



Arbitration CAS 2021/A/8225 Emilian Hulubei v. Romanian Football Federation (RFF), award of 11 April 2022

Panel: Mr Alexis Schoeb (Switzerland), Sole Arbitrator

Football

Validity of a decision of a federation's executive committee

Standing to sue according to the RFF Statutes

Standing to be sued in general

Condition to grant declaratory relief

Standing to be sued alone as regards the formal validity of the federation's decision

Standing to be sued alone as regards the substantial issues raised by the appellant

1. The question of whether or not a party has standing to sue/appeal (or to be sued) is an issue of substantive law. Article 48 para. 8 of the RFF Statutes expressly confers a right to appeal against a decision of the RFF Executive Committee to any of its members who voted against such decision and requested that his/her position be recorded in the minutes of the meeting.
2. A party has standing to be sued if it is personally obliged by the “disputed right” at stake. When assessing whether a party may have standing to be sued, it has to be analysed if it stands to be sufficiently affected by the matter at hand in order to qualify as a proper respondent within the meaning of the law. It follows that when deciding who is the proper party to defend an appealed decision, CAS panels proceed by an analysis of the interests involved and by taking into account the role assumed by the association at stake in the specific case. On a general point of view, a sports federation is deemed to be best suited to represent and defend the interests of its members in cases where a request for relief would have an indirect bearing on all its members. However, this is not necessarily the case where a request for relief directly affects one or several specific members. In this scenario, the appeal might also have to be directed against the potentially affected member(s) as co-respondent(s) alongside the sports federation from which the appealed decision emanates.
3. Declaratory reliefs can be granted only if the requesting party establishes a special legal interest to obtain such declaration.
4. Despite the fact that third parties would be directly affected by the potential incorrect application of procedural rules by a sports federation, it seems, in principle, that the federation would be best suited to defend alone the application of its own procedural rules.

5. **A CAS panel is not in a position to decide whether an appealed decision complied with a sports federations' substantive rules where the analysis of the compliance of the appealed decision with the sports federation's rules would require a concrete assessment of the applications submitted by the clubs directly affected by the outcome of the appeal as well as an analysis of the supporting documentation. Thus, the federation lacks standing to be sued alone in connection with such appealed decisions, and the appellant erred in filing his appeal only against the federation and not also against the clubs directly affected by the outcome of this appeal.**

I. PARTIES

1. Mr Emilian Hulubei (the "Appellant") is the president of the football players' union in Romania ("AFAN") and, in that capacity, is a member of the Executive Committee of the Romanian Football Federation.
2. The Romanian Football Federation (the "Respondent" or the "RFF") is the national governing body of football in Romania and has its registered office in Bucharest, Romania.

II. FACTUAL BACKGROUND

3. Below is a summary of the relevant facts and allegations based on the Parties' submissions and evidence filed. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, only the submissions and evidence necessary to explain the reasoning of this Award will be referred to in the following paragraphs.

A. The "Brasov" case

4. The Romanian football club "CSM Corona Brasov" ("Corona Brasov") is a public entity owned by the Brasov Municipality and plays in the *Liga III* of the Romanian football league system.
5. At the end of the Liga III 2020/2021 season, Corona Brasov was promoted to play in the *Liga II* of the Romanian football league system.
6. On 25 June 2021, the Brasov Municipality agreed to transfer Corona Brasov's right to participate in the Liga II to the football club "ACS FC Brasov" ("FC Brasov"), along with all the assets and liabilities of Corona Brasov.
7. On 30 June 2021, Corona Brasov applied to the RFF for the approval of such transfer of rights and obligations to FC Brasov.

8. On 1 July 2021, the Legal Department of the RFF issued and published on the RFF's official website its favourable opinion to such transfer, precisising that any interested person could oppose to this favourable opinion by filing an action with the Disciplinary and Ethics Committee of the RFF within 5 days of its publication.

