



Arbitration CAS 2016/A/4722 ACS Poli Timisoara v. Romanian Football Federation (RFF) & Romanian Professional Football League (RPFL), award of 2 March 2017

Panel: Mr Fabio Iudica (Italy), Sole Arbitrator

Football

Sanction against a club related to the promotion/relegation system of a national federation

Interpretation of a rule

Scope of the sphere of autonomy of an association

Scope of CAS power of review

- 1. In principle, there is no need for interpretation where a rule is clear and unambiguous. In this respect, the wording of the provision of a federation's regulations related to the promotion/relegation system and specifying that a minimum threshold of 15 points shall be accomplished in matches which have been disputed during the play-out phase of the championship or else the following season will begin with a point penalty is clear and unambiguous. Such interpretation is supported by the apparent purpose of the relevant provision i.e. to preserve the value of the points obtained in the football matches until the last championship match and to avoid the risk of voluntary throwing of points which would affect the integrity of the competition.**
- 2. It is undoubted that the promotion/relegation system falls within the sphere of autonomy of football associations which are free to set the conditions for participation in competitions and to exercise their regulatory authority in compliance with the FIFA Statutes and Regulations. *Inter alia*, although the relevant provision of the federation's regulations has a sanctioning character, it is not a disciplinary measure, but it falls within the rules governing the promotion/relegation system.**
- 3. A CAS panel's power of review does not extend to change, amend or abolish any regulations of the FIFA or of any sports federation. As a consequence, a decision rendered in accordance with the applicable regulations of a sports association is not subject to review by the CAS unless it was rendered in violation of the general principle belonging to public policy, such as, among others, the principle of good faith, the principle of *pacta sunt servanda*, the principle of prohibition of abuse of rights or discrimination.**

I. INTRODUCTION

1. This appeal is brought by ACS Poli Timisoara, against the decision rendered by the Emergency Committee of the Romanian Football Federation on 28 June 2016, as well as against the decision rendered by the Executive Committee of the Romanian Football Federation on 7 July 2016, regarding the final ranking for Liga 1 National Championship and relevant deduction of 8 points imposed on ACS Poli Timisoara for the sporting season 2016/2017.

II. THE PARTIES

2. ACS Poli Timisoara (the “Club” or the “Appellant”) is a professional football club based in Timisoara, Romania, competing in the Romania’s Liga I, affiliated with the Romanian Football Federation.
3. The Romanian Football Federation (the “RFF” or the “First Respondent”), based in Bucharest, is the governing body of football in Romania. It organizes the Romanian national team and most of the Romanian football competitions and it is affiliated with the Fédération Internationale de Football Association (“FIFA”).
4. The Romanian Professional Football League (“RPFL” or the “Second Respondent”) is a Romanian governing body consisting of the association of Romanian professional football clubs, that runs the Liga I, the top professional division of the Romanian football league system.

(hereinafter jointly referred to as the “Parties”).

III. THE CHALLENGED DECISIONS

5. The challenged decisions are a) the decision rendered by the RFF’s Emergency Committee on 28 June 2016, published on 29 June 2016, approving the final rankings of the First and Second Leagues’ National Championship for the sporting season 2015/2016, as well as the starting date and calendar of the First League National Championship for the Sporting Season 2016/2017 (the “Decision of the Emergency Committee”) and b) the decision rendered by the RFF’s Executive Committee on 7 July 2016, published on 8 July 2016, validating the Decision of the Emergency Committee (the “Decision of the Executive Committee”), (hereinafter collectively referred to as the “Appealed Decisions”).

IV. FACTUAL BACKGROUND

6. Below is a summary of the main relevant facts and allegations based on the Parties’ written submissions and relevant documentation produced. Additional facts and allegations may be set out, where relevant, in connection with the further legal discussion. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in the award only to the submissions and evidence it considers necessary to explain its reasoning.

