



TAS / CAS

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

CAS 2023/A/9809 Karpaty FC v. FIFA, Cristóbal Márquez Crespo & FC Karpaty Halych

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. Patrick Grandjean, Attorney-at-law, Belmont, Switzerland
Mr. Jordi López Batet, Attorney-at-law, Barcelona, Spain

in the arbitration between

Karpaty FC, Lviv, Ukraine

Represented by Messrs. Georgi Gradev, Márton Kiss and Ms. Yuliya Bogdanova, SILA International Lawyers, Sofia, Bulgaria

- Appellant -

and

1/ Fédération International de Football Association, Zurich, Switzerland

Represented by Mr. Saverio Paolo Spera, FIFA Senior Legal Counsel, Zurich, Switzerland

- First Respondent -

2/ Mr. Cristóbal Márquez Crespo, Spain

Represented by Mr. Messrs. Íñigo de Lacalle Baigorri and Juan Ignacio Triguero Gea, Senn, Ferrero & Asociados S.L.P., Madrid, Spain.

- Second Respondent -

3/ FC Karpaty Halych, Halych, Ukraine

- Third Respondent -

I. PARTIES

1. Karpaty FC (the “Appellant” or the “New Club”) is a professional football club with its registered office in Lviv, Ukraine. It is affiliated with the Ukrainian Association of Football (the “UAF”), which in turn is affiliated with the *Fédération Internationale de Football Association*.
2. *Fédération Internationale de Football Association* (the “First 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.
3. Mr. Cristóbal Márquez Crespo (the “Player” or the “Second Respondent”) is a professional football player of Spanish nationality.
4. FC Karpaty Halych (“Karpaty Halych” or the “Third Respondent”) is an amateur football club with its registered office in Halych, Ukraine. It is affiliated with the UAF, which in turn is affiliated with FIFA.
5. The Player and FIFA shall be collectively referred to as the “Respondents”¹.
6. The Appellant and the Respondents shall be collectively referred to as the “Parties”.

II. FACTUAL BACKGROUND

A. Background facts

7. Below is a summary of the main relevant facts, as established on the basis of the written and oral 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.
8. On 15 November 2018, the FIFA Dispute Resolution Chamber (the “FIFA DRC”) issued a decision whereby it declared the claim filed by the Player against football club FC Karpaty Lviv (the “Original Debtor”) inadmissible (the “DRC Decision”).
9. On 21 February 2019, the Player filed an appeal with the Court of Arbitration for Sports (the “CAS”) against the DRC Decision which was docketed under the case reference number *CAS 2019/A/6160*.

¹ The Third Respondent remained silent during the entirety of the present proceedings. In order to avoid constant repetitions in this respect, the Panel will henceforth use the term for the Player and FIFA only. In case of need, Karpaty Halych will be referred to as such.

10. On 30 March 2020, CAS rendered an award by means of which it set aside the DRC Decision and ordered the Original Debtor to pay the Player the following amounts: i) EUR 516,884 (five hundred sixteen thousand eight hundred and eighty four euros) plus interest, at a rate of 5% *p.a.* as of 26 April 2018 until the date of effective payment and ii) CHF 3,000 (three thousand Swiss Francs) as a contribution towards the Player's legal fees and other expenses incurred in connection with the above arbitration proceedings (the "CAS Award").
11. In light of the Original Debtor's failure to pay the above-mentioned amounts, the Player lodged a complaint with the FIFA Disciplinary Committee which issued a decision on 9 June 2020, sanctioning the Original Debtor for its failure to comply with the CAS Award.
12. On 29 March 2021, the UAF requested FIFA to change the popular and full name of the Original Debtor to "*CPF Karpaty LTD*" and "*Club of Professional Football Karpaty LLC*" respectively.
13. On 21 October 2021 and in the course of parallel disciplinary proceedings, the UAF informed FIFA that the Original Debtor and the New Club are separate legal entities which were established in different years and are not related in any way whatsoever in terms of management and ownership.
14. On 14 February and 8 November 2022, the Player requested the Secretariat of the FIFA Disciplinary Committee (the "Secretariat") to open disciplinary proceedings against the club "*Karpaty Lviv currently playing the Druha Liha*" (i.e., the New Club) as he had reasons to believe that the former club was to be considered the sporting successor of the Original Debtor and therefore, it was liable for the debts incurred by the latter by means of the CAS Award.

B. Proceedings before the FIFA Disciplinary Committee (the "FIFA DisCo")

15. Following the requests filed by the Player in this regard and further to article 32 (5) of the FIFA Disciplinary Code (the "FDC"), the Secretariat initiated an investigation in order to evaluate the assumptions of the Player. Despite both the Appellant and the UAF argued that the former did not constitute the sporting successor of the Original Debtor, the Secretariat determined, by means of its investigatory report (the "Investigatory Report") that both the New Club and the Original Debtor shared certain common elements that constituted part of their sporting identity such as the name, colors team logo and home venue. Further, the Secretariat noted that the New Club had managed to be granted a license to use the trademark "*FC Karpaty*" which was previously used by the Original Debtor and was owned by a fans' organization of the latter. After having examined several elements in this respect, the Secretariat concluded that "*according to the case file, it appears that the elements, which reveal sporting succession, would prevail over the non-existence elements, and as a consequence, it seems that the New Club should be considered the sporting successor of the [Original Debtor]*".

16. Against the above conclusion, on 14 April 2023 the New Club was informed of the disciplinary proceedings opened against it for a potential breach of Article 21 of the FDC.
 17. On 24 April 2023, the New Club filed its position in regards with the issue at stake. In essence, the New Club maintained that the Investigatory Report was based solely on the common appearance between the Original Debtor and the New Club and completely disregarded the well - settled jurisprudence of CAS according to which, the determination of sporting succession between two entities further required the establishment of the new club's attempt to avoid the financial obligations of its sporting predecessor while seizing the latter's asset. In support of its arguments, the New Club asserted that it never acquired the federative rights or the assets of the Original Debtor and that, while both clubs "*co-existed*" in the structure of Ukrainian football, they were owned and managed by different individuals. Accordingly, the New Club argued that Karpaty Halych was to be considered the sporting successor of the Original Debtor, mainly due to the involvement of the latter's stakeholders in the affairs of Karpaty Halych, as well as the transfer of certain assets of the Original Debtor to the Third Respondent. In view of the above, the New Club requested the inclusion of Karpaty Halych in the pertinent disciplinary proceedings as the sporting successor of the Original Debtor and the dismissal of all charges against the Appellant.
 18. On 11 May 2023, the FIFA DisCo rendered its decision on the pertinent matter with, *inter alia*, the following operative part (the "Appealed Decision"):
 - "1. [The New Club] is considered responsible for the debt(s) incurred by the [Original Debtor], and, as such is found responsible for failing to comply in full with the [CAS Award].
 2. [The New Club] is ordered to pay to [the Player] as follows:
 - EUR 516,884 within 30 days, plus 5% interest p.a. as from 26 April 2018 until the date of effective payment;
 - CHF 3,000 as contribution towards the legal fees and other expenses incurred in connection with the arbitration proceedings

[..]

 - 4. [The New Club] is ordered to pay a fine in the amount of CHF 25,000".
19. On 4 July 2023, the grounds of the Appealed Decision were communicated to the parties in the above proceedings determining, *inter alia*, the following:

"46. To begin with, the [FIFA DisCo] noted that the [New Club] submitted information and documentation with regard to a third club, FC Karpaty Halych, and requested to open disciplinary proceedings against the former since it had reasons to believe that this club is the sporting successor of the [Original Debtor] and therefore should be held liable for the debt(s) of the latter.

47. *In this respect, the [FIFA DisCo] would like to highlight that, according to art. 21(2) FDC, in the context of financial decisions passed by a body, a committee, a subsidiary or an instance of FIFA, or CAS, disciplinary proceedings may only commence at the request of the creditor or any other affected party.*

48. *In this sense, and according to the case file, the [FIFA DisCo] observed that the creditor established in the CAS Award, [the Player], at no moment during the investigations conducted by the Secretariat or during the course of the present disciplinary proceedings requested to open proceedings against a third club other than the [New Club] – and this despite the fact that he was aware of the allegations raised by the [New Club] against a third club. Consequently, and taking into consideration the foregoing, the [FIFA DisCo] was of the view that is not in a position to grant the abovementioned request of the [New Club].*

[..]

51. *To that end, the [FIFA DisCo] referred to decisions that had dealt with the question of succession of a sporting club in front of CAS. In particular, the [FIFA DisCo] pointed out that it had been established that, on the one hand, a club is a sporting entity identifiable by itself that, as a general rule, transcends the legal entities which 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. This said, on the other hand, it has been stated that the identity of a club is constituted primarily by elements such as its name, colours, fans, history, sporting achievements, shield, trophies, stadium, roster of players, historic figures, etc. These elements allowing (sic) a club to distinguish itself from all 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 a change of management completely different from themselves.*

52. *In these circumstances, the CAS has held that a “new” club has to be considered as the “sporting successor” of another one in a situation where (i) the “new” club created the impression that it wanted to be legally bound by the obligations of its predecessor (i.e. the “old” club), (ii) the “new” club took over the license or federative rights from the “old” club and (iii) the competent federation treated the two clubs as successors of one another.*

53. *By the same token, a “sporting succession” is the result of the fact that (i) a new entity was set up with the specific purpose of continuing the exact same activities as the old entity, (ii) the “new” club accepted certain liabilities of the “old” club, (iii) after the acquisition of the assets of the “old” club, the “new” club remained in the same city and (iv) the “new” club took over the license or federative rights from the “old” club.*

54. *Furthermore, the issue of the succession of two sporting entities (i.e. distinct clubs) might be different 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, as a general transcends the legal entities which*

operate it. Consequently, elements to consider are, amongst others, the name, the logo and colours, the registration address and/or the managing board of the club.

