Arbitration CAS 2020/A/7290 ARIS FC v. Oriol Lozano Farrán & Fédération Internationale de Football Association (FIFA), award of 26 May 2021

Panel: Mr Frans de Weger (The Netherlands), Sole Arbitrator

Football
Termination of the employment contract
Determination of the event giving rise to the dispute
Sporting succession of clubs
Fraudulent practices or bankruptcy proceedings as sine qua non elements of sporting succession
Effects of the sporting succession
Due diligence
Reduction of an excessive penalty clause

1. **In a case involving a succession of clubs, the "event giving rise to the dispute" to be considered when trying to determine whether or not a claim introduced by a player against the new club is time-barred, is not the contractual violation by the old club, but the new club's date of affiliation to its national federation, as it is from that specific moment in time that the player is in the position to initiate proceedings against the new club before the FIFA Dispute Resolution Chamber (DRC). Indeed, only as from that specific moment, when the new club starts actively participating in a competition organised under the auspices of the national federation, is the FIFA DRC, also in consideration of the party requirement according to the relevant applicable law, in particular under Article 6 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber, able to deal with the case.**

2. **As opposed to the concept of legal succession, in the context of sporting succession, the picture the alleged sporting successor presents to the general public is of relevance. The identity of a club is constituted by elements such as its name, colours, fans, history, sporting achievements, shield, trophies, stadium, roster of players, historic figures, etc. that allow it to distinguish from all the other clubs. Hence, the prevalence of the continuity and permanence in time of the sporting institution in front of the entity that manages it has been recognised, even when dealing with the change of management companies completely different from themselves. The abovementioned elements are not exhaustive; in other words, the existence of several elements can lead, in its combination, and so even if not all elements are met in a specific case, to the conclusion that a club has to be considered as a "sporting successor". The overall package of elements is decisive. In fact, because such analysis is to be made on a case-by-case basis, i.e. elements present in a certain case may tip the balance in one direction, whereas the elements present in a lesser or higher degree in another case, may tip the balance in the opposite direction.**

3. Although the concept of "sporting succession" is mainly implemented in order to avoid abuse, and although it can certainly be an element to consider when analysing a concrete scenario, fraudulent practices by parties trying to avoid payments, do not constitute a *conditio sine qua non* in order to conclude that sporting succession occurred. In other words, sporting succession can exist even in the absence of such practices. The same applies to the absence of bankruptcy proceedings, that is, sporting succession can also exist in the absence of bankruptcy proceedings. By the same token, sporting succession is also not exclusively limited to entities which purchase clubs through public tender or auction.

4. The sporting successor of a former, no longer existing club can, as a matter of principle, be liable to meet the financial obligations of that former club notwithstanding that the successor is not a party to any agreement, arrangement or understanding pursuant to which the financial obligation arose or a privy of any of the parties to any such agreement, arrangement or understanding and regardless of whether there has been a change of management or corporate structure or ownership of the club in question. Additionally, if a club is considered to be the sporting successor of another club and if it has been established that the latter was non-compliant, the sporting successor shall be considered a non-compliant party.

5. A creditor is expected to be vigilant and to take prompt and appropriate legal action to assert his claims. In principle, no disciplinary sanctions can be imposed on a club as a result of succession, should the creditor fail to claim his credit in the bankruptcy proceedings of the former club, as there is a theoretical possibility he could have recovered his credit, instead of remaining passive. In such instances it is necessary to examine whether or not a creditor has shown the required degree of diligence in order to recover the amounts he is owned. On the other hand, there is no blanket rule whether or not a creditor has shown the required degree of diligence. However, the question of whether the creditor showed the required degree of diligence has regularly been assessed in the context of a decision of the FIFA Disciplinary Committee related to the imposition of disciplinary sanctions for a possible contribution to a breach of Article 64 of the FIFA Disciplinary Code (FDC) (edition 2011 or 2017) or Article 15 FDC (edition 2019). In the context of a decision of the FIFA DRC related to the consequences of a contractual breach, the degree of diligence of the creditor does not need to be assessed. This could however be different in case the FIFA DRC would render a decision in light of Article 24bis of the FIFA Regulations on the Status and Transfer of Players.

6. In principle, parties are free to determine the amount of a contractual penalty. Contractual penalties should only be reduced in case they are excessive. It is for the judge to establish, with regard to the merits of the case and all the relevant circumstances, whether the penalty is excessive and, if so, to what extent it should be reduced. A penalty is deemed to be excessive when it is not reasonable and exceeds patently the amount that would seem just and equitable. However, the judge should not reduce a penalty too easily and the principle of contractual liberty has always to be privileged in case of doubt.

I. INTRODUCTION

1. This appeal is brought by the Greece professional football club ARIS FC (the "Appellant" or the "Club") against the decision rendered by the Dispute Resolution Chamber (the "FIFA DRC") of the Fédération Internationale de Football Association ("FIFA" or the "Second Respondent") on 4 June 2020 (the "Appealed Decision"), regarding an employment-related dispute between the Club and the Spanish professional football player Mr Oriol Lozano Farrán (the "Player" or the "First Respondent").

II. PARTIES

2. The Appellant is a Greek professional football club affiliated to the Hellenic Football Federation (the "HFF"), which in turn is a member association of FIFA.

3. The First Respondent is a Spanish professional football player.

4. The Second Respondent is the global governing body of football with its registered office in Zurich, Switzerland. FIFA exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and players worldwide.

5. The First and Second Respondent (the "Respondents") and the Appellant are hereinafter jointly referred to as the "Parties", where applicable.

III. FACTUAL BACKGROUND

6. Below is a summary of the main relevant facts, as established on the basis of the Parties' written submissions on the file, the video-hearing and relevant documentation produced in this appeal. Additional facts and allegations found in the Parties' submissions may be set out, where relevant, in connection with the further legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, the Award only refers to the submissions and evidence it considers necessary to explain its reasoning.

A. Background facts

7. On 9 July 2010, the Player and the Greek professional football club, ARIS FC Thessaloniki (the "Old Club" or the "Old Entity") signed an employment contract valid as from the date of signature until 30 June 2013 (the "Employment Contract").

8. From Article 4.4 of the Employment Contract it follows that the Player was, *inter alia,* entitled to remuneration in the amount of NET EUR 1,050,000, payable in thirteen instalments:

> *"20.000€ (twenty thousand euros) NET on 31-07-2011*
> *40.000€ (forty thousand euros) NET on 31-08-2011*

60.000€ (sixty thousand euros) NET on 30-09-2011
50.000€ (fifty thousand euros) NET on 31-01-2012
20.000€ (twenty thousand euros) NET on 31-07-2011[sic]
30.000€ (thrity thousand euros) NET on 31-08-2012
50.000€ (fifty thousand euros) NET on 31-01-2013
50.000€ (fifty thousand euros) NET on 30-06-2013".

9. On 5 July 2011, the Old Club and the Player signed a termination agreement, by means of which the Old Club undertook to pay the Player a total amount of NET EUR 300,000, corresponding to NET EUR 120,000 as outstanding payment and an amount of NET EUR 180,000 as compensation for the early termination of the Employment Contract.

10. On 29 March 2012, the Old Club and the Player signed a "Private Agreement", stating, *inter alia,* that the Employment Contract was breached with mutual consent on 5 July 2011 and the Old Club and the Player agreed to the payment of a total amount of NET EUR 300,000 ("Private Agreement"). From Article 3 of the Private Agreement it follows that:

> *"[…] after the payment of some of the above mentioned installments, the football player declares that he accepts the change of the date of the deposit as well as the change of the amount to 350.000€ NET (due to a delay of payment of the installment) and the new dates are settled as follows:*
> - *90.000€ (ninety thousand euros) NET on 30-04-2012*
> - *95.000€ (ninety* [sic] *thousand euros) NET on 31-05-2012*
> - *95.000€ (ninety five thousand euros) NET on 30-06-2012*
> - *70.000€ (seventy thousand euros) NET on 31-08-2012".*

11. The next day, on 30 March 2012, the Old Club and the Player signed a Spanish version of the Private Agreement. From Clause 4 of the Spanish version of the Private Agreement it follows that, *inter alia,* in case any of the four instalments would be delayed for more than a month, the Player could request full performance of the Employment Contract.

12. On 30 April 2012, the Old Club duly paid the first instalment of the Private Agreement.

13. On 29 May 2014, the Player lodged a claim in front of FIFA against the Old Club, claiming a total amount of EUR 750,000, corresponding to the residual amount of the Employment Contract in accordance with Article 4 of the Spanish version of the Private Agreement.

14. On 1 October 2014, the HFF informed FIFA, *inter alia,* that the Old Club was no longer affiliated with the HFF due to their dissolution.

15. On 12 March 2015, FIFA informed the Player that the Old Club was no longer affiliated to the HFF and therefore considered that FIFA was no longer in the position to further proceed with the claim of the Player against the Old Club.

B. Proceedings before the FIFA Dispute Resolution Chamber

16. On 8 May 2018, the Player lodged a claim against the Appellant in front of the FIFA DRC, requesting the payment of the amount of EUR 750,000, corresponding to the residual amount of the Employment Contract, based on the non-compliance of the Private Agreement and in particular referring to Clause 4 of the Spanish version of the Private Agreement, and claiming that the Appellant was reaffiliated with the HFF.

17. The Appellant replied to the claim by means of a letter which letterhead read "Aris FC", affirming that the Appellant is a different legal entity from the Old Club.

18. On 4 June 2020, the FIFA DRC rendered the Appealed Decision with the following operative part:

> *"1. The claim of the* [Player]*, ORIOL LOZANO FARRÁN, is admissible.*
>
> *2. The claim of the* [Club]*, is partially accepted.*
>
> *3. The* [Club] *ARIS FC (ATHLITIKOS SYLLOGOS THESSALONIKIS O ARIS PODOSFERIKI ANONYMI ETERIA) has to pay to the* [Player] *within 30 days as from the notification of this decision, the amount of EUR 750,000, plus interest at the rate of 5% p.a. as follows:*
>
> - *On the amount of EUR 380,000 as from 31 May 2012 until the date of effective payment;*
> - *On the amount of EUR 35,000 as from 31 August 2012 until the date of effective payment;*
> - *On the amount of EUR 90,000 as from 31 October 2012 until the date of effective payment;*
> - *On the amount of EUR 110,000 as from 31 January 2013 until the date of effective payment;*
> - *On the amount of EUR 135,000 as from 30 March 2013 until the date of effective payment.*
>
> *4. Any further claim lodged by the* [Player] *is rejected.*
>
> *(…)".*

19. On 1 July 2020, the grounds of the Appealed Decision were communicated to the Parties determining, *inter alia*, the following:

- Considering that the claim of the Player was lodged on 8 May 2018, the Chamber deemed that, in principle, it could not enter into any claim for salaries that fell due prior to 8 May 2016. However, the members of the Chamber wished to highlight the special circumstances of the present case, in particular, that the information regarding the existence of the Respondent only became available after the letter from HFF on 13 July 2018 during the proceedings in CAS 2016/A/4918. Consequently, the request for the salaries accrued before the date of 8 May 2016 are not barred by the statute of limitations in accordance with Article 25 (5) of the Regulations on the Status and Transfer of Players (the "FIFA RSTP").

