



**Arbitration CAS 2014/A/3602 S.C. Football Club Universitatea Cluj S.A. v. Romanian Football Federation (RFF) & Romanian Professional Football League (RPFL) & S.C. Concordia Chiajna, award of 5 May 2015**

Panel: Mr Hendrik Willem Kesler (The Netherlands), President; Mr José Juan Pintó (Spain); Mr Sofoklis Pilavios (Greece)

*Football*

*Loan agreement*

*Admissibility of late/unsolicited written submissions under Art. R56 CAS Code*

*Premature termination of a loan agreement and obligation of a player to return to the previous club*

*Right of clubs and players to challenge the validity of a registration under the Romanian Regulations (RSTFP)*

1. According to Article R56 of the CAS Code the President of the Panel may refuse to accept late submissions which supplement or amend the parties' requests if there are no exceptional circumstances.
2. If a loan agreement is terminated prematurely under the Romanian Regulations (RSTFP), a player is then not "obliged" to return to the club with which he has an employment contract. Different from other federations, the RFF appears to have created a system where a player in such a situation is free to join any club of his choice, as long as he returns to the club with which he has an employment contract at the end of the originally agreed loan period, without the need for approval from the club with which he has an employment contract. As such, even if the club with which the player has an employment contract requires the player to return, the player has no "obligation" to do so, he is only "entitled", or has "the right" to do so.
3. Article 25.4 of the Romanian Regulations (RSTFP) determines that *"the right of clubs and players to challenge the validity of a registration or a transfer contract to which they are a party can be exercised within maximum 90 days from the date of the registration or of the transfer, or the date when they became aware of this fact, respectively, but not later than a year from the date of conclusion of the contract"*.

## **I. PARTIES**

1. S.C. Football Club Universitatea Cluj S.A. (hereinafter: the “Appellant” or “Cluj”) is a football club with its registered office in Cluj-Napoca, Romania, and plays at the highest level in Romania. Cluj is registered with the Romanian Football Federation.
2. The Romanian Football Federation (hereinafter: the “First Respondent” or the “RFF”) is the national governing body of football in Romania. The RFF is affiliated to the Fédération Internationale de Football Association (hereinafter: “FIFA”).
3. The Romanian Professional Football League (hereinafter: the “Second Respondent” or the “RPFL”) is the organizer of the Liga I and II competitions in Romania and is the responsible body for the registration of players participating in this competition.
4. Sporting Club Concordia Chiajna (hereinafter: the “Third Respondent” or “Chiajna”) is a football club with its registered office in Chiajna, Romania, and plays at the highest level in Romania. Chiajna is registered with the RFF.

## **II. FACTUAL BACKGROUND**

### **A. Background Facts**

5. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the parties and the evidence examined in the course of the proceedings and the hearing. This background is made for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.
6. On 2 July 2012, Mr Marius Mădălin Martac (hereinafter: the “Player”) and AS FC Oțelul Larissa (hereinafter: “Larissa”), a Romanian football club playing at the 5th level in Romania, concluded an employment contract for a period of two football seasons, valid from 2 July 2012 until 2 July 2014.
7. On 8 August 2013, the Player was loaned to ASC Corona 2010 Brașov (hereinafter: “Corona”), a Romanian football club playing at the highest level in Romania, for one football season, until 30 June 2014.
8. On 31 August 2013, the Player and Larissa extended the employment contract by one football season, until 2 July 2015.
9. On 13 January 2014, the Player and Corona decided to mutually terminate their employment relationship as per 31 January 2014 by means of a termination agreement and Corona subsequently informed the Player that *“in the period 01.01.2014-31.01.2014 the club’s management agrees that you train with any team at home or abroad”*.