[...]

56. Against such background, it is likewise worth mentioning that the elements as referred to under art. 21 (4) FDC (formerly art.15 (4) of the 2019 FDC) are non – exhaustive. More specifically, CAS has 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 a club has to be considered (or not) as a “sporting successor”. The overall package of the elements, collectively considered, being decisive.

[...]

58. In this sense, the [FIFA DisCo] acknowledged the [New Club’s] position, which in essence, contested the conclusions of the Investigatory Report and stated that i) it was not the sporting successor of the [Original Debtor] and that ii) it is not enough to consider the new club to be sporting successor of another club solely on the basis of appearances and that, in any event, iii) there is not evidence that the public perceived the [New Club] to be the successor of the [Original Debtor]. Moreover, the [New Club] explained i) that the federative rights of the [Original Club] have not been transferred to the [New Club], ii) that the [New Club] had borrowed the logo – also used by the Original Club in the past – from the organization “ULTRAS KARPATY” and iii) that the [Original Debtor] has not gone insolvent, bankrupt, or disappeared.

[...]

60. With the above in mind, upon review of the information on file and within the Investigatory Report, the [FIFA DisCo] noted that the [New Club] shared several significant similarities with the [Original Debtor], all of which pointed towards a sporting succession between the former and the latter.

61. In particular, the [FIFA DisCo] found that:

i) the names of the [Original Debtor] – FC Karpaty Lviv – and the one of the [New Club] – TzOV FC Karpaty Lviv – are almost the same. In this respect, the [FIFA DisCo] pointed out that the popular name of the [New Club] is exactly the same as the [Original Debtor] – FC Karpaty Lviv;

ii) both clubs have the same colours, i.e. green and white;

iii) both clubs have the same logos;

iv) both club play in the same stadium and were located in the same city, Lviv, and;

v) both clubs competed in the same footballing division – the Second Professional League in Ukraine, the [Original Debtor] having last participated in the Second Professional League in the 2020 – 2021 season, whilst the New Club began

competing in such division following its promotion at the end of the 2020 – 2021 season.

62. *In this context, the [FIFA DisCo] likewise noted, based on the information and documentation at its disposal and in accordance with publicly accessible information, that the [New Club] could also be seen to share an intertwined history with the [Original Debtor] and that in accordance with the Investigatory Report, it appears that the [New Club] recognises the [Original Debtor’s] history as its own. In particular, the official website of the [New Club], under the history section, states that. “[t]he Lions are Back [...] The Karpaty Football Club was established in 2020 as part of the implementation of a public initiative to revive Karpaty Lviv [...]” (free English translation).*

63. *In addition, the [FIFA DisCo] was assured by the stipulations of the Investigatory Report that the [New Club] was clearly identified by the public as being connected to the [Original Debtor], there existing multiple accessible sources of information which made various references to the [Original Debtor] in connection with the [New Club].*

64. *Furthermore, it even appeared that the [New Club], on four occasions at least, posted content on its official social media channels, making reference to the [Original Debtor’s] triumphs, legends, and achievements. In the same line, the [FIFA DisCo] noted that on 15 July 2021, the [New Club] expressed on its official website its “gratitude to the Lviv Football Association [...] for maximum assistance in the revival of [Karpaty Lviv] [...] [The New Club] invite[d] Lviv fans to the matches of the team to jointly review the legend of Lviv – the football team “Karpaty” (free English translation).*

65. *Finally, the acknowledgement of the [Original Debtor’s] supporters’ group “Ultras Karpaty Lviv” to support the [New Club] as the [Original Debtor] was duly noted by the [FIFA DisCo], which also noticed that the “Ultras Karpaty Lviv” transferred to the Respondent the use of the logo that the [Original Debtor] had used for almost 17 years. In particular, the [FIFA DisCo] found that the aforementioned supporters’ statement, namely “the decision was made to transfer [...] our shire – club emblems. We believe that ahead of [them] are waiting for victory and urge everyone to support the [New Club], which are starting their way to the elite from the Second League of the Championship in Ukraine” (free English translation) represented an important element justifying the [New Club] being considered as the sporting successor of the [Original Debtor]”.*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

20. On 17 July 2023, 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 Mr. Patrick Grandjean, attorney-at-law in Switzerland, as an arbitrator.
21. On 31 July 2023 and following a request submitted by the Appellant in this regard, the CAS Court Office informed the Parties that the Appellant had been granted a 10 – day extension of the deadline to file its Appeal Brief, further to Article R32 (2) of the CAS Code.

22. On 3 August 2023, the Second Respondent requested that the time limit to file his Answer be fixed upon the payment by the Appellant of his share of the advance of costs, according to Articles R55 (3) and R64 (2) of the CAS Code. Said request was granted.
23. On 7 August 2023, the First Respondent informed the CAS Court Office that it had agreed with the Second Respondent to jointly nominate Mr. Jordi López Batet, attorney-at-law in Barcelona (Spain) as arbitrator. This was confirmed by the Second Respondent by means of an email to the CAS Court Office dated 8 August 2023.
24. On 8 August 2023, the CAS Court Office noted that the Third Respondent had not expressed its view on the joint nomination by the Respondents of Mr. Mr. Jordi López Batet as an arbitrator. Therefore, the Third Respondent was granted an additional deadline of three (3) days to state its preference in this respect, however to no avail. Silence on this was to be considered acceptance as stated in the letter of 8 August 2023.
25. On 11 August 2023, the Appellant filed its Appeal Brief pursuant to Article R51 of the CAS Code.
26. On 14 August 2023, the First Respondent requested that the time limit to file its Answer be set aside and a new time limit be fixed upon the payment by the Appellant of its share of the advance of costs, further to Articles R55 (3) and R64 (2) of the CAS Code. Said request was granted.
27. On 4 October 2023, the Appellant requested the admission of the arbitral award rendered in *CAS 2022/A/9044* in the case file of the matter at stake. In view of the Respondents' silence in this regard, the Appellant's request was granted.
28. On 23 October 2023 and following several extensions of the pertinent deadline, FIFA filed its Answer pursuant to Article R55 of the CAS Code.
29. On 31 October 2023 and after several extensions granted in this regard, the Player filed his Answer further to Article R55 of the CAS Code.
30. Karpaty Halych did not file its Answer. In fact, it did not file any written or oral submissions in these proceedings.
31. On 16 November 2023, the CAS Court Office noted that, whereas the First Respondent preferred for an award to be rendered in the present matter on the sole basis of the Parties' written submission, the Appellant and the Second Respondent requested for an in-person hearing to be held in the matter at stake.
32. On 22 November 2023, the CAS Court Office informed the Parties that, pursuant to Article R54 of the 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: Mr. Patrick Grandjean, Attorney-at-Law, Belmont, Switzerland
Mr. Jordi López Batet, Attorney-at-Law in Barcelona, Spain

33. On 18 January 2024, the CAS Court Office informed the Parties, *inter alia*, that the Panel had decided to hold a hearing in the matter at hand.
34. On 23 February 2024, the Appellant filed its duly signed Order of Procedure.
35. On 26 and 27 February 2024 respectively, the Second and the First Respondents filed their duly signed Order of Procedure.
36. On 18 March 2024, a hearing was held by video-conference. 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.
37. In addition to the Panel and Mr. Fabien Cagneux, Managing Counsel, the following persons attended the hearing:
 - For the Appellant:
 - 1) Mr. Georgi Gradev, counsel;
 - 2) Mr. Márton Kiss, counsel;
 - 3) Mrs. Yuliya Bogdanova, counsel;
 - 4) Mr. Krasimir Todorov, administrative assistant;
 - For the First Respondent:
 - 1) Mr. Saverio Paolo Spera, Senior Legal Counsel;
 - For the Second Respondent:
 - 1) Mr. Cristóbal Márquez Crespo, the Second Respondent;
 - 2) Mr. Íñigo de Lacalle Baigorri, counsel;
 - 3) Mr. Ignacio Triguero Gea, counsel;
38. The Parties had a complete opportunity to present their case, submit their arguments and answer the questions posed by the Panel.

