



**TAS / CAS**

TRIBUNAL ARBITRAL DU SPORT  
COURT OF ARBITRATION FOR SPORT  
TRIBUNAL ARBITRAL DEL DEPORTE

**CAS 2022/A/8966 1928 Bucaspor v. Eduardo Fernandes Pereira Gomes & FIFA**

## **ARBITRAL AWARD**

delivered by

## **COURT OF ARBITRATION FOR SPORT**

seating in the following composition:

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

in the arbitration between

**1928 Bucaspor**, Izmir, Turkey

Represented by Messrs. Juan De Dios Crespo, Juan Crespo Ruiz – Huerta and Mrs. Emily Yu,  
Ruiz – Huerta & Crespo Abogados, Valencia, Spain

- Appellant -

and

**Eduardo Fernandes Pereira Gomes**, Portugal

Represented by Mr. Nelson Soares, Nelson Soares Advogado Responsabilidade Limitada, Rua  
25 de Abril, nº 76 -1º Esq, Cruz de Pau, Amora, Portugal

- First Respondent -

and

**Fédération International de Football Association**, Zurich, Switzerland

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

- Second Respondent -

## **I. PARTIES**

1. 1928 Bucaspor (the “Appellant” or the “New Club”) is a professional football club with its registered office in Izmir, Turkey. It is affiliated with the Turkish Football Federation (the “TFF”), which in turn is affiliated with the *Fédération Internationale de Football Association*.
2. Mr. Eduardo Fernandes Pereira Gomes (the “Player” or the “First Respondent”) is a retired professional football player of Portuguese and Cape Verdean nationality.
3. *Fédération Internationale de Football Association* (the “Second Respondent” or “FIFA”) is a private association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the world governing body of international football. It exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and football players worldwide; The Player and FIFA shall be collectively referred to as the “Respondents”; The Appellant and the Respondents shall be collectively referred to as the “Parties”.

## **II. FACTUAL BACKGROUND**

4. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the Parties and the evidence examined in the course of the proceedings. Additional facts may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

### **A. Background facts**

5. Following a decision passed by the FIFA Dispute Resolution Chamber (the “FIFA DRC”) on 9 April 2020, the Turkish football club Bucaspor Kulubu Dernegi (the “Original Debtor” or the “Old Club”) was ordered to pay the Player the amount of EUR 616,000 (six hundred sixteen thousand euro), plus interest at a rate of 5% *p.a.* until the date of effective payment, according to the terms provided therein (the “Original Decision”). Additionally, the Original Debtor was ordered to pay the Player the amount of EUR 200,000 (two hundred thousand euro) as penalty.
6. At the time the Original Decision was rendered, the Original Debtor was participating in the Turkish Regional Amateur League, having been relegated from the fourth and lowest tier of professional football in Turkey at the end of the sporting season 2018/2019. Despite said relegation, the Original Debtor has not been disaffiliated from the TFF until today.

7. On 6 August 2020, pursuant to point 6 of the operative part of the Original Decision and since the amounts due to the Player had not been paid, FIFA imposed a transfer ban on the Original Debtor for the following three entire and consecutive registration periods:
  - First registration period: 05/01/2021 until 01/02/2021
  - Second registration period: 17/06/2021 until 08/09/2021
  - Third registration period: 12/01/2022 until 08/02/2022

**B. Proceedings before the FIFA Disciplinary Committee**

8. On 4 February 2021, and in view of the fact that the amounts due under the Original Decision had not yet been paid by the Original Debtor, the Player lodged a claim with FIFA requesting the imposition of sanctions to the New Club according to Article 15(2) and (4) FIFA Disciplinary Code (ed. 2019 – the “FDC”). By means of its submissions, the Player provided a detailed account of facts and information, claiming that the Appellant is the sporting successor of the Original Debtor and therefore, the former shall be held liable for the financial obligations of the latter towards the Player. The information provided in this respect pertained, *inter alia*, to the clubs’ name, logo, team colours, sporting facilities and administration. Despite said claim was notified to both the FIFA DRC and the FIFA Disciplinary Committee (the “FIFA DisCo”), it was only the FIFA DRC that initially opened proceedings against the New Club for a potential violation of Article 24<sup>ter</sup> of the January 2021 edition of the FIFA Regulations on the Status and Transfer of Players.
9. On 19 August 2021 and within the framework of the proceedings before the FIFA DRC, the New Club asserted, *inter alia*, that it has no connection with the Original Debtor “*because the two clubs had different managers, partners, addresses legal forms players and registration codes at TTF*”.
10. On 14 February 2022, the FIFA DRC issued its decision on the above matter and held the New Club liable for the outstanding financial obligations of the Original Debtor against the Player as provided in the Original Decision and extended to the Appellant the transfer ban that was originally imposed on the Old Club (the “DRC Decision”).
11. On 3 March 2022, the Secretariat to the FIFA DisCo opened disciplinary proceedings against the New Club for a potential violation of Article 15 FDC in respect with the Original Decision and invited the latter to submit its arguments in this respect.
12. On 9 March 2022, the New Club provided its position in respect with the alleged violation of Article 15 FDC. In essence, the New Club highlighted that it is not the same club as the Original Debtor and thus, it cannot be considered the sporting successor of the latter. Further, the Appellant argued that the proceedings before the FIFA DisCo should be

suspended in accordance with the legal principle of *lis pendens*, given that the DRC Decision was already under appeal before the CAS.