B. The “Dacia” case

9. The Romanian football club “ACS Dacia Unirea Braila” (“ACS Dacia”) was a privately-owned football club playing in *Liga III* of the Romanian football league system which had entered into insolvency proceedings on 1 October 2018.
10. In March 2021, the Romanian football club “AFC 1919 Dacia Unirea Braila” (“1919 Dacia”) acquired the principal debts of ACS Dacia.
11. On 19 April 2021, the general assembly of the creditors of ACS Dacia approved a reorganisation plan under which, *inter alia*, ACS Dacia's right to participate in RFF competitions was to be transferred to 1919 Dacia, along with its sporting record and the right to use its name and mark(s). The debts were to be paid to secured creditors, employee creditors and unsecured creditors over a period of three years.
12. On 24 May 2021, the Second Civil Section of Administrative and Fiscal Litigation of the Braila Court confirmed such reorganisation plan.
13. On 4 June 2021, ACS Dacia applied to the RFF for the approval of the transfer of rights to 1919 Dacia.
14. On 8 July 2021, the Legal Department of the RFF issued and published on the RFF's official website its favourable opinion to such transfer, precisising that any interested person could oppose to this favourable opinion by filing an action with the Disciplinary and Ethics Committee of the RFF within 5 days of its publication.

C. The Appealed Decisions

15. No action was filed against the favourable opinions of the RFF's Legal Department in the “Brasov” and “Dacia” case, which were both submitted to the RFF's Executive Committee for its approval, on the basis of the RFF's Legal Department favourable opinions, pursuant to Article 4 par. 6 and 6.4 of the RFF's Regulations for Organizing the Football Activity (“ROFA”).
16. During a meeting held on 19 July 2021 (the “Meeting”), the RFF's Executive Committee notably passed the following decisions (the “Appealed Decisions”):

“The executive committee of the Romanian Football Federation, convened by statute, in the presence of the majority of its members, Mr. Kyros Vassaras absent motivated, in accordance with art. 47 paragraph (2) of the Statute of the Romanian Football Federation on July 19, 2021, adopts the following decisions:

[...]

- *Approves with a majority of votes (one vote against) the concession of the right to participate in competition (2nd League) from CSM Corona Brasov to ACS Fotbal Club Brasov – Steagul Renaste. As a consequence, orders the affiliation ACS Fotbal Club Brasov – Steagul Renaste and the disaffiliation of CSM Corona Brasov.*

[...]

- *Approves with a majority of votes (one vote against) the concession of the right to participate in competition (3rd league) from ACS Dacia Unirea Braila to Asociatia Fotbal Club 1919 Dacia Unirea Braila. As a consequence, orders the affiliation Asociatia Fotbal Club 1919 Dacia Unirea Braila and the disaffiliation of ACS Dacia Unirea Braila”.*

17. The Appellant was the only member of the RFF’s Executive Committee to vote against the approval of the applications filed by Corona Brasov and ACS Dacia.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

18. On 9 August 2021, the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport (the “CAS”) against the Respondent with respect to the Appealed Decisions, pursuant to Art. R47 *et seq.* of the Code of Sports-related Arbitration (the “Code”). The Appellant requested that a sole arbitrator be appointed by the CAS pursuant to Art. R48 and Art. R50 of the Code.
19. By letter dated 12 August 2021, the CAS Court Office acknowledged receipt of the Appellant’s Statement of Appeal and provided the Respondent with a copy of such Statement of Appeal together with its enclosures and invited the Respondent to comment on the various procedural issues.
20. By letter dated 17 August 2021, the Respondent notably informed the CAS Court Office that it agreed to the appointment of a sole arbitrator.
21. Following a time limit extension of 15 days accorded by the CAS Deputy Division President and communicated to the parties by the CAS Court Office on 18 August 2021, the Appellant filed his Appeal Brief on 2 September 2021 which notably contained a request for production of documents.
22. Following a time limit extension of 15 days accorded by the CAS Deputy Division President and communicated to the parties by the CAS Court Office on 22 September 2021, the Respondent filed its Answer Brief on 8 October 2021 which notably contained a request for a second round of submissions.
23. By letter dated 12 October 2021, the CAS Court Office acknowledged receipt of the Respondent’s Answer Brief and informed the parties that the Deputy President of the CAS Appeals Arbitration Division appointed Mr Alexis Schoeb, Attorney-at-law in Geneva, Switzerland, as Sole Arbitrator to decide the matter at hand.

