



**Arbitration CAS 2015/A/3957 FC Sportul Studentesc SA v. FC Petrolul Ploiesti SA & Mares George Alexandru, award of 30 November 2015**

Panel: Mr Ivaylo Dermendjiev (Bulgaria), Sole arbitrator

*Football*

*Contract of employment between a junior player and a club*

*Determination of the applicable version of the regulations*

*Principle and exception regarding the first contract of employment of a junior player with a club*

1. According to the federation's applicable regulations, any decision of the federation's executive committee enters into force only at the time of its publication on the federation's website. A mere declaration or an "announcement" of the federation's executive committee to modify the federation's regulations cannot supersede this clear rule. Therefore, until a new version is published on the federation's website, the version actually in force is applicable.
  
2. Under the applicable national regulations for Status and Transfer of Players (RSTP), starting with the age of 16, junior players are obliged to enter into their first contract with the club with which they are registered in a definite manner under provided conditions. As an exception, if, within 60 days as of the date the player's 16th birthday, the player's club does not propose the conclusion of any contract to the player under the provided conditions, the player shall be entitled to enter into a contract with another club without the consent of the club with whom he is registered. The player shall subsequently register with the new club only if the latter can prove that the training compensation was paid or that said obligation was settled in any other way. In this respect, if the new club demonstrated that it had tried to pay the training compensation directly to the former club of the player, without success, the new club shall be considered as having fulfilled its obligations with regard to the payment of training compensation. In addition, according to the applicable regulations, a player is also free to conclude an employment agreement, if at the time of the conclusion of the contract, its club had been excluded from any competition organized by the national federation.

**I. PARTIES**

1. FC Sportul Studentesc SA (as the "Appellant" or "FC Sportul") is a football club with its registered office in Bucharest, Romania. It is a member of the Romanian Football Federation ("RFF"), itself affiliated to the Fédération Internationale de Football Association ("FIFA").

2. FC Petrolul Ploiesti SA ( the “First Respondent” or “FC Petrolul”) is a football club with its registered office in Ploiesti, Romania. It is also a member of the RFF.
3. Mr Mares George Alexandru (the “Second Respondent” or the “Player”) is a professional football player. He was born on 16 May 1996 and is of Romanian nationality.

## II. THE DECISION AND ISSUES ON APPEAL

4. FC Sportul appeals a decision (the “Appealed Decision”) notified on 5 February 2015 by the Appeals Commission of the RFF (the “RFFAC”) which was rendered on 6 November 2014, rejecting FC Sportul’s appeal against the decision of the RFF National Dispute Resolution Chamber (the “CNSL”) rendered on 10 July 2014, confirming the valid registration of the employment agreement concluded between the Player and FC Petrolul.

## III. BACKGROUND FACTS

5. Below is a summary of the main relevant facts and allegations based on the parties’ written submissions and evidence adduced at the hearing. Additional facts and allegations may be set out, where relevant, in connection with the 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, it refers in its Award only to the submission and evidence it considers necessary to explain its reasoning.
6. On 29 September 2005, the Player started his sporting career, at the age of 9, when he was registered for the first time as an amateur player with FC Steaua Bucarest.
7. On 2 November 2011, the Player was registered with FC Sportul, as an amateur player.
8. During the 2011/2012 season, the Player was called to play three times with the first team of FC Sportul, in the first division of the Romanian championship (the “Liga 1”). FC Sportul was relegated to the second division (the “Liga 2”) at the end of that season.
9. On 16 May 2012, the Player celebrated his 16<sup>th</sup> birthday.
10. During the 2012/2013 season, the Player participated in 11 matches with the first team of FC Sportul in Liga 2.
11. On 27 November 2013, FC Sportul was excluded by the RFF from all its competitions.
12. On 2 June 2014, the Player and FC Petrolul concluded an employment agreement whereby the former would join the latter from 5 June 2014 until 30 June 2018 (the “Employment Agreement”).