- In CAS 2013/A/3425 it is established that a club is a sporting entity identifiable by itself, which is formed by a combined set of elements that constitute its image. The FIFA DRC concluded that there are sufficient elements to establish that the Appellant has been the same club as the Old Club throughout its history, despite the alleged change of owners, board of directors, etc. By using the same name "Aris FC", logo, stadium and, in particular, the history, it is evident that the Appellant had the intention to maintain the identity and image of the Old Club in order to be considered the same club.

- Consequently, the FIFA DRC decided that the Appellant is the sporting successor of the Old Club, has standing to be sued and is therefore liable to pay to the Player the amounts due under the Employment Contract and the Private Agreement.

- Clause 4 of the Spanish version of the Private Agreement is equivalent to a financial disposition in a settlement agreement. The same parties had written that the Player, should the Appellant fail to make the payments as agreed, was entitled to EUR 750,000. Therefore, the amount is considered outstanding payment and not compensation for breach of contract, hence no mitigation shall be considered.

- The initial breakdown of the amounts claimed, adds up to EUR 840,000. As the Player acknowledged that he received the payment of EUR 90,000, the Appellant is liable to pay to the Player the requested amount of EUR 750,000 and must pay to the Player interest of 5% *p.a.* on the amount.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

20. On 22 July 2020, the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport (the "CAS") in accordance with Article 58 of the FIFA Statutes and Articles R47 and R48 of the Code of Sports-related Arbitration (2020 edition) (the "CAS Code"). In its submission, the Appellant requested the appointment of a sole arbitrator and to select English as the language of the proceedings.

21. On 31 July 2020, the First Respondent informed the CAS Court Office to agree to submit the case before a sole arbitrator and to confer the proceedings in English.

22. On 4 August 2020, the Second Respondent informed the CAS Court Office that it agreed to refer the matter to a sole arbitrator *"as long as he or she is selected from the football list"*.

23. On 13 August 2020, the Appellant filed its Appeal Brief pursuant to Article R51 of the CAS Code.

24. On 1 October 2020, the CAS Court Office informed the Parties that, pursuant to Article R54 of the CAS Code and on behalf of the President of the CAS Appeals Arbitration Division, the Arbitral Tribunal appointed to hear the appeal was constituted as follows:

Sole Arbitrator: Mr Frans de Weger, Attorney-at-Law in Haarlem, the Netherlands

25. On 17 October 2020, the First Respondent filed his Answer to the Appeal Brief in accordance with Article R55 of the CAS Code.

26. On 29 October 2020, the Second Respondent filed its Answer to the Appeal Brief in accordance with Article R55 of the Code.

27. On 11 November 2020, the CAS Court Office informed the Parties that, pursuant to Article R57 of the CAS Code, the Sole Arbitrator, after having consulted the Parties, had decided to hold a hearing in this matter. Per the same correspondence, the First Respondent was invited pursuant to Article R29 of the CAS Code, to submit an English translation of the documents that were only submitted in Spanish.

28. On 18 and 19 November 2020, the Respondents and the Appellant respectively, returned duly signed copies of the Order of Procedure to the CAS Court Office.

29. On 21 November 2020, the First Respondent submitted the English translation of Spanish documents, i.e. a translation of the employment contracts signed by the Player and additional translations of exhibit 1, 2 and 21.

30. On 8 December 2020, the CAS Court Office informed the Parties that the hearing would be held on 13 January 2021 by video-conference.

31. In addition to the Sole Arbitrator and Mr Antonio De Quesada, Head of Arbitration at the CAS, the following persons attended the hearing by video-conference on 13 January 2021:

    a) For the Appellant: Mr Konstantinos Zemberis, Counsel

    b) For the First Respondent: Mr Juan de Dios Crespo Pérez, Counsel and Mr Juan Crespo Ruiz-Huerta, Counsel and translator for the Respondent

    c) For the Second Respondent: Mr Jaime Cambreleng Contreras, Head of Litigation and Saverio Paolo Spera, Senior Legal Counsel

32. Before the hearing was concluded, the Parties expressly stated that they did not have any objection with the procedure adopted by the Sole Arbitrator and their right to be heard had been respected.

33. On 18 January 2020, the CAS Court Office invited the Parties to file a post hearing brief limited to their comments on the relevance of the recently published CAS Award CAS 2020/A/7092.

34. On 25 and 28 January 2021, the Respondents and the Appellant respectively, filed their post hearing briefs.

35. The Sole Arbitrator confirms that it carefully heard and took into account in its decision all of the submissions, evidence, and arguments presented by the Parties, even if they have not been specifically summarised or referred to in the present arbitral award.

V. SUBMISSIONS OF THE PARTIES

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

A. The Appellant

37. On 13 August 2020, the Appellant filed its Appeal Brief pursuant to Article R51 of the CAS Code. This document contained a statement of the facts and legal arguments. The Appellant challenged the Appealed Decision, submitting the following requests for relief:

> *"1. to set aside the challenged decision;*
>
> *2. to rule that the claim of the First Respondent was time-barred and to reject the claim on the basis as inadmissible;*
>
> *3. to condemn the Respondents to the payment in the favour of the Appellant of the legal expenses incurred;*
>
> *4. to establish that the costs of the arbitration procedure shall be borne by the Respondents.*
>
> *Subsidiarily, and only in the event that the above is rejected:*
>
> *1. to set aside the challenged decision;*
>
> *2. to rule that there is no legal and/or sporting succession between the Old Entity (PAE O Aris Thessalonikis) and the Appellant;*
>
> *3. to rule that the Appellant has no liability to pay any amount to the Respondent;*
>
> *4. to condemn the Respondents to the payment in the favour of the Appellant of the legal expenses incurred;*
>
> *5. to establish that the costs of the arbitration procedure shall be borne by the Respondents.*
>
> *Subsidiarily, and only in the event that the above is rejected:*
>
> *1. to set aside the challenged decision;*

2. *to rule that the First Respondent is not entitled to receive any amount from the Appellant and that the Appellant has no obligation towards the First Respondent or alternatively, to rule that the amount payable to the First Respondent is at maximum 260,000 euros and not 750,000 euros as mistakenly the challenged decision accepted;*

3. *to condemn the Respondents to the payment in the favour of the Appellant of the legal expenses incurred;*

4. *to establish that the costs of the arbitration procedure shall be borne by the Respondents".*

38. The Appellant's submissions, in essence, may be summarised as follows:

1. Time-barred

- As to the admissibility of the claim of the First Respondent, filed on 15 May 2018 against the Appellant, the Appellant argues that the claim was evidently time-barred. More than two years have elapsed since the event giving rise to the dispute and consequently, in accordance with Article 25(5) of the applicable FIFA RSTP, the FIFA DRC shall not hear the case.

- The event giving rise to the dispute is not the affiliation of the Appellant to the HFF and its participation to the second division of the Greek Football League in the 2016/2017 season, but obviously the alleged violation of the Old Entity of the Private Agreement signed between the First Respondent and the Old Entity on 29 March 2012. Since the event giving rise to the dispute, i.e. the starting point of the counting of the two years as set out in Article 25 (5) of the FIFA RSTP, is the alleged non-payment of the agreed instalments of the Private Agreement, it is clear that the time limit of two years for the First Respondent to claim outstanding amounts related to the Private Agreement had already elapsed at the time the First Respondent lodged his new claim in front of FIFA on 15 May 2018.

- It is undisputed that the main object of the claim, the breach of the Private Agreement by the Old Entity and its consequences, refers to an event giving rise to the dispute that took place in 2012 and thus, the new claim of the First Respondent against the Appellant that was filed on 15 May 2018, has actually been filed almost four years late. As a result, the claim filed by the First Respondent before the FIFA DRC on 15 May 2018 was evidently time-barred and therefore, inadmissible.

2. Sporting successorship

- In relation to the sporting successorship of the Old Entity, the Appellant adheres that the CAS and the FIFA DRC has decided in some cases that, under certain circumstances, it is possible to consider a new entity as a successor of the old entity and to condemn the said new entity to take over and pay the debts of the old entity.

However, these cases are always cases where shady practices have been followed with the sole and clear aim that the club and/or its owner avoids the payment of outstanding and/or agreed amounts to players, coaches, other clubs and other creditors, including tax and national insurance obligations.

- The Appellant avers that the FIFA and CAS jurisprudence regarding sporting succession are not applicable in the present matter, since crucial elements of all those cases are significantly different than the ones in the present case, where, among others, there is no uninterrupted participation in the first (same) division and no players or other assets were transferred by the Old Entity to the Appellant. The CAS jurisprudence that acknowledged and accepted cases of so-called "sporting succession" in its entirety, concerns cases of clubs that had acquired in a public tender, auction or otherwise assets of the former club, including the federative rights and/or the licence to participate in the first division and actually did participate immediately and without any interruption in the top level divisions replacing the old club. In addition, in such cases, the management and/or the actual owners of both the old and the new club were usually the same and the new clubs had all or most of the players of the old clubs. The same applies for the FIFA jurisprudence. In other words, it is clear that in all the cases where succession was confirmed, FIFA and the CAS had discovered shady practices and a clear intention to circumvent laws and regulations and avoid obligations, while they were still enjoying and taking advantage of the assets of old clubs and were operating under the same management and/or were being controlled by the same persons and of course continued to play without any interruption in the same football division of their countries.

- In the present case, the Appellant did neither acquire the license of the Old Entity in order to continue to participate in the top division of Greek football while avoiding at the same time the payment of its obligations, nor had acquired in an auction or otherwise the assets (players, federative rights, etc.) of the Old Entity and certainly the Appellant is not owned and/or controlled by the same owner and the same management as the Old Entity.

- The Old Entity participated during the 2013/2014 season in the Greek Superleague and then, after the Old Entity entered into liquidation, the amateur association ARIS AS participated during the seasons 2014/2015 and 2015/2016 in the third (amateur) division, i.e. the lowest division of Greek football.