10. From 17 January until 9 February 2014, the Player joined the training camp of Cluj in Antalya, Turkey.
11. On 29 January 2014, the Romanian Football League Dispute Resolution Chamber ratified the immediate termination of the contractual relations between the Player and Corona.
12. On 31 January 2014, a document (hereinafter: the “Document”) was registered with the County Football Association Prahova (hereinafter: the “CFA Prahova”), the body responsible for the registration of players in the 5<sup>th</sup> league in Romania. The Document contains signatures of a legal representative from Larissa and the Player – although the Player denies having signed the Document – but was not signed by any representative from Cluj. The Document contains the following content:

*“[Larissa], headquartered in [...], hereby allows the [Player] – under contract with [Larissa] - to train until 5 February with the First League Club – [Cluj], in view of signing a transfer contract between [Larissa] and [Cluj], in relation to this player. Also, the player is allowed to participate in the training schedule of the club [Cluj], including to travel abroad.*

*If, until 5 February, no contract is signed between the parties, the football player shall return to the club [Larissa] and the club [Cluj] shall bear any potential medical expenses arisen as a consequence of injuries suffered during the period the player trained with this team”.*

13. On 1 February 2014, the Player and Cluj concluded an employment contract, valid until 30 June 2014.
14. On 8 March 2014, the Player was fielded as one of the starting players of Cluj in a match (hereinafter: the “Match”) against Chiajna. At halftime of the Match, Chiajna objected to the eligibility of the Player to participate in the match because he was allegedly not validly registered.

#### **B. Proceedings before the Disciplinary Committee of the RFF**

15. On 12 March 2014, following the objection raised by Chiajna, the Disciplinary Committee of the RFF opened disciplinary proceedings against Cluj.
16. On the same day, the Disciplinary Committee of the RFF assigned the case to the National Dispute Resolution Chamber (hereinafter: the “NDRC”) concerning the legitimacy of the Player’s registration.
17. Still on the same day, upon the request of Cluj, the Romanian Professional League Competitions Department (hereinafter: the “Competitions Department”) informed Cluj as follows:

*“In our opinion, given the use of the expression “the said player is entitled”, it is obvious that the option to return to his old club or the choice of a new club until the completion of the initial period of the temporary transfer belongs to the player.*

*The second expression “if the latter so requires” merely conditions the player’s return to his old club to the latter’s agreement.*

*In the present case, the player chose to conclude a contract with a new club, therefore a potential request/agreement from his old club to the player’s return is irrelevant and cannot suppress the player’s right to choose.*

*Consequently, given the above, we consider that the player’s registration was made according to the regulations and your player has the right to play in the First League National Championship.*

*The present opinion does not impede on a potential settlement of the case by the jurisdictional bodies, and to the extent that the competent committee adopts a different decision, then it shall be applied therefrom in similar cases by the Competitions Department”.*

### **C. Proceedings before the NDRC of the RFF**

18. On 2 April 2014, the NDRC passed its decision, dismissing Chiajna’s objection regarding the validity of the Player’s registration with Cluj, principally determining the following:

*“After the cross examination of the original documents and the legal basis set in the regulations, the Chamber finds that the [Player] concluded a contract with [Cluj] only for the period leading up to the expiry of the temporary transfer and that he was not compelled to return to the assignor club, so long as the latter had not made any request to that effect at the time of termination of the contractual relations between the player and the assignee club [Corona], namely on 29.01.2014.*

*On the other hand, there is no rule imposing the requirement to obtain, in this situation, the agreement of the club where the player is registered on a permanent basis.*

*As such, the Chamber finds that the player is legally registered and has a right to play for [Cluj], in insolvency, until the end of the championship, at which time he is compelled to return to the assignor club [Larissa]”.*

### **D. Proceedings before the Appeal Committee of the RFF**

19. On 16 April 2014, Chiajna lodged an appeal with the RFF Appeal Committee.
20. On 24 April 2014, the RFF Appeal Committee issued its decision (hereinafter: the “Appealed Decision”), with, *inter alia*, the following operative part:

*“To uphold the appeal filed by [Chiajna] headquartered in [Chiajna] against the Decision [...] passed by the [NDRC] versus [Cluj].*

*To fully reverse Decision [...] passed by the [NDRC].*

*To declare that the registration of the [Player] with [Cluj] is contrary to regulations. [...]”.*

The most relevant considerations in the Appealed Decision determine, *inter alia*, the following:

*“Art. 19.2 let. c) of the RSTFP grants the player the right, if the contract with the assignee club ceases prior to the expiry of the temporary transfer, to opt during the transfer period for the return to the assignor club if the latter so requires or for the conclusion of a new contract with another club, until the expiry of the temporary transfer.*

*The issue at hand is whether the parties acted pursuant to art. 19.2 let. c) of the RSTFP and to the conduct adopted by the player on 31.01.2014, expressed in the document registered with the Prahova CFA under no. 06/31.01.2014, namely if the player had to return to the assignor club, given that the contractual relations with this club were suspended only during the period of the temporary transfer, or whether the unrestricted registration to another club was possible on the basis of a new contract for the time period remaining until the expiry of the temporary transfer.*

*In order to determine the manifested intent of the parties in this situation, the NDRC had to take into account the contents of the abovementioned document, signed by the club representative and the [Player]:*

[...]

