collectively referred to as the "Respondents"; The Appellant and the Respondents shall be collectively referred to as the "Parties".

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the Parties and the evidence examined in the course of the proceedings. Additional facts 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. Following a decision passed by the FIFA Dispute Resolution Chamber (the "FIFA DRC") on 7 March 2019, the Turkish football club Bucaspor Kulubu Dernegi (the "Original Debtor" or the "Old Club") was ordered to pay the Player the amount of €25,000 (twenty-five thousand euro), plus interest at a rate of 5% *p.a.* until the date of effective payment, according to the terms provided therein (the "DRC Decision").

6. In light of the Original Debtor's failure to comply with the DRC Decision, on 11 March 2021 the FIFA Disciplinary Committee (the "FIFA DisCo") found the Old Club guilty of breaching Article 15 of the 2019 edition of the FIFA Disciplinary Code (the "FDC") and consequently, granted the latter a final deadline of 30 days to pay the amount owed to the Player pursuant to the terms of the DRC Decision (the "Disciplinary Decision").

7. On 27 April and 10 May 2021 respectively, the TFF and FIFA implemented transfer bans against the Original Debtor, thereby preventing the latter from registering new players on both a national and international level.

8. On 24 September 2021 and in light of the Original Debtor's persistent failure to comply with the DRC Decision, the First Respondent requested the implementation of additional disciplinary sanctions against the Old Club.

9. On 1 October 2021, FIFA informed the Old Club that "[i]*n light of the foregoing, and considering that a transfer ban has been implemented in full on the* [Original Debtor] *and is currently being served in accordance with art. 15 par. 1 lit c) of the FDC, we wish to inform the parties that the said ban shall remain to be the disciplinary measure in force until the* [DRC Decision] *is complied with in full*".

10. Following the implementation of additional disciplinary sanctions against the Original Debtor as set out above, FIFA claims that it was brought to its attention that the New Club had appropriated the sporting identity of the Original Debtor. Said allegations were made in the context of disciplinary proceedings totally unrelated to the present matter that were opened against the Appellant, following a request submitted by another creditor of the Old Club.

11. On 14 February 2022 and after having concluded its investigation in this regard, FIFA decided that the Appellant is to be considered the sporting successor of the Original Debtor for the purposes of the above disciplinary proceedings.

12. On 3 March 2022, the FIFA DisCo without having received a request by the Player nor having invited the Appellant to provide its comments in this respect, passed *ex officio* its decision on the pertinent matter with the following operative part (the "Appealed Decision"):

    "*The FIFA Administration concludes that the New Club shall be considered as the sporting successor of the* [Original Debtor] *for the aforementioned reasons.*

    As such, it should serve the transfer bans imposed on the [Original Debtor]".

13. By means of the Appealed Decision, the elements that would reveal the sporting succession between the Appellant and the Original Debtor were examined in detail. In this regard, the FIFA DRC infers that both clubs share several common distinctive features, such as their name, history, sporting achievements, team colours, logos, players, registered address, stadium, and website, save only for their respective legal structure.

14. The Appealed Decision was notified to the Appellant via an email, whereby it was *inter alia* clarified by FIFA that "[b]*y way of consequence, please be informed that, in addition to the ban from registering new players implemented on* [the Original Debtor], *a ban from registering new players will now also be implemented on* [the New Club]. *As such, we kindly ask the respondent's member association (in copy) to immediately implement such ban also on* [the New Club] *at national level (in addition to that already implemented on*

[the Old Club]*) and also we hereby request the respondent's member association to confirm the TMS ID of the* [New Club].

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

15. On 10 March 2022, the Appellant filed a Statement of Appeal with CAS against the Appealed Decision in accordance with Articles R47 and R48 of the CAS Code of Sports-related Arbitration (the "CAS Code"). By means of its submissions, the New Club filed a Request for Provisional Measures within the meaning of R37 of the CAS Code, requesting that the execution of the Appealed Decision be stayed until the finalization of the present proceedings. Additionally, the Appellant requested CAS to order FIFA to produce a copy of the FIFA case file, as well as for an extension of the time limit to file its Appeal Brief by twenty days.

16. On 4 and 7 April 2022 respectively, FIFA and the Player filed their Answers in regard to the Request for Provisional Measures.