13. On 24 March 2022, the FIFA DisCo passed its decision on the pertinent matter with the following operative part (the “Appealed Decision”):

*“1. [The Appellant] is found responsible for failing to comply in full with the FIFA decision rendered on 09 April 2020 (Ref. 19-02255).*

*2. [The Appellant] is ordered to pay to Mr. Eduardo Fernandes Pereira Gomes as follows:*

- EUR 616,000 plus 5% interest p.a. to be calculated in accordance with the FIFA decision rendered on 09 April 2020.*
- EUR 200,000 as penalty.*

*3. [The Appellant] is granted a final deadline of 30 days as from notification of the present decision in which to settle said amount. Upon expiry of the aforementioned final deadline and in the event of persistent default or failure to comply in full with the decision within the period stipulated, a transfer ban will be pronounced until the complete amount due is paid or the non-financial decision is complied with. The transfer ban will be implemented automatically at national and international level by the Turkish Football Association and FIFA respectively, without a further formal decision having to be taken nor any order to be issued by the FIFA Disciplinary Committee or its secretariat. In addition, a deduction of points or relegation to a lower division may also be ordered in addition to a transfer ban in the event of persistent failure, repeated offences or serious infringements or if no full transfer could be imposed or served for any reason.*

*4. [the Appellant] is ordered to pay a fine to the amount of CHF 30,000.*

*5. The fine is to be paid within 30 days of notification of the present decision”.*

14. On 8 June 2022, the grounds of the Appealed Decision were communicated to the Parties determining, *inter alia*, the following:

*“29. To begin with, the [FIFA DisCo] noted that the New Club stressed that the present disciplinary proceedings resulted from another procedure [FDD-6806], in which FIFA had issued a letter on 14 February 2022 declaring the New Club to be sporting successor to the [Original Debtor]. As this letter was appealed to CAS, the New Club argued that the [FIFA DisCo] should suspend – in application of the *lis pendens* principle – the present disciplinary proceedings until CAS has ruled on FIFA’s letter dated 14 February 2022.*

30. *In this respect, the [FIFA DisCo] would like to point out that there is no specific provision on lis pendens in the FDC. In art. 54 (1) (c) FDC, it is only provided that a member of the [FIFA DisCo] may decide whether disciplinary proceedings “shall be initiated, suspended, or terminated”, without further guidance (emphasis added).*

31. *However, the [FIFA DisCo] considered that it was not necessary to suspend the present proceedings and to look in detail at the New Club’s contentions for the following reasons:*

*i. The two procedures, namely FDD-6806 and FDD-10433, are of a different nature, as the former related to the implementation of the sanctions contained in the [Original Decision], while the latter is of a disciplinary nature. In other words, the legal basis underlying the two procedures is different: on the one hand, the ban imposed on the [Original Debtor] – subsequently extended on the New Club – pursuant to the DRC Decision was made in accordance with art.25 RSTP, whereas the present disciplinary proceedings are based on art.15 FDC and imply that disciplinary measures, such as a fine and a registration ban, may be imposed on the party failing to respect a decision – in casu potentially the [Original Decision]. The fact that the notion of the sporting succession was present in both procedures does not make them identical.*

*ii. In addition, the [FIFA DisCo] noted that the ban from registering new players initially imposed on the [Original Debtor] on 6 August 2020 and then extended to the New Club on 14 February 2020 has been served so that the New Club could register new players at the opening of the next registration period i.e., 17 June 2022. Considering that the [Player] informed FIFA that the DRC Decision had still not been complied with by either the [Original Debtor] or the New Club (irrespective of any succession issues), the [FIFA DisCo] found that the provisions and measures provided in art.15 FDC could be implemented. Therefore, the [FIFA DisCo] found that it had to define precisely against which club the provisions of art.15 FDC should be applied.*

[..]

35. *In particular, the [FIFA DisCo] pointed out that it has been established that, on the one side, a club is a sporting entity identifiable by itself that, as a general rule, transcends the legal entities that operate it, meaning that the obligations acquired by any of the entities in charge of its administration, in relation with its activity, must be respected. On the other side, it has been stated that the identity of a club is constituted by elements such as its name, colours, fans, history, sporting achievements, shield, trophies, stadium, roster of players, historic figures, etc. These elements allow a club to distinguish itself from all the other clubs. Hence, the prevalence of the continuity and permanence in time of the sporting institution in from of the entity that manages its has been recognized, even when dealing with the changes of management completely different from themselves.*

[..]

37. Furthermore, the issue of succession of two sporting clubs might be different than if one were to apply civil law regarding the succession of two separate legal entities. In particular, it is important to recall that according to CAS, a club is a sporting entity identifiable by itself that generally transcends the legal entities that operate it. Consequently, elements to consider are, amongst others, the name, the logo and colours, the registration address and/or the managing board among others.

[..]

39. Furthermore, it is worth mentioning that the elements referred to in art. 15 (4) FDC are not exhaustive. In other words, CAS considered that the existence of several elements in light of this provision can lead, in its combination, and so even if not all elements are met in a specific case, to the conclusion that the club has to be considered as the “sporting successor”. The overall package of elements is decisive.

[..]

43. In this context, the [FIFA DisCo] recalled that according to the CAS jurisprudence the fact that a club is operated through a different legal entity than its predecessor does not bear relevance on whether a sporting succession has taken place.

