



Arbitration CAS 2020/A/7437 CS Pandurii Lignitul TG Jiu v. Romanian Football Federation (RFF), award of 27 September 2021

Panel: Mr Manfred Nan (The Netherlands), Sole Arbitrator

Football

Application for the revision of the decision of the appeal committee of a national federation

Principle of legality

Exhaustion of internal legal remedies

1. Pursuant to the principle of legality, an association can only enact rules and regulations insofar as entitled, or not prevented to do so, by higher norms. The relevant organs when creating new rules and regulations are bound by the limits imposed on them by higher ranking norms, in particular the association's statutes. According to this principle, regulations of a lower level may complement and concretize higher ranking provision, but not amend nor contradict or change them.
2. The requirement of exhausting all internal legal remedies set forth in Article R47 of the CAS Code has been interpreted as encompassing ordinary remedies only and not discretionary, optional, extraordinary or incomplete legal remedies (e.g. applications for revision or for early reinstatement in case of exceptional circumstances).

I. PARTIES

1. CS Pandurii Lignitul TG Jiu (the "Appellant" or the "Club") is a professional football club with its registered office in Tg. Jiu City, Romania. The Club is registered with the Romanian Football Federation.
2. The Romanian Football Federation (the "Respondent" or the "RFF") is the national governing body of football in Romania with its registered office in Bucharest, Romania. The RFF is affiliated to the *Union des Associations Européennes de Football* ("UEFA") and the *Fédération Internationale de Football Association* ("FIFA").
3. The Club and the RFF are hereinafter jointly referred to as the "Parties".

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the Parties and the evidence examined in the course of the proceedings and at

the hearing. This background is made for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.

5. On 10 July 2020, the Club's request to be granted a license¹ to participate in the second tier of Romanian professional football in the 2020/21 season on the basis of the RFF Regulations on the Requirements for Participation in the Second League National Championship (the "RFF Licensing Regulations") was allegedly rejected in a "Report" issued by the "evaluation manager of RFF" due to the Club having overdue payables.
6. On 14 July 2020, the RFF Secretary General forwarded a "notification formulated by the Certification Manager of [RFF]" to the RFF Disciplinary Committee, proposing to refuse issuing a license to the Club for the 2020/21 season.
7. On 17 August 2020, the RFF Disciplinary Committee decided to reject issuing a license to the Club for participation in the Second League National Championship in the 2020/21 season (the "RFF DC Decision"). The operative part of the RFF DC Decision provides as follows:

"Pursuant to art. 43 of the Regulation on the conditions for participation in the National Championship 2nd League, passes the referral of the Manager of the Evaluation Commission filed by the General Secretary of [RFF] and applies the sanction of refusing to grant the certificate of participation in the National Championship 2nd League for [the Club]"
8. The grounds of the RFF DC Decision provide that while the majority of overdue payables had been settled and that other licensing requirements had been complied with, the Club's debt towards Mr Bogoi Adrian Laurentiu, the Club's former coach (the "Coach"), in the amount of Romanian Lei ("RON") 80,266 (approximately EUR 16,500) remained outstanding. The RFF Disciplinary Committee noted that a litigation was pending between the Club and the Coach "having as object the financial claims of the club toward [the Coach] resulted from the defective execution by him of the contractual obligations and not the contestation of the debt to the former coach". On this basis, the RFF Disciplinary Committee determined that the overdue payable concerned was not validly contested and refused to grant a license to the Club.
9. On 21 August 2020, the Club and the Coach allegedly entered into a settlement agreement (the "Settlement Agreement"), whereby the Club committed itself to paying the Coach's credit within 5 days. According to the Club, the Coach kept the sole original version of the Settlement Agreement.
10. On 24 August 2020, the Club transferred an amount of RON 10,000 to the Coach.

¹ While the RFF indicated preferring to use the term "certification" instead of "licensing" in the context of the RFF Licensing Regulations, reserving the term "licensing" for the First League National Championship, the Sole Arbitrator considers it more appropriate to refer to "licensing" in the context of these appeal arbitration proceedings, as this is the term commonly used in international football for being granted the right to participate in a certain competition. The Sole Arbitrator finds that the RFF did not establish that the term "certification" would have an intrinsically different meaning, purpose or legal status than the term "licensing".

11. Also on 24 August 2020, following an appeal filed by the Club against the RFF DC Decision, the RFF Appeal Committee decided to uphold the Club's appeal in view of the Settlement Agreement that had been concluded with the Coach in the meantime and issued a license to the Club for the 2020/21 season (the "RFF AC Decision"). The operative part of the RFF AC Decision provides as follows:

"Passes the appeal filed by [the Club], considering the "Transaction" no. 3364 / 21.08.2020, against the [RFF].

Terminates the [RFF DC Decision], in the sense of removing the sanction of refusing to give the Certificate of participation in the 2nd League National Championship for the [Club].

Pursuant to art. 45 of the [RFF] Disciplinary Regulations, applies the sanction of a financial penalty of 10,000 RON to the [Club].

Definitive and enforceable internally.

The decision can be appealed to the TAS, within 10 days from the communication".

12. On 4 September 2020, the RFF AC Decision was notified to the Club and the RFF. Following the issuance of the RFF AC Decision, the Club was registered for and participated in the second tier of Romanian professional football in the 2020/21 season.
13. By letter dated 4 September 2020, received by the RFF on 8 September 2020, the Coach informed the RFF as follows with respect to the alleged Settlement Agreement:

"I, [the Coach], hereby inform you about the TRANSACTION registered with [the Club] with no. 3364 / 21.08.2020, that I was unaware of, and I never signed this document" (emphasis in original).

