



**Arbitration CAS 2011/A/2642 FC Bacau v. Steaua Bucurest, award of 20 August 2012
(operative part of 18 July 2012)**

Panel: Mr Bernhard Welten (Switzerland), President; Mr Mark Hovell (United Kingdom); Mr Vit Horáček (Czech Republic)

Football
Transfer
Interest

An interest of 1% per day is excessive. In accordance with Art. 104 of the applicable Swiss Code of Obligations, it has to be set at 5% per year.

1. FACTUAL BACKGROUND

1.1 Parties

1. Asociatia Sportiva “Fotbal Club Municipal” Bacau (hereinafter “FC Bacau” or the “Appellant”) is a football club with its registered office in 94 Pictor Th. Aman Street, Bacau, Romania. It is affiliated to the Romanian Football Federation (hereinafter “RFF”) and currently (since the season 2011/12), plays in the “Liga II”, which is the second division in Romanian football.
2. SC Fotbal Club Steaua Bucuresti SA (hereinafter “FC Steaua” or the “Respondent”) is a football club with its registered office in Bd. Ghencea, nr. 45, sector 6, Bucuresti, Romania. It is affiliated to the RFF and to the Romanian Professional Football League. It currently (since the season 1947/48) plays in the “Liga I”, which is the highest professional division in Romanian football.

1.2 Background

3. The Player E. (hereinafter the “Player”) was born on 25 May 1980 and was registered as a professional player with the Appellant from 18 July 2001 until 31 August 2004.
4. On 30 August 2004 the Appellant and the Respondent signed together with the Player the transfer agreement no. 067402 and an addendum no. 998 to this transfer agreement regarding the Player. The addendum no. 998 forms, based on article 4.1, lit. b) para. 8 of the transfer agreement (see below), an integral part of the transfer agreement.

5. The transfer agreement no. 067402 of 30 August 2004 states in the most relevant articles for this case, the following provisions:

“Article 3 Transfer Period

The parties have agreed that the player shall be transferred starting with 30.08.2004 for an INDEFINITE period of time.

Article 4 Obligations of the parties

4.1 The SC FC STEAUA Bucuresti SA, as Transferee, undertakes the following:

a) to pay to the Transferor FCM Bacau the transfer fee of 100,000 Euro (one hundred thousand Euro).

b) other conditions:

1. The fee shall be paid in four installments, as follows:

- 25,000 Euro until 06.09.2004;

- 25,000 Euro until 06.10. 2004;

- 25,000 Euro until 06.11.2004;

- 25,000 Euro until 06.12.200;

2. Should the payment of any of the installments indicated above be delayed for more than 48 hours, the player shall return unconditionally to FCM Bacau, being immediately entitled to play, for a period of 2 years. The player undertakes to sign an agreement with the FCM Bacau, according to the conditions imposed by the said club.

3. The fee for the transfer to any national or international club shall be of no less than 800,000 Euro (eight hundred thousand Euro).

4. The fee as of paragraph 3 shall be equally divided: 50% to FC Steaua and 50% to FCM Bacau.

5. The FCM Bacau and the player hereby agree to waive any and all claims against each other for financial or material compensations.

6. Should the FCM Bacau receive in its bank account the amount of 400,000 Euro (four hundred thousand Euro) from the SC FC STEAUA Bucuresti SA, the player shall become the property of FC Steaua.

7. The player or any other party shall not be able to claim any amount indicated in this transfer agreement or in the addendum no. 998 of August 30th 2004 regarding the transfer of the player without the written agreement of both clubs.

8. The addendum no. 998 of August 30th 2004 shall form an integral part of this transfer agreement”.

6. The addendum no. 998 to the transfer agreement of 30 August 2004 states in the most relevant articles for the case at hand, the following content:

“Article 1. *The contracting parties hereby agree that the player E. will sign, on the execution date of the transfer agreement, a contract allowing him to play football in the F.C. Steau Bucuresti team for 5 consecutive years, starting from the date the parties sign the transfer agreement to which this Addendum is attached, and until 30.06.2009.*

Article 2. *Any agreement regarding the transfer of the player during the period indicated in article 1 may be entered into only upon written authorization of the Transferor.*

...

Should the transfer have taken effect, the Transferee undertakes to pay the Transferor the amount of 800,000 Euro (eight hundred thousand Euro) within 30 days from the date the transfer documents have been executed.