44. In view of the above, the [FIFA DisCo] first noted that it is not disputed that one club, Tire 1922, changed its name several times and eventually became “1928 Bucaspor Kulubu”, the name of the New Club. Furthermore, the [FIFA DisCo] observed from publicly available sources that the original colours of Tire 1922 were red and whited and changed to yellow and indigo over time. The same applies to the logo of Tire 1922, which consisted of a large football and the name “Tire 1922” underneath in a red and whit colour combination. Now this logo has, curiously, changed to a yellow grape with a date “1928” underneath, all on an indigo/dark blue background with a yellow line framing said logo.

45. In light of the above considerations, the Committee noted interestingly than in addition to the almost similar names between the [Original Debtor], Bucaspor Kulubu Dernegi, and the New one, 1928 Bucaspor Kulubu, the logo of the New Club was identical to that used by the [Original Debtor]. Furthermore, the New Club even “changed” its (foundation) date from “1922” to “1928” and the team colours from red and white to yellow and indigo, the colours used by the [Original Debtor] (yellow and navy).

46. Already at this stage, the Committee could find no other explanation for all the changes undertaken by the management of the New Club than to want to look like and/or give the impression that it was the [Original Debtor]. In addition to this, the [FIFA DisCo] noted that several players from the [Original Debtor] also player for the New Club and that both clubs used the same stadium. Even if these two elements were not crucial, the Committee nevertheless considered that they clearly pointed towards a sporting succession.

47. *In view of the foregoing, the [FIFA DisCo] decided that the New Club was to be considered the sporting successor of the [Original Debtor] as (i) the names of the New Club and the [Original Debtor] were very similar, if not identical, (ii) the New Club adopted the same logo of the [Original Debtor], (iii) shared the same colour of the [Original Debtor] and was playing in the same stadium. Furthermore, the New Club (iv) publicly portrays itself as a club founded in 1928, date of foundation of the [Original Debtor] and (v) took several players from the [Original Debtor]. In this regard, the [FIFA DisCo] considered that the New Club presented itself as the sporting successor of the [Original Debtor].*

48. *Finally, and for the sake of completeness, the [FIFA DisCo] stressed that the fact that the two clubs, the Original and the New Club, co-existed under different names, and still seem to co-exist, does not alter the above conclusions. As a matter of fact, when analyzing the sequence of events related to the (co)-existence of both clubs, the [FIFA DisCo] had no doubt that from the moment the New Club changed its name, even though, both clubs were still existing and affiliated to TFF, the [Original Debtor] was in any even no longer active. Put differently, from the outside, there was always only one “Bucaspor Kulubu”, i.e. first the [Original Debtor] and then the New Club.*

[..]

50. *Having determined that the New Club is the sporting successor of the [Original Debtor], the [FIFA DisCo] moved on to analyze whether the former was to be held liable for the debt recognized in the DRC Decision dated 9 April (Ref. n° 19-02255).*

51. *In this sense, the [FIFA DisCo] recalled that, according to art. 15 (4) FDC, the sporting successor of a non – compliant party shall also be considered a non – compliant party and thus, subject to the obligations under art. 15 FDC. Therefore, in the [FIFA DisCo’s] view, in principle, whenever a club is considered the sporting successor of a non-compliant party, it is automatically (also) responsible of the debts of its predecessor.*

52. *Notwithstanding the above, the [FIFA DisCo] noted that the New Club argued that the sanction provided for in the DRC Decision had already been served by the [Original Debtor]. Therefore, if the [FIFA DisCo] were to sanction the New Club, any sanction would be contrary to the legal principle of ne bis in idem as “one cannot sanction two existing clubs for the same procedure, infringement and conflict”.*

53. *In this context. The [FIFA DisCo] recalled that it had already explained that the two proceedings, namely FDD-6806 and FDD-10433, were of a different nature, since the first once was linked to the execution and sanctions contained in the DRC Decision, while the second one was of a disciplinary nature (cf. supra point III.C.1). In other words, the present disciplinary proceedings could only be initiated after the implementation and execution of the measures contained in the DRC Decision, namely three entire and consecutive registration bans. This meant that the present disciplinary proceedings were the logical next*

*step that the Claimant could take to force its debtor, namely the New Club, to comply with the DRC Decision”.*

### III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

15. On 16 June 2022, the Appellant filed a Statement of Appeal with CAS against the Appealed Decision in accordance with Articles R47 and R48 of the CAS Code of Sports-related Arbitration (the “CAS Code”) and nominated Prof. Dr. Ulrich Haas, Professor of Law in Zurich, Switzerland as an arbitrator. By means of its submissions, the New Club filed a Request for Provisional Measures within the meaning of R37 of the CAS Code, requesting that the execution of the Appealed Decision be stayed until the finalization of the present proceedings. Additionally, and pursuant to Articles 126 and 272 Swiss Code of Civil Procedure, the Appellant requested that the present arbitration proceedings be suspended until an award was issued on the appeal filed by the New Club against the DRC Decision, which was registered by CAS under the case reference number “CAS 2022/A/8701 Bucaspor 1928 Ci Sportif Hizmetleri Anonim Şirketi v. Eduardo Fernandes Pereira Gomes & FIFA” as, according to the Appellant, “*the substantive grounds of the disciplinary sanction are based on a pending case*”. Alternatively, the Appellant requested that the present matter be referred to the same CAS Panel that was going to examine the abovementioned case.
16. On 22 June 2022, FIFA informed the CAS Court Office, *inter alia*, about its objection on the suspension of the present proceedings. Further, the Second Respondent declared that it considered the Request for Provisional Measures submitted by the Appellant to be moot, given that under Swiss law, a decision of a monetary nature issued by a Swiss private association is not enforceable while under appeal.
17. Also on 22 June 2022, and in light of the Second Respondent’s assertions mentioned above, the Appellant invited FIFA to confirm that “*there is no such ban currently imposed on the Appellant regarding this case*”.
18. On 23 June 2022, the CAS Court Office informed the Parties that the time limit for the Appellant to file its Appeal Brief was suspended until the President of the CAS Appeal Division decided on the Appellant’s request for the suspension of the present proceedings.
19. On the same day, the CAS Court Office noted that FIFA had confirmed that no transfer ban had been imposed on the Appellant under the terms of the Appealed Decision and invited the Appellant to indicate whether it wished to maintain its request for a stay of the Appealed Decision.