14. On 14 September 2020, the RFF Secretary General filed an application for revision of the RFF AC Decision with the RFF Appeal Committee, with the following request:

"MOTION TO REVISE

Against [the RFF AC Decision], by which we request the admission of the motion to revise and the annulment of the [RFF AC Decision] in its entirety" (emphasis in original).

15. On 24 September 2020, the Club paid the Coach the remaining part of the outstanding debt.
16. Also on 24 September 2020, the Coach informed the RFF as follows:

"[...] I show that I understand to withdraw the notification dated 04.09.2020, registered at [RFF] under no. 4013 / 08.09.2020, based on which the request for revision was formulated in the file 32CR2020.

I also mention that I received from the [Club] the entire amount owed by the club , respectively 80,226 lei, so that there is no debt to the undersigned” (emphasis in original).

17. On 8 October 2020, the RFF Appeal Committee issued its decision on the application for revision (the “Appealed Decision”) as a consequence of which the RFF AC Decision to issue a license to the Club was revoked, with the following operative part:

“DECIDES

To pass the motion for review.

Terminates the [RFF AC Decision].

Dismisses as unfounded the appeal filed by [the Club] against [the RFF DC Decision].

Definitive and enforceable internally.

The decision can be appealed to the TAS, within 10 days from the communication” (emphasis in original).

18. On 16 October 2020, i.e. after the Club filed its Statement of Appeal and after the Court of Arbitration for Sport (the “CAS”) issued an Order upholding the Club’s application for a stay of execution of the Appealed Decision, the grounds of the Appealed Decision were communicated to the Parties.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

19. On 9 October 2020, the Club filed a Statement of Appeal with the Court of Arbitration for Sport (the “CAS”) in accordance with Article R48 of the CAS Code of Sports-related Arbitration (2020 edition) (the “CAS Code”). In this submission, the Club filed an urgent application for a stay of execution of the Appealed Decision, requested the matter to be referred to a sole arbitrator and that the proceedings would be expedited in accordance with Article R52 CAS Code.
20. Also on 9 October 2020, the CAS Court Office acknowledged receipt of the Club’s Statement of Appeal and informed the Parties that the Deputy Division President of the CAS Appeals Arbitration Division would, in principle, issue an *ex parte* Order on the Club’s urgent application for a stay of execution of the Appealed Decision, in accordance with Article R37 CAS Code, while inviting the RFF to file a reply to the Club’s request for a stay by 17.00 CET on the same day.
21. Also on 9 October 2020, the RFF filed a reply to the Club’s urgent application for a stay, requesting that it be dismissed. The RFF also requested that an expedited procedure be implemented.

22. Also on 9 October 2020, the Deputy President of the Appeals Arbitration Division issued an Order on the Club's urgent application for a stay of execution of the Appealed Decision with the following operative part:

- “1. *The application for a stay filed by [the Club] of the [Appealed Decision] is upheld.*
2. *The RFF is ordered to provisionally grant the Certificate of participation in the Campionatul National Liga a 2-1 (2nd League National Championship) to [the Club].*
3. *The costs deriving from the present order will be determined in the final award or in any other final disposition of this arbitration”.*

23. On 12 October 2020, the Club nominated an arbitrator.

24. On 15 October 2020, the RFF requested for a sole arbitrator to be appointed.

25. On 19 October 2020, the Club accepted to submit the procedure to a sole arbitrator, but objected to an expedited procedure being implemented.

26. On 16 November 2020, the Club filed its Appeal Brief in accordance with Article R51 CAS Code.

27. On 19 November 2020, pursuant to Article R54 CAS Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the arbitrator tribunal appointed to decide the present matter was constituted as follows:

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28. On 1 December 2020, the grounds of the Order issued on 9 October 2020 by the Deputy President of the CAS Appeals Arbitration Division were communicated to the Parties.

29. On 14 December 2020, the RFF filed its Answer in accordance with Article R55 CAS Code.

30. On 21 December 2020, the CAS Court Office, on behalf of the Sole Arbitrator, provided the Parties with the following procedural instructions:

“The Sole Arbitrator notes that the Appellant, inter alia, relies on the Romanian “Law 76/2012”, but has not produced evidence of this law. The Appellant is therefore requested to file the relevant part of this law in original, with a certified English translation [...];

The Sole Arbitrator notes that the Respondent, inter alia, relies on Art. 5 RFF Statutes and Art. 292 of the Romanian New Civil Procedural Code (NCPC), but has not produced evidence of these provisions. The Respondent is therefore requested to file these provisions in original, with a certified English translation [...];

The Sole Arbitrator notes that in its Answer, Respondent refers to a “Proposal of Evidence”. In this respect, the Parties are informed that it is the Sole Arbitrator’s understanding that no action is required. If this assumption is wrong, the Respondent has to inform the CAS Court Office accordingly”.