13. On 11 July 2014, FC Petrolul paid the training compensation to FC Steaua for the period spent by the Player in that club.
14. Still on 11 July 2014, after several previous attempts to contact FC Sportul, FC Petrolul formally requested the bank account details in order to proceed with the payment of the training compensation for the Player.
15. FC Sportul never replied to this request. FC Petrolul therefore relied on the so-called “payment offer procedure and deposit” provided by the Romanian Code of Civil Procedure (Article 1005 *et seq.*) for those situations in which a creditor refuse to receive a payment, allowing the debtor to discharge its obligations.
16. Also on 11 July 2014, the Executive Committee of the RFF (the “RFF EC”) announced on its website the approval of some amendments to Articles 18 and 27 of the RFF Regulations for Status and Transfer of Players (the “RFF RSTP”), without giving any details on the text of those amendments.
17. On 15 July 2014, FC Petrolul submitted before the RFF a request to register the Employment Agreement (the “Registration Request”).
18. On 1 August 2014, after the “payment offer procedure and deposit” was completed, the Competition Department of the RFF denied the Registration Request.
19. On 5 August 2014, FC Petrolul filed an application for registration of the Player before the CNSL.
20. On 7 October 2014, the CNSL admitted the registration of the Player with FC Petrolul.
21. FC Sportul appealed against this decision before the RFF Appeals Committee (the “RFF AC”).
22. On 31 December 2014, FC Sportul proposed a professional employment agreement to the Player. The proposal was notified to the Player on the same date.
23. On 5 February 2015, FC Sportul was notified of the decision rendered on 6 November 2014 by the RFF AC dismissing its appeal and confirming the registration of the Player with FC Petrolul.

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

24. Following the notification of the Appealed Decision, the Appellant filed a Statement of Appeal before the Court of Arbitration for Sport (the “CAS”) pursuant to Article R47 of the Code of Sports-related Arbitration (the “Code”) on 25 February 2015. Within its Statement of Appeal, the Appellant nominated Mr. Cristian Jura, attorney-at-law in Bucharest (Romania), as arbitrator.

25. On 4 March 2015, the CAS Court Office sent a letter to the Parties, informing them on various aspects of the proceedings, in particular about the ten-day time limit granted by Article R51 of the Code to file the Appeal Brief.
26. On 6 March 2015, the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code.
27. On 11 March 2015, the First Respondent's legal counsel (i) informed the CAS Court Office about its mandate, (ii) requested an extension of the time limit to file the Answer until the Appellant has paid its share of the advance of costs, in accordance with Article R55 para. 3 of the Code and (iii) appointed Mr Frans de Weger, attorney-at-law in Zeist (the Netherlands), as arbitrator.
28. On the same day, the CAS Court Office informed the Parties that the Second Respondent was also represented by the First Respondent's legal counsel, that the time limit to file the answer was set aside and that a new time limit would be set once the Appellant would have paid its share of the advance of costs.
29. On 30 March 2015, following a request from the Appellant to reduce the advance of costs as the Respondents did not agree to pay their share, the CAS Court Office informed the Parties that it was not possible to do so, unless the number of arbitrators was modified.
30. On 3 April 2015, the Appellant requested that a Sole Arbitrator be appointed to decide on the matter and that the advance of costs be reduced accordingly.
31. On 8 April 2015, the Respondents objected that the matter be referred to a Sole Arbitrator.
32. On 13 April 2015, the CAS Court Office informed the Parties that the Deputy President of the CAS Appeals Arbitration Division had decided, considering the circumstances of the case, to submit the arbitration procedure to a Sole Arbitrator, in accordance with Article R50 para. 1 of the Code.
33. On 11 May 2015, following a request by the Respondents, the Appellant filed a resolution of the extraordinary general assembly of shareholders of the clubs dated of the same day, stating that Mrs Claudia Elena Iordachescu was duly authorized to represent the Appellant in front of CAS.
34. On 4 June 2015, and in accordance with Article R56 of the CAS Code, the Parties were informed that, unless they agreed or the President of the Panel ordered otherwise on the basis of exceptional circumstances, they were not authorized to supplement or amend their requests or their arguments, nor to produce new exhibits, nor to specify further evidence on which they intend to rely, after the submission of the appeal brief and of the answer.
35. On 9 June 2015, the Parties were informed that Mr Ivaylo Dermendjiev, attorney-at-law in Sofia, Bulgaria, had been appointed by the President of the CAS Appeals Arbitration Division as Sole Arbitrator to decide the present matter.