20. On 4 July 2022, the CAS Court Office noted that in light of the clarifications provided by FIFA on 23 June 2022, the Appellant's application for a stay of execution of the Appealed Decision "*appears to be moot*".
21. On 5 September 2022, the CAS Court Office informed the Parties that, pursuant to Article R54 CAS Code, the President of the CAS Appeals Arbitration Division had decided that the arbitral tribunal appointed to decide on the matter at hand was constituted as follows:
  - President: Mr. Sofoklis P. Pilavios, Attorney-at-Law, Athens, Greece
  - Arbitrators: Prof. Dr. Ulrich Haas, Professor of Law in Zurich, Switzerland and Attorney-at-Law, Hamburg, Germany, & Mr. José Juan Pintó Sala, Attorney-at-Law in Barcelona, Spain
22. On 3 October 2022, the CAS Court Office informed the Parties that the present arbitration proceedings were suspended until the CAS award in the matter under the case reference number "*CAS 2022/A/8701 Bucaspor 1928 Ci Sportif Hizmetleri Anonim Şirketi v. Eduardo Fernandes Pereira Gomes & FIFA*" was rendered.
23. On 2 November 2022, the First Respondent requested the suspension of this procedure to be lifted. Said request was also endorsed by the Second Respondent.
24. On 3 November 2022, the CAS Court Office informed the Parties that, in view of the Appellant's objection to the continuance of the present proceedings, said issued would be finally decided by the Panel.
25. On 8 November 2022, the CAS Court Office informed the Parties that the Respondents' request to lift the suspension of this procedure was granted and invited the Appellant to file its Appeal Brief until 28 November 2022.
26. On 29 November 2022 and after an extension granted in this respect, the Appellant filed its Appeal Brief pursuant to Article R51 CAS Code.
27. On 19 December 2022, the First Respondent submitted his Answer within the pertinent deadline, pursuant to Article R55 CAS Code.
28. On 27 January 2023 and after an extension granted in this regard, the Second Respondent filed its Answer pursuant to Article R55 CAS Code.
29. On 30 January 2023 and upon being invited to provide its view in this respect, the Respondents stated their preference for an award to be rendered on the present matter on the sole basis of the Parties' written submissions.

30. On 31 January 2023, the Appellant stated his preference for a hearing to be held on the matter at hand and suggested said hearing to take place on the same day as the hearing in the matter under the case reference number “CAS 2022/A/8701 Bucaspor 1928 *Ci Sportif Hizmetleri Anonim Şirketi v. Eduardo Fernandes Pereira Gomes & FIFA*”.
31. On the same date, the CAS Court Office informed the Parties that the Panel had decided to hold a hearing on the matter at hand.
32. On 13 February 2023, the Appellant and FIFA filed the duly signed Order of Procedure.
33. On 15 February 2023, the First Respondent filed the duly signed Order of Procedure.
34. On 22 March 2023, a hearing was held in Lausanne, Switzerland. At the outset of the hearing, the Parties confirmed not to have any objection or comments as to the constitution and the composition of the arbitral tribunal nor in respect of the conduction of the proceedings up to that moment.
35. In addition to the Panel and Antonio De Quesada, CAS Head of Arbitration, the following persons attended the hearing:
  - For the Appellant:
    - 1) Mr. Juan De Dios Crespo Perez, counsel;
    - 2) Mr. Ercan Sevdimbaz, counsel;
    - 3) Mrs. Cihan Aktas, President of the Appellant;
    - 4) Dizodar Golde, translator;
  - For the First Respondent:
    - 1) Mr. Nelson Soares, counsel;
  - For the Second Respondent:
    - 1) Mr. Roberto Najera Reyes, counsel;
    - 2) Mr. Alexander Jacobs, counsel;

36. The Parties had a complete opportunity to present their case, submit their arguments and answer the questions posed by the Panel.
37. Before the hearing was concluded, all the parties expressly stated that they did not have any objection with the procedure followed by the Panel and that they are satisfied and confirm that their right to be heard had been respected.
38. The Panel confirms that it carefully heard and took into consideration all the submissions, evidence and arguments presented by the Parties, even if they have not been specifically summarized or referred to in the present arbitral award.