31. On 11 January 2021, the RFF provided the CAS Court Office with a translation of the RFF Statutes and Article 292 of the Romanian New Civil Procedural Code (the “RNCPC”) and confirmed that no action was required with respect to the reference to “Proposal of Evidence” in its Answer.
32. On 21 January 2021, the CAS Court Office informed the Parties that Mr Dennis Koolaard, Attorney-at-Law in Arnhem, the Netherlands, had been appointed as *Ad hoc* Clerk.
33. On 26 January 2021, the Club provided the CAS Court Office with a translation of the provisions of the Romanian “Law 76/2012” referred to in its Appeal Brief, while emphasising that these provisions are relied upon in the Appealed Decision and are therefore invoked by the RFF, while the Club submits that these rules are not applicable. The Club also requested for a second round of written submissions.
34. On 28 January 2021, the RFF agreed to hold a second round of written submissions, which joint request of the Parties was subsequently endorsed by the Sole Arbitrator.
35. On 15 February 2021, the Club filed its Reply.
36. On 3 March 2021, the RFF filed its Rejoinder.
37. On 9 and 21 March 2021 respectively, the RFF indicated its preference for a hearing to be held, whereas the Club indicated that it preferred that an award be rendered on the basis of the Parties’ written submissions alone.
38. On 22 March 2021, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to hold a hearing.
39. On 31 March, the Club and the RFF returned duly signed copies of the Order of Procedure provided to them by the CAS Court Office on 25 March 2021.
40. On 20 April 2021, a hearing was held by video-conference. At the outset of the hearing, both Parties confirmed that they had no objection to the constitution and composition of the arbitral tribunal.
41. In addition to the Sole Arbitrator, Mr Antonio De Quesada, Head of Arbitration to the CAS, and Mr Dennis Koolaard, *Ad hoc* Clerk, the following persons attended the hearing:

For the Appellant:

- Mr Mincu Paul Alexandru, Counsel.

For the Respondent:

- Mr Adrian Stangaciu, RFF Head of Legal Department;
- Mr Paul F. Ciucur, Counsel.

42. No witnesses or experts were heard.
43. Both Parties had ample opportunity to present their case, submit their arguments and answer the questions posed by the Sole Arbitrator.
44. Before the hearing was concluded, both Parties expressly stated that they did not have any objection with the procedure adopted by the Sole Arbitrator and that their right to be heard had been respected.
45. The Sole Arbitrator confirms that he carefully heard and took into account in his decision all of the submissions, evidence and arguments presented by the Parties, even if they have not been specifically summarised or referred to in the present arbitral award.

IV. SUBMISSIONS OF THE PARTIES

46. The submissions of the Club, in essence, may be summarised as follows:
 - The conditions set forth for a revision in accordance with Article 121 RFF Disciplinary Regulations were not met.
 - The RFF AC Decision had not yet become irrevocable. Pursuant to Article 120(4) RFF Disciplinary Regulations, a decision of the RFF Appeals Committee only becomes irrevocable if such decision is not challenged before CAS within the time limit granted. The RFF AC Decision was issued on 4 September 2020 and the request for revision was filed on 15 September 2020. The deadline to file an appeal against a decision of the RFF Appeals Committee is 10 days, which time limit therefore only expired at the end of 15 September 2020.
 - Since the application for revision was filed against a decision that had not yet become irrevocable, the application for revision should have been rejected as inadmissible.
 - The RFF Appeals Committee became aware of the grounds of the Order issued by the Deputy President of the CAS Appeals Arbitration Decision before it issued the grounds of the Appealed Decision. By drafting the grounds of the Appealed Decision, the RFF Appeals Committee sought to give an appearance of legality. The justification based on Article 8 of Law 76/2012 can however not be maintained, because this law only applies to “*court judgements*”. Decisions of the judicial bodies of the RFF are not court decisions and cannot be assimilated to them. In any event, this law only applies to acts existing at the date of its entry into force on 15 July 2014.

- Further, the request for revision of the RFF AC Decision did not lead to a more favourable decision, as required by Article 121(1) RFF Disciplinary Regulations.
- In disciplinary proceedings, a decision may be considered more favourable only in relation to the party subject to the disciplinary action. It is well-known that, in disciplinary proceedings, the federation exercising disciplinary control cannot be considered a “party” to the dispute.
- The request for revision is also unfounded. During the revision proceedings, the Club presented evidence of the fact that the full debt was paid to the Coach and that he withdrew his complaint dated 4 September 2020, on which the request for revision was based. The original version of the Settlement Agreement of 21 August 2020 could not be presented, as it was destroyed by the Coach following the unexpected delay in the payment of the remaining amount. Accordingly, the Club showed that the reason for rejecting the issuance of the license for participation in the second league no longer existed.
- In the RFF AC Decision, the RFF Appeals Committee correctly took into account the Settlement Agreement dated 21 August 2020, even if it was submitted in copy. The Club also provided evidence that it started to enforce the Settlement Agreement by means of a payment of RON 10,000 to the Coach on 24 August 2020.
- Moreover, on the basis of the Settlement Agreement, the Club waived the settlement of the counterclaim submitted against the Coach. At the time of receiving the first instalment of the total debt, the Coach had no objection to rescheduling the amount due and did not intervene in the case, although he was aware of it.
- The RFF Disciplinary Committee refers to “*as long as this final subject is present in the case*” in the RFF DC Decision. This is important because it determines the moment on which the analysis is to take place with respect to the existence of the debt. The RFF Disciplinary Committee refers to the moment on which the decision was taken. It is inferred from this that a payment prior to this date would have resulted in the fulfilment of the financial criteria set forth in Article 43 RFF Licensing Regulations.
- The grounds for appeal raised by the Club in the proceedings before the RFF Appeals Committee only concerned the nature of the claim and the argument that it could not be considered an outstanding financial debt.
- This reasoning of the RFF Disciplinary Committee has *res judicata* effect between the Parties for the state of facts ascertained (the settlement of the debt before the decision = fulfilment of the financial criteria).
- The new facts were considered by the RFF Appeals Committee and it was decided that the financial criteria were now fulfilled. By this, the RFF Appeals Committee confirmed the reasoning of the RFF Disciplinary Committee, i.e. that settling the debt before the issuance of the decision will lead to the approval of the license application.

