



Arbitration CAS 2013/A/3371 Cinu Gabriel v. S.C. Sporting Club S.A. & Romanian Professional Football League (RPFL), award of 13 June 2014

Panel: Mr Markus Manninen (Finland), Sole Arbitrator

Football

Revision of a decision denying a penalty against a player

CAS scope of review

Standing to be sued

Prerequisites to seek revision of a decision

- 1. Based on the clear wording of R57 of the Code, CAS scope of review covers the facts and the law contained in the appealed decision. In addition, the appealed decision can be replaced if the facts were not correctly assessed or the law was not properly applied leading to an erroneous decision. As CAS jurisdiction is based on the arbitration clause contained in the rules of national federations, CAS has the power to rule on the dispute only as defined by the potential scope of the decision subject to appeal. Moreover, CAS is also limited by the requests by the parties.**
- 2. According to the established CAS jurisprudence, the defending party has standing to be sued if it is personally obliged by the disputed right at stake, that is, only if it has some interest in the dispute because something is sought against it. An appeal is directed against a “wrong” respondent if it has no right to dispose of the matter in dispute.**
- 3. Article 121, paragraphs 1 and 2 of the RFF Disciplinary Code set forth the prerequisites for granting a motion to revise a decision of the Appeal Committee (AC) of the RPFL. There are four cumulative prerequisites to be fulfilled before the motion to revise can be entertained: (1) The applicant must have discovered new facts or evidence after the delivery of an irrevocable disciplinary decision; (2) The facts or evidence could have led to a more favourable decision; (3) The facts or evidence could not have been discovered earlier despite all efforts used; (4) The revision shall be sought within 10 days of the acknowledgement of the grounds for revision. If the prerequisites are not fulfilled, the AC must not grant a motion to revise.**

I. THE PARTIES

1. Mr Cinu Gabriel (hereinafter referred to as the “Appellant” or the “Player”) is a professional Romanian football player, born on 18 January 1981 in Bucharest, Romania.
2. S.C. Sporting Club S.A. (hereinafter referred to as the “First Respondent”, “FC Vaslui” or the “Club”) is a Romanian football club, with its seat in Vaslui, Romania, affiliated with the Romanian Football Federation (hereinafter referred to as the “RFF”) which in turn is affiliated with FIFA.
3. Romanian Professional Football League (hereinafter referred to as the “Second Respondent”, the “RPFL” or the “League”, together with FC Vaslui the “Respondents”) is the association responsible for organising and supervising football in Romania.

II. FACTUAL BACKGROUND

4. The elements set out below are a summary of the main relevant facts, as established by the Sole Arbitrator on the basis of the written submissions of the Parties, the exhibits filed, the decision rendered by the Appeal Committee of the RPFL (hereinafter the “Appeal Committee” or the “AC”) on 23 July 2013 in the case between the Player and FC Vaslui (hereinafter the “Appealed Decision”) and the RPFL’s files that were produced in the CAS file. Additional facts and allegations found in the Parties’ written submissions and evidence may be set out, where relevant, in connection with the legal considerations of the present award. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

A. *The Contractual Relationship*

5. On 16 August 2012, the Player and FC Vaslui concluded contract no. 620/16.08.2012 regarding the Player’s employment as a professional football player (the “Player Contract”). The term of the Player Contract was one year. Pursuant to Section 3.4.1, Article 1 of the Player Contract, FC Vaslui had *inter alia* an obligation to pay the Player altogether EUR 120,000 net, payable in 12 instalments of EUR 10,000 each.

B. *The Injury*

6. On 21 October 2012, at the end of the football match between FC Vaslui and Universitatea Cluj, the Player declared to feel pain in the medial femoral condyle, to which the team doctor recommended a 14-day treatment.
7. Upon the end of the treatment period, the Player began the training again. However, according to the Player, the pain reappeared. The treatment was extended by two weeks *i.e.* until 22 November 2012.

8. After the expiration of the second treatment period, the Player told the Club that he could not participate in official matches because of his continued injury. Therefore, from 22 November 2012 to 1 February 2013 the Player did not wish to play.
9. On 11 December 2012, the Player underwent a magnetic resonance imaging (the “MRI”) investigation at S.C. Teoclinik S.R.L. (hereinafter “Teoclinik”). According to the report of the investigating physician, Dr Moldovanu Adriana, the Player did not suffer any lesion and was declared fit to play.

C. *The Contractual Dispute*

10. On 24 January 2013, the Player petitioned the Dispute Resolution Chamber of the RPFL (the “DRC”) to declare the unilateral termination without just cause of the Player Contract and the termination of the contractual relationship.
11. On 6 March 2013, the DRC rendered the Decision no. 821/06.03.2013 (case number 23CSL2013) whereby it partially affirmed the Player’s claim and declared the contractual relationship terminated. In addition, the DRC ordered FC Vaslui to pay the Player salaries amounting to EUR 60,000 net. Both the Player and the Club appealed the decision at the AC.
12. On 18 April 2013, the AC rendered the Decision no. 159 partially upholding the appeal of the Player, granting him the right to the outstanding salaries until the delivery of the decision and a compensation for the unilateral termination of the contract without just cause by FC Vaslui and ordering the Club to pay him an amount of EUR 90,608. The Club appealed the Decision no. 159 at the CAS.
13. On 7 August 2013, the CAS issued a Termination Order in the case *CAS 2013/A/3175* because of the non-payment of the required advance on costs. Thus, the Decision no. 159 of the AC became legally binding.

D. *The Disciplinary Dispute*

14. Simultaneously with the contractual dispute, the Player and FC Vaslui were involved in disciplinary proceedings.
15. In December 2012, FC Vaslui initiated disciplinary proceedings against the Player. The Club decided to sanction the Player by a financial penalty amounting to 25% of his yearly salary because, according to the Club’s decision no. 113/01.02.2013, the Player “*refused to participate in official matches by asserting medical problems without any justification*”. The sanctioning of the Player by the Club was submitted for ratification to the disciplinary bodies of the RPFL.
16. On 26 February 2013, the Disciplinary Committee of the RPFL (hereinafter the “DC”) rendered the Decision no. 14 and dismissed FC Vaslui’s claim concerning the sanctioning of the Player. The Club appealed the decision before the AC.

17. On 28 March 2013, the AC rendered the Decision no. 150 and dismissed the Club's appeal because the merits of the appeal were not filed within the prescribed time limit. At the bottom of its ruling, the AC noted that it was definitive and enforceable, subject to appeal before the CAS within 21 days from notification.
18. The Club did not appeal the Decision no. 150 before the CAS. However, on 20 June 2013, FC Vaslui filed a motion to revise the Decision no. 150 with the AC. On the merits, the Club requested the reversal of the Decision no. 150, the amendment of the DC's Decision no. 14 of 26 February 2013 and, in accordance with the decision of the Club, the sanctioning of the Player with a penalty of 25% of the value of the Player Contract for the football season 2012/2013. On 11 July 2013, the Player raised a motion on the inadmissibility of the motion to revise, putting forth that it was not filed within 21 days from its notification, and a motion for late filing, putting forth that it was filed outside the 10-day period stipulated in Article 121 paragraph 2 of the RFF Disciplinary Code. According to the Player, the document on which the motion to revise was based was in the possession of the Club since 12 November 2012.
19. On 11 July 2013, the Player also requested those members of the AC, who ruled the Club's application for ratification of the disciplinary sanction on the merits, to recuse themselves from adjudicating of the case. It followed that three members of the AC, Mr Mugur Popovici, Mr Gatejeanu Florin and Mr Coblisan Teodor, withdrew from the case and were substituted by Mr Mincu Constantin, Mr Ambrozie Octavian and Mr Valeriu Arbore.
20. On 23 July 2013, the AC rendered the Appealed Decision no. 168. The AC (a) dismissed the motion of the Player for inadmissibility of the motion to revise, (b) dismissed the motion of the Player for late filing, (c) granted the motion to revise the Decision no. 150 of the AC, and, on the merits, (d) ratified the decision of FC Vaslui's Board of Administration regarding the disciplinary sanction imposed on the Player.

