

**Arbitration CAS 2016/A/4541 FC Kuban v. FC Dacia, award of 27 March 2017**

Panel: Mr Lars Hilliger (Denmark), Sole Arbitrator

*Football**Training compensation**Principle applicable to training compensation in case of loan of a player**Absence of proof regarding the simulation of loan triggering the obligation to pay training compensation*

1. **In principle, the loan of a player to another club does not interrupt the continuing training period of the player. As a consequence, a club which transferred a player on a loan basis to another club is entitled to training compensation for the period of time during which it effectively trained the player, however, excluding the period of time of the loan to the other club. Likewise, a club which is loaned a player, and thus effectively trains the player, is in principle entitled to training compensation corresponding to the period it provided training to that player. The above-mentioned principle reasonably applies only in cases of loan periods and is not applicable in cases where the “interrupting period”, i.e. the period of time in which the player stayed with the club to which he was loaned, was a period in which the player was definitively transferred to said club and then was retransferred back to the club of origin. Only a professional may be loaned to another club on the basis of a valid written agreement. The decisive factor is therefore that the player formally meets the requirement of being registered as a professional in relation to the contract with the club of origin which is suspended during the loan. It is of no importance in a specific case that a player apparently received no remuneration during the period he spent with a club he was loaned to.**
2. **On CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof. Where it has not been proven to the comfortable satisfaction of the panel that there was a simulation of loan and, accordingly that the “chain of loans” was interrupted in a definitive manner between the date of the signing of the contract with the club of origin of the player and the date of the player’s registration with another club, the latter, as a result of the registration of the player, is obliged to pay training compensation to any club(s) for the time this club(s) trained and educated the player.**

**1. THE PARTIES**

- 1.1 FC Kuban (“FC Kuban” or the “Appellant”) is a Russian professional football club affiliated to the Football Union of Russia (the “FUR”), which in turn is member of the Fédération Internationale de Football Association (“FIFA”).

- 1.2 FC Dacia (“FC Dacia” or the “Respondent”) is a Moldovan professional football club affiliated to the Moldovan Football Federation (the “FMF”), which in turn is also a member of FIFA.

## 2. FACTUAL BACKGROUND

- 2.1 The elements set out below are a summary of the main relevant facts as established by the Sole Arbitrator on the basis of the decision rendered by the FIFA Dispute Resolution Chamber (the “DRC”) on 25 September 2015 (the “Decision”), the written submissions of the Parties and the FIFA file. Additional facts may be set out, where relevant, in the legal considerations of the present Award.

- 2.2 On 1 December 2010, FC Dacia and the Moldovan football player A., born in 1993 (the “Player”), entered into an employment agreement valid as from the date of signing until 31 December 2013 (the “Dacia Contract”).

- 2.3 During the time the Player was under contract with FC Dacia, the football season in Moldova ran from 1 June until 31 May the following year.

- 2.4 Clause 2 of the Dacia Contract stated, *inter alia*, as follows:

*“This contract governs employment of a professional football player (non-amateur) by the Club, member of the FMF and stipulates the right and obligations of the parties related to the football activity. ...”.*

- 2.5 On 12 February 2011, FC Dacia and the Moldovan football club FC Gagauziya entered into a contract regarding the loan of the Player to the latter from the date of signing until 30 June 2011 (the “Gagauziya Loan Agreement”), and the Player and FC Gagauziya also signed an employment contract valid as of 10 February 2011 until 30 June 2011 (the “Gagauziya Contract”).

- 2.6 The Gagauziya Contract stated, *inter alia*, as follows:

*“3. OBJECT OF THE CONTRACT:*

*This Contract governs employment of a professional football player (non-amateur) by the Club, member of MFF and stipulates the rights and obligations of the parties related to the football activity. ...*

*...*

*5. TYPE OF WORK/ACTIVITY*

*5.1 Position/profession: PROFESSIONAL FOOTBALL PLAYER, according to the Status Classification and FIFA/UEFA/FAM Regulations.*

*...*

*9. WAGES*

*9.1 Basic gross salary constitutes 1300 MDL*

*...”.*

- 2.7 On 1 July 2011, and following the loan to FC Gagauziya, the Player returned to FC Dacia and signed an order of reintegration, thus being reinstated in the terms and provisions of the Dacia Contract.
- 2.8 On 28 August and 31 December 2012, FC Dacia, the Player and the Moldovan football club FC Real Succes entered into two continuous contracts regarding the loan of the Player to the latter from 28 August 2012 until 31 December 2012 and 1 June 2013, respectively (the “FC Real Succes Loan Agreements”).
- 2.9 The FC Real Succes Loan Agreements stated, *inter alia*, as follows:  
“...  
*Art. 3 The “Receiving party” concludes the Labor contract with the Player for the period of validity of this contract and is obliged to pay salary to the Player (only the second agreement)*  
...  
*Art. 6 Based on the present the “Receiving party” can conclude an amature (sic) – non amature (sic) contract with the transferred player”.*
- 2.10 On 3 June 2013, and following the loan to FC Real Succes, the Player signed an order of reintegration, thus being reinstated in the terms and provisions of the Dacia Contract.
- 2.11 On 16 August 2013, FC Dacia, the Player and the Moldovan football club FC Sfintul entered into a contract regarding the loan of the Player to the latter from the date of signing until 31 December 2013 (the “FC Sfintul Loan Agreement”), and FC Dacia and the Player apparently also signed a suspension order “*to suspend individual labor contract with the football player A. for the period from 16.08.2013 till 31.12.2013 in connection with the transfer to FC Sfintul Gheorghe according to art. 77 p. (e) of Labor code of RM*”.
- 2.12 By letter of 13 December 2013, FC Dacia proposed that the Player should extend his employment contract with the club, however, by letter of 17 December 2013, the Player informed FC Dacia: “*The undersigned, A., hereby inform Football Club Dacia about the fact that I don’t intend to extend the contract in the future*”.
- 2.13 On 26 February 2014, the Player was transferred out of contract and for free to the Appellant, with which club he was registered as a professional.
- 2.14 According to the information in the FIFA Transfer Matching System (the “TMS”), at the time of the registration of the Player with the Appellant, the latter was registered as a UEFA category II club with the indicative amount of training costs of EUR 60,000 per year.
- 2.15 By letter of 3 October 2014, and following a letter from the Respondent, the FMF wrote to the Respondent, stating, *inter alia*, as follows:  
“*Regarding your letter from 22 September 2014, [...] Football Association of Moldova, informs you as follows:*

*The contract of the Player non-amateur between FC Dacia and A. was concluded for the period from 01 December 2010 till 31 December 2013.1*

*1. The Player's passport, which was issued by FAM contains a mistake due to the fact that Player's transfer was not reflected in the electronic register of the FAM, The updated version of the passport is attached.*

*2. After the expiration of the period of loan at Football Club Real Succes 01 June 2013, the Player was obliged to come back to the location of the Football Club Dacia and thereafter was transferred to FC Sfintul Gheorghe on loan, according the loan agreement from 16 August 2013. [...]"*