The RFF Appeals Committee considered the new documents from 21 August 2020 and modified the RFF DC Decision, even while concluded after the date of the RFF DC Decision.

- While this reasoning cannot be changed, this is what happened during the revision proceedings and also for this reason the Appealed Decision should be annulled.
 - When the RFF Appeals Committee issued the Appealed Decision, it had evidence on file of full payment of the Club's debt towards the Coach. In addition, it also had a statement from the Coach on file, by means of which he withdrew the complaint filed based on which the RFF Secretary General filed his request for revision.
47. On this basis, the Club submitted the following prayers for relief:
- I. To annul the decision issued by the Recourse Commission of the Romanian Football Federation on 08.10.2020 in the case file no 32.1/CR/2020;*
 - II. To reject the review application formulated by the General Secretary of the Romanian Football Federation on 14.09.2020 as inadmissible/unfounded;*
 - III. To order the Respondent to bear the costs of these arbitration proceedings”.*
48. The submissions of the RFF, in essence, may be summarised as follows:
- The Club is facing insolvency proceedings, after the decision of bankruptcy was annulled by the national court earlier in 2020. The Club faces several financial problems and has a lot of difficulties to pay its current debts. The Club was also sanctioned in 2019 for the same reason (overdue payables) and this is why the Club was banned from registering new players in the 2019/20 season. The profile of the Club is very clear to be understood looking at the articles published in the media.
 - Article 57(5) of the RFF Statutes provides that decisions of the RFF Appeals Committee are final and enforceable on a national level for all affiliated members as well as for RFF officials.
 - Article 14 of Annexe I to the RFF Licensing Regulations provides that only the clubs that requested the license for participation can challenge a decision issued by the RFF Appeals Committee before CAS.
 - Pursuant to Article 121(2) RFF Disciplinary Regulations, the time limit for lodging a review application is 10 days from the date one discovers the grounds for review.
 - Given that the Club, at the time, had no interest or reason to challenge the RFF AC Decision, the application for revision by the RFF Secretary General was only feasible within the 10-day time limit from the date one discovered a new document.

- For the sake of argumentation, although it seems only a marginal point of the Club, the “more favourable decision” referred to in Article 121 of the RFF Disciplinary Regulations applies to both Parties.
- As to the merits of the case, even if both the Disciplinary Committee and the Appeals Committee tried to help the Club in order to verify only the most obvious debts, the Club was not in a position to pay its debts and tried to mislead the RFF by using a false document.
- However, because the Coach found out about the Club being allowed to play in the Second League without paying the money owed to him, he informed the RFF and, hence, the revision of the case had to be asked by the RFF Secretary General. It was not the fault of the RFF that the Club used a false document, but the RFF would have been at fault if it had not asked the RFF Appeals Committee to review the RFF AC Decision.
- Following several attempts made by the RFF Appeals Committee to obtain the original version of the Settlement Agreement, the RFF Appeals Committee decided to admit the request for revision taking into account Article 292(2) RCPC, according to which, if a copy of a document is filed, the filing party is required to also have the original and make it available to the court, upon request, under penalty of not having that document taken into account.
- It is true that, after being summoned in front of the RFF Appeals Committee to present its point of view with regard to the RFF’s request for revision, it paid its entire debt to the Coach, which is the reason the Coach issued a letter dated 24 September 2020, by means of which he withdrew his letter dated 4 September 2020 and acknowledged having received all the money owed by the Club. This can however not be taken into consideration to issue a license to the Club for the following reasons:
 - The Club had the obligation to pay its debt previously, i.e. on the dates provided by the regulations. The fact that the debt was paid to the Coach on 24 September 2020 does not prove the fulfilment of the financial requirement of Article 43 RFF Licensing Regulations, but confirms the fact that the debt had not been paid by the reference dates specified in the regulations.
 - Since the Settlement Agreement dated 21 August 2020 is no longer considered as evidence in the case at hand, the Club also failed to provide evidence of any rescheduling or other agreement with the Coach, which would have resulted in the fulfilment of the requirements for being issued a license.
- The Settlement Agreement was not real, because the Club is undergoing insolvency proceedings. This means that all the documents issued by or concluded by the Club have to be signed by the official receiver. The Settlement Agreement is not signed by the official receiver.

- The contractual litigation between the Club and the Coach was ruled upon on 16 June 2020, confirming that the relevant contract ended in February 2020. It is obvious that the Settlement Agreement has nothing to do with a file that was closed two months earlier. There was therefore no interest of the parties to conclude the Settlement Agreement.
- It is easy to note that the signature of the Coach on his resignation letter is identical to the one used on the Settlement Agreement. It is well known that nobody can sign identically several times in a row, but the signature of the Coach on the Settlement Agreement is identical on all 3 pages.
- Even though the RFF Appeals Committee asked for the original version of the Settlement Agreement several times, despite the fact that the Club was made aware of Article 292(2) NCPC and the consequences of failing to provide an original version, the Club failed to provide an original version.
- The Club's argument that the original version of the Settlement Agreement was destroyed by the Coach cannot be sustained, because the Coach had no interest to destroy a document that offered him proof that the Club acknowledged its debts.
- Moreover, oddly and illegally from the insolvency proceedings point of view, the Club decided not to claim any money from the Coach, despite the fact that the Club was in insolvency and was entitled to receive certain amounts of money from the Coach.
- It is without a doubt that the Club tried to mislead the judicial bodies of the RFF and that the Club did not fulfil the criteria in order to receive a license for playing in the Second League in Romania.

