CAS 2022/A/9345 Milos Pavlovic v. Fotbal Club Rapid 1923 SA & Fédération Internationale de Football Association (FIFA)

ARBITRAL AWARD

rendered by

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Dr Jan Räker, Attorney-at-Law, Stuttgart, Germany
Arbitrators: Mr Mark Hovell, Solicitor, Manchester, United Kingdom
Mr Sofoklis P. Pilavios, Attorney-at-Law, Athens, Greece

in the arbitration between

Milos Pavlovic, Serbia,

Represented by Mr William Sternheimer and Mr Sam Kasoulis, Attorneys-at-Law with Morgan Sports Law, Lausanne, Switzerland

Appellant

v.

Fotbal Club Rapid 1923 SA, Bucharest, Romania,

Represented by Mr Marian Mihail, Attorney-at-Law with mihail.legal, Bucharest, Romania

First Respondent

and

Fédération Internationale de Football Association (FIFA), Zurich, Switzerland

Represented by Mr Alexander Jacobs, FIFA Senior Legal Counsel

Second Respondent

I. PARTIES

1. Mr Milos Pavlovic (the "Player" or the "Appellant") a former football player of Serbian nationality.

2. Fotbal Club Rapid 1923 SA (the "Club" or "Rapid" or the "First Respondent") is a professional football club based in Bucharest, Romania, which is a member of the Romanian Football Federation (the "RFF"), which is a member of FIFA.

3. The Fédération Internationale de Football Association ("FIFA" or the "Second Respondent") is the international governing body of football at worldwide level, headquartered in Zurich, Switzerland.

4. The First Respondent and the Second Respondent are collectively referred to as the "Respondents", the Appellant and the Respondents are referred to collectively as the "Parties".

II. FACTUAL BACKGROUND

5. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings, and evidence adduced. References to additional facts and allegations found in the Parties' written submissions, pleadings, and evidence will be made, where relevant, in connection with the legal analysis 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 deems necessary to explain its reasoning.

6. On 25 January 2012, the Player and the club S.C. Fotbal Club Rapid Bucuresti SA (the "Original Club"), entered into an agreement headlined "Civil Convention for the Performance of Sports Services" (the "Agreement"), under which the Player agreed to play as a professional footballer for the Original Club.

7. The Agreement did not contain any provisions regarding the job description in accordance to the Classification of Occupations in Romania, a trial period, vacation days, the physical place of work and the working hours, nor did it mention the Romanian Labour Code. The Agreement was furthermore not registered in the general register of employees, which is filed with the competent Regional Labour Directorate.

8. The Agreement contained a forum clause which reads as follows:

> *"10. Any dispute arising between the Parties from or in connection with the present convention, including its validity, interpretation, execution or abolition, shall be solved amiably. If the Parties cannot reach to an amiable solution, then the litigations shall be solved by the bodies having jurisdictional competences of the Romanian Football Federation, the Romanian Football League, FIFA or TAS, and resolved in accordance with the Code of Sports-related Arbitration."*

9. On 7 December 2012, insolvency proceedings were initiated against the Original Club before the competent Section of the Bucharest Tribunal (the "Bucharest Tribunal"). On the same day, the Bucharest Tribunal set *"the deadline for registering the application for the admission of claims on the debtor's assets"* as 22 January 2013.

10. On 11 December 2012, the Appellant wrote to the Original Club, requesting the payment of outstanding salaries and warning the Original Club that, in the absence of payment, a claim would be lodged before FIFA.

11. On 13 December 2012, the judicial administrator of the Original Club informed the Appellant that the Agreement had been terminated in accordance with Article 86 of Romanian Law 85/2006 (the "Romanian Insolvency Act 2006").

12. On 14 December 2012, the Appellant renewed his request for the payment of the outstanding remuneration and, in addition, requested payment of a compensation for breach of contract.

13. On 21 January 2013, the Appellant registered a claim of EUR 73,703 in the Original Club's insolvency, corresponding to his outstanding salaries for the months of August to November 2012, plus the first 13 days of December 2012. At the same time, the Appellant also explicitly reserved his right to claim EUR 537,897 as compensation for breach of contract before FIFA.

14. On 25 November 2013, the Appellant addressed another letter to the Bucharest Tribunal in which he stressed that he never agreed to be paid 10% only of his credit and affirmed that he will claim an amount of EUR 611,600 before FIFA.

15. On 10 May 2014, the Appellant lodged a claim against the Original Club in front of FIFA for breach of contract, requesting to be awarded with the amount of EUR 611,300.

16. On 11 June 2015, the FIFA Dispute Resolution Chamber (the "FIFA DRC") ordered the Original Club to pay to the Player an amount of EUR 460,700 (decision under reference number 14-00912, the "DRC Decision").

17. On 3 December 2015, the judicial administrator of the Original Club lodged an appeal on the Original Club's behalf at the Court of Arbitration for Sport (the "CAS") against the DRC Decision.

18. On 22 January 2016, the judicial administrator of the Original Club was replaced by Mr Brihac Aurel.

19. On 7 April 2016, the CAS Court Office issued a termination order regarding the aforementioned appeal procedure as a result of the lack of payment of the advance of costs by the Original Club.

20. On 31 May 2016, as the amounts due to the Player in accordance with the DRC Decision were not paid, the case was forwarded to the FIFA Disciplinary Committee for consideration and decision.

21. On 13 June 2016, the Bucharest Tribunal ordered that bankruptcy proceedings shall be initiated against the Original Club. The deadline for creditors to register claims against the Original Club within the bankruptcy proceedings was set to 28 July 2016. The judicial administrator, Mr Brihac Aurel, was appointed as the judicial liquidator.

22. The Appellant was never notified by the judicial liquidator, by the Original Club or any duly authorised agent of the Original Club (e.g., the Original Club's administrator) that bankruptcy proceedings had been initiated, nor was he notified of the deadline of 28 July 2016 for the registration of any claims against the Original Club within the bankruptcy proceedings.

23. The Appellant did not register any further claim against the Original Club within the bankruptcy procedure.

24. At an unspecified date in either September or October 2017, the Appellant became aware of the bankruptcy proceedings against the Original Club and that the deadline for registering claims within such procedure had expired during the previous year.

25. The Appellant, for the time being, took no further steps to seek the registration of his claim within the bankruptcy procedure or to be reinstated in his right to register his claim.

26. On 6 October 2017, the Secretariat to the FIFA Disciplinary Committee (the "Secretariat") sent a correspondence to the parties containing, *inter alia*, the following information:

> *"[...] the [Original Club] is no longer affiliated to the Romanian Football Federation and does not participate in any of the Romanian Football Federation competitions.*
>
> *On account of the above, we must inform you that, as a general rule, our services and competent decision-making bodies (i.e., the Players' Status Committee and the Dispute Resolution Chamber as well as the Disciplinary Committee) cannot deal with cases involving clubs which are not affiliated to their Association any longer.*
>
> *As a consequence, on behalf of the chairman of the FIFA Disciplinary Committee, we regret having to inform you that we do not appear to be in a position to further proceed with the case of the reference in which the [Original Club] is involved".*

27. Neither the Appellant, nor any other creditor, ever received any amounts from the Original Club in view of the claims registered within the insolvency procedure or the subsequent bankruptcy procedure. The only amounts paid to any parties were amounts paid to the administrators of the Original Club in a combined total amount of the equivalent of approximately EUR 21,619.38, *i.e.* less than 5 percent of the Appellant's entire claim.

III. PROCEEDINGS BEFORE THE FIFA DISCIPLINARY COMMITTEE

28. On 2 May 2022, the Appellant filed a complaint with the FIFA Disciplinary Committee (the "FIFA DC") and requested that the First Respondent should be considered the sporting successor of the Original Club and be held liable for the debt incurred by the latter as stipulated in the DRC Decision. In particular, the Appellant argued that a CAS panel in the procedure CAS 2020/A/7543 had already determined that the First Respondent should be considered the sporting successor to the Original Club.

29. On 10 August 2022, having been requested by the Secretariat to provide his comments *inter alia* regarding his diligence in claiming his credit within the bankruptcy proceedings of the Original Club, the Player's agent on behalf of the Player replied:

> *"[s]ince the amount of EUR 73'703 for overdue salaries was registered during the insolvency proceeding in front of the Romanian insolvency court, the amount was declined in the [DRC Decision]. However, this amount was neither received nor claimed repeatedly in front of the insolvency proceeding.*
>
> *Moreover, although the full amount could be registered with the Romanian insolvency proceeding, the [Player] never did this diligence in front of the Romanian insolvency proceeding against the new creditor club. Thus, [the Player] claim[s] only for the awarded amount by the FIFA DRC, (...), in front of the Disciplinary Committee, namely the amount of EUR 460'700 (...)."*

30. The Secretariat's investigatory report in this matter later contained the following findings and remarks:

> *"According to said CAS jurisprudence, it is necessary to examine whether a creditor has shown the required degree of diligence to recover the amounts he is owed. A creditor is expected to be vigilant and to take prompt and appropriate legal action in order to assert his claims.*
>
> *In this respect, no disciplinary sanctions can be imposed on a club as a result of succession, should the creditor fail to claim his credit in the liquidation proceedings of the former club, as there is a theoretical possibility, he could have recovered his credit, instead of remaining passive (CAS 2019/A/6164, par. 59 with reference to CAS 2011/A/2646 {20-31}). Of course, the assessment needs to be made based on the specific circumstances of each particular case (see e.g., CAS 2019/A/6164 par. 59 or CAS 2018/A/5854, par. 57).*
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> *Moreover, the obligation to exercise due diligence in national liquidation proceedings is also to be seen in the context of the principle of "par conditio creditorum" according to which in insolvency proceedings, all creditors shall be satisfied equally. This principle must strictly be observed, especially if a party's claim arose prior to the insolvency proceedings having been opened. In the case at hand the liquidation proceedings were opened on 7 December 2012 and the bankruptcy proceedings were declared on 13 June 2016 while the Player's credit arose on 11 June 2015."*

31. In light of the foregoing, the Secretariat opened disciplinary proceedings against the First Respondent on 26 September 2022 for a potential breach of Article 15 of the FIFA Disciplinary Code, 2019 edition (the "FDC").