39. 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.
40. 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 Karpaty FC

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

i) On the violation of the Appellant's procedural rights

- The right to be heard constitutes a fundamental and generally accepted legal principle that derives from the elementary rules of natural justice and due process. Said principle, which is also recognized in the context of sports arbitration, imposes upon the deciding body a minimal duty to examine every issue that arises in the context of a case. In turn, a party's right to be heard is violated when the tribunal, either due to an oversight or by a misunderstanding, does not take into consideration arguments and/or evidence submitted by said party which are important to the decision to be issued.
- In view of the above considerations, the Appealed Decision does not contain a "*passage [...] where the [FIFA DisCo] rejected the objective and subjective elements asserted by the Appellant regarding the sporting succession between the [Original Debtor] and [the Third Respondent], which are expressly mentioned in the chapter of the Appealed Decision devoted to stating the Appellant's position [...] [The FIFA DisCo] should also have addressed the issue as to whether mere appearance is sufficient to establish sporting succession or whether the new club must have (also) taken over the assets of the old club*". By failing to address the above elements and arguments presented by the Appellant, the FIFA DisCo violated the latter's right to be heard.
- Further, during the first instance proceedings the Appellant repeatedly requested from the FIFA DisCo to also include the Third Respondent as a party in the disciplinary case opened against the Appellant following the pertinent request of the Player; however, and in violation of the Appellant's right to be heard and right to fair proceedings, the FIFA DisCo dismissed said requests on the basis of Article 21(1) of the FDC which provides that disciplinary proceedings for failing to comply with a final decision of monetary nature only commence at the request of the creditor.
- In reaching the above conclusion, the FIFA DisCo misinterpreted the Appellant's request since the latter never sought the opening of autonomous disciplinary

proceedings against the Third Respondent but merely its “*joinder as a party to the ongoing proceedings opened at the Player’s request*”. The Appellant’s request is premised on Articles 81 (1) and 82 of the Swiss Code of Civil Procedure (the “CCP”) which, by virtue of Article 5 (b) of the FDC are also applicable in the context of disciplinary proceedings before the FIFA DisCo. Nevertheless, the FIFA DisCo rejected the Appellant’s “*legitimate repeated request for a party joinder*” and dismissed its pertinent argumentation regarding the sporting succession between the Original Debtor and the Third Respondent.

ii) On the issue of sporting succession

- Pursuant to the jurisprudence of previous CAS Panels, the concept of sporting succession is not to be applied just because two clubs share similar features such as the name, colour, logo, etc. On the contrary, such concept was created primarily to avoid abuse which in turn, implies that the sporting successor must have committed a certain offence. Accordingly, one cannot rely on the common appearance between two clubs, but further elements must also be established such as the acquisition of the predecessor’s federative rights by the sporting successor, the acceptance of liabilities of the previous club by the new club and the treatment of the new club as the successor of the previous club by the national and/or international federation.
- In the present case, the Player failed to establish that the Appellant was established with the purpose of avoiding the financial obligations of the Original Debtor while maintaining the latter’s activities. There is no indication of any connection between the Original Debtor and the Appellant whatsoever, contrary to the established connection between the former and Karpaty Halych. In fact, both the Appellant and the Original Debtor used to operate during the same period within the structure of Ukrainian football, albeit in different divisions until the Original Debtor was relegated to an amateur division and subsequently ceased its activities due to the implementation of a military law in Ukraine.
- With regard to the elements that constitute the sporting identity of the Appellant, it is noted that, according to the UAF, there are nearly forty clubs currently operating under the name “Karpaty”, given that said name indicates the area of the Carpathian Mountains where these clubs are domiciled. Similarly, all these clubs that operate under the name “Karpaty” use the colours green and white as said colours are also a tribute to their common area of origin. Further, the Appellant only temporarily exploits the logo of the Original Debtor – which, as a matter of fact, belongs to the non – governmental organization “Ultras Karpaty” and not to the Original Debtor – as it has already applied for the registration of two trademarks which are still pending for approval by the competent public authorities. By the same token, the Appellant may host its home games in the same stadium previously used by the Original Debtor but the ownership of said stadium belongs to the local municipality and in case, there are not many stadiums available in a city such as Lviv.

- On the contrary, the objective onlookers consider Karpaty Halych to be the sporting successor of the Original Debtor. Particularly, Karpaty Halych also shares a similar name and logo, as well as the same colours (green and white) with the Original Debtor. More importantly, during October 2020 Karpaty Halych acquired part of a certain monetary claim that the Original Debtor held against the Argentinian football club Atlético River Plate which indicates the solid connection between Karpaty Halych and the Original Debtor. The anticipation of the Original Debtor to receive certain fees also indicates that the Original Debtor was expected to be in a financial state that would allow it to repay the debt against the Player. However, the Player's passivity in retrieving his claim from the Original Debtor clearly falls short of the threshold of diligence that a creditor is expected to meet.

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

“[...]

1. *Annul the Appealed Decision and refer the case back to the [FIFA DisCo], which shall (i) join [Karpaty Halych] as a party to the disciplinary proceedings and (ii) adjudicate and decide the matter de novo, from the beginning of the procedure and with [Karpaty Halych] as a potential sporting successor of [the Original Debtor];*
2. *Alternatively, annul the Appealed Decision and issue a new decision, which shall find that [Karpaty Halych] is the sporting successor of the [Original Debtor] and is thus a non – compliant party with the [CAS Award];*
3. *More alternatively, annul the Appealed Decision and issue a new decision which shall find that the Appellant is not the sporting successor of [the Original Debtor] and is thus a non – compliant party with the [CAS Award];*
4. *Order FIFA to close the disciplinary proceedings against the Appellant;*
5. *Order FIFA and/or [the Player] to bear all costs incurred with this proceeding;*
6. *Order FIFA and/or [the Player] to pay the Appellant a contribution towards its legal and other costs in an amount to be determined at the Panel's discretion.”*

b FIFA

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

i) On the violation of the Appellant's procedural rights

- Despite the Appellant's assertions, there was no violation of its procedural rights in the course of the first instance proceedings before the FIFA DisCo and arguments submitted by the Appellant in this respect constitute simply a dilatory tactic adopted by the latter in order to further postpone the fulfilment of its financial obligations towards the Player. Initially, it should be noted that the FDC does not impose any obligation on FIFA to involve third parties in disciplinary proceedings at the request of a party that is not a creditor. Further, mandatory joinders in Swiss law are governed by Article 70 (1) CCP which provides that "*if two or more persons are in a legal relationship that calls for one single decision with effect for all of them, they must jointly appear as plaintiffs or be sue as joint defendants*". In the present case, which pertains to the question of whether the Appellant is the sporting successor of the Original Debtor and the consequences thereof, there is no such legal relationship between the New Club and Karpaty Halych nor the award to be issued in this respect will, in any way, affect Karpaty Halych. Therefore, the pertinent argumentation of the Appellant is simply incorrect.
- In any case and pursuant to the *de novo* power of review vested upon the Panel, any procedural flaw that may have occurred during the proceedings before the FIFA DisCo will be cured during the present arbitral proceedings.

ii) On the issue of sporting succession

- Whereas there have been a few CAS panels having underlined that the concept of sporting succession was primarily created to avoid abuse or fraudulent conduct from the side of the successor, it nevertheless does not constitute a *conditio sine qua non* for the competent deciding body to conclude whether sporting succession has occurred. On the contrary, the most important element to be determined is whether the new club has taken over the elements that comprise the old club's sporting identity.
- In the present case, the New Club publicly portrays itself as "Karpaty Lviv" and has adopted the logo and team colours of the Original Debtor. Further, by means of its accounts in the various social platforms and its official website, the Appellant seems to have appropriated the sporting history and achievements of the Original Debtor which are now presented as part of the New Club's history, despite the latter having been established only recently. As an additional element, the Appellant currently uses the same stadium as the Original Debtor and has hired seven individuals in total (four players and three executives) that were previously employed by the Original Debtor. In light of the above, the Appellant has adopted all the elements that indicate the continuity of the football entity "Karpaty Lviv".
- The assertions of the Appellant the latter and the Original Debtor are two separate entities with distinct shareholders/stakeholders and management are of minor to no importance for the case at hand; pursuant to the well-established jurisprudence of CAS, a club is a sporting entity identifiable by itself and therefore transcends the legal entities which operate it. In view of the above considerations, it follows

that any difference between the Appellant and the Original Debtor that pertains to their respective corporate structure cannot affect the conclusion that the former has succeeded the latter based on the concept of sporting succession.

- What the Appellant misconceives as “*just appearances*” is precisely the set of elements that depicts its perception by the public. In this regard, it has been held by various CAS Panels that the concept of sporting succession is heavily relied upon the views of the objective onlookers. Accordingly, a club (such as the Appellant) that actively attempts to portray itself as the same club with another entity, falls within the material scope of the pertinent provision of the FDC that regulates the issue of sporting succession. The fact that the Appellant is publicly perceived as the successor of the Original Debtor is further corroborated by the fact that the official fans’ organization of the latter has elected to bestow the use of the Original Debtor’s logo to the Appellant.

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

“(a) to reject the requests for relief sought by the Appellant;

(b) to confirm the Appealed Decision;

(c) to order the Appellant to make a contribution to FIFA’s legal costs.”

c Cristóbal Márquez Crespo

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

i) On the violation of the Appellant’s procedural rights

- Under Swiss law, the right to be heard of a party is mainly comprised by the following elements: i) the right to present arguments, submit evidence and properly participate in the hearing to be conducted and ii) the right to rebut the opposing party’s evidence and statements. However, such right does not oblige the arbitral tribunal to discuss all arguments presented, regardless of their relevance with the pertinent case. An “*implicit denial of irrelevant issues is possible and justified*”. In line with the above, the main issue of the first instance proceedings before the FIFA DisCo was the potential sporting succession between the Original Debtor and the Appellant. In this regard, the Appellant was granted ample opportunity to present its view and rebut the arguments submitted by the Player.
- Accordingly, the argument of the Appellant that the FIFA DisCo failed to address its request for the mandatory joinder of Karpaty Halych during the pertinent disciplinary proceedings is simply “*misplaced*”, as the first instance proceedings were focused on the legal succession of the New Club and did not have any effect on Karpaty Halych.