2.16 According to the Player's Player Passport, the Player was registered, *inter alia*, as follows:

<i>Registration dates:</i>	<i>Name of club:</i>	<i>Player status:</i>	<i>Loan or permanent registration:</i>
<i>1/12-10 – 31/1-11</i>	<i>FC Dacia</i>	<i>Professional</i>	<i>Permanent</i>
<i>01/2-11 – 31/05-11</i>	<i>FC Gagauziya</i>	<i>Professional</i>	<i>Loan</i>
<i>1/7-11 – 31/5-12</i>	<i>FC Dacia</i>	<i>Professional</i>	<i>Permanent</i>
<i>1/6-12 – 27/8-12</i>	<i>FC Dacia</i>	<i>Professional</i>	<i>Permanent</i>
<i>28/8-12 – 31/5-13</i>	<i>FC Real Succes</i>	<i>Amateur</i>	<i>Loan</i>
<i>16/8-13 – 31/12-13</i>	<i>FC Sfintul</i>	<i>Professional</i>	<i>Loan</i>

2.17 On 10 November 2014, FC Dacia, together with FC Gagauzyia and FC Real Succes, lodged their respective claims before the FIFA Dispute Resolution Chamber (the "FIFA DRC") and requested payment of training compensation on the basis of the subsequent professional registration of the Player with FC Kuban. In particular, FC Dacia requested payment of EUR 92,382 plus 5% interest *p.a.* as of the 31st day after the Player's registration with FC Kuban, together with costs to be determined by the FIFA DRC.

2.18 In support of its claim, FC Dacia submitted, *inter alia*, that it had concluded a valid employment contract with the Player for a period ending 31 December 2013 and that, during this contract period, the Player was loaned for free to three Moldovan clubs. In this context, it was entitled to receive training compensation from FC Kuban for the period in which the Player was effectively trained by the club since (i) it has contributed to the training of the Player, (ii) the loans of the Player do not constitute subsequent transfers within the meaning of Article 3 para. 1 of Annexe 4 of the Regulations on the Status and Transfer of Players (the "Regulations") and, consequently, (iii) loans for training compensation purposes must be understood as a continuous period.

2.19 In its reply, FC Kuban submitted, *inter alia*, that since (i) the Player was an amateur with FC Real Succes, (ii) there was no valid loan to the said club, and (iii) the Player did not go back to FC Dacia after his loan to FC Real Succes, it is of the opinion that the Player was registered as a free agent with FC Sfintul. Alternatively, FC Kuban asserted that the transfer of the Player from FC Dacia to FC Sfintul was a definitive transfer since FC Dacia could not call the Player back, it did not pay the Player's remuneration, the duration of the said loan corresponded to the remaining part of the Dacia Contract, and the FC Sfintul Loan Agreement was called a "transfer agreement".

- 2.20 Moreover, FC Kuban submitted that since the Player was only 17 years old at the time he entered into the Dacia Contract, pursuant to the Regulations, the maximum length of the said contract could be three years. In light of the above, since the Player was thus registered with FC Sfintul without having a valid employment contract with FC Dacia, it has to be understood as a definitive transfer to FC Sfintul. Thus, the only club entitled to receive training compensation is the last club with which the Player was registered on loan. Finally, FC Kuban rejected the claim for interest due to lack of contractual or regulatory basis and, furthermore, rejected any claim for procedural compensation and costs.
- 2.21 In its replica, FC Dacia rejected the application of the Regulations to a national Moldovan employment relationship as well as FC Kuban's interpretation regarding the alleged early termination of the Dacia Contract and, consequently, the alleged conversion of the Sfintul Loan Agreement into a definitive transfer. Furthermore, even if the Player was registered as an amateur during his temporary stay with FC Real Succes, the Player kept his professional registration on a permanent basis with FC Dacia. Both the Dacia Agreement and the Sfintul Loan Agreements were only subject to FMF's regulations and, accordingly, were not subject to the Regulations.
- 2.22 Moreover, FC Dacia rejected the allegations that the Player never returned to the club after his loan. As confirmed by the FMF, the Player was under contract with FC Dacia and did indeed return to the club for the period between 1 June and 15 August 2013. Furthermore, in the Sfintul Loan Agreements, FC Dacia and FC Sfintul did not include an "option clause", agreed that the loan was for free, agreed on a fixed loan and agreed that Sfintul did not have to pay the Player's remuneration during the loan period. Finally, the template used for the agreement was the FMF template and it was further noted that it had offered the Player a new contract.
- 2.23 In its duplica, FC Kuban held that FC Dacia failed to prove that the Player concluded an employment agreement with all the clubs with which he was on loan and that Article 2 of the Regulations applies at the national level, as well. Consequently, the employment relationship between the Player and FC Dacia was terminated tacitly upon the registration of the Player with one of the clubs with which he was registered as an amateur.
- 2.24 Furthermore, FC Kuban underlined that FC Dacia failed to provide evidence of the return of the Player to the club after each of the loans. As a result, it must be asserted that the Player has not been registered with FC Dacia since 28 August 2012, which should be considered the termination date of the Dacia Contract. Finally, the alleged loan from FC Dacia to FC Sfintul was a simulation as well since the Player was a minor at the date of the signature of the Dacia Contract, and the said contract had consequently no effect after 1 December 2013.
- 2.25 The FIFA DRC, after having confirmed its competence, concluded that the 2012 edition of the Regulations was applicable to the case.
- 2.26 The FIFA DRC then recalled that the Player was registered with FC Dacia as a professional for the periods between 1 December 2010 and 31 January 2011, 1 July 2011 and 27 August 2012 and 1 June 2013 and 15 August 2013 and that, between 1 February 2011 and 31 May 2011, 28

August 2012 and 31 May 2013 and until 31 December 2013, the Player was registered on a loan basis with three different Moldovan clubs.

- 2.27 Taking into consideration that any party claiming a right on the basis of an alleged fact carries the burden of proof, the FIFA DRC then noted that – according to the information contained in the TMS, and in view of the clarification provided by the FMF and the loan agreements provided by FC Dacia – the Player was a professional while registered with FC Dacia and that he was loaned on the basis of three written agreements to three different Moldovan clubs. In this regard, the FIFA DRC formed the belief that, regardless of what the status of the Player was with each of these loaning clubs, the Player was under an employment contract with FC Dacia and, therefore, has to be considered as a professional during the whole period.
- 2.28 Furthermore, the FIFA DRC pointed out that Article 18 para. 2 of the Regulations regulates the relationship between professional players and clubs. As such, no third party to such a relationship is entitled to claim that the length of such a contract freely concluded between and fully executed by the player and the club contravened the said provision since such a claim would necessarily need to be put forward by one of the parties to the relationship.
- 2.29 Moreover, the FIFA DRC referred to the information in the TMS, according to which the last club of the Player was FC Dacia. In light of the above, the FIFA DRC concluded that the Player's move to the three Moldovan clubs constituted three loans and not definitive transfers as alleged by FC Kuban.
- 2.30 Having established the foregoing, the FIFA DRC referred to the rules applicable to training compensation. As established in Article 20 of the Regulations as well as in Article 1 paragraph 1 of Annex 4, as read with Article 2 paragraph 1 of Annex 4 of the Regulations, training compensation is payable, as a general rule, for training expenses incurred between the ages of 12 and 21 when a player is registered for the first time as a professional before the end of the season of the player's 23<sup>rd</sup> birthday or when a professional is transferred between two clubs of two different associations before the end of the season of the player's 23<sup>rd</sup> birthday. In case the latter occurs, Article 3 paragraph 1, third sentence, of Annex 4 of the Regulations sets forth that training compensation will only be owed to the player's former club for the time he was effectively trained by that club.
- 2.31 Furthermore, pursuant to Article 10 paragraph 1 of the Regulations, a professional may be loaned to another club on the basis of a written agreement between the professional and the club concerned. Moreover, the last sentence of the said provision stipulates that any such loan is subject to the same rule that applies to the transfer of players, including the provisions on training compensation and the solidarity mechanism.
- 2.32 With reference to the argument raised by FC Kuban that FC Dacia is not entitled to any training compensation since the said club loaned the Player to another club and, therefore, is not the Player's former club within the meaning of Article 3 para. 1, third sentence, of Annex 4 of the Regulations, the FIFA DRC stressed that one of the aims of the last sentence of Article 10 paragraph 1 of the Regulations is to ensure that training clubs which register a player on a loan