*Although the date of registration to Prahova CFA was challenged, the signature of the [Document] by the player was not. It is relevant and important that the contents of the [Document] signed and undertook by the player clearly show that after the termination of the contractual relations with [Corona], but prior to 01.02.2014, the signatory parties unequivocally expressed their intent.*

*Upon the request of the club [Larissa], the player exercised his right as stipulated in art. 19.2 let. c) of the RSTFP, opting to return to the assignor club, due to the fact that he signed the [Document] stating that, being under contract with [Larissa], the latter allows him only to train with the team of the club [Cluj], in view of signing a transfer agreement to this club.*

*In addition, the contents of the [Document] show that the travel abroad was made with the approval of the assignor club [Larissa].*

*Given the contents of the [Document], the NDRC wrongfully interpreted that, in order to conclude a contract with another club, there was no need for a transfer agreement as long as the parties so decided. This argument of the NDRC would have been valid had the player decided not to return to the assignor club.*

*The fact that the player intended to continue the contractual relation with [Larissa] and that the registration with [Cluj] was to take place on the basis of a transfer agreement result from the end of the [Document]: “If, until 5 February, no contract is signed between the parties, the football player shall return to the club Otelul Larissa ...”.*

*Although the NDRC incorrectly held that, in this case, there was no rule imposing on the player a duty to obtain the consent of the club where he was registered on a permanent basis, there was also no rule prohibiting this consent, if the parties so established after agreeing on the circumstances in which the player was allowed to conclude a new contract for the period remaining until the expiry of the duration of the temporary transfer.*

*This is even more true given that, in the addendum to the employment contract, the parties agreed that the player was able to transfer at home or abroad if the player or the transferee club paid to [Larissa] 40.000 euro + VAT.*

*Given all of the above, the contract registered with the PFL [...] was concluded in breach of the provision of art. 19.2 let. c) first statement of the RSTFP, since on 05.02.2014 the player had to return to [Larissa].*

*On 01.02.2014, [Cluj] was fully aware and, together with the player, knew that the abovementioned rules were not observed, including the requirements in the [Document] registered with the Prabova CFA [...].*

[...]

*The employment contract of the football player [...] concluded by [the Player] and [Larissa], registered with the Prabova CFA [...] and extended until 02.07.2015, according to the addendum dated 31.07.2012, in the absence of a cause of suspension of its performance – temporary transfer – continued to be fully effective.*

*By concluding a second contract with [Cluj], effective according to pt. 9 and 10 of the chapter DEFINITIONS of the RSTFP and art. 15.5.1. of the RSTFP on 06.02.2012 (the date of registration with the PFL specialized department) a double registration was carried out, which was contrary to regulations”.*

#### **E. Continuation of the proceedings before the Disciplinary Committee of the RFF**

21. Upon communication of the Appealed Decision, the Disciplinary Committee of the RFF reopened the disciplinary proceedings it had instigated.
22. On 14 May 2014, the Disciplinary Committee of the RFF rendered its decision, dismissing Chiajna’s objection because the complaint should have been lodged before the Match.
23. Also on 14 May 2014, the NDRC informed the Player that its decision of 29 January 2014 contained a clerical mistake. The employment contract between the Player and Corona was not terminated on 29 January 2014, but on 31 January 2014, according to the will of the parties.
24. On 28 May 2014, the grounds of the decision of the Disciplinary Committee of the RFF were notified to the parties.

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

25. On 21 May 2014, Cluj filed a Statement of Appeal with the Court of Arbitration for Sport (hereinafter: the “CAS”), in accordance with Article R48 of the Code of Sports-related Arbitration (hereinafter: the “CAS Code”). In this submission, Cluj nominated Mr José Juan Pintó, attorney-at-law in Barcelona, Spain, as arbitrator.

