



Tribunal Arbitral du Sport
Court of Arbitration for Sport
Tribunal Arbitral del Deporte

CAS 2020/A/7240 U Craiova 1948 S.A. v. Josip Mišić & Fédération Internationale de Football (“FIFA”)

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr John Paul Mowberry, Solicitor in Glasgow, Scotland

in the arbitration between

U Craiova 1948, Craiova, Romania

Represented by Mr Mititelu Gigi Adrian, Administrator, Craiova, Romania, and Mr Mircea Moise, Attorney-at-Law, Romania

Appellant

and

Josip Mišić, Croatia

Represented by Ms Marina Mesić, Attorney-at-Law in Zagreb, Croatia

First Respondent

&

Fédération Internationale de Football (FIFA), Zurich, Switzerland

Represented by Mr Jaime Cambreleng Contreras, Head of Litigation and Mr Saverio Paolo Spera, Senior Legal Counsel, Zurich, Switzerland

Second Respondent

I. INTRODUCTION

1. This appeal is brought by U Craiova 1948 S.A. against the decision rendered by the single Member of the FIFA Disciplinary Committee (the “FIFA DC”) of the Federation Internationale de Football Association (“FIFA”) on 4 May 2020 (the “Appealed Decision”), regarding an infringement of Article 64 of FIFA Disciplinary Code (the “FDC”) for failing to comply with a decision passed against by the FIFA Dispute Resolution Chamber (the “FIFA DRC”) on 20 August 2014.

II. THE PARTIES

2. U Craiova 1948 S.A. (the “Appellant”) is a Romanian professional football club affiliated to the Romanian Football Federation (the “RFF”).
3. Josip Mišić (the “First Respondent” or the “Player”) is a professional football player and citizen of Croatia.
4. Federation Internationale de Football Association (the “Second Respondent” or “FIFA”) is the international governing body of football, with its headquarters in Zurich, Switzerland.
5. All together referred to as “the Parties”

III. FACTUAL BACKGROUND

6. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the Parties, the exhibits produced as well as the evidence examined in the course of the proceedings. Additional facts and allegations may be set out, where relevant, in connection with the ensuing legal discussion. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, in his award reference is made only to the submissions and evidence the Sole Arbitrator considers necessary to explain his reasoning.

A. FIFA Proceedings

7. On 20 August 2014, the FIFA DRC issued a decision (the “DRC Decision”) against the Romanian club SC Fotbal Club U Craiova SA and in favour of the First Respondent.
8. The DRC Decision ordered SC Fotbal Club U Craiova SA to pay to the Player the total amount of EUR 30,000 plus interest at a rate of 5% p.a. with an effective date due from 9 June 2011, within 30 days of notification of the DRC Decision.
9. On 28 July 2015, the FIFA DC opened disciplinary proceedings against the SC Fotbal Club U Craiova SA in respect of a potential violation of Article 64 FDC, on the basis that the club had not complied with the DRC Decision.

10. On the next day, the RFF informed FIFA that SC Fotbal U Craiova SA was in bankruptcy and thus no longer participating in any of the competitions organised by the RFF, but that it was “*still affiliated to the [RFF]*”.
11. On 9 September 2015 the FIFA disciplinary proceedings against SC Fotbal Club U Craiova SA were suspended due to information from the RFF that the said club was no longer participating in competition and was undergoing a bankruptcy process.
12. Various correspondence was received at the FIFA DRC Secretariat (the “Secretariat”) throughout 2016, 2017 and 2018. The Secretariat was informed by the RFF that the bankruptcy had proceeded. Also that during a separate Hearing at CAS (involving the SC Fotbal Club U Craiova SA) it had been stated that SC Fotbal Club U Craiova SA had been refounded and a new club had been entered into competition under the auspices of the Romanian Football Federation. The Appellant informed FIFA that it was not a affiliate-member but an associate-member of the RFF and that SC Fotbal Club U Craiova SA was “*distinct from the current U Craiova 1948 SA*”. It further denied having any obligations towards the players of the SC Fotbal Club U Craiova SA. On the other hand, the RFF provided documentation to FIFA in November 2018 stating that the Appellant was owned by Adrian Mititelu, the same owner of SC Fotbal Club U Craiova SA, that both clubs used the same stadium, headquarters and shared some of the same employees.
13. On 24 March 2020, the Secretariat opened disciplinary proceedings against the Appellant for potential violation of Article 64 FDC, inviting submissions on its position on the outstanding amounts, as no payments had been made to the Player.
14. On 4 May 2020 the Member of the FIFA DC issued a decision (the “Appealed Decision”) in the following terms:
 - “1. *The club FC U Craiova 1948 (hereinafter, the Debtor) is found guilty of failing to comply in full with the decision passed by the Dispute Resolution Chamber on 20 August 2014 according to which it was ordered to pay to the player Josip Misic (hereinafter, the Creditor);*
 - *EUR 6,000 plus 5% interest p.a. as of 9 June 2011 until the date of effective payment;*
 - *EUR 24,000 plus 5% interest p.a. as of 9 June 2011 until the date of effective payment.*
 2. *The Debtor is ordered to pay a fine to the amount of CHF 5,000. The fine is to be paid within 30 days of notification of the present decision.*
 3. *The Debtor is granted a final deadline of 30 days as from notification of the present decision in which to settle its debt to the Creditor.*
 4. *If payment is not made to the Creditor and proof of such a payment is not provided to the secretariat to the FIFA Disciplinary Committee and to the Romanian Football Federation by this deadline, a ban from registering new players, either*