Article 3. *Whereas during the period indicated in article 1 no other agreement for the player's transfer is signed and the Transferee signs a new contract with the player, the time period indicated in article 1 shall be extended accordingly with the period in the new contract.*

In this case, all the provisions in this addendum shall be effective until the new contract end date, as resulted from the previous paragraph.

Article 4. *Whereas during the period indicated in article 1, transfer agreements are signed for the transfer of the player after the expiration of the period indicated in article 1, the Transferee undertakes to pay the Transferor the amount of 800,000 Euro (eight hundred thousand Euro) within 30 days from the date the transfer documents have been signed.*

Article 5. *In the event that the contract between the Transferee and the Player is terminated, pursuant to the provisions of the herin article 2, regardless of the reasons leading to such termination, the Transferee undertakes to pay the Transferor the amount of 800,000 Euro (eight hundred thousand Euro) within 30 days from the contract termination date.*

...

Article 9. *In case the payments are not made at the due dates agreed in this addendum, the Transferee undertakes to pay an interest of 1% for each day of delay and, upon the expiry of another 30 day-period, the Transferee agrees to be excluded from the championship matches, for all the teams playing for the Transferee. This shall not exclude the application of penalties”.*

7. In accordance to the addendum, the Respondent and the Player signed a contract starting on 30 August 2004 and expiring on 30 June 2009. Before the contract expired, the Respondent and the Player agreed on 3 July 2008 to extend the contractual relationship until 30 June 2011.
8. On 28 June 2010 the Respondent offered to transfer the Player back to the Appellant, free of charge. A decision was asked from the Appellant within 24 hours. The Appellant did not agree with this transfer.
9. On 16 June 2011, the Respondent offered a new contract to the Player to start on 1 July 2011 with duration of one year, until 30 June 2012. On 17 June 2011 the Player rejected this offer made by the Respondent and in consequence the contract between the Respondent and the Player ended on 30 June 2011 upon expiration.
10. On 18 July 2011, the Appellant and the Player signed a contract. The Player was performing for the Appellant until December 2011; due to an accident he has not been able to play football since then.

11. On 19 July 2011, the Appellant sent an invoice to the Respondent to pay EUR 800'000 based on article 5 of the addendum to the transfer agreement until 30 July 2011 the latest.
12. On 3 August 2011, the Appellant filed a claim in front of the RFF National Dispute Resolution Commission (hereinafter the "DRC") against the Respondent for payment of the EUR 800'000. In return, the Respondent answered on 1 September 2011 and asked for the dismissal of the claim.
13. On 15 September 2011, the DRC issued its decision (hereinafter the "DRC Decision") and rejected the Appellant's claim. The reasoning for rejecting the Appellant's claim is based on the interpretation of article 5 of the addendum to the transfer agreement:

*"Article 5 of the Addendum no. 998 of 30.08.2004 provides for the obligation to pay the amount of 800,000 Euro "if the contract between the Transferee and the Player is terminated, **pursuant to the provisions of the herein article 1**, and regardless of the reasons leading to such termination". The only cause for the contract termination, indicated in article 1 of the Addendum, is the expiration of the 5-year term, i.e. until 30.06.2009. The 5-year term expired, the contract between the player and S.C. F.C. Steaua Bucuresti S.A. were extended until 30.06.2011 and the provisions in article 5 of the Addendum no. 998 of 30.08.2004 do not refer to the contract extension or to the applicability of article 3 of the same document".*
14. On 23 September 2011, the Appellant filed an appeal against the DRC Decision to the RFF Appeal Commission.
15. On 28 September 2011, the RFF Appeal Commission issued its decision no. 187/CR/2011 (hereinafter the "Decision") and rejected the appeal lodged by the Appellant as ungrounded. The rejection of the Appellant's appeal was reasoned as follows:

"The Addendum under dispute – in its entirety, if it was signed on the same day as the Transfer Agreement (in which it is mentioned that the Addendum forms an integral part of the Agreement) – contains, pursuant to article 19.12, paragraph 1 of the Regulations on the Status and Transfer of Players and even according the Claimant's arguments, the terms "to modify, amend, add and complete" the parties' obligations under the Transfer Agreement. This is forbidden by the cited Regulations, which indicate that all the financial rights and obligations of the contracting clubs must be included in the Transfer Agreement. At least from the formal and regulatory points of view, the drafting of a separate addendum contradicting the contents of the Transfer Agreement should not be validated by the ruling commissions.