32. On 20 October 2022, the FIFA DC issued the decision under its reference number FDD-11123 (the "Appealed Decision"), in which it decided to close the proceedings against the First Respondent.

33. Within the Appealed Decision, upon holding that the First Respondent shall be considered as the sporting successor of the Original Club, the FIFA DC *inter alia* argued as follows:

> *"62. Notwithstanding the above, the Committee points out that according to CAS jurisprudence, a creditor is expected to be vigilant and to take prompt and appropriate legal action to assert his claim. In principle, no disciplinary sanction can be imposed on a club as a result of succession, should the creditor fail to claim his credit in the bankruptcy proceedings of the former club, as there is a theoretical possibility he could have recovered his credit, instead of remaining passive. However, the Committee is aware that there is no blanket rule whether or not a creditor has shown the required degree of diligence and that the assessment of the creditor's diligence has to be made based on the specific circumstances of each case.*
>
> *63. Turning its attention to the present case and upon review of the documents at its disposal, the Committee holds that it cannot be denied that the Claimant was fully aware of the difficult financial situation of the Original Club, since on 11 December 2012, i.e., a few days after the opening of the insolvency proceedings against the Original Club, the Claimant wrote to the former "regretting that the latter had entered into an insolvency procedure". In addition, the judicial administrator of the Original Club informed the Claimant on 13 December 2012 that his employment contract was terminated pursuant to art. 86 of the Romanian Insolvency Act.*
>
> *64. Furthermore, the Committee notes that the Claimant even registered on 21 January 2013 "a credit of EUR 73,703 at the Bucharest Tribunal corresponding to his outstanding salaries for August, September, October, November, plus 13 days of December 2012" but "[reserved] his right to claim the aforementioned amount plus EUR 537,897 as compensation before FIFA". The Claimant eventually did so on 10 May 2014 and his claim was partially accepted by the DRC on 11 June 2015 as the Claimant was entitled to received* [sic] *EUR 460,700 from the Original Club.*
>
> *65. In view of the above, the Committee makes the following observations:*
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> *• The Claimant was aware of the insolvency proceedings in progress at the time, since he registered a credit of EUR 73,703 in the said proceedings, which, in view of the documents on file, was accepted in those proceedings.*
>
> *• However, the Claimant decided to reserve his right to claim compensation before FIFA, which the latter eventually did, more than a year after registering the aforementioned credit in the insolvency proceedings.*

66. In this respect, the Committee observes that the case file does not reveal the motivation(s) that led the Claimant i) not to claim the full amount in the insolvency proceedings, and ii) to wait almost 16 months to file a claim before the DRC to request payment of specific amounts.

[...]

68. The Committee further remarks that a few months later, the Original Club was declared bankrupt, i.e., on 13 June 2016. However, it appears that the Claimant did not register the amounts awarded in the DRC Decision in the abovementioned procedure.

69. In this regard, and upon request from the Secretariat to comment his diligence in claiming his credits in the bankruptcy proceedings, the Committee observes that the Claimant did not provide an elaborated or detailed position as he simply explained that "[s]ince the amount of EUR 73'703 for overdue salaries was registered during the insolvency proceeding in front of the Romanian insolvency court, the amount was declined in the FIFA [DRC Decision]", an amount that was however never received in the insolvency proceedings. Moreover, the Claimant further pointed out that "although the full amount could be registered with the Romanian insolvency proceeding, the [Claimant] never did this diligence in front of the Romanian insolvency proceeding against the new creditor club."

70. In view of the foregoing, the Committee first wishes to recall that, in view of the circumstances of the case, the Claimant was totally aware of the difficult financial situation of the Original Club since it registered part of his credit in the insolvency proceedings. This means, in the Committee's view, that the Claimant could legitimately be expected to follow the development of the insolvency proceedings, i.e., to be vigilant in order to take prompt and appropriate legal action in respect of its claim. Therefore, the opening of the bankruptcy proceedings could not, and should not, have come as any kind of surprise to the Claimant.

71. In addition, the Committee finds that it was in the Claimant's power to take prompt and appropriate action in the context of the bankruptcy proceedings, in particular to register the credit awarded in the DRC Decision. Indeed, the Committee is of the opinion that on the basis of the information available, there is no indication that the Claimant was legally prevented from registering his new credits, nor that the latter ever tried to do so.

72. On top of that, reading the Claimant's statements, namely the one submitted to the DRC where he stated to have "[reserved] his right to claim the aforementioned amount plus EUR 537,897 as compensation before FIFA" instead of claiming them in the context of the insolvency proceedings, and the one submitted in the scope of the present disciplinary proceedings where he submitted that "although the full amount could be registered with the Romanian insolvency proceeding, the [Claimant] never did this diligence in front of the Romanian insolvency proceeding against the new creditor club", the Committee deduces from these submissions that the Claimant theoretically had the possibility to claim his credits during the insolvency proceedings, but the latter only claimed part of them. Moreover, the Committee considers that the

Claimant had an additional opportunity to register all his credits in the domestic proceedings, namely the credits arising from the DRC Decision in the bankruptcy proceedings initiated after the DRC Decision became final, but that he also failed to do so.

73. As a result, the Committee is comfortably satisfied that the Claimant could have claimed his credits, or at least tried to register them either in the insolvency proceedings or the bankruptcy proceedings of the Original Club. In other words, the Claimant remained passive and did not perform the expected due diligence that the circumstances demanded, in particular to take the required legal actions at national level to recover the amount owed to him by the Original Club, and therefore contributed to the non-compliance by the Original Club, and subsequently by the New Club, of the DRC Decision issued on 11 June 2015.

74. In light of the above, although the New Club, SC Fotbal Club Rapid, is to be considered the sporting successor of the original Debtor, Fotbal Club Rapid 1923 SA, the Committee resolves that no disciplinary sanctions shall be imposed on the New Club and all charges against the latter shall be dismissed, as a result of the lack of diligence of the Claimant in collecting his debt in the respective proceedings at national level."

34. The grounds of the Appealed Decision were notified to the Appellant on 2 December 2022.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

35. On 14 December 2022, in accordance with Article R47 of the Code of Sports-related Arbitration (the "Code") (2022 edition), the Appellant filed its Statement of Appeal with the CAS against the Respondents with respect to the Appealed Decision. In its Statement of Appeal, the Appellant appointed Mr Mark Hovell, Solicitor in Manchester, United Kingdom, as arbitrator.

36. On 19 December 2022, the CAS Court Office informed the Respondents of the initiation of the present appeals proceedings against them and invited the Appellant to file its Appeal Brief within the deadline stated in Article R51 of the Code.

37. On 20 January 2023, the Respondents jointly nominated Mr Sofoklis P. Pilavios, Attorney-at-Law in Athens, Greece, as arbitrator.

38. On 30 January 2023, the Appellant sent a letter to the CAS Court Office, requesting the present matter to be submitted to a Sole Arbitrator instead of a three-member Panel.

39. On 31 January 2023, the CAS Court Office sent a letter to the Respondents, requesting them to comment on the aforementioned request.

40. By letter of the same day, the First Respondent objected to the submission of the procedure to a Sole Arbitrator.

41. By letter of 6 February 2023, the Second Respondent declared that it did not object against the matter being referred to a Sole Arbitrator as long as he or she is selected from the football list.

42. On 14 February 2023, the CAS Court Office acknowledged receipt of the Appeal Brief filed on 13 February 2023, within the extended deadline for its submission. Further it invited the Respondents to file their Answers in accordance with the provisions of Article R55 of the Code.

43. On 16 February 2023, the CAS Court Office sent a letter to the Parties, informing them that the Deputy President of the CAS Appeals Division had decided to submit the present procedure to a Panel composed of three arbitrators.

44. On 3 April 2023, the CAS Court Office sent a letter to the Parties, informing them that the Panel appointed to decide on the present proceedings was constituted as follows:

President:	Dr Jan Räker, Attorney-at-law, Stuttgart, Germany
Arbitrators:	Mr Mark Hovell, Solicitor, Manchester, United Kingdom
	Mr Sofoklis Pilavios, Attorney-at-Law, Athens, Greece.

45. On 21 April 2023, the CAS Court Office acknowledged receipt of the First Respondent's Answer, filed on 16 April 2023 and of the Second Respondent's Answer, filed on 20 April 2023, and invited the Parties to state whether they would prefer a hearing to be held in the present matter.

46. On the same day, the Second Respondent informed the CAS of its preference that the Panel shall render an award on the sole basis of the Parties' written submissions.

47. On 24 April 2023, the First Respondent informed the CAS Court Office that it preferred a hearing to be held.

48. On 28 April 2023, the Appellant informed the CAS Court Office that it preferred a hearing to be held in this matter but that it does not request a case management conference to be held.

49. On 17 May 2023, the CAS Court Office informed the Parties that the Panel had decided to hold a hearing in the present matter on 6 July 2023.

50. On 5 June 2023, the CAS Court Office sent to the Parties an Order of Procedure, requesting them to return a signed copy of it to the CAS Court Office.

51. On 2 June 2023, the Second Respondent sent its signed copy of the Order of Procedure. On 7 June 2023, the CAS Court Office acknowledged receipt of the copy of the Order of Procedure as signed by the Appellant. On 8 June 2023, the First Respondent transmitted its signed copy of the Order of Procedure.

52. On 6 July 2023, a hearing took place in the present proceedings at the CAS Court Office in Lausanne, Switzerland. The Panel was joined by the following participants:

For the Appellant:
Mr William Sternheimer and Mr Sam Kasoulis, counsels;
Mr Milos Pavlovic (via video-conference), the Appellant.

For the First Respondent:
Mr Marian I. Mihail, counsel;
Ms Alina Zechiu (via video-conference), expert witness;
Ms Roxana-Maria Popescu (via video-conference), expert witness.

For the Second Respondent:
Mr Alexander Jacobs, Senior Legal Counsel;
Mr Roberto Nájera Reyes, Senior Legal Counsel.

53. At the outset of the hearing, the Parties declared that they had no objections as to the constitution of the Panel.

54. The Panel heard expert evidence from Ms Alina Zechiu and Ms Roxana-Maria Popescu. Both of them were examined by the Parties and the Panel and confirmed their previous written statements.

