



**Arbitration CAS 2012/A/2690 S.C. Dinamo 1948 S.A. v. Romanian Professional Football League (RPFL), Romanian Football Federation (RFF) & Sporting Club SA Vaslui, award of 16 October 2012 (operative part of 31 May 2012)**

Panel: Prof. Peter Grilc (Slovenia), President; Mr Michele Bernasconi (Switzerland); Mr Efraim Barak (Israel)

*Football*

*Request to impose disciplinary sanctions to a club*

*Definition of “penalised person” with regard to standing to appeal*

*Legal nature of the sanction imposed by the DRC based on Art. 17 RSTP*

*Registration of a player free of contract outside the registration period according to Article 6 (1) RSTP*

*Rationale of Article 6 (1) RSTP*

- 1. Pursuant to Article 120(4) of the Disciplinary Regulations of the RFF, the appeal before CAS may be filed by the penalized person and the General Secretary of FRF/LPF. The term “penalized person” shall not be interpreted technically and purely literally. To the opposite, it must be interpreted in the context of the entire case. Therefore, in accordance with the *ratio legis* of the applicable regulations, a penalized person is any person whose rights and legal interests are violated or affected by the relevant decision. The above is in line with CAS jurisprudence recognizing the rights of a party aggrieved by a decision of a national or international sporting institution to resort to the CAS.**
- 2. The sanctions imposed by the FIFA Dispute Resolution Chamber (DRC) on the basis of art. 17 of the FIFA Regulations on the Status and Transfer of Players (RSTP) are disciplinary sanctions. The fact that the sanctions have been imposed because of a violation of a contractual duty does not change the nature of a disciplinary sanction. Indeed, to argue the opposite is to misconceive the disciplinary framework of the sanctions of art. 17 RSTP: FIFA, in order to foster contractual stability, has foreseen in its regulations duties and obligations of players and clubs, with disciplinary sanctions triggered by a violation of those duties.**
- 3. Article 6(1) RSTP enables an exception to the rule that players may only be registered during one of the two annual registration periods fixed by the relevant association. As an exception to this rule, a professional whose contract has expired prior to the end of a registration period may be registered outside that registration period. Upon expiry of the previous contract of a player, such player becomes a free agent and could be registered as such outside the registration period. This applies within the limits of good faith and only as far as the sporting integrity of the relevant competition is not at stake. This means that the exception foreseen in Article 6(1) RSTP shall not be abused to circumvent a ban, for instance by setting up a scheme with a player and his former club to allow a club suffering a ban to register a player literally a couple of hours after the**

expiry of the ban.

4. **Article 6(1) RSTP is meant to serve the interests of unemployed players that are and in good faith were indeed “without a club” even before a registration period started. But Article 6(1) RSTP is not there to protect the interests of a player that has terminated his contract with a club before a registration period, with the sole purpose to register after the expiry of the registration period for a new club that is suffering a transfer ban. The provision of Article 6(1) RSTP is an exception to the general rule enabling players without a contract to find a club to play with. It must be used and interpreted in a restrictive manner and any doubts concerning fulfilling the true intention of the exception should be carefully and completely dealt with by the competent national associations. It is obvious that special attention shall be given in the situation where a club just finished a penalty period.**

## **I. FACTS OF THE CASE**

### **1 THE PARTIES**

- 1.1 S.C. Dinamo 1948 S.A. (“Dinamo” or “Appellant”) is a football club with its registered office in Bucharest, Romania, affiliated with the Romanian Football Federation. The club played in the Romanian Professional Football League in the 2011/2012 season.
- 1.2 Liga Profesionista de Fotbal, (Romanian Professional Football League – “RPFL” or “First Respondent”) is the organization in charge of organizing and managing, under the jurisdiction of the Romanian Football Federation, the highest professional football league in Romania, with its registered office in Bucharest, Romania.
- 1.3 Federatia Romana de Fotbal, (Romanian Football Federation – “RFF” or “Second Respondent”) is the national governing body for the sport of football in Romania, with its registered office in Bucharest, Romania. It is a member of FIFA, i.e. the Fédération Internationale de Football Association.
- 1.4 Sporting Club S.A. Vaslui (“Vaslui” or “Third Respondent”) is a football club with its registered office in Vaslui, Romania, affiliated with the RFF. The club played in the Romanian professional football league in the 2011/2012 season.

## **2 PROCEEDINGS BEFORE THE RPFL DISCIPLINARY COMMITTEE AND BEFORE THE RPFL RECOURSE COMMISSION**

### **A) The Background of the Case**

- 2.1 M. (the “Player”) is a professional football player of Romanian nationality; he signed a professional employment contract with Vaslui on 31 August 2011 and was officially registered for said club by the RFF and the RPFL on 6 September 2011.
- 2.2 On 11 September 2011, the clubs Dinamo (the Appellant) and Vaslui (the Third Respondent) played the sixth fixture of the first football league organized by the RPFL, which ended in a 3-1 win for Vaslui. The Player was included in the line-up of Vaslui.
- 2.3 On 13 October 2010, the FIFA Dispute Resolution Chamber issued a decision pursuant to which Vaslui was *“banned from registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods following the notification of the present decision”* (the “DRC Decision”).
- 2.4 Vaslui appealed against the DRC Decision before the Court of Arbitration for Sport (“CAS”), but the appeal was dismissed and the DRC Decision was upheld (CAS 2010/A/2289 SC Sporting Club Vaslui v. Ljubinkovic of 3 August 2011).
- 2.5 The correspondence between the RFF and FIFA between 7 September 2011 and 1 November 2011 reveals that by letter of 7 September 2011, the RFF asked FIFA to lift the ban on the Third Respondent as the summer transfer window of 2011 had ended on 5 September 2011 and as Vaslui had therefore served its punishment.
- 2.6 During the same period of time, FIFA sent two letters to the RFF, maintaining in short that Vaslui would only be in a position to register new players as from the opening of the next registration period (being the third registration period after the imposition of the ban, i.e. the winter registration period of the 2011/2012 season) fixed by the RFF.

### **B) The decision of the Disciplinary Committee of the Romanian Professional Football League**

- 2.7 On 28 October 2011, Dinamo lodged a complaint with the Disciplinary Committee of the Romanian Professional Football League alleging that serious disciplinary infringements had been committed by Vaslui. Dinamo claimed that by registering the Player and fielding him in the match of 11 September 2011, Vaslui seriously infringed both FIFA and RFF regulations because the club was still banned from registering any new players. Dinamo filed the complaint based on Article 107(4) of the Disciplinary Regulations of the RFF in connection with Articles 85(4), 85(5), 86.10(5), 86.10(6) of the Disciplinary Regulations of the RFF and Article 55(1) of the FIFA Disciplinary Code. Dinamo asked the Disciplinary Committee to impose the following sanctions on Vaslui:

- (i) deduction of 15 points pursuant to Article 85(5) of the Disciplinary Regulations;
- (ii) losing by forfeit the game played on 11 September 2011 pursuant to Article 86.10(5) of the Disciplinary Regulations in conjunction with Article 55(1) of the FIFA Disciplinary Code.