#### IV. SUBMISSIONS OF THE PARTIES AND PRAYERS FOR RELIEF

##### a 1928 Bucaspor

39. The submissions of the Appellant, in essence, may be summarized as follows:
  - *“The whole FIFA Disciplinary procedure is based on the “presumption” that the Appellant is the sporting successor of the [Original Debtor]; since the [Original Debtor] failed to pay the amount stipulated in the [DRC Decision], the Appellant as the sporting successor must pay the amount of money decided by the [DRC Decision] to the Player, without doing so, the Appellant failed to respect FIFA decision, violating Article 15 of FIFA Disciplinary Code, therefore should be subject to sanction. However, if the Appellant by CAS award has not been considered a sporting successor, FIFA’s decision to impose sanctions on the Appellant will lose all the legal basis. As the Appellant would not have any financial obligation whatsoever towards the Player”.*
  - *“[...] FIFA was self-contradictory; firstly, it stated that even though whether the Appellant is the sporting successor is still pending in another case, CAS 2022/A/8701, due to the different legal nature of FDD-6806 and FDD-10433, so it is not necessary to suspend the disciplinary procedure. However, it said again that to implement art.15 FDC, the Committee needs to “define precisely against which club the provisions of art.15 FDC should be applied”. That is to say, to implement art.15 FDC in the current disciplinary procedure, [FIFA DisCo] had to decide the “subject” of the process and why the Appellant is involved. Because FIFA considered it as the sporting successor, that is to say, establishing the Appellant as the sporting successor is the first step of the current Disciplinary Committee [sic], which the [FIFA DisCo] itself confirmed’.*
  - *“Only FDD-6806 was based on the [DRC Decision], while [FIFA DisCo] made FDD-10433 does not change this fact [sic]. FIFA amended its RSTP in 2018 when empowered FIFA PSC and DRC to impose, as a consequence of the failure to pay*

*the appropriate amounts in due time, “temporary” sporting sanctions on players (a playing ban) or clubs (a registration ban) until the debt is paid. Before such an amendment, was made, one constantly needed to request [FIFA DisCo] to impose such sanctions. After explaining the legislative history of FIFA RSTP, one should know that the transfer ban imposed by FIFA PSC and DRC is still a way of sanction; it doesn’t change its disciplinary nature”.*

- In issuing the Appealed Decision, the FIFA DisCo relied on the findings of the DRC Decision which is still under appeal before CAS i.e., that the Appellant is the sporting successor of the Original Debtor. Therefore, *“it makes no sense for FIFA to start a disciplinary procedure knowing that the precondition of the disciplinary case is not yet determined”.*

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

1. “[Accept] *this Appeal Brief against the [Appealed Decision];*
2. [Annul] *the [Appealed Decision] and issue an award determining that since the Appellant is not the sporting successor of the [Original Debtor] and, therefore, not subject to Art. 15 FDC, and there should be no fine and transfer ban against the Appellant;*
3. [Fix] *a sum to be paid by the Respondents, in order to contribute to the payment of the Appellant legal fees and costs in the amount of CHF 20,000.00/- (twenty thousand Swiss Francs); and*
4. [Condemn] *the Respondents to the payment of the whole CAS administration costs and arbitrator fees.*

*Alternatively, if the Panel finally decides that the Appellant is the sporting successor, the Appellant hereby requests the Panel to rule:*

1. *Set aside the [Appealed Decision] due to violation of due process.*
2. [Fix] *a sum to be paid by the Respondents, in order to contribute to the payment of the Appellant legal fees and costs in the amount of CHF 20,000.00 - (twenty thousand Swiss Francs); and*
3. [Condemn] *the Respondents to the payment of the whole CAS administration costs and arbitrator fees;*

**b Eduardo, Fernandes Pereira Gomes**

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

- At the end of the sporting season 2018/2019 and following the relegation of the Original Debtor to an amateur category, the then president of the club, Mr. Cihan Aktaş, acquired Tire that was participating in the fourth professional division of Turkish football. The intention of Mr. Aktaş was to continue the sporting activities of the Original Debtor while avoiding the fulfilment of its financial obligations.
- Once acquired control of Tire, Mr. Aktaş gradually transformed the entire sporting identity of said club by changing its name, logo and colours. In particular, Tire assumed the name “Bucaspor 1928”, changed its colours to dark blue and yellow in order to resemble the colours of the Original Debtor and adopted a logo that is identical to the logo of the Original Debtor.
- After the transformation of Tire’s sporting identity had been completed, Mr Aktaş publicly announced that the activities of the Original Debtor would be continued through the Appellant and urged the fans of the Original Debtor to henceforth support the Appellant. In fact, the Original Debtor has not participated in any football activity as of the sporting season 2020/2021.
- Contrary to the Appellant’s assertions, the New Club substituted the Original Debtor in using the Yeni Buca Stadi and it is currently the only club that uses said stadium as its home venue.
- Before assuming the presidency of the Appellant, Mr. Aktas was also the president of the Original Debtor’s board of directors.
- After the Original Debtor was relegated, seven of its players were transferred to the Appellant.
- In view of the above, the established public perception is that the Appellant is the sporting successor of the Original Debtor, as it has been confirmed by several references in the Turkish media.