17. On 25 April 2022, and after an extension granted in this respect, the Appellant filed its Appeal Brief pursuant to Article R51 CAS Code.

18. On 12 May 2022, the CAS Court Office informed the Parties that, pursuant to Article R54 CAS Code, the President of the CAS Appeals Arbitration Division had decided that the arbitral tribunal appointed to decide on the matter at hand was constituted as follows:

- President: Mr. Sofoklis P. Pilavios, Attorney-at-Law, Athens, Greece
- Arbitrators: Prof. Dr. Ulrich Haas, Professor of Law in Zurich, Switzerland and Attorney-at-Law, Hamburg, Germany

  Mr. Jose Juan Pinto Sala, Attorney-at-Law in Barcelona, Spain

19. On 30 May 2022, the CAS Court Office informed the Parties that Panel had decided to request by FIFA to produce "*the complete FIFA case file related to this matter*".

20. On 13 June 2022, the CAS Court Office informed the Parties that the Panel has issued its Order on the Request for Provisional Measures submitted by the Appellant with *inter alia*, the following operative part:

"*1. The application for provisional measures filed by* [the Appellant] *on 10 March* [..] *is granted.*

2. FIFA is ordered to stay the ban from registering new players imposed on [the Appellant]".

21. On 2 and 16 June 2022 respectively and following several extensions granted in this respect, the Player and FIFA submitted their Answers pursuant to Article R55 CAS Code.

22. On 16 June 2022 and after having been invited to provide his comments in this regard, the Player stated his preference for an award to be issued on the present matter on the sole basis of the Parties' written submissions.

23. On 17 June 2022, the CAS Court Office informed the Parties about the Appellant's preference for a hearing to be held on the matter at hand.

24. On 21 June 2022, FIFA expressed its preference for an award to be issued on the present matter based on the Parties' written submissions.

25. On 14 July 2022, the CAS Court Office informed the Parties that pursuant to Article R57 CAS Code, the Panel had decided to hold a hearing on the case at hand.

26. On 10 and 14 November 2022, the Parties duly signed Order of Procedure.

27. On 23 March 2023, a hearing was held in Lausanne, Switzerland. At the outset of the hearing, the Parties confirmed not to have any objection or comments as to the constitution and the composition of the arbitral tribunal nor in respect of the conduction of the proceedings up to that moment.

28. In addition to the Panel and Mr. Antonio de Quesada, CAS Head of Arbitration, the following persons attended the hearing:

- For the Appellant:

1) Mr. Juan De Dios Crespo Perez and Mr. Ercan Sevdimbas, counsels;

2) Mrs. Cihan Aktas, President of the Appellant;

3) Dizodar Golde, translator;

- For the First Respondent:

1) Mr. Willem – Alexander Devlies, counsel;

- For the Second Respondent:

1) Mr. Roberto Najera Reyes, counsel;

2) Mr. Alexander Jacobs, counsel;

29. The Parties had a complete opportunity to present their case, submit their arguments and answer the questions posed by the Panel. Before the hearing was concluded, all the parties expressly stated that they did not have any objection with the procedure followed by the Panel and that they are satisfied and confirm that their right to be heard had been respected.

30. The Panel confirms that it carefully heard and took into consideration all the submissions, evidence and arguments presented by the Parties, even if they have not been specifically summarized or referred to in the present arbitral award.

IV. SUBMISSIONS OF THE PARTIES AND PRAYERS FOR RELIEF

a Bucaspor 1928 Kulubu Ci Sportif Hizmetleri Anonim Sirketi

31. The submissions of the Appellant, in essence, may be summarized as follows:

- The Appealed Decision was issued in clear violation of the Appellant's procedural rights. In rendering the Appealed Decision, the FIFA DisCo relied on the outcome of an unrelated disciplinary procedure against the Appellant which is already under appeal before CAS. What is more, FIFA DisCo considered that the arguments brought forward by the Appellant in the context of said unrelated disciplinary procedure absolved FIFA from its obligation to respect the "right to be heard" of the Appellant. As a result, the Appellant was never invited to provide its comments during the disciplinary proceedings that led to the issuance of the Appealed Decision.