7. On 11 July 2014, the RFF's Executive Committee approved the amendment of the RFF Regulations governing the Organization of Football Matters (the "RFF Regulations") introducing, among others, certain changes to the First League Competition system, which came into force on 15 July 2014 and to be effective as from the sporting season 2015/2016.
8. Such system is based on 14 teams competing in two different phases, the regular season (phase I), at the end of which the teams placed on the first six positions shall qualify for the play-off phase (at the end of which the team which rank first is the winner of the Championship), while the last 8 teams shall participate in the play-out phase (Phase II).
9. According to the amended version of the RFF Regulations, the provision of article 29 (4) related to the "Competition system", reads as follows: *"Teams participating in the play-out, placed at the end of the second phase on 6th, 7th and 8th position, must obtain at least 15 points in the play-out or else begin the following season with a point penalty calculated as a difference between the minimum score (15) and the number of points obtained in the play-out, irrespective of the competition level in which they participate"*.
10. During sporting season 2015/2016, the Appellant finished the regular season (first phase of the competition) at the 11th position with 25 points and was therefore qualified for the play-out phase pursuant to article 29 (2) of the RFF Regulations.
11. At the end of sporting season 2015/2016, on 28 June 2016, the Decision of the Emergency Committee approved the final rankings of the First and the Second League National Championship in accordance with the provisions of the RFF Regulations, as follows: *"According to art. 36 of the Statutes of the Romanian Football Federation, the Emergency Committee consisting of Razvan Burleanu, President of the RFF, Gino Iorgulescu, First Vice President of the RFF, Octavian Goga, Vice President of the RFF, unanimously decides:*
 - *It approves the final rankings of the First and Second League National Championships, 2015-2016 edition.*
 - *It approves the date of 22 July 2016 as the start date of the First League National Championship, 2016-2017 season.*
 - *It approves the competition calendar of the First League National Championship, 2016-2017 edition"*.
12. In accordance with the provision of article 29 (3), the Club begun phase II of the First League Championship with half the points obtained in the regular season, rounded by 0.5, *i.e.* 13 points.
13. According to the final rankings, the Appellant qualified in the 7th position with a total amount of 20 points, of which 13 points were obtained in matches played during the regular season and the remaining 7 points during the play-out phase.
14. In a footnote of the final ranking of the First League play-out approved by the Emergency Committee, it is indicated that *"ACS Poli Timisoara is relegated to the Second League and will start the 2016/2017 season with a -8 point sanction for failing to achieve the minimum point number"*.
15. On 7 July 2016, the Executive Committee of the RFF approved the Decision of the Emergency Committee as follows:

“(…)

The Executive Committee of the Romanian Football Federation of 7 July 2016, duly convened according to art. 33 par. (Z) of the Romanian Football Federation, in the presence of the majority of its members, Mr Kyros Vassaras, Stefan Stana and Emilian Hulubei being absent with justification, Mr Gino Iorgulescu, Valeriu Argaseala and Florian Prunea being absent without justification, hereby adopts the following decisions: (...)

Unanimously validates the Decision of the emergency committee no. 12 of 28 June 2016.

(…)”.

16. As a consequence of the foregoing, a deduction of 8 points was imposed on the Appellant at the end of the sporting season 2015/2016, although the Club was not relegated to the Second League due to a vacant position left by the club FC Rapid Bucharest which was not eligible to participate because of a bankruptcy procedure.

V. SUMMARY OF THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

17. On 20 July 2016, the Club filed a statement of appeal before the Court of Arbitration for Sport (the “CAS”) against the First and the Second Respondent with respect to the Appealed Decisions in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration, Edition 2013 (the “CAS Code”) and pursuant to articles 34 (9) and 36 (5) of the RFF Statutes. The Appellant chose English as the language of the present arbitration proceedings.
18. On 25 July 2016, upon request of the CAS Court Office, the Appellant provided a translated copy of the Appealed Decisions as well as the official translation of the provisions within the RFF which were originally submitted in Romanian language.
19. By fax letter on the same date, the Appellant proposed that a sole arbitrator be appointed to hear the present case.
20. On 29 July 2016, the Appellant applied for an extension of its time limit to file the appeal brief in accordance with Article R32 para. 2 of the CAS Code.
21. By fax letter dated 3 August 2016, in view of the Appellant’s request, the CAS Court Office invited the Respondents to state whether they consent to the relevant extension of the Appellant’s time limit to file its appeal brief and whether they agree with the nomination of a sole arbitrator.
22. By fax letter on 5 August 2016, the Second Respondent informed the CAS Court Office that it did not object to the Appellant’s request for extension for the filing of its appeal brief and that it agreed with the Appellant’s choice of language as well as with the nomination of a sole arbitrator.