- There is also no sporting succession since the sporting continuity has been interrupted between the Old Entity and the Appellant, as the Old Entity has been entered into liquidation due to its severe financial problems and the Appellant did neither acquire any federative or other license right of the Old Entity nor any of the players and/or other assets of the Old Entity, but actually the starting point of the Amateur Association ARIS was the lowest division of Greek football and then the Appellant, as from its incorporation, participated in the second division following

promotion of the Amateur ARIS from the third division and then it was promoted to the Superleague.

- If there were any succession between clubs, such succession would primarily be between the Old Entity and the Amateur association ARIS that started playing in the amateur third division, following the Old Entity's entering into liquidation and disaffiliation from the HFF. However, in CAS 2016/A/4918, the CAS already ruled that the Amateur association ARIS is not a sporting successor of the Old Entity. Consequently, there can be no sporting succession between the Old Entity and the Appellant either, since the Appellant has only been incorporated in the summer of 2016 by the Amateur association ARIS following its promotion from the amateur third division to the professional second division (Football League), pursuant to Greek Sports law. As such, since the Appellant has been incorporated only in 2016 and the Amateur association ARIS who competed in the 2014/2015 season in the third division, after the Old Entity's disaffiliation from the HFF and entering into liquidation, is not the sporting successor of the Old Entity, there is definitely no sporting continuity between the Old Entity and the Appellant.

- The Appellant and the Old Entity are two completely different entities. The Appellant has been founded long after the Old Entity entered into liquidation to be dissolved and had been disaffiliated from the HFF. Furthermore, the Appellant has not acquired any of the assets of the Old Entity and it has a totally different management and different owner.

- The Appellant never created the impression that it wanted to be legally bound by the obligations of the Old Entity, it did not take over the license or federative rights of the Old Entity, it did not acquire any of the assets of the Old Entity and was not treated as the Old Entity by the HFF. To the contrary, the HFF has many times explained and confirmed that no succession exists between the two entities. FIFA, in line with its firm position that it needs to trust the information provided by its member association, unless it has grounds to believe otherwise, has in previous cases, accepted the explanations and statements of the HFF, which is the only competent authority to provide information to FIFA and inform FIFA whether there is a succession between two clubs and whether a club is affiliated to the HFF or not.

- The Panhellenic Association of Professional Football Players (PSAP), the Greek member of the FIFPro has confirmed that there is no financial claim whatsoever of the union and of its members against the Appellant for whichever reason, despite the fact that it was aware that many players have claims against the Old Entity.

- The Appellant is using the same, more or less, logo and the same stadium (where it also has its office), due to the participation of the Amateur association ARIS and following the pertinent concession by the Amateur association ARIS against a considerable remuneration. However, from CAS 2020/A/7092 it follows that the same stadium and the same registered address is of minor importance and the

undisputed lack of common ownership and/or management is an important element against the sporting succession of an old entity.

- The Appellant wishes to point out that the First Respondent did not submit any evidence before the FIFA DRC to support and substantiate his allegation that the Appellant is the sporting successor of the Old Entity and thus, the FIFA DRC should have rejected the allegation and the claim of the First Respondent as far as the sporting succession is concerned as unsubstantiated and not proven, since the First Respondent did not discharge his burden of proof with respect to the sporting successorship. The FIFA DRC mistakenly accepted the First Respondent's allegation by referring to jurisprudence which cannot really be taken into consideration as a precedent, since the relevant decision was taken without any defence by the Appellant and thus, the FIFA DRC just accepted in that case the allegations as uncontested.

- The award in CAS 2020/A/7092 is fully applicable to the present matter and procedure, since both the background and the facts, details and evidence of the two cases are very similar and need to receive by the CAS the same treatment and the same considerations. Although each FIFA body is not directly bound by the decisions of another FIFA body, the Second Respondent cannot convincingly argue that there is no relevance between the jurisprudence of the different FIFA judicial bodies, since the way that FIFA assesses and decides whether in each particular case there is a sporting succession must be the same and must follow the same criteria, the same principles and of course the same CAS jurisprudence, irrespectively of whether such jurisprudence is the result of an appeal against a decision of the FIFA DRC or of the FIFA DC.

- In CAS 2020/A/7092, the Panel seems to confirm the relevance and the decisive importance of immoral practices such as shady and fraudulent practices and a clear intention to circumvent laws, regulations and obligations in deciding a possible sporting succession. Moreover, the award also confirms that the Second Respondent is not bound by its previous decisions with respect to the same party and can deviate from them and even take an opposite decision when during a procedure there are elements and evidence that had not been taken into consideration before the same or any other body of FIFA.

- It cannot be disputed that the elements acknowledged by the panel in CAS 2020/A/7092 as the most important ones in the assessment of sporting succession, are all against considering the Appellant as the sporting successor of the Old Club, that is, the Appellant did not have common players with the Old Club, has different owner and management, did not acquire the federative rights of the Old Club and the right/license to participate in the same category and of course did not acquire any of the rights of the Old Club and did not claim any amounts that the Old Club was entitled to receive according to decisions of FIFA or as solidarity contribution for players trained by the Old Club.

3. Diligence of the creditor

- With reference to the CAS award CAS 2011/A/2646, the Appellant adheres that if there is at least a theoretical possibility that the player could have recovered his claim in the bankruptcy proceedings, which would have made FIFA sanctions groundless and pointless, the Player by not trying to recover his credit in the bankruptcy proceedings, has forfeited his right to request that sanctions be imposed on the new club. Applying this reasoning to the current matter *mutatis mutandis* the First Respondent was not entitled to claim the amount allegedly due by the Old Entity from the Appellant, due to the fact that the First Respondent had forfeited such right by not announcing its claim to the liquidation procedure of the Old Entity and by not showing the necessary and expected diligence in recovering his claim. It is irrelevant whether the First Respondent knew the existence of such possibility or not, since according to FIFA jurisprudence, the creditor could not invoke lack of knowledge as a defence, because he was obliged to show the proper diligence in recovering his claim.

4. The amount awarded to the First Respondent

- In no case could the Appellant be liable to pay any kind of compensation to the First Respondent for a breach committed by the Old Entity and not by the Appellant.

- It is clear that a sporting successor could be held liable to pay any outstanding amounts that were due by the old club, but it obviously cannot be condemned to pay compensation for an alleged breach that was committed by the old club and not by the actual new club that is found to be a sporting successor. The Appellant thus avers that the Appealed Decision erroneously arrived at the preposterous conclusion that the Appellant is liable to pay the First Respondent the amount of EUR 750,000 which, according to the wrong view of the Appealed Decision, is supposedly not a compensation/consequence for the breach of the Private Agreement, but an outstanding amount.

- In addition, the representatives of the Old Entity signed the English and the Spanish version of the Private Agreement under duress, in their effort to secure the license for the following season and in fact, the Spanish version without even understanding its content. The only version of the Private Agreement that should be taken into consideration by the FIFA DRC, is the English version that both parties understood and which was actually signed by the First Respondent himself.

- Moreover, Clause 4 of the Spanish version of the Private Agreement, was against morality and imposed an excessive burden on the Old Entity. For this reason, the clause should be considered null and void and should not be taken into consideration. Furthermore, in case it is decided that Clause 4 of the Spanish version is valid and applicable, the Appellant stresses that the penalty is clearly disproportionate and against morality and shall be reduced to the appropriate level.

Furthermore, it derives from said provision that the First Respondent is empowered to request the full performance of the Employment Contract, which is something that evidently cannot be done. Subsequently, this would also require the First Respondent to provide his professional services, which undoubtedly is currently not an option.

- The Appealed Decision also failed to correctly calculate the residual amount of the Employment Contract by simply accepting the calculation of the First Respondent. Since the Old Entity paid "some" of the instalments of the termination agreement, which normally means more than two of them, it follows that the Old Entity had already paid at least EUR 120,000 of the amount agreed by means of the termination agreement and thus, has paid all the instalments of the Employment Contract of 9 July 2010 up to end of May 2011 and then paid another EUR 90,000 corresponding to the first instalment of the Private Agreement.

- Even if Clause 4 of the Spanish version of the Private Agreement was meant to be a compensation for the case of breach of the Old Entity obligations, the Appealed Decision should have reduced the amount by deducting any amount that the First Respondent has earned or failed to earn during the original period of duration of the Employment Contract of 9 July 2010 until 30 June 2013, due to the obligation of the First Respondent to mitigate his damages in accordance with Article 337c Swiss Code of Obligations (the "SCO") and in general had to reduce any such compensation to the appropriate level.

B. First Respondent

39. On 17 October 2020, the First Respondent filed his Answer in accordance with Article R55 of the CAS Code, submitting the following requests for relief:

> *"1. To dismiss the Appeal filled* [sic] *by ARIS FC against the Player with respect to the decision rendered by the FIFA DRC on the 4th of June 2020, communicated to the Parties with the grounds on the 1st of July 2020;*
>
> *2. To confirm the decision rendered by the FIFA DRC on the 4th of June 2020, communicated to the Parties with the grounds on the 1st of July 2020, whereby the Appellant was ordered to compensate the First Respondent in the amount of EUR 750,000,00 plus interest at the rate of 5% p.a. as follows:*
>
> > *On the amount of EUR 380,000 as from 31 May 2012 until the date of effective payment;*
> > *On the amount of EUR 35,000 as from 31 August 2012 until the date of effective payment;*
> > *On the amount of EUR 90,000 as from 31 October 2012 until the date of effective payment;*
> > *On the amount of EUR 110,000 as from 31 January 2013 until the date of effective payment;*
> > *On the amount of EUR 135,000 as from 30 March 2013 until the date of effective payment.*
>
> *3. To condemn the Club to the payment of the whole CAS administration cost and the Arbitrators fees.*

4. *To fix a sum of 40,000 CHF to be paid by the Club to the Player to help the payment of his legal fees covering the costs of its legal representation in front of the judicial bodies of the Court of Arbitration for Sport".*

40. The submissions of the First Respondent, in essence, may be summarised as follows:

1. Time-barred

- The allegations of the Appellant whether the claim of the First Respondent was time-barred is based on an incorrect interpretation of Article 25(5) of the FIFA RSTP. The true event giving rise to the dispute is the confirmation of the HFF of the re-affiliation of the Appellant to the HFF on 1 July 2016, and its subsequent resumption of participation in the second division of the Greek football league during the 2016/2017 football season. Up until this point, it would not have been possible for the First Respondent *"to assert his claim through the apparatus of FIFA"*.