49. On this basis, the RFF submitted the following prayers for relief:

- "A. To dismiss the appeal lodged by the Appellant against the Decision of RFF Recourse Committee (Appeal Panel) passed on 8 October 2020, ("the Decision");*
- B. to maintain and consider the challenged Decision 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"* (emphasis in original).

50. The Club's Reply, in essence, may be summarised as follows:

- As to the RFF's arguments with respect to the Club having a certain "profile", the Club invites the RFF to develop this statement and to indicate the significance thereof and how it can influence the decision in these proceedings. In the same logic, can it be attributed to the RFF that certain RFF employees are accused and/or investigated or convicted for certain illegalities?

- As to RFF's argument that a false document was used by the Club, the RFF did not produce any evidence of this in any of the three proceedings that took place before the RFF's internal bodies. There is a difference between the lack of probative force and the false character of a document. Because the RFF Appeals Committee did not consider the Settlement Agreement to be false, the RFF apparently considers it necessary to rely on the Club's "*profile*" to make its allegations credible. It is also not clear what the relevance of the Settlement Agreement is, given that even without taking it into account, no other situation could be established than the lack of any outstanding financial obligations. Why was it not taken into account in the Appealed Decision that the Coach had withdrawn his complaint of 8 September 2020?
- As to the RFF's reasoning in its Answer as to why the Settlement Agreement was false, it should be noted that this analysis was not carried out by the RFF Appeals Committee in the Appealed Decision. The RFF should only support the decision adopted by the RFF Appeals Committee, but it cannot invoke new arguments in support of the Appealed Decision for the first time before CAS.
- Also, it cannot be plausibly explained why the RFF Appeals Committee did not take into account statements of the Coach, who withdrew his complaint and stated that the Club had no financial debts remaining.

51. The RFF's Rejoinder, in essence, may be summarised as follows:

- The RFF confirms that it raised certain arguments for the first time before CAS, but maintains that this is permissible, because CAS rules *de novo*. Also, the forgery of the Settlement Agreement was only revealed after the issuance of the RFF AC Decision.
- The RFF was not in a position to challenge the Settlement Agreement, because it was only provided to the RFF Appeals Committee, not to the RFF. The RFF could only challenge it in the revision proceedings. The RFF was in fact required to challenge the Settlement Agreement, because the Coach informed the RFF that he had never signed it. It was mandatory for the RFF to defend the regulations, the truth and also other clubs that made efforts in order to settle their debts.
- Because the Settlement Agreement did not exist when filed before the RFF Appeals Committee, the Club had outstanding financial obligations and the sanction had to be the refusal to issue the license.
- It is of no relevance that the outstanding debt was paid later, as the debt had to be paid long time before.
- According to Romanian law, the Settlement Agreement cannot be taken into account as evidence.
- The fact that the Coach never signed the Settlement Agreement is confirmed by a witness statement of the Coach dated 3 March 2021.

V. JURISDICTION

52. The jurisdiction of CAS, which is not disputed, derives from Article 14 of the RFF Licensing Regulations, providing as follows:

“Clubs requesting a certificate of participation in the 2nd League National Championship may appeal the decision of the [RFF] Appeal Commission to the Lausanne Sports Arbitration Tribunal (TAS). The deadline for appeal to the TAS is 10 (ten) days from the communication of the decision. The TAS decision is irrevocable”.

53. Article R47 of the CAS Code establishes the following:

“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”.

54. The jurisdiction of CAS is confirmed by the Order of Procedure duly signed by both Parties.

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

VI. ADMISSIBILITY

56. Article 14 of the RFF Licensing Regulations provides for a deadline to appeal of 10 days.

57. The Club’s Statement of Appeal was filed within the deadline of 10 days and complied with all other requirements of Article R48 CAS Code, including the payment of the CAS Court Office fee.

58. It follows that the Club’s appeal is admissible.

VII. APPLICABLE LAW

59. Article R58 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”.

60. It remained undisputed between the parties that the various regulations of the RFF are primarily applicable to the matter at hand and, subsidiarily, Romanian law.

VIII. MERITS

A. The Main Issues

61. In view of the above, the main issues to be resolved by the Sole Arbitrator are the following:
- i. Was the RFF's application for revision of the RFF AC Decision admissible?
 - ii. If the application for revision was admissible, was the Club validly denied a license to participate in the Romanian 2nd League National Championship?

i. Was the RFF's application for revision of the RFF AC Decision admissible?