nationally or internationally, will be imposed on the Debtor. Once the deadline has expired, the transfer ban will be implemented automatically at national and international level by the Romanian Football Federation 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. The transfer ban shall cover all men eleven-a-side teams of the Debtor – first team and youth categories –. The Debtor shall be able to register new players, either nationally but internationally, only upon the payment to the Creditor of the total outstanding amount. In particular, the Debtor may not make use of the exception and the provisional measures stipulated in article 6 of the Regulations on the Status and Transfer of Players in order to register players at an earlier stage.

5. *As a member of FIFA, the Romanian football federation is reminded of its duty to implement this decision and provide FIFA with proof that the transfer ban has been implemented at national level. If the Romanian Football Federation does not comply with this decision, the FIFA Disciplinary Committee will decide on appropriate sanctions on the member. This can lead to an expulsion from FIFA competitions. [...]*”

15. On 6 May 2020 the FIFA DC notified the operative part of the Appealed Decision to the Romanian Football Federation requesting that same be forwarded to the Appellant.

B. The grounds of the Appealed Decision

16. On 5 June 2020 the grounds of the Appealed Decision were issued to the RFF requesting that they be forwarded to the Club.

17. The FIFA DC summarised all submissions put forth by the Club as follows:

- “• *The DRC decision was passed against its predecessor, SC Fotbal Club U Craiova SA, which underwent bankruptcy proceedings and was excluded from the Romanian football Federation in July 2011;*
- *FIFA is not allowed to open proceedings against clubs that are undergoing bankruptcy proceedings and therefore SC Fotbal Club U Craiova SA could not be obliged to pay compensation for a contract that had terminated in July 2011 and could not be obliged to pay interest considering that the insolvency law prohibits such payment obligations;*
- *There is no proof that the DRC decision was sent to the liquidator of its predecessor and the liquidator could not have registered the obligations provided for in said decision to the body of creditors of SC Fotbal Club U Craiova SA;*
- *As the predecessor was excluded from the Romanian football Federation in 2011 FIFA was not allowed to pass a decision against it in 2014;*
- *Even if FC U Craiova 1948 SA is the successor of SC Fotbal Club U Craiova SA, no disciplinary sanction can be imposed as neither FC U Craiova 1948 SA nor SC Fotbal Club U Craiova SA can be obliged to pay the amounts arbitrarily*

established in the decision dated 20 August 2014 as SC Fotbal Club U Craiova SA had no membership to the Romanian Football Federation and was under the protection of the insolvency law;;

- *'The case settled by FIFA on 20 August 2014 had no connection whatsoever with sports related activity but with the application of justice in areas regulated by the EU'. FIFA violated the jurisdiction of the Romanian courts and such jurisdiction was mandatorily established by the EU rules;*
- *Consequently, the decision passed on 20 August 2014 cannot have legal consequences, and the disciplinary procedures arbitrarily opened against FC U Craiova 1948 SA must be terminated as no disciplinary offences have been committed."*

18. In relation to the applicable law, the FIFA DC concluded that the present case fell under the 2017 edition of the FDC in accordance with Article 4 of the 2017 FDC. Furthermore, the FIFA DC deemed that the procedural aspects of the present matter were to be governed by the 2019 FDC.
19. The FIFA DC further deemed that the jurisdiction of FIFA was established, by reference inter alia to FIFA Statutes, rules and regulations and the jurisprudence of CAS, that he was competent to assess the present matter and therefore to pass a formal decision of a substantive nature concerning the liability of the new club, FC U Craiova 1948 SA, towards the debt of the original debtor in the frame of art. 64 of the 2017 FDC.
20. In assessing the merits of the case, the FIFA DC referred to the jurisprudence of CAS and FIFA on the question of succession of a sporting club in general, summarising how said jurisprudence had effectively been codified under 2019 FDC art. 15 par. 4 to be applied by the FIFA DC in answering such questions (CAS 2013/A/3425, CAS 2007/A/1322, CAS 2011/A/2646, CAS 2016/A/4576)
21. The FIFA DC in rendering the appealed decision referred to separate recent decisions of the Chairman and Deputy Chairman (Decisions 150575 and 150576) of the FIFA DC, noting that it had been determined therein that both clubs referred to in the present case shared the same address, stadium coach and owner, also that some employees and players had been employed by both the new club and the original debtor. Furthermore that the new club's official website was the same as the one previously used by the original debtor, noting that the colours used were the same for both clubs and the logo was almost identical, both clubs sharing the same history and sporting achievements. Finally, it noted that the Dolj County Football Association established that the new club was the successor of the activity previously developed by the original debtor.
22. The FIFA DC observed that none of the above information was contested by FC U Craiova 1948 SA, rather to the contrary that the new club recognised being the successor of the activity developed by the original Debtor, emphasising that it had entered into an agreement with the latter to jointly carry out the activity of the club, before acquiring rights to continue said activity following dissolution of the original Debtor.