- In this regard, the First Respondent referred to the CAS award CAS 2016/A/4918, following which the CAS appears to be open the possibility of granting a "new" claim against a "different" legal entity, provided that (1) the mandatory procedures set out in the applicable regulations are adhered to, and (2) the claimant is able to discharge to burden of proving that the current entity is the sporting successor of the indebted former entity.

- The current matter clearly fulfils the criteria as envisaged in CAS 2012/A/2919, as the Appellant and the First Respondent had mutually agreed on a new payment schedule, as a result of Appellant's (Debtor) request, and the First Respondent (Creditor) was *bona fide* in relying on the same.

- Moreover, in terms of Swiss law, more precisely Article 135 and 137 of the SCO, the First Respondent's claim is not time-barred since the two-year limitation set out in Article 25(5) of the FIFA RSTP, pursuant to mandatory Swiss law rules, was interrupted on 29 May 2014, upon the submission of the First Respondent's statement of claim to FIFA. Accordingly, a fresh two-year period of limitation begun anew as of 12 March 2015, being the date on which the First Respondent received the communication that, due to the Appellant's loss of affiliation to the HFF, FIFA was not in a position to proceed with his claim.

- Thus, by virtue of the Appellant's loss of affiliation to the HFF, and the First Respondent's resultant inability to assert his claim, the new two-year period of limitation was accordingly suspended until the Appellant's re-affiliation to the HFF was confirmed on 1 July 2016, being the earliest date on which the First Respondent could have resumed with his claim. In terms of Article 128(3) of the SCO, the First Respondent's claim will only prescribe on 1 July 2021 in terms of Swiss law, i.e. five years after the Appellant's re-affiliation to the HFF was confirmed on 1 July 2016.

2. Sporting successorship

- Contrary to the statements of the Appellant, the First Respondent is of the opinion that the Appellant is either the same entity or as the sporting successor of the Old Club, bound by a valid decision of the FIFA DRC.

- While the First Respondent concurs with the Appellant regarding the various shady practices adopted by clubs seeking to avoid having to comply with their payment obligations, the First Respondent disagrees with the Appellant that the jurisprudence of FIFA and the CAS is not applicable to the present matter, since crucial elements are significantly different from the ones in the present case. FIFA and the CAS have thus demonstrated a degree of willingness to accept that a debt, contracted in the past, by an organization that is now legally dissolved, is enforceable against the new entity, despite the fact that a liquidation procedure has been completed according to national law, provided that certain criteria are established.

- Article 15(4) of the FIFA Disciplinary Code (the "FDC) does not constitute a *numerous clausus* for the purposes of determining the issue of sporting succession, and, accordingly, the FIFA DRC and/or CAS, retain a discretion to consider any other elements which they may deem relevant in determining the outcome of a dispute. Despite the Appellant's attempted outward manifestation of its intention to be recognized as its own separate legal and/or sporting entity, which it claims is accordingly not responsible for the debts of the Old Club, internally, however, it continues to identify itself as the same entity for the purposes of arranging and conducting its affairs and activities.

- In this regard, it should be noted that (i) both the entities hold their local matches at the same stadium despite there being at least three potential stadiums in the city of Thessaloniki, (ii) both the Old Club and the Appellant completed in the Greek league under the name "ARIS FC" or "Aris Thessaloniki", (iii) the Old Club and the Appellant are distinct entities, in that the former is a football societé anonyme ("f.s.a".), and the latter is an amateur sporting association, (iv) both of the entities use the same colours (i.e. yellow-black) and (v) both the Appellant and the Old Club identify themselves according to the same footballing heritage and historical figures, thereby seeking to exploit supporter's affiliation these icons and momentous events in order to maximize financial gains. The website of the Appellant published two statements, which make numerous explicit references to the name of the Old Club when providing information regarding the organization of its internal state of affairs, almost a whole two years following the Appellant's re-affiliation to the HFF in July 2016.

- The factor of the same players is not definitive in and of itself, as, when considered in relation to the totality of the other evidence against the Appellant, the Appellant has not tendered any evidence which could be used in support of its statements that the Appellant is not owned and/or controlled by the same owner and the same

management as the Old Club and finaly, although jurisprudence suggests that one entity must directly replace the other in the same division, in order for there to be sporting succession, this element should not be afforded too much weigh, as the Appellant was able to benefit from its relegation, in that it was afforded an opportunity to get its affairs in order before returning to the top division. Consequently, it is possible to conclude that there has been sporting succession between the Appellant and the Old Club, as five of the seven criteria listed in Article 15 (4) of the FDC, have demonstrated to be in favour of the First Respondent.

- In addition, unlike in CAS 2020/A/7092, which concerns an appeal from a decision of the FIFA DC, the present case is based on an appeal of a decision rendered by the FIFA DRC. In the current matter the First Respondent is merely seeking an order which confirms the decision of the FIFA DRC rendering the Appellant liable for payment of the Old Club's outstanding financial obligations towards the First Respondent.

- Moreover, as also follows from CAS 2020/A/7092, sporting federations and sporting arbitral institutions are not bound to follow a system of binding precedents whereby like cases shall be decided alike, such analysis is to be made on a case-by-case basis, i.e. elements present in a certain case tip the balance in one direction, whereas elements present in a lesser or higher degree in another case, may tip the balance in the opposite direction.

3. Diligence of the creditor

- The jurisprudence relied upon by the Appellant in order to demonstrate a lack of diligence of the First Respondent by failing to announce his claim within the bankruptcy, liquidation or other relevant procedures, is not relevant with regard to the current dispute under consideration, and thus should not be applicable.

- The main considerations which informed the outcome in CAS 2011/A/2646 was the request that disciplinary sanctions be imposed by means of the old Article 64 of the FDC (new Aricle 15 of the FDC), in order to enforce and ensure compliance with a prior judicial award. Whereas, in the current matter, the emphasis is more on the First Respondent's attempt to achieve fulfilment of outstanding obligations owed to him by the Appellant, and not the imposition of disciplinary sanctions, as the latter is only permissible with regard to vertical disputes between FIFA and its subordinate entities.

- Moreover, disciplinary sanction can only be imposed in terms of vertical disputes, whereas the current dispute is a horizontal dispute, ground in contract, where there is no hierarchy between the Parties. The current dispute should be viewed as notionally distinction from the above situation, in that First Respondent was, at no stage prior to the Appealed Decision being rendered was in possession of an arbitral award which it could have used to assert his rights.

- Furthermore, the First Respondent's conduct cannot be seen as a tacit waiver of his right to collect the debt, rather, the First Respondent submits that precluding him from asserting a valid claim before FIFA could potentially amount to either a denial of justice or an infringement of the right to be heard, which is accordingly not permissible in terms of Swiss public policy.

- The First Respondent is aware that a certain level of diligence is required when seeking to recover outstanding payments, which is why the Player attempted to enforce his claim in front of FIFA on 29 May 2014, however, due to circumstances beyond his control, it was not possible to recover the outstanding payments.

- The jurisprudence relied on by the Appellant in support of its submission is not relevant with regard to the current dispute, as the factual circumstances and objectives of the parties in each is so distinct that it is not possible for one to have bearing on the other.

4. The amount awarded to the First Respondent

- The First Respondent was entitled to receive the amount of EUR 750,000 which was correctly awarded to him in the Appealed Decision. Once sporting succession has been found to exist, the debt of a previous entity, whatever form they may take, can be imputed onto the new entity, who will accordingly be responsible for discharging same.

- In relation to the contention that both agreements were signed under duress, the First Respondent would like to point out that he was accordingly unaware of the background discussions taking place between the Appellant and the HFF, and that he should accordingly not be penalized or held responsible for the Appellant's apparent failure to get their state of affairs in order. In addition, the allegation regarding the Appellant's inability to understand the Spanish version of the Private Agreement cannot be sustained, as a result of the intertwined principles of *freedom of contract, caveat subscriptor* and *pacta sunt servanda* which accordingly preclude the Appellant denying that it is bound by the Spanish version of the Private Agreement, concluded on 30 March 2012.

- The First Respondent strongly rejects the assertion that *"the only version of the* [Private Agreement] *that should be taken into consideration by the FIFA DRC, is the English version"*. Clearly, and according to simple logic, the Spanish version of the Private Agreement concluded the day of the English version of the Private Agreement should be preferred, regardless of it forms, as it is the most recent expression of the will of the Parties. Accordingly, the Appellant bears the burden of proving its allegation that the penalty is *"grossly disproportionate in accordance with Swiss Law"*, as it has not tendered any evidence which give support to same.

- With regard to the arguments of the Appellant that specific performance of the terms of the Employment Contract is not possible, the First Respondent highlights that he only requests specific performance of the Appellant's obligations and the entirety of the Employment Contract.

- In relation to the alleged failure of the First Respondent to mitigate his damages the First Respondent states that in line with CAS 2018/A/6029 it would have been impossible for the First Respondent to do more than signing an employment contract with the Spanish football club Real Murcia C.F. S.A.D. exactly one day after the termination agreement with the Appellant was signed.

C. Second Respondent

41. On 29 October 2020, the Second Respondent filed its Answer in accordance with Article R55 of the CAS Code, submitting the following requests for relief:

"(a) rejecting the reliefs sought by the Appellant;

(b) confirming the Appealed Decision;

(c) ordering the Appellants to bear the full costs of these arbitration proceedings

(d) ordering the Appellant to make a contribution to FIFA's legal costs".

42. The submissions of the Second Respondent, in essence, may be summarised as follows:

1. Time-barred

- The Appellant's line of reasoning bears a fundamental flaw in considering that the Player lodged the relevant claim only in May 2018. The First Respondent initiated his action in relation to the contractual dispute with the Old Club on 29 August 2014, i.e. within the statute of limitations provided for in the FIFA RSTP. As far as the prescription of his claim is concerned, the First Respondent's action was interrupted since then.

- The case at stake presents a particular scenario, which requires to integrate the lacuna in the FIFA RSTP. In particular, it is necessary to interpret if and when the prescription period of Article 25(5) of the FIFA RSTP can be considered to have been interrupted. As per the constant jurisprudence of the CAS, such as CAS 2016/A/4846 and CAS 2019/A/6525, and the indication of authoritative doctrine, this provision of the FIFA RSTP has to be interpreted – and any lacuna be filled – in light of Swiss law, more precisely Article 138 of the SCO.

- By having filed a claim on 29 August 2014, the First Respondent interrupted the limitation period. The dispute was not "settled" by the FIFA DRC as per Article 138

of the SCO until the said judicial body rendered the Appealed Decision. In this respect, the Player's correspondence of 8 May 2018 by means of which he asked the FIFA DRC to pass a decision against the Appellant does not have to be understood as a new claim, but rather as a continuation of the action he initiated on 29 May 2014. Consequently, the claim of the First Respondent was not time-barred and the arguments of the Appellant in this regard should be dismissed.