24. By letter dated 15 October 2021, the Appellant informed the CAS Court Office that he did not consider a second round of written submissions or a hearing to be necessary in this procedure.
25. By letter dated 21 October 2021, the CAS Court Office informed the parties that the Sole Arbitrator decided to hold a hearing in this matter and not to admit a second round of written submissions. Noting that the Respondent remained silent with respect to the request for disclosure of documents submitted by the Appellant, the CAS Court Office also invited the Respondent to file its comments in this regard by 28 October 2021.
26. On 5 November 2021, the Respondent filed the following additional documents, as titled by the Respondent: *1. The request of AFC 1919 Dacia Unirea Braila no. 13/01.06.2021; 2. The Affidavit of Mr. Valentin Avramescu; 3. The Decision of the General Assembly of AFC 1919 Dacia Unirea Braila; 4. Reorganization Plan of Asociația Club Sportiv Dacia Unirea Braila – excerpts; 5. Judgment No. 154/2021 of the Braila Court; 6. Decision no 373 of the Brasov Local Council; 7. CNSL Decision no 418/14.10.2021.*
27. By letter dated 5 November 2021, the CAS Court Office acknowledged receipt of the additional documents filed by the Respondent and invited the Appellant to state whether he was satisfied with the documents produced by the Respondent and if his request for disclosure could be considered moot.
28. By letter dated 9 November 2021, the Appellant informed the CAS Court Office that he considered his request for production of documents to be satisfied. The Appellant also submitted his list of the individuals who would attend the hearing.
29. On 11 November 2021, the Appellant returned a signed copy of the Order of Procedure.
30. By letter dated 12 November 2021, the CAS Court Office took note that the Appellant was satisfied with the documents produced by the Respondent.
31. By letter dated 12 November 2021, the Respondent provided the CAS Court Office with the list of the persons who would attend the hearing. The Respondent also took note that Appellant requested the presence of Mr Lucian Enache (legal counsel for AFAN) and requested in which capacity would Mr Enache be present at the hearing.
32. By letter dated 15 November 2021, the CAS Court Office invited the Appellant to provide the explanations required as to the attendance of Mr Enache by 17 November 2021.
33. On 16 November 2021, the Respondent returned a signed copy of the Order of Procedure.
34. By letter dated 16 November 2021, the Appellant provided his explanation as to the requested presence of Mr Enache at the hearing, stating that he would attend the hearing only as an observer and would not make any submission on behalf of the Appellant.
35. By letter dated 16 November 2021, the CAS Court Office informed the Parties that the Sole Arbitrator considered that, in accordance with Article R30 of the Code, there was no ground not to allow the attendance of Mr Enache as an observer at the hearing.

36. On 3 December 2021, the Respondent sent an unsolicited correspondence with enclosures directly to the Appellant with the CAS Court Office in copy.
37. By letter dated 3 December 2021, the Appellant informed the CAS Court Office that he objected to the Respondent's unsolicited letter and the submissions contained therein being added to the case file before the Sole Arbitrator.
38. By letter dated 6 December 2021, the CAS Court Office informed the Parties that the Respondent's letter of 3 December 2021 would be treated as a bilateral communication between the Parties without any relevance for the procedure and thus, failing any specific request in this regard, that such letter and its enclosures would not form part of the file.
39. On 9 December 2021, a hearing was held via video-conference. The Sole Arbitrator was assisted at the hearing by Mr Giovanni Maria Fares, Counsel to CAS. The following persons were in attendance:

For the Appellant:

Mr Emilian Hulubei, Appellant

Mr. Lucian Enache, legal counsel for AFAN, as observer

Mr William Sternheimer, Counsel for the Appellant

Mr Ben Cisneros, Counsel for the Appellant

For the Respondent:

Mr Adrian Stangaciu, Head of the Legal Department of the Romanian Football Federation

Mr Paul-Filip Ciucur, Counsel for the Respondent

40. At the conclusion of the hearing, the Parties indicated that they were satisfied that their right to be heard had been duly respected and that they had been treated fairly and equally during the arbitration proceedings. The Sole arbitrator therefore informed the Parties that the proceedings were closed.

