Arbitration CAS 2017/A/4947 Ion Viorel v. Romanian Football Federation (RFF), award of 6 October 2017

Panel: Mr Jacopo Tognon (Italy), Sole Arbitrator

Football
Match-fixing
Necessity of brief summary of witnesses expected testimony under Article R55 CAS Code
Impartiality of witness
Necessity of translation of documents under Article R29 CAS Code
Discretion regarding admissibility of evidence in arbitration
2-year ban and right to exercise profession and enjoy economic freedom
Independence and impartiality of first instance judicial body
Applicable law and lex mitior

1. **The requirement of a brief summary of the witnesses' expected testimony provided for in Article R55 of the CAS Code is firstly aimed at giving a CAS panel the necessary information to determine if the examination of a witness would be relevant and pertinent to the facts in dispute and thus to decide on his/her admissibility. Moreover, the requirement intends to guarantee the counterparty's right of defence, so that it may have the necessary information to prepare the examination of the witness proposed. When considering whether the admission of a witness for which no brief summary of its expected testimony has been provided violates the Appellant's right of defence or infringes any of its procedural rights and guarantees, the CAS panel may take into account the period of time available to the Appellant to raise an objection with regard to the (in)admissibility of the witness and whether the "expected testimony" of the witness was deducible for the Appellant from the content of the Respondent's answer, insofar as the participation of the witness with regards to the facts in dispute was clear.**

2. **The mere fact that in the past, the witness had been employed by the party by which it has been called, cannot lead to the inadmissibility of such witness for lack of impartiality. This is because first, any witness is obliged to tell the truth, subject to the sanctions of perjury envisaged by the Swiss Criminal Code. In addition, when examining any witness, it is the CAS panel's duty to properly assess the credibility and authenticity of the witness testimony, considering all his personal circumstances and contrasting his testimony with the rest of the evidence. Specifically, the CAS panel shall take into account the potential relationship he or she may have with the parties and the interests he or she may have in connection with the outcome of the proceedings.**

3. **Given that Article R29, *in fine*, of the CAS Code provides that a CAS panel has the prerogative to decide whether or not it is necessary to order the parties to produce certified translations of the documents produced in another language, the production**

of a document in a language different than the one of the proceedings does not entail the automatic exclusion of this document. Two conditions should be met for the CAS panel not to order the production of certified translations: the CAS panel should be in a position to understand the content of these documents, and the non-translation of these documents should not bring the other party at a disadvantage in the proceedings, nor deprive it of its right to be heard.

4. **Article 184 paragraph 1 of the Swiss Federal Code on Private International Law ("PILA") and Article R44.2 of the CAS Code provide arbitrators with a certain power of discretion to rule on the admissibility or inadmissibility of the evidence submitted by the parties. It follows from this discretion that a CAS panel may decide that the belated production by a party of translations of documents it had produced earlier in a different language cannot be considered as "new exhibits" or "further evidence" on which the party intends to rely, but rather as a supplement of the documentation and evidence that it had already brought to the procedure.**

5. **A 2-year ban from any football-related activity does not violate the concerned individual's right to exercise a profession or enjoy its economic freedom. On the contrary, the respective sanction simply limits its capability of performing any football activity, during a temporary and limited period of 2 years. The concerned individual will keep enjoying its economic freedom and would be allowed to exercise any profession or economic activity, provided that it is not related with football.**

6. **It is not sufficient to raise general accusations of partiality and lack of independence regarding a first instance judicial body. Instead, the party intending to challenge that body on grounds of partiality and/or lack of independence has to bring forward specific concerns or reasons that could lead it to suspect or be afraid of the potential lack of independence and impartiality of any or all of the members of the first instance judicial body. Furthermore, the fact that different federative bodies of the association holding the first instance judicial body play different procedural roles within the federative proceedings may give grounds to conclude that these federative bodies are independent and impartial.**

7. **According to constant CAS jurisprudence the applicable substantive rules have to be identified by reference to the principle *"tempus regit actum" i.e.* in order to determine whether an act constitutes a disciplinary infringement, the law in force at the time the act was committed has to be applied. New regulations, unless more favourable for the athlete (*lex mitior*), do not apply retroactively to facts that occurred prior to their entry into force, but only for the future. The assessment of the retroactive application of the law shall not be made *in abstracto,* analysing its compatibility with Article 7 of the ECHR but, on the contrary must be assessed on a case-by-case basis, taking into consideration the specific circumstances of each case and, notably, whether the domestic courts have applied the law whose provisions are most favourable to the defendant.**

I. PARTIES

1. Mr. Ion Viorel, (hereinafter the "Appellant") is a football coach of Romanian nationality that at the time of the facts was the coach and part of the management staff of the Romanian team Gloria Buzau, that was playing in the Second League of the Romanian National Championship.

2. The Romanian Football Federation (hereinafter the "Respondent" or "RFF") is the governing body of football in Romania and is a member of the Union des Associations Européennes de Football ("UEFA") and of the Fédération Internationale de Football Association ("FIFA").

II. FACTUAL BACKGROUND

3. A summary of the most relevant facts and the background giving rise to the present dispute will be developed below based on the Parties' written submissions, the evidence filed with these submissions, the statements made by the Parties and the evidence taken at the hearing held in the present case. Additional facts may be set out, where relevant, in connection with the legal discussion which follows. The Sole Arbitrator in his Award refers only to the submissions and evidence he considers necessary to explain his reasoning. The Sole Arbitrator, however, has considered all the factual allegations, legal arguments, and evidence submitted by the Parties with reference to the present proceedings.

4. On 20 September 2014, within the Liga 2 of the Romanian National Championship, a match was scheduled to be played between ACS Berceni and FC Gloria Buzau ("Match 1"). The match ended with a result of 4-2 for ACS Berceni.

5. On 22 September 2014, within the UEFA Betting Fraud Detection System ("BFDS"), the company SPORTRADAR AG ("Sportradar") issued a report with regard to Match 1, in which it concluded that the betting patterns combined with other elements described in the report *"show clear indications that bettors had prior knowledge of the result"* and that *"This match is considered highly suspicious and most likely manipulated for betting purposes"*. In particular, the summary of the report reads as follows:

> *"There was suspicious live betting for FC Gloria Buzau to lose the match by at least two goals. However, the most severe betting was witnessed in favour of a very high-scoring match, with odds reaching highly uncompetitive levels in the second half, reflecting a near certainly that at least five goals would be scored in total. The betting cannot be explained by any logical factors and therefore the BFDS believed this match was very likely to have been manipulated, with the primary aim of securing fraudulent betting profits".*

6. On 27 September 2014, within the Liga 2 of the Romanian National Championship, a match was scheduled to be played between FC Farul Constanta and FC Gloria Buzau ("Match 2"). The match ended with a result of 4-0 for FC Farul Constanta.

7. On 29 September 2014, within the UEFA BFDS, Sportradar issued a report in connection with Match 2, in which it concluded that *"the betting on this match suggests that bettors may have had prior knowledge of the final result"* and that *"This match should be considered suspicious and possibly manipulated for betting purposes"*. In particular, the summary of the report reads as follows:

"There was suspicious pre-match betting for FC Gloria Buzau to lose and to lose by two-goal margin, alongside similarly suspicious betting for the match to contain at least three goals. The live markets also saw suspicious betting for FC Gloria Buzau to lose by at least two and at least three goals. Overall, the BFDS believe it possible that this match was manipulated solely to secure fraudulent betting profits, as there appears to be no logical justification for any of the betting seen".

8. On 22 November 2014, within the Liga 2 of the Romanian National Championship, a match was scheduled to be played between CS Voluntari and FC Gloria Buzau ("Match 3"). The match ended with a result of 5-1 for CS Voluntari.

9. On 24 November 2014, within the UEFA BFDS, Sportradar issued a report in connection with Match 3, in which it concluded that *"the betting on this match suggests that bettors may have had prior knowledge of the final result"* and that *"This match should be considered suspicious and possibly manipulated for betting purposes"*. In particular, the summary of the report reads as follows:

"There was suspicious live betting for FC Gloria Buzau to lose the match by at least a three and four goal margin, alongside suspicious betting predicting a high scoring match. Odds reached unrealistically low levels early in the match and scarcely recovered, with the betting patterns witnessed being considered wholly illogical and unexplainable by any legitimate sporting factors. Consequently, the BFDS therefore believe it is possible that this match was manipulated for betting purposes".

10. On 29 November 2014, within the Liga 2 of the Romanian National Championship, a match was scheduled to be played between FC Gloria Buzau and ACS Berceni ("Match 4"). The match ended with a result of 7-1 for FC Gloria Buzau.

11. On 1 December 2014, within the UEFA BFDS, Sportradar issued a report in connection with Match 4, in which it concluded that *"the betting patterns combined with other elements described in this report show clear indications that bettors had prior knowledge of the final result"*, and that *"This match is considered highly suspicious and most likely manipulated for betting purposes"*. In particular, the summary of the report reads as follows:

"There was strong pre-match betting for ACS Berceni to lose the match, alongside strong betting for at least three goals to be scored. This was followed by highly suspicious live betting for there to be at least four, five and six goals scored in the game. Overall, the live betting patterns observed cannot be explained by any logical sporting factors, and in light of the poor defensive performance of ACS Berceni, the BFDS believe it highly likely that this match was manipulated for the purpose of obtaining illicit betting profits".

12. On 18 April 2015, within the Liga 2 of the Romanian National Championship, a match was scheduled to be played between CS Voluntari and FC Gloria Buzau ("Match 5"). The match ended with a result of 5-2 for CS Voluntari.

13. On 20 April 2015, within the UEFA BFDS, Sportradar issued a report in connection with Match 5, in which it concluded that *"the betting patterns combined with the other elements described in this report show clear indications that bettors had prior knowledge of the result"* and that *"This match is considered highly suspicious and most likely manipulated for betting purposes"*. In particular, the summary of the report reads as follows:

"There is overwhelming evidence that this match was manipulated for betting purposes in an orchestrated manner. No sporting factors can account for the highly suspicious betting patterns seen for FC Gloria Buzau to lose this match by a minimum three-goal margin in a high-scoring match. Overall, the betting evidence strongly suggests that this match was manipulated to secure fraudulent betting profits, with FC Gloria Buzau the team primarily suspected of the manipulation".