23. On 11 August 2016, in the absence of any response by the First Respondent, the CAS Court Office informed the Parties that the time limit for the Appellant to file its appeal brief had been extended until 22 August 2016.
24. On 22 August 2016, the Appellant filed its appeal brief.
25. By fax letter dated 26 August 2016, the First Respondent requested to the CAS Court Office that the time limit for the filing of its answer be fixed after the payment by the Appellant of its share of the advance of costs in accordance with Article R 55 para. 3 of the CAS Code.
26. By fax letter dated 31 August 2016, also the Second Respondent requested that its time limit for filing the answer be postponed according to Article R55 para. 3 of the CAS Code.
27. On 16 September 2016, the Appellant sent a fax letter to the CAS Court Office informing that, on 26 August 2016, the Executive Committee of the RFF had approved certain amendments to the RFF Regulations by deleting article 29 (4) on the basis of which the Club was sanctioned under the Appealed Decisions.
28. On 20 September 2016, the CAS Court Office informed the Parties that the Division President had decided to submit the present matter to a sole arbitrator in accordance with Article R50 para. 1 of the CAS Code.
29. By fax letter on 4 October 2016, the CAS Court Office acknowledged receipt of the payment by the Appellant of its share of the advance of costs and granted the Respondents a time limit of 20 days from receipt of the same fax letter to file their answers. The Parties were also informed that Mr Fabio Iudica, attorney-at-law in Milan, had been appointed as a sole arbitrator in the present proceedings.
30. On 12 October 2016, following the First Respondent's request for a 10-day extension of its time limit to file its answer, the CAS Court Office invited the Appellant and the Second Respondent to file their position in this regard, by 14 October 2016.
31. By fax letter dated 14 October 2016, the Appellant informed the CAS Court Office that it agreed with the First Respondent's request for an extension. The Second Respondent failed to provide its position regarding the mentioned request.
32. On 17 October 2016, the CAS Court Office informed the Parties that the First Respondent's request for a 10-day extension had been granted.
33. On 27 October 2016, the First and the Second Respondent respectively filed their answers in accordance with Article R55 para. 1 of the CAS Code.
34. By fax letter dated 3 November 2016, the CAS Court Office invited the Parties to inform the CAS, by 10 November 2016, whether they preferred a hearing to be held in the present arbitration proceedings or for the Sole Arbitrator to issue an award based solely on the Parties' written submissions.

35. On the same day, the First Respondent informed the CAS Court Office that it preferred that a hearing be held in the present proceedings.
36. By fax letter of 9 November 2016, the Appellant expressed its preference for a hearing to be held in the present matter.
37. By fax letter dated 10 November 2016, the Second Respondent stated its preference for the Sole Arbitrator to issue an award based solely on the Parties' written submissions.
38. By fax letter dated 6 December 2016, the CAS Court Office informed the Parties that a hearing would be held in the present arbitration proceedings on 12 January 2017, in Lausanne.
39. On 23 December 2016, the CAS Court Office forwarded the Order of Procedure to the Parties.
40. The Order of Procedure was returned to the CAS Court Office duly signed by the Appellant on 2 January 2017 and by the First Respondent on 4 January 2017.
41. By fax letters on 4 January 2017 and on 6 January 2017, the CAS Court Office reminded the Second Respondent to return its signed copy of the Order of Procedure by return.
42. The Second Respondent submitted its signed copy of the Order of Procedure on 9 January 2017.
43. With the signature of the Order of Procedure, the Parties also confirmed the jurisdiction of the CAS.
44. On 12 January 2017, a hearing was duly held in Lausanne, Switzerland. The following persons attended the hearing:
 - For the Appellant: Mrs Roxana Giurea, Mr Lucian Novacescu and Mr Heiner Kahlert, counsel;
 - For the First Respondent, Mr Adrian Stangaciu, Head of RFF Legal Department, and Mr Paul-Filip Ciucur, counsel;
 - For the Second Respondent, Mr Mircea Calin, Chief Cabinet General Secretary, Mr Constantin Statescu, Legal Director and Mr Paul Alexandru Mincu, counsel
 - Mr Fabien Cagneux, Counsel to the CAS, assisted the Sole Arbitrator at the hearing.
45. At the outset of the hearing, the Parties confirmed that they did not have any objection to the appointment of the Sole Arbitrator, nor to the jurisdiction of the CAS.
46. During the hearing, the Parties were granted the opportunity to present their oral arguments and answer the questions posed by the Sole Arbitrator. At the conclusion of the hearing, the Parties confirmed that they had no objection with respect to the manner in which the hearing had been conducted, and in particular explicitly agreed that their right to be heard and to be treated equally in these arbitration proceedings had been fully observed. The Parties were also satisfied that due process had been fully observed.

VI. SUBMISSIONS OF THE PARTIES

47. The following outline is a summary of the main positions of the Appellant and the Respondents which the Sole Arbitrator considers relevant to decide the present dispute and does not comprise each and every contention put forward by the Parties. The Sole Arbitrator, however, has carefully considered all the submissions made by the Appellant and the Respondents, even if no explicit reference has been made in what follows. The Parties' written submissions, documentary evidence and the content of the Appealed Decisions were all taken into consideration.

A. Appellant's Submissions and Requests for Relief

48. The Appellant made a number of submissions in its statement of appeal and in its appeal brief which can be summarized as follows.

49. The Club contests the deduction of 8 points which was imposed on it at the end of the sporting season 2015/2016, by the Decision of the Emergency Committee (which was confirmed by the Decision of the Executive Committee), as a result of the final ranking of the First League Play-Out.