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

*“a) Reject the appeal submitted by [the Appellant] against the decision passed by [the FIFA DisCo] on 24 March 2022 in the case with reference nr. FDD-10433;*

*b) Reject and dismiss all requests made by [the Appellant] in its appeal;*

*c) Confirm in full the [Appealed Decision] and its terms;*

*d) Condemn [the Appellant] to support the totality of arbitration and administrative costs inherent to the current appeal and also a contribution towards the First*

*Respondent's legal fees and other expenses in connection with the proceeding [sic], as provided in article R.64,5 of the Code".*

**c FIFA**

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

- The Appellant did not submit any evidence in support of its allegations that it is not the sporting successor of the Original Debtor and therefore, said issue remains outside the scope of the present arbitration proceedings.
- Contrary to the assertions of the Appellant, the fact that the issue of whether the Appellant is the sporting successor of the Original Debtor is still to be decided by CAS in the matters under the case reference numbers "*CAS 2022/A/8701*" and "*CAS 2022/A/8720*"; did not prevent the FIFA DisCo from examining whether the Appellant's failure to comply with the Original Decision constituted a breach of Article 15 FDC. When comparing the background of the aforementioned cases to the matter at hand, one can notice that none of the elements of the so-called "triple identity test", that is used under Swiss law to determine whether the legal principle of *lis pendens* is applicable, are met.
- The Appellant did not explain in which way FIFA acted contrary to the principles of due process when issuing the Appealed Decision, except for the alleged application of the principle of *lis pendens*.
- Even if one were to conclude that the FIFA DisCo committed any procedural error during the first – instance proceedings, the powers vested to the Panel to examine the present matter *de novo* "*are being cured by means of the present arbitration*".

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

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

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

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

**V. JURISDICTION**

47. The Appellant submits that the jurisdiction of CAS derives from Article 57(1) FIFA Statutes, as it determines that "[a]ppeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question".

48. The Respondents also state that jurisdiction of CAS to decide on the present matter is “uncontested”.
49. In this respect, the Panel notes that Article 49 FDC provides that “[d]ecisions passed by the Disciplinary and Appeal Committees may be appealed against before CAS, subject to the provisions of this Code and articles 57 and 58 of the FIFA Statutes”. Further, Article 57(1) (e) FDC provides that decisions passed in “compliance with article 15 of this Code” are not subject to an appeal before the FIFA Appeals Committee and therefore, are not subject to any additional internal legal remedies.
50. Accordingly, Article 57(2) FIFA Statutes stipulates that “[r]ecourse may only be made to CAS after all other internal channels have been exhausted”.
51. The jurisdiction of CAS is further confirmed by the Parties by means of their signature on the Order of Procedure.
52. It follows that CAS has jurisdiction to decide on the present dispute.

## VI. ADMISSIBILITY

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

## VII. APPLICABLE LAW

55. Article R58 CAS Code provides the following:

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

56. Pursuant to Article 56(2), of the FIFA Statutes, “[t]he provisions of the CAS Code of Sports related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”.

57. In principle, the Parties do not contest the primary application of the various FIFA Regulations and additionally, of Swiss Law on the present matter.
58. Under such circumstances, the Panel is satisfied that the various regulations of FIFA are primarily applicable, in particular the FDC (edition 2019), and subsidiarily Swiss law, should the need arise to fill a possible gap in the various regulations of FIFA.

### VIII. MERITS

59. As a preliminary observation, the Panel notes that in the context of the present proceedings the Appellant does not contest the findings of the Appealed Decision according to which, the New Club is the sporting successor of the Original Debtor, nor did it submit any evidence in this respect. Accordingly, the Panel finds that this issue lays outside the scope of the present appeal proceedings and it is not to be further examined.
60. In light of the above remarks, the Panel finds that the only contention among the Parties revolves around the issue of whether the Appealed Decision was rendered in violation of the legal maxims that comprise the notion of due process. In essence, the Appellant maintains that in rendering the Appealed Decision the FIFA DisCo had erroneously relied on the findings of the DRC Decision as, at that time, the latter was already under appeal before CAS (under the case reference number “CAS 2022/A/8701 Bucaspor 1928 *Ci Sportif Hizmetleri Anonim Şirketi v. Eduardo Fernandes Pereira Gomes & FIFA*”). Accordingly, the Appellant submits that the Appealed Decision should be annulled because it is premised on the DRC Decision which is not yet final and binding and therefore, it does not constitute a valid legal basis for the application of Article 15 FDC.
61. In assessing the argumentation brought forward by the Appellant, the Panel finds that in fact the New Club asserts that the first – instance proceedings before the FIFA DisCo should have been stayed until the DRC Decision became final and binding due to the application of the established legal principle of *lis pendens* and therefore, the FIFA DisCo violated the aforementioned legal maxim by rendering the Appealed Decision. On the contrary, the Panel recalls that the legal notion of due process pertains to the fundamental procedural rights of the parties before a state court or an arbitration tribunal, such as the right to be heard and the right to a fair and impartial tribunal. However, the Appellant does not maintain that its procedural rights were violated during the first – instance proceedings before the FIFA DisCo. As a result, the Panel will proceed in analysing whether by rendering the Appealed Decision, the FIFA DisCo violated the legal principle of *lis pendens*.
62. In this respect, the Panel notes that Article 54(1)(b) FDC provides that the following:



*“The chairman can rule alone as a single judge and may delegate his functions to another member of the Disciplinary Committee. In particular, the Chairman or his nominee acting as a single judge may take the following decisions with respect to any of the following matters:*

*[..]*

*b. deciding whether disciplinary proceedings shall be initiated, suspended or terminated;”.*

63. The Panel remarks that the pertinent provision of the FDC does not provide any clarifications as to the circumstances that may lead to the suspension of disciplinary proceedings. The Panel is mindful that Swiss law, which is applicable pursuant to Article 5 (b) FDC, deals with the problem of concurrent pending proceedings in Article 186 Swiss Private International Law Act (“PILA”). The latter provision is incorporated in Chapter 12 PILA that deals with “International Arbitration” and provides as follows:

*“1. The arbitral tribunal shall decide on its own jurisdiction.*

*Ibis. It shall decide on its jurisdiction without regard to an action having the same subject matter already pending between the same parties before a state court or another arbitral tribunal, unless serious reasons require to stay the proceedings.*

*2. Any objection to its jurisdiction must be raised prior to any defense on the merits.*

*3. The arbitral tribunal shall, in general, decide on its jurisdiction by a preliminary decision”.*

64. The Panel is aware that proceedings before association tribunals are of a different nature than arbitration and that Article 186 PILA does not refer to proceedings before an association tribunal. The Panel is also aware that the provisions on *lis pendens* not only serve to safeguard procedural efficiency, but also to protect the *res iudicata* effect of a court decision or an arbitral award. Decisions of association tribunals, on the contrary, are not vested with *res iudicata* effects. Nevertheless, the Panel finds it noteworthy that Article 186 of the PILA contemplates a stay of proceedings in very particular circumstances only. Consequently, if no stay is warranted in light of Article 186 of the PILA, such stay is even less warranted in the circumstances of the present case.
65. In view of the wording of Article 186 PILA and the established legal doctrine, the Panel concludes that a stay of the arbitration proceedings (in this case, the proceedings before the FIFA DisCo) only comes into play in case the concurrent proceedings deal with the same matter, between the same parties and pertaining to the same facts. Accordingly, the Panel will proceed in analyzing whether there is an identity of the above elements between the

first instance proceedings before the FIFA DisCo and the proceedings under the case reference number “CAS 2022/A/8701 Bucaspor 1928 Ci Sportif Hizmetleri Anonim Şirketi v. Eduardo Fernandes Pereira Gomes & FIFA”.

66. In this respect, the Panel remarks that whereas the case under the reference number “CAS 2022/A/8701” pertains primarily to the horizontal dispute between the Appellant and the Player, the first instance proceedings before the FIFA DisCo, being of purely disciplinary nature, pertained to the vertical dispute between the Appellant and FIFA. Put differently, while the former matter concerns the issue of whether the Appellant should pay the Player the outstanding amounts provided in the Original Decision, the contention in the latter case was whether the Appellant should be disciplined by way of sanction by FIFA for failing to comply with a decision issued by one of its deciding bodies.
67. The Panel further notes that the horizontal dispute between the Appellant and the Player is primarily governed by Article 24bis(1) and (2) and Article 24ter(1) FIFA Regulations on the Status and Transfer of Player (Ed. January 2021) which provide as follows:

*“24bis Consequences for failure to pay relevant amounts in due time*

*1. When:*

*a) a FIFA decision-making body orders a party (a club or a player) to pay another party (a club or a player), the consequences of the failure to pay the relevant amounts in due time shall be included in the decision;*

*b) parties to a dispute accept (or do not reject) a proposal made by the FIFA general secretariat pursuant to the Rules Governing the Procedures of the Players’ Status Committee and Dispute Resolution Chamber, the consequences of the failure to pay the relevant amounts in due time shall be included in the confirmation letter.*

*2. Such consequences shall be the following:*

*a) Against a club: a ban from registering any new players, either nationally or internationally, up until the due amounts are paid. The overall maximum duration of the registration ban shall be of up to three entire and consecutive registration periods, subject to paragraph 7 below;*

*b) Against a player: a restriction on playing in official matches up until the due amounts are paid. The overall maximum duration of the restriction shall be of up to six months on playing in official matches, subject to paragraph 7 below;*

*[..]*

*24ter Implementation of decisions and confirmation*

*The sporting successor of a debtor shall be considered the debtor and be subject to any decision or confirmation letter issued pursuant to this article. The criteria to assess whether an entity is the sporting successor of another entity are, among others, its headquarters, name, legal form, team colours, players, shareholders or stakeholders or ownership and the category of competition concerned”.*

68. The Appealed Decision, on the contrary, is premised on Article 15(1) and (4) FDC which stipulates the following:

*“1. Anyone who fails to pay another person (such as a player, a coach or a club) or FIFA a sum of money in full or part, even though instructed to do so by a body, a committee or an instance of FIFA or a CAS decision (financial decision), or anyone who fails to comply with another final decision (non-financial decision) passed by a body, a committee or an instance of FIFA, or by CAS:*

*a) will be fined for failing to comply with a decision; in addition:*

*b) will be granted a final deadline of 30 days in which to pay the amount due or to comply with the non-financial decision;*

*c) in the case of clubs, upon expiry of the aforementioned final deadline and in the event of persistent default or failure to comply in full with the decision within the period stipulated, a transfer ban will be pronounced until the complete amount due is paid or the non-financial decision is complied with. A deduction of points or relegation to a lower division may also be ordered in addition to a transfer ban in the event of persistent failure, repeated offences or serious infringements or if no full transfer could be imposed or served for any reason.*

*d) in the case of associations, upon expiry of the aforementioned final deadline and in the event of persistent default or failure to comply in full with the decision within the period stipulated, additional disciplinary measures may be imposed;*

*e) in the case of natural persons, upon expiry of the aforementioned final deadline and in the event of persistent default or failure to comply in full with the decision within the period stipulated, a ban on any football-related activity for a specific period may be imposed. Other disciplinary measures may also be imposed;*

[..]