14. On 2 May 2015, within the Liga 2 of the Romanian National Championship, a match was scheduled to be played between CF Braila and FC Gloria Buzau ("Match 6"). The match ended with a result of 3-2 for CF Braila.

15. On 4 May 2015, within the UEFA BFDS, Sportradar issued a report in connection with Match 6, in which it concluded that *"the betting patterns combined with the other elements described in this report show clear indications that bettors had prior knowledge of the result"* and that *"This match is considered highly suspicious and most likely manipulated for betting purposes"*. In particular, the summary of the report reads as follows:

"There was extremely suspicious live betting for FC Gloria Buzau to lose the match, combined with equally suspicious live betting for this match to contain at least three, four and five goals in total. When viewed with the suspicious recent history of FC Gloria Buzau, it is the opinion of the BFDS that they have deliberately lost this match, solely to secure fraudulent betting profits".

16. On 16 May 2015, within the Liga 2 of the Romanian National Championship, a match was scheduled to be played between ASC Bacau and FC Gloria Buzau ("Match 7"). The match ended with a result of 4-0 for ACS Bacau.

17. On 18 May 2015, within the UEFA BFDS, Sportradar issued a report in connection with Match 7, in which it concluded that *"there is overwhelming evidence that this match was manipulated for betting purposes in a precise, orchestrated manner, with corrupt betting profits generated as a result"*. In particular, the summary of the report reads as follows:

"This match was very likely manipulated for betting purposes in a highly organised manner. The evidence to support this conclusion is overwhelming, with highly suspicious pre-match betting observed for FC Gloria Buzau to lose this match. Thoroughly suspicious betting continued in the live markets for FC Gloria Buzau to concede at least one late goal and ultimately lose the match by at least a four-goal margin, with a minimum of four goals being scored in total. All relevant information strongly suggests that betting markets were manipulated in a sophisticated, deliberate manner, with corrupt betting profits resulting from this".

18. On 27 May 2015, within the Liga 2 of the Romanian National Championship, a match was scheduled to be played between FC Academica Arges and FC Gloria Buzau ("Match 8"). The match ended with a result of 5-1 for FC Academica Arges.

19. On 29 May 2015, within the UEFA BFDS, Sportradar issued a report in connection with Match 8, in which it concluded that *"there is overwhelming evidence that this match was manipulated for betting purposes in a precise, orchestrated manner, with corrupt betting profits generated as a result"*. In particular, the summary of the report reads as follows:

"A thorough investigation of the betting evidence on this match indicates that it was highly likely to have been manipulated for betting purposes. No logical sporting factors help counter this conclusion, with highly suspicious betting recorded for a high-scoring, heavy FC Gloria Buzau defeat. FC Gloria Buzau are suspected of manipulating numerous recent matches, and it appears very likely that they deliberately lost this match by a wide margin, with significant fraudulent profits secured in the process".

20. On 30 May 2015, within the Liga 2 of the Romanian National Championship, a match was scheduled to be played between FC Gloria Buzau and FCM Suceava ("Match 9"). The match ended with a result of 5-1 for FC Academica Arges.

21. On 1 June 2015, within the UEFA BFDS, Sportradar issued a report in connection with Match 9, in which it concluded that *"there is overwhelming evidence that this match was manipulated for betting purposes in a precise, orchestrated manner, with corrupt betting profits generated as a result"*. In particular, the summary of the report reads as follows:

"There is substantial evidence to support the conclusion that this match was manipulated for betting purposes. No logical sporting factors help mitigate the extremely suspicious betting recorded for FCM Suceava to lose by a minimum two-goal margin in a high scoring match. Overall, the evidence strongly suggests that FCM Suceava manipulated this match to secure corrupt betting profits in a scheme that was executed in a highly organised manner".

22. As a result of the foregoing, the Department of Integrity and Antifraud of the RFF informed its Secretary General that the result of the aforementioned games played by FC Gloria Buzau within the Romanian National Championship, League 2 (hereinafter "the Matches"), had been manipulated and influenced by the technical management (including the Appellant), the assistant coaches and some of the players of that team (FC Gloria Buzau).

23. On 26 October 2015, the Secretary General of the RFF referred the case to the Discipline and Ethics Committee of the RFF ("DEC").

24. On 25 May 2016, the DEC passed its Decision no. 23/CDE/2015 (hereinafter the "DEC Decision"), by means of which it imposed the following sanctions to the following members of FC Gloria Buzau (English sworn translation provided by the Appellant and not contested by the Respondent):

"by virtue of Article 60 bis with the application of Article 60 paragraph 1, Article 61 and Article 45 of RD of RFF penalized coach ***Ion Viorel*** *by the sanction of prohibiting any football-related activity for a period of* ***2 years*** *and a sports penalty of 200,000 lei, by virtue of Article 60 bis with the application of Article 60 paragraph 1, Article 61 and Article 45 of RD of RFF, it penalized coach* ***Romeo Bunica*** *by the sanction of prohibiting any football-related activity for a period of 2 years and a sports penalty of 200,000 lei, by virtue of Article 60 bis with the application of Article 60 paragraph 1, Article 61 and Article 45 of RD of RFF, penalized coach* ***Marian Rosu*** *by the sanction of prohibiting any football-related activity for a period of two years and a sports penalty of 200,000 lei, by virtue of Article 60 bis with the application of Article 60 paragraph 1, Article 61 and Article 45 of RD of RFF, penalized coach* ***Marian Rosu*** *by the sanction of prohibiting any football-related activity for a period of 2 years and a sport penalty of 200,000 lei, by virtue of Article 60 bis of RD of RFF, penalized player* ***Stoicescu Cristian*** *by the sanction of suspension for a*

period of 8 months and a sports penalty of 30,000 by virtue of Article 60 bis of RD of RFF, penalized player ***Sirbu Dan*** *by the sanction of suspension for a period of 6 months and a sports penalty of 15,000 lei, by virtue of Article 60 bis of RD of RFF, penalized player* ***Agache Sebastian*** *by the sanction of suspension for a period of 6 months and a sports penalty of 15,000 lei, by virtue of Article 60 bis of RD of RFF, penalized player* ***Danita Iulian*** *by the sanction of suspension for a period of 12 months and a sports penalty of 50,000 lei, by virtue of Article 60 bis of RD of RFF, penalized player* ***Dumitrescu Claudiu*** *by the sanction of suspension for a period of 10 months and a sport penalty of 40,000 lei, by virtue of Article 60 bis of RD of RFF, penalized player* ***Ghita George Daniel*** *by the sanction of suspension for a period of 6 months and a sports penalty of 15,000 lei, by virtue of Article 60 bis of RD of RFF, penalized player* ***Bobe Gabriel*** *by the sanction of suspension for a period of 6 months and a sport penalty of 15,000 lei, by virtue of Article 60 bis of RD of RFF, penalized player* ***Dedu Mugurel*** *by the sanction of suspension for a period of 6 months and a sports penalty of 15,000 lei, by virtue of Article 60 bis of RD of RFF, penalized player* ***Georgian Marcu*** *by the sanction of suspension for a period of 12 months and a sport penalty of 50,000 lei, by virtue of Article 60 bis of RD of RFF player* ***Popescu Nini Adrian*** *was sanctioned with the action of suspension for a period of 2 months and a sports penalty of 10,000 lei, by virtue of Article 60 bis of RD of RFF, penalized player* ***Burlacu Dorin*** *by the sanction of suspension for a period of 6 months and a sport penalty of 15,000 lei, by virtue of Article 60 bis of RD of RFF, penalized player* ***Palimaru Clement*** *by the sanction of suspension for a period of 10 months and a sports penalty of 40,000 lei, by virtue of Article 60 bis of RD of RFF, penalized player* ***Iordache Cristian Alin*** *by the sanction of suspension for a period of 2 months and a sport penalty of 10,000 lei. By virtue of Article 60 b is in conjunction with Article 60 paragraph 1 of RD of Romanian Football Federation DEC the Committee ordered that players Ghinea Adrian and Parvu Lician be not punished. By the same judgement, the Committee ordered the splitting of the cause regarding* ***Tulpan Dan****, the president of the club Gloria Buzau, and player* ***Raduca Adrian*** *following that other two files were to be established, and the request of suspension of sanction enforcement, a new case file being formed. By virtue of Article 9 of RD of RFF the club Gloria Buzau was ordered to jointly pay sports penalties".*

25. On 6 June 2016, along with two of his coach assistants and 14 players of FC Gloria Buzau, the Appellant filed an appeal before the Recourse Committee of the RFF (hereinafter referred to as the "RC") against the DEC Decision, requesting the RC the following (English translation provided by the Appellant and not contested by the Respondent):

"In conclusion, for all the arguments detailed above, we request that the recourse be allowed, entire Judgment no. 23 of 25.05.2016 be abolished and consequently, the case be referred back to the Disciplinary and Ethics of the Romanian Football Federation.

In the alternative, we require you to deliver a new judgment rejecting the referral made by the Secretariat-General of the Romanian Football Federation on 10.26.2015".

26. On 9 November 2016, the RC rendered its Decision n. 44/9.11.2016 (the "Appealed Decision") by means of which, *inter alia*, it dismissed the appeal filed by Mr. Viorel. In its English translation (provided by the Appellant and not contested by the Respondent), the operative part of the Appealed Decision reads as follows:

"The court dismisses the exception of inadmissibility of the Recourse filed by Alin Cristian Iordache […] and Nini Adrian Popescu […] against the ruling of the Disciplinary and Ethics Committee of RFF No. 23/25.05.2016, as unfounded.

The court dismisses the recourse filed by FC Gloria Buzau -in bankruptcy […] for non-payment of the stamp duty.

The court admits the recourse filed by Iordache Cristian Alin.

The court abolishes the decisions of the Disciplinary and Ethics Committee of RFF No. 23/25.05.2016 regarding the sanctions imposed to player Iordache Cristian Alin.

The court dismisses the referral of the Integrity and Fraud department of RFF regarding player Iordache Cristian Alin.