 2. *The ambiguous, inadequate and inaccurate formulation of the Addendum, especially of article 5 (even correlated with articles 1 and 3 and other provisions thereof) was correctly pointed out and sanctioned by the N.D.R.C., who dismissed the summons. ...*
 3. *Given the unclear contractual behavior, resulting in difficulties in establishing the real legal intention of the parties, the Appellate Commission cannot make use of approximations or incomplete interpretations. Given the terms and expressions with an ambiguous meaning and the fact that the burden of proof lies with the Claimant, in its interpretation of doubtful contract provisions, the Commission shall apply the interpretation rule according to which "Any reasonable doubt shall be interpreted in favor of the defendant" ".*
16. The Decision was notified to the Appellant and the Respondent on 3 November 2011.

2. PROCEEDINGS BEFORE CAS

17. On 21 November 2011, the Appellant filed a statement of appeal against the Respondent with the Court of Arbitration for Sport (hereinafter the “CAS”) pursuant to the Code of Sports-related Arbitration (hereinafter the “Code”). The Appellant challenged the Decision submitting the following prayers for relief:
- A. Annul the Resolution of the Recourse Commission No. 187/CR/2011 of 28.10.2011 in the case file no. 187/CR/2011 of the RFF and admit the introductory claim submitted by ASOCIATIA SPORTIVA “FOTBAL CLUB MUNICIPAL” BACAU before the Dispute Resolution Commission of the RFF;*
 - B. Order the Respondent S.C. FOTBAL CLUB STEAUA BUCURESTI S.A. to pay the following amounts of money:*
 - the amount of EUR 800,000 (eight hundred thousand euros) VAT excluded, according to Article 5 of the Addendum no. 998/30.08.2004 to the Transfer Agreement no. 067402/30.08.2004, having as object the remainder of payment related to the transfer of the football player E. to the Respondent club;*
 - the late payment penalties in quantum of 1% per each day of delay, calculated on the above-mentioned amount of EUR 800,000 from the date of 31.07.2011 until the payment of the main debt, according to Article 9 of the Addendum no. 998/30.08.2004 to the Transfer Agreement no. 067402/30.08.2004.*
 - C. Order the Respondent S.C. FOTBAL CLUB STEAUA BUCURESTI S.A. to pay all costs and expenses relating to the legal fees incurred in the proceedings before all the internal jurisdictions of the RFF;*
 - D. Also order the Respondent S.C. FOTBAL CLUB STEAUA BUCURESTI S.A. to pay all costs and expenses relating to the arbitration proceedings before CAS”.*
18. On 21 November 2011 as well, the Appellant filed its Appeal Brief, confirming the prayers stated before and requesting to proceed in an expedited manner based on art. R44.4 of the Code.
19. On 2 December 2011 the CAS asked the RFF if it wanted to participate as a party in the present arbitration.
20. On the same day, 2 December 2011, the CAS confirmed the receipt of the Appeal Brief and set the Respondent a deadline of 20 days to submit to the CAS an Answer.
21. On 7 December 2011 the Respondent requested that this case should be submitted to a panel of three arbitrators and it disagreed that this case should be dealt in an expedited manner.
22. On 19 December 2011 the President of the CAS Appeals Arbitration Division decided to submit the present case to a panel of three arbitrators. The Parties were given one week to nominate their arbitrator.