IV. POSITION OF THE PARTIES

41. The Sole Arbitrator has carefully considered and taken into account all of the evidence and arguments submitted by the Parties, but will limit the explicit references in the following summaries to those arguments that are relevant for this Award.

A. The Appellant's Position and Requests for Relief

42. The Appellant's position, in essence, may be summarized as follows:

The procedural requirements of the RFF Statutes

- i. Firstly, the Appellant claims that the Appealed Decisions are null and void because he was not provided with any documentation relating to the Appealed Decisions prior to or at the Meeting, in breach of Article 47(5) of the RFF Statutes.
- ii. In this regard, the Appellant considers that Article 47(5) of the RFF Statutes is an essential procedural requirement of decisions made by the Executive Committee which would ensure that the decisions of the Executive Committee are made following thorough and independent consideration of the bases of decisions, and with full information.
- iii. Secondly, the Appellant also claims that the Appealed Decisions were made without legal basis and are thus null and void, because they ordered the affiliation of FC Brasov and 1919 Dacia to the RFF, as well as the disaffiliation of Corona Brasov and ACS Dacia, in breach of Articles 31(2)(i) and 45(4)(g) of the RFF Statutes.
- iv. In this respect, the Appellant considers that Articles 31(2)(i) and 45(4)(g) of the RFF Statutes do not provide the Executive Committee with the power to determine the (dis)affiliation of a member of the RFF but may only determine such (dis)affiliation on a provisional basis and that it is the RFF's General Assembly which has the power to ultimately determine (dis)affiliation to the RFF.

The substantive rules of the RFF Statutes and of the ROFA

- v. The Appellant claims that the Appealed Decisions were made in breach of the substantive rules in Article 70(2) of the RFF Statutes and Article 4(5) of the ROFA and are thus null and void.
- vi. In support of his position, the Appellant submits that:
 - Article 70(2) of the RFF Statutes and Article 4(5) of the ROFA prohibit changes to the legal form or structure of football clubs aimed at transferring (or acquiring) the right to participate in RFF-authorized competitions between clubs, except (a) where the change is not to the detriment of the integrity of the competition; and (b) where proof of payment of all of the club's financial obligations is provided.
 - Article 4(5) ROFA further provides that the assignment of the right to participate "from a private law sports club to another private law sports club" will be a change in legal form/structure which violates Article 4(5).
 - Article 4(6) ROFA provides that any club wishing to modify the legal form or structure of a club and/or take any measures aimed at transferring (or acquiring) the right to participate in RFF-authorized competitions must first apply for RFF approval. Such applications, if approved by the RFF Legal Department, are then finally determined by the RFF Executive Committee.

The Brasov case

- vii. The Appellant submits that the transfer of the right to participate in Liga II from Corona Brasov to FC Brasov, in addition to the transfer of assets and liabilities, amounts to a change in Corona Brasov's legal form and/or structure aimed at transferring the right to participate in an RFF-authorized competition. In the Appellant's opinion, this is "*implicit in Corona Brasov's application to the FRF for approval and the FRF Legal Department's (explicit) consideration of the application in accordance with Article 4(6) of the ROFA*".
- viii. However, the Appellant submits that neither requirement under Article 4(5) ROFA was met (*i.e.* the transfer must not be to the detriment of sporting integrity and proof of payment of all of the club's financial obligations), and alleges that the "Brasov" decision was therefore unlawful (and thus void) for the following reasons:
- By acquiring Corona Brasov's right to participate, FC Brasov has gained entry into Liga II without sporting merit. Though the assets and liabilities of Corona Brasov have been assigned to FC Brasov, most of the players and coaches have not been transferred. FC Brasov is an entirely new entity and has effectively bought its way in to Liga II by acquiring the liabilities of Corona Brasov. In the Appellant's view, this runs contrary to the principles of promotion and relegation, and to the sporting integrity of the competition.
 - Corona Brasov's alleged unlawful termination of the contracts of 11 players in the course of the transfer damages the competition's sporting integrity, by violating the fundamental rights of one of its key stakeholders: the players.
 - The assignment of Corona Brasov's liabilities to FC Brasov could not amount to the "payment of all financial obligations", as "assigning" a debt is distinct from "paying" that debt. Thus, at the time of the "Brasov" decision, Corona Brasov had not provided proof of payment of all of its financial obligations and owed debts to its former players and coaches, in respect of the alleged unlawful termination of their contracts.