55. The expert witness Ms Zechiu *inter alia* stated that she was a qualified Romanian insolvency law expert and rendered the following expert opinion:

> Under Romanian insolvency law, any claim registered by a creditor in the insolvency proceeding would have been analyzed by the administrator. If the administrator decides to reject the claim, the creditor can appeal against this at a single judge within the Romanian judicial system against whose decision another appeal to the court of appeal would have been possible. Within these procedures a claimant could also argue that the Romanian legal system is incompetent to decide on a claim due to a forum clause. As the claim to the payment of damages arose after the initiation of the insolvency procedure, this claim, unlike the previous claims for overdue salaries which were registered in the insolvency procedure on behalf of the Appellant, would have been treated as a new claim within the insolvency procedure, meaning there was no need to register it within the respective deadline and that it would have enjoyed a preferred treatment compared to the old claims. Also, a claim could be registered or requested from the administrator without having obtained a prior court decision. The declaration that a creditor reserves his right to register a claim at a later point in time, does not constitute a valid registration of a claim, nor does it create to register a claim after the deadline for doing so has elapsed. Within the later bankruptcy procedure, the claim would however have been an old claim, meaning that it needed to be registered in order to be considered by the liquidator. In response to questions from the Panel, she acknowledged that she had not seen the claim made by the Player nor a copy of the Agreement.

56. The expert witness Ms Popescu *inter alia* stated that she was a qualified Romanian labour law expert with a PhD degree in sports law and rendered the following expert opinion:

> Romanian labour law distinguishes two different kinds of service agreements, an employment contract and/or a civil convention. Only employment contracts are

subject to the automatic registration of claims under the Romanian insolvency law. In order to be qualified as an employment contract, such contract would have to meet various criteria, amongst them stipulations on a trial period, vacation days, the place of work and/or the working hours. Furthermore, as an employment contract, the contract would have had to be registered at the general register of employees, which did not take place. Accordingly the contract between the Player and the Original Club was to be interpreted under Romanian law as a civil convention, in line with the agreement's title. This is a common approach within the Romanian football system and there is no unethical circumvention of the players' rights as employees, because in return for being subject to a different legal regime, the players in return benefit from substantially lower taxes.

57. The Parties were given a full opportunity to present their case, submit their arguments and submissions and answer the questions posed by the Panel.

58. Before the end of the hearing, the Panel indicated that it plans to pose further questions to the expert witness Ms Zechiu, which in view of her ineligibility for another video conference within the hearing were to be conveyed to her in writing.

59. At the end of the hearing, the Parties confirmed that they were satisfied with the hearing and that their right to be heard had been fully respected.

60. Later on 6 July 2023, the CAS Court Office sent a letter to the expert witness Ms Zechiu, containing various further questions of the Panel to the expert witness.

61. On 2 August 2023, the expert witness Ms Zechiu sent her answers to the questions posed by the Panel to the CAS Court Office. In her answers, the expert witness *inter alia* stated:

> The administrator of the insolvency procedure is obliged to provide a list with the names and addresses of all creditors to the liquidator in a later bankruptcy procedure. The liquidator is obliged to send a notice to all creditors mentioned in such list about the opening of the bankruptcy procedure. Such notice would also be published in Romania in accordance with the applicable laws. Claims already registered within the insolvency procedure are registered automatically within the bankruptcy procedure. Accordingly, only claims arising after the opening of the insolvency procedure are relevant for the notification by the liquidator. In case a creditor was not properly notified by the liquidator, the creditor can request to be reinstated in his right by submitting an according request to court within 15 days from the moment he obtained the information about the opening of the bankruptcy procedure. Regarding the possible automatic registration of claims from employment contracts, it is her opinion that the legal administrator shall examine the nature of the contract based on the provisions of the Romanian national law only. For this purpose, claims for damages and claims for salary payments do not have the same regime, as damages do not represent wages but a compensation granted in favor of a party as a consequence of the other party's misconduct.

62. By letter of 3 August 2023, the CAS Court Office invited the Parties to comment on the further answers of the expert witness by 10 August 2023 at the latest.

63. On 11 August 2023, the CAS Court office sent a letter to the Parties containing the Appellant's comments on the expert witness' further answers as filed on 7 August 2023, and the respective comments of the First Respondent, filed on 10 August 2023. The Second Respondent remained silent in this regard.

V. THE PARTIES' POSITIONS

64. This section of the Award does not contain an exhaustive list of the Parties' contentions, its aim being to provide a summary of the substance of the Parties' main arguments. In considering and deciding upon the Parties' claims in this Award, the Panel has accounted for and carefully considered all of the submissions made and evidence adduced by the Parties, including allegations and arguments not mentioned in this section of the Award or in the discussion of the claims below.

A. The Appellant

65. In his Appeal Brief, the Appellant refined his request for relief as follows:

> *"The Appellant respectfully requests the CAS to:*
>
> *(a) set aside the FIFA DC Decision on the basis that the due diligence requirement should not apply to this dispute, or on the alternative basis that the Appellant was diligent in pursuing his credit against SC FC Rapid;*
>
> *(b) determine that FC Rapid 1923 has failed to comply with the FIFA DRC Decision; therefore, order FC Rapid 1923 to pay to the Appellant the amount of EUR 460,777, plus 5% interest per annum on that amount from 10 May 2014 until the date of effective payment.*
>
> *(c) should FC Rapid 1923 fail to comply with the above, impose on FC Rapid 1923 a ban from registering any new players, either nationally or internationally, until the date of effective payment;*
>
> *(d) impose any other available sanction on FC Rapid 1923 in order to ensure that the latter complies with the FIFA DRC Decision including, without limitation, a deduction of points and relegation to a lower division;*
>
> *(e) order the Respondents to: (i) reimburse the Appellant his legal costs and other expenses pertaining to this appeal; and (ii) bear any and all costs pertaining to the arbitration".*

66. The Appellant argued that the Panel should reach the above conclusions based on the following arguments:

- The due diligence requirement should not be applied to the Appellant's claim against the First Respondent.
- Such requirement has no statutory source in the FDC or in the FIFA RSTP. It rather stems from the jurisprudence of CAS (case CAS 2011/A/2646, *Club Rangers de Talca v. FIFA, "Rangers de Talca"*).

- The rationale behind this jurisdiction is that the creditor should not benefit if his conduct has contributed to the debtor's failure to comply with FIFA's adjudicative decision. However, considering the existing regulatory framework, and the way in which financial decisions are enforced within the structure of the football dispute resolution system, the imposition of the diligence requirement is flawed and furthermore such jurisprudence undermines the aim pursued by FIFA with the introduction of Article 15(4) FDC, which is to establish the FIFA DC as the forum to enforce decisions rendered by FIFA and/or CAS and to prevent clubs from avoiding their mandatory financial liabilities to football creditors.

- First, the obligation of the creditor to pursue his claim via the national insolvency systems is contrary to FIFA's intention to establish the FIFA DC as the main forum for the enforcement of adjudicative decisions of FIFA and CAS. Second, the due diligence requirement actively encourages, the practice of clubs 'disappearing' and then 're-emerging' as a separate legal entity because debtor clubs are aware that, in doing so, they will receive an additional level of protection in respect of their football creditors, that being the diligence requirement.

- In addition, the Appellant points to the circumstance that, despite being aware of CAS' longstanding jurisprudence, FIFA decided not to introduce the due diligence requirement into the FDC during its 2019 edition, which means that FIFA had the opportunity to codify the diligence criteria but opted not to. Thus, it is the Appellant's submission that, if FIFA had intended for the diligence criteria to be applied, it would have introduced it in its regulations expressly.

- Furthermore, there was no feasible theoretical possibility for the Appellant to recover his credit via the national insolvency proceedings. It was the debtor club's obligation to prove that the liquidation of its assets resulted in a sufficient surplus such that the recovery of the debt would have been feasible. Indeed, there is nothing to suggest that the Original Club's assets are sufficient to meet the Appellant's credit. Up to date, more than 10 years after the proceedings were first initiated, only ever 4 payments in the combined total amount of approximately EUR 21,619.38 were made in the context of the insolvency proceedings, all of which were made to the Original Club's judicial administrators.

- Subsidiarily, the Appellant was diligent in pursuing his credit. Such diligence does not necessarily require the creditor to register his claim within the national insolvency procedure, but should be made based on the specific circumstances of each particular case (see also CAS 2019/A/6461, para. 59).

- In particular, the CAS established that in various situations the registration of the claim was not required, such as

  - when it is legally or otherwise impossible to register a claim (see CAS 2019/A/6461, CAS 2020/A/6941),
  - when the creditor was unaware of the existence of the insolvency proceedings (see CAS 2020/A/6745) and/or
  - when, under the applicable national law, the claim is registered automatically within the insolvency proceedings (see CAS 2020/A/7543).

- All of the above applies to the case at hand.

- It was legally impossible for the Appellant to register his claim within the insolvency procedure because the deadline to do so elapsed on 22 January 2013 and the DRC Decision under which the Appellant was awarded the amount of EUR 460,700 plus interests, without which it was not permitted for the Appellant to register his claim, was rendered only on 11 June 2015, long thereafter. This was confirmed by CAS, in relation to this very insolvency procedure, in the case CAS 2021/A/7684, FC Rapid 1923 & FIFA v. Daniel Barioni (the "Barioni Case"). However, regarding all amounts due before the deadline on 22 January 2013, the Appellant timely registered such claims within the insolvency procedure and furthermore expressly reserved his right to claim the further amounts, as partially awarded by the FIFA DRC in 2015.

- Within the Romanian legal system, the Appellant would have been unable to claim the damages based on Article 17 FIFA RSTP and the Appellant would subsequently have been unable to file the claim at FIFA due to the *res iudicata* principle.

- Regarding the bankruptcy procedure initiated on 13 June 2016, the Appellant was entirely unaware of such procedure until September or October 2017 as he did not receive any notification about the opening of the bankruptcy procedure. Being based in Serbia and Cyprus at the respective time, the Appellant was not, and could not be expected to remain, aware of what was going on in Romanian football, 4 years after he left the country. As soon as the Appellant became aware of the resurgence of the Club, he requested the execution of the DRC Decision.