23. On 21 December 2011, the Appellant repeated its request that this procedure shall have been dealt in an expedited manner.
24. On 29 December 2011, the CAS Court Office informed the Parties that no arbitrators were nominated yet. The Parties were set another deadline until 5 January 2012 to nominate their arbitrator, failing which the President of the CAS Appeals Division or his Deputy will appoint the arbitrators *in lieu* of the Parties.
25. On 3 January 2012, the Appellant repeated its request that the dispute shall have been resolved by a sole arbitrator and nominated as Arbitrator Mr. Mark Hovell.
26. On 10 January 2012, the CAS Court Office informed the Parties about the Appellant's choice of its arbitrator and that the Respondent failed to nominate its arbitrator within the given deadline. Therefore it was now for the President of the CAS Appeals Arbitration Division, or his Deputy, to soon appoint an arbitrator *in lieu* of the Respondent.
27. On 23 January 2012, the Appellant informed the CAS that it paid also the Respondent's advance of costs, as the Respondent did not pay its share of advance of costs within the time limit. Further it requested that a new deadline shall have been set to the Respondent to file its Answer.
28. On 27 January 2012, the CAS Court Office set the Respondent a deadline of 20 days to file its Answer.
29. On 16 February 2012, the Respondent served its Answer and made the following requests to CAS:
 1. *dismiss the appeal lodged by FCM Bacau against the Decision no. 187 rendered by the RFF Appeal Committee on 28 October 2011 as unfounded;*
 2. *to maintain the Decision no. 520 of 15 September 2011 rendered by the RFF DRC;*
 3. *order the Appellant to pay all the legal fees, costs and expenses related to the current arbitration proceedings*".
30. On 17 February 2012, the CAS Court Office confirmed having received the Respondent's Answer. Further it requested the Parties for a statement if they preferred to have a hearing in this matter or if the Panel should issue an award based on the Parties' written submissions.
31. On 17 February 2012, the CAS Court Office informed the Parties further about the constitution of the Panel.
32. On 21 February 2012, the Appellant requested that a hearing should be held and the Player, as well as Mr. Georghe H. Chivorchian were to be heard as witnesses.

33. On 24 February 2012, the Respondent requested the Panel to settle the dispute based on the Parties' written submissions.
34. On 7 March 2012, the Parties were informed that the Panel decided to hold a hearing in this procedure.
35. On 15 March 2012, the CAS Court Office requested the RFF to provide the entire file of this case, including the decisions of the DRC and the RFF Appeal Commission.
36. The attorneys for the parties attended the hearing on 26 April 2012. The Player and Mr. Chivorchian were heard as witnesses for the Appellant and Mr. Argaseala was heard as a representative of the Respondent.
37. All members of the Panel were in attendance and were assisted at the hearing by Mr. Pedro Fida, CAS Counsel. The parties confirmed they had no concerns with the constitution of the Panel.
38. The witnesses for the Appellant and the representative of the Respondent spoke and were examined by the Panel and the attorneys of the Respondent and Appellant respectively.
39. The parties were given the opportunity to present their cases, submit their arguments and to answer the questions posed by the Panel. A summary of the submissions is detailed below. After the parties' closing submissions, the hearing was finalized and the Panel reserved its detailed decision to its written award. Upon closing the hearing, the parties expressly stated that they had no objections in relation to their right to be heard and to have been treated equally in these arbitration proceedings.

3. CAS JURISDICTION AND ADMISSIBILITY OF THE APPEAL

40. The jurisdiction of CAS, which is not disputed, derives from article 57 paragraph 1 lit. b RFF Statutes as well as article 37 RFF Regulations on the Status and Transfer of Players, as well as article R47 of the Code. It is further confirmed by the Order of Procedure duly signed by the Parties. Consequently, CAS has jurisdiction to decide the present dispute.
41. Under article R57 of the Code, the Panel has the full power to review the facts and the law. Therefore the Panel holds a trial *de novo*, evaluating all facts, including new facts which may not have been mentioned by the Parties before the DRC and the RFF Appeal Commission, and all legal issues involved in the dispute.
42. The Appeal was filed within the deadline provided by article 58 paragraph 4 RFF Statutes and article 36.17 RFF Regulations on the Status and Transfer of Players respectively, namely within 21 days after notification of the Decision. The Statement of Appeal complies with the

requirements of article R48 of the Code. Therefore the Appeal is admissible, which is undisputed.

4. APPLICABLE LAW

43. Article R58 of the Code provides that the Panel shall decide the dispute according to the applicable regulations and the rule of law chosen by the parties or, in the absence of such a choice according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate.
44. The Parties point out that article 6 RFF Regulations on the Status and Transfer of Players provides "*if the provision of this regulation proves to be insufficient, the relevant FIFA and UEFA Regulations shall apply*".
45. In looking at article 62 FIFA Statutes and article 64 paragraph 1 UEFA Statutes the Respondent states that it is at least arguable that Swiss law is applied complementarily. This is confirmed by the Appellant's statement that the Panel could apply Swiss law, if deemed appropriate.
46. Based on the previously mentioned statements and facts it is undisputed, that in this case there shall be primarily applied the RFF Regulations, if necessary FIFA or/and UEFA Regulations and complementarily Swiss law.