III. SUMMARY OF THE ARBITRAL PROCEEDINGS BEFORE THE CAS

21. On 30 October 2013, the Player filed a Statement of Appeal with CAS against the Decision no. 168 rendered by the AC on 23 July 2013.
22. On 5 November 2013, the CAS Court Office informed the Parties of the receipt of the Statement of Appeal. The Respondents were invited to inform the CAS Court Office within a five-day time limit whether they agree to the appointment of a sole arbitrator.
23. On 6 November 2013, FC Vaslui informed the CAS Court Office that it does not consent to a sole arbitrator and requested the President of the Division to decide on three-member panel.
24. On 8 November 2013, the RPFL informed the CAS Court Office of its wish to have a panel of three arbitrators.

25. On the same day, 8 November 2013, the CAS Court Office sent a facsimile to the Parties noting that due to the disagreement on the number of arbitrators, it will be for the President of the CAS Appeals Arbitration Division, or his Deputy, to decide upon the issue.
26. On 14 November 2013, the Player requested an extension of 10 days to the time limit to file the Appeal Brief. Following the request, and with a view that neither Respondent objected, the time limit was extended until 25 November 2013.
27. On 22 November 2013, the CAS Court Office informed the Parties that pursuant to Article R50 of the Code of Sports-related Arbitration (hereinafter the “Code”), the President of the CAS Appeals Arbitration Division had decided to submit the present case to a panel composed of a sole arbitrator.
28. On 25 November 2013, the Player filed his Appeal Brief.
29. On 28 November 2013, the RPFL informed the CAS Court Office that it will not pay its share of the advance of costs and requested that the time limit to file its Answer be set after the payment of the advance of costs by the Player.
30. On 29 November 2013, the Parties were informed of the receipt of the Player’s Appeal Brief, FC Vaslui was granted a twenty-day time limit to file its Answer and the RPFL was informed that, in view of its request and in application of Article R55 paragraph 3 of the Code, it would be invited to submit its Answer after the payment of the Appellant’s share of the advance of costs.
31. On 2 December 2013, FC Vaslui requested that the time limit of 20 days for filing its Answer starts from the moment when the Player pays the advance of costs. On the same day, the CAS Court Office invited FC Vaslui to submit its Answer after the payment by the Player of his share of the advanced costs.
32. On 18 December 2013, the Parties were informed of the receipt of the Player’s advances of costs. The CAS Court Office also invited the Respondents to submit their Answers to the CAS.
33. On 27 December 2013, the Parties were informed that the Deputy President of the CAS Appeals Arbitration Division had appointed Mr Markus Manninen, Attorney-at-Law in Helsinki, Finland, as a Sole Arbitrator.
34. On 7 and 9 January 2014, the RPFL and FC Vaslui, respectively, requested the CAS to extend the time limits for the Answers until 14 January 2014.
35. On 10 January 2014, the CAS Court Office informed the Parties that the Sole Arbitrator had granted both Respondents an extension to file their Answers on or before 14 January 2014.
36. On 13 January 2014, FC Vaslui filed its Answer, together with an exception of lack of jurisdiction, however without exhibits 3-7 mentioned on page 11 of the Answer.

37. On 14 January 2014, the RPFL filed a two-page Answer noting that it does not have a standing to be sued in the matter.
38. On 23 January 2014, the CAS Court Office noted that the CAS had received the Answers only by fax and that the exhibits mentioned on page 11 of FC Vaslui's Answer had not been received. Consequently, the CAS Court Office invited the Club to submit the missing exhibits within five days.
39. On 30 January 2014, FC Vaslui once again submitted its Answer, this time with one enclosure *i.e.* the English translation of exhibit 1 identified on page 11 of the Club's Answer.
40. On 31 January 2014, the CAS Court Office repeated its view and invited FC Vaslui to submit the exhibits mentioned in its Answer within five days.
41. On 7 February 2014, the CAS Court Office noted to the Parties that FC Vaslui has challenged the jurisdiction of the CAS. Therefore, the Player was invited to file a written submission limited to said issue.
42. On 13 February 2014, in response to FC Vaslui's challenge, the Player filed a submission addressing the matter. In essence, the Player was of the view that the CAS had competence to hear and adjudicate the case.
43. On 14 February 2014, the CAS Court Office invited the Parties to inform by 21 February 2014 whether their preference is for a hearing to be held or for the Sole Arbitrator to issue an award based on the Parties' written submissions.
44. On 18 February 2014, FC Vaslui requested an extension of 10 days to its time limit for the submission of its response.
45. On 21 February 2014, FC Vaslui noted that in its belief, there is no need for a hearing. In the Club's opinion, the documents in the file suffice for the Sole Arbitrator to make a decision in the case.
46. On 21 February 2014, the Player informed that he does not see a need for a hearing to be held in the present matter. In addition, the Player confirmed that the right to be heard has been respected through the written proceedings.
47. On the same day, 21 February 2014, the RPFL noted that all relevant evidence in its possession has been duly submitted and, consequently, no hearing is necessary.
48. On 7 March 2014, the CAS Court Office informed the Parties of the Sole Arbitrator's decisions on the Player's evidentiary requests. In accordance with the Sole Arbitrator's decisions, the RPFL was invited to submit the case files identified as 23CR2013, 13CD2013, 23CSL2013 and 24CR2013. The Parties were further informed that the Sole Arbitrator had dismissed the Player's request for production of the CAS file related to the case CAS 2013/A/3175 and that after receipt of the requested files all parties would be invited to submit their final observations.

49. On 21 March 2014, the RPFL submitted the requested files to the CAS Court Office.
50. On 2 April 2014, the CAS Court Office invited all Parties to submit their final observations with their answers to the list of the Sole Arbitrator's questions, English translations of all the extracts of the files submitted by the RPFL upon which they intend to rely as well as English translations of any Romanian provisions upon which they intend to rely. Furthermore, FC Vaslui was provided with a final opportunity to submit the exhibits listed on page 11 of its Answer together with their English translations.
51. On 14 and 15 April 2014, the Player submitted answers to the questions of the Sole Arbitrator dated 2 April 2014. Moreover, he presented a document production request asking the CAS to order the RPFL to produce copies of the meeting reports of the AC meetings on 22 and 23 July 2013.
52. The Respondents did not file any submissions, documents, observations or answers within the granted deadline or thereafter.
53. On 30 April 2014, the Player's submissions were dispatched to the Respondents and the Player was informed that the Sole Arbitrator had dismissed his document production request. The Parties were furthermore invited to return a signed copy of the Order of Procedure that was attached to this letter.
54. On 5 May 2014, the Player and the RPFL signed the Order of Procedure.
55. During the proceedings, none of the Parties raised with the Sole Arbitrator any objection as to the respect of their right to be heard or to be treated equally in the present arbitration.