36. On 29 May 2015, the Respondents filed their answer.
37. On 25 June 2015, the Parties were informed that the hearing would be held on 13 July 2015 at the CAS Court Office in Lausanne, Switzerland.
38. On 7 July 2015, the Parties signed and returned the Order of Procedure.
39. On 10 July 2015, the Appellant filed an unsolicited written submission addressing several aspects of the answer.
40. On 13 July 2015, a hearing was held in Lausanne, Switzerland.
41. On 16 July 2015, the CAS Court Office sent a letter to the RFF, requesting an answer to the following questions:
  - *On which date did the 2014 Edition of the RFF-RSTP come into force? How and when were the clubs affiliated to the RFF informed of the modification of these regulations?*
  - *In your opinion, does Article 14 of RFF-RSTP comply with the provisions set out by Articles 39 and 45 of the Lisbon Treaty?*
42. On 10 August 2015, the RFF sent a letter to the CAS Court Office, answering the above-mentioned questions.
43. On 24 and 25 August 2015, the Respondents, respectively the Appellant, commented on the RFF's letter of 10 August 2015.

## **V. THE HEARING**

44. A hearing was held on 13 July 2015 at the CAS headquarters in Lausanne (the "Hearing"), in the presence of the Sole Arbitrator. At the outset of the Hearing, the Parties declared that they had no objection with regard to the composition of the arbitral tribunal.
45. The following persons attended the hearing:
  - FC Sportul was represented by Mr. Bogdan Lucan, Counsel;
  - Mr. Mares George Alexandru and FC Petrolul were represented by Mr. Josep F. Vandellos and Ms. Marina Alexe, Counsel;
46. Mr. Fabien Cagneux, Counsel to the CAS, and Mr. Serge Vittoz, *ad hoc* clerk, assisted the Sole Arbitrator at the Hearing.
47. At the beginning of the Hearing, the Respondents contested the powers of Mr. Bogdan Lucan to duly represent the Appellant. After having heard the Parties and analysed the evidence provided by the Appellant in this regard, the Sole Arbitrator decided that Mr. Bogdan Lucan had the necessary powers to represent the Appellant.

48. The Parties were afforded the opportunity to present their case, to submit their arguments, and to answer the questions asked by the Panel. The Parties explicitly agreed at the end of the hearing that their right to be heard and to be treated equally in these arbitration proceedings had been fully observed.

## VI. THE PARTIES' SUBMISSIONS

### A. FC Sportul

49. FC Sportul's submissions, in essence, may be summarized as follows:
- The RFF is a private non-profit, independent and non-governmental legal entity.
  - RFF regulations are not issued by a public authority or a State body invested with the power to issue generally binding rules. Therefore, the provisions of Article 78 of the Romanian Constitution, according to which "*Law is published in the Official Journal of Romania and comes into force three (3) days after the publication or on a subsequent date stipulated in its text*" do not apply to regulation issued by the RFF.
  - According to Article 41.2 RFF RSTP 2014, this document came into force on 15 July 2014.
  - RFF's affiliate members, players and commissions had been aware of the entry into force of the RFF RSTP 2014 since 11 July 2014, when an announcement in this regard was published on the RFF website.
  - The Registration Request, filed by FC Petrolul on 15 July 2014, had to comply with RFF RSTP 2014.
  - The time to be taken into consideration with regard to the applicability of the RFF RSTP is the time of the Registration Request, *i.e.* 15 July 2014, and not the signing of the Employment Agreement, *i.e.* 2 June 2014.
  - The Employment Agreement violates Article 14.2 RFF RSTP 2014. Thus, according to this provision, the club where the player is registered has the right to propose to the player to sign a contract for the provision of football services. The club has the opportunity to exercise this right between 1 July to 31 December of the year preceding the one in which the player turns 19 years old. The Player was to turn 19 years old in 2015. Therefore the reference period is 1 July 2014 to 31 December 2014. Interpreting *per a contrario* these statutory provisions, the Player could not sign a contract with another football club in that period.
  - At the time of the filing of the Registration Request, the Player was already registered with FC Sportul. Therefore, as long as the latter had the right to propose a contract to the Player during the period from July 1 to December 31 2014, he was forbidden to sign a contract with another football club.
  - This prohibition was effective on 15 July 2014, date on which the RFF RSTP 2014 entered into force.