26. On 26 May 2014, Cluj filed a request for provisional measures with the CAS Court Office, whereby the President of the Appeals Arbitration Division was requested to decide the following:
- 1) *“to accept the Appellant’s request for stay of the execution;*
  - 2) *to grant the stay of the execution of the Challenged Decision;*
  - 3) *to grant the stay of the procedure No. 25/CD/2014 currently pending before the Disciplinary Committee;*
  - 4) *to grant the stay of the procedure before the Appeal Committee of the RFF should the grounds of the decision in the procedure No. 25/CD/2014 be notified to the parties in the meantime”.*
27. On 3 July 2014, the CAS Court Office informed the parties that the Respondents failed to file a reply to Cluj’s request for provisional measures within the time limit prescribed.
28. On 5 June 2014, Cluj filed its Appeal Brief, in accordance with Article R51 of the CAS Code. This document contained a statement of the facts and legal arguments. Cluj challenged the Appealed Decision, submitting the following requests for relief:
1. *“to accept the present appeal against the Challenged Decision;*
  2. *to set aside the Challenged Decision;*
  3. *to establish that the player Marius Mădălin Martac is eligible to play for the Appellant in Liga I from 6 February 2014 until 30 June 2014;*
  4. *to establish that the Appellant was in good faith entitled to field the player Marius Mădălin Martac based on the registration made by the PFL Competitions Department;*
  5. *to establish that the registration of the player Marius Mădălin Martac is not contrary to the regulations;*
  6. *to condemn the Respondents to the payment in the favour of the Appellant of the legal expenses incurred;*
  7. *to establish that the costs of the arbitration procedure shall be borne by the Respondents”.*
29. On 30 June 2014, Chiajna filed its Answer, in accordance with Article R55 of the CAS Code. Although Chiajna failed to clearly set out its requests for relief, Chiajna mentioned in its submission that *“we request the rejection, as not founded, of the Appeal Request named above”*. Chiajna’s Answer also contained an objection to the admissibility of the appeal.
30. On 16 July 2014, the CAS Court Office informed the parties that the RFF and the RFPL had failed to file an Answer, but that the Panel may nevertheless proceed with the arbitration and deliver an award.
31. On 25 September 2014, Cluj informed the CAS Court Office that it would prefer a hearing to be held.
32. On 19 September 2014, pursuant to Article R54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the Panel appointed to decide the present matter was constituted by:

- Mr Hendrik Willem Kesler, attorney-at-law in Enschede, the Netherlands, as President;
  - Mr José J. Pintó, attorney-at-law in Barcelona, Spain, and;
  - Mr Sofoklis P. Pilavios, attorney-at-law in Athens, Greece, as arbitrators
33. On 7 November 2014, further to an invitation from the Panel, Cluj filed its comments to Chiajna's objection to the admissibility of the appeal.
34. On 14, 18, 20 and 24 November 2014 respectively, the Appellant, the RFF, Chiajna and the RPFL returned duly signed copies of the Order of Procedure.
35. On 20 November 2014, Chiajna filed unsolicited "written conclusions" with the CAS Court Office.
36. On 22 November 2014, Cluj objected to the admissibility of the "written conclusions" filed by Chiajna.
37. On 27 November 2014, a hearing was held in Lausanne, Switzerland. At the outset of the hearing both parties confirmed that they had no objection to the constitution and composition of the Panel.
38. In addition to the Panel, Mr Christopher Singer, Counsel to the CAS, and Mr Dennis Koolaard, *Ad hoc* Clerk, the following persons attended the hearing:

For the Appellant:

- Mr Gianpaolo Monteneri, Counsel for the Appellant;
- Mr Munteanu Vlad Ioan, special administrator;
- Mrs Anastasescu Marieta, representative of the judicial administrator (A&A Consultants IPURL) and lawyer;
- Mrs Iordanescu Anca, lawyer and interpreter;
- Mr Cristea David Raluca, legal adviser.

For the First Respondent:

- Mr Paul Filip Ciucur, Counsel for the First Respondent.