2. Sporting successorship

- The Appellant is to be considered by all means the Old Club's sporting successor. In this regard, the reasoning of the Appellant contains some fallacies. The first flaw in the Appellant's line of defence consists in portraying the necessity of suspicious intentions behind the bankruptcy of the old club for the sporting succession to produce its effects upon the new club vis-à-vis the creditors of the old club. Although when football clubs are concerned by insolvency proceedings, bankruptcy and sporting succession somehow end up dovetailing, these are two different concepts that pertain to different domains and should not be conceptually juxtaposed.

- From CAS 2013/A/3425, it follows that there can be sporting succession without bankruptcy proceedings having occurred since not all cases of sporting succession are triggered by the inability of a club to face its financial obligations.

- Most importantly, however, the obligation resting with the successor to pay the predecessor's previous debts is not dependent on whether the reasons triggering the bankruptcy ab initio were legitimate or suspicious, but on the fact that a new club takes over the old club's assets and its sportive distinctive traits.

- In other words, a finding of sporting succession does not have to derive necessarily from a fraudulent conduct, nor does FIFA have to prove the existence of "shady practices" from the sporting successor. While this can certainly be an element to take into account when analysing a concrete scenario, it nevertheless does not constitute a *conditio sine qua non* for the Committee – or the Sole Arbitrator – to be able to conclude that sporting succession occurred. In casu, it is evident that the Appellant took advantage of the situation to make use of the essential elements that conformed the Old Club and with which the fans use to identify Aris FC, in order to continue with that club's activity. Even if the Appellant's stance does not contravene any rule in Greece, it does create a situation that is undesirable and unwarranted in football.

- Despite the fact that there is extensive CAS case law indicating that whether a club is operated through a different legal entity, this does not bear relevance on whether a sporting succession has taken place or, as put by the CAS in 2013/A/3425 *"*[…] *a club is a sporting entity identifiable by itself that, as a general rule, transcends the legal entities which operate it* […]*"*.

- FIFA deciding bodies are not bound by previous decisions that it has rendered, i.e. its rulings do not have to observe the principle of stare decisis let alone those passed by other deciding bodies. Furthermore, like any deciding body within FIFA, the FIFA DRC always deals with its cases on a case-by-case basis analysing and taking into account all the specific circumstances of each case. For example, the findings of the panel in CAS 2020/A/7092 heavily rely on Italian law, however, in the present case the Appellant itself agreed with FIFA that the present dispute shall be decided according to the various FIFA Regulations and Swiss law. As such, the aformentioned CAS award is of limited relevance to decide the present case due to the individualized analysis that is required from any proceeding or disciplinary nature.

- The specific circumstances of this case show that the Appellant is the Old Club's sporting successor. In this regard, the Second Respondent stresses that both (i) clubs have always been identified, and competed, simply as "Aris" or "Aris Thessaloniki FC", (ii) the team's emblem has remained unchanged, (iii) the Appellant is playing its local matches in the same stadium where the Old Club was playing, i.e. the Kleanthis Vikelidis Stadium, located in Thessaloniki, (iv) the two clubs share the same colours, i.e. yellow and black, (v) according to the information retrievable through the Appellant's media channels, the two clubs share the same history as well, (vi) there is no indication on the Appellant's official website of discontinuity with the Old Club (same date of foundation, only one loge defining the club as from its birth in 1914 and the list of titles and achievements of the team starts as from 1928) and (vii) the Appellant itself confirms having acquired the Old Club's assets from the Amateur Sports Association.

- During the hiatus between the liquidation of the Old Club and the creation of the Appellant, the Amateur Sports Association was competing in the amateur Greek championship (i.e. the 3rd national division). In other words, the sporting continuity has been preserved by means of the creation of another entity in the form of an f.s.a. (the Appellant) capable of replacing in the Greek Professional League the one that went bankrupt (the Old Club), maintaining all the sporting traits of the latter, while in the meantime the Amateur Sports Association kept on existing and competing in the amateur leagues.

- In this regard, the Appellant was already found to be the Old Club's sporting succesor by the FIFA Disciplinary Committee (the "FIFA DC") within the scope of four different proceedings (all of which involved breaches of Article 64 of the FDC for not respecting the FIFA DRC decisions passed on 2013 and 2015) and never appealed any of the respective decisions. As a matter of fact, the Appellant has already reached payment agreements with the creditors or even fully paid said debts in compliance with the relevant decisions. It seems that, up to the moment it lodged this appeal, the Appellant itself never considered not to be the Old Club's sporting successor.

- The fact that the Panhellenic Association of Professional Football Players (PSAP) has not filed (yet) claims against the Appellant does not mean *per se* that a sporting succession with the Old Club has not occurred. The two circumstances are completely different and independent from each other.

- The Second Respondent deems that there is really no other option than to conclude that the Appellant is the Old Club's sporting successor and thus the Appealed Decision was right in its finding. Once the sporting succession is established, according to the CAS case law, the successor is held liable for the debts generated and not fulfilled by the previous clubs being replaced, and this on the basis of the sporting continuity of the club in light of the lex sportiva. Consequently, the Appealed Decision correctly found that the Appellant was the entity ultimately liable to pay to the Player the amounts which were deriving from the contractual breaches attributable to the Old Club.

3. Due diligence of the creditor

- While the decision appealed against in CAS 2011/A/2646 was a decision of the FIFA DC, the Appealed Decision in these procedures is a decision of the FIFA DRC. In other words, the very nature of the challenged ruling does not allow any meaningful parallels between the two scenarios to start with. The Appealed Decision did not (and could not) sanction the Appellant as a result of his failure to comply with the CAS Award (which was the subject matter of the appeal in CAS 2011/A/2646). As such, the nature of the Appealed Decision does not allow speculations on the possibility to sanction a debtor club in relation to the diligence exercised by the creditor in the context of the local bankruptcy proceedings. Such argument should therefore be rejected by the Sole Arbitrator.

4. The amount awarded to the First Respondent

- In line with the constant CAS jurisprudence which confirms that FIFA does not have standing in so-called 'horizontal' disputes, once the admissibility of the Player's claim which led to the Appealed Decision has been addressed and confirmed, it becomes unnecessary for the Second Respondent to comment on a dispute which exclusively concerns the other parties to this arbitration. The Second Respondent thus respectfully declines to comment on the merits of the contractual dispute (save for the already addressed issues concerning the admissibility of the First Respondent's claim before the FIFA DRC and the issue of the sporting succession) and simply refers to the FIFA DRC's findings in what we find is a sound and well-grounded Appealed Decision.

VI. JURISDICTION

43. Article R47 of the CAS Code provides as follows:

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

44. The jurisdiction of the CAS derives from Article 58(1) of the FIFA Statutes (2019 edition) which reads:

> *"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question".*

45. The jurisdiction of the CAS is further confirmed by the Orders of Procedure duly signed by the Parties.

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

VII. ADMISSIBILITY

47. Article R49 of the CAS Code provides as follows:

> *"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has already been constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties".*

48. The Sole Arbitrator notes that pursuant to Article 58(1) of the FIFA Statutes, the time limit to file an appeal is 21 days of receipt of the Appealed Decision.

49. In accordance with Articles R47 and R48 of the CAS Code, the Club filed its Statement of Appeal on 19 May 2020, which is within the deadline. The Statement of Appeal complied with the other conditions set out in Article R48 of the CAS Code.

50. Therefore, the appeal was timely submitted and is admissible.

VIII. APPLICABLE LAW

51. Article R58 of the CAS Code provides more specifically the following:

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

52. Article 57(2) of the FIFA Statutes reads as follows:

> *"The arbitral tribunal shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to the rules of law with which the dispute has the closest connection".*

53. The Sole Arbitrator notes that the Appellant and the First Respondent have not chosen any law in the Private Agreement.

54. In its submissions, the Appellant submitted that FIFA Regulations and additionally Swiss law applies pursuant to Article R58 of the CAS Code and the FIFA Statutes.

55. The First Respondent submitted that the present proceedings shall be decided exclusively under the FIFA RSTP (2012 edition) and the SCO.

56. The Sole Arbitrator is satisfied that the FIFA Regulations, in particular the FIFA RSTP, are applicable, with Swiss law applying to fill in any gaps or *lacuna* within those regulations.

IX. PRELIMINARY ISSUES

57. Before turning to the examination of the substantive issues, the Sole Arbitrator will address preliminary points, which were raised by the Parties during the arbitration.

58. These points concern the evidentiary requests from the side of the Appellant and the First Respondent.

59. As a preliminary remark, the Sole Arbitrator wishes to underline that on the basis of Article R57 par. 3 of the CAS Code, Article R44.3 of the CAS Code is also applicable to the current appeal arbitration proceedings, from which latter provision it follows that:

> *"A party may request the Panel to order the other party to produce documents in its custody or under its control. The party seeking such production shall demonstrate that such documents are likely to exist and to be relevant".*

60. In this context, the Appellant made the following request in the Appeal Brief:

> *"The Appellant requests hereby the CAS, in accordance with article 44.3 of the Code, to order the First Respondent to produce the employment contracts he signed for the seasons 2011-2012 and 2012-2013 and the Second Respondent to provide the information contained in the FIFA TMS regarding the amounts earned by the First Respondent under the said contracts, since any amounts earned would have to be deducted from the payable compensation, if any, as mitigation of damages, in the unexpected event that the CAS decides that the First Respondent's claim is not time-barred (quod non) and that the Appellant is the sporting successor of the* [Old Club] *(quod non) and that the Appellant is actually liable to pay the First Respondent compensation for breach of the agreement on the basis of clause 4 of the Spanish version of the* [Private Agreement] *(quod non)".*

61. As the First Respondent submitted the new employment contract of the Player with Real Murcia C.F. S.A.D., covering the 2011/2012 and 2012/2013 seasons, the Appellant's request is moot.

62. Turning to the evidentiary request from the side of the First Respondent, if follows from his submissions that:

> *"The Player herein requests CAS to request a copy of the names of the persons who owned and/or controlled and/or managed the* [Old Club].
>
> *The Player herein requests CAS to request a copy of the names of the persons who owned and/or controlled and/or managed the* [Old Club]*"* [sic].

63. The Sole Arbitrator decided that the documents as requested by the First Respondent in his evidentary request were likely to exist and also likely to be relevant, in particular in light of the determination of the existence or not of the issue of sporting succession, which is under review in this appeal.

64. Consequently, as communicated by the CAS Court Office on 11 November 2020 and pursuant to Article R44.3 of the CAS Code, the Appellant was invited to submit a copy of the names of the persons who owned and/or controlled and/or managed the Old Club.