The court dismisses the Recourse filed by Ion Viorel, Bunica Romeo, Rosu Marian, Stoicescu Cristian, Sirbu Dan, Agache Sebastian, Danita Iulian, Ghita George Daniel, Vlaicu Catalin Petrut, Bobe Gabriel, Mar Georgian Popescu, Nini Adrian, Palimaru Clement, […] as unfounded.

Final and enforceable domestically.

The judgment may be recourseed [sic] *at TAS, within 21 days as of notification".*

27. On 19 December 2016, the RC notified the Appealed Decision to the Appellant.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

28. On 12 January 2017, the Appellant filed a Statement of Appeal against the Respondent before the Court of Arbitration for Sport ("CAS"), challenging the Appealed Decision, requesting the CAS:

"1. to uphold the present Appeal.

2. to annul the Decision no. 44/2016, issued by the Recourse Committee of the Romanian Football Federation, and the Decision no. 23/2016, issued by the Ethics and Disciplinary Committee of the Romanian Football Federation.

3. to order the Respondent Romanian Football Federation to borne the costs of the current arbitration.

4. to order the Respondent Romanian Football Federation to borne the Appellant' [sic] *expenses incurred in connection with these arbitration proceedings".*

29. In his Statement of Appeal, the Appellant requested that the present case be submitted to a sole arbitrator.

30. On 17 January 2017, the CAS invited the Respondent to inform the CAS Court Office whether it agreed to the appointment of a Sole Arbitrator within 5 days, as requested by the Appellant. However, within the deadline given, the Respondent did not state its position with regard to the appointment of a Sole Arbitrator to rule on the present procedure.

31. On 27 January 2017, the Appellant filed his Appeal Brief with the CAS, with the following requests for relief:

> *"1. To uphold the present Appeal.*
>
> *2. to annul the Decision no. 444/2016, issued by the Recourse Committee of the Romanian Football Federation, and the Judgment no. 23/2016, issued by the Disciplinary and Ethics Committee of the Romanian Football Federation and to refer the case back to the Disciplinary and Ethics Committee of the Romanian Football Federation.*
>
> *3. to order the Respondent Romanian Football Federation to borne the costs of the current arbitration.*
>
> *4. to order the Respondent Romanian Football Federation to borne the Appellan'* [sic] *expenses incurred in connection with these arbitration proceedings".*

32. On 8 March 2017, the CAS informed the parties that the President of the CAS Appeals Arbitration Division had appointed Mr. Jacopo Tognon, attorney-at-law in Padua (Italy) as the Sole Arbitrator to decide the present case.

33. On 31 March 2017, the Respondent filed its Answer to the Appeal with the following request for relief:

> *"A. to dismiss the appeal lodged by the Appellant against the challenged Decision(s) rendered by the Committee(s) of the Romanian Football Federation;*
>
> *B. to maintain and consider the challenged Decision(s) undisturbed;*
>
> *C. subsequently, to deny all the prayers for relief made by the Appellant;*
>
> *D. to order the Appellant to pay all costs, expenses and legal fees relating to the arbitration proceedings before CAS encumbered by the Respondent".*

34. On 4 April 2017, the CAS Court Office invited the Parties to inform whether they preferred a hearing to be held in the present case or not.

35. On 11 April 2017, the Appellant informed the CAS that he preferred a hearing to be held in this matter. The Respondent did not give its position in this regard within the given term but he asked for the hearing to be held in its answer.

36. On 28 April 2017, the CAS informed the Parties that the Sole Arbitrator had decided to hold a hearing in this matter. In addition, in this correspondence the CAS invited the Respondent to provide, by 18 May 2017, an English translation of exhibit 3 of its answer, or of all the provisions reported in such exhibit on which the Respondent intended to rely.

37. On 9 May 2017, the CAS informed the Parties that Mr. Yago Vázquez Moraga, attorney-at-law in Barcelona (Spain), had been appointed as *ad hoc* Clerk in the present procedure.

38. On 31 May 2017, the CAS Court Office sent the Order of Procedure of the present case to the Parties.

39. On 7 June 2017, the Respondent sent to the CAS the Order of Procedure duly countersigned. In this correspondence, the Respondent also informed the CAS about the following circumstance:

> *"We must point out that the Appellant has also lodged a parallel file with the Bucharest Court of Appeal, having the same object as this CAS procedure. The case file no. is 688/2/2017, with the next scheduled hearing on 11 September 2017.*
>
> *Thus, we respectfully ask your offices to note that the Appellant is using a "law-shopping" method in order to hedge its chances throughout different jurisdictions".*

40. Also on 7 June 2017, the Appellant sent to the CAS a copy of the Order of Procedure duly countersigned, in which he made the following amendments:

> *"I. Reservation/amendment no. 1 to the "Introduction"*
>
> *The reference to the "exclusion of any other procedural law" contained by the final phrase of the Section "Introduction" cannot be interpreted as a waiver of the Appellant' [sic] rights granted by the Constitution and Laws of Romania and the corresponding legal means for the protection of these rights. Specifically, it cannot be interpreted as a waiver to the right to pursue the action for annulment of the arbitral awards issued by the FRF Recourse Committee, respectively FRF Disciplinary and Ethics Committee (in original, in Romanian "actiunea în anularea hotărârii arbitrale"), based on the Articles 608 and the following from the Civil Procedural Code of Romania – Law no. 134/2010.*
>
> *II. Reservation/amendment no. 2 to the point no. 7 "Law applicable to the merits"*
>
> *The Law applicable to the merits of the dispute is the Law of Romania, as both the Appellant (point 3.1. of the Appeal Brief) and the Respondent (point II.2. of the Answer) confirmed".*

41. On 13 June 2017, the CAS took note that the translations that were requested by the CAS on 28 April 2017, had not been produced by the Respondent.

42. On the same day, the Respondent filed with the CAS the requested translations into English of all the *"applicable legal and regulatory norms"* that were referred in its Answer to the Appeal.

43. The hearing of the present procedure took place in Lausanne, Switzerland, on 14 June 2017. The following persons attended the hearing:

- For the Appellant: Dr. Tudor Chiuariu (Counsel), Mr. Dan Idita (Counsel), Ms. Dorina Niculcea (trainee).

- For the Respondent: Mr. Adrian Stangaciu (Head of the RFF Legal Department), and Mr. Paul-Filip Ciucur (Counsel).

44. At the outset of the hearing, both parties confirmed that they had no objections to the constitution of the Panel (*i.e.* Sole Arbitrator) or to the jurisdiction of the CAS. However, in his opening statement, the Appellant objected the admissibility of the witnesses that had been called by the Respondent, as well as the admissibility of the document that the Respondent had filed on 13 June 2017. These objections were dismissed by the Sole Arbitrator in voce and the witnesses' testimony was admitted on the grounds that will be developed below, in Section VIII, para. A.1, of this Award.

45. During the hearing, the following witnesses were examined: Mr. Costin Negraru (RFF Integrity Officer at the time of the facts) and Mr. Tom Mace (Director of Global Operations of the company Sportradar AG) (both by video/tele-conference). At the hearing, the parties had the opportunity to present their case, to submit their arguments, examine the witnesses and answer the questions posed by the Sole Arbitrator.

46. At the end of the hearing, after the closing statements, all the Parties expressly declared that they were satisfied with respect to the procedure and that their right to be heard had been fully respected, with the sole exception raised by the Appellant with regard to the above-referred admission of the testimony of the Respondent's witnesses and of its new document dated 13 June 2017 that, in the Appellant's opinion, breached the adversarial principle and his right of defence.

47. On 3 July 2017, given that during the hearing the Appellant had raised some concerns about the accuracy of the English translation produced by the Respondent on 13 June 2017, the CAS invited the Appellant to submit his comments, if any, with regard to the accuracy of such translation.

48. On 5 July 2017, the Appellant filed unsolicited submissions with regard to the costs and expenses in which he would have incurred in this arbitration procedure.

49. Also on 5 July 2017, the CAS invited the Respondent to file by 10 July 2017 its comments on the admissibility of the Appellant's submissions of the incurred costs. However, the Respondent did not file its position within the given term. Pursuant to Art. 56 of the Code of Sports-related Arbitration the Appellant's submissions on costs are not admitted to the file. Furthermore, taking into account the Sole Arbitrator's decision on the costs of the present procedure (as it will be developed in Section IX of the Award), these submissions are in any case irrelevant.

50. On 10 July 2017, the Appellant filed his comments with regard to the accuracy of the Respondent's translation into English that it had produced on 13 June 2017.

IV. SUMMARY OF THE PARTIES' SUBMISSIONS

51. The following summary of the Parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the Parties. However, the Sole Arbitrator has thoroughly considered all of the evidence and arguments submitted by the Parties, even if there is no specific reference to those submissions in the following summary.

A. The Appellant

52. In the appeal procedure that was conducted before the RC, the Appellant challenged the DEC Decision arguing that (i) it infringed the principle of non-retroactivity of the law, (ii) some of the facts investigated (6 out of 9 matches) were time-barred, (iii) the decision did not identify the facts that allegedly committed any of the individuals that were found guilty and (iv) the decision was not duly reasoned. However, the RC dismissed this appeal and confirmed the DEC Decision.

53. The Appellant considers that the Appealed Decision is unfounded and unlawful, both for procedural and substantial reasons. The Appellant bases his appeal on the following grounds:

a) The sanctions imposed on the Appellant are completely unlawful, contravene public order and are contrary to human rights

54. The Appellant considers that the sanctions imposed on him (a 2-year ban and the fine of RON 200,000) seriously affect his fundamental rights guaranteed by the Constitution of Romania. In particular, the sanctions would violate his right to economic freedom (Art. 41) and his right to private property (Art. 44). The Appellant argues that, pursuant to Art. 53 of the Romanian Constitution, these fundamental rights can only be restricted by law, provided that such restriction is intended to fulfil the objectives established therein *("the safeguard of national security defence, of the public order, public health or public morality, of the rights and freedoms of the citizens; for the performance of the criminal prosecution; for preventing the natural disasters")* and that this measure is proportional to the situation leading to the limitation of the fundamental rights.