- The respective written statement of the Appellant's former agent, which was mentioned in the Appealed Decision, cannot be mistaken for an admission of the Player to have been lacking diligence. Neither can it amount to negligence on the Player's part that he claimed the damages against the Original Club only in 2014, given that no deadline was running and that the claim was filed within the limitation periods foreseen in the FIFA RSTP.

- In the alternative, the Appellant's claim was automatically registered within the insolvency procedure in accordance with Article 3 of the Romanian Insolvency Act, given that the Appellant was an employee of the Original Club. In this regard, the Appellant refers to the award in the Barioni Case in which the CAS panel held that the player's claims against the Original Club were to be considered automatically registered under Romanian insolvency law.

- Further, in response to the written opinion of Ms Zechiu of 17 July 2023, the Appellant noted that pursuant to Article 3(10) of the Romanian Insolvency Law:

  "Salary claims are claims arising from employment relationships between the debtor and his employees. These claims are registered ex officio in the claims table by the judicial administrator/liquidator."

- The liquidator could also register the credit of EUR 416,000 in the table. Indeed, he should have done so *ex officio*, following the jurisprudence in CAS

2020/A/7543, where the Sole Arbitrator found that a credit arising from an award for damages issued by the FIFA DRC in favour of the creditor player was registered *ex officio* in the Original Club's insolvency proceedings.

- The Agreement furthermore contains all *essentialia negotii* of an employment contract and must therefore be considered to constitute one. This remains true also in light of the testimony given by the expert witness as Romanian law was not applicable and as it was the will of the parties that the Agreement should be an employment contract.

- The Appellant's claim derives from the breach of the employment contract by the Original Club, *i.e.* from an employment contract.

B. The First Respondent

67. The First Respondent in its Answer requested the following relief:

"The First Respondent asks that the Appeal be dismissed, the FIFA DC decision be confirmed and that the Appellant be ordered to bear the entire costs of the arbitration and be ordered that he pay a contribution towards the First Respondent's legal costs."

68. The First Respondent argued that the Panel should reach the above conclusion based on the following arguments:

- The due diligence requirement is applicable to the case and the Appellant failed to meet it.

- The due diligence requirement stems from the jurisprudence of CAS and is applicable as such. CAS also rightfully held that no possible malicious intention around the formation of a new club to defraud the creditors of the old club of their claims was required to constitute their liability under the principle of sporting succession.

- In accordance with CAS jurisprudence, the diligence requirement is not met, if the creditor did not properly register his claim, but remained passive instead and it should at least be theoretically feasible that the creditor could have received a sum of his credit had he claimed it in the bankruptcy proceedings. Both conditions are met in this case.

- It is clear and not challenged by any party, that the Appellant was aware of the insolvency of the Original Club. However, despite this, the Appellant failed to pursue his claim to damages for more than another year and after being awarded damages by the FIFA DRC, he failed to register his claim within the insolvency procedure as current debt. During the entire period he remained entirely passive. He did not even follow the further progress of the Original Club and its insolvency, even though he had registered a claim within the insolvency, had a further 'new' claim and lived in a country directly adjacent to Romania. He also remained entirely passive after learning about the bankruptcy procedure. He did not request to be reinstated in his right, nor did he request the liquidator to pay any amounts of money to him.

- The Appellant, in accordance with the expert opinion provided by the expert witness, could have registered his claim within the insolvency procedure also without having obtained a FIFA award and accordingly, it is unexplainable why the Appellant chose not to register his claim within the procedure.

- Such claim would have been dealt with in an expedited procedure and it would have constituted 'new debts' and would accordingly have been treated in a preferred manner within the insolvency procedure. Given that the business of the Original Club was continued for several years before the bankruptcy procedure was opened, it is obvious that during this period the Original Club was indeed able to meet a considerable part of its economic obligations. Furthermore, the First Respondent paid an amount of EUR 400,000 in return for the rights and assets acquired from the Original Club. Accordingly, it would at least have been theoretically feasible that the Appellant could have received a sum of his credit had he claimed it in the bankruptcy proceedings.

- Unlike claimed by the Appellant, no exception from the due diligence requirement applies in this case. Namely, no exception applies to damages for breach of contract.

- Neither was the Appellant's claim registered automatically, as the Agreement did not constitute an employment contract under Romanian Law, as elaborated by the second expert witness, but rather a civil convention which is not subject to the automatic registration stipulated under the Romanian Insolvency Act.

- The Romanian Insolvency Act is applicable. The contractually agreed forum clause does not change that as the subject of this litigation is not the execution of the Player's contract, but the application of Romanian insolvency law.

- Contrary to the Appellant's allegations, the *Barioni Case* is not sufficiently similar to the case at hand for applying the rationale of the panel in that case, because in that case the player's claim was filed at FIFA already 3 years before the Original Club entered the insolvency proceeding and not 16 months thereafter, like the Appellant. Furthermore, in that case the player had concluded an employment contract with the Original Club and not a civil convention.

- The Appellant's bad faith is finally confirmed by the fact that he only claimed the money from the First Respondent in 2022, when the First Respondent's team was promoted to the first division in Romania, a full 5 years after the First Respondent started to compete in official competitions.

C. The Second Respondent

69. The Second Respondent in its Answer requested the following relief:

"Based on the foregoing, FIFA respectfully requests the Panel to issue an award:

(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".

70. The Second Respondent argued that the Panel should reach the above conclusion based on the following arguments:

- The due diligence requirement is applied consistently by all CAS panels to all cases in which sporting succession was triggered by an insolvency of the old club since *Rangers de Talca* without any exception.

- The creditor's due diligence requirement plays a crucial role in the two-step test in cases of sporting succession within which, after the sporting succession was established, it needs to be determined whether a sporting successor should be held liable for the obligations of the old club.

- It is evident that, once sporting succession has been established, a decision concerning a bankrupt club's debts might venture into the domain governed by foreign bankruptcy law because of which the Disciplinary Committee has to proceed carefully and perform further assessments before deciding that a certain credit can be satisfied. In this context, FIFA cannot disregard national insolvency/bankruptcy law and/or national court orders on the basis that it is not enforcing a decision against a bankrupt or insolvent club, but against a new club which is a separate entity not undergoing any bankruptcy or insolvency proceedings.

- The efforts made in sports jurisprudence, primarily by the CAS, to reconcile the purpose of foreign bankruptcy law with the objective envisaged in the FDC of the enforcement procedures shall not be undermined. In situations of bankruptcy, the creditors' actions serve the purpose of informing the bankrupt entity of the exact amount of the existing debt and create the necessary conditions so that the credit can be satisfied (at least in part) prior to any sanction being imposed on it. A sanction shall not be imposed if the creditor contributed to not removing the prerequisite leading to the sanction. If the creditor does not put himself in the situation to possibly be paid at a later point in time, he cannot request sanctions against the debtor or its sporting successor.

- The due diligence requirement does not undermine the aims pursued by FIFA within Article 15(4) FDC as FIFA needs to give proper consideration to national laws and public order prerogatives and the equal treatment principle enshrined in the national insolvency laws in any event.

- The specifics of sporting succession cases in the context of insolvency proceedings are also the reason why the due diligence requirement was not included in the version of Article 15(4) FDC, as not all sporting succession cases occur within the context of insolvency proceedings.

- The Appellant did not meet the due diligence requirement because he remained entirely passive regarding his claim throughout the entire insolvency and bankruptcy proceedings, even though he would have been able to claim or at least

to register his credits in the respective proceedings. The Appellant should and could have registered his claim already during the insolvency proceedings.

- The Appellant furthermore openly and expressly admitted through his agent, that he had not been diligent.

- The Appellant's references to various CAS cases fail, because these references are inapplicable to the matter at stake:

  - In CAS 2019/A/6461, it was legally impossible to register the claim because the liquidation procedure had already started 21 months before the respective DRC decision was issued, whereas in the present case the DRC Decision precedes the opening of the bankruptcy procedure by 2 months.

  - In CAS 2019/A/6941, it was argued that a claim to compensation for breach of an employment contract could not, as such, be registered within the national (Bulgarian) insolvency procedure, which is an argument which does not, and has not been argued to, apply to the current case in Romania.

  - The rationale in CAS 2020/A/6745 cannot be applied, because in that case the player had been unaware of the bankruptcy proceedings, whereas the Appellant was entirely aware of the insolvency and the subsequent bankruptcy proceedings.

  - In CAS 2020/A/7543, the creditor was not required to register his claim in the national insolvency proceedings because the claim was registered automatically, whereas this does not apply to the present case, where only a part of the Appellant's claims were registered in the insolvency proceedings whereas the claim which is at stake in the present proceedings was not.

- Also the *Barioni Case*, on which the Appellant relies heavily, does not apply to the present case. In the *Barioni Case*, the FIFA DRC procedure was already running for 3 years before the insolvency procedure was opened, however the creditor was never informed of this, while the Appellant was aware of the insolvency procedure from its very start and still only ever started the FIFA DRC procedure 16 months after the deadline to register claims within that procedure elapsed. Even more, the Appellant was awarded his claim by the FIFA DRC well before the bankruptcy procedure, of which he was aware, started and never became active, unlike the player *Barioni*, who actively negotiated with the Original Club about being paid.

- Regarding the Appellant's claim that he was not aware of the bankruptcy procedure because he was never notified of it, a reasonable and prudent creditor cannot simply rely on an alleged lack of information or news from a debtor's bankruptcy, but he should have actively verified the status of his debtor (or at least attempted to do so). The Appellant should have not simply and passively sat on his lack of information in that regard. The Appellant knew about the Original Club's difficult situation and should have kept a close eye on and monitor further development in light of the status of the Original Debtor. In other words, the Appellant should have been extra aware in light of future steps that need to be taken in order to protect its claims (see also CAS 2020/A/7280 & 7298, para. 107).

- However, the Appellant chose to remain entirely passive. He never reached out to the Romanian local authorities or to the RFF to enquire whether bankruptcy proceedings had been opened. Neither is there any evidence he ever contacted the judicial administrator. It is entirely within the realms of expectable developments that an insolvency procedure will later lead to a bankruptcy procedure, which makes it necessary to 'keep the finger on the pulse' and monitor the further development.