50. According to the Appellant's position, such a deduction has no legal basis and is disproportionate for the following reasons.

51. At the end of the "regular season" (phase I) of the First League Championship during sporting season 2015/2016, the Club placed on 11th position with 25 points, and qualified for the play-out phase, pursuant to article 29 of the RFF Regulations.

52. In accordance with the provision of article 29 (3), the Club started phase II of the First League Championship with half the points obtained in the regular season, rounded by 0.5, *i.e.* 13 points, and obtained 7 further points in the play-out matches.

53. As a consequence, the official final ranking of the play-out reported that the Club had obtained a total of 20 points and placed on the 7th position at the end of the relevant season.

54. In this context, the Club maintains that it allegedly satisfied the minimum threshold required by article 29 (4) of the RFF Regulations (*i.e.* 15 points), since the relevant rule shall be interpreted in the sense that both the first and the second phase (and not only the play-out phase) must be taken into consideration for the purpose of the points count as "*it is evident that the final result depends on the performance in both phases, i.e. a team's performance in games during phase II of the season (play-off/play-out) is not viewed in isolation, but only in combination with the performance during phase I (regular season)*".

55. Such an interpretation, in fact, is consistent with the general principle that any legal provision shall be taken into account within the whole systematic context and not as an isolated item. As a consequence, the Appellant suggests that the minimum 15 points indicated under the provision of article 29 (4) of the RFF Regulations simply refers to the number of points that a

club holds in the final ranking of the play-out phase (including the points achieved in the previous regular phase) and not to the points achieved by said club in play-out matches only.

56. In support of the said conclusion, the Appellant also relies on the provision of article 27 para. 1 of the RFF Regulations which provides that *“The merit-based hierarchy of the teams participating in the championships shall be established through the accumulation of points during the entire course of the competition”*.
57. On the contrary, the Club avers that the Decision of the Emergency Committee wrongly imposed the relevant deduction of 8 points, probably based on the fact that the Club obtained only 7 points during the play-out phase of the Championship, without considering that the Club finished the play-out phase with more than 15 points.
58. The Appellant contends that, in fact, even though it was not expressly mentioned in the relevant decision, the sanction imposed by the Emergency Committee of the RFF and confirmed by the Executive Committee, is supposedly based on the false assumption that the Club failed to achieve *“the minimum point number”*, under article 29 (4) of the RFF Regulations: *“the only explanation for the Appealed Decision is that the RFF must have interpreted Article 29 para 4 RFF ROAF to mean that 15 points ought to be obtained solely from matches played during the play-out phase”*.
59. However, according to the Appellant, the Appealed Decisions *“does not provide a sufficient legal basis for sanctioning a club that has 15 points or more at the end of the play-out, no matter from which games during the season those points came”*.
60. In this respect, the Appellant argues that the relevant provision is ambiguous and that the consequences of its unclear wording shall go to the detriment of its author, *i.e.* the RFF and not its members, in accordance with the principle *“interpretation contra proferentem”*. In any case, consistent with CAS jurisprudence, article 29 (4) shall be interpreted as restrictively as possible.
61. The Appellant also asserts that the Appealed Decisions are unreasonably discriminatory against the Club, when compared to clubs competing in the play-off phase which are not bound to any minimum number of points, which fact is also in violation of the European and Romanian competition law (in consideration of the alleged dominant position of the Respondents), as well as Romania’s public policy, and what is more, sanctioning only clubs which qualifies from 6th to 8th position in the play-outs increases the gap between the top clubs and the less successful clubs against the principle of fair play. Moreover, the relevant sanction, if upheld, would have a significant financial impact on the Club, especially with respect to TV rights.
62. In addition, the Club contends that, in any case, the sanction imposed by the Appealed Decisions is excessive and disproportionate with respect to the supposed goals of the provision of article 29 (4) of the RFF Regulations (*i.e.* to increase the level of competition and to fight match-fixing), considering that such a deduction was imposed simply on the basis of the Club’s sporting performance. In fact, there is no evidence that the Club committed any disciplinary misconduct justifying a deduction of points and, on the other hand, a deduction of 8 point is even stricter than the maximum sanction provided for under the RFF Disciplinary Regulations for very severe offences.