IV. POSITION OF THE PARTIES

56. The following outline of the Parties' positions is illustrative only and does not necessarily comprise every contention put forward by the Parties. The Sole Arbitrator, however, has carefully considered all the submissions made by the Parties, even if there is no specific reference to those submissions in the following summary.

IV.1 Appellant

57. According to the Appellant, on 25 January 2013, due to extensive delays in the payment of salaries but also because of abusive training schedule, the Player requested the DRC to declare the Player Contract unilaterally terminated without just cause by FC Vaslui and the termination of the contractual relations. The Player also requested that the Club be compelled to the payment of contractual arrears and compensation for the abusive unilateral termination of the contract.
58. On 6 March 2013, the DRC partially affirmed the Player's request. Both Parties appealed the decision before the AC.

59. On 18 April 2013 by the Decision no. 159, the AC partially affirmed the appeal of the Player, granting him the rights to the outstanding salaries until the delivery of the decision as well as compensation for the unilateral termination of the contract without just cause by FC Vaslui.
60. Dissatisfied with the judgment, FC Vaslui filed an appeal before the CAS. However, the Club did not pay the advance of costs and, therefore, CAS issued a Termination Order on 7 August 2013. Thus, the Decision no. 159 of 18 April 2013 became irrevocable.
61. During the contractual dispute, FC Vaslui initiated disciplinary proceedings and sanctioned the Player with a penalty of 25% of the salaries for the 2012/2013 competitive season.
62. The sanctioning of the Player was submitted for ratification to the DC, who dismissed the Club's request for ratification. FC Vaslui appealed the decision but the AC dismissed the appeal by Decision no. 150 of 28 March 2013, which was notified to the Club on 5 April 2013. FC Vaslui did not appeal it before the CAS. Therefore, the Decision no. 150 became irrevocable.
63. On 20 June 2013, FC Vaslui filed a motion to revise the Decision no. 150/28.03.2013 before the AC. The Player is of the opinion that in order to reach a favourable outcome for FC Vaslui, three AC members had to recuse themselves. Because of the disqualifications, the case could not be tried on 22 July 2013 as planned but was adjourned for the following day.
64. On 23 July 2013, the RPFL convened the Executive Committee for a session in order to appoint the substitutes of the disqualified members of the AC. Although the meeting of the RPFL Executive Committee did not take place on 23 July 2013, the session of the AC, scheduled for the same day, was attended by three persons, two of which were unknown, who claimed to have been appointed to try the motion to revise of the Club. These three members were asked to submit the decision on their appointment but they refused to do so and moved on to try the case.
65. On 23 July 2013, the *ad hoc* AC granted FC Vaslui's motion to revise. The decision was adopted with majority of votes. The new members voted in favour of the motion while the two members appointed by the players' trade union voted for the dismissal. The Decision no. 168/23.07.2013 was appealed before the CAS by the Player.
66. After having expressed the above course of events, the Player presented the following grounds for his claims.
67. *"An ad-hoc committee was set up to try the motion to revise in violation of the principle of equal representation of the clubs and players regarding the members appointed to settle a contractual case with financial implications".* According to the principles established in FIFA circular letters nos. 1010 and 1129, there must be an equal representation of the clubs and players in the national arbitral tribunals. In the present case, three out of five members – including the president – of the AC were appointed by the clubs *i.e.* the RPFL on the day set for the trial of the case. Because the AC did not fulfil the minimum requirements of independence, its decision is null and void.

68. *“There is no decision of the PFL Executive Committee to appoint the ad-hoc committee that settled the case”*. The persons who replaced the three disqualified members asserted the existence of a decision of the RPFL Executive Committee dated 23 July 2013. However, such decision does not exist. On the other hand, any amendment in the composition of the members of the RPFL jurisdictional committees is the exclusive prerogative of the RPFL General Assembly. There was no General Assembly deciding to change the composition of the AC.
69. *“The motion to revise is inadmissible”*. The requirement for the revision is that the party seeking it has discovered new facts or evidence, which despite all efforts used could not have been discovered earlier. The document on which FC Vaslui’s motion to revise was founded is the MRI Investigation Report dated 12 November 2012 (the “MRI Report”). However, said document was known to the Club since the moment of initiation of the disciplinary proceedings. Therefore, the motion to revise is inadmissible.
70. *“The motion of the club SC Sporting Club SA had to be submitted to the committee that tried the case on the merits (first instance). In the present case, the motion to revise had to be filed to the PFL Disciplinary Committee and not the Appeal Committee”*.
71. Given that the motion to revise was granted, the RPFL no longer enforced in full the Decision no. 159/18.04.2013 ordering FC Vaslui to pay to the Player EUR 90,608 as well as damages of 5% per year. At the moment of drafting the Appeal Brief, FC Vaslui still owed the Player EUR 31,124 consisting of salaries of January, February and March 2013 added with interests. Given that the RPFL failed to enforce the Decision no. 159 regarding the amount of EUR 30,000 net plus 5% per year as damages, the Player asks the CAS – in addition to the annulment of the decision to revise – to compel the RPFL to *“carry out the proceedings stipulated in the regulations”* for the sanctioning of the Club for its refusal to perform the obligations set in the irrevocable decision passed by the AC.
72. On 13 February 2014, the Player submitted that based on Articles 57 and 58 of the RFF Statutes as well as Articles 26.1, 26.8 and 36.17 of the RFF (hereinafter the “RSTP”), the CAS has jurisdiction to hear the present case. The Player stressed that FC Vaslui appealed the AC’s decision before the CAS against the Player (case number *CAS 2013/A/3175*). Thus, the Club, who invokes the lack of jurisdiction in the present case, considered the CAS to have jurisdiction in a similar case in the past.
73. On 14 April 2014, the Player expressed that the *“Law 551/2004 concerning the organization and operation of the national committee of sports discipline”* (hereinafter the “Law”), which the Club invoked, is not a mandatory statutory provision in Romania. According to Article 2(3) of the Law, *“The powers of the Commission (...) shall be exercised only if an interested party choose for this jurisdiction”*. According to the Player, the Law does not supersede the rules and regulations of the RFF or the RPFL and the competency of the Romanian National Committee of Sports Discipline (hereinafter the “NCSD”) is not exclusive.
74. With regard to the RPFL’s standing to be sued, the Player has put forth that the League has a standing. The Player’s prayer for relief no. 3 is formulated directly against the RPFL. Should the

CAS admit the request no. 3, only the RPFL is in charge of executing the award. If the RPFL were not a party in the proceedings, the prayer for relief no. 3 would remain without effect.

75. In addition, the Player has requested both Respondents to be liable for the payment of the costs incurred before the CAS (request no. 4). The ground for the request is that the RPFL appointed the members of the AC to replace those who withdrew from the panel. The claim for legal costs is also a ground for the RPFL's standing to be sued.
76. On 15 April 2014, the Player presented that in the DC meeting of 26 February 2013, he developed all the defences regarding the procedural issues, one of them being the fact that the reports drafted by the officials of FC Vaslui were not registered at the Club, thus generating suspicions with respect to their date. The Player pointed out that the reports were drafted by the Club at least two weeks after the last match in which the Player refused to play. According to the Player, this shows that the Club's officials were directed to issue reports in order to generate a false ground for the sanctioning of the Player.
77. With respect to the reasons for the Player's absence from the field, he had declared in the meeting with the Club's representatives on 28 January 2013 that he did not fake his injuries. On the contrary, they were investigated and diagnosed by the Club's doctor Mr Aramitu.
78. Finally, the Player noted that he has, through his attorney, objected to the appointments of the substitute AC members by the "*Urgency Committee*" of the RPFL since it had no jurisdiction to proceed with such appointments and since there was no document proving the legality of the appointments.