basis also benefit from the solidarity mechanism and the training compensation, provided that the relevant prerequisites in the pertinent provisions of the Regulations are fulfilled.

- 2.33 The FIFA DRC further emphasised that, as to the obligation to pay training compensation, the analogy established in Article 10 para. 1 of the Regulations could not be extended to the case in which a player is loaned to a club and therefore is not being definitively transferred to the latter club. Thus, a transfer of a player from the club of origin to the club that accepted him on loan, and the return of the said player from the club which accepted him on loan to the club of origin, do not constitute a “subsequent transfer” within the meaning of Article 3 para. 1, third sentence, of Annex 4 of the Regulations. This would potentially deprive the loan of its essential flexibility and overall purpose.
- 2.34 Moreover, and taking into consideration that FC Kuban belonged to UEFA Category II at the time of the registration of the Player (even if FC Dacia was not the Player’s former club *stricto sensu*), the FIFA DRC pointed out that, within the framework of loans and for the purposes of the rules governing training compensation, the period of time the Player was registered with the other Moldovan clubs on loan and the period of time that the Player was registered with FC Dacia should be considered as one continuous period of time. Hence, the FIFA DRC came to the firm conclusion that for the purposes of the provisions of the Regulations governing training compensation, the loan of a young player from his club of origin to other clubs does not interrupt the ongoing training period of the player and the obligation to pay training compensation arises only in case a player is transferred on a definitive basis, with the effect that, at that moment, the club which transferred the player on a loan basis to another club is entitled to training compensation for the entire period of time during which it effectively trained the player, however, excluding the period of time of the loan.
- 2.35 Bearing that in mind, the FIFA DRC deemed that FC Kuban’s interpretation of Article 3 para. 1, third sentence, of Annex 4 of the Regulations is incorrect and would clearly conflict with the intention of the legislator of the Regulations, according to which all training clubs must, in principle, be rewarded for their efforts invested in training young players, including clubs that have accepted a player on a temporary basis.
- 2.36 Thus, the FIFA DRC found that the loans of the Player to any of the three Moldovan clubs cannot be considered to constitute subsequent transfers, which would trigger the consequences stipulated in Article 3 para. 1, third sentence, of Annex 4 of the Regulations.
- 2.37 Furthermore, and taking into consideration that FC Kuban belonged to UEFA Category II with the indicative amount of training costs of EUR 60,000 per year at the time of the registration of the Player, combined with the fact that the Player was registered with FC Dacia as from December 2010 until 31 January 2011, as from 1 July 2011 until 27 August 2012 and as from 1 June 2013 until 15 August 2013, the FIFA DRC found that the Player was effectively registered with – and trained by – FC Dacia for a period of 18 months, and the FIFA DRC therefore accepted the claim of FC Dacia and decided that FC Kuban is liable to pay training compensation to FC Dacia in the amount of EUR 90,000.

2.38 On 25 September 2015, the FIFA DRC issued its decision (the “Decision”) stating, *inter alia*, as follows: “

1. *The claim of [FC Dacia], is partially accepted.*
2. *[FC Kuban] has to pay to [FC Dacia] **within 30 days** as of the date of notification of the present decision, the amount of EUR 90,000 plus 5% interest p.a. of 29 March 2014.*
3. *If the aforementioned sum plus interest is not paid within the stated time limit, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.*
4. *Any further claim lodged by [FC Dacia] is rejected.*
5. *The final costs of the proceedings in the amount of CHF 10,000 are to be paid by the [FC Kuban] within 30 days of notification of the present decision as follows:*
  - 5.1 *The amount of CHF 7,000 has to be paid to FIFA .....*
  - 5.2 *The amount of CHF 3,000 has to be paid directly to [FC Dacia] ....*

### **3. SUMMARY OF THE ARBITRAL PROCEEDINGS BEFORE THE CAS**

3.1 On 7 April 2016, the Appellant filed its Statement of Appeal in accordance with Articles R47 and R48 of the CAS Code of Sports-related Arbitration (the “CAS Code”) against the Decision rendered by the FIFA DRC on 25 September 2015.

3.2 On 13 May 2016, the Appellant filed its Appeal Brief in accordance with Article R51 of the Code.

3.3 On 27 July 2016, the Respondent filed its Answer in accordance with Article R55 of the Code.

3.4 By letter dated 6 June 2016, in accordance with Article R54 of the CAS Code, the Parties were informed by the CAS Court Office that Mr Lars Hilliger, attorney-at-law in Copenhagen, Denmark, had been appointed as Sole Arbitrator to resolve the dispute at hand.

3.5 By letter of 14 July 2016, the Parties were informed that the Sole Arbitrator had decided to deny the Appellant’s request to be granted a second round of submission for lack of exceptional circumstances pursuant to Article R56 of the CAS Code. However, upon receipt of the FIFA file, which the Sole Arbitrator had requested on the same date, the Parties may be invited to file their comments, where necessary.

3.6 By letter of 10 October 2016, the Parties were forwarded a copy of the FIFA file and were granted a short deadline to file their respective comments on the said file.

3.7 On 21 October 2016, both Parties submitted their comments on the FIFA file, however, the letter of the Appellant also contained the Appellant’s comments on certain exhibits filed by the Respondent together with its Answer, and, furthermore, the Appellant forwarded extracts of the Labour Code of Moldova and a piece of legal literature.

- 3.8 By letter of 16 November 2016, and following a request from the Respondent, the latter was granted a short deadline to file its comments with regard to the new arguments put forward by the Appellant in its written submission of 21 October 2016. The Respondent submitted its comments by letter of 23 November 2016.
- 3.9 By letter of 29 November 2016, and following the Parties' submissions on the same issue, the CAS Court Office informed the Parties that the Sole Arbitrator deemed himself sufficiently informed to decide the case and render an award, based solely on the written submissions received, without holding a hearing.
- 3.10 On 21 and, respectively, 26 December 2016, the Parties both duly signed and returned the Order of Procedure.
- 3.11 By signing the Order of Procedure, the Parties confirmed their agreement that the case should be decided solely on the basis of the written submissions and that their right to be heard had been duly respected.
- 3.12 The Sole Arbitrator examined carefully and took into account in his deliberations all the evidence and arguments presented by the Parties, even if they have not been expressly summarised in the present Award.