5. MERITS

5.1 The position of FC Bacau

47. The Appellant's submissions can be summarized, in essence as follows:
 - (1) With the transfer agreement of 30 August 2004, signed with the Respondent, all formal points according to art. 19.11 of the RFF Regulations of the Status and Transfer of Players are fully respected and the addendum signed by the Parties on the same 30 August 2004 is an integrated part of the transfer agreement. Therefore the transfer agreement as well as the addendum are valid contracts signed by the Parties and shall be respected accordingly.
 - (2) The Respondent paid the initial amount of EUR 100'000 in accordance with article 4 of the transfer agreement and signed accordingly a contract with the Player for a total of 5 years, until 30 June 2009. Based on the addendum the Respondent extended the contract with the Player until 30 June 2011. On 28 June 2010 the Respondent offered the transfer of the Player to the Appellant free of costs; the Respondent was looking for an answer from the Appellant within 24 hours and considered the lack of a response as an agreement to this transfer back of the Player to the Appellant. The Appellant, however, rejected this offer.

- (3) The addendum to the transfer agreement contained various provisions which could result in an additional payment by the Respondent to the Appellant. Article 5 of the addendum stated:
“in the case of termination of the contractual relations between the transferee and the Player determined by the provisions of Article 1, whatever the reasons ending the termination of these relations, the transferee commits to pay the transferor the amount of 800,000 (eight hundred thousand euros) EUR within 30 days of the date when the above-foreseen contractual relations have been terminated”.
- (4) The contract between the Player and the Respondent was extended once, but eventually terminated on its expiry on 30 June 2011; on that date and at that time the provisions in Article 5 of the addendum were satisfied and the EUR 800,000 became due to the Appellant.
- (5) The Appellant points out to two other transfers of players made to the Respondent, Florin Lovin and Dorin Goian. Such transfers made in 2004 (Lovin) and 2005 (Goian) respectively were structured in a similar way as the transfer of the Player in this case. The Respondent paid for each of the players an amount of EUR 1 Million to get the exclusive economic rights of the players.
- (6) The DRC, in its decision of 15 July 2010, based its reasons on the arguments filed by the Appellant in a submission to the same RFF authority regarding a completely different case. Further the DRC did not send the Respondent’s answer to the Appellant and it did not give the Appellant a possibility to take position on the Commission’s arguments taken from another file involving the Appellant. As there was no public hearing held in this procedure, the Appellant requested the Panel to take the breaches of elementary rights very seriously. Further the Appellant points out that the President of the DRC, Mr. Gabriel Manu, is a lawyer representing the interests of Mr. Victor Becali and Mr. Victor Piturcă in different cases since 2003. Mr. Victor Becali is the cousin of Mr. George Becali and Mr. Victor Piturcă is known to be an employee of Mr. George Becali, who is the owner of the Respondent. Therefore Mr. Gabriel Manu has to be considered as biased based on art. 27.9 RFF Regulations on the Statutes and Transfer of Players.
- (7) The RFF Appeal Commission interpreted the contract erroneously and did not analyze the three reasons given by the Appellant on which the appeal was based (bias of Mr. Gabriel Manu; violation of the principal of contradiction and right to defend). Further the reasoning of the RFF Appeal Commission did not interpret the agreements between the Parties properly - out of eight Romanian legal rules of interpretation, it used only the one being in favour of the Respondent to interpret the transfer agreement/addendum.

5.2 The position of FC Steaua

48. The Respondent’s answer can be summarized as follows:

- (1) The Parties signed the transfer agreement and an addendum to this transfer agreement on 30 August 2004. The Respondent paid the agreed transfer fee in the amount of EUR 100’000 in four instalments. In case of a subsequent transfer of the Player from the

Respondent to a third club the Appellant would receive 50% of the transfer fee, but not less than EUR 800'000. The main objective of the addendum was to protect the Appellant's interests regarding the "sell-on clause" stated in article 4 of the transfer agreement. Further the Respondent agreed to pay penalties of 1% for each day of delay in case of its failure to comply with the terms stipulated in the addendum.