For the Second Respondent:

- Mr Mincu Paul Alexandru, Counsel for the Second Respondent;
- Mr Statescu Constantin, Counsel for the Second Respondent

For the Third Respondent:

- Mr Cosmin Gabriel Barbieru, Counsel for the Third Respondent;
- Mr Razvan Pelmius, interpreter

39. No witnesses and experts were heard. The parties were afforded ample opportunity to present their case, submit their arguments and answer the questions posed by the Panel.
40. The Panel confirms that it carefully heard and took into account in its discussion and subsequent deliberations all of the submissions, evidence and arguments presented by the parties, even if they have not been specifically summarized or referred to in the present award.
41. Before the hearing was concluded, both parties expressly stated that they did not have any objection to the procedure adopted by the Panel and that their right to be heard had been respected.

#### **IV. SUBMISSIONS OF THE PARTIES**

42. The submissions of Cluj, in essence, may be summarized as follows:
  - Cluj finds that the Player's employment contract with Corona was duly and properly terminated and that the Player was therefore in a position to enter into a new employment contract with Cluj, the RPFL confirmed the legality of the Player's registration with Cluj and Larissa never expressed any interest in the Player's return after the termination of his employment contract with Corona.
  - Since the Player's registration with Cluj was approved by the RPFL, the only reason for the possibly inaccurate registration of the Player would be the lack of unified understanding between the RFF and the RPFL on how to interpret the applicable provisions of the RSTFP. Cluj finds that it must therefore be assumed that it was not at fault and should not be sanctioned by the RFF for following the instructions of the RPFL.
  - Cluj furthermore argues that if Larissa indeed wanted the Player to return, it should have requested the RPFL to send the Player's file to CFA Prahova. Whereas the RPFL registers players for the Liga I and II (the leagues in which Corona and Cluj play), CFA Prahova registers players for League IV and/or V (the league in which Larissa plays) and it should have had the complete file of the Player at its disposal, as required by the applicable regulations.
  - Cluj also maintains that since it relied in good faith on the registration of the Player, this registration cannot be cancelled retroactively (*ex tunc*), but only from the moment the competent body renders the relevant final decision on this particular aspect.
  - In addition, Cluj argues that the judicial bodies of the RFF committed numerous violations of the applicable regulations. First, by disregarding the procedural terms established for filing objections concerning the ineligibility of a player, as the Disciplinary Committee of the RFF should have decided on the admissibility of Chiajna's objection before assigning the issue of the validity of the Player's registration

to the NDRC. Second, by failing to provide it with the entire set of documents, including the Document, relating to the dispute at stake.

43. The Panel observes that the RFF and the RPFL did not file an Answer to Cluj's appeal brief.

44. The submissions of Chiajna, in essence, may be summarized as follows:

- Chiajna argues that Cluj *“was holding the quantity of a Company in judicial reorganization, under the surveillance of A&A Consultants IPURL – judicial administrator”*. This fact is also mentioned in the Appealed Decision. Chiajna finds that Cluj's Statement of Appeal before CAS *“was following to bear, compulsory, according to the law, also the signature of the judicial administrator of A&A Consultants IPURL [...]”*. Cluj's power-of-attorney *“due to the lack of the signature of the legal representative of the judicial administrator A&A Consultants IPURL on the [Statement of Appeal], attracts the inadmissibility of the above-mentioned request [...]. For all these facts, we understand to invoke the exception of inadmissibility of the Appellant's Request, exception that we respectfully ask you to admit, under the consequence of rejecting the appeal as inadmissible”*.
- Chiajna maintains that from a correct interpretation of the provisions of the RSTFP it results that *“the first obligation for the temporary transferred player, in case the contract concluded by this one with the cessionary club terminated before the expiry of the temporary transfer, is that of returning to the assignor club, in the situation in which the respective club requests it”*, but Larissa *“manifested the intention that the [Player] to return to the assignor club, and this fact is proven by the [Document]”*.
- On the basis of the Document, Chiajna concludes that the Player had the obligation to return to Larissa on 5 February 2014 and that, thus, *“on 06.02.2014, the above mentioned player was legitimate [sic], groundlessly and irregularly [sic], by [Cluj], respectively he was used by the latter, without the player to have the right to play at the game from 08.03.2014, developed starting with 4:00 PM, between [Chiajna] and [Cluj] on the occasion of the 22<sup>nd</sup> Stage within the National Football Championship – First League”*.