- When arguing that his claims should have been registered *ex officio* within the Romanian insolvency proceedings and to apply Romanian insolvency law accordingly, the Appellant should also accept that all other provisions of the Romanian insolvency law should be considered as well, namely the obligation of all creditors to request the registration of their claims for all credits born after the opening of the insolvency proceedings, such as the claim at hand. Furthermore, the circumstance that the claim was not registered *ex officio* shows that it did not fulfil the requirements for being automatically registered.

- Regarding the Appellant's claim that it was not at least theoretically possible and feasible that he could have recovered his claim in the bankruptcy proceedings as no monies were ever paid to any outside creditors, the Appellant overly relies on one isolated CAS award which needs to be read and understood within the specific circumstances of that case. As a general rule, there is always a feasible theoretical possibility to recover a credit if the credit is registered within an insolvency proceeding. This may not be evaluated retroactively (see also CAS 2020/A/7280 & 7298, para. 131).

VI. JURISDICTION

71. 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 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."

72. The FIFA DC is a legal body of FIFA. In addition, the Parties did not object to the jurisdiction of the CAS. It follows from all the above that CAS has jurisdiction to decide on the present dispute.

VII. ADMISSIBILITY

73. 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".

74. Pursuant to Article 57.1 of the FIFA Statutes:

> *"Appeals 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".*

75. The admissibility of the Appeal is not challenged. The Statement of Appeal also complied with the requirements of Articles R47, R48 and R64(1) of the Code, including the payment of the CAS Court Office fee.

76. It follows that the Appeal is admissible.

VIII. APPLICABLE LAW

77. Article 56.2 of the FIFA Statutes provides:

> *"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, subsidiarily, Swiss law".*

78. 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".*

79. The Panel therefore holds that primarily, the laws and regulations of FIFA, in particular the FDC, of which the 2019 edition was applicable at the time the Appealed Decision was rendered, are applicable to the case at hand. Any further reference to the FDC shall therefore be understood to mean the 2019 edition of the FDC.

80. Regarding the subsidiary application of national law, the Panel observes that the Parties did not make a choice in favour of any national law. However, the Appellant refers to Romanian national law as far as the insolvency and bankruptcy procedures are concerned. Indeed, the Panel notes that previous CAS panels acknowledged that for the determination of whether an insolvent debtor should be sanctioned (see CAS 2011/A/2646, para. 19; CAS 2012/A/2750, para. 168) and which diligence must be expected from a creditor in such circumstances, due consideration must be given to the applicable national insolvency laws. Accordingly, the Panel holds that Romanian insolvency law shall be applied for the evaluation of the options which were available to the Appellant and what behaviour was consequently to be expected from him to meet the due diligence requirement.

81. The Panel further notes, that, as far as the Appellant argues that his claim was or should have been registered automatically in the insolvency procedure in accordance with Article 3 of the Romanian Insolvency Act, such claim shall depend on the question

whether or not the Appellant and the Original Club had concluded an employment contract. The Parties disagree as to which law shall apply to this evaluation. While the Appellant prefers the application of Swiss law to such question and refers to the evaluation made by the CAS panel in the *Barioni Case*, the First Respondent argues that exclusively Romanian law shall apply to such question.

82. The Panel notes that the expert witness Ms Zechiu replied to the respective question of the Panel that "in her opinion" the legal administrator shall examine the nature of the Agreement based on the provisions of the Romanian national law only. The Panel notes that the expert witness did neither express a strong level of conviction in this regard nor provided any judicial or scholarly authorities in support of this claim. At the same time, the Panel, in its interpretation of Article 3 of the Romania Insolvency Act, turns its attention to the nature of such provision, which creates an exception from the general principle of *par conditio creditorum*, which entails that, as a general rule, all creditors shall be treated equally. In light of its exceptional nature, the Panel holds, that Article 3 of the Romanian Insolvency Act shall not be interpreted in an extensive manner. However, for the majority of the Panel, in light of the fact that the expert witness Ms Popescu convincingly elaborated that under Romanian law, there is a distinction between an employment relationship and a civil convention which involves the constant provision of services outside of an employment relationship, the Panel is led to assume that the Romanian legislator, when stipulating an automatic registration only in favour of people providing their services under an employment contract in the Romanian legal understanding, consciously and purposefully decided that people providing their services under a civil convention shall not profit from such treatment. The Panel finds its consideration confirmed by the circumstance that the scope of the Romanian Insolvency Act is the regulation of cases of insolvency taking place in Romania, which argues for the expectation that such provision would largely exclusively apply to labour relationships concluded and executed in Romania.

83. The Panel acknowledges that the FIFA DRC, in the DRC Decision from 11 June 2015, which later became final and binding, *inter alia* held that an employment contract was concluded between the Original Club and the Player. The Panel, under the assumption that the same contract template was used by the Original Club in both cases, furthermore agrees with the panel in CAS 2020/A/7543, paras. 130 *et seq.* and the DRC Decision that a contract with the content of the Agreement constitutes an employment contract under Swiss law. The Panel therefore needs to consider whether the DRC Decision does have a *res iudicata* effect on the legal nature of the Agreement.

84. However, the majority of the Panel notes that the scope of the DRC Decision was not to decide on the legal nature of the Player's contract under Romanian law, under which, as the Panel learned, two different forms of contract exist which are both to be considered an employment contract under the rules of Swiss law. In the DRC Decision, the general nature of the Agreement as an employment contract was solely relevant for establishing the judicial competence of the FIFA DRC under Article 22 lit. b) of the FIFA RSTP. Accordingly, for the purposes of the DRC Decision, the DRC neither delved nor was it required to delve into the particularities of Romanian labour law for a distinction of the two kinds of employment contracts which are possible under Romanian Law. The DRC Decision accordingly contains no position on such distinction. Therefore, even if the legal assessment of the Agreement as an employment contract by the FIFA DRC as a

preliminary legal question outside the operative provisions of the DRC Decision was at all capable of becoming a *res iudicata*, the majority of the Panel holds that such effect cannot extend to the distinction between the two possible kinds of employment contracts under Romanian national law for the purpose of the application of Romanian national insolvency law.

85. Therefore, the majority of the Panel holds that for the determination of the nature of the Agreement also Romanian law shall apply.

86. Accordingly, the Panel concludes that the laws applicable to this appeal are the FIFA regulations (principally the FDC), Romanian law for the Romanian insolvency procedure and the determination of the Agreement's nature and Swiss law (subsidiarily and to the extent necessary).

IX. MERITS

87. The FIFA DC's analysis of the sporting succession is not contested between the Parties in the present procedure. The Panel further finds comfort in this regard in the convincing elaborations of the CAS panel in the *Barioni Case* in this regard (CAS 2021/A/7684, paras. 128 *et seq.*).

88. Accordingly, the legal conflict in this procedure centres on two claims of the Appellant for each of which the Appellant provides several arguments. The Appellant argues that:

- the due diligence requirement shall not be applicable, at least in the present case; and
- subsidiarily, even if the requirement was applicable, that the Appellant had acted with the required level of diligence to warrant a sanction on the First Respondent.

1. Applicability of the Due Diligence Requirement

89. The Appellant argues that the due diligence requirement shall not apply because it was not incorporated into the new Article 15(4) FDC and because its effect contravenes the goal pursued by Article 15(4) FDC, which is to ensure that no debtor can avoid its credit by disappearing and re-emerging as a new club.

90. The Respondents agree that the due diligence requirement shall be applicable as accepted by all CAS panels since the *Rangers de Talca* case. In particular, the Second Respondent argues that cases of sporting succession do not necessarily involve the insolvency of the old club, which is why the due diligence requirement was not incorporated into the new Article 15(4) FDC.

91. The Panel firstly notes that in the context of sanctions for non-obedience with a judicial award, it must be taken into account whether the debtor was legally prevented from complying with the decision (see CAS 2012/A/2750, para. 168). The Panel concludes from this not only that it needs to take into account the applicable rules of national insolvency law or other applicable legal regimes when evaluating the conduct of both the creditor and the debtor, but also that a sanction against a debtor can be related to the debtor's ability to comply with an award.

92. *Vice versa*, the Panel notes that in further previous jurisprudence the ability to request a sanction against a debtor was rejected if the creditor was found to have contributed to the respective non-compliance or at least to the likelihood of non-compliance (see *inter alia Rangers de Talca*, CAS 2011/A/2646, para. 30; CAS 2019/A/6461, para. 59), in particular when the creditor did not make use of its rights under the applicable national insolvency laws.

93. The Panel concurs with this reasoning. A creditor who is in the position to improve the odds of obtaining at least a part of his credit and then fails to act accordingly, negligently contributes to the likelihood of the very events on which he bases his claim to sanctioning his debtor. In such circumstances, it may be unjust to award the creditor with a claim to impose sanctions on the debtor.

94. Furthermore, the Panel agrees with the Second Respondent that it cannot necessarily be drawn from the omission of FIFA to codify the due diligence requirement when Article 15 FDC was revised, because not all cases of sporting succession do involve situations of insolvency. The Panel, to the contrary, also observes that FIFA did not choose to incorporate a rule into the FDC which would clarify that the due diligence requirement was not applicable any longer, despite this being consistent CAS case law. In the absence of a clear indication of the lawmaker's intention in this regard, the Panel observes that the parties' interests deserving legal protection and the validity of the considerations described in paras. 92 *et seq.* above have remained unchanged. The Panel therefore considers it adequate to continue to apply the due diligence requirement to cases of sporting succession involving an insolvency of the old club.

95. The Panel accordingly concludes that the due diligence requirement is applicable to the current case.

2. Did the Appellant act sufficiently diligent?

96. The Appellant further argues that even if the due diligence requirement applies – which the Panel held it does, as established above – he was sufficiently diligent to justify that a sanction shall be imposed on the First Respondent, despite not having registered the credit at stake in either the insolvency (should he needed to do so) or the bankruptcy procedure. The Panel acknowledges that the Player did register the arrears credit in the insolvency procedure, however, it is not contested that he did not register the compensation credit for EUR 460,700 in the bankruptcy procedure.

97. As a general rule, under the due diligence requirement a creditor is expected to register his credit within an insolvency procedure in order to be considered in the distribution of the debtor's remaining property (see *Rangers de Talca*, para. 27 *et seq.*; CAS 2020/A/7280 & 7298, para. 130).