- The FIFA DisCo is not competent to determine whether a football club constitutes the sporting successor of a no longer existent entity. As various CAS Panels have held in the past, before a creditor can request the FIFA DisCo to turn its attention away from a bankrupt entity, said creditor should have previously brought a claim against the apparent successor before the FIFA DRC, which is the only competent body to determine whether the new entity is actually the successor of the insolvent entity.

- Given that the only deciding body of FIFA that is competent to decide upon the issue of sporting succession is the FIFA DRC, the present dispute lies outside the two – year prescription period set forth in the FIFA Regulations on the Status and Transfer of Players. Particularly, it is evident from the case file that the Appellant initially changed its name in "Bucaspor 1928" on 21 February 2020 and therefore, this is the date where the resemblance between the Appellant and the Original Debtor began to manifest. Accordingly, and since the Player never brought a claim against the Appellant before the FIFA DRC, more than two years have elapsed since the event that gave rise to the present dispute.

- The Player never requested the implementation of disciplinary sanctions against the Appellant, nor did he submit any evidence in support of the allegation that the New Club is the sporting successor of the Original Debtor. On the contrary, while the First Respondent merely requested the imposition of disciplinary sanctions on the Old Club, it was FIFA that decided *ex officio*, and without having provided the Appellant with the opportunity to submit its comments in this respect, to extend to the New Club the disciplinary sanctions that were originally imposed on the Original Debtor.

- Irrespective of the procedural errors that occurred during the proceedings before the FIFA DisCo, the Appellant is not to be considered the sporting successor of the Original Debtor; both clubs are separate legal entities that were established during different years and operate under separate administrations. In fact, the clubs in question competed against each other a few years ago in the third professional division of Turkish Football.

- During the past few years, the Appellant has undergone several changes in terms of its name, logo and jersey colours which, however, is an indicator that it does not intend to appropriate the sporting identity of the Original Debtor. Also, whereas the Appellant uses the same stadium that had been used by the Original Debtor only due to a "shortage" of stadiums in the province of Izmir. In particular, said area has four stadiums to cover the needs of seven professional and amateur football clubs operating in the same region. Further, following the relegation of the Original Debtor to an amateur division, several of its player were registered with the Appellant solely for the purpose of maintaining their professional status without having to move from the greater area of Izmir. In fact, the New Club even paid a fee to the Original Debtor for the transfer of two of its players.

32. On this basis, the Appellant submits the following prayers for relief:

    1. "[Accept] *this Appeal Brief against the* [Appealed Decision];

    2. [Annul] *the* [Appealed Decision] *and issue an award determining that the Appellant's rights have been severely violated, which should lead to the* [Appealed Decision] *to annulled. If not,*

    3. *To decide that the Appellant is not the sporting successor of the* [Original Debtor] *and, therefore, not liable for the debts incurred by the* [Original Debtor] *towards the Player;*

    4. [Fix] *a sum to be paid by the Respondents, in order to contribute to the payment of the Appellant legal fees and costs in the amount of CHF 20,000.00/- (twenty thousand Swiss Frances); and*

5. [Condemn] *the Respondents to the payment of the whole CAS administration costs and arbitrator fees.*

b Mohamed Dahmane

33. The submissions of the First Respondent, in essence, may be summarized as follows:

- Whereas the Player never requested FIFA to initiate disciplinary proceedings against the Appellant, the investigation conducted by the FIFA Administration in relation to another creditor of the Original Debtor revealed that the Appellant has appropriated the sporting identity of the Old Club. It was in the context of said disciplinary proceedings that the Appellant failed to effectively prove that it is not the sporting successor of the Original Debtor. Accordingly, it would make no sense for FIFA to diverge from its previous decision and hold that the Appellant shall not be held liable for the debt of the Old Club against the Player.

- "[T]*here was no need for the First Respondent to file a new claim against the Appellant, as FIFA already decided on the sporting succession issue in another case (Mr Gomes), following which the sporting succession is established for any other debt of the Original Club following from a FIFA decision. Moreover, in Mr Gomes' case, FIFA decided that the event giving rise to the dispute was the Appellant's name change to 'Bucaspor 1928' on 15 September 2020*".