62. The Club maintains that the RFF General Secretariat was not entitled to apply for a revision of the RFF AC Decision and that it should therefore have been declared inadmissible, whereas the RFF maintains that the RFF General Secretariat was entitled to apply for a revision on the basis of Article 121(2) RFF Disciplinary Regulations.
63. First of all, the Sole Arbitrator notes that the RFF interchangeably relies on the RFF Licensing Regulations and the RFF Disciplinary Regulations. This is unusual and confusing, in particular because both sets of rules contain their own regulatory framework with respect to the possibilities for appeal and revision of decisions. While the Sole Arbitrator took note of the RFF's statement that the regulatory framework has been updated in the meantime, this is of no avail to the present proceedings.
64. Commencing with RFF Licensing Regulations, these rules provide that the first instance competent to issue a license is the RFF Disciplinary Committee, that the RFF Appeal Committee (or RFF Redress Committee as sometimes referred to in the translation of the RFF Licensing Regulations provided by the RFF) is competent to decide on appeals and that the highest appeal instance is CAS. In this respect, Article 13 and 14 of Annex 1 to the RFF Licensing Regulations provide as follows:

Article 13 of Annex 1 to the RFF Licensing Regulations:

"[...] The decision of the [Appeal Committee of RFF] is final and binding internally. The applicant cannot challenge the decision of the [Appeal Committee of RFF] before any court of law or arbitration court and the only remedy is the one specified by art. 14 of Annex 1".

Article 14 of Annex 1 to the RFF Licensing Regulations:

"The clubs applying for certification to participate in the Second League National Championship may challenge the decision of the [Appeal Committee of RFF] before the Court of Arbitration for Sport (CAS) in Lausanne. The appeal may be lodged with CAS within ten (10) days from the date when the decision is notified. The CAS award is irrevocable".

65. Furthermore, Article 6(6) RFF Licensing Regulations provides as follows:

“The sanctions that result in denying the granting of the certificate for participation in the Second League National Championship, financial sanctions and/ or the interdiction to register and transfer senior players (as assignee) for one or two transfer periods of the next competition season shall be cancelled as soon as the reasons for which the sanction was applied no longer exists, but no later than 30 June. The certification applicant may file an application with the Discipline and Ethics Commission of [RFF] in order to have its situation reviewed. If the sanction was decided as a result of a violation of a financial and accounting criterion, the Discipline and Ethics Commission shall forward the submitted documents to the financial assessor for the purpose of obtaining an adequate professional opinion”.

66. The Sole Arbitrator notes in particular that, as also submitted by the RFF, based on the RFF Licensing Regulations, only the license applicant is entitled to lodge an appeal against a decision issued by the RFF Appeal Committee. No such possibility exists for the RFF.
67. However, Article 57(4)(b) RFF Statutes provides that decisions passed by the RFF Appeal Committee *“may be challenged before the Court of Arbitration for Sport in Lausanne, which shall act as body of last instance at international level”* and Article 57(8) RFF Statutes provides that *“[t]he decisions passed by the Court of Arbitration for Sport in Lausanne are binding for the professional leagues, for the affiliated members of [RFF] and their members and officials, and for players’ or match agents. [...]”*.
68. Since the RFF Statutes are of a hierarchical higher status than the RFF Licensing Regulations, the Sole Arbitrator finds that the RFF was entitled to appeal the RFF AC Decision on such basis.
69. Pursuant to the principle of legality, an association can only enact rules and regulations insofar as entitled, or not prevented to do so, by higher norms.
70. The Sole Arbitrator feels comforted in this conclusion by the reasoning of another CAS panel, with reference to legal doctrine:
- “In principle, sports federations can freely establish their own provisions (cf. ZEN-RUFFINEN, Droit du Sport, 2002, marg. no. 161). However, there are limits to this autonomy. In particular the relevant organs when creating new rules and regulations are bound by the limits imposed on them by higher ranking norms, in particular the association’s statutes. This follows from the principle of legality (“Le principe de la légalité implique l’exigence de la conformité aux statuts des textes réglementaires inférieurs et des décisions des organes sociaux”, cf. BADDELEY M., L’association sportive face au droit, Les limites de son autonomie, 1994, p. 208). According to this principle regulations of a lower level may complement and concretize higher ranking provision, but not amend nor contradict or change them. This principle is also well established in CAS jurisprudence (cf. CAS 2006/A/1181, no. 8.2.2; CAS 2006/A/1125, no. 6.18; 2004/A/794, no. 10.4.15)” (CAS 2008/A/1705, para. 25 of the abstract published on the CAS website; CAS 2016/A/4654, para. 71 of the abstract published on the CAS website).*
71. Consequently, the Sole Arbitrator finds that the RFF Licensing Regulations cannot deprive the RFF of its right to appeal a decision of the RFF Appeal Committee as set forth in Articles 57(4)(b) and (8) RFF Statutes.

72. Furthermore, going back to the RFF Licensing Regulations, pursuant to Article 6(6) thereof, the possibility of applying for a revision is also exclusively available to the license applicant.
73. Accordingly, the Sole Arbitrator finds that, strictly based on the RFF Licensing Regulations, the RFF neither had the authority to lodge an appeal with CAS against the RFF AC Decision (although it was entitled to do so on the basis of Articles 57(4)(b) and (8) RFF Statutes, nor to apply for a revision.
74. Turning then to the RFF Disciplinary Regulations, which are the rules actually relied upon by the RFF in applying for a revision of the RFF AC Decision, the Sole Arbitrator notes that Article 120(4) and 121 RFF Disciplinary Regulations provides as follows:

Article 120(4) RFF Disciplinary Regulations:

“The sanctioned person and the General Secretariat of the [RFF] / LPF may appeal to the Lausanne Court of Arbitration for Sport against the decision of the [RFF] / LPF Appeal Commission, within 21 days of the communication of the decision. If the decision of the [RFF] / LPF Commission of Appeal is not challenged at TAS within the time limit set out above, it shall become final and irrevocable”.