55. In this regard, the Appellant considers that in the present case, such limitation (i) has not been provided by law but by an internal act of the RFF, (ii) is not necessary to fulfil the objectives established by Art. 53 of the Romanian Constitution and (iii) is not proportional, because the fine imposed on the Appellant is more than 100 times the average Romanian net monthly salary (which is of RON 1,900).

b) The RC is not an impartial and independent tribunal in cases where one of the parties is the RFF itself

56. In the Appellant's opinion, the regulations on the composition of the RC breach his right to an impartial and independent tribunal and to a fair trial, as guaranteed by Art. 6 of the European Convention of Human Rights (ECHR) and Art. 21.3 of the Constitution of Romania. In this view, the fact that the 5 members of the RC are appointed by the RFF Executive Committee for a limited term of one year, and that they can be renewed pursuant to Art. 92 of the RFF Disciplinary Regulation after a non-transparent procedure, leads to doubt about the impartiality and independence of its members.

57. The Appellant considers that this is particularly clear in cases where the RFF is one of the Parties, like the one at stake. In addition, in his view this circumstance would be even clearer, due to the fact that the Appellant has a conflict with the President of the RFF, Mr. Răzvan Burleanu, and with the Secretary General of the RFF, Mr. Gabriel Bodescu. The Appellant

considers that this lack of independence would have been confirmed during the previous instance proceedings because, despite that he had requested to the RC to produce a copy of the content and procedure followed by the Executive Committee of the RFF to appoint the members of the Committee, the latter did not produce these documents and rejected the objection raised by the Appellant with regard to its composition.

58. Finally, the Appellant sustains that this lack of impartiality and independence of the RFF disciplinary committees is not compensated with an effective procedural remedy. In particular, Art. 95 of the RFF Disciplinary Regulations restricts the right of the parties to challenge the members of the RFF disciplinary bodies to only 1 of its 5 members (otherwise the challenge would be deemed non-admissible). Therefore, as the grounds for the challenge exist in all of the 5 members of the RC, in this case such procedural remedy is totally ineffective.

c) The Appealed Decision did not explain why the 2016 Edition of the RFF Disciplinary Code was to be considered as the "most favourable" law ("lex mitior")

59. The version of the RFF Disciplinary Regulations that was in force at the time of the facts at stake was the one dated 1 November 2013. However, both the DEC and the RC retroactively applied a later version (the one dated 3 February 2016). The Appellant sustains that by doing this, the Appealed Decision breached his right to a more favourable law guaranteed by Art. 7 of the ECHR. In addition, as it did not explain why the 2016 version of the RFF Disciplinary Regulations was to be considered as the most favourable law, it also infringed his right to a reasoned decision, which is part of his right to a fair trial that is guaranteed by Art. 6 of the ECHR.

60. The DEC did not give the Parties the opportunity to argue on this important issue. Furthermore, it did not justify why the RFF Disciplinary Regulations of 3 February 2016 were to be considered as the most favourable ones to the case at stake. The Appellant considers that, in order to be valid, the retroactive application of the regulations would request a thorough and global comparison and analysis of the two versions of the regulations at stake, that the DEC failed to do.

61. In addition, the Appealed Decision incurred in the same defect, as it did not justify why the RFF Disciplinary Code of 3 February 2016 was the most favourable law at stake. Moreover, the Appellant sustains that the previous version of the RFF Disciplinary Regulations had not been published in the Romanian Official Journal and was not available on the webpage of the RFF either, which ultimately made this regulation non-predictable.

d) The limitation period of the disciplinary liability applies for a number of 6 out of 9 matches

62. In accordance with the RFF Disciplinary Regulations of 2016, the limitation period for disciplinary faults depends on whether the infringement is committed during a match or out of the game. In the present case, the infringements were committed during the matches, and thus the limitation period of 6 months envisaged by Art. 46 para. 1 of the 2016 RFF Disciplinary Regulations applies.

e) Both Decisions (the DEC Decision and the Appealed Decision) did not identify and individualize the facts attributed to each person

63. The Appealed Decision attributed the Appellant an infringement of Art. 61 of the RFF Disciplinary Regulations, pursuant to which *"Whoever conspires or make arrangements to influence the result of a game in a manner inconsistent with the ethics of sport and the principles of conduct required by these rules shall be sanctioned with a ban on any activities related to football from 1 to 2 years and a fine of at least 200.000 lei"*.

64. The Appellant sustains that a conspiracy or an arrangement is a concerted activity that requires the involvement of third parties. In the present case, a disciplinary offence of this kind could have been only committed in case the technical staff would have collaborated with other people and, in particular, with the players of the team and with the representatives and players of the opposing team. However, none of the decisions proved that the Appellant participated in any concerted activity and thus the application of Art. 61 of the RFF Disciplinary Regulations is unfounded.

B. The Respondent

65. The Respondent sustains that both the DEC Decision and the Appealed Decision complies with the UEFA and the RFF Disciplinary Regulations, the CAS jurisprudence on the standard of proof in match-fixing cases and with the fundamental legal principles of Romania and of international law.

66. The Respondent notes that the Appellant is requesting the Sole Arbitrator to annul the Appealed Decision and the DEC Decision and to refer the case back to the first instance (the DEC). However, pursuant to Art. R57 of the Code of Sports-related Arbitration, CAS is only competent to refer the case back to the previous instance, which is the RC, not the DEC. Therefore, the Respondent considers that the Appellant's prayer for relief is not admissible. As it was already explained in the proceedings before the RC, pursuant to Art. 120 para. 1 lit. (a) and (b) of the RFF Disciplinary Regulations, the RC is not competent to refer the case back to the DEC. Therefore, it is also obvious that the CAS is neither competent to refer the case back to such instance.

67. On the other hand, with regard to the applicability of the 2016 version of the RFF Disciplinary Regulations, the Respondent states that Art. 5 para. 1 of these regulations expressly envisages that those regulations apply to offences or infringements occurred before its entry into force, provided that the current regulations provides for a more favourable sanctioning scheme to the offender. In the present case, both the DEC and the RC applied the regulations that were more favourable for the offenders.

68. With regard to the Appellant's allegation concerning the statute of limitations, the Respondent considers that the limitation of 6 months established by Art. 46 of the RFF Disciplinary Regulations does not refer to betting or manipulating the results of a game, but to infringements of the laws of the game that may occur in the field during a match. Therefore, in the present case the applicable statute of limitation is of 5 years or, alternatively, there is no statute of

limitation due to the nature of the offence (match-fixing, bribery and/or corruption). In addition, the RFF Disciplinary Regulations impose the same sanction regardless whether the infringement was committed once (in one match) or on several occasions (more than one match).

69. On the other hand, the Respondent considers that the DEC Decision is well reasoned and grounded. The DEC explained the entire mechanism used by the offenders to manipulate the matches. In this regard, the Respondent affirms that the DEC detailed every single sanction for each individual within its paragraphs 6.12.1 to 6.12.21. In addition, Section 5 of the DEC Decision determined the facts attributed to and to be taken into account to each single person.

70. Furthermore, under Romanian Law, fundamental rights can be restricted in certain cases in order to preserve public interest, like sports integrity and fairness principles. In this case, this is made by means of the Romanian Law no. 69/2000, that authorizes sports federations (like the RFF) to exercise, monitor and control the disciplinary authority, under the terms provided in Art. 37, para. 1, lit. e, of this law, as well as by the RFF Statutes and regulations.

V. JURISDICTION

71. Art. R47 of the Code of Sports-related Arbitration (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.*
>
> *An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned".*

72. In the present case, the jurisdiction of the CAS arises out of Art. 57.4 and 57.6 of the RFF Statutes, pursuant to which the decisions of the RC can be appealed before the CAS. Notwithstanding this, the Sole Arbitrator notes that, in fact, with his appeal the Appellant is seeking to challenge not only the Appealed Decision (i.e. the Decision passed by the RC) but also the DEC Decision, as he is also requesting the annulment of the latter. However, the RFF Statutes do not envisage that the decisions passed by the DEC can be appealed before the CAS, and only allows to challenge them in front of the RC, which is the final body at national level.

73. Indeed, this is totally consistent with the fact that, pursuant to the aforementioned Art. R47 of the CAS Code, one of the prerequisites for the admissibility of an appeal of this kind is that the Appellant *"has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body"*. Therefore, from a formal point of view, the DEC Decision cannot be the object of the present appeal, as CAS would lack jurisdiction to rule on such appeal.

74. However, the Sole Arbitrator finds that in the present case this "cumulative appeal" lacks of procedural relevance because, even though in his prayers for relief the Appellant requested the annulment of both decisions (DEC Decision and the Appealed Decision), from a formal point

of view, in his Statement of Appeal he exclusively identified the Decision of the RC as the decision that he was appealing against, in the terms of Art. R48 of the CAS Code. Therefore, even though the CAS would have no jurisdiction to hear an appeal brought exclusively against the DEC Decision, taking into account that ultimately the Appellant is challenging this decision of first instance additionally to the Appealed Decision, this cannot affect the jurisdiction that CAS has over the appeal filed against the Decision rendered by the RC (the Appealed Decision), which is the object of this appeal procedure.

75. Therefore, the Sole Arbitrator concludes that the jurisdiction of the CAS, which has not been disputed by any party, arises out of Art. 57 of the RFF Statutes in connection with Art. R47 of the CAS Code, and thus the Sole Arbitrator is competent to rule on this case.

VI. ADMISSIBILITY

76. The appeal was filed within the deadline given in the Appealed Decision (i.e. 21 days as of its notification) and complied with all the other requirements of Art. R48 of the CAS Code. Therefore, the Sole Arbitrator deems the appeal admissible.

VII. APPLICABLE LAW

77. Art. R58 of the CAS Code reads as follows:

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

78. In the present case, as it has been sustained by the Parties, considering that the appeal is directed to a decision passed by the RC on the basis of its own regulations, the applicable regulations for the purposes of Art. R58 of the CAS Code are the regulations of the RFF. In this regard, the question of which edition of the Disciplinary Regulations of the RFF shall be applied to the present case will be developed below, in Section VIII of the present award. Furthermore, taking into account that the RFF has its seat in Romania, the laws of Romania shall apply on a subsidiary basis.

