



**Arbitration CAS 2013/A/3247 C.S. Concordia Chiajna v. Romanian Football Federation (RFF) & S.C.F.C. Rapid S.A., award of 10 October 2013 (operative part of 2 August 2013)**

Sole Arbitrator: Mr Marco Balmelli (Switzerland)

*Football*

*Club licensing system*

*Validity of amendments in the rules of a federation*

*Occupation of vacant spots in the first division of the Romanian Football Championship*

*Prohibition against arbitrary for national football associations*

1. **As a general legal principle, an amendment is only valid for the future. Without any proof to the contrary, this legal principle is applicable.**
2. **There exists a (common) practice based on which a football club lacking license is not allowed to play in the first division of the Romanian Football Championship. This rule was also supported by CAS case law. In the past years, vacant spots in the first division were occupied by substitution by meaning that the best-ranking licensed team which was relegated in the second division in the previous season shall occupy the vacant spot in the first division.**
3. **National football federations enjoy a monopoly. For this reason, in particular, they are obliged to approve clear and comprehensible decisions as well as to grant an equal and not arbitrary treatment to clubs. They must treat all football clubs in an equal manner.**

**I. THE PARTIES**

1. C.S. Concordia Chiajna (the “Appellant” or “Concordia”) is a Romanian football club and member of the Romanian Football Federation, duly incorporated under Romanian law, registered with the Sports Identity Certificate no. 747/11.06.2012. Concordia was founded in 1957 and has its registered office in Chiajna, Romania.
2. The Romanian Football Federation (the “First Respondent” or “RFF”) is the governing body of football in Romania and headquartered in Bucharest. The RFF was founded in 1902. The RFF is a member of FIFA and UEFA.
3. S.C. F.C. Rapid S.A. (the “Second Respondent” or “Rapid”) is a Romanian football club in liquidation, which was founded in 1923.

## II. FACTUAL BACKGROUND

4. The elements set out below are a summary of the main relevant facts, as established by the Sole Arbitrator on the basis of the written submissions of the Parties and the oral pleadings at the hearing held on 31 July 2013.
5. On 26 April 2013, the Romanian Football Federation first instance body (“FRF”) refused to grant first division (League 1) license to Rapid by means of the decision no. 16/26.04.2013.
6. The FRF’s decision was appealed by Rapid before the RFF appeal body on 10 May 2013.
7. The RFF appeal body stated that Rapid, for which insolvency proceedings have been initiated on 7 December 2012, had outstanding debts for which no payment evidence has been produced by 31 March 2013, which was the relevant deadline for the evaluation of the financial situation of Romanian clubs. Furthermore, it was stated that Rapid was involved in several disputes with other football clubs and players concerning financial claims, which were admitted, in full or in part. Based on the standing of the debts and with regard to the capacity to perform the activity in compliance with the further work principle, the RFF appeal body found that Rapid had insufficient available funds for the payment of uncontested, due and payable receivables. Based on these grounds, the RFF appeal body rejected the appeal as unfounded with decision no. 1/10.05.2013 and upheld the decision no. 16/26.04.2013 rendered by the FRF by meaning that the license has been refused to Rapid.
8. The aforementioned decision no. 1/10.05.2013 of the RFF appeal body was not further challenged and therefore became final and irrevocable.
9. During the 2012/2013 season, the Appellant finished at the 15<sup>th</sup> place of the first division championship, *i.e.* the first relegated team.
10. On 6 July 2013, the Executive Committee of the RFF approved several amendments and supplements in the Regulation for the Organization of the Football Activity (“ROAF”) according to which, in case there are vacancies in a championship, they have to be compensated by the first teams under the relegation line in the prior season.
11. On 6 July 2013, the Executive Committee of the RFF also decided that the number of teams to play in the 2013/2014 season of the Romanian first division shall be 18 although only 17 clubs met with the sporting and financial request. Furthermore, the Executive Committee of the RFF decided that the 18<sup>th</sup> place shall be occupied by the winner of a knock-out match between the Appellant and Rapid (the “Decision”).
12. The knock-out match was scheduled on 13 July 2013. The knock-out match has been won by Rapid.