63. Besides the foregoing, the Appellant underlines that the sanction based on article 29 (4) of the RFF Regulations is not even able to prevent match-fixing, considering that a club determined to influence the outcome of certain matches could easily reach the minimum 15 points to avoid deduction.
64. In support of the abovementioned arguments, on 16 September 2016, the Appellant sent a fax-letter to the CAS Court Office reporting that on 26 August 2016, the Executive Committee of the RFF had approved some changes to the RFF Regulations, according to which article 29 (4) had been repealed. In this respect, the Appellant insists that such circumstance further demonstrates that article 24 (9) was a flawed and abusive provision which fact entails the illegitimacy of the Appealed Decisions.
65. In its appeal brief, the Appellant submitted the following requests for relief:
- I. To annul the Decision of the Emergency Committee adopted by the Respondents on 28 June 2016 with regard to the deduction of 8 points imposed upon the Appellant;*
- II. To annul the Decision of the Romanian Football Federation ("RFF") adopted within the Executive Committee on 7 July 2016, to the extent that it confirms the deduction of 8 points as imposed upon the Appellant by the Decision of the Emergency committee issued on 28 June 2016;*
- III. To grant the Appellant the eight points deducted by means of the Appealed Decisions and to adjust the table of the Romanian First League season 2016/2017 accordingly;*
- IV. To order the Respondents to bear the costs of these arbitration proceedings and;*
- V. To grant ACS Poli Timisoara a contribution towards its legal fees and other expenses incurred in connection with these arbitration proceedings".*

B. The First Respondent's Submissions and Requests for Relief

66. The position of the First Respondent is set forth in its answer and can be summarized as follows.
67. The Appealed Decisions are lawful and grounded and are based on the following facts:
- a) The Appellant failed to meet the criteria established under article 29 (4) of the RFF Regulations since the Club did not obtain the minimum number of points at the end of the play-out phase;
 - b) The Emergency Committee approved the final ranking of the Liga 1 Championship in which the Appellant qualified in the 7th position;
 - c) On 7 July 2016, the Executive Committee duly confirmed the Decision of the Emergency Committee regarding the abovementioned final ranking and relevant point deductions.
68. With regard to the Appellant's criticism against article 29 (4) of the RFF Regulations, the First Respondent contests that neither the Club, nor any other affiliated member to the RFF never

challenged the RFF Regulations before the present arbitration proceedings were instigated, with regard to the minimum requirement of 15 points.

69. As to the violation committed by the Club, it is evident from the very wording of article 29 (4) that a club must achieve a minimum number of 15 points in the 14 matches from the play-out phase, while, on the contrary, the Club itself admits that 13 points out of 20 were achieved in the first phase of the competition.
70. Therefore, the Club only obtained 7 points during the play-out phase, thus 8 points less than the minimum required under article 29 (4) and shall therefore begin the following season with a corresponding penalty.
71. In fact, another club in a similar position, Petrolul Ploiesti was also sanctioned with a deduction of 1 point as it obtained only 14 points during the play-out phase. Such club would be unreasonably discriminated in the event that the Appealed Decisions were set aside by the CAS.
72. With respect to the applicability of the provision at stake, the First Respondent, maintains a) that the provision contained in article 29 (4) of the RFF Regulations was in force when the relevant deduction was imposed on the Club and b) that such provision was never challenged by the Club or by any other member of the RFF, before the present dispute was brought in front of the CAS.
73. The First Respondent submitted the following requests for relief:
 - “A. to dismiss the appeal lodged by the Claimant/ Appellant against the decision of the Emergency Committee of the Romanian Football Federation issued on 28 June 2016 as well as against the Decision of the RFF Executive Committee (CEX) from 7 July 2016;*
 - B. to maintain and consider the challenged Decisions undisturbed;*
 - C. to order the Claimant/ Appellant to pay all the costs, expenses and legal fees relating to the arbitration proceedings before CAS encumbered by the First Respondent”.*

C. The Second Respondent’s Submissions and Requests for Relief

74. The position of the RPFL is set forth in its answer and is the following.
75. As a preliminary issue in relation to the appeal filed by the Club, the Second Respondent firstly points out that it acquiesces in the arguments put forward by the Appellant and that its submissions are only limited to the request to not be ordered to pay the costs of the present arbitration proceedings.
76. With regard to the facts of the case, according to the Second Respondent, article 29 (4) of the RFF Regulations was introduced with a view to protect the integrity of the competition and fight match-fixing and other acts of corruption. In this sense, the said provision aimed at motivating teams participating in the play-out to obtain a minimum number of points in that phase of the championship, irrespective of the competition level, under penalty of a deduction of points in the next championship. In fact, this system sought to preserve the value of the

points obtained by the Club until the very last championship match with the purpose to avoid the voluntary throwing of points by teams that had mathematically relegated during the play-out phase.