- The application of Swiss law in the matter at hand is limited only on a subsidiary basis and only in case a need arises to fill a gap in the applicable FIFA Regulations or to interpret said regulations. Accordingly, and since the FDC does not contain a provision addressing the issue of mandatory joinders, the New Club cannot rely on Swiss law to “*create a new provision*”. Additionally, and further to its Article 1, the CPC is not applicable in the context of international arbitration proceedings, such as the matter at stake. In any case, the pertinent provisions of the CPC that regulate the issue of mandatory joinder, provide that the joint appearance of two parties is required only in case said parties “*are in a legal relationship that calls for one single decision with effect to all of them*”. This is not the case in the present matter.

ii) On the issue of sporting succession

- Despite that various CAS Panels have assessed a fraudulent intention to be one of the key elements in establishing that sporting succession has occurred between two clubs, such element is not a necessary precondition for that purpose; the Sole Arbitrator in *CAS 2020/A/6884* clearly explained that “[...] *the fact that this provision was created to avoid abuse of clubs trying to escape from financial obligations, is also not put in doubt by the Sole Arbitrator. However, the Sole Arbitrator wishes to underline that even if any abuse is absent or cannot be demonstrated, Article 15(4) of the 2019 FIFA Disciplinary Code can still apply*”.
- The Appellant has adopted the vast majority of the elements that constitute the “sporting identity” of the Original Debtor such as the name, the logo, the team colours and the city of establishment. Moreover, the Appellant uses the same venue in which the Original Debtor used to host its home games and has registered seven former employees of the latter. More importantly, by means of the publications in its website and the various social media accounts, it is rather obvious that the Appellant actively portrays itself as the successor of the Original Debtor, by constantly referring to the sporting achievements of the latter and to important figures of its sporting history. The public perception of the Appellant as the successor of the Original Debtor is further corroborated by the license agreement that was concluded between the New Club and the fans’ organization “Ultras Karpaty” regarding the use of the Original Debtor’s logo. Said organization supports the football entity “Karpaty Lviv” and acquired the logo from the Original Debtor prior to the cessation of its activities.
- By the end of the sporting season 2020/2021, the Appellant was promoted to the professional categories of Ukrainian football while the Original Debtor was relegated to an amateur division and subsequently ceased every football activity. Therefore, the sequence of events created the impression, to the eyes of the public, that the sporting continuity of the football entity “Karpaty Lviv” was achieved by its unrelentless participation in the domestic professional divisions, even by means of different legal entities.

- Karpaty Halych is a totally distinct football club which operates under a different name, uses a different stadium and operates in a different city. Further, as opposed to the Appellant which constantly refers to the founding year of the Original Debtor i.e., 1963, Karpaty Halych was established in 1949 and it does not attempt to associate itself with the Original Debtor in any way whatsoever.

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

“(A) The Appeal filed by [the Appellant], is fully dismissed, confirming the Appealed Decision;

(B) In any case, [order the Appellant] to pay the costs and other expenses of this arbitration;

(C) In any case, [order the Appellant] a significant contribution towards its legal fees and other expenses incurred in connections with these proceedings in an amount to be determined at the discretion of the Panel in accordance with Article R65(3) of the CAS Code.”

V. JURISDICTION

47. The Appellant submits that the jurisdiction of CAS derives from Article 57 (1) of the 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”, in conjunction with Articles 52 and 61 (1) (e) of the FDC.
48. The Respondents also state that CAS is competent to decide on the present matter further to Article 57 (1) of the FIFA Statutes.
49. In this respect, the Panel notes that Article 52 of the 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 56 and 57 of the FIFA Statutes”. Further, Article 61 (1) (e) of the FDC provides that decisions passed in “compliance with article 21 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. Against that background, Article 57 (2) of the 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) of the 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 of the 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 – particularly the FDC – and additionally, of Swiss Law on the present matter.
58. As to the applicable version of the FDC, the Panel notes that the Parties agree that the 2023 edition of the FDC is applicable on the present matter. The Panel concurs with this view, further to Article 4(2) of the FDC.
59. Under such circumstances, the Panel is satisfied that the various regulations of FIFA are primarily applicable, in particular the FDC (edition 2023), and subsidiarily Swiss law, should the need arise to fill a possible gap in the various regulations of FIFA.

VIII. MERITS

Main Issues

60. The main issues to be resolved by the Panel are the following:
- (i) Have any procedural rights of the Appellant been violated during the first instance proceedings before the FIFA DisCo?
 - (ii) Does the Third Respondent have standing to be sued?
 - (iii) Is the Appellant the sporting successor of the Original Debtor?

- (iv) If the answer under (iii) is of the affirmative, was the Player adequately diligent in seeking to retrieve the outstanding amounts from the Original Debtor?
- (v) Following and depending on the answer under (iv), which are the consequences thereof for the Appellant?
- (i) Have any procedural rights of the Appellant been violated during the first instance proceedings before the FIFA DisCo?
61. The Appellant asserts that certain of its procedural rights have been violated during the first instance proceedings before the FIFA DisCo and therefore, requests the Panel to annul the Appealed Decision and refer the pertinent dispute back to the FIFA DisCo with specific instructions to conduct new disciplinary proceedings that will also include the Third Respondent as a party. Particularly, the Appellant argues that its right to be heard was violated during the proceedings that led to the issuance of the Appealed Decision since the FIFA DisCo failed to adequately address “*the objective and subjective elements asserted by the Appellant regarding the sporting succession between the [Original Debtor] and Karpaty Halych*” and “*the issue as to whether mere appearance is sufficient to establish sporting succession or whether the new club must have (also) taken over the assets of the old club*”. Additionally and further to Articles 81 (1) and 82 CCP, the Appellant claims that it was entitled to request the mandatory joinder of Karpaty Halych during the first instance proceedings since it is “*entitled to assert the rights it believes it will have against [the Third Respondent] if it is unsuccessful in the proceedings that deal with the main action instigated by the Player per Article 21 FDC*”.
62. On the contrary, the Respondents deem that no procedural right of the Appellant was violated during the first-instance proceedings and that the Appellant’s request for the referral of the present dispute back to the FIFA DisCo is nothing but a scheme adopted by the Appellant with the purpose to further delay the fulfillment of its financial obligations towards the Player.
63. Having taken the view of the Parties into consideration, the Panel primarily recalls that, pursuant to Article R57 of the CAS Code, it is vested with the power to review the facts and the law of the matter at stake *de novo*. As such and in accordance with the well – established jurisprudence of CAS, any procedural flaws that might have occurred at the previous instance can be cured in the second instance (cf. Mavromati/Reeb, The Code of the Court of Arbitration for Sport, Commentary Cases and Materials, Edition 2015, comment under Article R57, paras. 29-30, pp. 513-514 and CAS 2016/A/4704, CAS 2020/A/7567).
64. Taking the aforementioned into consideration, it is the Panel’s view that the issue of the sporting succession is extensively developed and treated in the Appealed Decision and that the FIFA DisCo addressed the inclusion of Karpaty Halych in the disciplinary proceedings. The fact that the result of it is not favourable to the Appellant’s interest does not entail that the Appellant’s related arguments were not duly considered by the FIFA DisCo. In any event, both matters will be re-addressed again in this appeal, in which the

Appellant had ample opportunity to be heard and to defend its case, as it was admitted at the end of the hearing.

65. In light of the foregoing, the Panel shall conclude that no infringement of the Appellant's procedural rights took place in the previous instance and that should any infringement existed, it could (and would) be cured in these CAS proceedings.
66. In any event and for the sake of completeness however, the Panel wishes to address certain points of the argumentation brought forward by the Parties in this regard. Firstly, the Panel finds the parallel that the Appellant attempts to draw between the present case and the so – called "*Hapoel Tel Aviv case*" (CAS 2020A/6778, 6779, 6827, 6828, 6829, 6936, 6937, 6967, 7146) to be rather misplaced. In the "*Hapoel Tel Aviv case*" certain particularities arose that pertained to the legal personhood and capacity of the football clubs in Israel under the national law and the consequences thereof. In summary, it was established that under the Israeli law football clubs do not have legal personality and therefore, are not entitled to assume contractual obligations. Consequently, any legal implications for a club's failure to comply with the contractual commitments assumed in its name would fall upon the corporation that holds the right to manage such club. Against that background, it was established that the entity that operated Hapoel Tel Aviv was set under liquidation and the assets of said club were acquired by another company. As a result, the Panel concluded that FIFA should have conducted the pertinent disciplinary proceedings against the entity that had acquired the assets of Hapoel Tel Aviv and not against the entity that, due to its liquidation, had fallen outside the jurisdiction of FIFA. On the contrary, it remains undisputed that in the matter at hand the pertinent disciplinary proceedings were conducted against the party indicated by the creditor (i.e., the Player) which has its own legal personality and capacity and therefore, it can validly assume contractual commitments itself.
67. Additionally, the Appellant asserts that it was entitled to request the mandatory joinder of Karpaty Halych during the first instance proceedings pursuant to Articles 81 (1) and 82 CCP. According to the Appellant, it was "*entitled to assert the rights it believes it will have against Karpaty Halych if it is unsuccessful*" in the present proceedings. To the understanding of the Panel, the Appellant claims that the joinder of Karpaty Halych in the proceedings before the FIFA DisCo was required due to the fact that, in the view of the Appellant, Karpaty Halych is the sporting successor of the Original Debtor and therefore, the New Club will have the right to take recourse against Karpaty Halych in case the former will be held liable to fulfill any monetary obligations of the Original Debtor.
68. In the present case, these arbitration proceedings are international and in their signed Order of Procedure, the Parties have expressly agreed that they were governed by Chapter 12 of the Swiss Private International Law ("PILA") "*to the exclusion of any other procedural law*". Under these circumstances, it is doubtful that the reference to Articles 81 and 82 CCP is relevant and founded.
69. Nevertheless, the Panel observes that the FIFA regulations do not stipulate that FIFA has the obligation to involve a third party (as *in casu* is Karpaty Halych) into disciplinary