VIII. LEGAL DISCUSSION

A. Preliminary issues

A.1. Decision on the admissibility of the witnesses submitted by the Respondent

79. At the hearing, the Appellant objected the admissibility of the two witnesses proposed by the Respondent with its Answer. Firstly, the Appellant considered that these witnesses (Mr. Costin

Negraru – RFF Integrity Officer at the time of the facts – and Mr. Tom Mace - Director of Global Operations of Sportradar) were not relevant to the present case, because none of the grounds of his appeal could be challenged by the testimony of these witnesses. In addition, the Appellant sustained that one of the witnesses (Mr. Negraru) lacked of impartiality, as at the time of the facts he was working for the Respondent. Finally, the Appellant argued that as the Respondent had not explained in due time which the expected testimony of these witnesses was, their testimonies were not admissible.

80. The Sole Arbitrator did not agree with the Appellant and considered that both witnesses were relevant and that their testimony was admissible. It is true that, in accordance with Art. R55 of the CAS Code, the Respondent is expected to provide together with his answer to the appeal the names of any witnesses that he intends to call, *"including a brief summary of their expected testimony"*. However, this provision shall be interpreted in accordance with its procedural spirit. In the Sole Arbitrator's opinion, this requirement is firstly aimed at giving the Panel (or the Sole Arbitrator) the necessary information to determine if the examination of a witness would be relevant and pertinent to the facts in dispute and thus to decide on his/her admissibility. Moreover, at the same time, this requirement intends to guarantee the counterparty's right of defence, so that he/she may have the necessary information to prepare the examination of the witness proposed, in order to preserve his/her right of defence.

81. In the present case, in its Answer to the Appeal, the Respondent stated the name of the witnesses that he proposed, as well as their job and position. However, the Respondent did not produce *"a brief summary of their expected testimony"*. Nevertheless, the Sole Arbitrator considers that, in the specific case at stake, the Respondent's omission is not of sufficient significance to entail the inadmissibility of this evidence.

82. First of all, the Sole Arbitrator has noted that, even though the Appellant had plenty of time and opportunities to do it, he did not raise any objection with regard to the alleged inadmissibility of these witnesses until the day of the hearing (i.e. 2 months and a half after the witnesses had been proposed by the Respondent). Moreover, the Sole Arbitrator is of the opinion that from the content of the Answer to the Appeal it was easily deducible for the Appellant what was the "expected testimony" of both witnesses, as the participation that these witnesses have had with regard to the facts in dispute was clear. Indeed, after having carefully analysed the parties' submissions, the Sole Arbitrator is convinced that the Appellant perfectly knew the circumstances and the role that both witnesses played in the facts in dispute, and thus he could easily identify the facts on which the witnesses were going to give their testimony. In particular, the Sole Arbitrator noted that, in the written statement that the Appellant produced with his Appeal Brief (which corresponds to a testimony that he gave before the RC), he made constant reference to one of these witnesses, Mr. Negraru (who at the time of the facts was the Integrity Officer of the RFF). In line with this, in the recourse that the Appellant filed before the RC, he also made several allegations with regard to UEFA BFDS and, in particular, to the work done by the other witness proposed, Mr. Tom Mace (Director of Global Operations of Sportsradar). At the same time, this circumstance made clear to the Sole Arbitrator that the testimony of both witnesses was relevant for the present dispute.

83. For these reasons, the Sole Arbitrator reached the conclusion that the admission of these witnesses did not violate the Appellant's right of defence or infringe any of his procedural rights and guarantees.

84. Nevertheless, with regard to the alleged lack of impartiality of Mr. Negraru due to his former employment at the RFF, the Sole Arbitrator shall clarify that this fact cannot lead to the inadmissibility of this witness. First of all, it shall be taken into account that any witness is obliged to tell the truth, subject to the sanctions of perjury envisaged by the Swiss Criminal Code. In addition, when examining any witness, the Sole Arbitrator shall take into account all the circumstances that concur on the individual and, among others, the potential relationship that he or she may have with the Parties (a circumstance that in the present case was explained and acknowledged by both the Respondent and the witness during his examination) and the interests that he or she may have in connection with the outcome of the proceedings. These potential circumstances do not entail to the automatic inadmissibility of a witness due to his/her potential lack of impartiality. On the contrary, in these cases, it is the Sole Arbitrator's duty to properly assess the credibility and authenticity of the witness' testimony, considering all his/her personal circumstances and contrasting his/her testimony with the rest of the evidence at stake.

85. Therefore, for these reasons, the Sole Arbitrator cannot accept the Appellant's attempt to disregard the testimony of Mr. Negraru due to this alleged lack of impartiality which is merely based on a circumstance (his former job at the RFF) that he was aware of and that it was disclosed by the Respondent when proposing the witness. Furthermore, the Sole Arbitrator shall clarify that the concerns raised by the Appellant at the outset of the hearing with regard to the fact that the examination of this witness could be used by the Respondent to raise new arguments and submission in clear violation of the adversarial principle, were totally dispelled after the examination of the witness, which testimony did not introduce in the proceedings any new argument or submission. Therefore, the procedural rights and guarantees of the Appellant have not been violated either. Hence, the Sole Arbitrator decided to admit this evidence and as a consequence to examine these witnesses.

A.2. Decision on the admissibility of the document produced by the Respondent on 13 June 2017

86. As it has been already explained, on 28 April 2017 the CAS invited the Respondent to provide by 18 May 2017 a translation into English of the relevant provisions that it had invoked in its Answer to the Appeal, submitted in Romanian. However, the Respondent did not produce this translation until 13 June 2017, once the given deadline had expired. At the hearing, the Appellant requested the Sole Arbitrator to declare this document inadmissible since, in his opinion, its admission would infringe Art. R56 of the CAS Code and his right of defence. In addition, the Appellant argued that he did not have time to check the accuracy of the translation which was not a sworn translation as requested by Art. R29 of the CAS Code.

87. After the hearing, the Appellant was invited to submit his comments on the accuracy of the translation produced by the Respondent. In his submissions, the Appellant only argued that (i) the Respondent had intentionally omitted the translation of the Art. 60[1] of the RFF Disciplinary Regulation (which is not correct, as the translation of this provision had been already provided

by the Respondent in page 6 of its Answer to the Appeal), and that (ii) the translation of Art. 46.1 of the Romanian Law 69/2000 was not accurate, as the Romanian word *"legitim"* had to be translated as *"legitimate"* instead of *"lawfully"*.

88. The Sole Arbitrator, however, decided to admit this document. First of all, because the production of a document in a language different than the one of the proceedings does not entail the automatic exclusion of this document. Therefore, even if the late translation would have been deemed inadmissible, the original Romanian version of this document would be admissible, provided that some conditions were met. Actually, Art. R29, *in fine*, of the CAS Code provides that *"The Panel or, prior to the constitution of the Panel, the Division President may order that all documents submitted in languages other than that of the proceedings be filed together with a certified translation in the language of the proceedings"*. Therefore, as has been already confirmed by CAS jurisprudence (i.a. CAS 2015/A/4204) *"although it would be always preferable that all the documentation produced by the parties is translated into the language of the proceedings, Art. R29 of the CAS Code does not determine that the documents submitted in a language other than the one set as the language of the procedure be declared automatically inadmissible"*.

89. On the contrary, the Sole Arbitrator *"has the prerogative to decide that it is not necessary to order the parties to produce certified translations of the documents that were produced in another language. The two conditions that should be met are that the Panel should be in a position to understand the content of these documents, and that the non-translation of these documents does not bring the respondent at a disadvantage in the proceedings, nor deprive him of his right to be heard"* (MAVROMATI/REEB, The Code of the Court of Arbitration for Sport: Commentary, Cases and Materials; 2015; p. 84).

90. In the present case, for obvious reasons, it is clear that the Appellant and his counsel perfectly understand the document at stake (i.e. the RFF Disciplinary Regulations) and the rest of provisions that were produced by the Respondent in Romanian language. Therefore, the admission of this document without translation did not cause the Appellant any disadvantage in the proceedings, or violate his right of defence or the adversarial principle. For the same reason, the admission of the translation into English of these provisions (which indeed had been also referred by the Appellant in his Appeal Brief) after filing the Answer to the Appeal does not put the Appellant in disadvantage in this procedure, or violates or restricts his rights of defence or to be heard.

91. Indeed, the Sole Arbitrator does not consider the translations lately produced by the Appellant as "new exhibits" or "further evidence" on which it intends to rely, but rather a supplement of the documentation and evidence that it had already brought to this procedure. In this regard, as noted by other CAS Panels (TAS 2009/A/1879), the Sole Arbitrator considers that *"Selon l'Article 184 alinéa 1 LDIP « le tribunal arbitral procède lui-même à l'administration des preuves ». Cette disposition donne aux arbitres le pouvoir de statuer sur l'admissibilité d'une preuve soumise par une des parties. 14 Le pouvoir de la Formation de statuer sur l'admissibilité de la preuve est repris dans le Code TAS (cf. l'Article R44.2). Il découle de l'Article 184 alinéa 1 LDIP (ainsi que des articles du Code TAS) que la Formation dispose ainsi d'un certain pouvoir d'appréciation pour déterminer la recevabilité ou l'irrecevabilité de la preuve"* (which can be freely translated into English as follows: *"Pursuant to Article 184 paragraph 1 of the PILA «The arbitral tribunal shall itself take the evidence». This provision provides the arbitrators with the power to rule on the admissibility of the evidence submitted by one of the parties. The power of the Panel to*

rule on the admissibility of the evidence is set out in the CAS Code (see Article R44.2). It follows from Artide 184 paragraph 1 of the PILA (as well as from the articles of the TAS Code) that the Panel has a certain power of discretion to determine the admissibility or inadmissibility of the evidence").

B. Scope of the Sole Arbitrator's review

92. In the present proceedings, the Appellant is not seeking for a *de novo* trial. The Appellant is not requesting the Sole Arbitrator to review *"the facts and the law"* of the present case in order to *"issue a new decision which replaces the decision challenged"*, as envisaged by Art. 57 of the CAS Code. On the contrary, in his Appeal Brief the Appellant has limited the scope of the proceedings to the assessment and review by the Sole Arbitrator of all the procedural flaws and violations of procedural rights that, allegedly, would have occurred in the previous instances (the DEC and the RC), in order to get the annulment of the Appealed Decision and the DEC Decision and the referral of the case back to the first instance (the DEC) for new judgment.