- "*In the present case, the FIFA Administration, after concluding a thourough investigation, including a study of the arguments brought forward by the TFF and the Appellant and a full comparison between the Appellant and the Original Club, FIFA concluded that all factual elements (except legal form) such as name, history, title and sporting achievements, team colours, team logos, registered address, stadium, website and social media, ownership, management, players, officials, sponsors, public perception and football division, clearly revealed a sporting succession between the Appellant and the Original Club*".

34. On this basis, the Player submits the following prayer for relief:

"*- Reject the appeal filed by the Appellant;*

- Confirm the Appealed Decision;

- Confirm that the Appellant is to be considered as the sporting successor of the Original Club, and therefore, is liable to pay to the First Respondent the amount of EUR 25,000 plus default interests of 5% p.a. as of 7 March 2019 until the date of full payment;

- Order the Appellant to bear the entire costs of the arbitration proceedings;

- Order the Appellant to pay a contribution towards the First Respondent's costs and legal fees in the amount of CHF 15,000".

c FIFA

35. The submissions of FIFA, in essence, may be summarized as follows:

- Contrary to the Appellant's assertions, Article 15(4) FDC entitles the FIFA DisCo to decide upon the issue of sporting succession between two football clubs. In fact, the CAS jurisprudence brought forward by the Appellant is obsolete. In several subsequent CAS proceedings the CAS panels have confirmed that, pursuant to the aforementioned provision, the FIFA DisCo is competent to conclude whether a football club is to be considered the sporting successor of another.

- Whereas article 15(2) FDC requires a request to be made by the creditor for the initiation of disciplinary proceedings against the debtor, said requirement is not included in article 15(4) FDC which contemplates the issue of sporting successor. In this regard, in the present dispute the FIFA DisCo did not determine whether a club failed to respect a financial decision passed by FIFA, but only whether the Appellant is to be considered the sporting successor of the Original Debtor and, therefore, whether the former shall bear the consequences thereof. Accordingly, the FIFA DisCo was entitled to investigate *ex officio* the abovementioned issued pursuant to articles 32(5) and 52(1) FDC.

- The present dispute is not related to the FIFA Football Tribunal or the FIFA Regulations on the Status and Transfer of Players but to the FDC and the FIFA DisCo where the applicable statute of limitation is five years.

- The Appellant gradually adopted all the elements that constitute the sporting identity of the Original Debtor, including its name, logo, team colours, registered offices and stadium, as well as several of its former players and a former coach. At the same time, the Original Debtor, while formally remaining under the administration of Mr. Sevinç ceased every football activity. Currently, Mr. Sevinç publicly portrays himself as the Vice – President of the New Club.

- The Appellant also relies on the sporting history of the Original Debtor and publicly portrays itself as being the same Bucaspor as the Old Club with the purpose of profiting from the latter's fanbase. For that purpose, the Appellant also appropriated the social media accounts of the Old Club.

36. On this basis, FIFA submits the following prayers for relief:

"*(a)* [Reject] *the requests for relief sought by the Appellant;*

(b) [Confirm] *the Appealed Decision;*

(c) [Order] *the Appellant to bear the full costs of these arbitration proceedings;*

(d) [Order] *the Appellant to make a contribution to FIFA's legal costs*".

V. JURISDICTION

37. The Appellant submits that the jurisdiction of CAS derives from Article 57(1) FIFA Statutes, 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*".

38. The Respondents also state that jurisdiction of CAS to decide on the present matter is "uncontested".

39. In this respect, the Panel notes that Article 49 FDC provides that "[d]*ecisions passed by the* Disciplinary *and Appeal Committees may be appealed against before CAS, subject to the provisions of this Code and articles 57 and 58 of the FIFA Statutes*". Further, Article 57(1) (e) FDC provides that decisions passed in "*compliance with article 15 of this Code*" are not subject to an appeal before the FIFA Appeals Committee and therefore, are not subject to any additional internal legal remedies.

40. Accordingly, Article 57(2) FIFA Statutes stipulates that "[r]*ecourse may only be made to CAS after all other internal channels have been exhausted*".