### III. THE PROCEEDING BEFORE THE COURT OF ARBITRATION FOR SPORT (“CAS”)

13. On 11 July 2013, the Appellant filed a Statement of Appeal with the CAS, two days before the knock-out match.
14. In its Statement of Appeal, the Appellant requested *“that with utmost urgency, prior to the transfer of the file to the Panel, and provided that the Respondent is subsequently heard, the Division President issues an order of suspension of the Decision until a final award is pronounced in this case.”*

*This relief is necessary to protect the Claimant from irreparable harm, given the extremely close date set for the knock-out match involving the Claimant and FC Rapid. If the Decision is not suspended, and FC Rapid manages to win the knock-out match, the 2013-2014 football season will start with FC Rapid as part of the 1<sup>st</sup> Division. In such scenario, even if a later arbitral award will agree to the Claimant’s requests, the Claimant will have no legal possibility to re-enter the 2013-2014 season of the 1<sup>st</sup> Division. As a result, lack of a provisional remedy will cause irreparable harm to the Claimant”.*
15. By letter dated 12 July 2013, the parties were informed that the Deputy President of the CAS Appeals Arbitration Division had noted that the knock-out match scheduled on 13 July 2013 was to determine which team between the Appellant and Rapid shall play in the next Romanian 1<sup>st</sup> Division and that, at this stage, the Appellant did not suffer any irreparable harm should it have to play the knock-out game. The Deputy President of the CAS Appeals Arbitration Division expressly noted that the Appellant itself stated it would suffer an irreparable harm, *“if the Decision is not suspended, and FC Rapid manages to win the knock-out match...”* (emphasis added). However, it was stated that the Respondent would be granted a deadline until 16 July 2013 to provide its answer to the Appellant’s request in the event that Rapid won the knock-out game.
16. On 16 July 2013, the RFF filed its answer to the Appellants request for stay.
17. On 16 July 2013, Rapid filed a request for intervention in the present procedure pursuant to Article R41.3 of the Code of Sports-related Arbitration (the “Code”). Together with its request, Rapid filed its position on the Appellant’s request for stay. The Appellant and the First Respondent agreed with the intervention of Rapid.
18. On 16 July 2013, the CAS took note that the Respondent agreed that the present matter be submitted to a Sole Arbitrator, as had been suggested by the Appellant together with its Statement of Appeal. On the same day the parties were informed that pursuant to article R54 of the Code, the President of the CAS Appeals Arbitration Division, or his Deputy, will appoint the Sole Arbitrator.
19. On 17 July 2013, the Deputy President of the CAS Appeals Arbitration Division rendered an Order of Stay, rejecting the Appellant’s request.
20. On 19 July 2013, the Appellant filed an urgent application for an expedited procedure and a new urgent request for provisional measures.

21. On 22 July 2013, the First Respondent agreed to an expedited procedure and to the expedited procedural calendar suggested by the CAS, but objected to the Appellant's new application for provisional measures.
22. In view of the First Respondent's agreement to the expedited calendar, the Appellant withdrew its new urgent request for provisional measures.
23. On 23 July 2013, the expedited procedural calendar was issued by CAS pursuant to Article R52 of the Code. On the same day, the parties were informed that the hearing will be held on 31 July 2013. They were also informed that the operative part of the award would be rendered by the CAS at the latest 2 August 2013 by noon. Furthermore, the parties were informed that pursuant to Article R54 of the Code, Dr. Marco Balmelli, attorney-at-law in Basel, Switzerland, will decide the present case as Sole Arbitrator.
24. On 23 July 2013, following the Appellant's and RFF's agreement, Rapid was included to the proceedings following its request for intervention to which the RFF and the Appellant have agreed.
25. On 26 July 2013, in accordance with the expedited calendar agreed upon by the Parties and implemented by the CAS, the Respondents filed their respective Answers.
26. On 29 July 2013, the Order of Procedure has been sent to the Parties to sign.
27. On 29 July 2013, the Appellant and Rapid signed the Order of Procedure without any remarks. The RFF has failed to sign and return the Order of Procedure.
28. On 31 July 2013, the hearing was held in Lausanne, Switzerland. Only the Appellant and Rapid were represented at such hearing. The RFF, even though regularly convened, did not show up. At the close of the hearing, the Parties present confirmed that they were satisfied as to how the hearing and the proceedings were conducted.
29. In addition to the Sole Arbitrator and Mr William Sternheimer, Managing Counsel & Head of Arbitration, the following people attended the hearing:

For the Appellant:

- Mr Jorge Ibarrola, legal counsel;
- Mr Ionut Chirila, manager of Concordia.