98. The Appellant mainly bases the claim that in the present case it was not necessary to register his claim in either the insolvency or the bankruptcy proceedings on the rationale that the due diligence requirement was applicable only in reference to the specific circumstances of each case and that in line with this finding, CAS jurisprudence developed several categories of exceptional circumstances under which the registration of a credit is not required for the fulfilment of the due diligence requirement which are applicable to the case at hand.

99. Namely, the Appellant suggests that the registration of his credit against the Original Club was not necessary for the following reasons:

- there was no feasible theoretical possibility of recovering his credit via the insolvency proceedings,
- the claim was registered *ex officio* under the applicable Romanian insolvency law,
- it was legally impossible to register the claim in the insolvency procedure as the DRC Decision was rendered more than two years after the registration deadline elapsed, and
- it was legally impossible to register the claim in the bankruptcy procedure as the Original Club's liquidator failed to inform the Appellant of the bankruptcy procedure and the deadline to register any credits within it.

100. The Panel agrees with the Appellant in so far as indeed it is long-standing CAS jurisprudence that each case must be evaluated individually when examining the required conduct of a creditor under the due diligence requirement (see *inter alia* CAS 2019/A/6461, para. 59).

101. As a preliminary remark, the Panel emphasizes that neither a remark in an internal investigatory report of FIFA nor a statement of the Player's agent can serve as proof for the existence or the lack of the required degree of diligence. The Panel shall therefore examine and evaluate the Appellant's conduct on its own, based solely on the evidence and arguments presented in the current procedure.

102. The Panel further notes that some of the aforementioned arguments contradict each other, as the credit cannot have been both automatically registered and been legally impossible to register. The Panel accordingly understands the Appellant's arguments to apply alternatively, with the logical order being that the Appellant primarily argues that the credit was indeed registered prior to it being necessary to examine whether it was legally impossible to be registered in case it is not found to have been registered automatically.

a) Was there no feasible theoretical chance of recovering the credit?

103. In order to justify his claim that he did not need to register the claim in line with CAS 2019/A/6461, as there was no feasible theoretical chance of recovering his credit, the Appellant draws the Panel's attention to the fact that until today, only the comparatively low total combined amount of about EUR 21,619.38 was ever distributed out of the Original Club's property, with none of this amount having been distributed to the Appellant or any other creditors, but only to the administrators of the Original Club.

104. The Panel does not agree with this position.

105. Firstly, the Panel notes, that the Original Club remained operative for more than three full years after the insolvency procedure was initiated, meaning that during this time the Original Club was obviously able to cover at least a certain degree of its obligations.

106. As the expert witness Ms Zechiu convincingly expressed, any obligations created after the initiation of the insolvency procedure enjoy a preferred status under Romanian

insolvency law as opposed to the obligations created prior to that date. Accordingly, the Appellant's credit at hand would have enjoyed such preferred status, which would have resulted in a very feasible theoretical possibility to recover at least part of his credit.

107. Secondly, the Panel agrees with the Sole Arbitrator in CAS 2020/A/7280 & 7298, who stated:

> *"The Sole Arbitrator remarks that the "feasible theoretical possibility" concept follows from the CAS jurisprudence (see, inter alia, CAS 2011/A/2646, CAS 2019/A/6461 and CAS 2020/A/6884), to which he also fully adheres. [...]*
>
> *Although the Appellant argues that no funds were distributed to the creditors, the Sole Arbitrator wishes to emphasise that, even if this were true, this is, usually, not yet know at the moment bankruptcy proceedings start. Therefore, this cannot be retroactively invoked as a valid reason for the Appellant not to have submitted his claims. In fact, at the specific point in time, i.e. the moment when the bankruptcy proceedings were opened, this was not clear. This might have been different in case it is undisputed that, at the relevant moment in time, no funds would be distributed, but it is the responsibility of the Appellant to demonstrate this, which he failed to do".*
> (see CAS 2020/A/7280 & 7298, paras 130 *et seq.*)

108. The Panel notes, that also in the current case the Appellant failed to show that, either in the insolvency procedure or the later bankruptcy procedure, it was obvious from the start that no money would be distributed, even though the Panel agrees that at least regarding the bankruptcy procedure there was a particularly low likelihood, which however in the Panel's view does not suffice to dispense the Appellant entirely of the requirement to properly register his credit. Indeed, the Panel noted that at para 27 of the DRC Decision, there was a reference to the Player having actually received two payments against the arrears credit, albeit only in the sum of approximately EUR 630.

109. Therefore, the Panel holds that the Appellant cannot claim that registering the credit was not necessary due to a lack of a feasible theoretical possibility to recover his credit.

b) Was the credit automatically registered under Romanian insolvency law?

110. The Appellant argues that his credit was, or at least should have been, registered *ex officio* in accordance with Article 3 of the Romanian Insolvency Act, because the Appellant was an employee of the Original Club.

111. The Panel in principle concurs with the Appellant's view that in case the Appellant's credit was or should have been registered automatically, a creditor would no longer be expected to register his claim, irrespective of whether it was duly registered or if it was not registered despite the according stipulation (see also CAS 2020/A/7543, para. 133 *et seq.*)

112. Accordingly, the majority of the Panel determines that an evaluation of the Appellant's legal argument requires the examination whether the Agreement constituted an employment contract.

113. The Appellant argues that this is the case and points to the award in the case CAS 2020/A/7543, in which the panel held that a 'convention' concluded between the Original Club and another player, which appears to have been largely comparable or even largely identical with the Agreement, constituted an employment contract under Swiss law (see CAS 2020/A/7543, paras. 128 *et seq.*).

114. The Panel agrees with the panel in CAS 2020/A/7543, para. 130 *et seq.* and the DRC Decision that a contract with the content of the Agreement constitutes an employment contract under Swiss law.

115. However, as elaborated above in paras. 80 *et seq.*, the majority of the Panel has come to the conclusion that Romanian law shall apply to the question whether a contract is to be classified as an employment contract under Article 3 of the Romanian Insolvency Act.

116. Regarding the Romanian labour law, the expert witness adduced by the First Respondent, Ms Popescu, elaborated in writing and orally that a legal distinction is made under Romanian law between employment contracts and civil conventions. The latter may also govern the provision of services outside of an employment relationship, but are not considered employment contracts under Romanian law and are accordingly not subject to the Romanian rules applicable to employment contracts.

117. According to the expert witness' assessment, the Agreement should not be regarded as an employment contract, but as a civil convention – which would not be subject to the rules stipulated in Article 3 of the Romanian Insolvency Act. In particular, the expert witness argued that the Agreement lacked several stipulations which are required for a contract to be considered an employment contract, such as stipulations on a trial period, vacation days, the place of work and/or the working hours. Furthermore, the expert witness stated that, as an employment contract, the Agreement would have had to be registered at the general register of employees, which did not happen in the case at hand.

118. The expert witness further explained that the prospective employees under Romanian law also had one incentive to conclude a civil convention in place of an employment contract, which is a considerably lower tax rate.

119. The Panel in its evaluation of the expert witness' testimony took note that the expert witness appeared to be sufficiently qualified to render her testimony on the subject at hand. Further, the Panel noted that the Appellant did not attempt or manage to reduce the testimony's probative value by offering conflicting legal opinion by a qualified Romanian lawyer or with reference to any Romanian judicial or scholarly authorities.

120. Furthermore, the Panel notes that the Agreement is headed 'Civil Convention…', which the Panel considers to be a strong indication that under a national legal regime which allows for the conclusion of such contract, both parties to the contract intended to conclude this type of agreement.

121. Finally, the Panel considers that the conclusion of a civil convention in place of an employment contract was not only in the Original Club's best interest, but also led to a substantially lower taxation for the Appellant who therefore benefitted from this approach as well in return for sacrificing some of the legal benefits which exclusively

apply to employment contracts, such as the applicability of Article 3 of the Romanian Insolvency Act.

122. Therefore, the majority of the Panel concludes that the Agreement is not to be considered an employment contract under the applicable rules of Romanian labour law and that consequently, Article 3 of the Romanian Insolvency Act does not apply to the current case, resulting in the Appellant's claim not having to be registered *ex officio* in the insolvency procedure of the Original Club.

123. In accordance with the aforementioned, the Appellant cannot argue successfully that due to the applicability of Article 3 of the Romanian Insolvency Act he did not have to register his credit in either the insolvency or the bankruptcy procedure.

c) Was it legally impossible to register the claim in the insolvency procedure?

124. The Appellant claims that it was legally impossible to register his claim in the insolvency procedure, because at the time the deadline to register credits within the procedure elapsed on 22 January 2013, he had not yet obtained an adjudicatory decision which established that he was entitled to receive compensation for breach of contract from the Original Club, as the DRC Decision was not rendered until 11 June 2015.

125. The Appellant specifically refers to the *Barioni Case* in which the required diligence was assumed in a case in which the player also had failed to register his credit because he had not yet obtained a legal decision on his claim when the deadline for registering claims in the respective insolvency procedure passed.

126. The Second Respondent, in turn, argues that unlike in the present case, in the *Barioni Case*, the FIFA DRC procedure was already running for 3 years before the insolvency procedure was opened, about which the creditor was never informed, while the Appellant in the present procedure was aware of the insolvency procedure from its very start and still only ever started the FIFA DRC procedure 16 months after the deadline to register claims within that procedure had elapsed. Further, unlike the player *Barioni*, who actively negotiated with the Original Club about being paid, the Appellant remained passive outside the FIFA DRC procedure.

127. In its evaluation of the aforementioned arguments of the respective Parties, the Panel notes that the events giving rise to the Appellant's claim against the Original Club, the contract termination declared on behalf of the Original Club on 13 December 2012, occurred before the deadline to register credits passed on 22 January 2013. Accordingly, the Panel finds that after 22 January 2013, it was indeed legally impossible to register the Appellant's credit within the insolvency procedure.

128. However, the Panel notes that this is the self-evident consequence in any insolvency procedure after the applicable deadlines have passed and that accordingly, the legal impossibility to register a claim after the registration deadline has passed cannot *per se* be a justification for not registering a credit, as otherwise all creditors who failed to register their credits could resort to this argument by simply never registering their claims. Accordingly, the Panel concludes that the legal impossibility to register a claim

in an insolvency procedure only matters with respect to the due diligence requirement, if such legal impossibility also already existed before such deadline passed.