#### **4. CAS JURISDICTION AND ADMISSIBILITY OF THE APPEAL**

- 4.1 Article R47 of the Code states as follows: *“An appeal against the decision of a federation, association or sports-related body may be filed with the 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”*.
- 4.2 With respect to the Decision, the jurisdiction of the CAS derives from art. 67(1) of the FIFA Statutes as it determines that *“[a]ppeals against final decisions passed by FIFA’s legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question”*. In addition, neither the Appellant nor the Respondent objected to the jurisdiction of CAS, which was furthermore confirmed by the Parties signing the Order of Procedure.
- 4.3 The grounds of the Decision with were notified to the Appellant on 17 March 2016, and the Appellant’s Statement of Appeal was lodged on 7 April 2016, *i.e.* within the statutory time limit of 21 days set forth in Article 67(1) of the FIFA Statutes, which is not disputed. Furthermore, the Statement of Appeal and the Appeal Brief complied with all the requirements of Articles R48 and R51 of the CAS Code.
- 4.4 It follows that the CAS has jurisdiction to decide on the Appeal and that the Appeal is admissible.

## 5. APPLICABLE LAW

- 5.1 Article R58 of the Code states as follows: *“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”*.
- 5.2 Article 66 para. 2 of the FIFA Statutes states as follows: *“The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”*.
- 5.3 Based on the above, and with reference to the Parties’ submissions, which are consistent with these provisions, the Sole Arbitrator is satisfied to accept the application of the Regulations and, additionally, Swiss law, both insofar as the application relates to the normative application and interpretation of the Regulations, and to the extent that the Panel has to decide on matters not addressed in the Regulations.
- 5.4 As such, the Sole Arbitrator rejects the submission by the Respondent that FMF regulations must be taken into consideration where needed.
- 5.5 Finally, the Sole Arbitrator agrees with the FIFA DRC and the Parties that the FIFA Regulations on the Status and Transfer of Players (2012 edition) are applicable to the present matter.

## 6. THE PARTIES’ REQUESTS FOR RELIEF AND POSITIONS

- 6.1 The following outline of the Parties’ requests for relief and 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 and evidence filed by the Parties with the CAS, even if there is no specific reference to those submissions or evidence in the following summary.

### 6.2 The Appellant

- 6.2.1 In its Appeal Brief, the Appellant requested the following from the CAS:

1. *To set aside and annul the decision passed on 25 September 2015 by the FIFA Dispute Resolution Chamber.*
2. *To establish that FC Kuban does not owe training compensation to FC Dacia for the player A.; or, alternatively: To establish that FC Kuban has to pay to FC Dacia the amount of EUR 80,000 as training compensation for the player A.*
3. *To establish that FC Kuban does not have to pay any costs for the proceedings at FIFA; or, alternatively: To establish that FC Dacia has to bear part of the costs of the proceedings at FIFA, in an amount to be determined at the discretion of the Panel.*

4. *To order FC Dacia to bear all the costs incurred with the present procedure.*
5. *To order FC Dacia to pay FC Kuban a contribution towards its legal and other costs, in an amount to be determined at the discretion of the Panel.*

6.2.2 In support of its requests for relief, the Appellant submitted as follows:

- a) The FMF regulations on the status of professional players and loan transfers cannot deviate from the provisions stipulated in the Regulations, which are mandatory at the national level and, therefore, apply to the Player's move from FC Dacia to FC Real Succes.
- b) In accordance with the Regulations, training compensation is payable, as a general rule for training incurred between the ages of 12 and 21, when a player is registered for the first time as a professional, or when a professional is transferred between two clubs of two different associations, before the end of the season of the player's 23<sup>rd</sup> birthday. Furthermore, in case of a subsequent transfer of the professional, training compensation will only be owed to his former club for the time he was effectively trained by that club.
- c) However, there was never any valid loan of the Player executed between the Respondent and FC Real Succes, and the employment relationship between the Player and the Appellant was terminated tacitly by mutual consent upon the registration of the Player with FC Real Succes as an amateur, on 28 August 2012.
- d) The Respondent failed to prove that FC Real Succes and the Player ever concluded an employment contract for the Player for the duration of the alleged loan period, or that either FC Real Succes or the Respondent paid any salary to the Player during the said period. On the contrary, the Player acquired amateur status when he was registered with FC Real Succes, which fact is proven, *inter alia*, by the information in the Player Passport.
- e) Furthermore, there is no evidence proving that the Player was actually registered with the Respondent after his stay with FC Real Succes, and according to the Player Passport, the Player was never registered with any club in the period between 1 June and 15 August 2013 as it was not until 16 August 2013 that the Player was registered with FC Sfintul as a professional.
- f) In this respect, the Decision conflicts with the Regulations and the settled FIFA and CAS jurisprudence by ruling that *"the DRC formed the belief that regardless of what the status of the player was with each of these clubs, the player was under an employment contract with the [Respondent] and, therefore has to be considered as a professional during the whole period"*.
- g) With regard to the application of Article 10 para. 1 of the Regulations, pursuant to the Commentary on the Regulations for the Status and Transfer of Players (the "Commentary") *"[...] Only professionals can be loaned. The loan of an amateur is not possible, since the club loaning the player must be in possession of a valid employment contract at the moment the player leaves on loan. [...] The two clubs and the player are also entitled to enter into a tripartite agreement in which the terms of the loan and employment are established, In any event, the player and the new club shall stipulate an employment contract for the duration of the loan. [...]"*.
- h) In this case, and since an employment contract with FC Real Succes was never concluded, coupled with the fact that no remuneration was ever paid to the Player during his stay

with the said club, the Player should be considered as an amateur during this period. Since it was consequently not possible for the Player to maintain his status as a professional during his stay with Real Succes, and since only professionals may be loaned from one club to another, the Dacia Contract should be considered to have been terminated tacitly by mutual consent upon the registration of the Player with FC Real Succes as an amateur on 28 August 2012. This is supported by the Respondent's failure to prove that it did in fact pay the Player's salary in the period from 1 June until 31 December 2013, *i.e.* for the time remaining on the Dacia Contract.