23. In rendering the Appealed Decision, the FIFA DC stated that he had “*no other alternative but to conclude that the new Club, FC U Craiova 1948 SA, appears to be the sporting successor of the original Debtor, SC Fotbal Club U Craiova 1948 SA*”. Accordingly, the Appellant “*shall also be considered a non-compliant party*” subject to sanctions for failure to comply with the DRC Decision.
24. The FIFA DC decided by reference the 2017 FDC and the Committee’s established practice that a fine amounting to CHF 5,000 was appropriate sanction in the circumstances, and the decision rendered required all due sums, including the EUR 30,000 plus interest at 5% p.a. as of 9 June 2011, previously due to the Player, Josip Mišić, to be paid within 30 days, failing which a transfer ban would take effect.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

25. The following summarises the main points from the proceedings before the CAS.
26. On 24 June 2020 the Appellant filed its Statement of Appeal with the Court of Arbitration for Sport against the Respondents, in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration, 2019 edition (“the CAS Code”).
27. The Appellant filed its Appeal Brief on 2 July 2020. In its Appeal Brief, the Appellant requested that the procedure be suspended until the Court of Justice of the European Union (the “CJEU”) has given a preliminary ruling on various questions raised by the Appellant in its Appeal Brief.
28. On 15 and 20 July 2020, the First Respondent objected to the admissibility of the appeal, insofar as it was directed against the FIFA DRC Decision of 20 August 2014.
29. On 21 July 2020, the CAS Court Office noted that, while the appeal was directed against the FIFA DC decision of 4 May 2020, the Appellant’s requests for relief were in part directed against the DRC Decision of 20 August 2014. Accordingly, the Appellant was invited to comment on the admissibility of the appeal.
30. On 24 July 2020, the President of the CAS Appeals Arbitration Division decided to deny the Appellant’s request to suspend all CAS proceedings until a preliminary ruling was obtained from the CJEU and that it would be for the Panel, once constituted, to decide on the Appellant’s request.
31. On 28 July 2020, the Appellant clarified that the appeal was solely directed against the Appealed Decision, to the exclusion of the DRC Decision of 20 August 2014.
32. The First Respondent filed its Answer on 30 July 2020.
33. A Panel was called upon 9 September 2020, duly constituted with Mr. John Paul Mowberry, solicitor in Glasgow, Scotland, appointed as Sole Arbitrator.

34. The Second Respondent filed its Answer on 25 September 2020. FIFA also provided a copy of the entire disciplinary file.
35. On 7 October 2020, the Parties were informed by the CAS Court Office that the request for a preliminary ruling by the CJEU was denied and that written reasons would be included in the final Award.
36. On 19 October 2020, the Parties were informed by the CAS Court Office that a hearing would take place via Webex on 16 November 2020.
37. On 3 November 2020, the CAS Court Office, on behalf of the Sole Arbitrator, sent an Order of Procedure to the Parties, inviting them to sign and return a copy of such Order by 10 November 2020.
38. On 9 November 2020, both Respondents returned a signed copy of the Order of Procedure to the CAS Court Office. The Appellant did not return a signed copy of the Order of Procedure to the CAS Court Office within the prescribed time limit.
39. On 12 November 2020, the Appellant filed a petition for challenge against the appointment of Mr John Paul Mowberry as Sole Arbitrator.
40. On 13 November 2020, the CAS Court Office acknowledged receipt of the petition for challenge and informed the Parties that a Decision on Challenge would be issued in short order.
41. On the same day, the Challenge Commission of the Board of the International Council of Arbitration for Sport (the “Challenge Commission”) issued the operative part of a Decision on Challenge, dismissing the Appellant’s petition for challenge.
42. The hearing proceeded on 16 November 2020 by video conference and the Panel was assisted by Counsel to the CAS, Delphine Deschenaux-Rochat.
43. The following persons attended the hearing:
 - The Appellant was represented by its legal counsel, Mr Mircea Moise, assisted by Mr Gigel Preoteasa, interpreter;
 - The Player was represented by his legal counsel, Ms Marina Mesić;
 - FIFA was represented by Mr Jaime Cambreleng Contreras, Head of Litigation and Mr Saverio Paolo Spera, Senior Legal Counsel.
44. All parties were permitted ample time to make submissions to the Panel. At the end of the hearing, both Respondents confirmed that their right to be heard and to be treated equally in the present proceedings had been fully respected. The Appellant declined to provide such confirmation on the grounds that its request for production of documents had been rejected by the Sole Arbitrator (see paras. 104 ff below). After the Parties’

final arguments, the Sole Arbitrator closed the hearing and announced that the award would be rendered in due course.

45. A letter was received from the Appellant, post-hearing, on 24 November 2021, seeking to add further written submissions. The Respondents were afforded an opportunity to comment on said application and the Sole Arbitrator held that the Appellant's additional written submissions were inadmissible on the grounds that they were filed late and did not meet the requirements set out in Article R56 of the CAS Code.
46. On 7 December 2020, the Challenge Commission issued its reasoned Order on challenge.