Article 121 RFF Disciplinary Regulations:

- “1. The revision may be made after the issuance of an irrevocable decision in disciplinary matters, if there are instruments, evidence or judgments that could not be presented earlier and which, if known, would have led to a more favourable decision.*
- 2. The request for revision may be made by the party within 10 days of finding out the reasons for the revision.*
- 3. The revision may be filed by the party or ex officio within a maximum of one year from the date on which the decision became irrevocable”.*

75. The Sole Arbitrator observes that, on the basis of the RFF Disciplinary Regulations, both the sanctioned person as well as the General Secretariat of the RFF may lodge an appeal with CAS against decisions issued by the RFF Appeal Committee within 21 days, whereas the possibility to apply for a revision is limited to the party subject to the disciplinary proceedings, or *ex officio*.
76. As indicated *supra*, the RFF relies on Article 121(1) RFF Disciplinary Regulations in applying for a revision of the RFF AC Decision.
77. Article 121(1) RFF Disciplinary Proceedings provides that a revision may be made after the issuance of an irrevocable decision in “disciplinary matters”. The Sole Arbitrator finds that the proceedings resulting in the issuance or the refusal to issue a licence in accordance with RFF Licensing Regulations cannot typically be described as a “disciplinary matter”, as a consequence of which the applicability of the RFF Disciplinary Regulations to the matter at hand is doubtful.

78. However, in any event, even if the RFF Disciplinary Regulations were applicable, the RFF's application for revision was filed 10 days after the RFF Appeal Committee issued the RFF AC Decision, i.e. at a point in time when the deadline for the RFF to file an appeal against the RFF AC Decision on the basis of Article 120(4) RFF Disciplinary Regulations had not yet lapsed. Pursuant to Article 120(4) RFF Disciplinary Regulations, the RFF AC Decision would only become "*final and irrevocable*" after this deadline for appeal lapsed, which is a prerequisite for filing an application for revision according to Article 121(1) RFF Disciplinary Regulations.
79. With respect to the RFF's argument that it was not entitled to appeal the RFF AC Decision and that it was therefore appropriate to apply for a revision on the basis of Article 121 RFF Disciplinary Regulations, although the Sole Arbitrator notes that the RFF Licensing Regulations indeed do not provide the RFF with the possibility to appeal a decision issued by the RFF Appeal Committee, Article 120(4) RFF Disciplinary Regulations provides for such possibility, as well as Articles 57(4)(b) and (8) RFF Statutes, the hierarchical order of which exceeds those of both the RFF Licensing Regulations as well as the RFF Disciplinary Regulations.
80. The Sole Arbitrator finds the RFF's reasoning in this respect inconsistent. The RFF cannot interchangeably pick and choose the application of provisions from the RFF Licensing Regulations and the RFF Disciplinary Regulations to create an artificial "pick and choose" regulatory framework that best suits its purpose in justifying the filing of an application for revision. Such piecemeal approach cannot be condoned.
81. Either the RFF Licensing Regulations are to be applied, in which case the RFF does not have a right to appeal (or it does, but then on the basis of Articles 57(4)(b) and (8) RFF Statutes) and no right to apply for a revision, or the RFF Disciplinary Regulations are to be applied, in which case the RFF has the right to appeal to CAS, but where the application for revision is reserved for situations where the statutory deadline to appeal has lapsed. In either case, the RFF General Secretariat was not entitled to apply for a revision of the RFF AC Decision.
82. The RFF Appeal Committee further refers to Article 8 of Law no. 76/2012 in the Appealed Decision, which provision provides as follows:
- "As of the effective date of the Code of Civil Procedure, references in the regulatory documents to a "final and irrevocable" court decision or, as the case may be, "irrevocable" shall be understood as being made to the "final" court decision".*
83. The Sole Arbitrator finds that this provision has no impact on the above findings; when the RFF General Secretariat filed its application for revision, the RFF AC Decision was neither final nor irrevocable, as it was still subject to a possible appeal before CAS. Article 14 of Annex 1 to the RFF Licensing Regulations confirms that the arbitral award issued by CAS is irrevocable.
84. Furthermore, the RFF maintains that Article 57(5) of the RFF Statutes provides that decisions of the RFF Appeal Committee are final and enforceable at national level and that it was therefore entitled to file an application for revision with respect to the RFF AC Decision.

85. Article 57(5) RFF Statutes provides as follows:

“The decisions passed by the [RFF Appeal Committee] are final and binding at national level for all affiliated members, their players and officials, the officials of [RFF]/AJF/AMFB, as well for all match and players’ agents”.

86. While it is true that Article 57(5) RFF Statutes states that decisions issued by the RFF Appeal Committee are final and binding at national level, the Sole Arbitrator notes that, as paraphrased *supra* already, Article 57(4)(b) RFF Statutes provides that decisions passed by the RFF Appeal Committee *“may be challenged before the Court of Arbitration for Sport in Lausanne, which shall act as body of last instance at international level”* and that Article 57(8) RFF Statutes provides that *“[t]he decisions passed by the Court of Arbitration for Sport in Lausanne are binding for the professional leagues, for the affiliated members of [RFF] and their members and officials, and for players’ or match agents. [...]”*.

87. The wording and procedure to be followed according to Article 57 RFF Statutes is almost exactly the same as the wording and procedure to be followed set forth in Article 13 and 14 of Annex 1 to the RFF Licensing Regulations.