The Dacia case

- ix. The Appellant submits that the transfer of the right to participate in Liga II from ACS Dacia to 1919 Dacia, in addition to the transfer of assets under the Reorganisation Plan, amounts to a change in ACS Dacia's legal form and/or structure aimed at transferring the right to participate in an RFF-authorized competition.
- x. However, the Appellant claims that neither requirement under Article 4(5) ROFA was met and that the "Dacia" decision was therefore unlawful (and thus void) for the following reasons:
- By transferring its right to participate, along with its sporting record, name and mark(s), to 1919 Dacia – a new entity, albeit a club which is now virtually identical

to ACS Dacia – ACS Dacia allegedly side-stepped the consequences of its insolvency (*i.e.* that it would no longer exist and could not play in Liga II). The transfer deprived another club of the opportunity to play in Liga II (in the place of ACS Dacia) on the basis of sporting merit and allowed 1919 Dacia to “*buy its way*” into the competition.

- ACS Dacia, at the time of the Dacia Decision, was in insolvency. It was thus, by definition, unable to pay its debts. It was therefore impossible for ACS Dacia to comply with this requirement, and it did not do so. In any event, any assignment of ACS Dacia’s liabilities to 1919 Dacia could not amount to “payment of all financial obligations”.
- The transfer of the participation right from ACS Dacia to 1919 Dacia is a transfer from one private law sports club to another. Article 4(5) of the ROFA explicitly states that such transfers are prohibited.

43. In his Statement of Appeal, the Appellant sought the following relief:

“The Appellant is respectfully requesting the Court of Arbitration for Sport:

- a) To rule that the Brasov and Dacia – decisions conflict with the law and with the provisions of the Statutes and regulations of RFF.*
- b) To annul the Brasov-decisions.*
- c) To annul the Dacia-decision.*
- d) To condemn the Respondent to pay the entire CAS administration costs and the arbitration fees and to reimburse the Appellant of any and all expenses incurred in connection with this procedure.*
- e) To rule that the Respondent has to pay the Appellant a contribution towards legal costs”.*

44. In his Appeal Brief, the Appellant amended his requests for relief as follows:

“The Appellant respectfully requests the Sole Arbitrator to:

- (a) declare that the Decisions were made in breach of the FRF Statutes and/or the ROFA;*
- (b) declare the Decisions null and void;*
- (c) further or in the alternative, set aside the Decisions;*
- (d) order the Respondent to pay the costs of the arbitration; and*
- (e) order the Respondent to pay the Appellant’s legal costs and expenses in relation with the present proceedings in the amount of CHF 15,000”.*

B. Respondent's Position and Requests for Relief

45. The Respondent's position, in essence, may be summarized as follows:

The Appellant's alleged lack of legal interest to lodge this appeal

- i. The Respondent argues that the Appellant lacks any personal, direct and legitimate interest. In particular, the Appellant is not directly touched by the Appealed Decisions and agreed with the procedure of the vote, the pre-meeting information and the legal arguments in all other similar cases of "*activity transfer*".
- ii. The Respondent also underlines that all the decisions taken by the Executive Committee of the RFF on 19 July 2021 were unanimously approved, except for the decisions which are the object of this Appeal and the other "*activity transfer*" decisions for which the Appellant refrained to vote and so did not vote against.