65. On 25 November 2020, the Appellant submitted documents containing the names of the persons that constituted the last board of directors of the Old Club before its entering into liquidation, as well as a list of the Old Club's shareholders at the time the Old Club entered into liquidation, as requested per letter of 11 November 2020.

66. The Sole Arbitrator can now turn to the substantive points, to be examined in sequence.

X. MERITS

A. The Main Issues

67. The main issues to be resolved by the Sole Arbitrator are:

i) Was the claim of the Appellant time-barred?
ii) If not, is the Appellant the sporting successor of the Old Club?
iii) If so, did the First Respondent act with due diligence?
iv) If so, what is the outstanding amount?

i) Was the appeal of the Appellant time-barred?

68. The first issue the Sole Arbitrator will deal with relates to the Appellant' position that the First Respondent' claim filed on 8 May 2018 against the Appellant is time-barred.

69. As a starting point, the Sole Arbitrator refers to Article 25(5) of the FIFA RSTP, to which provision the Parties also referred in their submissions, which reads as follows:

> *"The relevant FIFA decision-making body shall not hear any case subject to these regulations if more than two years have elapsed since the event giving rise to the dispute. Application of this time limit shall be examined ex officio in each individual case".*

70. In this context, the Sole Arbitrator observes that the Parties take different positions as to the "event giving rise to the dispute". On the one hand, the Appellant and the Second Respondent agree that the "event giving rise to the dispute" is the Old Club's violation of the Private Agreement, which English and Spanish versions were signed on 29 March 2012 and 30 March 2012. In this regard, the Sole Arbitrator notes however that the Appellant and the Second Respondent reach different conclusions as to the outcome of the issue whether or not the claim is time-barred. As a matter of fact, it is the Appellant's position that the claim of the First Respondent is time-barred as more than two year had elapsed since what he considers to be the "event giving rise to the dispute". On the other hand, the First Respondent takes the position that the "event giving rise to the dispute" is the re-affiliation of the Appellant to the HFF, which was confirmed on 1 July 2016.

71. Considering the above positions of the Parties, the Sole Arbitrator underlines that the question at stake is whether the claim against the Appellant is time-barred. With regard to this question, it is not relevant whether the claim against the Old Club was filed in time as the Sole Arbitrator finds this is more an issue related to the First Respondent's required degree of diligence, as will be discussed under that part of the Award below. More specifically, with regard to the question whether or not the claim against the Appellant is time-barred, the Sole Arbitrator finds that only the claim against the Appellant, which is under review in the present arbitration, must be considered in light of Article 25(5) of the FIFA RSTP and the stipulated two years deadline therein, in particular what must be considered in this case as the "event giving rise to the dispute".

72. In this regard, the Sole Arbitrator does not agree with the Appellant and the Second Respondent's view that the Old Club's violation of the Private Agreement must be considered as the "event giving rise to the dispute" (irrespective of the different conclusions reached). As set out above, here it concerns a claim against the Appellant, which is to be considered by the Sole Arbitrator as a new different legal entity (see, *inter alia*, CAS 2016/A/4918 and CAS 2017/A/5460) (at the same time noting that this is a different legal concept as compared to sporting succession, as will be discussed below).

73. In fact, the Sole Arbitrator notes that the Appellant was only established in 2016, as was also confirmed by the Appellant and which is not in dispute, as a consequence of which it is clear that the First Respondent, in any event, could not have filed a claim against the Appellant prior to that date. What is more, only as from the moment the Appellant was affiliated to the HFF, which was confirmed on 1 July 2016, the First Respondent could objectively have sought recourse against this newly established entity in front of the FIFA DRC. Only as from that specific moment, when the Appellant started actively participating in a competition organised under the auspices of the HFF, the FIFA DRC, also in consideration of the party requirement according to the relevant applicable law, in particular under Article 6 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber, was able to deal with the case.

74. Therefore, the Sole Arbitrator finds that the "event giving rise to the dispute" is the Appellant's date of affiliation to the HFF, i.e. on 1 July 2016, as it was from that specific moment in time that the First Respondent was in the position to initiate proceedings against the Appellant before FIFA DRC. It was not possible to do so before that date.

75. Against the above background, and in view of the fact that the First Respondent's claim against the Appellant was filed on 8 May 2018, which is within the stipulated deadline of two years as referred to in Article 25(5) of the FIFA RSTP, the Sole Arbitrator concludes that the First Respondent's claim against the Appellant was not time-barred.

76. For the avoidance of misunderstanding, the Sole Arbitrator wishes to add that determining otherwise, and in case the "event giving rise to the dispute" would be the Old Club's breach in 2012, this would lead to the situation, at least in light of the two years deadline as stipulated in Article 25(5) of the FIFA RSTP, that an alleged sporting successor could avoid payment obligations by waiting two years as from the event that gave rise to the dispute in order for a possible claim of the creditor to be time-barred. In this regard, the Sole Arbitrator notes that the Second Respondent argues that such claim against an old club could still be interrupted under Swiss law as there is a lacuna in the FIFA RSTP, but still, Article 25(5) of the FIFA RSTP does not provide for such scenario, in particular that under circumstances this limitation period can be interrupted.

ii) If not, is the Appellant the sporting successor of the Old Club?

77. Having established that the claim of the First Respondent is not time-barred, the Sole Arbitrator shall now examine whether or not the Appellant is to be considered the sporting successor of the Old Club, i.e. the entity which was ordered by the FIFA DRC to pay the amount of EUR 750,000 following the breach of the Private Agreement.

a. In general: points of departure and legal framework

78. As a first important point of departure and to have this distinction clear, the Sole Arbitrator emphasizes that the issue of the succession of two sporting clubs might be different than if one were to apply civil law regarding the succession of two separate legal entities. As such, the mere fact that two parties appeared as two separate legal entities is, so the Sole Arbitrator finds, not a decisive factor to rule out sporting succession. The Sole Arbitrator underlines that the question is not whether the Appellant is the legal successor of the Old Club. The central question to address by the Sole Arbitrator in this case is whether the Appellant is the sporting successor of the Old Club.

79. In addition, and for the sake of further clarity, the Sole Arbitrator also emphasises, as opposed to the concept of legal succession, that in the context of sporting succession it is of relevance to determine this concept in light of the eyes of the general public. In other words, so the Sole Arbitrator finds, the picture the alleged sporting successor presents to the general public is of relevance. A parallel can be drawn with the "sporting name" of a club, which is the name under which a club appears in public. The Sole Arbitrator will attach much weight to these circumstances in the present arbitration.

80. In this context, the Sole Arbitrator underlines that there is a significant number of CAS awards that dealt with the legal concept of sporting succession. The Sole Arbitrator refers to well-established jurisprudence from which it follows under what circumstances a "new" club can be considered as a "sporting successor", listing criteria to determine if "sporting succession" has taken place, irregardless of the legal form under which the respective clubs have operated (see, *inter alia*, CAS 2007/A/1355, CAS 2011/A/2614, CAS 2011/A/2646, CAS 2012/A/2778, CAS 2016/A/4550 and CAS 2016/A/4576).

81. In particular, the Sole Arbitrator refers to an important award in CAS 2013/A/3425 (as was also referred to in CAS 2018/A/5618), from which it clearly follows that:

> *"… the identity of a club is constituted by elements such as its name, colours, fans, history, sporting achievements, shield, trophies, stadium, roster of players, historic figures, etc. that allow it to distinguish from all the other clubs. Hence, the prevalence of the continuity and permanence in time of the sporting institution in front of the entity that manages it has been recognised, even when dealing with the change of management companies completely different from themselves"* (original text in Spanish).

82. This approach has been applied in a number of decisions of the CAS (see, *inter alia*, CAS 2016/A/4576, CAS 2018/A/5618, CAS 2020/A/6884 and CAS 2020/A/7092). The effect of these decisions, and to which the Sole Arbitrator fully adheres, is that the sporting successor

of a former, no longer existing club can, as a matter of principle, be liable to meet the financial obligations of that former club notwithstanding that the successor is not a party to any agreement, arrangement or understanding pursuant to which the financial obligation arose or a privy of any of the parties to any such agreement, arrangement or understanding and regardless of whether there has been a change of management or corporate structure or ownership of the club in question.

83. In light of the foregoing, although not directly applicable to the present matter, the Sole Arbitrator wishes to refer to Article 15(4) of the 2019 edition of the FDC:

> *"The sporting successor of a non-compliant party shall also be considered a non-compliant party and thus subject to the obligations under this provision. Criteria to assess whether an entity is to be considered as the sporting successor of another entity are, among others, its headquarters, name, legal form, team colours, players, shareholders or stakeholders or ownership and the category of competition concerned".*

And to Article 24ter(1) FIFA RSTP (also not directly applicable to the case):

> *"The sporting successor of a debtor shall be considered the debtor and be subject to any decision or confirmation letter issued pursuant to this article. The criteria to assess whether an entity is the sporting successor of another entity are, among others, its headquarters, name, legal form, team colours, players, shareholders or stakeholders or ownership and the category of competition concerned".*

84. The Sole Arbitrator considers it appropriate to refer to both provisions as the Parties repeatedly referred in their submissions to the listed criteria as mentioned in Article 15(4) of the 2019 edition of the FDC as well as that Article 24ter(1) of the FIFA RSTP is almost identical to Article 15(4) of the FDC. These provisions shed more light in order to establish whether or not sporting succession exists based on these criteria, bringing in mind that the provisions are also a codification of existing jurisprudence.

85. Additionally, the Sole Arbitrator wishes to add that if a club is considered to be a sporting successor of a non-compliant club and once this is established, the sporting successor shall be considered a non-compliant party (see, *inter alia*, CAS 2020/A/7092).

86. For the sake of clarity and avoidance of any misunderstanding, the Sole Arbitrator further recognises that the elements as referred to in Article 15(4) of the 2019 edition of the FDC and Article 24ter(1) of the FIFA RSTP are not exhaustive, as clearly follows from the words *"among others"*. The Sole Arbitrator feels forced to lay emphasis on this. In other words, the existence of several elements in light of these provisions can lead, in its combination, and so even if not all elements are met in a specific case, to the conclusion that a club has to be considered as a "sporting successor". The overall package of elements is decisive (see also CAS 2020/A/6884). As was also clearly stated in CAS 2020/A/7092, on which the Appellant heavily relies, the Sole Arbitrator considers himself not bound by prior decisions of the FIFA DC, FIFA DRC or the CAS. In fact, because such analysis is to be made on a case-by-case basis, i.e. elements present in a certain case may tip the balance in one direction, whereas the elements present in a lesser or higher degree in another case, may tip the balance in the opposite direction.