## V. JURISDICTION

45. The jurisdiction of CAS, which is not disputed, derives from Article 58(3) of the Statutes of the RFF, as it determines that *“CAS is competent to settle any disputes between FIFA, UEFA, regional confederations, national federations, leagues, clubs, players, officials, agents of players or agents licensed in matches, if FIFA/UEFA Statutes / FRF does not provide otherwise”* and Article R47 of the CAS Code. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by the parties.

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

**VI. ADMISSIBILITY**

47. The appeal was filed within the deadline of 21 days set by Article 58(4) of the Statutes of the RFF. The appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fee.
48. Chiajna maintained that Cluj’s appeal is to be held inadmissible since it is under bankruptcy and because it was under “*judicial reorganisation*” at the time of filing the appeal and its judicial administrator did not jointly sign the Statement of Appeal and the power-of-attorney.
49. Upon an invitation from the Panel to comment on Chiajna’s objection to the admissibility of the appeal, Cluj confirmed that it was under “*judicial administration*” at the time of filing the appeal. However, Cluj maintains that under Romanian law the judicial administrator has the right to hire lawyers (article 20(1)(l) of the Romanian Insolvency law) and to appoint specialised persons (article 23 of the Romanian Insolvency law). On this basis, Cluj submits that the power-of-attorney was issued by A&A Consultants IPURL, represented by Mrs Anastasescu Marieta.
50. At the beginning of the hearing, the Panel inquired whether Chiajna maintained its objection to the admissibility of the appeal, following which Chiajna answered that it no longer had any objections in this respect.
51. The Panel therefore considers Chiajna’s objection withdrawn and finds that the appeal is admissible.

**VII. APPLICABLE LAW**

52. Article R58 of the CAS Code provides the following:
- “The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, 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”.*
53. Cluj argues that the applicable laws shall be the regulations adopted by the RFF and the RPFL, in particular the Regulations Governing the Organization of the Football Activity (hereinafter: the “ROFA”) and the Regulations on the Status and Transfer of Football Players (hereinafter: the “RSTFP”) and that subsidiarily Swiss law shall be applied.
54. Chiajna does not specifically request certain regulations to be applied but refers throughout its submissions to the RSTFP, the ROFA and the RFF Statutes.

55. The applicability of the various regulations of the RFF is not disputed. The Panel, considering that the present dispute is of a national nature, is therefore satisfied to accept the application of the various rules and regulations of the RFF.
56. As to the law to be applied subsidiarily in the event of a gap in the various regulations of the RFF, the Panel finds that Romanian law is in principle to be applied since this is the law of the country in which the federation which issued the Appealed Decision is domiciled.

### **VIII. PRELIMINARY ISSUES**

#### **A. Admissibility of Chiajna’s “written conclusions”**

57. On 20 November 2014, Chiajna filed unsolicited “written conclusions” with the CAS Court Office.
58. On 22 November 2014, Cluj objected to the admissibility of the “written conclusions” filed by Chiajna.
59. At the outset of the hearing, the RFF and the RPFL confirmed to agree with the objection of Cluj.
60. The Panel took note of Article R56 of the CAS Code, determining the following:

*“Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer”.*

61. After hearing all the parties on this issue, the Panel decided that Chiajna’s “written conclusions” were inadmissible in view of Article R56 of the CAS Code and because of the fact that no exceptional circumstances were raised by Chiajna that might have allowed the President of the Panel to order otherwise.

#### **B. Request for provisional measures**

62. In view of Cluj’s clarification at the hearing that it no longer deemed it necessary that a decision on its request for provisional measures be taken by the President of the Appeals Arbitration Division, such request is considered withdrawn and need not be addressed by the Panel.

#### **C. Legal interest of the parties in the present dispute**

63. At the outset of the hearing, the Panel inquired the parties about their legal interest in the present matter, since it appeared that the Player was no longer registered with Cluj and because the Disciplinary Committee of the RFF did not impose any sanctions on Cluj.