The alleged procedural breaches of Articles 45 and 47 of the RFF Statutes

- iii. The Respondent submits that the alleged breach of Article 47 of the RFF Statutes was already settled in favour of the RFF by another CAS Panel in CAS 2019/O/6383.
- iv. In this regard, the Respondent considers that:
 - the Appellant did not complain about other points on the agenda when such documents were presented orally by one of the members, because documents are not always provided before meetings, but are often replaced by presentations, slide-shows etc.
 - the transfer of activity was published on the RFF website, for publicity reasons, with a time limit of 5 days for any interested person to be able to protest against, or challenge such procedure. Nevertheless, no challenge was brought against the RFF Legal Department's public vetting of the procedures.
- v. The Respondent further submits that the alleged breach of Article 45 of the RFF Statutes is "*a state of confusion*" induced by the Appellant, because the members of the RFF Executive Committee are experienced members who are well aware of the provisional effect of the affiliation/disaffiliation of a club.
- vi. In any case, the Respondent considers that the provisions of art. 12 and 13 of the RFF Statutes are clear and that the Executive Committee's debate and vote were in fact, in everyone's mind, a provisional affiliation only.

The alleged breach of the substantive rules contained in Article 70(2) of the RFF Statutes in the Brasov case

- vii. The Respondent explains that Romanian legislation obliges the RFF to grant public entities with an access to a sporting competition if they win the sporting right to take part in that competition but that it also does not allow public entities to join a professional league and fails to mention what should happen if a club organized as a public legal entity wins the sporting right to take part in the professional league.
- viii. The Respondent submits that the fundamental principle of promotion and relegation based on the sporting merits mentioned at Article 70 para. 1 of the RFF Statutes means that legal impediments should however not stand in the way of clubs taking part in a competition for which they have won the right to be in.
- ix. In the Respondent's view, the RFF was thus "*forced to intervene*" and regulate through an administrative decision the fact that a club has to be allowed to change its legal form from a public legal entity to a private one. In this case, the Respondent submits that the Executive Committee of the RFF allowed Brasov to transform from a public legal entity into a private one in compliance with the legal provisions its own sporting statutes and regulations as already established in the CAS 2019/O/6383.
- x. In this respect, the Respondent claims that Article 70 (2) of the RFF Statutes prohibits altering the form of organization exclusively in reference to affecting the integrity of competitions, not to protecting it or the sports merits criteria of prevalence and that the Appellant "*wrongfully represents the purpose of this change with regard to Brasov*", alleging that this change has the single purpose of ensuring the principle of promotion is respected and can be fully implemented if Brasov wins the right to play in the First League.

The alleged breach of the substantive rules contained in Article 4(5) of the ROFA in the Dacia case

- xi. The Respondent explains that the RFF's Legal Department and the Executive Committee do not have the means to verify in depth if a club has or not debts towards other clubs, players, coaches etc, and that it was thus decided that it would be considered as sufficient if the new legal entity provides the RFF with an affidavit which states that the new club will pay any debts arising out of the football activity of the old club. The Respondent submits that in all cases (not only in the Brasov and Dacia cases), the RFF verified and received such document.
- xii. The Respondent further argues that:
 - In the case of the clubs playing in the 2021/2022 Season in the Romanian Second League, including Brasov and Dacia, the fact that the clubs had no debts was verified by checking if the clubs were granted the certificate (license) to play in the 20/21 Season in the second tier of Romanian football.

- Both clubs, Braila and Brasov, received such a certificate, meaning that no debts, as provided by the applicable regulations, were notified to the RFF's certification manager or to the financial expert.
 - If Braila and Brasov would have had overdue payables towards clubs, players, coaches etc, such certificate to play in the Second League would have been refused to them.
- xiii. The Respondent also notes that the legal remedy against an alleged breach of Article 4 para. 5 of the ROFA would have been the procedure mentioned at Article 4 para. 6.1 ROFA. However, until today no legal or natural person opened such a case in front of the RFF Disciplinary Committee.