*4. The sporting successor of a non-compliant party shall also be considered a non-compliant party and thus subject to the obligations under this provision. Criteria to assess whether an entity is to be considered as the sporting successor of another entity are, among others, its headquarters, name, legal form, team colours, players, shareholders or stakeholders or ownership and the category of competition concerned”.*

69. The Panel observes that the fact that there exist two separate sets of rules pertinent to the execution of a decision have been drafted by FIFA indicates that both matters must be differentiated. Whereas the provisions envisaged in the FIFA RSTP pertain to the execution of monetary decisions issued by the FIFA DRC and the FIFA PSC, the pertinent provision of the FDC is applicable to all decisions issued not only by FIFA but also by CAS. Further, the Panel observes that there is a significant difference in the wording used in Article 24bis FIFA RSTP and Article 15 FDC: In the first case, the registration ban is limited to a maximum of three transfer periods, whereas in the second one it is not limited unless the amount is paid. Additionally, the FIFA RSTP refers to “consequences” whereas the FDC refers to “sanctions”. In light of the above remarks, previous a CAS Panel has held that a transfer ban imposed on the basis of Article 24bis FIFA RSTP is “*part of the decision in terms of the substance of the dispute, a consequence of non-payment of the amount awarded by the FIFA DRC foreseen in Article 24bis FIFA RSTP and not an independent disciplinary sanction, applied in accordance with Article 15 FIFA Disciplinary Code as a result of a separate disciplinary proceedings*” (CAS 2021/A/8329).
70. The Panel fully adheres to the principles reflected in the abovementioned jurisprudence and therefore, it finds that the proceedings under examination do not pertain to the same subject matter, nor did they involve the same parties. Consequently, the FIFA DisCo did not violate the principle of *lis pendens* (in case the latter should be applicable) by rendering the Appealed Decision, even though the DRC Decision was already at that time under appeal before CAS. In reaching this conclusion, the Panel feels further supported by the fact that, contrary to the allegations of the Appellant, the FIFA DisCo did not rely on the findings of the DRC Decision on the issue of whether the Appellant is the sporting successor of the Original Debtor, but it proceeded in making its own independent analysis in this respect, on the basis of the pertinent case file.
71. In any case, the Panel observes that there is no provision in the FDC preventing the FIFA DisCo from proceeding with its own independent determination as to whether the New Club is the sporting successor of the Old Club in the context of separate disciplinary proceedings. In line with the above, the pertinent legal doctrine, which is also reflected in the established CAS jurisprudence, provides that “[t]he ‘substantive’ (or ‘serious’ grounds) are one of the conditions enumerated in Article 186 paragraph 1 PILA. Substantive grounds exist if the appellant can prove that the suspension is necessary in order to protect its rights and that the continuation of the arbitration proceedings would cause any serious harm. However, the simple possibility of a state court issuing a decision different from the CAS is not considered to be a substantive ground. Indeed, the possibility to have contradictory decisions exists in all parallel proceedings involving a civil and an arbitration institution. Otherwise, the arbitral procedure would always end up being suspended, which is clearly not the aim of Article 186 paragraph 1 of the PILA” (MAVROMATI/REEB, The Code of the Court of Arbitration for Sport, 2015, p. 491).

72. For the sake of completeness, the Panel underlines that even if by issuing the Appealed Decision, the FIFA DisCo somehow violated the legal maxim of due process at the expense of the Appellant, *quod non*, any procedural flaws occurred in the course of the first – instance proceedings would be cured during the present appeal procedure, given that CAS Panels are vested with the power to examine every case *de novo* (CAS 2016/A/4704).
73. It follows that the Appealed Decision was not issued in violation of the legal principles of due process and *lis pendens*.

## IX. CONCLUSIONS

74. Based on the foregoing, the Panel finds that:
75. *The Appealed Decision was not issued in violation of the legal principles of due process and lis pendens.*
76. All other and further motions and prayers for relief are dismissed.

## X. COSTS

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

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

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

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

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

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

79. Having taken into account the outcome of the arbitration, in particular that the Appellant’s appeal was dismissed in its entirety, the Panel considers it reasonable and fair that the costs of the arbitration, in an amount that will be determined and notified to the parties by the CAS Court Office, shall be borne by the Appellant.

80. Furthermore, pursuant to Article R64.5 CAS Code and in consideration of the complexity and outcome of the proceedings, the Panel rules that the Appellant shall bear its own costs and pay a contribution towards the Player’s fees and other expenses incurred in connection with these arbitration proceedings in the amount of CHF 4,000 (four thousand Swiss Francs) while CHF 1,000 (one thousand Swiss Francs) to FIFA.

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## ON THESE GROUNDS

### The Court of Arbitration for Sport rules that:

1. The appeal filed on 16 June 2022 by 1928 Bucaspor against the decision issued on 24 March 2022 by the Disciplinary Committee of the *Fédération Internationale de Football Association* is dismissed.
2. The decision issued on 24 March 2022 by the Disciplinary Committee of the *Fédération Internationale de Football Association* is confirmed.
3. The costs of the arbitration, to be determined and served to the parties by the CAS Court Office, shall be entirely borne by 1928 Bucaspor.
4. 1928 Bucaspor shall bear its own costs and is ordered to pay CHF 4,000 to Mr. Eduardo Fernandes Pereira Gomes and CHF 1,000 to the *Fédération Internationale de Football Association* as a contribution towards their respective legal fees and other expenses incurred in connection with these arbitration proceedings.
5. All other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 4 March 2024

## THE COURT OF ARBITRATION FOR SPORT

/ Sofoklis Pilavios  
President of the Panel

Ulrich Haas  
Arbitrator

José Juan Pintó  
Arbitrator