- The Employment Agreement shall therefore be invalidated.

B. *FC Petrolul Ploiesti SA and Mr. Mares George Alexandru*

50. The submissions of the Respondents, in essence, can be summarized as follows:

- The Player, born on 16 May 1996, was registered as an amateur player from 2005 until 2011 with FC Steaua Bucuresti.
- On 2 November 2011, the Player was registered, still as an amateur player, for FC Sportul.
- In the 2011/2012 season, the Player played three (3) times with the first division team of FC Petrolul, in Liga 1. At the end of this season, FC Petrolul was relegated to the Liga 2.
- The Player turned 16 years old on 16 May 2012.
- During the 2012/2013, the First Team of FC Sportul was excluded from all FRF organized competitions.
- The Player concluded a professional football contract with FC Petrolul on 2 June 2014.
- On 11 July 2014, FC Petrolul paid the training compensation to FC Steaua Bucuresti.
- On the same date, after several frustrated attempts to contact FC Sportul, FC Petrolul requested the bank account details of FC Sportul, in order to pay the owed training compensation. As no answer was received, FC Petrolul decided to rely on the so-called “payment offer procedure deposit” provided by Romanian law in order to discharge its obligations with regard to such payment.
- On 11 July 2014, the RFF EC announced on the RFF website the approval of some amendments to Articles 18 and 27 of the RFF RSTP
- On 15 July 2014, FC Petrolul submitted before the RFF the request to register the Employment Agreement.
- On 16 July 2014, the uploaded version of the RFF RSTP website was still the 2013 version.
- Article 14 RFF RSTP, in its editions 2013 and 2014, contains an exclusive right granted to the RFF affiliated clubs to compel their junior players to sign their first professional contract with them. This system allows clubs to block or retain at their own will players during a period of eight years.
- Such a system, besides being immoral, directly violates fundamental rights granted by the Romanian Constitution, in particular its Article 41 which states as follows :

*The right to work shall not be restricted. Everyone has a free choice of his/her profession, trade or occupation, as well as work place.*

Article 14 RFF RSTP provides a rule impeding junior amateur players to freely sign a labour contract and pursue his career with the club of his choice constitutes a direct and unjustified obstacle to the fundamental right to work and to choose the place of work.

- The above fundamental rights are further developed by the Romanian Labour Code (Article 3), whose dispositions are compulsory and cannot be abrogated.
- The right of a club to compel a junior player signing his first contract, such as Article 14 RFF RSTP, contravenes likewise Article 4 of the European Convention on Human Rights (ECHR), stating in particular that *“No one shall be required to perform forced or compulsory labour”*.
- Furthermore, Article 14 RFF RSTP also violates several provisions of the FIFA Regulations on the Status and Transfer of Players (Ed. 2015).
- Lastly, Article 14 RFF RSTP is also contrary to Swiss fundamental values regarding labour law and also contrary to international public order, and therefore, cannot be applied in the context of an arbitration procedure in Switzerland in accordance with Article 19(2) of the Swiss Private Law Act (“PILA”).
- Notwithstanding the above, the Respondents consider that the Employment Agreement was concluded in accordance with the applicable regulations and therefore, validly registered.
- Furthermore, new regulations, such as the RFF RSTP 2014 cannot under any circumstance apply to facts that occurred prior to their entry into force, as for instance, the conclusion of the Employment Agreement on 2 June 2014.
- It is a non-disputed fact by the Appellant that the Player and FC Sportul were not prevented by any regulations or laws to conclude the contract on 2 June 2014. Therefore, it is legitimate that the Respondents rely also on the rules in force at the time of the conclusion of the Employment Agreement in order to register it before the RFF competent department. The registration procedure is not constitutive of any right, but rather a simple declarative step in order to be opposable to third parties, and thus, the registration is to be subject to the same rules as the contract presented for registration. The interpretation of the Appellant would lead to the unacceptable situation of a contract validly and legally concluded not being able to be registered due to a subsequent and unknown regulation at the time of conclusion, generating a state of legal uncertainty.
- That, in conjunction with the fact that the new regulations (RFF RSTP 2014) could not possibly have come into force as they were not published until 21 July 2014, date on which they were firstly made public; and additionally, that the Respondents had a 45 days deadline at their disposal to submit the Employment Agreement for its registration before the RFF, renders the conclusion of the RFF AC with regard to the applicable version of the regulations governing the registration of the Employment Agreement (RFF RSTP 2013) entirely correct.
- Moreover, the Player having been registered with FC Petrolul in the preceding year of his 19<sup>th</sup> birthday, the right conferred by Article 14 para. 2 RFF RSTP 2013 would belong in any event, exclusively to FC Petrolul.
- The fact that FC Sportul never proposed the Player the conclusion of a contract after his 16<sup>th</sup> birthday is not disputed. Consequently, it results beyond any doubt that the