41. The jurisdiction of CAS is further confirmed by the Parties by means of their signature on the Order of Procedure.

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

VI. ADMISSIBILITY

43. The Panel notes that the present Appeal was filed within the deadline of 21 days set by Article 57(1) FIFA Statutes. Further, the present Appeal complied with all other requirements set in Article R48 of the CAS Code, including the payment of the CAS Court Office fee.

44. It follows that the Appeal is admissible.

VII. APPLICABLE LAW

45. Article R58 CAS Code provides the following:

> "*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*".

46. Pursuant to Article 56(2), of the FIFA Statutes, "[t]*he 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*".

47. In principle, the Parties do not contest the primary application of the various FIFA Regulations and additionally, of Swiss Law on the present matter.

48. Under such circumstances, the Panel is satisfied that the various regulations of FIFA are primarily applicable, in particular the FDC (edition 2019), and subsidiarily Swiss law, should the need arise to fill a possible gap in the various regulations of FIFA.

VIII. MERITS

Main Issues

49. The main issues to be resolved by the Panel are the following:

(i) Was the FIFA Disciplinary Committee the competent body to decide upon the issue of the alleged sporting succession between the Appellant and the Original Debtor?

(ii) Was the Appealed Decision rendered in breach of the formalities set in Article 15 FDC?

(iii) If the answer under (i) is of the negative, did the FIFA DisCo violate the Appellant's right to be heard?

(iv) If the answer under (ii) is of the negative, is the Appellant the sporting successor of the Original Debtor?

(v) Following and depending on the decision under (iii), which are the consequences for the Appellant thereof?

(vi) Was the FIFA Disciplinary Committee the competent body to decide upon the issue of the alleged sporting succession between the Appellant and the Original Debtor?

50. The Panel observes that the Appellant contests the jurisdiction of the FIFA DisCo to decide upon the issue of sporting succession between two football entities. According to the submissions of the Appellant, the Player should have filed a claim against the Appellant before the FIFA DRC, which is the only competent body to decide whether the New Club constitutes the sporting successor of the Original Debtor. In support of its pertinent assertion, the Appellant relies on previous CAS jurisprudence according to which a creditor seeking to collect his claim from the sporting successor of its original debtor should revert before the FIFA DRC.

51. As an initial remark, the Panel recalls that the issue of sporting succession between two football entities was firstly addressed by FIFA, in terms of its regulatory framework, within the context of the FDC. By means of the then newly – established article 15(4) FDC, FIFA codified the pertinent jurisprudence of CAS in an attempt to effectively deal with the various schemes that were being adopted by several football clubs in order to avoid the fulfillment of their financial obligations.

52. Further, the Panel remarks that any infringement of the FDC is adjudicated by the FIFA DisCo. Accordingly, the Panel finds that it would make no sense for FIFA to insert certain provisions about the issue of sporting succession in the FDC, were the FIFA DisCo was not competent to decide upon the certain issue. In reaching this conclusion, the Panel feels further supported by the vast majority of the pertinent CAS jurisprudence, whereby it has been consistently held that the FIFA DisCo is competent to decide whether sporting succession has occurred between two football clubs. Ultimately, "*it does not appear to matter which body at FIFA takes a decision on sporting succession so long as it does. In the case at hand, the FIFA Disciplinary Committee has taken that decision and as such the matter does not need to go to the FIFA DRC, as the Appellant argued*" (CAS 2019/A/6461).

53. It follows that the FIFA DisCo was competent to decide upon the issue of the alleged sporting succession between the Appellant and the Original Debtor.

(i) *Was the Appealed Decision rendered in breach of the formalities set in Article 15 FDC?*

54. After having established that the FIFA DisCo is indeed competent to decide whether a football entity is the sporting successor of another, the Panel notes that pursuant to the argumentation brought forward by the Appellant in this respect, the FIFA DisCo had erred in rendering the Appealed Decision, given that the First Respondent never requested the

imposition of disciplinary sanctions on the New Club as required by Article 15(2) FDC. However, the Respondents contest the pertinent allegations of the Appellant; for its part, FIFA asserts that despite the formalities set out in Article 15(2) FDC, the Appealed Decision was issued pursuant to Articles 15(4), 31 and 52 FDC which allow FIFA to investigate potential disciplinary infringements *ex officio*. Similarly, whereas the Player admits not having requested the opening of disciplinary proceedings against the New Club, he claims that since the FIFA DisCo had already decided that the Appellant is indeed the sporting successor of the Original Debtor in the context of a different disciplinary procedure, it would make no sense to treat the creditors of the Old Club in a different manner.