V. OVERVIEW OF THE PARTIES' POSITIONS

47. The following outline is a summary of the Parties' arguments and submissions which the Sole Arbitrator considers relevant to decide the present dispute and does not necessarily comprise each and every contention put forward by the Parties. The Sole Arbitrator has nonetheless carefully considered all the submissions made by the Parties even if no explicit reference has been made in the following summary. The Parties' written submissions documentary evidence and the content of the Appealed Decision were all taken into consideration.

A. The Appellant's Submissions and Requests for Relief

48. The Appellant's submissions in its Appeal Brief may be summarised as follows.
49. The Appellant submitted that the Appealed Decision was rendered by an incompetent body, involved FIFA breaching its own mandatory rules, breached fundamental rules of Romanian law, breached particular laws of the European Union and transgressed the legal restrictions surrounding insolvency proceedings.
50. With respect to CAS jurisdiction, the Appellant submitted that there is no agreement between the parties to have their dispute adjudicated by the CAS and that the CAS is a "*FIFA-imposed jurisdiction*".
51. The Appellant submitted that the contract between SC Fotbal Club U Craiova SA and the Player did not include an arbitral clause granting FIFA the competence to adjudicate the dispute. According to the Appellant, SC Fotbal Club U Craiova SA was excluded from the RFF on 20 July 2011 and thus no longer under the jurisdiction of FIFA, and could not be made subject to an arbitrary and illegal decision of FIFA in 2014. At that time, the club was itself the subject of bankruptcy and insolvency proceedings in Romania, so that the dispute with the Player was "*attributed by operation of the law to the competence of Romanian courts*".
52. The Appellant argued that the Player "*had the possibility to become aware of the insolvency and could have referred to the official receiver and the judicial liquidator*",

yet he failed to do so. Referring the dispute to FIFA amounts to a circumvention of the Romanian insolvency and bankruptcy proceedings.

53. Thus the Appellant also challenged the enforceability of the 2014 FIFA DRC Decision per se and also its context within the Appealed Decision, assessing this not as an enforceable decision, but rather as a fundamental violation of insolvency laws and the Appellant maintained that, in any event, there was insufficient evidence to confirm that the 2014 Decision had been properly intimated to the Club.
54. The Appellant maintained that while Romanian civil law should be applied to the proceedings, furthermore that FIFA's actions in this case conflict directly with the legal framework and protections which are established by European Union law and regulation.
55. The evidence demonstrated, according to the Appellant that neither the Appealed Decision nor the DRC Decision of (which the Appellant argued was integral to the Appealed Decision), were connected to any sports-related activity and therefore were not specifically regulated by FIFA and invoking:
- Private International law provisions from the Romanian civil code;
 - Regulations of the EU on Insolvency Proceedings, adopted by the Council of the EU;
 - Fundamental Treaties and Charters of the European Union;
 - The European Convention for the Protection of Human Rights and Fundamental Freedoms.
56. During the hearing the Appellant did not challenge the assertion and even expressly admitted that that it is, as a matter of fact, the sporting successor to SC Fotbal Club U Craiova SA.
57. The Appellant further requested a preliminary ruling by the CJEU as well as the suspension of the arbitral procedure pending such preliminary ruling.
58. In its Appeal Brief the Appellant submitted the following request for relief:
- “(i) *Referring the matter at hand to the Court of Justice of the EU and suspending the relevant appeal;*
 - (ii) Confirming our appeal;*
 - (iii) Dismissing the Decision passed by the FIFA Dispute Resolution Chamber [sic] on 4 May 2020, in case with reference number 200394;*
 - (iv) Ordering the Respondents to pay all procedural and legal costs U Craiova 1948 SA has incurred and will incur in the future with respect to the current proceedings (fee, plane tickets, accommodation etc.)”*

59. Together with its Appeal Brief, the Appellant filed a request for production of several documents, namely “*the correspondence between our predecessor Fotbal Club U Craiova SA and/or its representatives and FIFA after 20 July 2011, as well as between UEFA and FIFA with respect to the exclusion of FC Universitatea Craiova from the [RFF]; (2) the correspondence between the court-appointed liquidator of Fotbal Club U Craiova SA and FIFA after 9 April 2014; (3) the correspondence between the RFF and the Respondent FIFA after 20 July 2011 with respect to: a) the exclusion of our predecessor from the RFF; b) the opening of the bankruptcy proceedings of our predecessor Fotbal Club U Craiova SA; (4) the file in which the appealed decision was passed; (5) proof of communication of the operative part of the decision passed by the DRC on 20 August 2014 to the court-appointed liquidator of Fotbal Club U Craiova SA; (6) the entire disciplinary file in which the appealed decision was passed*”.