2.8 On 9 November 2011, by Decision No. 633/09.11.2011, the Disciplinary Committee of the Professional Football League decided that: *“Having regard to art. 26, paragraph 3, point a) of the ROAF regulation, admits the plea, and as a consequence dismisses the petition made by S.C. Dinamo 1948 S.A. as inadmissible”*.

### **C) Further correspondence**

2.9 On 3 November 2011, Dinamo informed FIFA about Vaslui’s alleged violations of the FIFA Regulations on the Status and Transfer of Players (“FIFA Regulations”) and asked for intervention by requesting FIFA *inter alia*:

*“(a) To establish that the club that was sanctioned with the ban on registering any players for two consecutive registration periods can only register players again starting from the third registration period following the decision imposing such ban;*

*(b) To establish that the registration of a player for a club that has been banned from registering players, outside the registration period violates the wording and the spirit of the FIFA Regulations and Article 17(4);*

*(...)*

*(f) To instruct RFF and LPF to declare the matches where [the Player] was fielded as lost by forfeit by Vaslui and in particular to declare the match Dinamo v Vaslui played on 11 September 2011 is lost by forfeit by Vaslui”*.

2.10 On 8 November 2011, FIFA replied that questions regarding standing of a result are the sole competence of the organiser of the competition (RFF and RPFL) and urged the RFF to ensure that corresponding proceedings were initiated.

### **D) The decision of the Recourse Commission**

2.11 On 14 November 2011, Dinamo lodged an appeal before the Recourse Commission (Comisia de recurs) of the Romanian Professional Football League against Decision No. 633/09.11.2011 of the Disciplinary Committee of 9 November 2011, asking *inter alia* to admit the appeal, to cancel the previous decision No. 633/09.11.2011, to admit the complaint having regard to the provisions of Article 107(4) and asking for the same sanctions to be applied to Vaslui as already demanded in the complaint.

- 2.12 On 8 December 2011, the Recourse Commission rendered its decision No. 65/CR/2011 (the “Appealed Decision”) with the following operative part: *“Rejects the recourse filed by SC DINAMO 1948 SA against Resolution No. 633/9 November 2011 of DC of PFL, as not grounded”*.

## **II. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

### **3 STATEMENT OF APPEAL, APPEAL BRIEF AND ANSWER**

- 3.1 On 6 January 2012, the Appellant filed its statement of appeal (“Statement of Appeal”).
- 3.2 On 16 January 2012, the Appellant filed its appeal brief (“Appeal Brief”; Statement of Appeal and Appeal Brief together “Appeal”).
- 3.3 On 23 February 2012, the CAS Court Office, on behalf of the President of the CAS Appeals Arbitration Division, informed the parties that the Panel for the present dispute was constituted as follows: Professor Peter Grilc as President and Mr. Michele Bernasconi and Mr. Efraim Barak as arbitrators nominated by the parties. None of the parties raised any objection as to the constitution of the Panel.
- 3.4 On 12 March 2012, the First Respondent and the Second Respondent filed their answers (“First Respondent’s Answer”; “Second Respondent’s Answer”). The Third Respondent filed its answer (“Third Respondent’s Answer”) on 5 March 2012.
- 3.5 On 10 February 2012 the Third Respondent sent a letter objecting to CAS jurisdiction and asking that the CAS render a preliminary decision on jurisdiction. The Third Respondent reiterated such demand on 29 February 2012 and 22 March 2012.
- 3.6 On 11 April 2012, the parties were informed that the Panel had decided to rule first on its jurisdiction. In view of this decision and as the Third Respondent already submitted its position, the other parties were granted a deadline to file written submissions on the jurisdiction of CAS.
- 3.7 On 19 April 2012, the Appellant filed its written submission on jurisdiction.
- 3.8 On 26 April 2012, the parties were advised that having considered the issue of jurisdiction in this matter, the Panel had decided that CAS had jurisdiction to hear this case and that the reasons for the Panel’s decision would be contained in the final award (see Chapter 12 below).

### **4 HEARING**

- 4.1 On 15 March 2012, the CAS Court Office invited the parties to inform it whether their preference was for a hearing to be held or whether their preference was for the Panel to issue an award based on the parties’ written submissions. Thereupon, the Appellant expressed its preference for a hearing to be held, whereas the First and Third Respondent did not deem it necessary to hold a hearing. The Second Respondent did not express any preference.

- 4.2 On 19 April 2012, together with its position on jurisdiction, the Appellant requested the Panel to *“proceed with the decision on jurisdiction as soon as possible and, once the Panel confirms its competence, to deal with the merits of the dispute in an expedited manner so that to reach the final resolution of the case by the end of the Romanian championship”*.
- 4.3 On 26 April 2012, in light of the Appellant’s request that this matter be expedited, the Panel confirmed its availability for a hearing on the merits on 14 May 2012.
- 4.4 On 4 May 2012, the Second and Third Respondent informed the Panel that they were not available for a hearing on 14 May 2012 and gave reasons for their unavailability. The Third Respondent suggested 18 and 25 May 2012 as alternative hearing dates as *“due to the complexity of the case, we consider our presence compulsory at the hearing”*.
- 4.5 On 7 May 2012, the Appellant informed CAS that in view of the situation and taking into account that it was only the Appellant that had requested a hearing, it renounced its right for a hearing to be held and authorised the Panel to render a decision based on the written submissions only. Considering that the Romanian championship would end on 19 May 2012 and that the present affair might influence the final standing in the championship, the Appellant requested the Panel to issue the operative part of the award before the end of the Romanian championship.
- 4.6 In light of the above submissions and requests, the Panel analyzed the Third Respondent’s position considering it had written on the one hand that *“(…) our presence [is] compulsory at the hearing (…)”* (letter of 4 May 2012), but on the other hand, it had expressly stated its preference not to hold a hearing (letter of 22 March 2012). Bearing in mind these submissions and the express statement of the Appellant of 7 May 2012 that it no longer requested a hearing, the Panel interpreted that the Third Respondent considered its presence compulsory at the hearing only in the event a hearing was held.
- 4.7 Pursuant to Article R57 of the Code of Sport-related Arbitration (the “Code”) the Panel deemed itself to be sufficiently well informed and decided to issue the award without holding a hearing.