- i) Based on that, the "chain of loans" was interrupted by the Player's move to FC Real Succes because each time a player is definitively transferred to another club, it interrupts the former club's entitlement to training compensation. Hence, the FIFA DRC erred by applying the "loan segmentation principle", which applies only in cases of a valid loan of a professional. As such, any training compensation payable to the Respondent should be paid by FC Sfintul, since it was the last club with which the Player was permanently registered as a professional prior to his transfer to the Appellant.
- j) In the alternative, and only if these submissions are rejected, the Appellant submits that the Player's move from the Respondent to FC Sfintul was a definitive transfer and, accordingly, that the FC Sfintul Loan Agreement is an evident simulation of a loan.
- k) The FIFA DRC failed to or omitted to assert the Appellant's arguments regarding contractual simulation, thereby violating the Appellant's right to be heard, and the Sole Arbitrator should therefore review the matter *de novo* in accordance with Article R57 of the CAS Code.
- l) In accordance with the jurisprudence of FIFA and the CAS, in favour of the Player's move to FC Sfintul being a definitive transfer, the following facts, which were never rebutted by the Respondent before the FIFA DRC, must be taken into account: (i) there was no mechanism to either call back the Player or send the Player back, (ii) the Respondent ceased paying the Player's salary and medical insurance during the loan, (iii) the duration of the loan corresponded to the remaining part of the Dacia Contract, (iv) being 17 years old when he signed the Dacia Contract, the Player was in fact without a valid contract with the Respondent from 1 until 31 December 2013, (v) the FC Sfintul Loan Agreement was referred to as the "Transfer Contract", (vi) the Player was under no obligation to return to the Respondent after the expiry of the alleged loan, and (vii) FC Sfintul was under no obligation to return the registration of the Player to the Respondent after the expiry of the alleged loan.
- m) Based on that, it must be concluded that the Respondent and FC Sfintul did not internally want to produce a loan of the Player, but wanted to execute a definitive transfer, as they did. In reality, both clubs wanted to hide or mask the Player's definitive transfer to FC Sfintul for the purpose of circumventing the provision of Article 3 para. 1 of Annexe 4 of the Regulations, in order for the Respondent and the other Moldovan clubs to preserve their right to claim training compensation from the Player's new club in case of an international transfer, as it happened.

- n) As it follows, FC Sfintul is the “former club” within the meaning of Article 3 para. 1 of Annexe 4 of the Regulations, and training compensation is thus owed by the Appellant only to FC Sfintul for the time the Player was effectively trained by that club.
- o) More alternatively, the Appellant submits that the FIFA DRC miscalculated the amount of training compensation due to the Respondent.
- p) While it is undisputed that the Player was registered with the Appellant on 26 February 2014, which was a UEFA category I club at that time, the Appellant rejects the FIFA DRC consideration that the Player was registered with the Respondent from 1 June until 15 August 2013, which is not supported by the Player Passport.
- q) According to the Player Passport, the Player was not registered with any club from 1 until 30 June 2011 or from 1 June until 15 August 2013. Thus, the Player was in any case only registered with the Respondent for a total of 16 months during the seasons of his 17<sup>th</sup>, 18<sup>th</sup> and 19<sup>th</sup> birthdays, *i.e.* from 1 December 2010 until 31 January 2011 (two months), from 1 July 2011 until 31 May 2012 (11 months) and, finally, from 1 June until 27 August 2012 (three months).
- r) It follows that the Appellant should eventually be liable to pay the Respondent training compensation in the total amount of EUR 80,000, *i.e.* for 16 months of EUR 5,000 each.

### 6.3 The Respondent

6.3.1 In its Answer, the Respondent filed the following requests for relief:

- 1. *The appeal filed by OSJC Football Club “KUBAN”, in this arbitration procedure is dismissed.*
- 2. *The decision issued by the Dispute Resolution Chamber of FIFA on 25 September 2015 is confirmed.*
- 3. *OSJC Football Club “KUBAN” shall be ordered to sustain all the costs of this arbitration procedure.*
- 4. *OSJC Football Club “KUBAN” shall be ordered to reimburse FC Dacia all the legal fees and other costs suffered in connection with this arbitration procedure, in an amount to be determined at the Panel’s discretion.*

6.3.2 In support of its requests for relief, the Respondent submitted as follows:

- a) The Player, who was under the Dacia Contract with the Respondent from 1 December 2010 until 31 December 2013, was transferred on loan for free to three different Moldovan clubs during the length of the said contract in order to foster his training and education as follows: (i) between 10 February 2011 and 30 June 2011 to FC Gagauziya; (ii) between 28 August 2012 and 1 June 2013 to FC Real Succes, and (iii) between 16 August 2013 and 31 December 2013 to FC Sfintul.
- b) Although not appearing in the Player Passport, the Player returned to the Respondent from his loan with FC Real Succes on 1 June 2013 before being re-transferred on loan to FC Sfintul on 16 August 2013, which is supported by evidence submitted to the CAS during these proceedings.

- c) The pillar concept of the rules regarding training compensation is that clubs investing in the training and education of young players have to be rewarded and that the compensation is distributed from the top of the football pyramid to the very bottom.
- d) It is undisputed that the Respondent, among other clubs, effectively and successfully contributed to the Player's training, which fact must be kept in mind as a starting point.
- e) Pursuant to the Regulations, training compensation is due when, *inter alia*, a professional is transferred between clubs of different associations (whether during or at the end of a contract) before the end of the season of his 23<sup>rd</sup> birthday. In the case of subsequent transfers of the professional, training compensation will only be owed to his former club for the time he was effectively trained by that club.
- f) According to the consistent jurisprudence of FIFA and the CAS, the concept of "subsequent transfer" and its consequence as mentioned does not apply to cases where the transfer is a loan.
- g) The Respondent kept the definitive registration of the Player for all the duration of the Dacia Contract and only transferred the Player on loan for free to three different Moldovan clubs in order to foster his training and let him improve his skills. Consequently, the Decision was correct in ruling that the Respondent is entitled to training compensation both for the period of training before and after the loan periods with the three different clubs.
- h) With regard to the status of the Player, it has been proven, both by documents and by the Player, that he kept his registration as a professional for all the duration of the Dacia Contract. Thus, the Player was a professional also during the short loan periods he spent with other clubs during the same period of time, like his stay with FC Real Succes.
- i) The Appellant is wrong in submitting that since the Player was an amateur during his stay with FC Real Succes, and since, according to the Appellant, only professionals may go on loan, the loan to FC Real Succes has to be automatically considered a definitive registration.
- j) In that connection, it must be noted that the loan agreements are subject only to the FMF rules since all the clubs involved are Moldovan clubs and such loans are allowed pursuant to the applicable FMF rules.
- k) Furthermore, the FIFA DRC was correct in stating that regardless of the status of the Player with each of the loaning clubs, the Player was still under an employment contract with the Respondent and, therefore, has to be considered as a professional during the whole period.
- l) Regardless of whether or not the Player signed an employment contract with FC Real Succes and whether or not he received any remuneration during his loan with the said club, it is absolutely irrelevant for the purpose of establishing that he kept his professional status, which is proven and undisputed. The allegation that the Player was not paid by the Respondent during the loan to FC Real Succes is in any case disputed by the Respondent.
- m) Furthermore, no alleged "tacit" termination "by mutual consent" of the Dacia Contract ever occurred, and the Appellant failed to prove its allegations.