For the Second Respondent:

- Mr Josep F. Vandellos Alamilla, legal counsel.

30. The Parties did not raise any procedural issues or objections in the course of the proceedings. They did not make any objections either with regard to the appointment of the Sole Arbitrator

and more generally with regard to the proceedings held. The Parties had full opportunity to present their case in the course of the proceedings and their right to be heard was duly respected.

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

31. The Appellant states that the 18<sup>th</sup> spot in the first division should have been occupied by the first team under the relegation line which means by itself. The Appellant explains that Rapid did not meet the requirements according to the Romanian National Regulations for Licensing Clubs (“NRLC”, Edition 2012). Therefore the license was not granted to Rapid to play in the first division. The Appellant states that the Decision violates the NRLC. Furthermore, the Appellant considers that the RFF’s practice was to qualify the first team under the relegation line in order to occupy a vacancy. Finally, the Appellant considers that the rule adopted by the Executive Committee of the RFF in the ROAF according to which, in case there are vacancies in a championship, they have to be compensated by the first teams under the relegation line in the prior season, is of immediate application for the 2013/2014 season. The Appellant requests to annul the Decision and to order the RFF to qualify and register Concordia for first division in the season 2013/2014 in place of Rapid.
32. The First Respondent requests the dismissal of the Appeal. RFF explains that the Executive Committee of the RFF had decided that 18 teams shall participate in the first division of the Romanian National Championship. In the absence of a rule, the Executive Committee of the RFF had to adopt a rule with regard to filling the 18<sup>th</sup> spot. The Executive Committee of the RFF, pending the implementation of the new ROAF rule, decided that the vacant spot shall be occupied by organizing a knock-out game between Concordia and Rapid. The RFF states that the Executive Committee of the RFF had the competence to organize a knock-out match based on article 61 in conjunction with article 52 of the RFF Statutes. Finally, the RFF also confirmed that Rapid did not obtain the license to participate in the first division of the Romanian National Championship.
33. The Second Respondent requests the dismissal of the Appeal filed by Concordia. The Second Respondent contests the jurisdiction of CAS in its written submission based on article 34 (9) of the Statutes of RFF. Furthermore, Rapid states that the Executive Committee of the RFF had power and competence to decide the organization of a knock-out match. With regard to the amendments of the ROAF, the Second Respondent states that the amendments shall not have effect for the season 2013/2014.

#### **V. ADMISSIBILITY**

34. Article R49 of the Code provides as follows:

*“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt*

*of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late”.*

35. The appealed Decision was rendered on 6 July 2013. The Appeal was filed on 11 July 2013. The Appeal was submitted at due date.

## VI. JURISDICTION

36. Article R47 of the Code provides as follows:

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

37. Article 34 of the Statutes of the RFF provides:

*“34 (9/1) – Decisions of the Executive Committee that are contrary to the law or to the provisions comprised in the statutes and Regulations may be challenged before the Courts of law by any member who did not participate in the meeting of the Executive Committee or who voted against and requested that this should be recorded in the minutes of the meeting in accordance to legal provisions before”;*

and

*“34 (9/2) – Any dispute regarding the decisions of the Executive Committee will be mandatorily submitted firstly to an arbitration procedure before the Court of Arbitration for Sport”.*

38. The Sole Arbitrator strongly suggests that the above-mentioned article is setting up the CAS as the instance for ruling on *any* dispute brought against a decision of the Executive Committee. The fact that *any* dispute must be resolved through arbitration implies that CAS has jurisdiction to rule on disputes raised by any interested party, whether it is a member of the Executive Committee or not. Based on that the Second Respondents considerations related to article 34 of the Statutes of the RFF can be disregarded without further consideration. In addition, the jurisdiction of CAS is confirmed by the Order of Procedure, which was duly signed by the Appellant and the Second Respondent, and no further objection had been upheld at the hearing.
39. In light of the foregoing, the Sole Arbitrator is satisfied that CAS has jurisdiction to hear this matter and will therefore consider the merits of the appeal.

## VII. APPLICABLE LAW

40. Article R58 of the Code provides as follows:

*“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily [sic], 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”.*

41. The Parties have agreed that the present case shall be judged according to Romanian football statutory regulations and to Romanian law. The Sole Arbitrator will decide the dispute according to those regulations and the Romanian law.