- (2) The Respondent had a contract with the Player expiring on 30 June 2009. On 3 July 2008 they agreed to extend the contractual relationship until 30 June 2011. On 16 June 2011 the Respondent offered the Player a further extension of the contract for one year, until 30 June 2012. As the Player did not agree with this extension, the contractual relation ended on 30 June 2011.
- (3) Article 5 of the addendum is ambiguous. It is supposed to protect against the transferee breaching the Player's contract. In such event, the transferor might lose any chance of a share of a transfer fee, so protection is needed. The Respondent denied article 5 would be triggered by the expiry of the playing contract between the transferee and the Player.
- (4) For this reason it is necessary to analyze the nature of the obligation to pay the amount of EUR 800'000. It was never the Parties' intention to agree in the addendum to a new instalment of the transfer fee provided for the final transfer of the Player; therefore no wording to support this idea does exist. The amount of EUR 800'000 cannot represent a transfer quota for the transfer of the Player to another club, as no such transfer was concluded. Finally the amount cannot be considered as damage for a breach of the contract, as the Respondent was not held responsible for not fulfilling its contractual obligations arising from the transfer agreement and the addendum; the Appellant never suffered any damage caused by the Respondent.
- (5) Article 5 of the addendum cannot have the meaning stated in the Appellant's Appeal Brief (*"the reason for which the contractual relations ended is irrelevant for the present case"*). Article 5 of the addendum cannot produce the effects requested by the Appellant as such an interpretation of article 5 is based on a cause which is immoral and which is against the public policy due to its purpose (*"to obtain an amount of money, even for reasons which cannot be attributed to the other contracting party"*).
- (6) Further the interest rate of 198% p.a. is excessive, unreasonable and inequitable under Romanian and Swiss law.

5.3 The evaluation of the Panel

49. The most important documents in this case are the transfer agreement of 30 August 2004 and the addendum to this agreement of 30 August 2004. It is uncontested by the Parties that they formally signed a valid transfer contract regarding the Player, composed of the transfer agreement no. 067402 and the addendum to the transfer agreement no. 067402.
50. In relation to the facts it is further uncontested by the Parties, that the contract between the Player and the Respondent was signed for a period starting on 30 August 2004 and expiring on

30 June 2009. Before this contract expired, the Respondent and the Player agreed on 3 July 2008 to extend the contractual relationship for two years, until 30 June 2011.

51. The Panel holds that with the extension of the contractual relationship between the Player and the Respondent, the transfer agreement and the addendum of 30 August 2004 were extended according to the period of the new contract between the Player and the Respondent until 30 June 2011, based on the clear wording of article 3 of the addendum to the transfer agreement (see para. 6 above). For this reason, article 5 of the addendum to the transfer agreement was valid until 30 June 2011 as well. The Respondent's "*e contrario*" argument that article 3 of the addendum shall not be applicable during the extended time period of the Player's contract with the Respondent is therefore rejected.
52. The Respondent alleged that the wording of article 5 of the addendum is ambiguous. To decide on this point, the Panel relies on the several translations received of article 5 of the addendum and the interpreter's statement made during the hearing that the Romanian word "incetarii" is used for many things and could be translated to English as "ending" or "termination". The Respondent did not object to such translation. The Panel finds that based on the wording of this clause, the Parties' statements and the translations received, the wording of article 5 of the addendum is not ambiguous. The Panel states that the wording "*in the event that the contract between the Transferee [Respondent] and the Player is terminated [ended], pursuant to the provisions of the herein article 1, regardless of the reasons leading to such termination [ending]*", has only one meaning when being read together with article 1 of the addendum: The contract between the Player and the Respondent is running out in reaching the stipulated end date of the contract, in this case 30 June 2011.
53. It is uncontested by the Parties that the extended contract between the Respondent and the Player did run out by reaching the end date stipulated in the contract, being 30 June 2011. Therefore and based on the wording it is obvious for the Panel that article 5 of the addendum is governing the facts at hand.
54. The Player stated as witness that the Respondent did put him in the second team even if he felt to be able to compete for the Respondent's first team and offered him only 1/3 of the existing salary for an extended contract beyond 30 June 2011. However, as the Respondent did not invite him for the first team's training camp and it was in delay with the salary payments by approximately two months (for the last three months of his contractual period), he did reject the Respondent's offer to extend the contract beyond 30 June 2011.
55. The witness Mr. Gheorghe Chivorchian, who negotiated the contract for the Appellant with the Respondent in 2004, stated that article 5 of the addendum was included as a warning and to keep the pressure on the Respondent to fulfil the goal of the transfer agreement/addendum and sell the Player to a third club. From such a sale both, Appellant and Respondent, would have benefited.
56. As stated before, it is uncontested that the Respondent tried to transfer the Player back to the Appellant free of costs on 28 June 2010, giving the Appellant a deadline of 24 hours and stating