Respondents were entitled to conclude the Employment Agreement legally at any time after the deadline expired.

51. In addition, Article 13 para. 5 RFF RSTP 2013 also allows a Player to conclude a contract with a new club if, in the course of a championship, a team is excluded from that competition. FC Sportul was excluded from participating in any organized football competition on 27 November 2013, *i.e.* during the 2013/2014 season. A season, according to RFF RSTP 2013, lasts from 1 July to 30 June of the following year.

## VII. THE PARTIES' REQUEST FOR RELIEF

52. The Appellant's requests for relief are the following:

*Based on the above mentioned arguments, the Appellant requests that CAS rules as follows:*

- *To Admit the Appeal against the Decision no. 86 issued by the Appeal Committee of the Romanian Football Federation;*
- *To invalidate the contract no. 713, concluded on June 02, 2014, between Petrolul and Mr. Mares George Alexandru due to the non-compliance with the provisions of Regulations on the Status and Transfer of Football Player, in force since July 15, 2014, Regulations issued by the Romanian Football Federation;*
- *To invalidate the request made by Petrolul, for legitimating Mr. Mares George Alexandru under the above mentioned contract.*

53. The Respondents' requests for relief are the following:

*In the light of the above consideration, the RESPONDENT (sic) respectfully requests the Sole Arbitrator:*

- 1) *In principal, to fully dismiss the appeal filed by the FC Sportul against the Respondents, confirming that both the contract concluded between the Player and FC Petrolul is valid and accordingly, the registration of the Player with the latter is legal.*
- 2) *Accordingly, to ascertain and declare that Article 14 of the FRF-RSTP (Ed. 2013 and Ed. 2014) is null, void and inapplicable, and consequently producing no effects, being contrary to the fundamental legal principles announced in the present brief.*
- 3) *In subsidiary, for the case the Sole Arbitrator considers Article 14 of the FRF-RSTP legal and/or applicable, to ascertain that the Appellant club was deprived from the right to compel the Player to sign a contract, in view of the provisions contained in the applicable version of the FRF-RSTP (Ed. 2013).*
- 4) *Also in subsidiary, for the case the Sole Arbitrator considers that Article 14 of the FRF-RSTP is legal and/or applicable, and that the applicable Edition of the FRF-RSTP is the 2014, to ascertain that the Appellant club was deprived from the right to compel the Player to sign a contract, in view of the provisions contained in the applicable version of the FRF-RSTP (Ed. 2014).*
- 5) *To condemn the Appellant to the payment of the whole CAS administration costs and the Panel fees.*
- 6) *To fix a sum, to be paid by the Appellant to the Respondent, in order to pay its defense fees and costs in a sum of 20.000 Euro (10.000 Euro for each of the Respondents).*

### VIII. CAS JURISDICTION

54. The jurisdiction of CAS, which is not disputed, derives from Article 36 para. 17 of the RFF RSTP 2014. It is further confirmed by the order of procedure duly signed by the Parties. It follows that CAS has jurisdiction to decide on the present dispute.
55. Under Article R57 of the CAS Code, the Sole Arbitrator has the full power to review the facts and the law.

### IX. ADMISSIBILITY

56. The appeal was filed within the deadline provided by the RFF RSTP 2014, which is not disputed by the Respondents. It further complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court office fee.
57. It follows that the appeal is admissible.