B. The First Respondent’s Submissions and Requests for Relief

60. The position of the First Respondent as set forth in his answer can be summarised as follows.
61. According to the First Respondent the DRC Decision became final and binding and cannot be the subject of any appellate submissions, specifically, that following Article 15 of the FIFA Rules Governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber the Appellant could have requested grounds of said decision within the requisite time limits (in 2014) and effective failure to do so within the stated deadline resulted in the decision becoming final and binding and the parties being deemed to have waived their rights to file an appeal.
62. By reference to exhibits the First Respondent sought to demonstrate how the evidence fully supported its position further in that the DRC decision was properly communicated and delivered to the Appellant in 2014.
63. By reference to Article 49 of the FIFA Statutes the First Respondent set out how, under FIFA jurisdiction, the procedure adopted was impartial and independent, and that in line with Article 22 of the FIFA Regulations on the Status and Transfer of Players, FIFA’s competence to hear employment-related disputes of an international dimension is established, the First Respondent having taken all proper and necessary steps to pursue his claim before the correct body.
64. In answer to the request for a preliminary ruling before the CJEU, the First Respondent referred to Article 267 of the Treaty on the Functioning of the EU (“TFEU”), which did not, in his submission, support any request by the Appellant for a preliminary ruling in the proceedings before the CAS and essentially set out that there were no legal grounds whatsoever for such a ruling being sought.
65. The First Respondent requested “*that this Court rejects the Appeal filed against the decision passed by FIFA [DRC] on August 20th 2014 as well as all other requests submitted by the Appellant*”.

C. The Second Respondent's Submissions and Requests for Relief

66. The position of the Second Respondent as set forth in its Answer can be summarised as follows.
67. By reference to legal doctrine, *lex arbitri*, Swiss arbitration law, Swiss Private International Law Act, the CAS Code, FIFA Statutes, FIFA Regulations and Swiss Law the Second Respondent sought dismissal of the Appellant's submissions on the applicability of Romanian Law and European Regulations.
68. According to the Second Respondent, the DRC Decision of 20 August 2014 is final and binding due to the application of the fundamental principle of *res iudicata*, and given the essential nature of that doctrine no further arguments regarding FIFA's competence to pass that Decision should be heard.
69. The Second Respondent further asserted, as a matter of fact, that the RFF had informed it on 29 July 2015 that SC Fotbal Club U Craiova SA was still affiliated to the RFF.
70. Regarding the Appealed Decision the Second Respondent set out how the Appellant had never put into question that it is the sporting successor of SC Fotbal Club U Craiova SA, expressly confirming that it was the sporting successor in recalled CAS Proceedings (CAS 2020 /A/6567 & 6758), while supporting this position with CAS jurisprudence (CAS 2013/A/3245) on essential elements for analysis of sporting succession:
- a) the clubs had the same sporting name;
 - b) they both had the same foundational year in the clubs' website;
 - c) they had the same crest and kit;
 - d) they played in the same stadium;
 - e) they claimed the same sporting merits and titles;
 - f) their headquarters were also in the same premises.
71. Given that the sporting succession was clearly established between the two clubs, the successor club is liable for the debts incurred by the previous club and the failure to obtemper the Appealed Decision must be analysed as a violation of Article 64 FDC.
72. The Second Respondent supported the absolute competence of the FIFA DC to deal with the case at hand, recalling CAS 2018/A/5647, para. 135 which, it submitted, dealt with similar issues underlining that:

“FIFA disciplinary bodies are in a position to decide on the issue submitted by the Appellant; [...] The FIFA DC is not prevented from reviewing, making a legal assessment and deciding if the New Club is the same as – and/or the successor of – the Old Club. [...] Even when the FIFA Disciplinary Code provides in Article 107 that the ‘Proceedings may be closed if: a) the parties reach an agreement; b) a party declares bankruptcy; they become baseless’, the Panel notes that the Player brought into the scene the New Club which, in his view, has to be considered the same as – and or the sporting successor of – the Old Club. This New Club is not bankrupt and is currently

affiliated to the BFU and, thus, under these circumstances the Player deserves a formal consideration and decision of a substantive nature from FIFA.”

73. According to the Second Respondent, the consequences of sporting succession are clearly identifiable within a line of CAS jurisprudence, fully supporting the contention that the new clubs are held liable for the debts generated by the old clubs (CAS 2007/A/1355, TAS 2011/A/2614, CAS 2013/A/3425, CAS 2016/A/4550, CAS 2016/A/4576, CAS 2011/A/2646).
74. The documentation clearly demonstrates therefore, that in accordance with Article 64 FDC, the FIFA DC is entitled pronounce disciplinary measures on the basis that the sporting successor, FC U Craiova 1948 SA, has failed to pay its debt to the Player, despite being aware of the DRC Decision, making no payment whatsoever, not even a partial payment, therefore having established that the Appellant was in breach of Article 64 FDC the sanctions were due to be imposed and were appropriate.
75. The Second Respondent submitted the following Prayers for Relief:
- “Based on the foregoing, FIFA respectfully requests the Sole Arbitrator to issue an award on the merits:*
- 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;*
 - d) Ordering the Appellant to make a contribution to FIFA’s legal costs”*
76. With regard to the Appellant’s request for a preliminary ruling from the CJEU, FIFA notes that such prerogative is reserved to ordinary courts of Member States and that the Appellant’s request shall therefore be dismissed.

VI. JURISDICTION

77. Article R47 of the CAS Code stipulates:
- “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.”*
78. The jurisdiction of CAS derives from Article 58(1) FIFA Statutes (2018 Edition), as it determines that “[a]ppeals against final decisions passed by FIFA’s legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question”, and from Article R47 CAS Code. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by the Respondents. The Sole Arbitrator further notes that, although the

Appellant argues that there is no agreement between the Parties to have their dispute adjudicated by the CAS, it did not request the CAS to declare itself incompetent.