IV.2 First Respondent

79. FC Vaslui's position, expressed in its Answer, can be summarised as follows.
80. The Club primarily requests the CAS to find that it has no jurisdiction and, secondarily, to dismiss the appeal submitted by the Player and to uphold the Appealed Decision.
81. According to FC Vaslui, the CAS has no jurisdiction to adjudicate the present dispute as in compliance with the provisions of the Law, the Player should have filed his appeal with the NCSJ. The Club has suggested that the NCSJ has the competence to resolve the appeals against the final decisions that have been made by the internal disciplinary committees functioning within, among others, the national sports federations.
82. On 21 October 2012, at the end of the football match between FC Vaslui and Universitatea Cluj, the Player claimed a series of medical problems. The Player purported to feel pain in the femoral condyle area. The doctor of the team, Mr Aramitu, granted the Player a treatment of 14 days. At the end of the care, the Player resumed the training, however in very short time claiming the reappearance of the pain. A new set of medical investigations coordinated by Mr Gabriel Dinu were performed. The treatment was extended by two weeks *i.e.* until 22 November 2012. Even after the prolonged recovery period, when the doctors considered the Player completely cured, he continued to invoke the injury and refused to participate in the team's

program. Between 22 November 2012 and 1 February 2013, the Player was reluctant to play although in the physician's view he was fit for that.

83. The Decision no. 14 of the DC issued on 26 February 2013 concerning the sanctioning of the Player was communicated to the Club on Friday, 22 March 2013. In compliance with article 29.5 of the RSTP, *"The terms are calculated in calendaristic [sic] days. The terms begin to be calculated the very next day after the procedure was fulfilled"*. Article 116 paragraph 3 of the RFF Disciplinary Code provides that *"The term of declaring of the appeal is in two days from the communication of the decision"*. Thus, the term of two days began on Saturday, 23 March 2013, and would have ended on Sunday, 24 March 2013. However, according to Article 29.6 of the RSTP, *"The terms that end on a legal celebration or when the service is suspended will be extended to the end of the first next working day"*. Further, the motivation of the appeal shall be submitted in writing in three days from the expiry of the above term.
84. In the present case, the term for filing the appeal expired on Monday, 25 March 2013, and the three days' time limit to file the motivation of the appeal terminated on 28 March 2013. It follows that the motivation was filed in compliance with the applicable stipulations and FC Vaslui's appeal should have been tried on its merits in the AC instead of dismissing it because of late filing.
85. The Club maintains that the Appealed Decision no. 168 is well founded.
86. Unrightfully, the DC found in its Decision no. 14 that the accounts in which the disciplinary offences made by the Player had no register number from the Club, due to which the condition of informing the management was not proved. The applicable rule provided that the manager of the club shall be informed by its trainer or any other official person of the club in writing concerning the offence made by the player.
87. FC Vaslui maintains that all the accounts were rendered in writing, dated, signed by the officials of the Club and submitted to the attention of the Board of Directors of the Club during its meeting of 28 January 2013 where the Player was present. All accounts were read by the Chairman of the Board.
88. In FC Vaslui's opinion, the non-participation by the Player in the matches after the recovery period represented an attitude that formed possible repeated offences. Thus, the Board of the Club considered that the Player was unrightfully absent on 26 November, on 2 December and on 8 December 2012.
89. With regard to the moment when the disciplinary offence was committed, FC Vaslui reiterated that the Player's right to defend himself was respected. He participated in the meeting of the Club's Board of Directors, signed the minutes of the meeting, asked for the communication of the accounts that were the basis of the inquiry and requested for a term to present a point of view in writing. However, later on he waived his right to defend himself in written form.

90. Concerning the merits of the case, the Player omitted to present any kind of defence in any phase of the process and failed to indicate any exact reason for his refusal to participate in the official matches of FC Vaslui.
91. FC Vaslui is of the opinion that the formation of the *ad hoc* AC was legal. It was formed *ad hoc* as on 11 June 2013, the Player solicited the withdrawal from the case of those members of the committee, who had already judged the request of ratification of the disciplinary offence against the Player. The three members involved complied with the Player's request and were replaced by well-known persons. At the time, the Player did not object the substitute members of the AC.
92. According to FC Vaslui, the Appealed Decision is well-founded and legal. The review request registered on 20 June 2013 was filed within the term of 10 days, having as its main document the MRI Report issued by Teoclinik on 19 June 2013.
93. As to the Player's demand regarding the payment of penalizing interests in accordance with the Decision no. 159 of 18 April 2013, FC Vaslui requested the rejection of the demand as groundless. The enforcement of said decision is closely tied to the final resolution of the present case.
94. FC Vaslui concludes that it has respected the disciplinary procedure provided by Article 42.6.2 of the RFF Disciplinary Code and the Club's Board of Directors adopted its decision on disciplinary sanctioning legally and thoroughly.

IV.3 Second Respondent

95. In its Answer, the RPFL has put forth that it has no standing to be sued.
96. The DC and the AC are jurisdictional bodies constituted in accordance with, among others, Article 91 of the RFF Disciplinary Code. The RPFL has no influence over the members of the panels that settle the cases brought by the parties and/or cases which are constituted *ex officio* for the infringements occurred during the official games of National Championship League I. According to Article 94 of the Disciplinary Code, the members of the panels are independent and they obey only the applicable statutes and regulations. The RPFL provides only the logistics for the activities of the DC and the AC.
97. Considering the above, the RPFL finds that it has no standing to be sued. The only parties with contradictory interests in the present matter and who should discuss the merits of the case are FC Vaslui and the Player. Therefore, the RPFL requested the CAS to consider only their submissions in adjudicating the case.
98. For the avoidance of doubt, the Sole Arbitrator notes that the RPFL has not addressed the merits of the case during the proceedings.

V. PARTIES' REQUESTS FOR RELIEF

V.1 Appellant

99. The Player's requests for relief set forth in the Statement of Appeal are the following:

"Based on the provisions of Article R57 of the Code, we request CAS to issue an arbitral award that:

- 1. Annul the Decision no. 168/23.07.2013 issued by the Appeal Commission of RPFL.*
- 2. Reject the review application formulated by the club S.C. Sporting Club S.A. against the decision no. 150/28.03.2013 issued by the Appeal Commission of RPFL.*
- 3. Order the Romanian Professional Football League to enforce the Decision no. 159/18.04.2013 in its entirety.*
- 4. Order the Respondents to jointly and severally bear all the costs incurred in the present procedure (administrative fee of CAS, costs of the arbitrators, expeditions, document translations and others)".*

100. The Player has repeated and supplemented his requests in the Appeal Brief as follows:

"(...) I respectfully ask for the annulment of the Decision of the PFL Appeal Committee no. 168/23.07.2013 and for the dismissal of the motion to revise raised by the club SC Sporting Club SA (counts 1 and 2 of the Statement of Appeal)".

"Given that the PFL failed to enforce (by sanctioning the club, in case of failure to perform) Decision no. 159/18.04.2013 regarding the amount of 30.000 Euro net plus 5%/year damages, I ask the CAS, in addition to the annulment of the decision to revise, to compel the [Second] Respondent to carry out the proceedings stipulated in the regulations for the sanctioning of the club SC Sporting Club SA for its refusal to perform the obligations set in the irrevocable decision passed by the Appeal Committee".