129. In this regard, the Appellant argues that this was the case, as he had not yet obtained the DRC Decision in which his claim was confirmed and which subsequently became legally binding between the Appellant and the Original Club.

130. The Appellant's position appears to be confirmed in the case CAS 2019/A/6461, where the panel held in para. 60 that

> *"[...] the Panel finds that the Creditor Club could not have done much differently [...]. It is evident that whilst the DRC proceedings were pending, the Creditor Club had no opportunity to timely register his claim in the liquidation proceedings".*

131. The Panel however notes, that in the case CAS 2019/A/6461, an Estonian club was the debtor and that accordingly, Estonian insolvency law applied to that case. In the case at hand however, Romanian insolvency law applies and it needs to be determined under Romanian insolvency law whether it was impossible to register the credit because the Appellant had not yet obtained the DRC Decision.

132. In that respect, the expert witness Ms Zechiu stated that under Romanian insolvency law it is possible to register a claim which is not yet adjudicated, and laid out the procedure which would follow, should the administrator reject such credit. In such case, the creditor would have the option to appeal this finding before the Romanian court, where he could also invoke a deviating forum clause, according to which the Romanian courts lacked competence to adjudicate the claim in favour of another jurisdiction, such as FIFA jurisdiction.

133. The Panel in its evaluation of the expert witness' testimony took note that the expert witness appeared to be sufficiently qualified to render her testimony on the subject at hand. Further, the Panel noted that the Appellant did not attempt or manage to reduce the testimony's probative value by offering any conflicting legal opinion by a qualified Romanian lawyer or with reference to any Romanian judicial or scholarly authorities. The Panel therefore feels comfortable to trust the expert witness' expertise and to accept her testimony as an accurate representation of the content of the applicable Romanian law.

134. The Panel therefore finds that it was in principle possible for the Appellant to register his credit against the Original Club within the applicable deadline of the insolvency procedure. However, the Panel also recognizes that the credit (the award of compensation from the DRC Decision) was sent to the Original Club and the administrator, who decided to initially appeal that decision to CAS, before it ultimately became final and binding, pursuant to the respective CAS' termination order.

135. Having reached this conclusion, the Panel remains aware that a football creditor who bases his claim on Article 17 RSTP - *i.e.* a stipulation within a regulation issued by a Swiss private association which contains rules which are very specific to the football business and which was the result of an extensive legislative process within which all relevant stakeholders were properly represented - may have difficulties to invoke claims on such basis in the context of a procedure at a national state court, given that the latter

will be used to apply its national labour law with its possible restrictions on the freedom of contract, with little or no understanding for the particularities of the football business and against a debtor who, as the local football club, will likely enjoy a highly emotional public support within the local community of the court's seat.

136. Under such circumstances, the Panel considers it highly questionable whether the due diligence requirement applicable in the context of Article 15(4) FDC requires a creditor to expose himself to the elevated risks of that kind of legal procedure, if such procedure is the only forum available to the creditor in case he registers his credit on time within the insolvency procedure.

137. However, as the Panel notes, the expert witness elaborated that also within the local court procedure a creditor is entitled to claim the local court's incompetence to hear the case in case of a valid deviating forum clause. Such clause was agreed on within the Agreement, para. 10 of which reads:

> *"Any dispute arising between the Parties from or in connection with the present convention, including its validity, interpretation, execution or abolition, shall be solved amiably. If the Parties cannot reach to an amiable solution, then the litigations shall be solved by the bodies having jurisdictional competences of the Romanian Football Federation, the Romanian Football League, FIFA or TAS, and resolved in accordance with the Code of Sports-related Arbitration".*

138. The aforementioned clause constitutes a valid forum clause, by which, in the Panel's interpretation of the clause, the FIFA DRC gained the competence to hear the case at the expense of the Romanian courts.

139. Accordingly, the majority of the Panel holds that the commencement of a legal procedure at a local Romanian court was not the only option available to the Appellant in case of a rejection of the Appellant's claim by the Original Club's administrator, should the Appellant, as was possible for him (see para. 134 above), have registered his credit within the applicable deadline.

140. The Panel further considers that the Appellant was in principle aware of the aforementioned legal situation as well as both the necessity to act and the applicable deadlines for doing so. The Appellant's express reservation of his right to claim the relevant credit in his letter dated 21 January 2013 further shows that the Appellant was perfectly aware of his existing credit against the Original Club at the time. Each national insolvency law contains a very formalized and rigid system of rights and obligations for all affected parties, and in line with the general principle of *par conditio creditorum*, it is aimed at treating all creditors equally, which also leads to the conclusion that each creditor must in principle be held responsible for his own legal or procedural errors.

141. The majority of the Panel therefore finds that the Appellant did not show the required degree of diligence when not registering his credit on time within the insolvency procedure.

d) Was it legally impossible to register the claim in the bankruptcy procedure?

142. The Appellant claims that it was legally impossible to register his claim also in the bankruptcy procedure, because at the time the deadline to register credits within the procedure elapsed, *i.e.* on 28 July 2016, he had not yet been aware of the opening of the bankruptcy procedure.

143. In support of his argument the Appellant resorts to CAS 2020/A/6745, paras. 86 *et seq.*, where the sole arbitrator, at para. 88, stated:

> *"88. The Sole Arbitrator deems it undisputed that the Appellant did not participate in the Old Club's bankruptcy proceedings initiated in Uzbekistan on 17 April 2017 and therefore did not file his credit in said proceedings. However, the Sole Arbitrator also considers proven that (i) the Player left Uzbekistan well before the Old Club was declared bankrupt and (ii) the Appellant did not get aware about said bankruptcy proceedings until FIFA forwarded him the letter sent by the UFA on 22 March 2019, that is to say well after the FIFA disciplinary proceedings started. On the contrary, the fact the Old Club, on 27 July 2017 (that is to say, months after the beginning of the bankruptcy proceedings in Uzbekistan) requested FIFA an extension of the deadline to comply with the payment obligation until 30 November 2017 logically created on the Player the impression of the Old Club's willingness to pay, and not that bankruptcy proceedings were being conducted and that in short, a Court decision approving the liquidation of the Old Club would be issued (which happened on 18 August 2017). It is important to contextualize that when the Old Club, in said communication of 27 July 2017, requested the extension to make the payment, the bankruptcy proceedings were already open in Uzbekistan from at least on 17 April 2017 in accordance with the documentation produced to the file. Therefore in said communication of 27 July 2017 the Old Club could have perfectly informed (and in good faith should have informed) the Appellant and FIFA of the existence of said bankruptcy proceedings, thus enabling the Player to take the appropriate decisions in this respect, but the Old Club failed to do this, and created the legitimate expectation on the Player that at some point it would be paying the amounts due, as an extension of payment was being requested. The Sole Arbitrator considers that this is a clear reprehensible conduct by the Old Club and that cannot jeopardize the Player's position. Holding the contrary would mean, in the Sole Arbitrator's opinion, to infringe the doctrine of estoppel which has been extensively acknowledged by the CAS in inter alia, the awards CAS 2008/O/1455 and CAS 2002/O/410".*

144. For the purpose of the present procedure, the Panel notes that the Appellant's allegation that he was unaware of the Original Club's bankruptcy until late 2017 was not contested by any of the Respondents and shall therefore be considered fact. The same applies to the Appellant's allegation that he was never informed of the opening of the bankruptcy procedure by the Original Club's liquidator.

145. The Panel at the same time considers that not every unawareness of an ongoing bankruptcy procedure can excuse a creditor for not having registered his credit on time within such procedure. The Panel notes that also in the case cited by the Appellant there was an additional factor which played a decisive role in triggering the sole arbitrator's verdict, namely the old club's conduct of sending a letter which comprehensibly created

the creditor's expectation that his credit would be paid, even though the bankruptcy procedure had already been running for 17 days.

146. A reason for considering the Appellant's unawareness worth of legal protection in the case at hand could in the Panel's view lie in the fact that the Appellant was never officially informed of the bankruptcy procedure by the liquidator, provided indeed the liquidator was legally obliged to inform the Appellant accordingly.

147. In this regard, the Panel again refers to the view of the expert witness Ms. Zechiu, who responded to this question in writing that the liquidator, upon having received a list with the names and addresses of all creditors from the administrator of the insolvency procedure, is obliged to send a notice about the opening of the bankruptcy procedure to all creditors mentioned in such list. Such notice would then also be published in Romania in accordance with the applicable laws. She further informed the Panel that claims already registered within the insolvency procedure are registered automatically within the bankruptcy procedure. The Panel noted that the administrator later on became the liquidator, so it assumes that his list already existed or did not need to be formally sent in such circumstances.

148. On the basis of the testimony of the expert witness, the Panel concurs that there was indeed a legal obligation on the liquidator to inform the Appellant about the opening of the bankruptcy procedure because in 2015, the Appellant was awarded damages for the breach of contract in the DRC Decision, a decision which became final and binding in April 2016, *i.e.* well before the bankruptcy procedure was opened and this was fully known to the administrator, who even filed an appeal against the DRC Decision before the CAS.

149. Accordingly, the Panel finds that a legal mistake was made by the liquidator on behalf of the Original Club which led to the Appellant's lack of knowledge of the bankruptcy procedure and the deadline applicable to register claims within it. When the Appellant learned of the bankruptcy procedure, such deadline had long passed.

150. In determining the level of protection which must be awarded to the Appellant in the aforementioned circumstances, the Panel turns to the question, whether the Appellant was realistically able to cure such mistake in his favour.

151. The expert witness Ms Zechiu stated that in case a creditor was not properly notified by the liquidator, the creditor can request to be reinstated in his right by submitting a respective request to court within 15 days from the moment he obtained the information about the opening of the bankruptcy procedure.

152. The Panel therefore considers that the Appellant indeed had the opportunity to be reinstated in his right, by submitting an respective request to the Romanian Courts within a period of 15 days after learning about the bankruptcy procedure. However, the Appellant, who was unaware of such opportunity and the urgency to act, did not file a respective request. After the expiry of the 15 days deadline, it was legally impossible for the Appellant to register his credit within the bankruptcy procedure.

153. Accordingly, the Panel needs to evaluate, whether the due diligence requirement is met, given that not only the liquidator's omission led to the Appellant's legal impossibility to

register the credit, but also the Appellant's own omission to take the required legal steps to remedy the situation in due time.