55. In this respect, the Panel notes that Articles 32(5) and 52(1) FDC provide the following:

"*Article 32 Secretariat*

[..]

5. The Secretariat takes charge of the necessary investigation ex officio

[..]

Article 52 Commencement of proceedings

1. Proceedings are opened by the secretariat of the Disciplinary Committee [..]

h) ex officio".

56. Further, Articles 15(2) and (4) FDC stipulate as follows:

"*Article 15 Failure to respect decisions*

[..]

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

[..]

4. The sporting successor of a non-compliant party shall also be considered a non-compliant party and thus subject to the obligations under this provision. Criteria to assess whether an entity is to be considered as the sporting successor of another entity are, among

others, its headquarters, name, legal form, team colours, players, shareholders or stakeholders or ownership and the category of competition concerned".

57. Which of the above views is to be followed depends first and foremost on the interpretation of the relevant rules within the applicable regulatory framework, i.e. the FDC; FIFA is a private entity domiciled in Switzerland and its regulations should be interpreted in accordance with the principles established with regard to the interpretation of state laws, rather than those applicable to the interpretation of contracts. The Panel concurs with that view, which is also in line with the long-standing jurisprudence of CAS and the Swiss Federal Tribunal on that matter and stipulates the following:

"*According to the SFT, the starting point for interpreting is indeed its wording (literal interpretation). There is no reason to depart from the plain text, unless there are objective reasons to think that it does not reflect the core meaning of the provision under review. This may result from the drafting history of the provision, from its purpose, or from the systematic interpretation of the law. Where the text is not entirely clear and there are several possible interpretations, the true scope of the provision will need to be narrowed by taking into account all the pertinent factors, such as its relationship with other legal provisions and its context (systematic interpretation), the goal pursued, especially the protected interest (teleological interpretation), as well as the intent of the legislator as it is reflected, among others, from the drafting history of the piece of legislation in question (historical interpretation) (SFT 132 III 226 at 3.3.5 and references; SFT 131 II 361 at 4.2). When called upon to interpret a law, the SFT adopts a pragmatic approach and follows a plurality of methods, without assigning any priority to the various means of interpretation (SFT 133 III 257 at 2.4; SFT 132 III 226 at 3.3.5).*

[..]

According to the SFT, the statutes of a private legal entity are normally interpreted according to the principle of good faith, which is also applicable to contracts (SFT 4A_392/2008, at 4.2.1 and references). However, the method of interpretation may vary depending on the nature and dimension of the legal person involved. As regards the statutes of larger entities, it may be more appropriate to have recourse to the method of interpretation applicable to the law, whereas in the presence of smaller enterprises, the statutes may more legitimately be interpreted by reference to good faith. The subjective interpretation will be required only when a very little number of stakeholders are concerned (SFT 4A_235/2013, at 2.3 and 4C.350/2002, at 3.2).

FIFA is a very large legal entity with over not only two hundred affiliated associations, but also far more numerous indirect members who must also abide by FIFA's applicable regulations (SFT 4P.240/2006). It is safe to say that FIFA's regulations have effects which are felt worldwide and should therefore be subject to the more objective interpretation principles." (CAS 2017/O/5264 & 5265 & 5266 par.199, CAS 2013/A/3365 & 3366, par.

139 and 143-144. Also, CAS 2017/A/5173 par.74, CAS 2017/A/5356 par.86, CAS 2012/A/2187 par.107).

58. The Panel fully adheres to these conclusions and principles and therefore, starts its analysis by reviewing the wording of Articles 32(5) and 52(1) FDC. In this regard, the Panel observes that pursuant to the foregoing provisions, the Secretariat of the FIFA DisCo is granted in principle the authority to conduct investigations and subsequently, to open disciplinary proceedings against potential breaches of the FDC, *ex officio*. However, when it comes to the application of Article 15 FDC, which pertains to the enforcement of a final decision issued by a deciding body of FIFA or CAS, the provision in question requires additional actions to be taken for the initiation of the pertinent disciplinary proceedings. Particularly, Article 15(2) FDC provides that disciplinary proceedings against the debtor of a sum that has been awarded by means of a final decision passed by the various FIFA deciding bodies or CAS "*may only commence at the request of the creditor or any other affected party*".