## VIII. MERITS

42. The resolution of this case depends on the regulations of RFF with regard to the licensing system in the Romanian first division championship and the rules concerning the occupation of a vacant spot in the first division which results from a license refusal.

43. According to article 13 (3) ROAF, a club is entitled to play in League 1 only if it obtains a license issued by RFF.

44. It is uncontested and was expressively confirmed by Rapid in its written submission and at the hearing that Rapid has been denied its license to play in the Romanian National Championship 2013/2014. The decision no. 1/10.05.2013 of the RFF appeal body concerning this matter is final and binding as no further appeal was filed before the competent jurisdiction.

45. It is further uncontested that the Executive Committee of the RFF decided that first division of the Romanian National Championship shall be composed by 18 teams. As a result of the license refusal Rapid was no longer entitled to play in the first division. Subsequently, there was a vacancy in the first division which had to be – according to the valid decision of the First Respondent - occupied.

46. According to the regulations in the ROAF, the clubs applying for a League 1 license and being refused shall be relegated to League 2. It is obvious that a football club lacking license is not entitled to play in the League 1.

47. Consequently, for the League 1, the question arises based on which provisions or grounds a vacancy in the first division shall be occupied.

**A. Applicable Regulation**

48. On 6 July 2013, the Executive Committee of the RFF approved several amendments and supplementations to the ROAF, whereby one of the adopted new rules prescribes that football clubs in the first division, which do not obtain a license shall be relegated to second division and that the resulting vacancy shall be occupied by the best rated licensed club the team of which was relegated from League 1 in the previous championship.
49. As a general legal principle, an amendment is only valid for the future. Without any proof to the contrary, this legal principle is applicable.
50. According to article 34 (3) of the Statutes of the RFF, the decisions of the Executive Committee of the RFF shall be effective immediately, unless otherwise provided by the Executive Committee of the RFF.
51. The Executive Committee of the RFF did not provide any transitional rule with regard of the implementation of the amendments and supplementations to the ROAF adopted on 6 July 2013.
52. The Statutes of the RFF are binding for the Parties. With regard to the implementation of the above mentioned amendments to the ROAF, they do not allow another interpretation. Subsequently, the amendments and supplementations to the ROAF became effective immediately and are therefore directly applicable in this case.
53. The RFF itself wrote expressively in its answer filed on 26 July 2013 that the amendments to the ROAF shall be applicable for the season 2013/2014. The RFF is of the view that the amendments to the ROAF are not applicable in this present case as the situations affects the previous season (2012/2013). The same position was adopted by Rapid.
54. By its Decision, the Executive Committee had decided that 18 teams instead of 17 teams shall participate in the first division in the season 2013/2014. Rapid has been denied license for the season 2013/2014 as a result there was a vacant spot in the first division. The situation with the vacant spot arised after the 2012/2013 edition of the Romanian championship had ended. Subsequently - and contrary to the reasons put forward by the RFF and Rapid -, the question with regard of the occupation of the vacant spot in League 1 does affect the season 2013/2014.
55. Therefore and contrary to the reasons put forward by the RFF and Rapid, the Sole Arbitrator holds that the current case does not affect the last season of the Romanian first division championship, which ended by the end of May 2013. It affects the current season, which began by the end of July 2013. License was denied to Rapid for the current season 2013/2014 and not for the previous season.
56. On the basis of the above, the Sole Arbitrator considers that the amendments to the ROAF are applicable to the facts of the present dispute. On this basis alone, the appeal shall be

upheld. However, for sake of completeness, the Sole Arbitrator would like to address the following.

**B. Earlier practice and decisions of the RFF**

57. Even if it would be assumed that the amendments and supplementations to the ROAF are not applicable to the fact of the present case, the Sole Arbitrator states that the Appellant has been able to prove in its submission and at the hearing that:

- there exists a (common) practice based on which a football club lacking license is not allowed to play in the first division of the Romanian Football Championship. This rule was also supported by CAS itself in the decision no. 2012/A/2852 S.C.S. Fotbal Club SFR 1907 Cluj S.A. et al. v. RFF.
- in the past years, vacant spots in the first division were occupied by substitution by meaning that the best-ranking licensed team which was relegated in the second division in the previous season shall occupy the vacant spot in the first division.