V.2 First Respondent

101. FC Vaslui's requests for relief are presented in the Answer as follows:

"(...) we respectfully ask for in principal to admit the exception invoked and in subsidiary, with the background of the cause to totally reject the appeal formulated by the player CINU Gabriel and to totally maintain the Decision no. 168 from 23.07.2013 rendered by the Appeal Committee of the Professional Football League in case no. 23/CR/2013, as being grounded and regular (...)"

102. The Club has rephrased its prayer for relief as follows:

"In the resolution of the appeal request formulated by the player Cinu Gabriel, the unique judge assigned by TAS/CAS should take into consideration the facts presented herein, in principal to admit the exception invoked and in subsidiary to totally reject the appeal formulated by the player CINU Gabriel and to totally maintain the Decision no. 168 dated 23.07.2013 rendered by the Appeal Committee of the Professional Football League

in case no. 23/CR/2013, as being solid and legal and to reject the appeal request formulated by the player Cinu Gabriel as being groundless”.

V.3 Second Respondent

103. The RPFL has put forth that it has no standing to be sued. The RPFL’s position presented in its Answer reads as follows:

“(…) Romanian Professional Football League has no standing to be sued and cannot be a Respondent in the procedure triggered by the player Cinu Gabriel before the Court of Arbitration for Sport.

We further note that the only parties with contradictory interests involved in the matter at hand and which should discuss the merits of the case are the club S.C. Sporting Club S.A. Vaslui and the player Cinu Gabriel. Therefore, we kindly ask you to consider only their submissions for the adjudication of this case”.

104. Apart from the matter of standing to be sued, the RPFL has not addressed the disputed issues in its two-page answer dated 14 January 2014.

VI. JURISDICTION OF THE CAS

VI.1 The Player’s and FC Vaslui’s Positions

105. The Player has stated that the jurisdiction of the CAS derives primarily from Article 36.17 of the RSTP adopted by the RFF. Said stipulation reads as follows (English translation, as provided by the Player and not disputed by FC Vaslui):

“From their delivery the decisions of the RFF/PFL Appeal Commission are final and enforceable internally and may be appealed only before the Court of Arbitration for Sport, in 21 days following their communication”.

106. The jurisdiction of the CAS in the present case is disputed by FC Vaslui. According to the Club, pursuant to the provisions of the Law, the Player should have addressed the case to the NCSO, which has the competence to adjudicate an appeal against the final decisions that have been made by the internal disciplinary committees or by other disciplinary bodies, which are organized and operate within the national sports federations, the district associations and those of Bucharest, concerning sports, the professional leagues and the Romanian Olympic Committee.

107. The Club has invoked Article 2(2) of the Law.

108. Article 2 paragraphs (1) through (3) read as follows (English translation):

“(1) The Committee is competent to resolve the appeal formulated against the final resolutions rendered, by any ways of defence, by the internal disciplinary commissions or by other organisms with disciplinary attributes, which are organised and operate within the national sports federations, department associations and of Bucharest, on

sports branches, the professional leagues and the Romanian Olympic Committee, also by the ways of defence formulated against the decisions of the National Committee of Action against Violence in Sports.

(2) The Committee resolves the ways of defence formulated against the final decisions rendered concerning the following types of offences:

a) the transgression of the provisions of the statutes and of the regulations of the sports structures, when the sanctioning of such an offence is under the competence of the internal sports committees;

b) aggressive or unsportsmanlike conducts, attitudes, gestures of the players towards the referees, officials, other sportsmen or the public;

c) public declarations of the managers, technicians, referees or sportsmen that can incite or may lead to acts of violence from the teams or the public;

d) the unrightful absence from the competitions, in case of the convening of the national teams;

e) the manipulation or modification, directly or by the medium of another person, of the material or of the sports equipment, through the transgression of the technical regulations of each sports branch;

f) the unauthorized participation, the absence or the unrightful retreat from any test or competition;

g) any other types of offences which are under the competence of the internal disciplinary committees.

(3) The powers of the [Committee] under par. (1) and (2) shall be exercised only if an interested party choose for this jurisdiction. The appeal may be filed within 15 days of the judgment”.

109. Upon FC Vaslui challenging CAS jurisdiction, the Player further invoked Articles 57 and 58 of the RFF Statutes as well as Articles 26.1 and 26.8 of the RSTP of the RFF. In addition, the Player has underlined that FC Vaslui appealed an AC decision against the Player before the CAS (case number *CAS 2013/A/3175*). According to the Player, FC Vaslui thus considered the CAS to have jurisdiction in a case similar to the present dispute.
110. The Sole Arbitrator requested the Player and FC Vaslui to elaborate their views on CAS jurisdiction by answering the Sole Arbitrator’s questions on the topic.
111. As a response to the Sole Arbitrator’s questions, the Player denied that the Law is a mandatory statutory provision in Romania. He emphasized the language of Article 2(3) of the Law, which reads as follows (English translation, as provided by the Player and not disputed by FC Vaslui):

“The powers of the Commission under par. (1) and (2) shall be exercised only if an interested party choose for this jurisdiction. (...)”.
112. The Player further submitted that the Law does not supersede the rules and regulations of the RFF or the RPFL and that the competency of the NCSD is non-exclusive.
113. FC Vaslui did not answer the Sole Arbitrator’s questions within the given time limit or thereafter.

VI.2 Findings of the Sole Arbitrator

114. According to Article R28 of the Code, the seat of the CAS and each Arbitration Panel is in Lausanne, Switzerland. Both the Player and the Respondents have had their domicile outside Switzerland at the decisive time. As the Parties did not rule out in writing the provisions of

Chapter 12 of the Swiss Act on Private International Law (hereinafter the “PILA”), they are applicable (Art. 176 (1) and (2) PILA).

115. According to Article 186 paragraph 1 PILA, the arbitral tribunal shall rule on its own jurisdiction. Therefore, the Sole Arbitrator of the present dispute has the power to decide about its own jurisdiction.
116. FC Vaslui argues that the CAS lacks jurisdiction. The Club’s view is based solely on the contention that according to the Law, the case should have been referred to the NCSO.
117. According to the applicable Chapter 12 of the PILA, the jurisdiction of the CAS presupposes, *inter alia*, the existence of a valid arbitration agreement between the parties and the validity of that arbitration agreement shall be determined in accordance with Swiss law. Consequently, the decisive elements of a binding arbitration agreement are (a) the agreement of the parties to submit their dispute to arbitration by designating a particular arbitral tribunal or at least one that is determinable by objective interpretation and (b) the description of the dispute or the legal relationship which shall be covered by the arbitration agreement. These elements, on which the formation of the arbitration agreement is based, are subject to a restrictive interpretation whereas all other elements of the clause shall be interpreted more broadly and in favour of the validity of the arbitration agreement.
118. This is in line with Article R27 of the Code (*“Application of the Rules”*) as a general rule for the application of the Code and the initiation of ordinary or appeal proceedings before the CAS. Article R27 of the Code reads as follows:

“These Procedural Rules apply whenever the parties have agreed to refer a sports-related dispute to CAS. Such reference may arise out of an arbitration clause contained in a contract or regulations or by reason of a later arbitration agreement (ordinary arbitration proceedings) or may involve an appeal against a decision rendered by a federation, association or sports-related body where the statutes or regulations of such bodies, or a specific agreement provide for an appeal to CAS (appeal arbitration proceedings).