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

VII. ADMISSIBILITY

80. Article R49 of the CAS Code determines 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.”

81. In accordance with Article 58 para. 1 of the FIFA Statutes, *“appeals against final decisions passed by FIFA’s legal bodies [...] shall be lodged with CAS within 21 days of notification of the decision in question.”*

82. The appeal was filed within the deadline of 21 days set by Article 58(1) FIFA Statutes. The appeal complied with all other requirements of Article R48 CAS Code, including the payment of the CAS Court Office fee.

83. It follows that the appeal is admissible.

VIII. APPLICABLE LAW

84. The Parties were not in agreement as to the applicable law.

85. The Appellant, in its Appeal Brief had referred to Romanian law, Articles 4, 67, 68, 165 and 197 TFEU, Regulation (EC) No 593/2008 of the European Parliament and the Council of 17 June 2008 on the law applicable to contractual obligations (also known as Rome I), Regulation (EC) No 864/2007 (Rome II), Council Reg (EC) 1346/2000, Article 6(1) Treaty on the European Union (TEU), EU Charter of Fundamental Rights and the European Convention of Human Rights (ECHR).

86. The Second Respondent denied that any nexus exists between the laws and regulations invoked by the Appellant and the present case while the First Respondent supported the approach taken by FIFA i.e. that the FIFA Statutes and the various FIFA Regulations be applied to the present case, with Swiss law applicable on an auxiliary basis, in line with a consistent line of CAS jurisprudence to this effect.

87. Therefore the Sole Arbitrator addressed, at the outset of the Oral Hearing, identified a preliminary issue, i.e. the applicable law for the proceedings and submissions were invited from counsel on behalf of all parties

88. The oral submissions of Parties’ were in line with written submissions raised in the Appeal Brief and Answers.

89. The Sole Arbitrator issued a decision that the applicable law for proceedings is the FIFA Statutes, the various FIFA Regulations, also that in line R58 of the CAS Code, additionally Swiss Law was to apply, with further written reasons (below) to be issued within the terms of the Arbitral Award.

90. The established norm is identifiable within Article 58 of the CAS Code, which reads as follows:

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

91. Furthermore, Art. 57.2 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, additionally, Swiss law.”

92. The Sole Arbitrator believes that CAS jurisprudence has consistently emphasised that uniform legal standards must be ensured in the domain of international football, and also finds that no submissions advanced by the Appellant support divergence from all available, established and straightforward jurisprudence, which clearly informs the Parties that the present case must be addressed by the application of the FIFA Statutes, the various regulations of FIFA and, additionally, Swiss Law. It follows that the claims based on Romanian law and EU law raised by the Appellant do not need to be addressed by the Sole Arbitrator and are rejected.

IX. PRELIMINARY ISSUES

A. Referral to the CJEU

93. The Appellant requested in the Appeal Brief that the CAS “order referral” to the CJEU, requiring interim suspension of all CAS proceedings.

94. The Appellant listed rules and regulations of the EU along with multiple questions, which it wished the CJEU “to reply to” following such a referral, these questions were directed towards the following summary of issues:

- a) That FIFA cannot be an independent and impartial judge;
- b) That FIFA has become a legislative and judicial superpower, exercising functions in areas outwith sports, which should fall to be dealt with by bodies of the European Union;
- c) Whether fundamental rights guaranteed by European Treaty are consistent with international sports federations;

- d) Whether the rules imposed by FIFA and the appellate system at CAS is provide effective access to justice in the EU;
 - e) if the rules of sports federations derogate from relationship between European Law and Romanian law regarding solvency proceedings;
 - f) whether the application of the CAS throughout European Union states is compliant with jurisdictional protection under EU law;
 - g) whether the proper functioning of the EU is disturbed by the provisions of international sports federations;
 - h) whether the rights to carry out business in the EU is undermined by the provisions of international sports federations;
 - i) whether all persons are equal to the law except for international sports federations in a manner which does not correspond with EU law;
 - j) whether fundamental freedoms which are guaranteed to individuals and organisations under Eu law are limited or breached by the practices of international sports federations, in the context of professional football contracts.
95. The Sole Arbitrator had issued a decision at paragraph 35 above, stating that written reasons (herein) would be issued within the terms of the Arbitral Award.
96. Article 267 TFEU provides as follows:
- “The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:*
- (a) the interpretation of the Treaties;*
 - (b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union;*
- Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon. [...]*”
97. First of all, the Sole Arbitrator notes that only the courts of member states have the right to request preliminary rulings. Since the CAS is not a court of a member state, it does not have the right or obligation to submit requests for preliminary rulings. For this reason already, the Appellant’s request shall be dismissed.
98. In addition, it is useful to address the very nature of this preliminary request which is essentially a potential application for an interpretation of EU law by the CJEU.
99. The Sole Arbitrator observes that Article 267 TFEU would require de minimis that any application for a preliminary ruling, by a competent requesting tribunal, would necessitate the applicability of EU law to the matter at hand and also that its interpretation be relevant in order to resolve the matter.