## **5 ORDER OF PROCEDURE**

- 5.1 On 10 May 2012, the Panel issued an Order of Procedure setting out, inter alia, the composition and the seat of the Panel, the language of the arbitration, and the law applicable to the merits of the dispute.
- 5.2 The Order of Procedure was signed by the Appellant, the First and the Second Respondent, while the Third Respondent asked for amendments concerning, in particular, its objections to CAS jurisdiction. Consequently, on 16 May 2012, the Third Respondent signed the Order of Procedure with several handwritten additions and amendments.

## **6 SUBSEQUENT AND FINAL SUBMISSIONS**

- 6.1 On 14 May 2012, due to the decision not to hold a hearing, the parties were asked by the Panel to file final written submissions on the merits of the case. Upon this invitation the following submissions were received: the Third Respondent's written submission of 21 May 2012, the Appellant's written submission of 24 May 2012 and the Third Respondent's written submission of 29 May 2012.
- 6.2 On 16 May 2012, the Appellant filed a request for provisional and conservatory measures, asking the Panel to order the First and Second Respondent not to confirm the final standing of the Romanian championship and not to inform UEFA about the Romanian clubs that would participate in the European club competitions in the next football season. The Third Respondent filed its answer in this respect on 18 May 2012.
- 6.3 On 18 May 2012, the Panel denied the Appellant's request for provisional and conservatory measures and advised the parties that the grounds for this decision would be set out in the final award. The Panel did not admit the request and decided to deny the request for provisional and conservatory measures because the Panel was not convinced that the Appellant established the existence of the criteria for granting such a request, and due to the fact that in any case the Panel intended to communicate the operative part of the award prior to the dead line that was the basis and only argument for the request, as indeed was done.

## **7 SITTING OF THE PANEL**

- 7.1 On 30 May 2012 the Panel met at the CAS headquarters in Lausanne for deliberations. The operative part of the award was sent to the parties on 31 May 2012.

# **III. THE RELEVANT RULES OF CAS, RFF, ROFA AND FIFA**

## **8 CODE OF SPORTS-RELATED ARBITRATION (2010 EDITION)**

- 8.1 Art. R57 (Scope of Panel's Review, Hearing) of the CAS Code

*Art. R57 states: The Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. Upon transfer of the file, the President of the Panel shall issue directions in connection with the hearing for the examination of the parties, the witnesses and the experts, as well as for the oral arguments. He may also request communication of the file of the federation, association or sports-related body, whose decision is the subject of the appeal. Articles R44.2 and R44.3 shall apply.*

*After consulting the parties, the Panel may, if it deems itself to be sufficiently well informed, decide not to hold a hearing. At the hearing, the proceedings take place in camera, unless the parties agree otherwise.*

*If any of the parties is duly summoned yet fails to appear, the Panel may nevertheless proceed with the hearing.*

## 8.2 Art. R58 (Law applicable to the merits) of the CAS Code

Art. R58 states: *The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.*

## 8.3 In accordance with Article R58 of the CAS Code, the relevant provisions of the FIFA, RFF and ROFA rules and regulations which shall apply on the merits are as follows:

# 9 FIFA RULES: REGULATIONS ON THE STATUS AND TRANSFER OF PLAYERS, PARTICULARLY ARTICLES 6 (REGISTRATION PERIODS), 17(4) (CONSEQUENCES OF TERMINATING A CONTRACT WITHOUT A JUST CAUSE), 22 (COMPETENCE OF FIFA)

## 9.1 Article 5(1) FIFA Regulations

*A player must be registered at an association to play for a club as either a professional or an amateur in accordance with the provisions of article 2. Only registered players are eligible to participate in organised football. By the act of registering, a player agrees to abide by the statutes and regulations of FIFA, the confederations and the associations.*

## 9.2 Article 6(1) FIFA Regulations

*Players may only be registered during one of the two annual registration periods fixed by the relevant association. As an exception to this rule, a professional whose contract has expired prior to the end of a registration period may be registered outside that registration period. Associations are authorised to register such professionals provided due consideration is given to the sporting integrity of the relevant competition. Where a contract has been terminated with just cause, FIFA may take provisional measures in order to avoid abuse, subject to article 22.*

## 9.3 Article 17(1) FIFA Regulations

*In all cases, the party in breach shall pay compensation. Subject to the provisions of article 20 and Annexe 4 in relation to training compensation, and unless otherwise provided for in the contract, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period.*

## 9.4 Article 17(4) FIFA Regulations

*In addition to the obligation to pay compensation, sporting sanctions shall be imposed on any club found to be in breach of contract or found to be inducing a breach of contract during the protected period. It shall be presumed, unless established to the contrary, that any club signing a professional who has terminated his contract without*

*just cause has induced that professional to commit a breach. The club shall be banned from registering any new players, either nationally or internationally, for two registration periods.*

9.5 FIFA Disciplinary Code Art. 2

*This code applies to every match and competition organized by FIFA.*

**10 RFF RULES: DISCIPLINARY REGULATIONS OF THE ROMANIAN FOOTBALL FEDERATION (REGULAMENT DISCIPLINAR), EDITION 2011, PARTICULARLY ARTICLES 85(4), 85(5), 86(10.5), 106, 107(4), 120(4); (“DISCIPLINARY REGULATIONS”)**

10.1 Article 85(4)

*The decisions pronounced by the jurisdictional bodies of FIFA/UEFA or the Court of Arbitration for Sport shall be enforced by the Executive Committee/Urgency Committee of FRF by consensus, in accordance with the enforcement procedure making an integral part of the FRF statute.*

10.2 Article 85(5)

*The natural persons’ or clubs’ failure to enforce the enforceable disciplinary decision, except for players, others than those regarding the obligation to pay certain amounts of money, shall be penalized by the deduction of 6 to 15 points from the team of the club the penalized person belongs to and in case of further noncompliance after the points deduction, the retrogradation to a lower category.*

10.3 Article 86 par. 10(5)

*The teams comprising players who have obtained their registration and right to play with the infringement of the regulatory provisions, a fact proven pursuant to the contestation resolution, shall be penalized with losing the games by forfeit.*

10.4 Article 120(4)

*The penalized person and the General Secretary of FRF/LPF may institute appellate proceedings before the Court of Arbitration for Sport in Lausanne against the decision of the Appellate Committee of FRF/LPF, within 21 days from the communication of such decision.*

**11 ROFA RULES: REGULATIONS OF ORGANIZATION OF THE FOOTBALL ACTIVITY (REGULAMENT DE ORGANIZARE ACTIVITATII FOTBALISTICE), EDITION 2011, PARTICULARLY ARTICLES 26(1), 26(3), 27(2), 27(3), 50, 62, 85(4), 85(5), 86(10.5), 106, 107(4), 120(4); (“ROFA REGULATIONS”)**

11.1 Article 26(1)

*The clubs which believe that the opponent team has infringed certain regulatory provisions, irrespective of their nature, are entitled to uphold their case only on the basis of contestation written in the referee’s report.*