### X. APPLICABLE LAW

58. Article R58 of the CAS Code provides the following:  
*“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*
59. A likewise approach can be found in Article 187 PILA, being applicable as the seat of the arbitral tribunal in Switzerland, which, inter alia, provides that *“the arbitral tribunal shall rule according to the law chosen by the parties or, in the absence of such a choice, according to the law with which the action is most closely connected”.*
60. In the absence of any rules of law chosen by the parties, the RFF Statutes and regulations shall apply primarily, and Romanian law subsidiary, as this is the law of the country in which the RFF is domiciled.
61. No issue of applicable law arose in the present case.

### XI. MERITS

#### A. The Main issues

62. In view of the above, the main issues to be resolved by the Sole Arbitrator are:
  - a) Which version of the RFF RSTP is applicable to the case at hand?

- b) Was the Player allowed to conclude the Employment Agreement with FC Petrolul, according to the applicable regulations?
- c) If applicable, is Article 14 RFF RSTP, in any of its version, compatible with the Romanian Constitution and European Law?
- a) Which version of the RFF RSTP is applicable to the case at hand?
63. At the heart of the dispute between the Parties is the question of the version of the RFF RSTP applicable at the time when the Registration Request was filed by the Respondent, *i.e.* on 15 July 2015.
64. On the one hand, the Appellant considers that it is the 2014 Edition which is applicable, mainly because (i) the RFF EC adopted these regulations on 11 July 2014, and announced such adoption on the RFF website, and (ii) because Article 41 para. 2 of RFF RSTP 2014 expressly states that it entered into force on 15 July 2015.
65. On the other hand, the Respondents consider that the 2013 Edition is applicable as (i) the Employment Agreement was signed on 2 June 2014 and that therefore new regulations cannot have retroactive effect and (ii) the RFF RSTP 2014 was not published on the RFF website before 21 July 2014.
66. As to the RFF administration, it stated in particular the following in its letter to the CAS Court Office of 10 August 2015:
- Referring to the first question, the date on which the RSTP came into force is 15 July 2014. The clubs affiliated to the Romanian Football Federation were informed about the changes of these regulations by publishing a consolidated version of the document on the website of the Romanian Football Federation according to the Article 41 paragraph 2 from RSTP. According to Article 34 paragraph 10 of FRF Statute, "The decisions of the Executive Committee will be published on the official website of the FRF, [www.frf.ro](http://www.frf.ro), except for the confidential decisions. The public or confidential nature of the decisions is determined by the Secretary General of the FRF. The publication in the above-mentioned form stands as official communication towards any interested person". After the publication of the Regulation, it enters into force and applies to all procedures pending as of that date.*
67. Article 41 para. 2 RFF RSTP 2014 states as follows:
- This Regulation shall enter into force on 15.07.2014 and will apply to all applications to the CNSL pending at this time.*
68. The Sole arbitrator finds that the Respondents provided sufficient evidence by enclosing print screens to their answer that the RFF RSTP 2014 was still not published on the RFF website on 16 July 2014. On the other hand, neither the Appellant, nor RFF provided any evidence that on 15 July 2014 these regulations were published on the RFF website, or that they had entered into force in any other manner. Furthermore, the "announcement", on 11 July 2014, of the decision of the RFF EC to modify some the RFF regulations, in particular the RFF RSTP does not

demonstrate, in the Sole Arbitrator's opinion, that the text of the RFF RSTP 2014 was actually published on that date.