88. The Sole Arbitrator finds that, notwithstanding the reference to *“final and binding at national level”* in Article 57(5) RFF Statutes, Articles 57(4)(b) and (8) RFF Statutes clarify that a decision of the RFF Appeal Committee is only final and irrevocable if no appeal is lodged with CAS, because if there is, only the award issued by CAS is final and irrevocable. The Sole Arbitrator finds that the references to “national” and “international” have no impact on these findings, because all disputes arising from the Statutes or regulations of the RFF are in principle “national” disputes. The Sole Arbitrator understands that the reference to “international” is included to clarify that there are no further internal legal remedies available within the RFF or Romania in general, but that the only recourse at that stage is CAS.

89. Further, Article 121(1) RFF Disciplinary Regulations provides that an application for revision may be made if the new circumstances *“would have led to a more favourable decision”*.

90. The Sole Arbitrator finds that the reference to a *“more favourable decision”* is to be interpreted solely from the perspective of the license applicant / sanctioned party, for if it would apply to both parties, i.e. to the licensor and the licensee, there would have been no need to incorporate a reference to a *“more favourable decision”* in Article 121(1) RFF Disciplinary Regulations, but a reference to a *“different decision”* would have sufficed. By incorporating the reference to a *“more favourable decision”*, the regulator apparently wanted to exclude the possibility that an application for revision would result in a less favourable decision for the license applicant. In general, disciplinary proceedings clearly have the alleged perpetrator as the object, so if one speaks of a more favourable decision, this would in principle apply to the alleged perpetrator.

91. Accordingly, also on this ground the RFF General Secretariat’s application for revision did not comply with the prerequisites and should have been declared inadmissible.

92. The Sole Arbitrator also finds that this was not a situation of an *ex officio* revision as referred to in Article 121(3) RFF Disciplinary Regulations, because the revision was clearly instigated by an application for revision filed by the RFF General Secretariat on 14 September 2020.
93. Finally, the RFF's argument that filing an appeal against the RFF AC Decision with CAS would have been inadmissible, because it would have failed to exhaust the internal legal remedies at its disposal, is also to be dismissed. As argued by the Club during the hearing, the requirement of exhausting all internal legal remedies set forth in Article R47 CAS Code does not apply to extraordinary remedies, such as an application for revision.
94. This view is confirmed in legal doctrine:
- “The wording of Article R47 of the Code has been interpreted as encompassing ordinary remedies only and not extraordinary remedies. The SFT has confirmed the view that the obligation to exhaust internal legal remedies applies only to ordinary – and not to extraordinary or incomplete legal remedies (e.g., the request for revision) [with footnote to “ATF 4A_682/2012 of 20 June 2013, E.F.A. v. Al-Masry, at 4.4.3.2.] (MAVROMATI/REEB, R47: Appeal, The Code of the Court of Arbitration for Sport – Commentary, Cases and Materials, 2015, p. 391).*
- “The requirement of the exhaustion of internal remedies only applies to remedies which are mandatory under the applicable regulations: discretionary, optional or extraordinary remedies, such as, for instance, applications for early reinstatement in case of exceptional circumstances, need not be exhausted for the purposes of Art. R47(1)” (RIGOZZI/HASLER, Article R47 CAS Code, in: ARROYO (Ed.), Arbitration in Switzerland – The Practitioner's Guide, 2018, p. 1581-1582).*
95. As a consequence of the finding that the application for revision by the RFF General Secretariat was inadmissible, the Appealed Decision is to be annulled. The Sole Arbitrator is barred from addressing the substance of the dispute between the Club and the RFF, because the scope of the present appeal arbitration proceedings is limited to RFF General Secretariat's application for revision and the Appealed Decision issued on the basis of such application.
96. The above findings do not mean that the RFF had no recourse in case it considered that the Club engaged in fraudulent behaviour or otherwise acted inappropriately in obtaining the license to participate in the Romanian Second League National Championship, because the RFF could have filed an appeal against the RFF AC Decision with CAS. Alternatively, the RFF could potentially have started disciplinary proceedings against the Club, outside the context of the RFF Licensing Regulations.
97. Since the Sole Arbitrator finds that the application for revision of the RFF AC Decision filed by the RFF General Secretariat was inadmissible, the Appealed Decision is to be annulled, with the consequence that the RFF AC Decision enters into force again, including, *inter alia*, the granting of a license to the Club to participate in the Romanian 2nd League National Championship for the 2020/21 season and the imposition of a fine in the amount of RON 10,000.

B. Conclusion

98. Based on the foregoing, and after taking into due consideration all the evidence produced and all arguments made, the Sole Arbitrator finds that:
- i. The application for revision of the RFF AC Decision filed by the RFF General Secretariat was inadmissible.
 - ii. The Appealed Decision is annulled.
 - iii. The RFF AC Decision enters into force again.
99. All other and further motions or prayers for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 9 October 2020 by CS Pandurii Lignitul TG Jiu against the decision issued on 8 October 2020 by the Appeal Committee of the Romanian Football Federation is upheld.
2. The decision issued on 8 October 2020 by the Appeal Committee of the Romanian Football Federation is set aside. As a result, the decision issued on 24 August 2020 by the Appeal Committee of the Romanian Football Federation enters into force again.
3. (...).
4. (...).
5. All other and further motions or prayers for relief are dismissed.