59. Whereas from a semantic point of view, one may assess the choice of including the words "may" and "only" in the same provision to be unfortunate, the Panel cannot ignore that the overall interpretation of Article 15(2) is also rather straightforward in establishing that disciplinary proceedings against a debtor that has failed to comply with a final decision of monetary nature issued by FIFA or CAS, can only commence following a request submitted by its creditor in this regard. Further, the Panel notes that whereas articles 32(5) and 52(1) FDC refer to the authority of the Secretariat of FIFA DisCo in general (*lex generalis*), article 15(2) pertains exclusively to the enforcement of final decisions of a monetary nature that have been issued by the deciding bodies referred therein (*lex specialis*) and therefore, takes precedent over the more generic provisions of FDC. Accordingly, the Panel finds that when it comes to the enforcement of a final decision of monetary nature issued by the deciding bodies of FIFA or CAS, the FIFA DisCo cannot initiate disciplinary proceedings against the debtor in question without priorly having received a request by the creditor in this regard.

60. Having established the above, the Panel turns its attention to Article 15(4) FDC by means of which, the sporting successor of a non – compliant party shall also be considered as such for the purposes of Article 15 FDC. In this regard, FIFA maintains that "*the Appealed Decision did not determine whether a club failed to respect a financial decision or not* [..]. *What the Appealed Decision decided is whether or not the New Club is the sporting successor of the* [Original Debtor] *and, as a result, if the Disciplinary Decision and its consequences apply to the New Club*" thereby suggesting that since it had already been determined that the DRC Decision was not respected, the FIFA DisCo could decide *ex officio* whether the Appellant is the sporting successor of the Original Debtor, pursuant to Articles 32(5) and 52(1) FDC.

61. The Panel does not concur with the, by all means, wide interpretation of the provision in question that is suggested by the Second Respondent. Article 15(4) FDC is not a "stand – alone" provision but rather, it forms part of article 15 FDC whereby the enforcement of a final decision issued by the various deciding bodies of FIFA and CAS is contemplated. In this regard, the Panel observes that pursuant to the pertinent provision, the FIFA DisCo assess the issue of sporting succession between two football entities solely for the purpose of subjecting the sporting successor to the obligations established by means of said final decision. Besides, it would make no sense for the FIFA DisCo to examine whether a football club is the sporting successor of another entity without an ulterior motive i.e., without aiming to extend certain obligations to the sporting successor. Put differently, the sporting succession between two football entities does not constitute a disciplinary infringement *ipso facto*, unless they also fall under the material scope of articles 15(1) and (2) as well. Accordingly, the Panel considers that article 15(4) was established solely for the purpose of enabling the more optimal application of articles 15(1) and (2) FDC. When read together, it follows that pursuant to articles 15(1) and (4) FDC, the FIFA DisCo may impose *ex officio* disciplinary sanctions on the sporting successor of a party that has failed to comply with a non – financial, yet final decision issued by the various deciding bodies of FIFA or CAS. On the contrary, the systematical interpretation of articles 15(2) and (4) FDC suggests that disciplinary proceedings against the sporting successor of a party that has failed to comply with a financial decision rendered by the above association or arbitral tribunals can only be initiated following a request by the creditor of said outstanding debt. The same conclusion is also supported from the teleological interpretation of article 15(4) whereby it is established that the sporting successor of a non – compliant party is "*subject to the obligations under this provision*". Given that article 15(4) does not provide for certain disciplinary sanctions to be imposed on the sporting successor of a non – compliant party, it follows that said sanctions can only be derived from articles 15(1) and (2) FDC.