77. Notwithstanding the clear intention of the relevant rule, as specified above, its actual application did not lead to achieving the original purpose and, as a result, it was finally removed from the RFF Regulations by the Decision of the Executive Committee on 26 August 2016.
78. The RPFL underlines that such a provision was not challenged by any of the affiliated clubs after it was adopted in July 2014, within the prescribed time limit, nor did any of the member clubs seek any clarification on the functioning or the application of the relevant provision.
79. Moreover, the Second Respondent observes that it has no direct responsibility and implication in the present dispute since it merely acknowledged the Appealed Decisions.
80. In any case, contrary to what the Appellant argues, the application of article 26 (4) to the Club was not discriminatory against the latter, as it is also demonstrated by the fact that also FC Petrolul Ploiesti, which was in the same situation as the Appellant, was sanctioned with a 1 point deduction for failing to comply with the minimum number of points at the end of the play-out phase, which is to say that the Executive Committee equally imposed the same rule to all teams that failed to comply with the 15-point threshold.
81. The Second Respondent submitted the following requests for relief:
 - *we partially acquiesce to the Appellant's claim in this statement of appeal;*
 - *we object to the claim seeking to compel the undersigned Professional Football League to pay the costs of these proceedings (arbitration costs, share of the Appellant's legal fees)".*

VII. CAS JURISDICTION

82. The Appellant relies on the combined provisions of Article 34 (9) of the RFF Statutes and Article R47 of the CAS Code as conferring jurisdiction to the CAS.
83. Article 34 (9) of the RFF Statutes establishes that "*Any decision of the Executive Committee which conflicts with the law or with the provisions of the Statutes and regulations of FRF may be challenged in court by any member of the Executive Committee who is not present at the respective meeting of the Executive Committee or votes against the decision and request that his position be recorded in the minutes of the meeting in accordance with the applicable legislation. Any dispute arising in connection with a decision passed by the Executive Committee must be first referred to the Court of Arbitration for Sport*" (certified translation provided by the First Respondent).
84. Article R47 of the CAS Code, reads 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 him prior to the appeal, in accordance with the statutes or regulations of that body*".

85. The jurisdiction of the CAS is not disputed by the Respondents.
86. Moreover, the signature of the Order of Procedure confirmed that the jurisdiction of the CAS in the present case was not disputed. Accordingly, the Sole Arbitrator is satisfied that he has jurisdiction to hear the present case.
87. Notwithstanding the above, the First Respondent alleges that the present case would fall within the scope of the Ordinary Procedure and not the Appeal Procedure. According to the First Respondent, in fact *“The scope of this preliminary procedure is to have a subsequent appeal, but after this ordinary arbitration before the CAS takes place. In other words, the clear phrasing of article 34.9 of the RFF Statutes is an arbitration agreement, not an appeal provided after all other remedies are exhausted – on the contrary – thus the provision of R 38 et seq. are applicable in casu”*.
88. The Sole Arbitrator is not persuaded by the interpretation of the First Respondent.
89. According to article R27 para. 1 of the CAS Code, the CAS has jurisdiction whenever the parties agreed to refer a dispute to the CAS by means of an arbitration clause inserted in a contract or regulations or of a later arbitration agreement (ordinary arbitration proceedings) or involve an appeal against a decision rendered by a federation, association or sports-related body where the statutes or regulations of such bodies, or a specific agreement provides for an appeal to the CAS (appeal arbitration proceedings).
90. With respect to the wording of the second part of article 34 (9) of the RFF Statutes (*“Any dispute arising in connection with a decision passed by the Executive Committee”*), it is evident that reference to the jurisdiction of CAS involves a decision rendered by the relevant Romanian association, against which the RFF Statutes provide an appeal arbitration procedure as the one set forth under Article R47 of the CAS Code.
91. Therefore, the Sole Arbitrator considers that the present dispute shall be subject to the provisions applicable to the Appeal Arbitration Procedure.
92. Under Article R57 of the CAS Code, the Sole Arbitrator has the full power to review the facts and the law and may issue a new decision which replaces the decision appealed or annul the challenged decision and/or refer the case back to the previous instance.

VIII. ADMISSIBILITY OF THE APPEAL

93. Article R49 of the CAS Code provides as follows: *“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against ...”*.
94. The Sole Arbitrator notes that, according to article 36 of the RFF Statutes, *“The decision of the Emergency Committee shall come into force at once. The President must immediately notify the members of the Executive Committee regarding the decisions adopted by the Emergency Committee. All decisions adopted by the Emergency Committee must be approved by the Executive Committee during its first session ...”*.

95. The decision rendered by the RFF's Emergency Committee on 28 June 2016, was approved by the RFF's Executive Committee with the decision rendered on 7 July 2016, published on 8 July 2016.
96. Considering that the Appellant filed its statement of appeal on 20 July 2016, *i.e.* within the deadline of 21 days set established under Article 49 of the CAS Code, the Sole Arbitrator is satisfied that the present appeal was timely filed and is therefore admissible.