## 11.2 Article 26(3)

*Teams are entitled to bring contestations as follows:*

*a) prior to the game commencement:*

*- if the right to play of one or several players of the opponent team mentioned in the game report is challenged, mentioning the concrete reasons....*

## IV. JURISDICTION, SCOPE OF THE PANEL'S REVIEW AND ADMISSIBILITY

### 12 JURISDICTION

- 12.1 CAS has jurisdiction to decide the present dispute between the parties. The jurisdiction of CAS is based on Article 120(4) of the Disciplinary Regulations of the RFF which states that the "... penalized person and the General Secretary of FRF/LPF may institute appellate proceedings before the Court of Arbitration for Sport in Lausanne against the decision of the Appellate Committee of FRF/LPF, within 21 days from the communication of such decision. If the decision of the appellate committee of FRF/LPF is not challenged before TAS within the above-referred time limit, this becomes final and irrevocable" and article R47 of the CAS Code. The Panel further notes that the Decision of the Recourse Commission states "With recourse at TAS within 21 days from communication".
- 12.2 The jurisdiction of CAS was disputed only by the Third Respondent. It appears from the appeal brief, the answers to the appeal and the written submissions, that the jurisdiction of CAS was undisputed by the Appellant, the First and the Second Respondent.
- 12.3 The Third Respondent objected the CAS jurisdiction and reiterated that on several occasions:
- (i) on 10 February 2012, in a letter demanding that the CAS render a preliminary decision on jurisdiction;
  - (ii) on 5 March 2012, in its answer to the appeal;
  - (iii) on 29 February 2012 and on 22 March 2012 in two letters to CAS.
- 12.4 Furthermore, the Third Respondent signed the Order of Procedure and amended it with his express statement that it had objected to the jurisdiction of CAS (supra in para. 5.2 of the award).
- 12.5 The Third Appellant substantiates and underpins the objection to CAS jurisdiction relying on Article R47 of the CAS Code, which stipulates that "[a]n appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar (i) as the statutes or regulations of the said body so provide or as the parties have concluded a (ii) specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body". Vaslui claims that neither the first nor the second requirement is

fulfilled. Pursuant to Article 120(4) of the Disciplinary Regulations of the RFF, the appeal before CAS may be filed by the penalized person and the General Secretary of FRF/LPF.

- 12.6 The appeal was clearly not filed by General Secretary of FRF/LPF and neither was a specific arbitration agreement concluded between the parties, however, the question whether the appeal was filed by a penalized person remains in dispute. Whereas the Appellant contends it had the status of a penalized person in the sense of the Articles of the Disciplinary Regulations, the Third Respondent objected to such contention (Third Respondent's answer from 29 February 2012).
- 12.7 The Panel considers Dinamo to be a penalized person within the meaning of Article 120(4) of the Disciplinary Regulations of the RFF for the following reasons.
- 12.8 In the present case, the Appellant was not penalized and was not a penalized person *stricto sensu*, however the decisions issued in both procedures before the national association had a penalizing effect on Dinamo. There was no proceeding initiated against the Appellant before the national federation or association. Quite the opposite, both the Disciplinary Committee of the Professional Football League Decision and the Recourse Commission Decision were issued in proceedings in which the Appellant itself sought protection of its own legal interests. Therefore, it is correct in this respect that it was the one who reverted to both commissions (Third Respondent in Response to the Appeal, p. 10). Neither of the decisions provided the Appellant with the result it sought to obtain.
- 12.9 Nevertheless, the Panel is of the opinion that the term "penalized person" shall not be interpreted technically and purely literally. To the opposite, it must be interpreted in the context of the entire case. Despite the fact that the Appellant is not a penalized person *stricto sensu*, it would be deprived of the opportunity to challenge the decisions issued on the merits by the two national bodies before CAS for purely procedural reasons. The Panel is satisfied that in accordance with the *ratio legis* of the applicable regulations, a penalized person is any person whose rights and legal interests are violated or affected by the relevant decision. The above is in line with CAS jurisprudence recognizing the rights of a party aggrieved by a decision of a national or international sporting institution to resort to the CAS (cf. CAS 2008/A/1583 and CAS 2008/A/1584: someone being "... *directly affected by a decision ... is directly concerned... There is therefore no need to separately review whether it was right to grant the Appellants the standing of a party ...*").
- 12.10 The term "penalized person" is therefore not to be interpreted *stricto sensu*, but must be interpreted as referring to any person suffering negative consequences as a result of the decisions of national football authorities. The Appellant's interests were directly affected by the alleged misconduct of the Third Respondent and both decisions of the national bodies.
- 12.11 Therefore, the Panel considers that there are enough and well-founded reasons to decide that in the present case there is jurisdiction of CAS.

12.12 Under article R57 of the CAS Code, the Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance.

### 13 ADMISSIBILITY

13.1 The Statement of Appeal was filed within the deadline set in the RFF rules and the Appeal Brief was filed within the prescribed deadlines as well.

13.2 In the Appeal Brief the Appellant has set fourteen prayers for relief (the Panel notes that the prayers for relief are numbered differently in the Statement of Appeal where there is no relief under 5), asking the Court of Arbitration for Sport:

- “1. *To accept the present appeal against the challenged decision;*
2. *To set aside the challenged decision;*
3. *To establish that the club that was sanctioned with the ban on registering any new players for two consecutive registration periods can only register players again starting from the third registration period following the decision imposing such ban;*
4. *To establish that the registration of a player outside the registration period, for a club that has been banned from registering players violates the wording and the spirit of the FIFA Regulations of the Status and Transfer of Player and in particular Article 17(4) thereof;*
5. *To confirm that fielding a player that is not eligible to play has a consequence that the relevant match is lost by forfeit (note: this prayer for relief was not included in the Statement of Appeal);*
6. *To establish that RFF, RPFL and Vaslui have violated the FIFA Regulations on the Status and Transfer of Player and the DRC Decision when registering the Player for Vaslui;*
7. *To establish that Vaslui was not entitled to register the Player;*
8. *To establish that the Player was therefore not eligible to play for Vaslui before the opening of the winter registration period of January 2012 and to establish particularly that the Player was not eligible to play in the Match;*
9. *To admit the complaint filed under Art. 107 par (4) of the RFF Disciplinary Regulations regarding the disciplinary infringements, sanctioned under the RFF Disciplinary Regulations as per Art. 85 par (5) and art. 86 point 10, par (5);*
10. *To order the RFF and/or the RPFL to declare the Match as lost by forfeit by Vaslui;*
11. *To declare the matches where the player was fielded as lost by forfeit by Vaslui and in particular to declare the match Dinamo v Vaslui played on 11 September 2011 is lost by forfeit by Vaslui or to order the RFF and/or the RPFL to do so;*