93. In this regard, the Respondent sustains that, in accordance with Art. R57 of the CAS Code, the Appellant's request to refer the case back to the DEC is inadmissible, because the CAS can only refer the case back to the "previous" instance (i.e. the RC). In addition, the Respondent considers that this impossibility would be confirmed by the fact that, pursuant to Art. 120, para. 1, of the RFF Disciplinary Regulation (hereinafter the "RFF-DR"), the RC is not allowed to refer the case back to its previous instance.

94. With regard to this matter, it shall be firstly taken into account that, for the reasons explained in Section V of the present award, the sole object of the considered appeal is the Appealed Decision (and not the DEC Decision). Therefore, the Sole Arbitrator agrees with the Respondent and considers that in case the Appealed Decision is to be annulled, it will not be possible to refer the case back to the first instance (i.e. the DEC), as requested by the Appellant, and that the only possibility would be to refer the case back to the "previous" instance (i.e. the RC), in the terms of Art. R57 of the CAS Code.

95. In this regard, at the hearing the Respondent reiterated that the Appellant's request to refer the case back to the DEC was inadmissible and hence that the CAS could only reject the appeal or, alternatively, use its power of review and rule this case *de novo*. Taking into account the Respondent's submissions, at the hearing the Sole Arbitrator invited the Appellant to confirm whether he limited his petition to request the CAS to annul both decisions and to refer the case back to the first instance (DEC) or, alternatively, if he also requested the Sole Arbitrator to decide on the case *de novo* in case he deemed it convenient. Initially, the Appellant stated that he did not want the Sole Arbitrator to rule *de novo* and that he exclusively requested the annulment of the decisions and the referral of this case back to the DEC.

96. At this point it shall be noted that, despite all the opportunities given to him, the Appellant, instead of requesting the Sole Arbitrator to use his wide power of review to issue a new decision potentially healing all the procedural irregularities, mistakes or violations of rights that could have occurred in the previous instances, firmly rejected this possibility and requested the Sole Arbitrator not to enter into the merits of the case.

97. Nonetheless, in his closing statements the Appellant clarified his prayers for relief in the sense that, if the Sole Arbitrator considered that for procedural reasons it was not possible to refer the case back to the first instance (i.e. the DEC), then the requested referral would have to be made to the RC, and not to the DEC.

98. As it can be observed, among other reasons the Appellant is requesting the annulment of the Appealed Decision on the grounds of an alleged lack of impartiality and independence of the RC and, at the same time, he is requesting to refer the case back to this same body that, in his own words, *"is not an impartial and independent tribunal"*. It does not seem very logical to simultaneously request to annul a decision on the grounds that it would have been issued by a body that lacks of impartiality and independence and, and the same time, request the referral of the case back to this same body so, with the same memberships, it can decide the matter again. Indeed, if the Appellant's accusation of lack of independence and impartiality was confirmed, the Appellant's request may lead to a never-ending procedural loop in which the federative body would be issuing a decision that would be appealed in front of the CAS, and CAS would be referring the case back to this same body so that the circle can start again.

99. In any case and regardless of these concerns, in the present procedure the scope of the Sole Arbitrator's review, as defined by the Appellant, shall be limited to determine whether all the alleged irregularities and infringements reported by the Appellant have taken place or not and, in the affirmative, establish if they entail the annulment of the Appealed Decision and the referral of the case back to the previous instance.

C. Merits

100. The present procedure derives from the disciplinary proceedings that have been conducted by the disciplinary bodies of the RFF that, in connection with the matches that were investigated (i.e. Matches 1 to 9), sanctioned the Appellant with a 2-year ban from any football-related activity and a sports penalty of RON 200,000.

101. These sanctions were imposed in accordance with Art. 60 bis of the RFF-DR and Art. 60[1], paragraph 1, Art. 61 and Art. 45 of the said regulations (version of 03 February 2016). In particular, the Appealed Decision found the Appellant to have incurred in the prohibition established by Art. 61 of the RFF-DR, pursuant to which:

> *"Art. 61*
>
> *Whoever conspires or make arrangements to influence the result of a game in a manner inconsistent with the ethics of sport and the principles of conduct required by these rules shall be sanctioned with a ban on any activities related to football from 1 to 2 years and a fine of at least 200,000 lei"*
>
> (translation into English provided by the Appellant).

102. In essence, the Appellant sustains that the Appealed Decision shall be annulled, because (i) the sanctions imposed are unlawful and contrary to his fundamental rights, (ii) the RC is not an impartial and independent tribunal in cases where one of the parties is the RFF itself, (iii) the

Appealed Decision contravened the principle of non-retroactivity of the law, (iv) the disciplinary offences would have had prescribed with regard to 6 out of the 9 matches investigated, (v) the Appealed Decision did not identify the facts charged to each of the persons that were found guilty.

103. The Sole Arbitrator shall thus examine each of these questions:

i. Compatibility of the sanctions imposed on the Appellant with his fundamental rights

104. The Appellant sustains that the sanctions imposed on him violate his fundamental rights to economic freedom and to private property, as established by Arts. 41 and 43 of the Romanian Constitution, respectively. In this regard, the Appellant considers that, under Romanian Law, the limitation of these rights is not possible unless (i) it is provided by law, (ii) it pursues one of the goals envisaged by Art. 53 of the Romanian Constitution and (iii) it is proportional to the situation leading to such limitation of rights. In particular, the Appellant considers that the fine imposed on him is not proportional, as it represents more than 100 times the average Romanian monthly salary.

105. In this regard, the Sole Arbitrator has noted that, in the previous appeal that the Appellant filed before the RC, he did not challenge the legality of these sanctions and he did not consider that it violated his fundamental rights.

106. In any case, to assess the Appellant's submission, the Sole Arbitrator shall bear in mind that, as it has been clarified by the CAS jurisprudence (see CAS 2013/A/3139), international federations like the RFF have a wide margin of autonomy to regulate their own affairs and, specifically, they are competent and have the power *"(i) to adopt rules of conduct to be followed by their direct and indirect members and (ii) to apply disciplinary sanctions to members who violate those rules, on condition that their own rules and certain general principles of law – such as the right to be heard and proportionality – be respected (CAS 2011/A/2426, para. 62; cf. BADDELEY M., L'association sportive face au droit, Bale, 1994, pp. 107 ff., 218 ff.; BELOFF/KERR/DEMETRIOU, Sports Law, Oxford, 1999, pp. 171 ff.)"*. As a consequence, as a general principle, their disciplinary power does not rest on public or criminal law, but on civil law.

107. In the present case, pursuant to the Romanian law (in particular, to the Romanian Act 69/2000 regarding physical education and sports), the RFF has conferred the legal power to *"exercise disciplinary authority under the terms established by the law herein and according to the own statutes and regulations"* (Art. 37, para. 1, lit. e). In addition, pursuant to Art. 46 of the Romanian Law 69/2000:

"Art. 46.-

(1) The disciplinary authority is exercised in full and lawfully[1] according to:

a) the powers conferred by law to exercise the right of supervision and control of sporting structures by the specialized central public administration body for the sport;

b) the statutes and regulations of national sports federations, country and Bucharest associations by sporting branch, professional leagues and the Romanian Olympic Committee.

(2) The disciplinary power confers it holders, listed in par. (1) letter b), the power to investigate and, as appropriate, penalize the offending individuals and institutions".

108. In line with this, Art. 9, section u) of the Statutes of the RFF establishes that the RFF *"carries out the monitoring, the control and the disciplinary authority in its field under the terms provided by the Sports Law, as amended and supplemented, and according to its own Statute and regulations".*

109. Particularly, in the exercise of its legal statutory competences the RFF has adopted the RFF-DR, a set of rules that establishes a number of provisions aimed to fight against the manipulation of football competitions (match-fixing) and to protect the integrity of sport. In this regard, the Sole Arbitrator shall point out that the fight against match manipulation is one of the main objectives of FIFA and UEFA, whose regulations, pursuant to Art. 57.2 of the RFF Statutes, are applicable by the disciplinary bodies of the RFF. As a matter of fact, match-fixing is a very serious problem worldwide, that at European level has been acknowledged by the European Union (among others, in its 2011 *Communication on sport*) and by the Council of Europe that, in its *Convention on the Manipulation of Sport Competitions* (of 18 of September of 2014) emphasized that sports organisations bear the responsibility to detect and sanction the manipulation of sports competitions committed by persons under their authority.

110. The Sole Arbitrator does not share the Appellant's considerations with regard to the disciplinary sanctions that have been enacted by the RFF in its Disciplinary Regulations. First of all, the Sole Arbitrator notes that these sanctions have been established within the RFF's scope of competence, not only as a consequence of its autonomy and power of self-ruling but also in the exercise of the legal authority that the Romanian Law confers it. Therefore, the sanctions imposed on the Appellant have been legally established by the RFF and, in case the Appellant considers that the RFF's regulations are unconstitutional or contravene the Romanian public policy, this circumstance would have to be declared by the competent national jurisdiction and, until that happens, it shall be assumed that these standing regulations are in principle valid under Romanian Law.

111. Furthermore, the Sole Arbitrator considers that the sanctions imposed on the Appellant do not violate the applicable international standards of human rights and, in particular, that they do not affect "in a drastic manner" on the Appellant's fundamental right to freely exercise a profession

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1 Translation provided by the Respondent and partially contested by the Appellant, that considers that the original Romanian word "legitim" shall be translated by the English word "legitimate", instead of "lawfully" (as it has been translated by the Respondent).

- economic freedom - and the right to private property (as established by Arts. 41 and 44 of the Romanian Constitution, respectively). In this regard, the Sole Arbitrator considers that the 2-year ban from any football-related activity does not violate the Appellant's right to exercise a profession or enjoy his economic freedom. On the contrary, the sanction imposed on the Appellant simply limits his capability of performing any football activity, during a temporary and limited period of 2 years. In this regard, it should be noted that the coaching activity is a regulated activity that, until he was sanctioned, the Appellant was performing under the authorization and the rules of the RFF, and within its disciplinary authority. Therefore, the breach of these rules by the Appellant can legitimately entail for the temporary suspension of his authorization for coaching, without having violated the Appellant's fundamental rights. In addition, during this temporary period the Appellant will keep enjoying his economic freedom and would be allowed to exercise any profession or economic activity, provided that it is not related with football. Therefore, the Sole Arbitrator considers that the 2-year ban from any football-related activity imposed on the Appellant does not violate any of his fundamental rights.