100. The written pleadings in the Appeal Brief, in relation to this issue, simply list the various EU regulations and then pose questions, without legal analysis of any potential EU law issues.
101. Significantly, nowhere in its pleadings did the Appellant establish how the provisions of European Law mentioned in its Appeal Brief were applicable to the present case.
102. Fundamentally, the Appellant did not establish any nexus between EU law and the resolution of a dispute concerning the imposition of disciplinary measures by the FIFA Dispute Resolution Chamber.
103. The Sole Arbitrator therefore concluded that the Appellant's request for CAS to seek a preliminary ruling before the CJEU was irrelevant and fell to be refused.

B. Request for production of documents

104. As stated above, the Appellant filed with its Appeal Brief a request for production of the following documents:

- “(1) the correspondence between our predecessor Fotbal Club U Craiova SA and/or its representatives and FIFA after 20 July 2011, as well as between UEFA and FIFA with respect to the exclusion of FC Universitatea Craiova from the [RFF];*
- (2) the correspondence between the court-appointed liquidator of Fotbal Club U Craiova SA and FIFA after 9 April 2014;*
- (3) the correspondence between the RFF and the Respondent FIFA after 20 July 2011 with respect to: a) the exclusion of our predecessor from the RFF; b) the opening of the bankruptcy proceedings of our predecessor Fotbal Club U Craiova SA;*
- (4) the file in which the appealed decision was passed;*
- (5) proof of communication of the operative part of the decision passed by the DRC on 20 August 2014 to the court-appointed liquidator of Fotbal Club U Craiova SA;*
- (6) the entire disciplinary file in which the appealed decision was passed”.*

105. In relation to the documents requested at para. 104 (1) – para. 104 (5) above, the Sole Arbitrator refused any application for production of said documents for the following reasons.
106. Article R44.3 of the CAS Code requires that when a party requests the Panel to order such production of documents that the requesting party shall demonstrate the relevance and existence of said documents.
107. The Sole Arbitrator found that the Appellant had not demonstrated the relevance of the documentation requested. Specifically, in relation to requests (1), (2), (3) and (5) it was

clearly stated by the Appellant in its request for production, that these documents related to the 2014 DRC Decision. The Appellant did not satisfy the test of relevance to the Appealed Decision.

108. In this regard, as stated above, the CAS Court Office wrote to the Appellant during proceedings to ask for it to clearly state which Decision it intended to appeal, furthermore, the Sole Arbitrator directly clarified this issue with the Appellant during the oral hearing – on both occasions the Appellant stated that the 2020 FDC Decision was the Appealed Decision.
109. In relation to the request at 104 (4) above, the Sole Arbitrator observes that during the procedure before the CAS, FIFA disclosed the entire disciplinary file, there was no submission made out by the Appellant which satisfied the test set out at the CAS Code Article R44.3 in relation to any “further appeal file in which the decision was passed”, particularly in the context whereby the entire FIFA Disciplinary File was actually lodged in proceedings.
110. Therefore the requests for production all fell to be rejected, save for (6) which had been dealt with directly by the Second Respondent, without any order from the Sole Arbitrator.

X. MERITS

111. The present appeal is lodged against the decision of the FIFA DC for breaching Article 64 FDC, as the Appellant had been found to be the sporting successor of the previous club and accordingly, in line with all CAS jurisprudence, liable for debts of the previous club.
112. A central question therefore is the issue of sporting succession, as without this being established there would be no possible legal relationship between the Appellant and the First Respondent.
113. The Sole Arbitrator recalls a decision of the CAS (2018/A/5618, paras 66 & 67), where the Panel in that decision referred to a previous line of CAS jurisprudence:

“In CAS 2013/A/3425 (at par. 139), the Sole Arbitrator said the following:

‘The Sole Arbitrator highlights that the decisions that had dealt with the question of the succession of a sporting club in front of the CAS (CAS 2007/A/1355; TAS 2011/A/2614; TAS 2011/A/2646; TAS 2012/A/2778) and in front of FIFA’s decision-making bodies (...), have established that, on the one side, a club is a sporting entity identifiable by itself that, as a general rule, transcends the legal entities which operate it. Thus, the obligations acquired by any of the entities in charge of its administration in relation with its activity must be respected; and on the other side, 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. that allow it to

distinguish from all the other clubs. Hence, the prevalence of the continuity and permanence in time of the sporting institution in front of the entity that manages it has been recognised, even when dealing with the change of management companies completely different from themselves' (original text in Spanish).

This approach has been subsequently approved and applied in a number of decisions of the CAS including CAS 2016/A/4550 & CAS 2016/A/4576. The effect of these decisions is that the sporting successor of a former, no longer existing club can, as a matter of principle, be liable to meet the financial obligations of that former club notwithstanding that the successor is not a party to any agreement, arrangement or understanding pursuant to which the financial obligation arose or a privy of any of the parties to any such agreement, arrangement or understanding and regardless of whether there has been a change of management or corporate structure or ownership of the club in question.”