12. *To deduct 6 to 15 points from Vaslui's first team's ranking in the Romanian Championships as per Art. 85 par (5) of the RFF Disciplinary Regulations or to order the RFF and/or the RPFL to do so;*
  13. *To condemn the Respondents to the payment in the favour of the Appellant of the legal expenses incurred;*
  14. *To establish that the costs of the arbitration procedure shall be borne by the Respondents”.*
- 13.3 The First Respondent refers to the Statement of Appeal and contends that the above prayers for relief 3, 4, 6, 7, 8 and 11 (partially) from the Appeal Brief (3 to 8 and partially 10 as numbered in the Statement of Appeal) are inadmissible since they exceed the frame of proceedings set forth by Dinamo upon the original complaint lodged to the Disciplinary Committee of the RPFL.
- 13.4 The Second Respondent used similar arguments in its Answer to the Appeal, however it is not entirely clear whether the arguments are related to the prayers for relief in the Statement of Appeal or the Appeal Brief. However, due to the similar approach in comparison with the First Respondent's answer, the Panel considers that the arguments are related to the Statement of Appeal. The Second Respondent challenges the admissibility for the same reasons as the First Respondent, it also challenges prayers for relief 9 and 11 (Second Respondent's Answer to the Appeal of 12 March 2012, p. 3).
- 13.5 The Third Respondent refers to the Appeal Brief and objects to the admissibility of prayers for relief 3 to 8, 11 and 12.
- 13.6 There were no objections by the Respondents regarding the admissibility of the appeal regarding prayers for relief 1, 2, 13 and 14. Therefore, the Panel considers that the appeal is admissible at least in respect of those points. The admissibility of the disputed prayers for reliefs is discussed later in the award.

## V. POSITIONS OF THE PARTIES

Below is a summary of the main relevant facts and allegations based on the parties' written submissions. Although 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.

### 14 THE APPELLANT'S POSITION

14.1 The Appellant's submission, in essence, can be summarized as follows:

- The Appellant considers that the Respondents failed to comply with and to ensure the compliance with the DRC Decision. Pursuant to Article 13 of the FIFA Statutes, Dinamo emphasizes that the proceedings accrued solely due to the failure of Vaslui to comply

with the DRC Decision and the FIFA Regulations, whereas the RFF and the RPFL failed to respect their duty of ensuring the proper implementation of the DRC Decision.

- The Appellant is of the opinion that the Player was registered for Vaslui during the term of the transfer ban (p. 9-10 of the Appeal Brief). The relevant registration periods following the DRC Decision were between 26 December 2010 and 23 January 2011 and between 21 June 2011 and 5 September 2011. In accordance with the literal and teleological interpretation of Article 17(4) of the FIFA Regulations, Vaslui was sanctioned with a ban on registering any new players until the third registration period following the decision imposing such ban. The Appellant is therefore of the opinion that the registration periods under Article 17(4) do not only contain the relevant registration periods fixed by the association, but also the timeframe between the registration periods. It would be correct to assume that the registration date of the Player (6 September 2011) was covered by the term of the sanction and the scope of Article 17(4), since outside the registration period one could conclude that a club which is banned would also be able to register new players in the timeframe between the two consecutive registration periods fixed by the association. Since Vaslui was banned from registering any new players until the commencement of the third registration period, the registration of the Player was invalid.
- Furthermore, the Appellant claims that the First and Second Respondent failed to ensure compliance with the DRC Decision (p. 10-12 of the Appeal Brief). Both Respondents were bound by Article 13(d) of the FIFA Statutes and Article 85(4) of the RFF Disciplinary Regulations. The RFF failed to procure the due compliance of Vaslui with the DRC Decision, thus allowing the club to register a new player and allowing it to field the Player in official matches while the ban was still effective. The Appellant asked FIFA for clarification of the ban and received the answer that the registration of new players for Vaslui would have been possible only from the beginning of the next registration period, i.e. the winter registration period of the 2011/12 season. However, the First and the Second Respondent did not wait for the FIFA answer and negligently permitted the fielding of the Player in the matches of the first half of the 2011/12 football league season. The Respondents' intention to neglect decisions and regulations is illustrated by the timeline of events and facts, namely (i) the player was registered by the RFF on 6 September 2011 while the transfer ban against Vaslui was still in force, (ii) the next day, on 7 September 2011, the RFF sent an official letter to FIFA, requesting it to lift the transfer ban on Vaslui, (iii) after just two days, on 9 September 2011, FIFA answered the RFF, clearly stating that the registration ban was valid until the winter registration period of the 2011/2012 season and that Vaslui would not be able to register any new players until that moment, thereby refusing to lift the ban on registering any new players.
- The Appellant claims that the First and the Second Respondent failed to examine properly the violation of Vaslui (p. 12-13 of the Appeal Brief). In this respect Dinamo relies on Article 85(5) of the RFF Disciplinary Regulations claiming that neither the Disciplinary Committee nor the Recourse Commission managed to examine the considerations of the Appellant, to properly assess Vaslui's violations and consequently

undertake the due measures to implement the DRC Decision. They disregarded the RFF Disciplinary Regulations and did not deduct the requested number of points and did not declare the match between Vaslui and Dinamo sanctioned by forfeiting. In addition, the Appellant claims that Vaslui was acting in bad faith when registering the Player since the club was well aware of the illegality of such registration and both instances of the RPFL, while rejecting the Appellant's applications, encouraged Vaslui for its violation of the DRC Decision and the FIFA Regulations.