64. Cluj then clarified that Chiajna had in the meantime lodged an appeal against the decision of the Disciplinary Committee of the RFF and that this procedure was suspended pending the outcome of the present appeals arbitration proceedings regarding the validity of the Player's registration with Cluj and that the outcome of these proceedings might have an important influence on the outcome of the disciplinary proceedings before the Appeals Committee of the RFF. A decision of the Appeals Committee of the RFF might include the deduction of points, which subsequently might lead to financial consequences (approximately EUR 140,000 per position) since it would affect the final league ranking in the 2013/2014 season.
65. In view of these explanations, the Panel was satisfied that there is a legal interest for the parties in the present proceedings.

## **IX. MERITS**

### **A. The Main Issues**

66. In view of the above, the main issues to be resolved by the Panel are:
- i. Was the Player validly registered with Cluj?
  - ii. If not, was Cluj in good faith entitled to field the Player based on the registration made by the RPFL Competitions Department?

#### ***i. Was the Player validly registered with Cluj?***

67. Whereas Cluj finds that Article 19(2)(c) of the RSTFP does not oblige a player to return to the club with which he has an employment contract if the loan has been terminated prematurely, as long as the player returns to this club when the original loan period ends, Chiajna maintains that from a correct interpretation of the provisions of the RSTFP it results that "*the first obligation for the temporary transferred player, in case the contract concluded by this one with the cessionary club terminated before the expiry of the temporary transfer, is that of returning to the assignor club, in the situation in which the respective club requests it*", but Larissa "*manifested the intention that the [Player] to return to the assignor club, and this fact is proven by the [Document]*".
68. The Panel observes that article 19(2)(c) of the RSTFP, in a translation used by Cluj, determines the following:
- "in case of a temporary transfer, if the contract with the assignee club expires before the end of the temporary transfer, the player in question is entitled to return to the assignor club during the transfer periods if the latter so requires, or to conclude a new contract with another club for the period until the expiry of the temporary transfer"*.
69. In a translation used by Chiajna, the provision reads as follows:

*“in case of a temporary transfer, in case the contract with the cession club terminates before the expiry of the temporary transfer, the player in cause has the right that, during the transfer periods, to return to the assignor club, if the latter requests, or to conclude a new contract with another club only for the period up to the expiry of the temporary transport”.*

70. Although the wording of the translations differ, the Panel deems it crucial that reference is made either to “entitled” in the translation used by Cluj and to “the right” in the translation used by Chiajna.
71. On this basis, the Panel has no doubt that if a loan agreement is terminated prematurely, that a player is then not “obliged” to return to the club with which he has an employment contract. Different from other federations, the RFF appears to have created a system where a player in such a situation is free to join any club of his choice, as long as he returns to the club with which he has an employment contract at the end of the originally agreed loan period, without the need for approval from the club with which he has an employment contract. As such, even if the club with which the player has an employment contract requires the player to return, the player has no “obligation” to do so, he is only “entitled”, or has “the right” to do so.
72. As such, the Panel finds that the Player was in principle free to join any club of his choice until the end of the 2013/2014 football season and was therefore also entitled to register with Cluj, without the need to ask Larissa for approval.
73. This being established, the Panel turns its attention to the question whether the Player, by signing the Document, committed himself to return to Larissa already before the end of the 2013/2014 football season. The Panel understands the reasoning of the Appeals Committee of the RFF in the Appealed Decision in the sense that it considered the Document to be a joint expression by the Player and Larissa that the Player would return to Larissa should the Player not conclude an employment contract with Cluj before 5 February 2014.
74. The Panel duly noted that Cluj argues that the Player never signed the Document. If this were true, the Panel finds that the Player was free to register with Cluj and was not obliged to return to Larissa.
75. However, the Panel observes that even if it would turn out that the Player did sign the Document, he was still only obliged to return to Larissa “[i]f, until 5 February, no contract is signed between the parties”.
76. In order to see whether the Player and Cluj complied with the content of the Document, it needs to be verified when the Player and Cluj concluded their employment contract. The date of registration of the Player with Cluj is not considered to be relevant in this respect since the Document specifically refers to the **signing** of the contract.
77. The Panel observes that the employment contract unequivocally determines the following below the final article of the employment contract and above the signatures:

*“This Contract has been drafted and signed in 4 (four) original counterparts, this day of 01.02.2014 and they come into effect on 01.02.2014. The Club shall register the Contract with the RFF / PFL / CFA, as applicable, and one counterpart shall be kept on record. The other counterparts were released to the Player and the Club”.*

78. Although the Panel at the hearing specifically drew the attention of the parties to this provision, it remained undisputed that this employment contract was concluded on 1 February 2014. Chiajna stated during the hearing that it was not aware of this and that the employment contract had not come to its attention and no reference was made to it by the RFF or the RPFL. It however remained undisputed that the employment contract concluded between Cluj and the Player was enclosed as annex 1 to Cluj’s Appeal Brief.
79. It appears to the Panel that Chiajna and the Appeals Committee of the RFF were not aware of the fact that the Player and Cluj signed an employment contract on 1 February 2014 and that the Document, even if taken into account, is therefore actually a confirmation of the approval of Larissa that the Player was allowed to be registered with Cluj.
80. The Panel further notes that the employment contract concluded between the Player and Cluj was valid until the end of the 2013/2014 season and thus complied with the regulatory requirement that a player in principle has to return to the club with which he has an employment contract after the end of the original loan period.
81. As such, since the conclusion of the Panel would remain the same, regardless of whether the Document was signed by the Player or not, the Panel does not find it necessary to verify the authenticity of the Document before rendering its decision.
82. Furthermore, the Panel observes that Article 25.4 of the RSTFP determines the following:
- “The right of clubs and players to challenge the validity of a registration or a transfer contract to which they are a party can be exercised within maximum 90 days from the date of the registration or of the transfer, or the date when they became aware of this fact, respectively, but not later than a year from the date of conclusion of the contract”.*
83. Due to the Player’s performances in the highest Romanian league, Larissa was certainly aware of the Player’s registration with Cluj. The Panel deems it important that Larissa never challenged the Player’s registration and that the deadline to do so has passed.
84. Even after the end of the 2013/2014 football season, it appears that Larissa was not interested in the services of the Player since it did not request the Player’s personal data sheet (*i.e.* the player passport) from the RPFL, in the absence of which the Player is in principle not eligible to participate in matches for Larissa.
85. Article 4(11) of the RSTFP determines the following:
- “The player’s personal data sheet is the official document that contains all information regarding the registration/ transfers of a player and is kept in the records of the body performing the registration/ transfer of the player. If the player is transferred to a club that takes part in the competitions organized by another*

*body, upon written request of the new club, the player's personal data sheet shall be released to and kept in the records of the body organizing the competition in question (...)"*

86. Since Larissa plays at the 5th level in Romania, the registration of players is conducted by the Prahova CFA and not by the RPFL. As such, should Larissa have wanted to register the Player upon his return, it had to request the Player's personal data sheet from the RFPL. However, according to Cluj no such request was ever made by Larissa and this was not disputed by Chiajna, the RFF or the RPFL.
87. As such, since Larissa never showed any interest in registering the Player upon the termination of his loan with Corona and because it never indicated to oppose the Player's registration with Cluj, the Panel finds that the Player was not obliged to return to Larissa and was free to be registered with Cluj for the remainder of the original loan period. This also appears from the letter issued to the Player by Corona confirming that the Player was entitled to *"train with any team at home or abroad"*.
88. In view of the above considerations, the Panel concludes that the Player was validly registered with Cluj as from 6 February 2014 and was therefore eligible to play for Cluj as from 6 February 2014. In the light of the foregoing, the Panel finds that there is no need to examine the second main issue set out above
89. Any further claims or requests for relief are dismissed.

## ON THESE GROUNDS

### The Court of Arbitration for Sport rules:

1. The appeal filed on 21 May 2014 by S.C. Football Club Universitatea Cluj S.A. against the Decision issued on 24 April 2014 by the Appeals Committee of the Romanian Football Federation is upheld.
  2. The Decision issued on 24 April 2014 by the Appeals Committee of the Romanian Football Federation is set aside.
  3. Mr Marius Mădălin Martac was validly registered from 6 February 2014 to play for S.C. Football Club Universitatea Cluj S.A.
- (...)
- 8 All other motions or prayers for relief are dismissed.