87. The Sole Arbitrator also feels comforted to take this approach and not to be bound by previous decisions, considering that in arbitration there is no *"stare decisis"*. At the same time, as rightly stated by previous panels, the Sole Arbitrator is aware that CAS rulings form a valuable body of case law and can contribute to strengthen legal predictability in international sports law (see, *inter alia*, CAS 2004/A/628, CAS 2008/A/1545). More specifically, consistency, in particular also as to the issue of sporting succession to which the centre of the dispute revolves, helps to develop legitimate expectations among the relevant parties. Therefore, although not binding, the Sole Arbitrator has taken the CAS decisions, in particular regarding sporting succession as listed above, into attentive consideration and, as such, accorded to such awards a substantial precedential value.

88. Before analysing the relevant criteria, the Sole Arbitrator also wishes to point out that although the concept of "sporting succession" is mainly implemented in order to avoid abuse, as also rightfully considered by the panel in CAS 2020/A/7092, the Sole Arbitrator disagrees with the Appellant that "shady practices", as far as this must be understood by the Sole Arbitrator as fraudulent practices trying to avoid payments, must be demonstrated in order to conclude that an entity is the sporting successor of another entity. In this regard, the Sole Arbitrator is also mindful of FIFA Circular no. 1681 and the main purpose of FIFA to implement the concept of sporting succession. However, and although it can certainly be an element to consider when analysing a concrete scenario, as was also argued by the Second Respondent, shady practices in itself, or rather fraudulent practices by parties trying to avoid payments, do not constitute a *conditio sine qua non* in order to conclude that sporting succession occurred. In other words, sporting succession can exist even if there is absence of such practices. The same applies to the absence of bankruptcy proceedings. Put differently, sporting succession can also exist even if there is the absence of bankruptcy proceedings (see, *inter alia*, CAS 2013/A/3425 and CAS 2020/A/6884). By the same token, the Sole Arbitrator wishes to add that sporting succession is also not exclusively limited to entities which purchase clubs through public tender or auction (see, *inter alia*, CAS 2018/A/5618).

89. Against the above legal background and in view of the relevant criteria that apply to the present dispute, the Sole Arbitrator finds that there is conclusive evidence that it concerns a matter of sporting succession at a sporting level in the present case. In fact, many relevant criteria, as clearly listed in Article 15(4) of the FDC and Article 24ter(1) of the FIFA RSTP, as well as the ones as derived from the above CAS jurisprudence, are present. Therefore, the Sole Arbitrator concludes, as will be demonstrated below, that, in this case the Appellant is actually the sporting successor of the Old Club. The Sole Arbitrator will now turn to assessing the individual criteria to support this decision.

b. In particular: the criteria

90. First, the Sole Arbitrator observes and finds it of much importance that the names of the Appellant and the Old Club are practically identical. The Sole Arbitrator underlines that both clubs have always been identified, and competed, simply as "Aris" or "Aris Thessaloniki FC". This also clearly follows from the Appellant's own website, which is to be considered an important indication as it is not information simply following from some internet sources or

social media platforms. Additionally, the Sole Arbitrator notes that, as was demonstrated by the Second Respondent, also at the website of UEFA, the Old Club and the Appellant were both identified as "Aris" or "Aris Thessaloniki FC".

91. Further to this, there is no doubt that the Appellant publicly portrays itself being the same club as the Old Club. In this regard, the Sole Arbitrator attaches much value to the perception of the public, as set out above. Moreover, it is clear to the Sole Arbitrator that the Appellant identifies itself as a sports entity founded on 25 March 1914 and the list of titles and achievements of the team starts as from 1928. As such, the history of the Old Club is exactly the same as the Appellant and a great number of players who played for the Original Debtor are in fact recognized in the Appellant's history, thereby, as correctly stated by the First Respondent, seeking to exploit supporter's affiliation with these icons and momentous events in order to maximize financial gains. The Sole Arbitrator finds this a very important aspect in light of sporting succession. In fact, if Appellant wanted to avoid any risk of being considered the sporting successor of the Old Club, it could have distinguished itself from the Old Club, but it clearly opted not to do so. At the least, it cannot be denied that the Appellant had a serious hand in the creation of confusion towards the general public which could have been easily avoided.

92. Additionally, the Sole Arbitrator underlines that the Old Club and the Appellant have their premises at the same address, have the same stadium, use the same logo, colors and uniform. As to the logo, for example, it is true that there are some differences, but also here it comes down to the confusion that is created, which aspect is found to be of much importance for the Sole Arbitrator. In fact, the logos are practically identical.

93. The arguments as raised by the Appellant that ownership, license football teams and legal entities are different, are fully noted and taken into account by the Sole Arbitrator, which was also sufficiently demonstrated by the Appellant. However, these arguments will not prevail over the significant number of elements on the other side, as summed up above, that clearly point in the direction of the existence of sporting succession. In this regard, the Sole Arbitrator reiterates that the elements are not exhaustive and are purely meant as indicative pointers of direction in order to determine whether sporting successorship exists. In this context, it is the combination of elements that exist in the present arbitration, as referred to above, that leads to the conclusion that the Appellant is considered as the sporting successor of the Old Club. In addition, whether a club is operated through a different legal entity does not bear relevance on whether a sporting succession has taken place, i.e. *"a sporting entity identifiable by itself that, as a general rule, transcends the legal entities which operate it"* (CAS 2013/A/3425 at par. 139). Therefore, the arguments by the Appellant that the latter is a different legal entity do not last, at least not as to the question whether the Appellant must be considered as the sporting successor of the Old Club. These arguments are of very less relevance here.

94. The same applies to the fact that no players were taken over by the Appellant from the Old Club. This is also of little relevance, considering that Article 18 of Annex A of the HFF Regulations on the Status and Transfer of Players determine that all players' contract were automatically terminated on relegation of the Old Club to the amateur division. By the same token, the Sole Arbitrator does not attach decisive value to the fact that the Appellant did not

directly replace the Old Club in the same division as it comes down to the fact, so the Sole Arbitrator finds, whether the Appellant actually benefited from the relegation of the Old Club, which is the case here. In other words, the analysis must be made from a broader perspective in terms of whether the situation provided for an opportunity for the Appellant and that it made use of such benefits.

95. Also the award issued in CAS 2016/A/4918 relied upon by the Appellant is of little relevance as it does not follow from such award that no sporting succession took place between the Appellant and the Old Club. Rather, to the contrary. In fact, from the award it can also not be ruled out that the Appellant is the sporting successor of the Old Club.

96. Further to this, the Sole Arbitrator does not want to leave unmentioned that according to CAS 2011/A/2646, a new club acquiring in the bankruptcy proceedings the *"economic unit composed of all the assets seized"* from another club, was to be understood as a successor of the old club since it was clear that the new club, by purchasing the assets of the old club, continued the activity formerly developed by the old club with the same image, badge, hymn, representative colours, emblems and placement. In the present case, the Appellant is using the same, more or less, logo and the same stadium and also holds its office at the same location at the Old Club against a considerable remuneration. In other words, the Appellant, at the least, created the impression that it wanted to be legally bound by the obligations of its predecessor (CAS 2007/A/1233). The fact that the Appellant did not acquire the federative rights in a public tender, auction or otherwise assets would not only not prevail over the criteria that point in the direction of sporting successorship, but is also not convincing and questionable as the Appellant did confirm having acquired the Old Club's assets from the Amateur Sports Association against a considerable remuneration.

97. As a final note, although this aspect is not decisive as to his judgment, the Sole Arbitrator does not want to leave unmentioned that the Appellant has already been found to be the Old Club's sporting successor by the FIFA DC in four different proceedings.

98. In light of the foregoing, the Sole Arbitrator agrees with the Respondents and rejects the Appellant's arguments on the issue of sporting succession, and upholds the findings in the Appealed Decision that the Appellant is the sporting successor of the Old Club. For all the reasons above, there is no doubt for the Sole Arbitrator, weighting all the relevant criteria, that the Appellant should be considered the same club as the Old Club or, at least, the Old Club's sporting successor, and that the Appellant can, as a consequence thereof, be held liable in order to comply with the financial obligations of the Old Club.

iii) If so, did the First Respondent act with due diligence?

99. Now having established that the Appellant is the Old Club's sporting successor, the Sole Arbitrator notes that the Appellant further argues that, even if there is sporting succession, the First Respondent would still not be entitled to any amount from the Appellant as it did not show the required degree of diligence as follows from the jurisprudence of CAS, in particular CAS 2011/A/2646.

100. Indeed, the Sole Arbitrator is aware and remarks that, in the past, CAS panels have also dealt several times with the question if the creditor showed the required degree of diligence, which obligation does not arise from the FIFA Regulations. In fact, it is well-established jurisprudence to assess this aspect in the context of a possible contribution to a breach of Article 64 FDC (edition 2011 or 2017)/Article 15 FDC (edition 2019).

101. More specifically, the approach taken by CAS panels does not only follow from CAS 2011/A/2646, to which the Appellant referred, but also from other CAS jurisprudence (see, *inter alia*, CAS 2019/A/6461, CAS 2020/A/6884 and CAS 2020/A/6745). The Sole Arbitrator fully concurs with the general stance taken in such jurisprudence regarding the required degree of diligence.

102. In particular, there should be no doubt, which also follows from the above jurisprudence and to which approach the Sole Arbitrator also fully adheres, that a creditor is expected to be vigilant and to take prompt and appropriate legal action to assert his claims. In principle, no disciplinary sanctions can be imposed on a club as a result of succession, should the creditor fail to claim his credit in the bankruptcy proceedings of the former club, as there is a theoretical possibility he could have recovered his credit, instead of remaining passive. As was decided in the above CAS jurisprudence, in such instances it is necessary to examine whether or not a creditor has shown the required degree of diligence in order to recover the amounts he is owned. On the other hand, as was also considered by the panel in CAS 2019/A/6461, the Sole Arbitrator is mindful that there is no blanket rule whether or not a creditor has shown the required degree of diligence.

103. Notwithstanding the above, the Sole Arbitrator notes that the present dispute significantly differs from the aforementioned CAS jurisprudence. As a matter of fact, the present dispute does not concern an appeal of a decision of the FIFA DC. Instead, the Appealed Decision concerns a decision of the FIFA DRC. In the Appealed Decision it was decided that the Appellant is responsible for the consequences of the Old Club's contractual breach of the Private Agreement. In other words, by means of the Appealed Decision the Appellant was not sanctioned as a result of a failure to comply with a final and binding decision of the FIFA DC. As such, it does not concern a matter related to the imposition of disciplinary sanctions. Therefore, the Sole Arbitrator finds that the required degree of diligence from the side of the First Respondent in terms of the above cited jurisprudence, as was argued by the Appellant, does not apply to the present case.