Such disputes may involve matters of principle relating to sport or matters of pecuniary or other interests relating to the practice or the development of sport and may include, more generally, any activity or matter related or connected to sport”.

119. More specifically, Article R47 paragraph 1 of the Code (*“Appeal”*) provides for CAS Appeal Arbitration proceedings as follows:

“An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body”.

120. According to the provisions listed above, the arbitration agreement has to be specifically concluded by the parties or contained in the respective statutes or regulations of the relevant federation or sporting body, *i.e.* here the RFF.

121. The appeal filed by the Player is directed against the decision of the AC of the RPFL. When asked to comment on the issue of jurisdiction of the CAS, the Player underlined that the applicable regulations refer to the CAS and noted that no other instance would have exclusive jurisdiction.
122. Article R47 paragraph 1 of the Code foresees that CAS has jurisdiction if “*the statutes or regulations of the said body*” provide the right to file an appeal with the CAS against the decision of the federation. It is therefore necessary to carefully consider Article 36.17 of the RSTP of the RFF which reads as follows (English translation, as provided by the Player and not disputed by FC Vaslui):

“From their delivery the decisions of the RFF/PFL Appeal Commission are final and enforceable internally and may be appealed only before the Court of Arbitration for Sport, in 21 days following their communication”.
123. The Sole Arbitrator observes that Article 36.17 of the RSTP gives the right to appeal “*decisions of the RFF/PFL Appeal Commission*” with the CAS. The Sole Arbitrator further notes that the Appealed Decision falls under the wording of Article 36.17 of the RSTP and that a clear and explicit reference is made to the CAS as competent arbitral tribunal.
124. The Sole Arbitrator remarks that even if Articles 2(1) and (2) of the Law invoked by FC Vaslui lent support to the Club’s view, it becomes apparent from Article 2(3) of the Law that the NCSO is an alternative non-exclusive dispute resolution instance available for the Romanian sports-related issues. It follows that the RSTP of the RFF and the Law are in any event not inconsistent.
125. Finally, the Sole Arbitrator is of the opinion that the jurisdiction of the CAS to hear appeals against the decisions of the AC is corroborated by FC Vaslui’s previous behaviour. Indeed, in the case identified as *CAS 2013/A/3175* the Club itself considered that the CAS has jurisdiction to adjudicate an appeal against the AC’s decision in a dispute between FC Vaslui and the Player. When the Sole Arbitrator requested FC Vaslui to elaborate on the reasons for the shift in its attitude on CAS jurisdiction, the Club chose not to answer. This leads the Sole Arbitrator to conclude that in the Club’s genuine understanding, the CAS has jurisdiction.
126. Since the AC of the RPFL rendered a decision in the matter, and since the Sole Arbitrator cannot find any limitation of the right to appeal decisions of the AC that would be applicable here and would limit the right of the Player to appeal the decision of the AC of 23 July 2013 before CAS, the Sole Arbitrator holds that the jurisdiction of CAS to decide on the appeal filed by the Player against such decision of the AC flows from Article 36.17 of the RSTP of the RFF. Consequently, the CAS has jurisdiction to decide on the appeal filed by the Player against the AC decision no. 168. FC Vaslui’s objection in this respect is thus dismissed. The Sole Arbitrator however underlines that, for the reasons set out below, some of the Player’s requests for relief fall outside the scope of the present arbitration.

VII. SCOPE OF REVIEW

127. Article R57, paragraph 1, first sentence of the Code (*“Scope of Panel’s Review, Hearing”*) provides as follows:

“The Panel has 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”.

128. Based on the clear wording of R57 of the Code, the Sole Arbitrator can review the facts and the law contained in the Appealed Decision. In addition, the Sole Arbitrator can replace the Appealed Decision if he finds that the facts were not correctly assessed or the law was not properly applied leading to an erroneous decision. However, as its jurisdiction is based on the arbitration clause contained in the rules of national federations, CAS has the power to rule on the dispute only as defined by the potential scope of the decision subject to appeal. Moreover, CAS is also limited by the requests by the parties (the so called *“petita”*).
129. The Player’s third request for relief is based primarily on the enforcement of the legally binding and non-appealable Decision no. 159 rendered in the contractual dispute between the Player and FC Vaslui.
130. The Sole Arbitrator underlines that the Decision no. 159 is not the object of the present arbitration. Indeed, the current proceedings concern the AC’s Decision no. 168 rendered on 23 July 2013 regarding the Club’s decision to take disciplinary action against the Player. The decisions preceding the Appealed Decision are (a) the Decision no. 113/01.02.2013 to sanction the Player taken by the Board of Administration of FC Vaslui, (b) the DC’s Decision no. 14/26.02.2013 to dismiss the Club’s claim and (c) the AC’s Decision no. 150/28.03.2013 to dismiss the Club’s appeal.
131. Based on the foregoing, it is obvious that the Player’s request concerning the enforcement of the Decision no. 159 does not fall under the scope of this arbitration.
132. The Sole Arbitrator deems that the above conclusion applies also to the Player’s request to compel the RPFL to sanction FC Vaslui because of its purported refusal to obey the Decision no. 159. The Player’s position how the Appealed Decision would concern the sanctioning of the Club by the RPFL cannot be followed.
133. Finally, the Sole Arbitrator underlines here that in accordance with the above account on the *de novo* character of the CAS appeal arbitration proceedings, the Sole Arbitrator has the power to review the facts and the law. It follows that any potential violations on the parties’ procedural rights at the previous instance can be cured by the recourse to full and proper arbitration proceedings before the CAS (cf., among many other cases, CAS 2010/A/1920, paragraph 87 and TAS 2010/A/2220, paragraph 24, confirmed by the Swiss Federal Tribunal in DTF 4A_530/2011 of October 3, 2011, paragraph 3.3.2).
134. Based on the foregoing, the Sole Arbitrator notes that while it is pertinent to examine the fulfilment of the material prerequisites for revision, there is no overriding need to consider the

contended formal shortcomings relating to the revision process before the AC, such procedural flaws being in any event cured by the *de novo* proceedings at the CAS.

VIII. ADMISSIBILITY

135. According to Article 36.17 of the RSTP of the RFF (English translation, as provided by the Player and not disputed by FC Vaslui):

“From their delivery the decisions of the RFF/PFL Appeal Commission are final and enforceable internally and may be appealed only before the Court of Arbitration for Sport, in 21 days following their communication”.

136. The same 21-day time limit has been referred to in the Appealed Decision as follows (English translation, as provided by the Player and not disputed by FC Vaslui):

“The decision is subject to appeal before the CAS within 21 days from notification”.

137. According to the Player, the grounds of the Appealed Decision were notified to him on 14 October 2013. The Respondents have not disputed the Player’s statement. The Statement of Appeal was filed with the CAS Court Office on 30 October 2013. It follows that the Appeal was submitted within the prescribed time limit.

138. Because the Player complied with all other requirements of Article R48 of the Code as well, including the payment of the CAS Court Office fee, the appeal was admissible.