proceedings. In addition, it is well established that there is a mandatory joinder where several persons are jointly the holders or the passive subjects of a single right, so that each party to the legal relationship cannot unilaterally enforce it or modify its content before the courts or be sued individually for these purposes. Actions for the creation, modification or extinction of a right must involve all the parties to the legal relationship in question, to the extent that it is essential for the proceedings to culminate in a single judgment having the force of *res judicata* for all the parties (SFT 4A_201/2014 consid. 3.2). The Panel finds that the Appellant failed to establish both the legal relationship between the latter and Karpaty Halych necessarily calling for a single decision, as well as the effects that the Appealed Decision has on the Third Respondent that would justify its mandatory joinder during the first instance proceedings. Either the Panel will conclude that the New Club is the sporting successor of the Original Debtor, in which case the Appealed Decision must be upheld. Such a decision will not affect Karpaty Halych or any other club. Or the Panel will overturn the Appealed Decision and its award will be final only as far as the New Club is concerned. It will then be up to the Player to proceed against any other successor, whether that successor is Karpaty Halych or any other potential sporting successor. Further, the Panel recalls that, pursuant to Article 21 of the FDC, disciplinary proceedings against the Appellant were initiated at the request of the creditor, and that in accordance with such provision, the FIFA DisCo could not have initiated disciplinary proceedings against Karpaty Halych given the absence of a request by the Player in this regard.

70. Against that background, the Panel concludes that the arguments of the Appellant regarding the alleged violation of its right to fair proceedings are unsubstantiated and therefore, they should be dismissed, and that the case shall not be referred back to the FIFA DisCo for a new decision as requested under point 1 of the Appeal Brief's request for relief.

(ii) Does the Third Respondent have standing to be sued?

71. The Panel remarks that the appeal under examination is also directed against Karpaty Halych, despite the latter not being a party during the first instance proceedings that led to the issuance of the Appealed Decision. Therefore, it is the view of the Panel that the present Appeal raises a question regarding the standing to be sued of the Third Respondent, at least in connection with the prayers for relief submitted by the Appellant which pertain to the referral of the case at hand back to the FIFA DisCo and the inclusion of Karpaty Halych in the relevant disciplinary proceedings. Under Swiss law, the standing to be sued is not a procedural prerequisite but concerns the substantive law (cf. SFT 139 III 504 consid. 1.2 p. 507; 133 III 180 consid. 3.4 p. 184. As held by previous CAS panels and the Swiss Federal Tribunal, the standing to be sued is a substantive requirement of the claim and must be examined *ex officio* by the adjudicatory authority at each level in the context of the application of the law (CAS 2018/A/5799; CAS 2013/A/3372; CAS 2012/A/2906; SFT 128 III 50; SFT 126 III 59).

72. Against that background, the Panel recalls that despite that the Appealed Decision neither grants any right to, nor impose any obligation on Karpaty Halych, by means of its prayers for relief, the Appellant is requesting to the Panel, *inter alia*, to “refer the case back to

the [FIFA DisCo], which shall (i) join [Karpaty Halych] as a party to the disciplinary proceedings and (ii) adjudicate and decide the matter de novo, from the beginning of the procedure and with [Karpaty Halych] as a potential sporting successor of [the Original Debtor]”.

73. Under such circumstances and whereas the Third Respondent might not be the proper party to defend the merits of the Appealed Decision, the Panel finds that if it was to uphold the above-mentioned requests for relief submitted by the Appellant and refer the present case back to the FIFA DisCo with explicit instructions to include Karpaty Halych as a party in the pertinent disciplinary proceedings, said decision will surely affect the legal interests of Karpaty Halych which, for this reason, should be afforded the opportunity to submit its position in this regard. In reaching this conclusion the Panel feels comfortable to rely on the findings of previous CAS Panels, according to which in order to determine whether a party has standing to be sued in the context of a certain dispute, one must ask whether said party “stands to be sufficiently affected by the matter at hand in order to qualify as a proper respondent within the meaning of the law” (cf. CAS 2020/A/7356; CAS 2017/A/5227; CAS 2015/A/3910).
74. In light of the above considerations and to the extent that the Third Respondent might be affected by the outcome of the present appeal proceedings should the pertinent prayers for relief submitted by the Appellant are to be upheld, the Panel concludes that Karpaty Halych has standing to be sued in the context of the present proceedings. However, the Panel wishes to highlight that the above conclusion only pertains to the procedural “landscape” that was created by means of the Appellant’s requests for relief and the subsequent obligation of the Panel to ensure that the Third Respondent’s right to be heard will be respected and it does not refer to the merits of the pertinent requests for relief which, to a certain extent, have already been assessed on their substance and will be further addressed below.
- (iii) *Is the Appellant the sporting successor of the Original Debtor?*
75. The Appellant asserts that the FIFA DisCo erred in concluding that the New Club is the sporting successor of the Original Debtor and maintains that it is actually Karpaty Halych that should bear the consequences of the Original Debtor’s failure to fulfil its contractual commitments towards the Player. In support of its plea, the Appellant underlines that the clubs under examination are two separate legal entities with distinct management and ownership structure that operate independently from each other. Further, the Appellant maintains that it did not acquire the assets of the Original Debtor nor its federative rights which in turn, resulted in the two clubs being treated by the UAF as different entities. In addition, the Appellant maintains that certain “assets” (in the broad sense of the term) of the Original Debtor were assigned to Karpaty Halych, such as the academies and a portion of a transfer fee the Original Debtor was entitled to receive from the Argentinian football club River Plate. Further, the logo of Karpaty Halych closely resembles the logo of the Original Debtor. Under such circumstances, the Appellant asserts that “mere appearance” is not sufficient to establish the sporting succession between two entities, but one must further ascertain fraud or abuse on behalf of the new entity.

76. On the contrary, the Respondents assert that the Appellant is the sporting successor of the Original Debtor and that Karpaty Halych is merely exploited by the New Club to deliberately create confusion to the adjudicatory bodies, with the purpose of further delaying the fulfillment of its obligations towards the Player. Apart from the elements that constitute the sporting identity of the New Club, such as its name, logo, colours, fans, stadium and city of operation, the Panel notes that the Respondents rely heavily on the public perception towards the Appellant and on its active attempt – conducted via the various digital platforms – to appropriate the sporting history and achievements of the Original Debtor and to present such historic facts as its own.
77. Putting the above considerations into context, it remains undisputed that during the sporting season 2020/2021 the Original Debtor participated in the second professional league of Ukraine, which is the third tier of Ukrainian football, under the popular name “Karpaty Lviv FC”. During said season, at the end of which it was relegated to the fourth tier of Ukrainian football which is the highest amateur category, the UAF requested FIFA to change the full and popular name of the Original Debtor to “*Club of Professional Football Karpaty LLC*” and “*CPF Karpaty LTD*” respectively. Additionally, the Original Debtor announced that it had assigned its traditional logo to its fans i.e., the NGO “Ultras Karpaty” and implemented a new emblem, which is materially differentiated compared to the one previously used. According to the media reports submitted by the Appellant, due to the substantial debt that the Original Debtor had accumulated, its owner, Mr. Smaliychuk, was considering transferring the activities of the Original Debtor to Karpaty Halych, a plan that was apparently never fulfilled due to the opposition of the Lviv Football Association. Since the beginning of the sporting season 2021/2022, the Original Debtor has not demonstrated any football activity whatsoever. However, it appears to remain affiliated with the UAF and it has not been set under liquidation or declared bankrupt, at least in accordance with the information provided to the CAS file.
78. According to the information on its website, the Appellant was established in 2020 “*as part of a public initiative to revive Karpaty Lviv. The captains of all generations of Karpaty called for the resumption of the club's activities from scratch, the veterans of the team, who in 1963 participated in the creation and formation of the club, won the USSR Cup in 1969. The legendary Lviv football player Stepan Yurchyshyn became the head coach of Karpaty, the head coach was a well-known player of one of the best squads of the team Andriy Tlumak*”. In this regard, the Panel further notes that despite having been established under the name “*LIMITED LIABILITY COMPANY “FOOTBALL CLUB “KARPATY*”, the Appellant publicly portrays itself as “*Karpaty Lviv FC*”. During the sporting season 2020/2021 the Appellant participated in the highest amateur category of Ukrainian football and following its sporting results, it was subsequently promoted to participate in the championship of the second professional division to be held for the sporting season 2021/2022. It also remains undisputed that, since July 2021, the Appellant has been using the logo of the Original Debtor, after having concluded a “*Licensing Agreement*” with the fans’ organization “Ultras Karpaty”.
79. Against that background, the Panel notes that this is not a “textbook” case of sporting succession in the sense that the “sporting predecessor” in question was never disaffiliated

from the UAF nor set under liquidation as in many similar cases adjudicated by CAS. On the contrary, the Original Debtor is – at least legally speaking – an active entity, despite not having demonstrated any football activities since the sporting season 2020/2021. In assessing whether said element warrants any further analysis, the Panel recalls that Article 21 (4) of the FDC provides as follows:

“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”.