- The Appellant qualifies the ban on registering any new players, as was imposed on Vaslui, as a sanction of a disciplinary nature (p. 13-16 of the Appeal Brief). Despite the fact that the Recourse Commission of the RPFL interpreted the FIFA DRC Decision as “9...*certainly a resolution on contractual matters, setting a dispute related to the observance or non-observance of contractual obligations*”. The Appellant maintained that the legal essence of the sanction imposed on Vaslui is a sanction of a disciplinary nature for the following reasons. Firstly, Article 17(4) of the FIFA Regulations defines a sporting sanction (“*In addition to the obligation to pay compensation, sporting sanctions shall be imposed on any club found to be in breach of contract or found to be inducing a breach of contract during the protected period (...)*”). A disciplinary sanction is a punishment imposed for the purposes of maintaining order and safety within the establishment. Following Article 12 of the FIFA Disciplinary Code, the transfer ban is a disciplinary sanction which may be applicable to legal persons, therefore including clubs. Further legal arguments are offered in support of the disciplinary nature of the transfer ban sanction (rec. 59 to 68 of the Appeal Brief).
- The Appellant brought a complaint in front of the national judicial bodies according to Article 107(4) of the Disciplinary Regulations of the RFF (p. 16-17 of the Appeal Brief). The Appellant considers that both the Disciplinary Committee and the Recourse Commission wrongly classified the nature of the notification made by Dinamo as a contestation under Article 26(3a) of the ROFA. Consequently, the contestation filed by the Appellant was found to be tardy because teams are only entitled to bring contestations prior to the commencement of the game. The Appellant was not aware of the illicit registration at the time the game was played, therefore the contestation was not possible. Consequently, the Appellant made the notification when it became aware of such registration. Such notification was not made under Article 26(3a) of the ROFA, but under Article 107(4) of the RFF Disciplinary Regulations. The Appellant considers that it cannot be expected to discover all kind of irregularities with registrations, that his acts were based on trust of the relevant football authorities and their competence to act in such cases *ex officio*.
- In addition, the two FIFA documents were not published and communicated to the clubs: this relates to the FIFA letter of 9 September 2011, stating that Vaslui was not entitled to register the Player as was communicated to the RFF and the FIFA DRC on 13 October 2010. The purpose of Article 107(4) RFF Disciplinary Regulations is to grant a party the right to raise issues regarding a disciplinary infringement, including non-compliance with a disciplinary sanction issued by the FIFA DRC, and to address the matter to the competent bodies as a written complaint. The Appellant therefore had the right to submit

a complaint for the serious disciplinary infringements, not being limited by the observance of any time limit or any prior formalities.

- The Appellant requested that Vaslui shall be sanctioned in accordance with the effective regulations of the RFF and RPFL and requested for evidentiary proceedings that the Panel requests the RFF to deliver in full the whole exchange of documentation with FIFA related to the registration of players.

## 15 THE FIRST AND SECOND RESPONDENT'S POSITIONS

15.1 The First and Second Respondent's submissions, in essence, can be summarized as follows:

- Both Respondents consider that they do not have passive legal standing. The Second Respondent claims that it did not participate at the trial of the case and did not pass either of the decisions against which the Appellant appealed. The Appellant does not request anything from the Second Respondent. The First Respondent repeats identical arguments with identical wording, as put by the Second Respondent concerning the legal standing, however it is worth mentioning that it was the First Respondent whose bodies issued both decisions at the national level.
- The First Respondent objects to the admissibility of certain prayers for relief:
  - o prayers for relief no. 3, 4, 6, 7, 8 and 11 (partially) from the Appeal Brief (3 to 8 and partially 10 as numbered in the Statement of Appeal) are inadmissible because (i) they exceed the frame of proceedings set forth by the Appellant upon the original complaint lodged to the Disciplinary complaint of the RPFL (p. 2,3) and (ii) they were for the first time formulated before CAS; these prayers correspond with and are repeated by the Second Respondent in his submission (p.2)
  - o prayers for relief 3, 4, and 8 are inadmissible since the Appellant demands to establish general rules and is asking CAS to write the law (p. 3,4);
  - o prayers for relief 6 and 7 are inadmissible since they cannot be discussed without the participation of the player M. because by concluding a contract and registering him with the Third Respondent, the player acquired certain rights, which are personal (right to participate in the game, right to be occupied; p. 4,5);
  - o prayer for relief 10 of the Appeal has to be restricted to the game played on 11 September 2011 (p.5); these prayers correspond with and are repeated by the Second Respondent in his submission (p.4);
- The complaint to the Disciplinary Committee of RPFL is inadmissible because the only procedure concerning the Third Respondent's right to field the player for the game on 11 September 2011 was the procedure under Article 26 of the ROFA.

- The First Respondent finds the complaint of the Appellant to the RPFL Disciplinary Committee ungrounded because the second transfer period following the notification of the DRC Decision ended on 5 September 2011, which accordingly was also the date the ban on registering any new players expired. The Player was registered on 6 September 2011, i.e. after the expiry of the sanction. Furthermore, the First Respondent disagrees with FIFA and the interpretation in the letter offered by Mr. Ongaro and Mr. Villiger dated 13 October 2011, because the interpretation was not made by the members of the body that passed the decision on 13 October 2010 and because the letter from FIFA does not consider the national regulatory exceptions allowing the registration of a player outside the transfer period, FIFA's interpretation is not relevant for the issue at hand.
- Claiming that CAS does not have disciplinary authority over the RPFL'S members and cannot establish disciplinary sanctions against them, the First Respondent request that the Panel rejects the appeal or subsidiarily sends the case back to the national bodies (p.7,8).
- Apart from and alternatively to the submissions of the First Respondent, the Second Respondent objects to the admissibility of prayers for relief no. 9 and 11 because in accordance with Article 85(5) of the FRF Disciplinary Regulations, the decisions of the judicial bodies of FIFA/UEFA or the CAS shall be enforced by the Executive Committee/Urgency Committee of RFF by consensus which was not done in the present case. The Second Respondent asks CAS to rule that the RFF does not have passive legal standing, that the appeal is inadmissible, that the appeal is dismissed and to grant an award for costs in favor of the RFF (p. 4).

## 16 THE THIRD RESPONDENT'S POSITIONS

16.1 The Third Respondent's submissions, in essence, can be summarized as follows:

- The Third Respondent states that it indeed on several occasions attempted to register players during the summer registration period of 2011 and sought to access the FIFA TMS system, because it had perfect knowledge of the ban and respected it till the end of the relevant registration period and kept the information public showing that it acted in good faith and the intention of the club to register new players was well known as can be observed from the frequency of the appearance in press. The second proof corroborating the Third Respondent's good faith is the fact that the Player had not been used in further matches of the season after it became aware of FIFA's stance.
- As to the rules of law applicable to the merits, based on the interpretation of article R58 of the CAS Code and the award delivered in CAS 2006/A/1109, the Third Respondent claimed that the Romanian Law be applied complementarily by the Panel.
- Jurisdiction of CAS and admissibility. The Third Respondent reiterates its objection to the jurisdiction of CAS in its Answer to the Appeal as already dealt with in para. 12 and

in 12.3 of this award (supra) and to admissibility (supra) in para. 13 of this award (p.9-13 of the Answer to the Appeal).