69. Furthermore, the Sole Arbitrator also deems that Article 41 para. 2 RFF RSTP 2014 shall be considered as a mere declaration and cannot supersede the strict rule of Article 34 para. 10 of these regulations, which clearly states that any decision of the RFF EC enters into force only at the time of its publication on the RFF website.
70. Considering the above, the Sole Arbitrator is therefore comfortably satisfied that, at the time of the filing of the Registration Request, the RFF RSTP 2013 was applicable.
71. The Sole Arbitrator notes that in view of the above reasoning, he does not have to discuss the issue of the application of Article 78 of the Romanian Constitution with regard to the entry into force of laws.
  - b) Was the Player allowed to conclude the Employment Agreement with FC Petrolul, according to the applicable regulations?
72. The second question to be answered by the Sole Arbitrator is whether, in accordance with Article 41 RFF RSTP 2013, the Player could validly enter into the Employment Agreement with FC Petrolul.
73. Article 14 RFF RSTP 2013 reads as follows:
  1. *Starting with the age of 16, junior players are obliged to enter into their first contract with the club with which they are registered in a definite manner, under the following conditions:*
    - a) *Within maximum 60 days as of their 16<sup>th</sup> birthday, if the club in question proposes the signing of a contract ensuring the players salary or a remuneration of at least 180 lei – net amount – during eb period in which they are juniors. The contract proposal is made in written form and communicated personally to the player confirmed through his personal signature or through registered parcel mail with confirmation of receipt and certified value sent to the player's domicile. The club shall register the contracts with the relevant body within the mentioned deadline of 60 days, or shall otherwise lose its rights to obliged the players to enter into a contract;*
    - b) *In the event junior players refuse to sign the contract proposed by their clubs, the players in question shall continue to be registered as amateur players with the same club, and will not be able to transfer to third club without the consent of the clubs to which they belong. Under the sanction of being deprived of their rights, clubs in which the players are registered are entitled to lodge a claim before the RFF or AJF competent committee, as appropriate, relating to the player's refusal, within maximum 60 days as of the date of the player's 16th birthday, in which case the relevant committee shall ascertain the refusal through a decision;*
    - c) *As an exception, if, within 60 days as of the date the player's 16th birthday, the player's club does not propose the conclusion of any contract to the player under the abovementioned conditions, the player shall be entitled to enter into a contract with another club without the consent of the club with whom he is registered. The player shall subsequently register with the new club only if the*

*latter can prove that the training compensation was paid or that said obligation was settled in any other way.*

2. *Within 6 months before the end of the period during which the player is a junior, he must enter into a contract with his club, for a term of at least 3 years, only if the club makes a proposition for the signing of a contract and guarantees a monthly minimum net remuneration equal to:*

*League 1<sup>st</sup> Clubs: 1500 Lei*

*League 2<sup>nd</sup> Clubs: 1000 Lei*

*Other division clubs: 700 Lei*

*Interested clubs may only exercise this right in the period between 1 January – 30 June in the year of the player's 19th birthday. Clubs that work exclusively with junior players do not benefit from this right. The proposal to conclude a contract is made in a written form and communicated to the player in accordance with the procedure established in Article 14 para. 1 lit. a.*

3. *If a junior player is in the situation described under par. 2 and refuses to enter into an employment contract/ civil contract, although his club has offered the conditions stipulated under par. 2 above, he shall be sanctioned according to the provisions of this regulation. In this case, the interested club is entitled to lodge a claim before the relevant committee, carrying the burden of proof for its allegations. The claim may be lodged only during the time the player is a junior, the club losing this right at a later stage.*

74. This provision of the RFF RSTP 2013 gives to clubs two different opportunities to impose on their junior players to conclude employment agreement with them, therefore preventing those players to join other clubs.
75. It is undisputed between the Parties that the Appellant did not propose any contract to the Player in accordance with Article 14 para. 1 lit. a RFF RSTP 2013. Therefore, in accordance with Article 14 para. 1 lit. c RFF RSTP 2013 the Player, after 60 days as of the date of his 16<sup>th</sup> birthday, was “entitled to enter into a contract with another club without the consent of the club with whom he [was] registered”.
76. Furthermore, it is the Sole Arbitrator’s opinion that FC Petrolul demonstrated that it had tried to pay the training compensation directly to the Appellant, without success. Therefore FC Petrolul, successfully, followed the procedure provided by Articles 1005 *et seq.* of the Romanian Code of Civil Procedure for those situations in which a creditor refuses to receive a payment, allowing the debtor to discharge its obligations. This is not contested by the Appellant. It shall therefore be considered that FC Petrolul has fulfilled its obligations with regard to the payment of training compensation in accordance with Article 14 para. 1 lit. c RFF RSTP 2013.
77. The Sole Arbitrator therefore considers that, on 2 June 2014, at the date of the conclusion of the Employment Agreement, the Player was free to join FC Petrolul, in accordance with Article 14 para. 1 lit. c RFF RSTP 2013. The Sole Arbitrator notes that he would come to the same conclusion if he follows the Appellant’s position that the Employment Agreement did not become effective before 15 July 2014, i.e. on the date of the filing of Registration Request, as on that particular date the RFF RSTP 2013 was still in force.