IX. APPLICABLE LAW

139. Article R58 of the Code (*“Law Applicable to the Merits”*) provides the following:

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

140. Regarding the issue at hand, the Sole Arbitrator notes that the Player and FC Vaslui have their residence and registered office, respectively, in Romania. In addition, the federation in the sense of Article R58 of the Code is domiciled in Romania and the Player Contract expressly provides for Romanian Law be applicable. Therefore, the Sole Arbitrator decides that in order to resolve the dispute, the rules and regulations of the RFF and RPFL shall govern primarily, with Romanian law applying in the event that the interpretation of the RFF and RPFL rules and regulations is required.

X. MERITS

141. In view of the scope of the present arbitration and of the Parties' submissions, the main difference between the arguments of the Player and those of FC Vaslui to be scrutinized by the Sole Arbitrator is whether the AC should have granted FC Vaslui's motion to revise because the Club allegedly got hold of Teoclinik's MRI Report on 19 June 2013 or whether such motion was inadmissible.
142. However, the Sole Arbitrator must assess first whether the Player has correctly directed his appeal against the RPFL or whether the RPFL has no standing to be sued in the present case.

X.1 The Second Respondent's Standing to Be Sued

143. The RPFL maintains that it has no standing to be sued and that the appeal is directed at a wrong party.
144. The Sole Arbitrator notes that according to the established CAS jurisprudence, the defending party has standing to be sued if it is personally obliged by the disputed right at stake, that is only if it has some interest in the dispute because something is sought against it. An appeal is directed against a "wrong" respondent if it has no right to dispose of the matter in dispute (cf., among many other cases, CAS 2006/A/1192, CAS 2007/A/1329, CAS 2008/A/1517 and CAS 2008/A/1639).
145. As shown above, the Player's requests that the Sole Arbitrator order the RPFL to "*enforce the Decision no 159/18.04.2013*" and to "*compel [it] to carry out the proceedings stipulated in the regulations for the sanctioning of the club SC Sporting Club SA for its refusal to perform the obligations set in the irrevocable decision passed by the Appeal Committee*" fall outside the scope of the present arbitration. The Player's arguments justifying the RPFL's standing to be sued on the basis of such requests are therefore irrelevant.
146. Nevertheless, the Sole Arbitrator, who is limited by the parties' requests for relief but not by their arguments, deems that the Player has correctly directed his appeal against both the Club and the RPFL for the reasons set out below.
147. First, not only the challenged decision was issued by a RPFL body, but the starting point of the present proceedings is not a purely contractual matter (*id est* a challenge brought by a player in front of his federation against the penalty imposed on him by his club on the basis of their contract), but the RPFL's refusal to grant the ratification requested to it by FC Vaslui in application of Article 42.6. of the RFF Disciplinary Regulations.
148. Second, while by its Decision no. 150, the AC then dismissed for late filing the appeal against the Decision no. 14 brought by FC Vaslui, the object of the present appeal is not the fine imposed by the Club as such, but the AC Decision no. 168 of 23 July 2013, by which the RPFL granted FC Vaslui's motion to revise the Decision no. 150 and ratified the Club's decision to impose a fine on the Player.

149. As both the Club's right to impose a fine and the RPFL's disciplinary prerogative to ratify such sanction are at stake in the present case, the Sole Arbitrator considers that both Respondents have standing to be sued.
150. The Sole Arbitrator has of course taken due note of the Second Respondent's arguments according to which it provides only the logistics for the activities of the DC and the AC whose members are independent and obey only the applicable statutes and regulations. The Sole Arbitrator however underlines that while members of the "jurisdictional" bodies of federations are indeed usually independent, such bodies are not independent legal entities but bodies of the federation, *in casu* the RPFL, which has therefore standing to be sued in the present case.

X.2 Fulfilment of the Prerequisites to Seek Revision

151. Article 121, paragraphs 1 and 2 of the RFF Disciplinary Code set forth the prerequisites for seeking revision. They read as follows (English translation, as provided by the Player and not disputed by FC Vaslui):

"1. Revision can be sought if, after the delivery of an irrevocable disciplinary decision, a party discovers facts or evidence which, if known at the time, could have led to a more favorable decision, and which could not have been discovered earlier despite all efforts used.

2. Revision can be sought within 10 days from the acknowledgement of the grounds for revision".

152. According to the Appealed Decision, the AC considered that the conditions were fulfilled. The AC has stated the following (English translation, as provided by the Player and not disputed by FC Vaslui):

"The second motion raised, that of late filing, is based on the failure to observe the 10-day time limit stipulated in art. 121 par. 2. The committee finds it unfounded as the MRI investigation of the player Canu Gabriel was made available to the Petitioner on 19 June 2013, date of issuance of the document by THEOCLINIK SRL [sic], and the motion to revise was registered on 20.06.2013, therefore this motion shall also be dismissed" (Underlining here).

153. The Player's position is that FC Vaslui had the MRI Report, or at least the essential content of it, in its use no later than from 1 February 2013 onwards. The Club, on the other hand, has maintained that the request for review was filed within the stipulated 10-day period because the MRI Report was issued by Teoclinik on 19 June 2013, one day before the motion to revise.
154. As shown by the stipulations quoted above, there are four cumulative prerequisites to be fulfilled before the motion to revise can be entertained:

- (1) The applicant must have discovered new facts or evidence after the delivery of an irrevocable disciplinary decision (here, after 28 March 2013¹ or 5 April 2013²);
- (2) The facts or evidence could have led to a more favourable decision (here, eventually to the acceptance of FC Vaslui's application to sanction the Player);
- (3) The facts or evidence could not have been discovered earlier despite all efforts used; and
- (4) The revision shall be sought within 10 days of the acknowledgement of the grounds for revision.

155. In accordance with the above, the Sole Arbitrator must first examine when the Club discovered the MRI Report – before or after the delivery of the Decision no. 150.

X.2.1 The Moment of FC Vaslui Discovering the MRI Report

156. The Sole Arbitrator acknowledges that the copy of the MRI Report submitted to the CAS by the Player contains the following marking:

“Date of print: 19 June 2013 11:28:59”

157. As such, the text lends support to FC Vaslui's contention that the MRI Report was issued on 19 June 2013. However, it is worth noting that the language of the MRI Report merely indicates when that particular copy was printed. Instead, it fails to evidence that 19 June 2013 was the date when the MRI Report was first put on paper.
158. Considering the importance of the MRI Report for FC Vaslui as well as its decision to initiate disciplinary measures against the Player, and in light of Teoclinik's letter to the Player of 29 January 2013 according to which the MRI was requested by FC Vaslui under a contract between it and Teoclinik, the Sole Arbitrator does not find plausible that FC Vaslui's management did not request Teoclinik to issue the MRI Report without delay after the medical investigations were completed in November 2012. It would be contrary to the common sense not to be interested in the expert's view on the status of the Player's injury in the middle of the football season and, furthermore, to have the report on paper in a situation where the Club allegedly suspected the truthfulness of the Player's view on his inability to participate in the team's program.
159. That said, the Sole Arbitrator notes that the copy of the MRI Report in the case file neither shows that FC Vaslui had another copy of the MRI Report in its possession before 19 June 2013, nor that the Club discovered it for the first time on said date. There are justified reasons to believe that FC Vaslui possessed the MRI Report immediately after the medical examination

¹ According to the translation of the Decision no. 150 submitted by the Player, it was “delivered” on 28 March 2013.

² The Player has put forth in his Appeal Brief that the Decision no. 150 was notified to the Club on 5 April 2013.

was carried out, or soon thereafter. FC Vaslui has not convinced the Sole Arbitrator that the Club did not receive the MRI Report until 19 June 2013.