IX. APPLICABLE LAW

97. Article R58 of the CAS Code provides the following:

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

98. In its appeal brief, the Appellant refers to the Statutes and Regulations of the Romanian Football Federation and, additionally, Romanian law, including EU law, as the applicable law in the present proceedings.
99. The First Respondent agrees that the RFF Statutes and Regulations shall apply to the present dispute. Although the Second Respondent's answer does not contain any specific indication on this point, it also makes reference to the RFF Statutes and Regulations by addressing the present matter.
100. In consideration of the above and pursuant to Article R58 of the CAS Code, the Sole Arbitrator holds that the Statutes and Regulations of the RFF are applicable. The Parties having not specifically agreed on the application of any other rules of law, the Sole Arbitrator finds that Romanian law shall also be applicable, subsidiarily, if needed.

X. MERITS OF THE APPEAL – LEGAL ANALYSIS

101. With regard to the merits of the present dispute, the Sole Arbitrator observes that what is first disputed between the Parties is whether the relevant sanction could lawfully be imposed on the Club by the Appealed Decisions based on the provision of article 29 (4) of the RFF Regulations.
102. In this respect, in accordance with the Appellant's interpretation of article 29 (4), which is opposed by the Respondents, the conditions for the application of the deduction of points were allegedly not met in the present case.
103. In fact, the Appellant maintains that the minimum threshold of 15 points envisaged by the provision at stake, under the penalty of point deductions for the following sporting season, refers to the total amount of points achieved by a club during the first, as well as the second phase of the relevant Championship, and not only during the single play-out phase as it was

supposedly assumed by the Emergency Committee when it imposed the relevant sanction on the Club. As a consequence, the Club argues that it actually complied with the requirement of the relevant provision since it obtained a total amount of 20 points at the end of the play-out phase, and the fact that only 7 points were obtained in play-out matches is irrelevant.

104. Conversely, according to the First and the Second Respondent, article 29 (4) requires that a club must obtain at least 15 points within the play-out phase, *i.e.* during the 14 matches from the play-out phase.
105. In particular, according to the Second Respondent, such an interpretation finds its basis on the main purpose of the said provision which was that to motivate the relegating teams participating in the play-out “*to preserve the value of the points obtained in the football matches until the last championship match*” and to avoid the risk of voluntary throwing of points which would affect the integrity of the competition.
106. In order to resolve the issue whether the penalty imposed on the Club was effectively grounded and lawful, the Sole Arbitrator recalls the content of article 29 (4) of the RFF Regulations which reads as follows:

“Article 29 – Competition system

1. *The competition system, including the promotion-relegation system, for the First, Second and Third league championships as well as for other official competitions shall be approved by the RFF Executive Committee and shall be posted on the official RFF/PFL website before the start of the said championship/competition.*
2. *Starting with the 2015/2016 competition season, the First League National Championship shall take place among 14 teams in a play-off/play-out system, as follows:*
 - a) *The regular season (phase I) – each team shall play all other teams in a two-legged match system. At the end of the regular season, the teams placed on the first six positions shall qualify for the play-off and the next 8 teams shall participate in the play-out;*
 - b) *Play-off (phase II) – the teams placed at the end of the regular season on the positions 1-6 shall participate. Each team qualified in the play-off shall play all other teams qualified in the play-off in two-legged matches;*
The winner of the championship is the team that ranks first at the end of the play-off phase.
 - c) *Play-out (phase II) – the teams placed at the end of the regular season on the positions 7-14 shall participate. Each participant in the play-out shall play all other teams participating in the play-out in two-legged matches.*
 - d) *§Ties (phase III) – the team ranked 6th in the play-out shall play a two-legged tie with the winner of the matches between the second-placed teams in the two Second League series. Ties between the second-placed teams in the two Second League series shall be organized by the RFF and ties between the winners and the sixth-placed in the play-out shall be organized by the PFL.*
3. *The teams qualified in the play-off and play-out shall begin the second phase of the competition with half the points obtained in the regular system (Belgian system). If, during the regular season an odd number of points was gained, the number of points resulting after the division by two shall be rounded by 0.5 (ex: if one team gains 31 points in the regular season, it shall begin the second phase with 16 points).*

If two or more teams are equal on points on competition of the play-off or play-out, the ranks are determined firstly by establishing whether the 0.5 rounding was applied or not. In case of a tie after the application of this criterion, ranking shall be determined pursuant to art. 27.

4. *Teams participating in the play-out, placed at the end of the second phase on 6th, 7th and 8th position, must obtain at least 15 points in the play-out or else begin the following season with a point penalty calculated as a difference between the minimum score (15) and the number of points obtained in the play-out, irrespective of the competition level in which they participate.*

The other competition rules are set in the first League National Championship Regulations drawn up by the PFL and approved by the RFF”.