80. In view of the wording of the aforementioned provision, the majority of the Panel remarks that the draftsman of the pertinent regulations does not require that the previous club ceases to exist as a precondition for one to ascertain the succession between two football clubs. Rather, the majority of the Panel finds that sporting succession can also occur when the elements that constitute the sporting identity of a football club are transferred to a new entity, while the former continues somehow to exist. Accordingly, the fact that the Original Debtor remains, at least formally, an active entity does not affect the assessment of the majority of the Panel in respect to the issue of the alleged sporting succession between the Original Debtor and the Appellant.
81. After having established the above, the Panel does not see any reason to depart from the established jurisprudence of CAS regarding the criteria that shall be taken into consideration in assessing whether sporting succession has occurred. As a matter of fact, there is ample CAS caselaw confirming that the identity of a football club is constituted by elements such as its name, colors, fans, history, sporting achievements, shield, trophies, stadium, roster of players, historic figures and so forth, that allow it to distinguish itself from all the other clubs (CAS 2007/A/1355, CAS 2011/A/2614, CAS 2011/A/2646, CAS 2012/A/2778, CAS 2016/A/4550 and CAS 2016/A/4576). Hence, *“the prevalence of the continuity and permanence in time of the sporting institution in front of the entity that manages it has been recognized, even when dealing with the change of management companies completely different from themselves”* (CAS 2013/A/3425, par.139).
82. Nevertheless, the elements taken into account by the various CAS Panels in determining the issue of sporting succession between two football clubs are not exhaustive, as also indicated from the wording of Article 21 (4) of the FDC, where the phrase *“among others”* was inserted before the citation of the pertinent criteria. This entitles the Panel to take into account any other element it considers necessary in order to establish whether the Appellant is the sporting successor of the Original Debtor. In this regard, the existence of several elements can lead, in combination and while taking into account the particularities of the case, to the conclusion that the New Club has indeed succeeded the Original Debtor in the sense of Article 21 (4) of the FDC, although not all elements cited in said provision are met. The overall analysis is warranted, given that the Panel needs the full picture of both clubs in order to take a decision in this regard, as there is no *numerus clausus* that it has to follow in its analysis. Furthermore, Article 21 (4) of the

FDC is silent on how to weigh the different aspects, more particularly whether one element can be set off by others. Finally, the pertinent provision does not state what the decisive moment in time is to assess the various elements. The assessment of whether sporting succession exists is therefore left to be decided in the hands of the adjudicatory body in each case.

83. The Panel underlines that the above considerations, which are reflected in the majority of the CAS jurisprudence on the issue of sporting succession, are all the more important in the case at hand given that, due to the particularities of Ukrainian football where certain elements of the sporting identity of each club are heavily impacted by factors such as the city of its origins, an overall analysis is warranted in order to determine whether sporting succession has indeed occurred between two football clubs or they just share certain similarities which are attributed to the above-mentioned particularities of Ukrainian football. In light of the above, the Panel will examine the respective elements that constitute the sporting identity of the clubs in question i.e., the Original Debtor, the Appellant and Karpaty Halych, as presented by the Parties and subsequently, it will proceed with its overall assessment.

a) Name

84. It remains undisputed that the Original Debtor used to operate under the name “*Karpaty Lviv FC*” until March 2021 where, following a request submitted by the UAF in this regard, its name changed to “*CPF Karpaty LTD*”. In this respect, the Appellant asserts that the city of Lviv is not mentioned in the legal name of either the Original Debtor or the New Club and that there are nearly 40 clubs in the greater area of the Carpathian Mountains that operate under such name, 8 of which are called “FC Karpaty Lviv”. At the same time, it remains undisputed that, since its establishment, Karpaty Halych has been operating under said name.
85. Nevertheless, the Panel notes that despite the Appellant being officially registered under the name “Karpaty FC LLC”, it publicly portrays itself in the various social media platforms as well as on its website as “Karpaty Lviv FC” and, according to the information submitted by the Appellant from the FIFA Transfer Matching System, it is currently the only (men’s) football club currently participating in organized football activities. Further, the name “Karpaty Lviv FC” is depicted in a Cyrillic font also in the logo used by the Appellant (par. 89 *infra*).

b) Logo

86. The Panel notes that the current logo of the Appellant is identical with the logo used by the Original Debtor until the sporting season 2020/2021 i.e., a golden lion placed on a shield comprised of vertical green and white stripes with the inscription “Karpaty Lviv FC 1963” in a Cyrillic font. Following the assignment of said logo to the NGO “Ultras Karpaty”, the Original Debtor assumed a different logo which, while maintaining the colours of the club, is materially differentiated from the previous logo. The Panel also notes that the new logo of the Original Debtor bears a different inscription as well, namely “FC Karpaty” in a Cyrillic font.

87. Similarly, the Panel observes that the logo of Karpaty Halych, despite being similar with the current logo of the Appellant – to the extent that it is comprised of a golden lion on a green and white background – it explicitly refers to the name of the club (“Karpaty Halych”) and lacks any reference to the year 1963 which is the year the sporting entity Karpaty Lviv FC was established.

c) Team colours

88. The Panel remarks that the team colours of all the clubs in question are green and white. However, as put forward by the Appellant, said choice of colours stems from the area of origin of each club i.e., the Carpathian Mountains.

d) Stadium and city

89. It remains undisputed that the Original Debtor is established in the city of Lviv and, until it ceased its football activities, used the “Ukrayina” stadium which was subsequently occupied by the Appellant that is also established in the city of Lviv. In this respect, the Appellant remarks that said stadium is owned by the local municipality and that, in any case, it is anticipated in a small city such as Lviv to be a shortage of stadiums. Nevertheless, the Panel underlines that the “Ukrayina” stadium is not the only stadium available for football clubs in the city of Lviv. As a matter of fact, the Appellant had already been using the “Shkoliar” stadium prior to moving to the “Ukrayina” stadium, as per the information provided by the UAF in this respect.

90. According to the evidence submitted by the Second Respondent in this regard, it is also the understanding of the Panel that Karpaty Halych is located in a different city and therefore, utilizing a stadium located in the city of Lviv was never an option.

e) Players / Coaching staff / Officials

91. It remains undisputed that, following the cessation of the activities of the Original Debtor, four former players (one professional and three amateurs) of the Original Debtor were directly transferred to the Appellant as free agents. Every other registration of either players, coaches or officials that occurred between the Original Debtor and the Appellant was not a “direct transfer” in the sense that said individuals were registered with other clubs following their departure from the Original Debtor and prior to their employment by the Appellant.

92. Simultaneously, the Panel notes that during the sporting seasons 2020/2021 and 2021/2022, thirteen (13) professional players of the Original Debtor were transferred to Karpaty Halych in total. During the same period, Karpaty Halych also hired a former youth coach of the Original Debtor.

f) Sporting history

93. The Panel remarks that, by means of their respective submissions, the Respondents rely heavily on the public attempts of the Appellant to appropriate the sporting history and the achievements of the sporting entity “Karpaty Lviv FC” since its establishment, regardless of which was the legal entity that managed said football club at the time. Either via its

own website or its accounts across the various social media platforms, the Appellant makes constant references to the sporting history and achievements of the Original Debtor. Indicatively, the Panel highlights the following public statements made by the Appellant:

- **Press release of 15 October 2020**

“Six captains announced the revival of the legendary team.

In recent years, we have been concerned about the situation with Karpaty Lviv, to which we have given a part of our lives in different periods [...], We cannot stand aside in this situation. Among us are those who back in 1963 took part in the creation and formation of the club, led the team to victory in the Cup of the former USSR in 1969, won bronze medal in the championship of independent Ukraine in 1998 and fought for a place in the group stage of the Europa League in 2010. We see no other way out of this situation than the revival of the legendary team from the beginning. Teams with the heart of a lion and always loyal fans [...] “Karpaty” in Lviv – to be!”.

- **Press release of 15 July 2021**

“KARPATY WILL PLAY IN THE TRADITIONAL COAT OF ARMS, AND IN TWO YEARS THEY WILL PLAY IN THE PREMIER LEAGUE

[...]

The club’s coat of arms is a (sic) non – governmental organization that unites Karpaty fans, which has transferred to the club the right to use the Karpaty logo. We thank the fans for their trust. In the coming days, we will submit information about the coat of arms to the football authorities.