112. On the other hand, with regard to the fine imposed on the Appellant, the Sole Arbitrator notes that, in accordance with Art. 61 of the RFF-DR, such fine has mandatory nature (shall be always imposed on the offender) and, indeed, in the case at stake, its amount was the minimum one established by the RFF-DR for disciplinary offences of this kind. Therefore, taking into account the mandatory nature of this sporting penalty and that it was set in its minimum amount (i.e. RON 200.000), the issue on its proportionality is meaningless, particularly when considering that the economic capacity of the Appellant is much higher than those of an average Romanian citizen (as he recognizes in his submissions, the Appellant was even financing the club's - Gloria Buzau - activity and had even made a loan of 10,000 USD) and that, moreover, in connection with the payment of this fine the Appealed Decision established that *"By virtue of Article 9 of RD of RFF the club Gloria Buzau was ordered to jointly pay sports penalties"*.

113. Therefore, for the reasons explained, the Sole Arbitrator concludes that the sanctions imposed on the Appellant are valid and are not contrary to any national or international fundamental principles or rights and, in particular, that they do not violate the Romanian Constitution or the Romanian public policy.

ii. On the alleged lack of impartiality and independence of the RC

114. The Appellant considers that the members of the RC *"cannot be impartial and independent in the proceeding where one of the parties is the FRF* [RFF] *itself"* and that, due to the election system by the RFF Executive Committee of the members of the RC (that the Appellant considers to be non-transparent), and to their short term of office (1-year renewable), this disciplinary body would lack of impartiality and independence, which would be in breach of Art. 6 of the European Convention of Human Rights and Art. 21.3 of the Constitution of Romania. In addition, this lack of independence and impartiality would not have an effective procedural remedy, as the RFF-DR only allows the challenge of 1 of the 5 members of the RC. Therefore, in the Appellant's opinion, in cases like the one at stake such challenge would be ineffective.

115. Moreover, the Appellant considers that in the present case this alleged lack of impartiality and independence would have been confirmed by the fact that, despite the Appellant's request, the RC did not disclose the documentation regarding the procedure that had been followed to appoint all the members of the RC.

116. First of all, the Sole Arbitrator notes that the grounds of the Appellant's request before the RC were not based on a suspicion on the independence or impartiality of any or all of its members, but on the fact that he had a conflict with the management of the RFF which could affect the impartiality and independence of the members of the Committee. In this regard, the Sole Arbitrator observes that it is not true that the Appellant *"didn't receive an official written answer from the Recourse Committee"*, which would have merely rejected the Appellant's request. On the contrary, the Sole Arbitrator has noted that the RC dismissed the Appellant's request twice. Firstly, by means of its resolution dated 15 September 2016, in which it reasoned that such request was not admissible as it did not fall under its jurisdiction. Secondly, by means of its resolution of 13 October 2016, the RC dismissed again this request, based on the following grounds:

> *"The Recourse Committee, unanimously, sitting on the exception of erroneous composition of the Recourse Committee and the request for granting a hearing, in supporting the exception, decide to reject the request of postponement of the case for the following reasons: on the exception of erroneous composition/constitution of the Recourse Committee, according to the Statute of RFF, publishing on FRF.ro site, jurisdictional committees are designated by decisions of the Executive Committee, given that at this hearing it has been proved that on RFF website there is a decision of the Executive Committee of 26.08.2016 which approved the composition of RFF judicial commissions, meaning that they remain unchanged, given that also according to the provisions of Article 48 paragraph 8 of the Statute of RFF the Judgments of the Executive Committee may be challenged in court if they are unlawful and non-statutory, after an arbitration procedure before TAS, thus the Decision of the Executive Committee of 08.26.2016 is presumed to be lawful and valid until proven otherwise, i.e. until their invalidation by the court the Decisions of the Executive Committee shall be valid".*

117. The Sole Arbitrator shares the position of the RC. In the first place, because it is not true that the members of the RC are appointed *"after a totally non-transparent, even secret procedure, which casts the first shadows of doubt regarding their independence and impartibility"*, as the Appellant affirms. On the contrary, the appointment of the members of this Committee is not discretionary, and shall fulfil the procedure established in Art. 57, paras. 2 and 3, of the RFF Statutes, which provides as follows:

> *"2. These committees are impartial and independent arbitration courts, composed in accordance with the provisions of FIFA in the field. Members of these committees apply in their rulings the statutes, regulations and directives of FRF, UEFA, FIFA and the legislation in force.*
>
> *3. The members of the jurisdictional committee are appointed according to the following criteria:*
>
> *- have higher legal education attested by a bachelor's degree, long-term higher education attested with a bachelor's degree or equivalent;*
>
> *- have legal experience of at least 8 years.*

The applications shall be submitted at the general secretary office and are approved by the Secretary General. The Secretary General shall submit for approval by the Executive Committee the appointment and/or revocation of jurisdictional committee members".

118. Therefore, pursuant to this provision the Secretary General of the RFF proposes to the Executive Committee, for its approval, the members that will conform the RC, which would be elected amongst those candidates that have run for this position and fulfil with the experience and the educational requirements established by Art. 57, para. 3, of the RFF Statutes. In addition, from the resolution passed by the RC on 13 October 2016, the Sole Arbitrator acknowledges that this appointment is not secret and, on the contrary, the decision that the Executive Committee of the RFF passes for this purpose is even published in the website of the RFF.

119. In this regard, the Sole Arbitrator notes that, despite this general accusation of partiality and lack of independence, the Appellant has not raised (neither in CAS, nor in the previous instance) any specific concern or reason that could lead him to suspect or be afraid of the potential lack of independence and impartiality of any or all of the members of the RC. Therefore, besides this general allegation of lack of independence and impartiality, the Appellant has not raised any legitimate reason that can make objectively fear that the members of the RC were not independent and impartial. Indeed, as underlined by the RC in its resolution of 13 October 2016, pursuant to Art. 48, para. 8, of the Statutes of the RFF, the resolution of the Executive Committee of the RFF appointing the members of its jurisdictional bodies can be challenged before the Court in case it is unlawful or contravenes the RFF regulations. Thus, as the Appellant did not challenge this resolution, in principle the Sole Arbitrator shall assume that such designation is lawful.

120. Moreover, the Sole Arbitrator considers that the current configuration of the disciplinary bodies of the RFF promotes and guarantees its independence, even in cases where the RFF is indirectly a party to the proceedings. In particular, the fact that different federative bodies of the RFF (i.e. the DEC, the RC and the Integrity and Antifraud Department of the RFF) play different procedural roles within the federative proceedings gives grounds to conclude that these federative bodies are independent and impartial. In particular, it shall be noted that the Integrity and Antifraud Department of the RFF is the body in charge of the investigation of this kind of facts and the one which performs the prosecution before the competent jurisdictional committees of the RFF: the DEC in first instance, and the RC in second instance.

121. In addition, even if it is true that the mechanism for challenging the members of the RC who may raise doubts as to their independence, as established in Art. 95 of the RFF-DR, could be improved, in any case the RFF-DR envisage enough systems by means of which the parties to the proceedings can assure and guarantee that the procedure is ruled by an independent and impartial body. In particular, the fact that, ultimately, the final decision that could be passed at the federative level (i.e. the decision of the RC) can be appealed before the CAS that, through its full power of review and its rehearing of the case, can heal all the procedural defects occurred in the previous instances, including the eventual lack of independence of the first-instance tribunal.

122. As a consequence, for the foregoing reasons, the Sole Arbitrator concludes that the alleged lack of impartiality and independence of the RC has not been proven by the Appellant and thus this submission shall be dismissed.

iii. On the retroactive application of the 2016 Edition of the RFF-DR

123. Even though the Appellant does not expressly contest that the 2016 edition of the RFF-DR was more favourable to him, in any case he considers that the Appealed Decision failed to explain why the 2016 edition of these regulations was the most favourable in the case at stake. In this regard, the Appellant considered that the application of these regulations violated his right to a fair trial (Art. 6 of the ECHR) and the prohibition of a retroactive application of the law (Art. 7 of the ECHR).

124. In this regard, the CAS jurisprudence has already clarified that *"The Panel identifies, in fact, the applicable substantive rules by reference to the principle "tempus regit actum": in order to determine whether an act constitutes a disciplinary infringement, the Panel applies the law in force at the time the act was committed. In other words, new regulations, unless they are more favourable for the athlete (the lex mitior principle referenced in advisory opinion CAS 94/128, rendered on 5 January 1995), do not apply retroactively to facts that occurred prior to their entry into force, but only for the future (CAS 2000/A/274, award of 19 October 2000)"* (CAS 2015/A/4351).

125. Particularly, with regard to the guarantee enshrined in Art. 7 of the ECHR *("Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed")*, as declared by the Grand Chamber of the European Court of Human Rights in the judgment quoted by the Appellant (judgment of 18 July 2013, Case of Maktouf and Damjanović v. Bosnia and Herzegovina), the assessment of the retroactive application of the law shall not be made *in abstracto,* analysing its compatibility with Art. 7 of the ECHR and, on the contrary, *"this matter must be assessed on a case-by-case basis, taking into consideration the specific circumstances of each case and, notably, whether the domestic courts have applied the law whose provisions are most favourable to the defendant"*.

126. Having regard to this principle, the Sole Arbitrator firstly notes that Art. 5 of the RFF-DR (Ed. 2016) expressly establishes the possibility of applying these regulations retroactively in cases where it provides for a more favourable sanction to the offender. It is further noted that, in the specific case at stake, the 2016 version of Art. 61 of the RFF-DR eliminated the additional sanction established in the last paragraph of the former version (2013) of this provision, pursuant to which *"The judicial body can apply, in serious cases, the sanction of declaring the person non grata",* that in the version enacted in 2016 disappeared. As for the rest of the disciplinary provision, it remained unchanged, maintaining point by point its original wording. Therefore, the Sole Arbitrator considers that, indeed, the 2016 Edition of the RFF-DR was more favourable for the Appellant and that the RC was right in considering it as the *lex mitior* at stake.