- n) The Respondent also disputes the allegations made by the Appellant that from 1 June until 15 August 2013, the Player was not registered with any club and thereafter, on 16 August 2013, the Player was registered with FC Sfintul as a professional. The fact that the Player actually was with the Respondent during the said period is proven before the CAS by submitting written evidence of such fact. Thus, the Player returned to the Respondent after his loan to FC Real Succes and was then retransferred on loan from the Respondent to FC Sfintul as a professional.
- o) As such, it must be concluded that the Respondent's "chain of entitlement" of training compensation was never interrupted by the Player's loan to FC Real Succes and that the "loan segmentation principle" applies insofar as a valid loan of a professional was executed, and the Appellant is therefore liable for payment of training compensation.
- p) With regard to the loan of the Player to FC Sfintul, this did in fact constitute a loan of the Player, which was in fact dealt with by the FIFA DRC, and the Appellant failed to prove differently. Thus, the Player was never transferred to FC Sfintul on a permanent basis, and the loan agreement did not in any way turn into such a permanent transfer.
- q) Based on the evidence submitted by the Respondent, it must thus be evidently concluded that the employment relationship between the Player and the Respondent remained valid until 31 December 2013 in accordance with the terms of the Dacia Contract.
- r) Finally, the submission by the Appellant that the FIFA DRC incorrectly calculated the amount of training compensation due to the Respondent is groundless and must be dismissed.
- s) In particular, although in the Player Passport the Player was not registered with the Respondent from 1 June until 15 August 2013, the FMF later confirmed in writing that "[...] *After the expiration of the period of loan at Football Real Succes 01 June 2013, the Player was obliged to come back to the location of Football Club Dacia and thereafter was transferred to FC Sfintul Gheorghe on loan, according to the Loan Agreement from 16 August 2013*". Furthermore, the Respondent paid the Player's salary for the entire month of June 2013.
- t) Thus, the Respondent is entitled to receive the amount of EUR 90,000 as training compensation from the Appellant, which amount carries interest at the rate of 5% from 29 March 2013. The said starting date and rate of interest are not disputed by the Appellant.

## 7. MERITS

- 7.1 Initially, the Sole Arbitrator notes that it is undisputed that on 1 December 2010, the Player and the Respondent signed the Dacia Contract, valid as from the date of signing until 31 December 2013 (the "Dacia Contract Period") and that the Player was registered as a professional with the Respondent.
- 7.2 It is further undisputed that on 26 February 2014, the Player, who, at that time, was under the age of 23, was transferred out of contract and for free to the Appellant, with which club the Player was registered as a professional. According to the information in the TMS, at the time

of the registration of the Player with the Appellant, the Appellant was registered as a UEFA Category II club with the indicative amount of training cost of EUR 60,000 per year, which is also undisputed. Also, the Sole Arbitrator notes that he considers it is proven that the Respondent did in fact offer the Player a new contract before the expiry of the Dacia Contract, which offer was rejected by the Player.

7.3 Furthermore, it is undisputed that during the Dacia Contract Period, the Player was transferred to/registered with the following three Moldovan football clubs as follows: (i) between 10 February 2011 and 30 June 2011 with FC Gagauziya; (ii) between 28 August 2012 and 31 May 2013 with FC Real Succes, and (iii) between 16 August 2013 and 31 December 2013 with FC Sfintul.

7.4 According to the Player's Player Passport issued by the FMF on 3 October 2014, the Player was registered, *inter alia*, as follows:

<i>Registration dates:</i>	<i>Name of club:</i>	<i>Player status:</i>	<i>Loan or permanent registration:</i>
1/12-10 – 31/1-11	FC Dacia	Professional	Permanent
01/2-11 – 31/05-11	FC Gagauziya	Professional	Loan
1/7-11 – 31/5-12	FC Dacia	Professional	Permanent
1/6-12 – 27/8-12	FC Dacia	Professional	Permanent
28/8-12 – 31/5-13	FC Real Succes	Amateur	Loan
16/8-13 – 31/12-13	FC Sfintul	Professional	Loan

7.5 However, while the Parties agree that the Appellant's registration of the Player on 26 February 2013 triggers an obligation for the Appellant to pay training compensation to FC Sfintul, in accordance with the Regulations, the Parties disagree over whether or not the Appellant is also obliged to pay training compensation to the Respondent (and to FC Gagauziya and FC Real Succes, whose claims are being dealt with separately in two parallel CAS proceedings), and, in the affirmative, over the size of the amount to be paid.

7.6 Thus, the main issues to be resolved by the Sole Arbitrator are:

- a) Is the Appellant, as a result of the registration of the Player with the Appellant, obliged to pay training compensation to the Respondent for the training and education of the Player during his time with the Respondent?
- b) In the event that question a) is answered in the affirmative, what amount of training compensation must the Appellant pay to the Respondent?

**A. Is the Appellant, as a result of the registration of the Player with the Appellant, obliged to pay training compensation to the Respondent for the training and education of the Player during his time with the Respondent?**

7.7 Article 20 of the Regulations provides, *inter alia*, that:

*“Training compensation shall be paid to a player’s training club(s): (1) when a player signs his first contract as a professional, and (2) each time a professional is transferred until the end of the season of his 23rd birthday. The obligation to pay training compensation arises whether the transfer takes place during or at the end of the player’s contract. The provisions concerning training compensation are set out in Annex 4 of these regulations”.*

7.8 Furthermore, according to Article 3 para. 1 of Annex 4 of the Regulations:

*“On registering as a professional for the first time, the club with which the player is registered is responsible for paying training compensation within 30 days of registration to every club with which the player has previously been registered (in accordance with the players’ career history as provided in the player passport) and that has contributed to his training starting from the season of his 12th birthday. The amount payable is calculated on a pro rata basis according to the period of training that the player spent with each club.*

*In the case of subsequent transfers of the professional, training compensation will only be owed to his former club for the time he was effectively trained by that club”.*

7.9 The Sole Arbitrator further notes that Article 10 of the Regulations provides, *inter alia*, that:

*“A Professional may be loaned to another club on the basis of a written agreement between him and the clubs concerned. Any such loan is subject to the same rules as apply to the transfer of players, including the provisions on training compensation and solidarity mechanism”.*

7.10 With regard to the application of Article 10 of the Regulations, the Commentary states, *inter alia*, that:

*“The loan of a player by one club to another constitutes a transfer for a predetermined period of time. Only professionals can be loaned. The loan of an amateur is not possible, since the club loaning the player must be in possession of a valid employment contract at the moment the player leaves on loan. The conditions governing the loan of a professional, such as the duration of the loan and the obligation to which the loan is subject, shall be regulated by a separate written contract. A loan contract is in principle only concluded between the two clubs. The player is, however, often asked to co-sign it so as to give his consent to the transfer on a loan basis. The two clubs and the player are also entitled to enter into a tripartite agreement in which the terms of the loan and employment are established. In any event, the player and the new club shall stipulate an employment contract for the duration of the loan. The minimum period of loan shall be the time between two registration periods”. [...]*

*“A loan is subject to the same rules that apply to the transfer of players, including the provisions on training compensation and solidarity mechanism. In other words, the club receiving the player on loan shall retain 5% of the loan fee and distribute it to all clubs that contributed to training the player between the ages of 12 and 23. At the same time, the club receiving a player on loan is entitled to claim training compensation and a solidarity contribution for the time the player remained with it and it can claim training compensation if the player transfers to a third club provided the player is younger than 23”.*