The principle of proportionality

- xiv. The Respondent notes that the Appealed Decisions were approved without any votes against, except for these two points challenged in the present dispute, and that the four clubs involved are not part of these proceedings although they are directly and legitimately interested and affected by this case.
- xv. The Respondent argues that upholding the appeal would be completely out of proportion and excessive as opposed to the effects, as the annulment of the Appealed Decisions would irreparably affect more than one third party's sports, financial, legal or other situation, in the absence of a former procedure in which the third party should have been present, in order to exercise its right of defence guaranteed by the Romanian Constitution, as well as by the sport governing bodies' regulations.
- xvi. The Respondent also considers that:
- the practical interest of the Appellant is questionable if all players shall suffer from being registered with an insolvent and relegated club, e.g. the former clubs (transferor clubs), and thus if they have nothing to gain in the present case.
 - it is unacceptable and legally unsound for the Appellant to lodge an appeal which, in case of success, would have a negative impact on more persons than the number of those who would benefit from it;
 - the Appellant voted in favour of a similar decision already settled by CAS between FCSB and the RFF in the matter CAS 2019/O/6383.
46. In its Request for relief, the Respondent requests as follows:
- A. to dismiss the appeal lodged by the Appellant against the challenged Decision rendered by the Executive Committee (ExCo) of the Romanian Football Federation;*
 - B. to maintain and consider the challenged Decision undisturbed;*

C. *to order the Appellant to pay all costs, expenses and a contribution to the legal fees relating to the arbitration proceedings before CAS encumbered by the Respondent*".

V. JURISDICTION

47. As Switzerland is the seat of the arbitration (Art. R28 of the Code) and neither of the Parties is domiciled in Switzerland, the provisions of the Chapter 12 of the Swiss Private International Law ("PILA") are applicable (Art. 176 para. 1 PILA).

48. In accordance with Art. 186 PILA, CAS has the power to decide upon its own jurisdiction.

49. Article R47 of the Code provides as follows:

"An appeal against the decision of a federation, association or sports-related body may be filed with 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".

50. In the present matter, the decision which is the subject of this appeal was issued by the Executive Committee of the RFF.

51. The jurisdiction of CAS arises out of Article 48(8) of the RFF Statutes, pursuant to which:

"A decision of the Executive Committee which conflicts with the law or with the provisions of the Statutes and regulations of RFF may be challenged 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 requests 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 in Lausanne".

52. The Respondent did not object to the competence of CAS in the present dispute and the Parties accepted the jurisdiction of CAS by signing the Order of Procedure.

53. In light of the foregoing, the Sole Arbitrator, therefore, confirms that CAS has jurisdiction to hear this appeal.

VI. ADMISSIBILITY

54. The Appealed Decisions have been taken by the RFF's Executive Committee during the Meeting held on 19 July 2021, during which the Appellant was present and voted against the Appealed Decisions.

55. The Appellant then filed his Statement of Appeal on 9 August 2021, thus being within the 21-day deadline established by Article R49 of the Code.

56. Furthermore, the Appellant complied with all other requirements of the Code, including the payment of the CAS Court Office fee.
57. The Respondent did not object to the admissibility of the appeal.
58. Consequently, the appeal is deemed admissible.

VII. APPLICABLE LAW

59. The law applicable to the present arbitration is defined by the Sole Arbitrator in accordance with Article R58 of the Code, which 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. The present dispute concerns an appeal submitted against decisions issued by the Executive Committee of the RFF. Therefore, the applicable regulations in the case at hand shall be the statutes and regulations of the RFF.
61. In addition, noting that the statutes and regulations of the RFF do not appear to contain any choice of law applicable in the case at hand, the law of the country of the RFF’s domicile, *i.e.* Romania, shall be subsidiarily applicable.
62. As a result, the Sole Arbitrator holds that pursuant to Article R58 of the Code, the present dispute is to be determined in accordance with the statutes and regulations of the RFF, and subsidiarily, Romanian law.

VIII. MERITS

The Main Issues

63. The present case revolves around the preliminary issues raised by the Respondent and, on substance, whether the Appealed Decisions comply with the statutes and regulations of the RFF.
64. Indeed, while the Appellant claims that the Appealed Decisions are null and void on the basis of alleged violations of procedural requirements and were made in breach of Article 70(2) of the RFF Statutes and Article 4(5) of the ROFA, the Respondent argues that the Appellant lacks a legal interest to lodge this appeal, objects that the four clubs involved were not part of these proceedings although they are allegedly directly and legitimately interested and affected by this case and refutes any breach of the RFF regulations.