107. The Sole Arbitrator believes that, as opposed to the Appellant’s arguments, the wording of paragraph 4 is absolutely clear and unambiguous in specifying that the minimum threshold shall be accomplished in matches which have been disputed during the play-out phase of the championship as it results from the following quote: *“must obtain at least 15 points in the play-out”.*
108. In addition thereto, such interpretation is supported by the apparent purpose of the relevant provision which was also clarified by the Second Respondent in its answer, *i.e. “to preserve the value of the points obtained in the football matches until the last championship match”* and to avoid the risk of voluntary throwing of points which would affect the integrity of the competition.
109. In this context, and in the light of the clarity of the relevant rule, the Sole Arbitrator notes that there is no further need for interpretation and that the Appellant’s argument with regard to the alleged contradiction of article 29 (4) with article 27 (1) of the RFF Regulations referring to the *“accumulation of points during the entire course of the competition”* as the general foundation of the *“merit-based hierarchy of teams participating in the championships”* is inappropriate and groundless. In fact, according to the Sole Arbitrator’s opinion, there is no contradiction between the principle set out under article 27 (1) of the RFF Regulations and the penalty system envisaged under article 29 (4), whose purpose is to encourage the integrity of competition and avoid the risk of match-fixing or other acts of corruption.
110. The Sole Arbitrator further observes that the Appellant challenges the Appealed Decisions also in terms of merits by maintaining that a) the sanction imposed to the Club would allegedly be discriminatory since the minimum threshold of 15 points does not apply to clubs competing in the play-off phase; b) the rule would be in violation of European and Romanian competition law in consideration of the dominant position of the Respondents which fact also entails a violation of Romania’s public policy; c) the mechanism envisaged under article 29 (4) increases the gap between top clubs and less successful clubs against the principle of fair play; d) the sanction is excessive and disproportionate with respect to the purpose of the relevant provision and is not even effective in order to prevent match-fixing and, moreover e) it was not demonstrated that the Club committed any disciplinary misconduct justifying the application of the sanction imposed by the Appealed Decisions.
111. With respect to the foregoing, the Sole Arbitrator notes that the Appellant’s allegations are not capable of denying the validity and legitimacy of the Appealed Decisions for the following reasons.

112. As a first consideration, the Sole Arbitrator emphasizes that the Appealed Decisions were rendered in line with the rules of the RFF, as it was discussed above, which were applicable at the time of the event giving rise to the present dispute.
113. It is undoubted that the promotion/relegation system falls within the sphere of autonomy of football associations which are free to set the conditions for participation in competitions and to exercise their regulatory authority in compliance with the FIFA Statutes and Regulations [*inter alia*, the Sole Arbitrator notes that, although article 29 (4) of the RFF Regulations has a sanctioning character, it is not a disciplinary measure, as alleged by the Appellant, but it falls within the rules governing the promotion/relegation system].
114. In this context, the Appellant's criticism against the merits of the said provision are irrelevant.
115. In fact, the Sole Arbitrator wishes to emphasize that, according to the jurisprudence of the CAS, the panel's power of review does not extend to change, amend or abolish any regulations of the FIFA or of any sports federation (CAS 2009/A/1944). As a consequence, a decision rendered in accordance with the applicable regulations of a sports association is not subject to review by the CAS unless it was rendered in violation of the general principle belonging to public policy, such as, among others, the principle of good faith, the principle of *pacta sunt servanda*, the principle of prohibition of abuse of rights or discrimination.
116. The argument that the Appealed Decisions would be inconsistent with public policy is therefore unfounded.
117. The Appellant pretends that the Appealed Decisions allegedly breaches article 102 of the Treaty on the Functioning of the European Union (TFEU) due to an alleged abuse of the dominant position held by the Respondents and, consequently, Romania's public policy would also be infringed. The Appellant's arguments are completely groundless since the relevant provision is not applicable to the present case principally because it refers to abuses in relation to trade market, insofar they may affect trade between member States of the EU, which is not the present case and, moreover, an abuse of dominant position, if any, implies the intention to restrict competition and overcome competitors through the dominant position in the relevant market, which is still not the present case.
118. In addition, the Sole Arbitrator believes that the Appealed Decisions were not rendered in violation of the principle of equality or in violation of any other general principle of law, nor it has been demonstrated otherwise by the Appellant.
119. In view of all the foregoing, the Sole Arbitrator concludes that the Appealed Decisions were legitimately rendered by the Emergency Committee and by the Executive Committee in accordance with the applicable RFF Regulations and, therefore, the present appeal shall be dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 20 July 2016 by ACS Poli Timisoara against the decision rendered by RFF's Emergency Committee on 28 June 2016 and against the decision rendered by the RFF's Executive Committee on 7 July 2016, is dismissed.
2. The decision rendered by the RFF's Emergency Committee on 28 June 2016 and the decision rendered by the RFF's Executive Committee on 7 July 2016 are confirmed.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.