[...]

Football club “Karpary” expresses its gratitude to the Lviv Football Association and its head Oleksandr Shevchenko for their maximum assistance in the revival of Lviv “Karpaty”.

We invite Lviv fans to the team’s matches to jointly revive the legend of Lviv – the Karpaty football team”.

- **Press release of 17 August 2021**

“On this day, August 17, 1969, Lviv “Karpaty” became the first in our football and still the only team of the lower league to win the Cup of the country. Then it was the USSR Cup. Now the Lviv club is being revived in a new way. And the “Lviv Cup” at Ukrainian stadiums will again sound menacing”.

94. On the contrary, the Panel highlights that the Appellant failed to submit any evidence indicating that Karpaty Halych relies on the sporting history of the Original Debtor.

g) Shareholders / Stakeholders and legal form

95. According to the information submitted by the UAF in this respect, the Panel notes that both the Original Debtor and the Appellant function as limited liability companies. However, according to UAF and the Ukrainian public company registry, there are no common shareholders and/or stakeholders between the companies in question. Additionally, according to the media reports submitted by the Appellant, it appears that one of the two owners of the Original Debtor, Mr. Smaliychuk, was involved in some way in the activities of Karpaty Halych during 2021, at least until the cessation of its activities.

h) Transfer of assets and federative rights

96. It remains undisputed that the Appellant did not acquire any of its assets (either tangible or intangible) directly from the Original Debtor, save for the players mentioned above. Particularly, as set out *supra*, the Appellant acquired its current logo from the fans' organization "Ultras Karpaty" to which such logo had been assigned by the Original Debtor prior to the cessation of its activities. Further, the "Ukrayina" stadium is a property of the city of Lviv and therefore, the Appellant concluded a lease agreement with said public authority to secure its use.
97. On the contrary, on 14 October 2020 a tripartite agreement was concluded between the Original Debtor, the Third Respondent and the Argentinian football club Atlético River Plate whereby the Original Debtor assigned to Karpaty Halych a portion of the transfer that was still due at the time to the former against the permanent transfer of the player C. to the Argentinian club. The Appellant further asserts that the Original Debtor further transferred its academies to Karpaty Halych; however, from the evidence submitted in this regard, it just follows that on 9 November 2020 the Original Debtor terminated an unspecified cooperation with a sporting institution located in the city of Lviv and that on the same date, Karpaty Halych concluded a cooperation agreement with said institution aiming to the support of grassroots football.
98. Additionally, it remains undisputed that each of the clubs in question maintain their own federative rights and particularly, the federative rights of the Original Debtor were never acquired by neither the Appellant nor Karpaty Halych.

i) Fans and public perception

99. The Respondents submit that through its public statements and constant references to the sporting history of the Original Debtor, the Appellant created the impression to the objective onlookers that it is the sporting successor of the Original Debtor hence, the non – governmental organization "Ultras Karpaty", which is a fans' organization that consistently supports the football entity "Karpaty Lviv FC" chose to bestow the use of the Original Debtor's logo to the Appellant and invited its members to support the team of the Appellant henceforth. On the contrary, the Appellant infers that any public reference it made regarding the sporting history of the Original Debtor pertain solely to the element of "appearance" which is purely subjective and therefore, not decisive in ascertaining the sporting succession between two clubs. Further, the Appellant claims

that the only reason the “Ultras Karpaty” invited their members to support the team of the Appellant is because it temporarily uses the logo of the Original Debtor.

i) Category of competition

100. It remains uncontested between the Parties that during the sporting season 2020/2021, the Original Debtor participated in the third tier of Ukrainian football, which is also the lowest professional football division in the country. Following the end of said season and due to its sporting results, the Original Debtor was relegated to the highest amateur division of Ukrainian football, without however having demonstrated any football activities ever since. Further, it was admitted by the Appellant during the hearing that Karpaty Halych has not presented any football activity since 2022, following the imposition of a military law in Ukraine.
101. On the other hand, the Appellant, which was established in October 2020 (i.e., during the season 2020/2021) participated during said season in the fourth division of Ukrainian football, at the end of which it was promoted to the national categories where it has been participating until today.

j) Interim conclusion

102. Against that background, the majority of the Panel is comfortably satisfied that the Appellant is the sporting successor of the Original Debtor. In reaching this conclusion, the majority of the Panel initially remarks that the elements that pertain to the “appearance” of a football club, such as the name, logo and team colours, are identical between the Original Debtor and the Appellant. In particular, the New Club publicly uses the name “Karpaty Lviv FC” – regardless of the name under which it is registered with the public authorities – its team colours are the same with the colours of the Original Debtor (green and white) and uses the iconic logo that was used by the Original Debtor, until the latter decided to assign it to its fans. Further, the Appellant is also established in the city of Lviv and it uses the same stadium in which the Original Debtor used to host its home matches.
103. Nevertheless, the elements that constitute the appearance of the above football clubs are not sufficient by themselves to establish the sporting succession between them, not only because in the matter at hand, as set out above, said elements are affected to a certain extent by the origins of said clubs but also due to the fact that one may easily notice that the Third Respondent - despite the fact that it is located in a different city and uses a different stadium - is also named “Karpaty”, uses the same team colours and a similar (yet not identical) logo. Under such circumstances, the Panel recalls that, as per the well – established jurisprudence of CAS, one of the key elements to ascertain the sporting succession between two clubs is the public perception of the alleged successor, i.e. whether the alleged successor is deemed by the objective onlookers to be the same club as its predecessor (CAS 2020/A/7481; CAS 2021/A/8446). Accordingly, in reaching the conclusion that the Appellant is the sporting successor of the Original Debtor, the majority of the Panel primarily relies on the undeniable efforts of the Appellant to appropriate the sporting history of the Original Debtor and to publicly portray itself as being the same club. By making constant references to the sporting history and

achievements of the Original Debtor and mentioning the “*revival of Karpaty Lviv*” (par.72 *supra*), the Appellant creates the reasonable perception that it continues the activities of the Original Debtor. In turn, such endeavors led the objective onlookers and more importantly, the fans of the Original Debtor, to consider the Appellant as the sporting successor of the Original Debtor. Such “look and feel” that was created to the public by the actions of the Appellant was the main reason the supporters’ organization of the Original Debtor agreed to bestow the use of their club’s logo to the New Club and invited their members to support the team of the Appellant. It is common knowledge in the world of football that the main aim of a club’s supporters is to ensure the continuity of their favorite club and not to exploit the bond between the fans and the club for commercial reasons, as the Appellant claims. Put differently, it is highly improbable that the fans of Karpaty Lviv FC would assign the use of their club’s logo to any other club but the one that would ensure the continuity of their favorite club’s activities. Given the importance that is attached to the public perception in cases of sporting succession, the question therefore arises as for the reasons the Appellant went to such lengths to appear as the successor of the Original Debtor if it did not want to appear as such in the minds of the public. On the contrary, it remains undisputed between the Parties that Karpaty Halych never sought to appropriate the sporting history of the Original Debtor, nor did it attempt to portray itself as its successor.

104. Whereas the arguments raised by the Appellant regarding the different ownership, the transfer of several players directly from the Original Debtor to Karpaty Halych and the assignment of a monetary claim from the former to the latter are fully noted and taken into account by the Panel, they do not prevail over the significant number of elements on the other side, as summed up above, that clearly point to the direction of the existence of sporting succession between the Appellant and the Original Debtor. In this regard, the Panel reiterates that the elements are not exhaustive and are merely meant as indicative pointers in order to determine whether sporting succession exists. In this context, it is the combination of elements that exist in the present arbitration proceedings, as referred to above, that leads to the conclusion that the Appellant is the sporting successor of the Old Club. In addition, whether a football club is operated through a different legal entity does not bear relevance on whether sporting succession has taken place, given that a football club is “*a sporting entity identifiable by itself that, as a general rule, transcends the legal entities which operate it*” (CAS 2013/A/3425, par.139). Therefore, the arguments submitted by the Appellant that the latter is a different legal entity are of minor importance, at least to the question as to whether it shall be considered the sporting successor of the Original Debtor. Further, it is the understanding of the Panel that, prior to the cessation of its activities, the owner of the Original Debtor, Mr. Smaliychuk, contemplated, to say the least, to merge Karpaty Halych with the Original Debtor, due to the latter’s financial distress. In attempting such endeavor, Mr. Smaliychuk decided to progressively change certain distinctive features of the Original Debtor, such as the name and the logo which, however, were never transferred to Karpaty Halych but were subsequently adopted by the Appellant. In view of the evidence submitted by the Appellant, the Panel is comfortably satisfied that there was at least an attempt on behalf of Mr. Smaliychuk to transfer the activities of the Original Debtor to Karpaty Halych. However, such attempt remained incomplete and, in any case, the sole transfer of

individual assets (such as players or a monetary claim), however substantial it may be, it is just a single pointer of whether sporting succession has occurred and it cannot prevail over the overall picture which indicates that, ultimately, the activities of the Original Debtor were assumed by the Appellant and it was only the personal activities of Mr. Smaliychuk that were transferred to Karpaty Halych. As a final remark in this regard, the Panel highlights that it is not a prerequisite for sporting succession that the new club assumes the sporting identity and activities of the previous entity immediately upon its establishment, but it can also occur over time, provided that the continuity of the sporting institution is ensured. In the present case, the Appellant proceeded in gradually adopting the elements that constitute the sporting identity of Karpaty Lviv FC (yet, in a close temporal connection) and upon the relegation of the Original Debtor to an amateur division and the subsequent cessation of its activities, it proceeded in “replacing” the latter in the professional categories of Ukrainian football based on its sporting results. In the view of the majority of the Panel, this sequence of events over the course of less than a year since the establishment of the Appellant created the sense of continuity of the activities of Karpaty Lviv FC which exists and remains unbroken.