- The second general objection to admissibility of the Appeal is directed at the first and second requests for relief. The Third Respondent understands that the Appellant requests the Panel to accept the appeal and to set aside the challenged decision which is contrary to the provision of article R57 of the CAS Code enabling only alternative decisions (either the Panel issues a new decision which replaces the challenged decision or annuls the decision and refers the case back to the previous instance).
- Particular objections to the admissibility mainly concentrate on observations that it is the first time in the Appeal Brief and / or in the Statement of Appeal that the Appellant is making such claims and the Third Respondent alleges that they are all tardy. This relates to reliefs no. 3, 4, 5, 6, 7, 8, 9, 10 and 11. A part of the wording of relief no. 12 was not introduced in the Statement of Appeal and emerged only in the Appeal Brief, therefore it is tardy as well.
- As to the registration of the Player, the Third Respondent maintains that the contract was concluded on 1 September 2011 (although it appears from the facts of the case that the employment contract between the Player and Vaslui was concluded on 31 August 2011) and the registration was not attempted before 5 September 2011 when the ban was officially over.
- It was impossible to contest the Player's registration because according to Article 62 of the ROFA, the delegates of both playing teams must sign the referee's report before the game and the Appellant had full access to the list of players in that report. Accordingly, no contestation in accordance with Articles 26 and 27 was filed despite the fact that the Appellant had enough time to contest the playing of the Player. Furthermore, even if the petition is considered as a contestation, it was tardily formulated (p.26), because it was not filed within the time limits set out in Articles 26 and 27 of the ROFA, therefore it should be rejected. Consequently, the Appellant's written complaint in accordance with Article 107(4) of the Disciplinary Regulation was not a relevant procedure (p. 1-5 of the Answer). The relevant procedure should have started with the contestation prior to the game commencing according to Articles 26(1) and (2) of the ROFA (p.24), because the Appellant had not only the list of players from the referee's report, but he also had all the information on this matter from the media.
- As to the enforceability of the decision, the Third Respondent points out that the relevant body (RFF Executive Committee/Urgency Committee) never took an official decision in order to enforce the DRC decision within the meaning of Article 85(4)(5) of the RFF Disciplinary Regulations (p.5 and further on p.27-28 and 29).
- As to the disciplinary nature of the sanction, the Third Respondent claims that the sanction imposed on it was not of a disciplinary nature, but was a contractual obligation and sanction. Vaslui puts forward several arguments in support of this statement: (i)

Formally, if it were a measure of a disciplinary nature, the competence to solve it would have pertained to the FIFA Disciplinary Committee and not the FIFA DRC; (ii) Secondly, the DRC decision ordered a payment of a financial compensation, not being a disciplinary sanction (p.29), further; (iii) the sanction it flows from a contractual liability (non-performance of the employment contract between the club and the player); (iv) the sporting sanction against Vaslui in accordance with Article 17(4) of the FIFA Regulations has been pronounced as an inherent effect of the principle of contractual stability; and (v) the financial compensation and the sporting sanctions are two similar sanctions, as the financial element of the sporting sanction, although it does not consist in a pecuniary measure, can easily be quantified, as the transfer market has a high economical component. Consequently the DRC Decision is certainly a resolution on a contractual matter, settling a dispute related to the observance or non-observance of contractual obligations (p.29-32) and is different from the transfer ban provided for by Article 12 of the FIFA Disciplinary Code (p.31-32).

- Duration of the sanction. The sanction imposed in accordance with Article 17(4) of the FIFA Regulations should be interpreted in a way that it expired at the end of the second registration period in 2011 and according to its literal interpretation (p. 6 and p. 35-37) because of several reasons (if the legislator had intended to impose such a ban until the beginning of the winter registration period, he would have used the necessary wording; such interpretation was accepted by the Romanian football community). The Third Respondent was therefore acting in good faith, contrary to the Appellant who acted in bad faith given the fact that the registration of the Player was a well-known fact before the commencement of the match, but the Appellant acted only after it lost the game (p.38-39).
- Based on the exception provided for in Article 6 of the FIFA Regulations, by registering a player free of contract outside the registration period being outside the ban, , the Third Respondent did not violate the ban imposed for two registration periods. By registering the Player on 6 September 2011, Vaslui has respected the ban imposed as the ban expired on 5 September 2011 and the registration was done in accordance with the wording of Article 6(1): *"(...) As an exception to this rule, a professional whose contract has expired prior to the end of a registration period may be registered outside that registration period. (...)"* (p. 33-34).
- The Third Respondent objects to the Appellant's request to hear Mr. Ongaro, Head of Players' Status and Governance of FIFA as a witness, due to the lack of impartiality because he was a representative of FIFA in the Ljubinković case which triggered the FIFA DRC Decision and given the fact that he was a colleague of the attorney of the Appellant at FIFA in the period 1997-2005.

## **VI. THE MERITS OF THE DISPUTE BETWEEN THE PARTIES AND CONCLUSIONS OF THE PANEL**

### **17 THE MAIN ISSUES**

17.1 The issues in dispute are the following:

1. What was the legal nature of the sanction imposed by the DRC?
2. Was the Appellant a penalized person within the meaning of Article 120(4) of the Disciplinary Regulations of the RFF?
3. Which period was covered by the DRC decision based on Article 17(4) of the FIFA Regulations that “The club shall be banned from registering any new players, either nationally or internationally, for two registration periods”?
4. Questions as to the registration of the Player:
  - a) Was the registration of the Player in accordance with FIFA and RFF Rules?
  - b) Did the First, Second and Third Respondents fail to ensure compliance with the DRC Decision?
  - c) Did the Second and Third Respondents breach the ban on registering any players for two registration periods by registering a player free of contract outside the registration period, based on the exception provided for in Article 6 of the FIFA Regulations?

17.2 The merits are, as far as they are relevant for the outcome of this procedure, dealt with in the following part of the decision.

### **18 WHAT WAS THE LEGAL NATURE OF THE SANCTION IMPOSED BY THE DRC AND WAS THE APPELLANT A PENALIZED PERSON WITHIN THE MEANING OF ARTICLE 120(4) OF THE DISCIPLINARY REGULATIONS OF THE RFF?**

18.1 The Panel considers that these first two questions are of a preliminary nature. They are relevant for deciding on the jurisdiction of CAS and were therefore both already dealt with in this award in para. 12 (Jurisdiction).

18.2 As to the nature of the decision of the DRC and the imposed sanctions, the Panel believes that the arguments raised by the Respondents are without any merit. The Panel is satisfied that the sanctions imposed by the DRC on the basis of art. 17 of the FIFA Regulations were and are disciplinary sanctions. The fact that the sanctions have been imposed because of a violation of a contractual duty, does not change the nature of a disciplinary sanction. Indeed, to argue the opposite is to misconceive the disciplinary framework of the sanctions of art. 17 of the FIFA

Regulations: FIFA, in order to foster contractual stability, has foreseen in its regulations duties and obligations of players and clubs, with disciplinary sanctions triggered by a violation of those duties.

- 18.3 Same applies, *mutatis mutandis*, for the purpose of the proceedings that led to the Appealed Decision, as to the Appealed decision itself. Accordingly, the Panel considers that the Appealed Decision against which the appeal was lodged to be of a disciplinary nature.