62. Having established the connection between the provisions in question, the Panel considers that it is not enough for a creditor to request FIFA to initiate disciplinary proceedings against the debtor of a certain sum but also, said request must be addressed against the proper non – compliant party, whether that be the original debtor of the amount is question or its sporting successor. In the eyes of the Panel, this is the minimum threshold of diligence that a creditor must meet in order to be able to recover its credit from its debtor. In cases such as the matter at hand, following the submission of a proper request on behalf of the creditor against the sporting successor of its debtor, the FIFA DisCo should primarily assess whether the amount in question remains outstanding and subsequently, whether the alleged non – compliant party is indeed the sporting successor of the original debtor. Nevertheless, such assessment is inherently to be made in the context of a consolidated disciplinary procedure, given that, as set out above, article 15(4) does not constitute an autonomous disciplinary infringement but rather, it is only assessed in the context of articles 15(1) or (2) FDC, which require the submission of a request for the implementation of sanctions against the debtor.

63. In the matter at hand, it remains uncontested between the Parties that the Player never addressed its request for the imposition of disciplinary sanctions that led to the issuance of the Appealed Decision against the Appellant. Consequently, the Panel finds that the FIFA DisCo had erred in proceeding *ex officio* to the imposition of any disciplinary sanctions on the Appellant pursuant to Article 15(2) FDC. This procedural mistake cannot be corrected at the CAS level in these proceedings, since the matter in dispute before this Panel is confined to what should have been the matter in dispute before the previous instance.

64. It follows that the Appealed Decision was issued in breach of the formalities set out in article 15 FDC and therefore, it should be set aside.

65. Considering and following the findings on the above issue, the Panel is not to proceed its analysis any further.

IX. CONCLUSIONS

66. Based on the foregoing, the Panel finds that:

67. *The FIFA DisCo was competent to decide upon the issue of the alleged sporting succession between the Appellant and the Original Debtor*

68. *The Appealed Decision was issued in breach of the formalities set out in article 15 FDC.*

69. All other and further motions and prayers for relief are dismissed.

X. COSTS

70. Article R64.4 CAS Code provides as follows:

"*At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include:*

- *the CAS Court Office fee,*
- *the administrative costs of the CAS calculated in accordance with the CAS scale,*
- *the costs and fees of the arbitrators,*
- *the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale,*
- *a contribution towards the expenses of the CAS, and*

- *the costs of witnesses, experts and interpreters.*

The final account of the arbitration costs may either be included in the award or communicated separately to the parties. The advance of costs already paid by the parties are not reimbursed by the CAS with the exception of the portion which exceeds the total amount of the arbitration costs."

71. Article R64.6 CAS Code provides the following:

"*In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties.*"

72. Having taken into account the outcome of the present arbitration, in particular that the Appellant's appeal was upheld but also the fact the Player did not initiate the proceedings that led to the present arbitration, the Panel considers it reasonable and fair that the costs of the arbitration, in an amount that will be determined and notified to the parties by the CAS Court Office, shall be borne by FIFA.

73. Furthermore, pursuant to Article R64.5 CAS Code and in consideration of the complexity and outcome of the proceedings as well as the conduct and the financial resources of the Parties, including what was set out above about the procedural conduct of the Player, the Panel rules that FIFA pay a contribution towards the Appellant's fees and other expenses incurred in connection with these arbitration proceedings in the amount of CHF 3,000 (three thousand Swiss Francs) while the Player will bear his own costs.

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ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 10 March 2022 by Bucaspor 1928 Kulubu Ci Sportif Hizmetleri Anonim Sirketi against the decision issued on 3 March 2022 by the Disciplinary Committee of the *Fédération Internationale de Football Association* is upheld.

2. The decision issued on 3 March 2022 by the Disciplinary Committee of the *Fédération Internationale de Football Association* is set aside.

3. The costs of the arbitration, to be determined and served to the parties by the CAS Court Office, shall be entirely borne by FIFA.

4. FIFA shall bear its own costs and is ordered to pay to Bucaspor 1928 Kulubu Ci Sportif Hizmetleri Anonim Sirketi, the amount of CHF 3,000 Swiss Francs as a contribution towards his legal fees and other expenses incurred in connection with these arbitration proceedings.

5. Mr. Mohamed Dahmane shall bear his own costs.

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

Seat of arbitration: Lausanne, Switzerland

Date: 27 October 2023

THE COURT OF ARBITRATION FOR SPORT

Sofoklis Pilavios
President of the Panel

Ulrich Haas
Arbitrator

José Juan Pintó
Arbitrator