- 7.11 The Appellant submits that no valid loan of the Player was ever executed between the Respondent and FC Real Succes and that the employment relationship between the Respondent and the Player was terminated tacitly by mutual consent upon the registration of the Player as an amateur with the said club on 28 August 2012. Furthermore, there is no evidence that the Player was ever registered with any club from the time when he was no longer with FC Real Succes (from 1 June 2013) until he was registered with FC Sfintul on 16 August 2013.
- 7.12 As such, the “chain of loans” was interrupted by the Player’s move to FC Real Succes, and the Appellant is thus not obliged to pay any training compensation to the Respondent, because each time a player is definitively transferred to another club, the former club’s entitlement to training compensation is interrupted.
- 7.13 Initially, the Sole Arbitrator notes, that the actual rationale of the training compensation system is to encourage the recruitment and training of young players. However, often such young players are not proficient enough to play for the first team of the club of origin, and in order to give such players the opportunity, *inter alia*, to train with and play for another team, players are therefore loaned to other clubs to gain such experience, which in general is considered beneficial for both the clubs and the players.
- 7.14 However, if such a loan would entail the consequence that the club of origin would thereby waive its entitlement to training compensation, the said club might decide not to loan the player in question to another club, merely in order to secure its entitlement to training compensation, subject to the fulfilment of the conditions in the Regulations.
- 7.15 The Sole Arbitrator regards such a situation as undesirable and, thus, endorses the decision in CAS 2013/A/3119, according to which a loan of a player to another club does not interrupt the continuing training period of the player. As a consequence, a club which transferred a player on a loan basis to another club is entitled to training compensation for the period of time during which it effectively trained the player, however, excluding the period of time of the loan to the other club.
- 7.16 In continuation hereof, and with reference to, *inter alia*, the Commentary on the application of Article 10 of the Regulations (see para 7.10 above), the Sole Arbitrator furthermore agrees with the Panel in CAS 2013/A/3119 when stating that “*A club which [is] loaned a player; and thus effectively trains the player, is in principle entitled to training compensation corresponding to the period it provided training to that player, [...]*” (see para. 115 of the said Award).
- 7.17 Finally, the Sole Arbitrator stresses, also in line with the above-mentioned award, that the above-mentioned principle reasonably applies only in cases of loan periods and is not applicable in cases where the “interrupting period”, *i.e.* the period of time in which the player in question stayed with the other club, was a period in which the player was definitively transferred to the other club and then was retransferred back to the club of origin.

- 7.18 Thus, the Sole Arbitrator has to decide whether the “chain of loans” was ever interrupted in a definitive manner between the date of the signing of the Dacia Contract and the date of the Player’s registration with the Appellant.
- 7.19 With regard to the Player’s stay with FC Real Succes between 28 August 2012 and 31 May 2013, the Sole Arbitrator notes that the Appellant submits that since the Player never signed any employment agreement with the said club and was never paid any remuneration during this stay, the Dacia Contract was terminated tacitly by mutual consent upon the registration of the Player with FC Real Succes as an amateur.
- 7.20 The Sole Arbitrator notes in this regard that according to the FC Real Succes Loan Agreements, FC Real Succes was entitled to “*conclude an amateur – non-amateur contract*” (sic) with the Player, and according to the second of the two contracts, FC Real Succes “*is obliged to pay salary to the Player*”. It is also noted that the Player, in his written witness statement submitted during these proceedings, stated that he never entered into a professional contract with FC Real Succes and never received any payment during his stay with the said club.
- 7.21 However, the Sole Arbitrator further notes that the FMF did in fact register the loan as a valid loan in the Player Passport, even if the Player’s status during this period was registered as that of amateur.
- 7.22 Pursuant to Article 10 of the Regulations, “*a professional may be loaned to another club on the basis of a written agreement between him and the clubs concerned*”, and it is undisputed that the FC Real Succes Loan Agreements were both signed by the Player and the clubs concerned, thus constituting, at least at the outset, a valid loan of the Player. It is furthermore noted that the Player was indisputably registered as a professional with the Respondent at the time of the signing of the first of the said loan agreements.
- 7.23 Although it has not been proven whether the Player and FC Real Succes did in fact enter into a valid employment agreement, nor whether the Player was indeed paid any remuneration during the period he spent with the Respondent, the Sole Arbitrator finds that the Appellant cannot use this absence of proof as a valid argument that no valid loan agreement existed between the Player and FC Real Succes and/or that the Dacia Contract was terminated tacitly by mutual consent upon the registration of the Player with FC Real Succes as an amateur.
- 7.24 In this connection, the Sole Arbitrator emphasises, *inter alia*, that the Player’s period with FC Real Succes was extended by the three parties’ conclusion of the second FC Real Succes loan agreement, which would have been unnecessary if the three parties had not all agreed on the continuance of the loan, coupled with the fact that the Player, as mentioned below, did in fact return to the Respondent after the expiry of the agreed loan period. Besides, the Player apparently accepted the terms and conditions applicable during the loan period, since it must be expected, if this had not been the case that the Player would have refused to extend the loan period.

- 7.25 The Sole Arbitrator thus finds it of no importance in this specific case that the Player apparently received no remuneration during the period he spent with FC Real Succes, as the rule in Article 10 of the Regulations specifying that only a professional player may be loaned to another club was observed at the time of the commencement of the loan agreement when the Player was registered as a professional with the Respondent. The decisive factor is therefore not whether the Player, throughout his loan period, formally met the requirement of being registered as a professional, but, on the other hand, that this requirement is seen to have been met in relation to the underlying contract with the club of origin which is suspended during the loan, unless the Player can only be deemed specifically to have met the requirement of being a professional for an insignificant part of this total contract period. This does not appear to be inconsistent with the Commentary on Article 10 of the Regulations, which, *inter alia*, states as follows: “*The loan of an amateur is not possible, since the club loaning the player must be in possession of a valid employment contract at the moment the player leaves on loan*”.
- 7.26 The Sole Arbitrator emphasises, however, that the above will apply only provided that a player’s professional contract with his club of origin can be considered to have a valid, substantive content and, accordingly, cannot be assumed to have been concluded exclusively on a *pro forma* basis with a view to signing a player on a professional contract without, at any time, being prepared to respect the professional terms and conditions agreed with the relevant player.
- 7.27 Based on the above, the Sole Arbitrator thus finds (i) that the Player was validly loaned to FC Real Succes pursuant to the FC Real Succes Loan Agreements, (ii) that the Dacia Contract is not considered to have been terminated tacitly by mutual consent between the Player and the Respondent upon the registration of the Player with FC Real Succes as an amateur and (iii) that the “chain of loans” was not interrupted in a definitive manner as a result of the loan of the Player to FC Real Succes.
- 7.28 The Sole Arbitrator further notes that he finds that sufficient evidence has been produced to prove that the Player did in fact return to the Respondent in the period between the expiry of his loan to FC Real Succes and his registration with FC Sfintul, *i.e.* between 1 June and 16 August 2013.
- 7.29 In this connection, the Sole Arbitrator attaches for instance importance to the letter of 3 October 2014 from the FMF, which states, *inter alia*, as follows: “[...] 2. *After the expiration of the period of loan at Football Club Real Succes 01 June 2013, the Player was obliged to come back to the location of the Football Club Dacia and thereafter was transferred to FC Sfintul Gheorghe on loan, according the loan agreement from 16 August 2013*”. It is furthermore noted that the Respondent submitted evidence regarding its payment of the Player’s remuneration for June 2013 and that, on 3 June 2013, the Player signed an Order stating as follows: “*To reestablish A.n in the position of football player at FC Dacia from 03.06.2013 due to expiration of the validity of the contract of loan with FC Real Succes. Basis: Individual Labor Contract no 58/10 from 01.12.2010*”.
- 7.30 The Sole Arbitrator therefore concludes that the Player was under valid contract with the Respondent on 16 August 2013 when he and the Respondent signed the FC Sfintul Loan Agreement with FC Sfintul, thus not interrupting the “chain of loans” in a definitive manner.