114. With reference to the substance of the present matter, the Sole Arbitrator considers that the Appellant does not dispute that it is, as a matter of fact, the sporting successor to SC Fotbal Club U Craiova S.A.
115. Furthermore, there is no dispute against the suggestion that the Player has received no payment from the club since the DRC Decision in 2014.
116. The issue of sporting succession was central to consideration of the FIFA DC, which fully reviewed the available information to conclude that all necessary criteria were met in determination of the issue of sporting succession – the Sole Arbitrator holds that there was no challenge to this aspect of the Appealed Decision.
117. According to well established CAS jurisprudence, “*Article 64 para. 1 FDC clearly sets out the legal framework applicable in the event of a club’s failure to comply with payment obligations set by a body of FIFA. It therefore enables the club to foresee the consequences of failing to comply with a decision passed by the PSC. It is clear that under Article 64 FDC, a club that is obliged to comply with a FIFA decision may be subject to a number of measures, such as fines, points deductions, transfer bans, etc., in the event it disregards a decision ordering it to pay an amount of money to another club*” (CAS 2018/A/5900).
118. The Sole Arbitrator finds that the Appellant accepts that it is the sporting successor and that the Appellant is indeed, as a matter of fact, the sporting successor to SC Fotbal U Craiova SA.
119. The Appellant clarified in writing (having been requested so to do by Counsel to the CAS) in its correspondence of 28 July 2020 that the appeal was indeed directed against the 2020 FIFA DC Decision and not against the original 2014 DRC Decision. Furthermore, the Appellant’s counsel confirmed during preliminary discussions at the hearing that the subject matter of the present appeal was the 2020 FIFA DC Decision.

120. On one view, the DRC Decision therefore does not need to be addressed, any further than by reference to its Terms, in the Sole Arbitrator's consideration.
121. However, the Appellant maintained a challenge to the competency and enforceability of the 2014 DRC Decision, both per se and in its context as part of the Appealed Decision. Essentially submitting that CAS is being asked by the Respondents to uphold the Appealed Decision which is itself based on a previous erroneous process and flawed decision (namely the DRC Decision).
122. Both Respondents raised the principle of res iudicata and submitted that the 2014 DRC Decision was final and binding, that the time limits for any appeal had long expired. The Appellant did not contend that time limits for appealing the 2104 DRC Decision had expired.
123. For the sake of completeness, The Sole Arbitrator observes that res iudicata is a fundamental principle of legal procedure which can be clearly identified in the present case when considering the 2014 DRC Decision. Furthermore, the prescribed time limits for any properly constituted appeal against this decision have unarguably expired. As a consequence of the principle of res iudicata, the Appellant's submissions against the validity or enforceability of the final and binding 2014 DRC Decision are bound to fail.
124. With regard to the Appellant's argument that SC Fotbal U Craiova SA was no longer a member of RFF at the time when FIFA initiated disciplinary proceedings, the Sole Arbitrator notes that a letter from the RFF contradicts this statement. Indeed, in a letter dated 29 July 2015, the RFF stated that SC Fotbal U Craiova SA was still affiliated with the RFF. It follows that, when the disciplinary procedure was initiated, SC Fotbal U Craiova SA still fell under the jurisdiction of FIFA.
125. With regard to sanctions imposed by the FIFA DC under the Terms of the Appealed Decision, the appropriateness of the fine imposed against the Appellant (CHF 5,000) was not challenged by any of the Parties, and for completeness, the Sole Arbitrator does not consider that either the imposition of this sanction nor the level of the fine raises any question of proportionality.
126. The Sole Arbitrator concludes that, in all the circumstances described above, no challenge has been established against the Appealed Decision regarding the specific finding that the Appellant is the sporting successor, consequences of such a finding is that the Appellant must be assessed non-compliant under Article 64 of the 2017 FDC, in the terms set out by the Member of the FIFA Dispute Resolution Chamber, whereby the Appellant has correctly been found liable for the debt to the First Respondent.
127. The Sole Arbitrator recalls that the Swiss Federal Tribunal has previously found FIFA's system of sanctions in response to non-compliance with FIFA decisions to be lawful (SFT 4P.240/2006).

128. Therefore the Sole Arbitrator is satisfied that the FIFA DC was authorised and entitled to impose the disciplinary measure against the Appellant and the Appealed Decision is confirmed.

XI. COSTS

129. 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”.

130. 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 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”.

131. In light of the outcome of these proceedings, the Sole Arbitrator considers that the costs of the arbitration, to be calculated by the CAS Court Office and communicated separately to the parties, shall be borne by the Appellant.
132. The Panel also considers that, in light of the outcome and complexity of the present dispute, the Appellant should contribute to the legal fees and other expenses incurred by the Player in an amount of CHF 5'000. Given that FIFA was not represented by outside Counsel, the Sole Arbitrator rules that it shall bear its own costs and expenses.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by U Craiova 1948 S.A. against the decision rendered by the FIFA Disciplinary Committee on 4 May 2020 is dismissed.
2. The decision rendered by the FIFA Disciplinary Committee on 4 May 2020 is confirmed.
3. The costs of the arbitration, to be determined by the CAS Court Office, shall be borne entirely by U Craiova 1948 S.A.
4. U Craiova 1948 S.A. is ordered to pay to Mr Josip Mišić an amount of CHF 5'000 as a contribution towards his legal costs and expenses incurred in connection with the present proceedings.
5. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 27 September 2021

THE COURT OF ARBITRATION FOR SPORT

John Paul Mowberry
Sole Arbitrator