127. Furthermore, the Sole Arbitrator observes that it is not correct, as sustained by the Appellant, that the Appealed Decision *"breached the Appellant's rights to a reasoned decision, part of the right to a fair trial, guaranteed by Article 6 ECHR"*. On the contrary, the RC gave the following reasons for the retroactive application of the 2016 Edition of the RFF-DR:

"The ground of recourse alleging infringement of the principle of non retroactivity of the law in terms of the application of RFF Disciplinary Rules is unfounded since the provisions of Articles 5 paragraph 1 of FRF Disciplinary Regulations stipulates that the Regulation applies to offenses committed after its entry into force, and to acts committed before, whether this Regulation provides for a sanction regime more favourable to the perpetrator.

So, correctly, DEC has made the application of Article 5 of RD of the RFF and ordered that the disciplinary rules more favourable be imposed. Even if from the motivation of DEC it does not follow expressly that it was analysed which of the two regulations is more favourable and that, following analysis, the last regulation was applied which cannot lead to the conclusion that the law more favourable was not applied, as long their application was made unquestionably.

The reason for which the last regulation is more favourable law is that by introducing the causes of impunity and applying a milder sanction regime in certain situations under the Emergency Committee Decision of RFF of 03.02.2016, more favourable rules are reached compared to the standard sanction established by the Disciplinary Rules prior to 03.02.2016.

But the standard in the matter is the decision of CCR[2] no. 265/2014 showing that Articles 5 of the Criminal Code is only constitutional to the extent that it doesn't allow the combination of the provisions of successive laws in establishing and applying more favourable penal law.

But, according to the decision of the ECHR Case Anghel v. Romania, in Contravention matter the same standards as in criminal matters apply. In disciplinary matters, obviously, the same standards apply".

128. As a consequence, this submission of the Appellant is rejected.

iv. On the alleged applicability of the limitation period of the sanctions with regard to 6 of the 9 matches investigated

129. In the Sole Arbitrator's opinion, this ground of appeal is manifestly unfounded. First of all, because even if it was true that the disciplinary infringements committed in 6 of the 9 matches analysed were time-barred, such circumstance are irrelevant for the present case, because sanctions provided by Art. 61 of the RFF-DR do not require that the conduct that constitutes the disciplinary infringement (to conspire or make arrangements to influence the result of a game in a manner inconsistent with the ethics of sport and the principles of conduct required by these rules) is committed in various matches and, on the contrary, it only requires that it is committed in a sole match. Therefore, as declared by the Appealed Decision, *"it is not relevant for the establishment of guilt if only one or more games were rigged by manipulating the results, a single match being sufficient in order to apply the sanctions"*.

130. As a consequence, even if it was considered true that the facts occurred in 6 of the 9 games had prescribed, the sanctions that could be imposed on the Appellant would be the same *("a ban on any activities related to football from 1 to 2 years and a fine of at least 200,000 lei").* Notwithstanding this,

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2 Constitutional Court of Romania.

and for the sake of completeness, the Sole Arbitrator shall clarify that the Appellant's position on this issue is not correct. Pursuant to Art. 46 of the RFF-DR:

> *"1. Infringements committed during a match may no longer be sanctioned after a lapse of 6 (six) months. As a general rule, other infringements may not be sanctioned after a lapse of 5 (five) years.*
>
> *2. Anti-Doping rule violations may not be prosecuted after 8 (eight) years have elapsed.*
>
> *3. Sanctioning for corruption deeds is not subject to a limitation period".*

131. The Sole Arbitrator agrees with the RC and considers that the 6-month limitation period established by Art. 46, para. 1 of the RFF-DR does not apply in this case, as it only applies to *"disciplinary offences on the field of play (violations of the Game Laws or participation in the game in irregular conditions)"*. Consequently, disciplinary offences like the one at stake (manipulation of matches) would become time-barred no less than after a 5-year term since its perpetration or, alternatively, they would not prescribe in case they are considered as "corruption deeds" in the sense of para. 3 of Art. 46 of the RFF-DR. Therefore, the Sole Arbitrator concludes that none of the offences committed in the 9 Matches investigated, that were played between 20 September 2014 to 30 May 2015, are time-barred.

v. With regard to the facts that were charged to the Appellant

132. The Sole Arbitrator does not agree with the Appellant and considers that both the DEC Decision and the Appealed Decision correctly identified and established the facts that the Appellant had committed in breach of Art. 61 of the RFF-DR. On the contrary, as summarized by the Appealed Decision, the DEC concluded that the results of the games mentioned in the report of the Department of Integrity and Antifraud of the RFF were manipulated in order to obtain profits from betting.

133. The Appellant argues that the activity of "conspiring" and "making deals" require the collaboration of the technical staff with other people and, in particular, with the players of their own teams or with the representatives and/or players of the opposing teams. In this regard, the Appellant affirms that, as both the DEC Decision and the Appealed Decision declared that it cannot be held beyond any doubt that an agreement between the technical management and the players of FC Gloria Buzau existed, the application on the Appellant of the sanctions envisaged by Art. 61 of the RFF-DR is unlawful.

134. According to the Sole Arbitrator's standpoint, the Appellant is taking some of the declarations of both the Appealed Decision and the DEC Decision out of context, trying to support his allegations. However, in the Sole Arbitrator's opinion both decisions made clear that, in the present case, the Appellant undoubtedly conspired or made arrangements to influence the result of a game in a manner inconsistent with the ethics of sport and the principles of conduct required by the RFF Regulations, as established by Art. 61 of the RFF-DR.

135. In particular, pursuant to the Appealed Decision, *"the manipulation of the results could not have been done without the involvement of the persons from the club Gloria Buzau, namely managers, coaches and players,*

being necessary an understanding between all the persons involved or making an understanding by persons with powers of decision". In particular, *"it was revealed the role of the technical management formed of Ion Viorel, Romeo Bunica and Marian Rosu, who led and managed the manipulation of the results, collaborating and constantly complementing each other in achieving goals proposed"*.

136. Indeed, pursuant to the DEC Decision, this was even recognized by the other members of the coaching team (Messrs. Romeo Bunica and Marian Rosu), who confessed to have participated in the manipulation of the matches. Therefore, an agreement, a conspiracy or an arrangement between the technical staff of the team to manipulate the results of the Matches, in the terms envisaged by Art. 61 of the RFF-DR, existed and was proven during the disciplinary proceedings.

137. In this regard, it is true that *"it was not revealed, beyond any doubt, that players of the team had understanding with technical management for the manipulation of the results"*. However, this was due to the fact that, as declared by the DEC Decision, the coaching management did not want the players of the team to know in advance how the Matches were going to be manipulated, so they would not know what to bet and hence they would not alter the betting odds.

138. As a consequence, it was found that *"the technical management had communicated the players only in the last minute, what was going to happen, it carefully controlled the information sent to players, it tried to prevent players from using information and misleading them and the players expressed dissatisfaction between them towards the situation in which they were placed, even though they had agreed to execute the instructions of technical management, some have not executed all instructions assuming their non-participation in games, etc"*.

139. Nevertheless, this does not mean that the players did not participate in the manipulation of the Matches. Indeed, *"The Players accepted to collaborate with technical management and generally they executed its orders for various reasons such as the precarious financial situation of most of the players with their financial rights unpaid for months, the need to support their families, the hope for recovery of salary arrears, the lack of a professional alternative, the hope of winning some money in personal bets, fear of repercussions when executing orders given by the coaches"*. In effect, *"players have acted to influence the course and/or results of the games assuming a behaviour contrary to statute and regulations of RFF in the view of obtaining personal benefit or for third parties, they participated in betting, they used information likely to encroach upon the integrity of matches, they did not inform the RFF's management on requirements of the technical management, which aimed at influencing the course and/or the outcome of matches in which they have participated and they did not denounce to RFF the behaviour of the technical management"*.

140. For all these reasons, after having analysed the report issued by the Department of Integrity and Antifraud of the RFF, the 9 reports issued by Sportsradar within the UEFA BFDS, the video recordings of the matches, all the testimonies given by all the staff of the team Gloria Buzau, and the rest of the evidence produced by the Parties, the RC reached the conclusion that *"the activity of manipulating the results conducted by coaches with the participation of players, the lack of sincerity of both coaches and of majority of players nominated in the report of the department of integrity to which there are also added elements of details provided by players and circumstances arising from general financial situation of the club and especially of the players, the Committee found that the activity of manipulating the results of games included in the referral was real and, therefore, it applied the sanctions provided for by Regulation with regard to each defendant separately"*.

141. In particular, throughout 11 pages, Section IV of the DEC Decision analyses the facts at stake and, in its Section 5, it identifies all the specific facts and circumstances that have been taken into account to assess the disciplinary liability of each of the defendants and, finally, in its Section 6, the DEC Decision gives the particular details of the sanctions imposed on each of the defendants. In this regard, it is worth noting that the DEC Decision spends 14 pages (paras. 5.1.1 to 5.1.17 of the DEC Decision) to explain all the facts and circumstances that it has taken into account with regard to the Appellant, and that led the DEC to impose the sanction on the Appellant.

142. As a consequence of the foregoing, the Sole Arbitrator finds that the DEC and the RC correctly and exhaustively identified the facts occurred and the acts committed by each of the persons that were condemned and, in particular, by the Appellant and, most important, that the findings of the DEC Decision and the Appealed Decision with regard to the Appellant entail for the imposition of the sanctions established by Art. 61 of the RFF-DR.

143. It then follows that the Appeal filed by the Appellant shall be dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr. Ion Viorel on 17 January 2017 against the Decision no. 44/9.11.2016 rendered by the Recourse Committee of the Romanian Football Federation on 9 November 2016 is dismissed.

2. The Decision no. 44/9.11.2016 rendered by the Recourse Committee of the Romanian Football Federation on 9 November 2016 is confirmed.

(…)

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