- 7.31 With regard to the Player's stay with FC Sfintul, the Sole Arbitrator notes that the Appellant submits that the Player's move from the Respondent to the said club was a definitive transfer and, consequently, only a simulation of a loan, which FIFA allegedly failed to address in the Decision, thus violating the Appellant's right to be heard.
- 7.32 Initially, the Sole Arbitrator notes that, pursuant to Article R57 of the CAS Code, the Sole Arbitrator enjoys a full power to review the Decision, which means that any possible violation of the Appellant's right to be heard with regard to the above-mentioned submission is in any case cured by the Sole Arbitrator's current review.
- 7.33 Regarding the move of the Player to FC Sfintul allegedly being a definitive transfer and, thus, only a simulation of a loan, based on the facts of the case and the Parties' submissions, the Sole Arbitrator finds that it is up to the Appellant to discharge the burden of proof to establish that these allegations are in fact correct.
- 7.34 In doing so, the Sole Arbitrator adheres to the principle established by CAS jurisprudence that *"in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue, in other words, the party which asserts facts to support its rights has the burden of establishing them (..) The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some fact and persuade the deciding body, it must actively substantiate its allegations with convincing evidence"* (e.g. CAS 2003/A/506, para. 54; CAS 2009/A/1810 & 1811, para. 46 and CAS 2009/A/1975, para. 71ff).
- 7.35 However, the Sole Arbitrator finds that the Appellant has not adequately discharged the burden of proof to establish that the move of the Player to FC Sfintul did in fact constitute a definitive transfer and, thus, only a simulation of a loan.
- 7.36 The Sole Arbitrator notes in this connection that the fact that the Parties – as mentioned by the Appellant in support of its allegation that a definitive transfer was made between the Respondent and FC Sfintul – failed to agree on, for instance, (i) a mechanism to either call the Player back or send the Player back, or (ii) an obligation for the Respondent to pay the Player's remuneration and medical insurance during his stay with FC Sfintul, combined with, *inter alia*, the fact that the duration of the alleged loan period corresponded to the remaining time of the Dacia Contract, does not in itself imply that this must in effect be assumed to be a definitive transfer.
- 7.37 Furthermore, the Sole Arbitrator notes that the loaning club (FC Sfintul), in this specific case, as opposed to the situation in, for instance, CAS 2007/A/1219, did not pay any loan fee to the Respondent, which fee in CAS 2007/A/1219 was effectively considered to replace/constitute an actual transfer fee, and the Player was in fact also offered a new contract by the Respondent before the expiry of the Dacia Contract, which would have meant, in the event of the Player's acceptance, that the contractual relationships would have continued. In addition, neither any of

the clubs involved nor the Player has indicated that the FC Sfintul Loan Agreement was concluded for any purpose other than to establish an actual loan between the two clubs.

- 7.38 Based on that, the Sole Arbitrator finds that the Appellant failed to prove to the comfortable satisfaction of the Sole Arbitrator that there was only a simulation of a loan and, accordingly, that the move of the Player to FC Sfintul did in fact constitute a definitive transfer.
- 7.39 Furthermore, and with regard to the submission that the FC Dacia Contract in any case expired at the end of November 2013 due to the fact that the Player was only 17 years old when signing the said contract on 1 December 2010, the Sole Arbitrator agrees with the FIFA DRC that Article 18 para. 2 of the Regulations regulates the relationship between professional players and club, and in accordance with this provision, no third party to such a relationship is entitled to claim that the length of a contract freely concluded between and fully executed by the contract parties contravenes the said provision since such a claim would necessarily need to be forwarded by one of the parties to the relationship.
- 7.40 Based on that, the Sole Arbitrator finds that the “chain of loans” was never interrupted in a definitive manner between the date of the signing of the Dacia Contract and the date of the Player’s registration with the Appellant, which is why the Appellant (see para 7.15 above), as a result of the registration of the Player with the Appellant, is obliged to pay training compensation to the Respondent for the training and education of the Player during his time with the Respondent.

**B) In the event that a) is answered in the affirmative, what amount of training compensation must the Appellant pay to the Respondent?**

- 7.41 Having established that the Appellant is obliged to pay training compensation to the Respondent in accordance with Article 20 of the Regulations, the Sole Arbitrator notes that the FIFA DRC found in the Decision that the Player was effectively trained by the Respondent for a period of 18 months during the Dacia Contract Period (from 1 December 2010 until 31 January 2011, from 1 July 2011 until 27 August 2012 and from 1 June 2013 until 15 August 2013).
- 7.42 However, the Appellant rejects the allegation, contrary to the Decision of the FIFA DRC, that the Player was effectively registered with the Respondent from 1 June until 15 August 2013, *i.e.* between the loan to FC Real Succes and the loan to FC Sfintul. Based on that, the relevant period for the calculation of the training compensation should be only 16 months.
- 7.43 As already mentioned in paragraphs 7.28 and 7.29, the Sole Arbitrator finds that he considers it sufficiently proven that the Player did in fact return to the Respondent in the period between the expiry of his loan to FC Real Succes and his registration with FC Sfintul, *i.e.* between 1 June and 16 August 2013. Furthermore, there are no indications that the Player was not effectively trained by the Respondent during this period also.

- 7.44 Based on that, the Sole Arbitrator finds that the relevant period for the calculation of the training compensation is in fact 18 months in accordance with the Decision.
- 7.45 Since it is undisputed that the Appellant, at the time of the registration of the Player, was registered as a UEFA Category II club with the indicative amount of training cost of EUR 60,000 per year, the Sole Arbitrator agrees that the amount of training compensation payable by the Appellant to the Respondent is EUR 90,000.
- 7.46 Finally, the Sole Arbitrator sees no reason to deviate from the Decision concerning the late payment interest to be paid by the Appellant.

## **8. SUMMARY**

- 8.1 Based on the foregoing and after taking into consideration all evidence produced and all arguments made, the Sole Arbitrator finds that the Appellant, as a result of the registration of the Player with the Appellant, is obliged to pay training compensation to the Respondent for the training and education of the Player during his time with the Respondent.
- 8.2 As the Appellant at the time of the registration of the Player was registered as a UEFA Category II club with the indicative amount of training cost of EUR 60,000 per year, and since the Player is considered to have spent 18 months of training with the Respondent, the amount of training compensation payable by the Appellant to the Respondent is EUR 90,000.
- 8.3 The Appeal filed against the Decision is therefore dismissed.

## **ON THESE GROUNDS**

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

1. The appeal filed on 7 April 2016 by FC Kuban against the decision rendered by the FIFA Dispute Resolution Chamber on 25 September 2015 is dismissed.
2. The Decision rendered by the FIFA Dispute Resolution Chamber on 25 September 2015 is upheld.
3. (...).
4. (...).
5. All further and other requests for relief are dismissed.