58. A RFF report dated 22 June 2011 handles a similar situation. In this Report one discovers that vacant places of League 1 shall be occupied by the best-ranking club from among the clubs relegated from League 1 in the previous season, which also holds a license for the first division.

59. Furthermore, it was established that in the ROAF itself there used to be a rule saying that vacant places in a higher division shall be occupied by the best-ranking clubs from among the clubs relegated in the previous season. This rule was withdrawn in 2011 and reinserted by the Executive Committee of the RFF on 6 July 2013.

60. It is not understandable based on which grounds the Executive Committee of the RFF deviated from the above mentioned common practice and more importantly from its approved rules in the ROAF. Neither the First Respondent nor the Second Respondent could provide plausible grounds and/or legal basis for the Decision, which differs from the common practice and the rules in the ROAF, to be upheld. Especially, the Respondents could not explain why Rapid shall be allowed to play in League 1 although the license to play in League 1 in the season 2013/2014 was not granted to it.

**C. Prohibition against arbitrary**

61. The RFF enjoys a monopoly. For this reason, in particular, it is obliged to approve clear and comprehensible decisions as well as to grant an equal and not arbitrary treatment to clubs.

62. The Decision concerning the knock-out match is clearly contravening the regulations of the RFF. Rapid is in insolvency and therefore its license was denied. Subsequently, according to the NRLC, Rapid is not allowed to play in the first division of the Romanian National Championship. There is absolutely no basis allowing unlicensed Rapid to play in the first division.

63. The RFF has to treat all football clubs in an equal manner. In the previous years, clubs lacking license were not allowed to play in the first division of the Romanian football championship. Nevertheless, the Executive Committee of the RFF allows unlicensed Rapid to play in the first division in the Romanian championship although it doesn't meet the requirements set by the Romanian license system. In turn, this leads to an unequal treatment of the football clubs in the Romanian football championship.
64. The Executive Committee could not prove that there exists a justification for such an unequal treatment. By lacking a basis to handle the situation of Rapid differently, the Executive Committee of the RFF acts clearly in an arbitrary manner. In addition, the Decision of the RFF Executive Committee allowing unlicensed Rapid to play in the first division is in clear contradiction to all previous decisions of the RFF.
65. By allowing unlicensed Rapid to play in the first division, the Executive Committee of the RFF also disobeyed the irrevocable decision of the RFF appeal body no. 1/10.05.2013. There is no reason to deviate from this decision. The Executive Committee of the RFF could not prove that it has the power to disregard irrevocable decisions of a jurisdictional body.
66. It has already been mentioned that the Executive Committee of the RFF has approved amendments in the ROAF on 6 July 2013. These amendments were in force from their publication on. Taking into account this fact and the prior acts, the Executive Committee of the RFF did not have powers to order a knock-out match. It is questionable whether and how RFF justifies its decision to allow Rapid to play in League 1 even though Rapid has been denied its license to play in the first division.
67. Moreover the RFF and Rapid could not prove or justify in any reasonable way why Rapid shall be allowed to play in League 1 even without license.
68. The Executive Committee of the RFF approved the amendments to the ROAF ruling how to occupy vacant spots in a division. There are no rational reasons to abandon these rules.

#### **D. Conclusion**

69. Article R57 of the Code states:

*“The Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance”.*

70. According to the above, the Sole Arbitrator comes to the conclusion that a team lacking license to play in the first division is not allowed to play in that division and that the 18<sup>th</sup> vacant spot shall be filled with Concordia.

## ON THESE GROUNDS

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

1. The appeal filed on 11 July 2013 by C.S. Concordia Chiajna against the decision rendered by the Executive Committee of the Romanian Football Federation on 6 July 2013 with respect to the knock-out game between C.S. Concordia Chiajna and S.C.F.C. Rapid S.A. is upheld.
2. The decision rendered by the Executive committee of the Romanian Football Federation on 6 July 2013 with respect to the knock-out game between C.S. Concordia Chiajna and S.C.F.C. Rapid S.A. is annulled.
3. The Romanian Football Federation is ordered to qualify and register C.S. Concordia Chiajna in the Romanian First Division Championship for the season 2013/2014 in lieu of S.C.F.C. Rapid S.A.
4. (...).
5. (...).
6. All other motions or prayers for relief are dismissed.