78. The Appellant however contends that he validly proposed, on 30 December 2014, a contract to the Player in accordance with Article 14 para. 2 RFF RSTP 2014. The Sole Arbitrator considers that this position is untenable, for the following reasons:
- a) At the time of the proposal made by the Appellant to the Player, the latter had already validly signed an Employment Agreement with FC Petrolul and that such contract had been registered by the RFF. The Player was therefore at that time not registered with the Appellant any more.
  - b) The proposal was notified to the Player on 31 December 2014, *i.e.* outside of the period stipulated in Article 14 para. 2 RFF RSTP 2013.
79. In addition, the Respondents also rely on Article 34 para. 2 RFF RSTP 2013, which reads as follows:
- “Contracts entered between players and clubs whose teams have been excluded from a competition after the start of the championship shall expire as of the date of registration of the new contracts between the players in question and other clubs. The Players shall be entitled to register with a third club anytime during the year, except for the last six match-days of the championship in which the new club is competing. Amateur players registered with clubs whose teams withdrawn or excluded from competition after the start of the championship may request to be registered with another club under the same conditions as professionals”.*
80. The Respondents provided evidence that FC Sportul was excluded from all competitions by the RFF on 27 November 2013, by a decision of the RFF Disciplinary Committee, *i.e.* in the course of the 2013/2014.
81. Therefore, the Player was also free to conclude the Employment Agreement on June 2 2014 in accordance with Article 34 para. 2 RFF RSTP 2013, as at that time, during the 2013/2014 season, its club had been excluded from any competition organized by the RFF.
82. In view of all the above, the Sole Arbitrator considers that the Employment Agreement was validly concluded between the Player and FC Petrolul and that therefore, the Appealed Decision, which concluded that the Employment Agreement was validly registered with the RFF shall be upheld.
83. Considering the above reasoning, the Sole Arbitrator deems that the issue of the compatibility of Article 14 RFF RSTP (2013 and 2014) with the Romanian Constitution, subsequently Romanian Labour Code and/or European Law can be left aside. Notwithstanding with this, but as a remark concerning the fairness of the laws in connection with the sport issues, it is fair to underline the jurisprudence in European Court related to the sport problems as well known as “Bosman case”. Before to proceed with its reflections concerning to reach fair and impartial final result it this procedure, the present award would like to mention in order to obtain complete review of the legal frame that the above cited provision of the Romanian Code could be considered in a direct opposition with the provisions of the European Law which undoubtedly are applicable to the rules governing the sporting associations. Any restrictive rules which deprives the freedom of movement for persons and the freedom to provide services even

laid down by autonomous sporting associations cannot be seen as necessary to ensure enjoyment of their freedom and thereof, to restrict the exercise of rights conferred on individuals by the Treaty. Considering the ECJ jurisprudence (C-415/93 Union Royale Belge des Sociétés de Football Association ASBL v. Jean-Marc Bosman, 1995 I-04921) requires that such provisions to be revised and put in compliance with the applicable principles of the TFEU. It is very disputable in both editions of RSTP which right are preserved more - those of the players or those to the clubs.

## **XII. CONCLUSION**

84. On the basis of the foregoing, the Sole Arbitrator considers that:
- The 2013 version of the RFF RSTP is applicable to the case at hand;
  - The Appellant never validly proposed an employment contract to the Player in accordance with Article 14 para. 1 and 2 RFF RSTP 2013;
  - The Player was free to conclude the Employment Agreement with FC Petrolul;
  - The RFF validly registered the Employment Agreement.
85. The Sole Arbitrator therefore concludes that the appeal shall be dismissed.

## **ON THESE GROUNDS**

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

1. The appeal filed on 24 February 2015 by FC Sportul Studentesc against the decision rendered by the Appeals Committee of the Romanian Football Federation on 6 November 2014 is dismissed.
2. The decision of the Appeals Committee of the Romanian Football Federation issued on 6 November 2014 is confirmed.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.