that this transfer back would be considered as accepted if the Appellant did not reply within this short deadline. The Panel is of the opinion that this behaviour of the Respondent clearly shows that the Respondent was fully aware of article 5 of the addendum and the costs of EUR 800'000 to be paid to the Appellant in case the contract with the Player would run out by 30 June 2011. Further the Panel considers the statements of the two cited witnesses as confirmation that the Parties did have the same objective when signing the contract: they both wished that the Player could be sold to a third club during the period of the contract agreed between the Respondent and the Player. The Panel is satisfied that also the Respondent was aware and did agree to the clear wording of article 5 of the addendum.

57. As mentioned before, the Panel finds that the Parties' will, when executing the relevant documents, namely the addendum to the transfer agreement, was to transfer/sell the Player to the Respondent with the aim of his further transfer to a third club and therefore get a profit from this transfer/sale to a third club. This corresponds to i) the Appellant's will to get a reasonable and properly calculated sum of money for the Player, even if paid in installments, and ii) the Respondent's will to pay a reasonable and properly calculated sum of money for the Player in different and defined circumstances, even if paid in installments or in different occasions. The Parties drafted the addendum to the transfer agreement carefully and in a sophisticated way to cover all eventualities. It is therefore logic and clear to the Panel that the Parties did also agree to a solution in case the main aim of the transfer to a third club would not happen during the contract period between the Respondent and the Player, and what would then be the amount to be received by the Appellant: this solution is contained in article 5 of the addendum and gives the Appellant the right to receive an amount of EUR 800'000 from the Respondent.
58. The Appellant requests that the amount of EUR 800'000 shall be VAT excluded, meaning that, in addition, the Respondent shall pay the Romanian VAT. The contract does not state anything in relation to the VAT. However, the VAT paid by a company can be deducted from the VAT payments due to the tax authority and, therefore, such VAT is "neutral" for the debtor. The Panel therefore determines that the Respondent has to pay in addition to the mentioned amount, the applicable Romanian VAT to the Appellant.
59. The Panel determines that the wording of article 5 of the addendum is clear and obliges the Respondent to pay the Appellant an amount of EUR 800'000 plus VAT within 30 days from the contract termination date which is 30 June 2011.
60. In article 9 of the addendum the Parties agreed that the Respondent undertakes to pay an interest of 1% for each day of delay. Based on article 5 of the addendum the amount of EUR 800'000 had to be paid by the Respondent to the Appellant until 30 July 2011 at the latest. Starting from 31 July 2011 the Respondent was therefore in arrears and it has to pay interest for having delayed such payment.
61. The Respondent objected to this high interest of 1% per day, even though it signed such a clause and therefore has to be considered as behaving in bad faith (*venire contra factum proprium*).

The Panel, in applying subsidiarily Swiss law, is of the opinion that such an interest of 1% per day is indeed excessive. Article 104, § 1 of the Swiss Code of Obligations states that the interest to be paid when delayed is 5% per year. Therefore, the Panel determines the interest to be paid by the Respondent to the Appellant for its delayed payment at 5% per year, starting from 31 July 2011.

62. Based on article R57 of the Code the Panel has the full power to review the facts and the law; therefore all possible breaches of fundamental procedural rights (bias of Mr. Gabriel Manu; violation of the due process and/or the right to be heard) are considered as being cured. There is no need for the Panel to further develop these points.
63. All other motions or requests are rejected.

6. CONCLUSION

64. Based on the above reasoning the Panel decides that the Respondent has to pay to the Appellant based on article 5 of the addendum to the transfer agreement of the Player an amount of EUR 800'000 plus VAT and 5% interest p.a., starting on 31 July 2011.
65. Based on all the above, the appeal is upheld.

ON THESE GROUNDS

The Court of Arbitration for Sports Rules that:

1. Asociatia Sportiva "Fotbal Club Municipal" Bacau's appeal against the decision of the RFF Appeal Commission no. 187/CR/2011 of 28.10.2011 is upheld.
 2. SC Fotbal Club Steaua Bucuresti S.A. is ordered to pay to Asociatia Sportiva "Fotbal Club Municipal" Bacau the amount of EUR 800'000 (eight hundred thousand Euros) plus VAT and 5% interest p.a. starting as from 31 July 2011.
- (...)
5. All other motions or requests for relief are dismissed.