**19 WHICH PERIOD WAS COVERED BY THE DRC DECISION BASED ON ARTICLE 17(4) OF THE FIFA REGULATIONS THAT “THE CLUB SHALL BE BANNED FROM REGISTERING ANY NEW PLAYERS, EITHER NATIONALLY OR INTERNATIONALLY, FOR TWO REGISTRATION PERIODS”?**

- 19.1 The answer to this question is relevant to establish when the imposed sanction, i.e. the registration ban, expired.
- 19.2 The position of the Appellant is that the sanction includes the period from the end of the second registration period until the start of the third registration period and that the Third Respondent shall be banned from registering any new players until the beginning of the winter registration period commencing on 1 January 2012. The Third Respondent’s position is that the sanction imposed on it expired on 5 September 2012.
- 19.3 It is not in dispute that the two registration periods the club was banned from registering any new players, either nationally or internationally, relate to the periods from 26 December 2010 until 23 January 2011 and from 21 June 2011 until 5 September 2011.
- 19.4 The Panel is of the view that the ban expired on 5 September 2012, for the following reasons:
- 19.5 The sanction imposed on the Third Respondent by the DRC Decision is a sporting sanction of a disciplinary nature (supra 18.2 of this award). The sporting sanction was imposed in accordance with Article 17(4) of the FIFA Regulations. This provision states that a ban shall last “*for two [full and consecutive] registration periods*”. If one interprets the provision on the basis of its wording, there is hardly any doubt that the ban expires at the end of the second period and that it does not last “*until the beginning of the third registration period*”. Accordingly, a literal interpretation of the wording speaks in favour of the expiry of the ban at the end of the second full registration period.
- 19.6 This, of course, does not mean that in the period before the first registration period or between the two registration periods the ban would not be effective. In other words, based on the wording of art. 17(4) of the FIFA Regulations, the ban shall start from the entry into force of the relevant disciplinary decision until the expiry of the second, full and consecutive, registration period.
- 19.7 There was an exchange of correspondence between the RFF (letter dated 7 September 2011) and FIFA (response dated 9 September 2011) which supports the understanding by FIFA that

the registration of new players will be possible only as from the beginning of the winter registration period in the 2011/2012 season.

- 19.8 The Panel considers FIFA's response of 9 September 2011 as representing indeed a different interpretation of art. 17(4) of the FIFA Regulations. However, such interpretation finds less support in the wording of the rule at stake than the interpretation above. Further, on the basis of the evidence submitted, the Panel is not satisfied that such interpretation amounts to a binding custom and practice of FIFA that would deviate from the quite clear wording of art. 17(4) of the Regulations.
- 19.9 Therefore, as the ban on the Third Respondent expired at the conclusion of the second registration period, the Third Respondent was in principle free to register a player free of contract whose previous contract expired before the closing of the second transfer period contained in the sanction (i.e. a player covered by the exception foreseen in art. 6(1) of the FIFA Regulations).

## **20 QUESTIONS AS TO THE REGISTRATION OF THE PLAYER**

- 20.1 The following issues arise in relation to the registration of the Player by the Third Respondent:
- 3.a) Was the registration of the Player in accordance with FIFA and RFF Rules?
  - 3.b) Did the First, Second and Third Respondents fail to ensure compliance with the DRC Decision?
  - 3.c) Did the Second and Third Respondents breach the ban imposed for two registration periods by registering a player free of contract outside the registration period, based on the exception provided for in Article 6(1) of the FIFA Regulations?
- 20.2 The date the Player and the Third Respondent entered into the employment contract regulating rights and obligations concerning performance of services by the Player for Vaslui is irrelevant for the present case. The relevant date is the date of registration of the Player. It is undisputed that the employment contract between the Player and the Third Respondent has been concluded on 31 August 2011 and that the Player was registered on 8 September 2011. Since the ban expired on 5 September 2011 (supra in 19 of this award), the Third Respondent registered the Player on the basis of Article 6(1) of the FIFA Regulations. The Third Respondent claims in fact that the Player was a free agent because his former contract expired on 25 August 2011.
- 20.3 Article 6(1) of the FIFA Regulations enables an exception to the rule that players may only be registered during one of the two annual registration periods fixed by the relevant association. As an exception to this rule, a professional whose contract has expired prior to the end of a registration period may be registered outside that registration period. Since the previous contract of the Player expired on 26 August 2011, the Player became a free agent and was

registered as such outside (on 8 September 2011) the registration period which ended on 5 September 2011.

- 20.4 The above applies of course within the limits of good faith and only as far as the sporting integrity of the relevant competition is not at stake. This means for instance that the exception foreseen in art. 6(1) of the FIFA Regulations shall not be abused to circumvent a ban, for instance by setting up a scheme with a player and his former club to allow a club suffering a ban to register a player literally a couple of hours after the expiry of the ban. Art. 6(1) of the FIFA Regulations is meant to serve the interests of unemployed players that are and in good faith were indeed “without a club” even before a registration period started. But art. 6(1) FIFA Regulations is not there to protect the interests of a player that has terminated his contract with a club before a registration period, with the sole purpose to register after the expiry of the registration period for a new club that is suffering a transfer ban.

In the present case, even though some media articles that could question the good faith of the registration of the Player by the Third Respondent have been submitted to the Panel, the Panel has not sufficient evidence to deny the applicability of Art. 6(1) of the FIFA Regulations.

- 20.5 In this respect the Panel is of the opinion that both the RFF and the RPFL were in possession of articles, press releases and other information, which were important in the decision making process when registering the Player. The provision of Article 6(1) of the FIFA Regulations is an exception to the general rule enabling players without a contract to find a club to play with. It must be used and interpreted in a restrictive manner and any doubts concerning fulfilling the true intention of the exception should be carefully and completely dealt with by the competent national associations. It is obvious that special attention shall be given in the situation where a club just finished a penalty period. The Panel has not been provided with sufficient evidence to acknowledge a deliberate, wrong application by the First and/or the Second Respondent of art. 6(1) of the FIFA Regulations. Accordingly, in the absence of sufficient evidence to do so, the Panel does not have sufficient reasons to change the decisions taken by the competent Romanian football bodies.

## 21 CONCLUSION

- 21.1 Against the above background and for the reasons explained above, the Panel comes to the following conclusion:
- i. the relief to accept the present appeal against the Appealed Decision is rejected;
  - ii. the relief to set aside the Appealed Decision is rejected;
  - iii. taking into consideration that the Appeal is rejected and the Appealed Decision confirmed, the other prayers for relief and requests are denied.

## **ON THESE GROUNDS**

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

1. The appeal filed by S.C. Dinamo 1948 S.A. on 6 January 2012 is dismissed.
2. The decision issued by the Romanian Professional Football League Recourse Commission on 8 December 2011 is confirmed.
3. (...).
4. (...).
5. All further and other motions and claims for relief are dismissed, in as far as they are not declared inadmissible.