160. Because the moment of issuing the MRI Report to FC Vaslui has remained unsubstantiated, and because of the possibility that the Club received a copy of the document for the first time on 19 June 2013, the Sole Arbitrator has to move on to analyse whether the MRI Report contained facts which could have led to a more favourable decision for the Club in the disciplinary proceedings.

X.2.2 *The Content of the MRI Report*

161. The Player has submitted to the CAS the medical report by FC Vaslui's doctor Mr Flavian Aramitu dated 20 December 2012. In his report, Mr Aramitu declares as follows (English translation, as provided by the Player and not disputed by FC Vaslui):

“Given that the player GABRIEL CANU asserted the reappearance of the pain, he underwent an MRI. After the interpretation of the MRI, Dr. Adriana Moldovanu, consultant doctor radiology – medical imaging, concluded that there are no muscular, ligament, meniscus or cartilage-related lesions in the internal area of the left knee to justify the symptoms asserted by the player (I attach the result of the MRI)” (Underlining here).

162. The Protocol of the Club's Board of Administration meeting on 1 February 2013 contains the following marking (English translation, as provided by the Player and not disputed by FC Vaslui):

“From the analysis of performed, the Board of Administration concluded that the player asserted medical problems after the match FC Vaslui – U Cluj on 21.10.2012, in the 12th fixture of the First League (...) The treatment prescribed by the team doctor was subject to the 14-day time period and the player restarted training, but again asserted pain. Therefore, it was decided to carry out an MRI following which dr. Adriana Moldovanu, consultant doctor radiology – medical imagery, concluded that there were no muscular lesions” (Underlining here).

163. The Decision no. 113 of the Club's Board of Administration rendered on 1 February 2013 reads, for its essential part, as follows (English translation, as provided by the Player and not disputed by FC Vaslui):

“As to the facts: the player unjustifiably invoked medical problems after the end of the recovery period imposed after the match FC Vaslui – U Cluj, on 21.10.2012, fact which was confirmed by the MRI based on which dr. Adriana Moldovanu, consultant doctor radiology-medical imagery, concluded that there were no muscular lesions. The same hypothesis was confirmed after the consultation of the player by Conf. Dr. Gabriel Dinu, consultant doctor orthopedics – traumatology, who also did not find any lesions and considered that the recovery should not exceed 4 weeks, namely until 22.11.2012” (Underlining here).

164. Further, the Decision no. 14 of the DC rendered after the hearing held on 26 February 2013 contains the following description (English translation, as provided by the Player and not disputed by FC Vaslui):

“The club (...) asks for the application for ratification to be upheld, given that the player unjustifiably asserted medical problems after the end of the recovery period imposed after the match FC Vaslui – U Cluj. This is confirmed by the MRI scan performed, which showed that there were no muscular lesions, and by an orthopedic consultation, which confirmed that there were no lesions and that there was no need for a recovery period exceeding 4 weeks, namely until 22.11.2012. The fact that the player unjustifiably asserts pains and thus avoids to play for the club is proven by the reports of the club’s sporting director, the physiotherapist, the club’s vice president as well as by the report of the club’s doctor, all submitted to the case record” (Underlining here).

165. The Sole Arbitrator finds that Mr Aramitu’s report, as well as the protocol and decisions by the Club and the DC, clearly evidence that FC Vaslui was well aware of the substantial content of Dr Moldovanu’s MRI Report *i.e.* the result of the MRI already on 20 December 2012, the date of the team doctor’s report. The abundant documentation leaves no doubt on the Club’s awareness of the MRI results, according to which the Player was fit to play.
166. In fact, the disciplinary proceedings initiated by FC Vaslui against the Player seem to be essentially based on the result of the MRI carried out on 12 November 2012. Thus, even if the Club received a copy of the MRI Report for the first time on 19 June 2013 as it implies, the MRI Report itself did not contain any such information, which could have led to a more favourable decision if known at the time of the disciplinary proceedings. The Club has from the very beginning of the disciplinary proceedings consistently put forth that according to the doctors and the MRI, the Player was fit to play.

X.2.3 FC Vaslui’s Efforts to Discover the MRI Report

167. With regard to the third cumulative requirement of the revision process, the Sole Arbitrator takes note that in accordance with Article 121 paragraph 1, the party seeking a revision is required to have taken extensive measures in discovering all relevant facts and evidence before the judgement to be revised became irrevocable. Only under exceptional circumstances, where new facts or evidence emerged following the judgment becoming non-appealable, the applicant may be granted a motion to revise.
168. The Sole Arbitrator reiterates that the Club instructed Teoclinik to perform the MRI on the Player and, therefore, was fully aware of the medical investigation. As indicated by the clinic’s letter to the Player of 29 January 2013, it was ready to release the MRI Report to its contracting party, FC Vaslui. Thus, if the Club did not have a copy of the MRI Report in its use until 19 June 2013, it obviously could have got it simply by inviting Teoclinik to issue the document. Put differently, if the Club did not have the MRI Report at the time of the disciplinary measures, it undoubtedly failed to take any effort to get it. It follows that the third prerequisite for the revision process is evidently unfulfilled.

X.2.4 Conclusion

169. In conclusion, the Sole Arbitrator finds that FC Vaslui did not, after the AC’s Decision no. 150 was determined as being irrevocable, discover new facts or evidence, which could have led to a more favourable decision from the Club’s point of view, and which could not have been

discovered earlier despite all efforts used. Therefore, the prerequisites for the revision of the Decision no. 150 of the AC are not fulfilled. The AC should not have granted the Club a motion to revise as it did.

170. On a separate note, the Sole Arbitrator bears in mind that the Decision no. 150 of the AC to reject FC Vaslui's appeal on the DC's Decision no. 14 was based only on the late filing of the motivation of the Club's appeal. However, this fact was not put forward by the Player in the present proceedings or given significance by the majority of the AC in the Appealed Decision. The Sole Arbitrator notes that because the AC did not dismiss the Club's appeal on the merits – *i.e.* because the Club failed to show that the Player was fit to play – but because of a technical reason, the MRI Report would not have entitled to a revision even if it contained new facts or constituted new evidence on the Player's ability to play.
171. By virtue of the above, the Sole Arbitrator upholds the Player's appeal, sets aside the Appealed Decision and rejects the motion to revise the Decision no. 150/28.03.2013 brought by FC Vaslui before the AC.

XI. CONCLUSION

172. On the basis of the foregoing, the Sole Arbitrator concludes that:
- The Player's request for relief related to the Decision no. 159/18.04.2013 falls outside the scope of the present arbitration.
 - The prerequisites for granting the motion to revise set forth in Article 121 paragraphs (1) and (2) of the RFF Disciplinary Code are not fulfilled; therefore
 - The Player's appeal is partially upheld and the Appealed Decision is set aside and the motion to revise the Decision no. 150/28.03.2013 brought by FC Vaslui before the AC is rejected.

ON THESE GROUNDS

The Court of Arbitration for Sport hereby rules:

1. The appeal filed by Mr Cinu Gabriel against the Decision no. 168 issued by the Appeal Committee of the Romanian Professional Football League on 23 July 2013 is partially upheld.

2. The Decision no. 168 issued by the Appeal Committee of the Romanian Professional Football League on 23 July 2013 is set aside and the motion to revise the Decision no. 150/28.03.2013 brought by FC Vaslui before the AC is rejected.
3. (...).
4. (...).
5. All other or further claims are dismissed.