104. For the sake of completeness, the Sole Arbitrator recognises and adds that this could have been different in case the FIFA DRC had rendered a decision in light of Article 24bis of the FIFA RSTP, but this is not the case and such decision was not rendered.

105. Consequently, and in view of the reasons as set out above, the Sole Arbitrator concludes that the required diligence in view of the well-established CAS jurisprudence, such as CAS 2011/A/2646, does not apply to the present case. Any failure in terms of such required degree of diligence cannot be considered a valid reason for the Sole Arbitrator to decide that the First Respondent forfeited its right to receive the outstanding amounts as claimed from the Appellant in the present dispute.

106. Although the required diligence in light of the well-established CAS jurisprudence, as set out above, does not apply to the present dispute, the Sole Arbitrator agrees with the First Respondent that a certain level of diligence is still required. Therefore, as set out above, the Sole Arbitrator finds it of relevance that, as the First Respondent argued, the First Respondent made use of the legal remedies available to him, which he did by means of the claim he filed against the Old Club before the FIFA DRC. This claim was filed in time, more specifically on 29 May 2014, and so within the two years deadline of Article 25(5) of the FIFA RSTP, considering that the "event giving rise to the dispute" regarding the claim against the Old Club was its violation of the Private Agreement, in particular the second instalment of EUR 95,000, which was not paid on 31 May 2012.

107. Against the above background, the Sole Arbitrator is comfortably satisfied that it is sufficiently demonstrated that the First Respondent acted with due diligence in this case.

iv) If so, what is the outstanding amount?

108. As to the amount claimed by the First Respondent, the Sole Arbitrator observes that the Appellant contained that it cannot be condemned to pay compensation for an alleged breach that was committed by the Old Club and not by the Appellant. Moreover, the Appellant stressed that the representatives of the Old Club signed the two versions of the Private Agreement under duress, in their effort to secure the license for the following season and the Spanish version without even understanding its content. Only the English version of the Private Agreement must be taken into account. Moreover, the Appellant argues that Clause 4 of the Spanish version of the Private Agreement is considered null and void as it is against morality and imposes an excessive burden on the Old Club.

109. In addition, the Appellant argued that even if Clause 4 of the Spanish version of the Private Agreement is considered valid and applicable, the clause should be considered unenforceable as it only mentions that the First Respondent is empowered to request the full performance of the Employment Contract, which is something that evidently cannot be done. Moreover, the Appellant argued that the First Respondent also failed to respect his obligation to mitigate his damages in accordance with Article 337c of the SCO.

110. The Sole Arbitrator does not agree with the Appellant's arguments.

111. First, the Sole Arbitrator notes that, as also established by other CAS panels, as set out above, the provisions in relation to sporting successorship do not leave any discretion for the adjudicatory body. In fact, it clearly follows from the CAS jurisprudence that if a club is considered to be a "sporting successor" of a non-compliant club, it is clear that it shall also be considered a non-compliant party (see, *inter alia*, CAS 2020/A/7092).

112. Therefore, having established that the Appellant is the sporting successor of the Old Club, as set out above, the Appellant is considered the non-compliant party and, as such, is liable for outstanding payments under the Private Agreement to the First Respondent.

113. As far as the Appellant asserted that the Private Agreement was signed under duress, the Sole Arbitrator remarks, as CAS panels have noted before, that the burden of proof in situations of duress is on the party making such accusations (see, *inter alia*, CAS 2017/A/5366). In particular, the Sole Arbitrator notes that Article 8 of the Swiss Civil Code states that *"[u]nless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact"*.

114. It is clear to the Sole Arbitrator that the Appellant did not meet the burden of proof. More specifically, the Appellant does not substantiate, at all, why both versions, i.e. the English and the Spanish version, of the Private Agreement were signed under duress. It was only stated by the Appellant that both versions were signed under duress, however without any motivation. This is far from sufficient in terms of Article 8 of the SCO.

115. Moreover, the Sole Arbitrator refers to Article 31(1) and (2) of the SCO that reads:

> *"1. Where the party acting under error, fraud or duress neither declares to the other party that he intends not to honour the contract nor seeks restitution for the performance made within one year, the contract is deemed to have been ratified.*
>
> *2. The one-year period runs from the time that the error or the fraud was discovered or from the time that the duress ended".*

116. In this regard, the Sole Arbitrator observes that the Appellant, even if it had been able to meet the burden of proof, only argued that the Private Agreement was signed under duress in these CAS proceedings for the first time. Therefore, at this stage, and in particular in the absence of any situation as described under paragraph 2 of Article 31 of the SCO, which was neither demonstrated by the Appellant in the present case, the Sole Arbitrator concludes that the Appellant, already for this reason alone, is not able to successfully adopt that there was a situation of duress as such request is time-barred.

117. As to the arguments of the Appellant that Clause 4 of the Spanish version of the Private Agreement was against morality and imposed an excessive burden on the Old Club and must therefore be considered null and void, the Sole Arbitrator does not see why such provision should be null and void for these reasons. As rightfully concluded by the FIFA DRC, Clause 4 of the Spanish version of the Private Agreement is equivalent to a financial disposition in a settlement agreement to which the parties involved explicitly agreed. Therefore, in light of *pacta sunt servanda*, Clause 4 is considered to be valid.

118. Furthermore, it is irrelevant, so the Sole Arbitrator finds, that the Employment Contract cannot be performed by the First Respondent, as is wrongfully argued by the Appellant. In fact, as set out above, Clause 4 of the Private Agreement must be considered a penalty for not complying with its financial obligations under the Private Agreement. Therefore, there is no reason for the Sole Arbitrator to disregard Clause 4 for this specific reason.

119. There is also no need for the Sole Arbitrator to reduce the amount of EUR 750,000.

120. In this context, there is no reason to do so in light of the duty to mitigate under Article 337c of the SCO with regard to the earnings received by the First Respondent under his new employment contract with Real Murcia C.F. S.A.D.. In fact, as also rightfully decided by the FIFA DRC, the outstanding amount is considered outstanding payment and not compensation for breach of contract. Therefore, no mitigation shall be applied.

121. Furthermore, it is also not relevant whether the Old Club paid "some" of the instalments, as further argued by the Appellant, as Clause 4 of the Private Agreement is clear. In fact, in case of non-payment of any of the payments under the Private Agreement, it was agreed that the First Respondent was entitled to receive the amount of EUR 750,000.

122. Further to this, there is also no ground for any reduction for reason that the amount is "grossly disproportionate", as was also argued by the Appellant. Also here the Appellant failed to substantiate why such amount was cleary disproportionate. Further to this, the Sole Arbitrator underlines that Swiss law does not prohibit the use of such contractual penalties for untimely payment of debts. The Sole Arbitrator takes judicial note that the penalty clause contained in Clause 4 of the Private Agreement qualifies as a contractual penalty (*"clause pénale"* or *"Konventionalstrafe"*) under Swiss law, following Article 160 of the SCO, *i.e.* under the law applicable to the merits of the dispute in this arbitration. The Sole Arbitrator remarks that, in principle, under Swiss law, parties are free to determine the amount of the contractual penalty (Article 163(1) of the SCO). Further to this, it also follows from the CAS jurisprudence that contractual penalties can be valid (see, *inter alia*, CAS 2017/A/5233, CAS 2010/A/2317, CAS 2011/A/2323).

123. The Sole Arbitrator notes that in general contractual penalties should be reduced in case they are excessive, which follows from Article 163(3) CO. The law, however, does not provide a clear definition of an excessive penalty, so that it is for the judge to establish, with regard to the merits of the case and all the relevant circumstances, whether the penalty is excessive and, if so, to what extent it should be reduced (ATF 82 II 142 consid. 3, JdT 1957 I 104). It must be stressed that the judge should not reduce a penalty too easily and the principle of contractual liberty, which is essential under Swiss law, has always to be privileged in case of doubt (see MOOSER M., Commentaire Romand du Code des obligations, Basel, 2003, n. 7 ad art. 163; COUCHEPIN G., La clause pénale, Zurich 2008, § 934).

124. Therefore, and in view of the above considerations, the Sole Arbitrator must act with reluctance with regard to a reduction of Clause 4 of the Private Agreement. In this regard, the Sole Arbitrator notes that, according to the Swiss case law and legal doctrine, a penalty is deemed to be excessive when it is not reasonable and exceeds patently the amount that would seem just and equitable (ATF 82 II 142 consid. 3, JdT 1957 I 104). Thus, the judge may reduce when it is unreasonable to an extent which cannot be justified (COUCHEPIN G., op. cit., § 840 ff.). In that respect, the Sole Arbitrator emphasises that the burden of the proof of the penalty's excessiveness falls upon the debtor (Article 8 CO / COUCHEPIN G., op. cit., § 851; ATF 114 II 264, JdT 1989 I 74).

125. In light of the above, and weighing all criteria, the Sole Arbitrator finds that Clause 4 of the Private Agreement is not unreasonable regarding the breach committed by Old Club and the First Respondent's interest to secure performance of the breached obligation.

126. In the present case, therefore, the Sole Arbitrator considers that Clause 4 of the Private Agreement is not excessive, also considering the fact that the Appellant did not sufficiently demonstrate that such clause is excessive, as has already been set out above.

127. Therefore, under the circumstances, the Sole Arbitrator fully concurs with the decision of the FIFA DRC to award the First Respondent with the amount of EUR 750,000 plus interest at the rate of 5% *per annum* as further specified in the Appealed Decision.

B. Conclusion

128. Based on the foregoing, and after having taken into due consideration all the specific circumstances of the case, the evidence produced and the arguments submitted by the Parties, the Appealed Decision is upheld as the Sole Arbitrator concludes that:

i) The claim of the Appellant filed before FIFA was not time-barred;
ii) The Appellant is the sporting successor of the Old Club;
iii) The First Respondent acted with due diligence; and
iv) The outstanding amount is in total EUR 750,000 plus 5% interest *p.a.* on the amounts as further specified by the FIFA DRC in the Appealed Decision.

129. All other and further motions or prayers for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 22 July 2020 by the ARIS FC against Mr Oriol Lozano Farrán and FIFA with respect to the decision issued on 4 June 2020 by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* is rejected.

2. The decision issued on 4 June 2020 by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* is confirmed.

3. (…).

4. (…).

5. All other and further motions or prayers for relief are dismissed.