105. In summary, bearing in mind the content of Article 21 (4) of the FDC, the majority of the Panel underlines that a sporting successor cannot select only the positive commercial attributes without accepting that with said selection comes the responsibility to discharge any outstanding liabilities of the old club. In view of the foregoing, it follows that the Appellant, at least in the sense of the criteria set in Article 21(4) of the FDC, is the sporting successor of the Original Debtor.

k) The issue of fraud or abuse

106. Be that as it may, the Appellant claims that the establishment of sporting succession between two sporting entities cannot be based only on “*mere appearance*” as the New Club defines the above-cited criteria. According to the Appellant, a further assessment is warranted as the Panel should additionally determine whether, by establishing a new entity, the alleged successor exploited a fraudulent or abusive scheme to avoid the fulfillment of its predecessor’s financial obligations. In the view of the New Club, only if the conclusion of said assessment is of the affirmative the successor can be held liable for the said outstanding obligations. In this respect, the Panel initially notes that this element is not explicitly referred to in Article 21 (4) of the FDC. This being said, it is also true that there is certain CAS jurisprudence – which is also cited by the Appellant – that considers such element of fraud or abuse to be a *conditio sine qua non* for the determination of sporting succession between two entities (such as CAS 2020/A/6873; CAS 2020/A/7183). Nevertheless, the Panel is mindful of the fact that the above approach is not reflected unanimously in the caselaw of CAS. As a matter of example, the Panel notes that the Sole Arbitrator in CAS 2020/A/6884 concluded that “[m]oreover, the fact that this provision was created to avoid abuse of clubs trying to escape from financial obligations, is also not put in doubt by the Sole Arbitrator. However, the Sole Arbitrator wishes to underline that even if any abuse is absent or cannot be demonstrated, Article 15 (4) of the 2019 FIFA Disciplinary Code can still apply”. The same was concluded in CAS 2020/A/7290 or in CAS 2020/A/7543, in accordance to which “[...] *shady practices*

in itself, or rather fraudulent practices by parties trying to avoid payments, do not constitute a conditio sine qua non in order to conclude that sporting succession occurred. In other words, sporting succession can exist even if there is absence of such practices”. Regardless of the conflicting approaches on the pertinent issue, the Panel remarks that the above caselaw cited by the Appellant, in support of its argument that sporting succession between two entities requires the element of fraud or abuse, involves football clubs that due to their financial distress were forced to go insolvent or declare bankruptcy and therefore, there was no other alternative to continue the activities of the sporting institution in question but to establish a new entity. However, this is not the case in the matter at hand; the Original Debtor is still – at least legally speaking – an active entity and since the executives of the Appellant (all of which are former players of the Original Debtor) wished to “*revive Karpaty Lviv*”, as they publicly stated, they could have acquired the ownership of the Original Debtor and maintain its operation as they saw fit. On the contrary, they preferred to establish a new entity (i.e., the Appellant) which would appropriate the sporting identity of the Original Debtor while at the same time would operate with a “clear” balance sheet. In the view of the majority of the Panel, the Appellant shall thus bear the consequences established in Article 24 (1) of the FDC, which precisely intends to neutralize potential situations of abuse and therefore, it concludes that the Appellant is the sporting successor of the Original Debtor.

(iv) *If the answer under (iii) is of the affirmative, was the Player adequately diligent in seeking to retrieve the outstanding amounts from the Original Debtor?*

107. Having established the above, the Panel notes that the Appellant further asserts that the Player was not adequately diligent in recovering his credit from the Original Debtor and therefore, he has contributed to “*the present situation*”. In essence, the Appellant claims that the Player should have taken recourse against the Original Debtor before the national courts of Ukraine instead of seeking to retrieve his credit from the New Club.
108. The Panel does not concur with the argumentation brought forward by the Appellant in this regard. In particular, the Panel notes that on 9 June 2020, the FIFA DisCo passed a decision whereby it provided the Original Debtor with a final deadline of 30 days to comply with the findings of the CAS Award. Following the expiration of the above deadline, the Player sent further correspondence to FIFA on 20 July 2020, 4 November 2020, 17 February 2021 and 7 September 2021 respectively, whereby he *inter alia* informed FIFA that according to the information at his disposal, the Original Debtor had violated the transfer ban imposed by the FIFA DisCo by registering player at a national level with the assistance of UAF. On 28 February 2022 and in response to a further identical complaint filed by the Player on 27 January 2022, FIFA informed the Second Respondent that despite its sufficient legal interests at stake, he was not a party to the pertinent proceedings and consequently, he was not entitled to be further informed in this regard. In view of the above, the Panel concludes that the Player was indeed vigilant and sought to enforce the CAS Award, at least to the extent that at the time he was still unaware that the Original Debtor had ceased his football activities while remaining – theoretically – affiliated with the UAF. Further, the Panel notes that the CAS Award was vested with *res judicata* effect regarding the circumstances of his employment

relationship with the Original Debtor and therefore, any similar claim on behalf of the Player before the national courts of Ukraine would be dismissed.

109. Against that background, the Panel is of the view that the Player was adequately diligent in seeking to retrieve the pertinent outstanding amounts from the Original Debtor.

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

110. In view of the above conclusions, the Panel notes that Articles 21 (1) of the FDC provides, *inter alia*, the following:

“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, a subsidiary 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, a subsidiary or an instance of FIFA, or by CAS:

a) will be fined for failing to comply with a decision and receive any pertinent additional disciplinary measure; and, if necessary:

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) may be ordered to pay an interest rate of 18% p.a. to the creditor as from the date of the decision of the Disciplinary Committee rendered in connection to a CAS decision on an appeal against a (financial) decision passed by a body, a committee, a subsidiary or an instance of FIFA;

d) 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 ban on registering new players will be issued 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 ban on registering new players in the event of persistent failure (i.e. the ban on registering new players has been served for more than three entire and consecutive registration periods following the notification of the decision), repeated offences or serious infringements or if no full registration ban could be imposed or served for any reason;”.

111. Further, Article 21 (4) provides, *inter alia*, as follows:

“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”.

112. In view of the above, the majority of the Panel concludes that the New Club, under its capacity as the sporting successor of the Original Debtor, should comply with the findings of the CAS Award and in case of failure, be subject to the disciplinary sanctions provided in Article 21 (1) of the FDC.

IX. Conclusions

113. Based on the foregoing, the majority of the Panel finds that:

- Any request submitted by Karpaty FC regarding the alleged violation of its procedural rights during the proceedings before the FIFA Disciplinary Committee is moot;
- FC Karpaty Halych has standing to be sued in the context of the present proceedings;
- Karpaty FC is the sporting successor of CPF Karpaty LTD;
- Karpaty FC is liable for the financial obligations of CPF Karpaty LTD towards Mr. Cristóbal Márquez Crespo as further detailed in the Appealed Decision and for the payment of the fine imposed in the Appealed Decision;
- All other and further motions and prayers for relief are dismissed.
- The Appealed Decision is to be confirmed.

X. COSTS

114. Article R64.4 of the 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.”

115. Article R64.5 of the 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.”

116. Having taken into account the outcome of the present 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 in their entirety.
117. Furthermore, pursuant to Article R64.5 of the CAS Code and in consideration of the complexity and outcome of the proceedings as well as the conduct and the financial resources of the Parties, including the fact the Third Respondent did not actively participate in the present proceedings and that the hearing was held on a remote basis, the Panel rules that the Appellant shall bear its own costs and pay a contribution towards to each of the Second Respondent’s fees and other expenses incurred in connection with these arbitration proceedings in the amount of CHF 4,000 . The First Respondent, who was not represented by an external counsel, and the third Respondent shall bear their own costs incurred by these arbitral proceedings.

ON THESE GROUNDS

The Court of Arbitration for Sport rules by majority that:

1. The appeal filed on 17 July 2023 by FC Karpaty against the decision issued on 11 May 2023 by th
2. The decision issued

served to the parties by the CAS Court Office, shall be entirely borne by FC Karpaty.
4. FC Karpaty shall bear its own costs and is ordered to pay to Mr. Cristóbal Márquez Crespo, the amount of CHF 4,000 (Four Thousand Swiss Francs) as a contribution towards their legal fees and other expenses incurred in connection with these arbitration proceedings.
5. The *Fédération Internationale de football Association* and FC Karpaty Halych shall bear their own legal costs and other expenses incurred by these arbitral proceedings.
6. All other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 18 July 2024

THE COURT OF ARBITRATION FOR SPORT

Sofoklis Pilavios
President of the Panel

Patrick Grandjean
Arbitrator

Jordi López Batet
Arbitrator