154. The Panel is reluctant to apply a formal benchmark to such question, given that a large variety of circumstances may lead to a respective situation. Therefore, the Panel considers that the failure to request a reinstatement into the previous state within an applicable deadline of 15 days does not *per se* render a creditor's conduct negligent. Instead, the Panel considers the circumstances of the specific case to be of great importance for the determination of the applicable standard of diligence in each specific case.

155. In the case at hand, there are various arguments beyond the formal expiry of the applicable deadline to request reinstatement to consider whether the Appellant was negligent in the pursuit of his interest following his claim at the FIFA DRC.

156. Namely, it appears that the Appellant did not hire a lawyer or ensured by any other means that he would stay informed on the progress of the insolvency, despite being entirely aware of the latter. However, in light of the Original Club's insolvency and the limited chances of a substantial payout in the particular situation of this case, it must have appeared highly questionable to a prudent creditor whether investing considerable further financial mean into *e.g.* lawyer's fees, with little expectation on an adequate return, would be in the prudent creditor's interest. Indeed, the Panel holds, that a creditor should have certain discretion whether an investment, which is subject to such kind of obvious risk is or is not in his best interest. A diligent creditor is not obliged to throw good money after bad.

157. Further, the Panel observes that the Appellant, at no point after the DRC Decision was awarded or had become final and binding, contacted the Original Club demanding payment of the awarded amount. However, the Panel also considers that the Original Club's first administrator appealed the DRC Decision before the CAS, rendering moot any payment request that may have been made before the DRC Decision became final and binding. As the DRC Decision only became final and binding in April 2016, i.e. only two months before the bankruptcy procedure was opened with the prospect of liquidating the Original Club, following almost four years of insolvency administration, any payment request against the Original Club would most likely not have resulted in any payment. The Panel therefore holds, that the only effect such request would have had was to ensure that the administrator/liquidator was aware of the Appellant's credit and the DRC Decision. The Panel however considers such awareness already established in light of the administrator's/liquidator's knowledge of the appeal to CAS, that was lodged by his predecessor against the DRC Decision, and the closure of that procedure in April 2016, of which the administrator/liquidator was duly informed by the CAS Court Office. Therefore, the Panel considers that a possible payment request of the Appellant would not have sufficiently raised the likelihood of the legally required bankruptcy notification by the liquidator to the Appellant to consider the Appellant's omission as relevant in the evaluation of his diligence for the purpose of the current procedure.

158. The Panel further notes that the Appellant did not just narrowly miss the deadline for requesting to be reinstated to the previous state – he did not file any according request at

all nor did he ever submit any other communication to the Original Club or its liquidator. Only after several years, in May 2022, the Appellant filed a request that the Club shall be held responsible for the Original Club's debt and be sanctioned in accordance with Article 15(4) FDC. The Panel therefore notes that the shortness of the window of opportunity that arose for the Appellant for just 15 days following the day he learned of the bankruptcy was not decisive for the legal impossibility to register the creditor upon the deadline's expiry, as the Appellant would neither have met any longer deadline, given that he never filed a respective request. However, the Panel also considers that such step, if taken after the deadline's expiry, would in any case not have had any legal effect. The Panel therefore considers it excessive to demand of a creditor that he shall file legal requests for which the deadline has already expired as a prerequisite of diligent conduct.

159. Therefore, the Panel holds that mainly, and actually only, the fact that the Appellant did not file a request to be reinstated within the applicable deadline of 15 days after he gained knowledge of the bankruptcy procedure can be held to argue in favour of denying that the Appellant's conduct met the applicable diligence standard. The Panel considers this aspect as quite important and of considerable weight, but not sufficient important that it would necessarily predetermine the outcome of its evaluation.

160. On the other side, the Panel also finds that there are several aspects which can be argued in favour of the Appellant in this evaluation.

161. Firstly, the Panel feels that it must be taken into account that the Appellant is a football player and a legal layman of whom it cannot be expected to be aware of legal remedies such as a request for being reinstated in the previous state and the applicable deadline, even less so of any such remedy within the legal system of a country of which he is not a citizen and in which he does not reside. The only possibility for the Appellant to meet the applicable requirements for his request would have been if he had immediately consulted a lawyer with sufficient knowledge of Romanian insolvency law. However, not only would such step already require a certain degree of legal awareness which the Panel considers bold to require from a layman, but also the Appellant would have had to inquire first in order to find a sufficiently specialized attorney to mandate and finally, the Panel returns to the consideration from para. 156 above that in the particular circumstances of the case at hand it would consider it excessive to demand from the Appellant to invest further money in hiring legal advice in order to acquire a formal status within a running liquidation procedure, given that at this advanced point in time, there was hardly any chance of recovering such investment from any possible payout.

162. Secondly, the Panel reminds that the administrator/liquidator was in general entirely aware of the Appellant's credit, given that he himself had appealed the DRC Decision granting the Appellant such credit to the CAS, on behalf of the Original Club. Furthermore, all parties of that procedure received the termination notice by the CAS Court Office in April 2016, *i.e.* only two months before the bankruptcy procedure was opened and before the Appellant should have been informed about such fact by the liquidator. Furthermore, as the administrator later became the liquidator, there was no danger that the administrator might forget to inform the liquidator of the Appellant's claim in line with the legal requirements under Romanian insolvency law. Furthermore, the Appellant did not remain entirely passive but actively filed a claim with the FIFA

DRC whose decision was later even appealed by the previous administrator on behalf of the Original Club, rendering any possible unawareness of the administrators or the liquidator highly unlikely and negligent. The illegal omission of the liquidator must therefore be considered negligent and as the legal representative of the Original Club at that time, such negligence must in the Panel's view also be attributed to the Original Club.

163. Comparing the degrees of negligence of the Appellant and of the liquidator which led to the unfortunate outcome that the Appellant remained unaware of the opportunity and obligation to register his credit and of the legal remedy available to him after the first deadline expired, the Panel comes to the conclusion that the liquidator's negligence weighs substantially higher than the Appellant's failure to immediately seek qualified legal advice.

164. This insight leads the Panel to the conclusion that the Appellant, in this specific case, could not be expected to request his reinstatement within the applicable deadline to meet the due diligence requirement applicable under Article 15(4) FDC. The legal impossibility for him to register his credit can therefore not be attributed to his negligence. Accordingly, the Panel holds that in the context of the bankruptcy proceeding, the Appellant acted with the required level of diligence.

3. Sporting Succession

165. In the Appealed Decision, the FIFA DC held that the Club must be considered to be the sporting successor of the Original Club.

166. This finding was not disputed by the Club in the current procedure with any particular argument. This finding was further reached also in an earlier decision of the FIFA DC and consequently confirmed by CAS in the *Barioni Case*.

167. The Panel in this respect concurs with the views of the FIFA DC and the CAS Panel in the *Barioni Case* for the reasons specified in the Appealed Decision and in the CAS award in the *Barioni Case*.

168. The Panel therefore considers the Club to be the sporting successor of the Original Club in the understanding of Article 15(4) FDC.

4. Conclusion

169. Accordingly, the Panel holds that the Club is the sporting successor of the Original Club, that the Player met the required standard of diligence in the bankruptcy proceedings and that the Club did so far not pay to the Player the amount owed to the Player by the Original Club in accordance with the DRC Decision.

170. The Panel therefore holds that all requirements for a sanction of the Club under Article 15 FDC are met.

171. As the Appealed Decision held that no sanction shall be imposed, the Appeal must be upheld and the Appealed Decision shall be set aside. The Panel shall therefore apply

Article 15 FDC to the case, including the granting of a final grace period before the sanctions foreseen in Article 15 FDC would apply.

X. COSTS

172. Article R64(4) of the Code provides that:

> *"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".*

173. Furthermore, Article R64(5) of the Code provides that:

> *"In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall state 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".*

174. Having taken into account the outcome of the present arbitration proceedings, in particular the fact that the appeal by the Appellant has been upheld, the Panel finds that the costs of the arbitration, to be determined and served to the Parties by the CAS Court Office, shall be borne by the two Respondents in equal parts.

175. Finally, pursuant to Article R64.5 of the Code and in view of the outcome of the proceedings, as well as the conduct and the financial resources of the parties, the Panel rules that the Respondents shall bear its own costs and legal fees and pay a contribution towards the Appellant's legal fees and other expenses incurred in connection with the present proceedings in the amount of CHF 2,000 each, whereas the Respondents shall bear their own legal fees and expenses.

ON THESE GROUNDS

The Court of Arbitration for Sports rules that:

1. The appeal filed on 14 December 2022 by Mr Milos Pavlovic with the Court of Arbitration for Sport with respect to the decision issued on 20 October 2022 by the FIFA Disciplinary Committee is upheld.

2. The decision issued on 20 October 2022 by the FIFA Disciplinary Committee is set aside.

3. It is determined that FC Rapid 1923 SA has failed to comply with the Decision of the FIFA DRC taken on 11 June 2015 in the procedure no. 14-00912.

4. FC Rapid 1923 SA is granted a final deadline of 30 days, calculated from the notification of this award to FC Rapid 1923 SA, to pay to Mr Milos Pavlovic an amount of EUR 460,700 plus 5 % p.a., as from 10 May 2014.

5. In case of FC Rapid 1923 SA's failure to comply with the obligation to pay the aforementioned amount in full within the granted deadline, a ban from registering any new players, either nationally or internationally, is imposed on FC Rapid 1923 SA which shall be valid until the date of effective payment of the full amount.

6. The costs of the arbitration, as determined by the CAS Court Office and served separately on the Parties by the CAS Court Office, will be borne by FC Rapid 1923 SA and FIFA in equal parts.

7. FC Rapid 1923 SA and FIFA are ordered to pay to Mr Milos Pavlovic a contribution towards his legal fees costs and other expenses incurred in connection with these proceedings in the amount of CHF 2,000 (two thousand Swiss francs) each.

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

Seat of Arbitration: Lausanne, Switzerland.

Date: 11 December 2023

THE COURT OF ARBITRATION FOR SPORT

Dr Jan Räkei
President of the Panel

Mr Mark Hovell
Arbitrator

Mr Sofoklis Pilavios
Arbitrator