65. In light of the foregoing and in accordance with the Parties' submissions, before analysing whether the Appealed Decisions comply with the procedural requirements and the substantive rules of the RFF regulations, the Sole Arbitrator shall firstly determine the preliminary issues raised by the Respondent in the present dispute, *i.e.* the Appellant' standing to sue and the Respondent' standing to be sued alone.

A. The Appellant' standing to sue

66. The Respondent challenged the Appellant's standing to sue, arguing in essence that the Appellant lacked any personal, direct and legitimate interest. In particular, according to the Respondent, the Appellant was not directly touched by the Appealed Decisions.

67. The question of whether or not a party has standing to sue/appeal (or to be sued) is – according to the well-established CAS jurisprudence (*see* CAS 2020/A/7356; CAS 2020/A/6694; CAS 2016/A/4602; CAS 2013/A/3047; CAS 2008/A/1639) – an issue of substantive law.

68. In the case CAS 2019/O/6383, to which the Sole Arbitrator was referred to by the Respondent and which also involved the RFF as respondent and the same edition of the RFF Statutes, the Panel observed that Article 48 para. 8 of the RFF Statutes provides that:

“A decision of the Executive Committee which conflicts with the law or with the provisions of the Statutes and regulations of RFF may be challenged 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 requests that his position be recorded in the minutes of the meeting in accordance with the applicable legislation”.

69. The Sole Arbitrator thus notes, as the Panel did in the case CAS 2019/O/6383, that Article 48 para. 8 of the RFF Statutes expressly confers a right to appeal against a decision of the RFF Executive Committee to any of its members who voted against such decision and requested that his/her position be recorded in the minutes of the meeting.

70. In the present case, it is undisputed that the Appellant voted against the Appealed Decisions and requested that his position be recorded in the minutes of the RFF Executive Committee's Meeting.

71. Consequently, the Sole Arbitrator concludes that the Appellant has the right to lodge this appeal and thus that the Respondent's objection shall be rejected.

B. The Respondent' standing to be sued alone

72. The Respondent is indeed the organisation (through one of its organs, the Executive Committee) that issued the Appealed Decisions and it is undisputed that it has standing to be sued in the present proceedings. However, Respondent argued that the four clubs involved were not part of these proceedings although they are legitimately interested and directly affected by this case. The Respondent thus objected that those four clubs should have been present in

these proceedings in order to exercise their right of defence, because their sporting, financial and legal situation would be irreparably affected should the appeal be upheld.

73. The Appellant indicated that he directed his appeal solely against the Respondent because the Respondent represents its members and, since he did not take any conclusions against the clubs, there was no need to include them in the present proceedings.
74. The question at hand is therefore whether the Respondent has standing to be sued alone and thus whether the Appellant has named the right respondent(s) in the present proceedings. In other words, the question arises if the Appellant had to direct its Appeal also against the potentially affected four clubs, and, if so, what legal consequences follow from the Appellant's failure to do so.
75. In accordance with the CAS jurisprudence, a party has standing to be sued if it is personally obliged by the "disputed right" at stake, *i.e.* if said party has some stake in the dispute because something is sought against it (CAS 2008/A/1620, para. 4.1; CAS 2007/A/1367, para. 37; and, CAS 2012/A/3032 para. 42).
76. CAS Panels repeatedly held that, when assessing whether a party may have standing to be sued, it has to be analysed if it "*stands to be sufficiently affected by the matter at hand in order to qualify as a proper respondent within the meaning of the law*" (CAS 2017/A/5227, para. 35). CAS Panels also accepted the principle that "*no order for relief can be granted which affects the rights and legitimate interests of absent third parties*" (*see* CAS 2020/A/7061, para. 125; CAS 2019/A/6334, par. 57; CAS 2016/A/4642 §120; CAS 2004/A/594 §51).
77. In particular, CAS panels decided on several occasions that "*the question of standing to be sued [...] must be resolved on the basis of a weighting of the interests of the persons affected by said decision. The question, thus, is who [...] is best suited to represent and defend the will expressed by the organ of the association*" (CAS 2016/A/4787 para. 109; CAS 2015/A/3910, para. 138, endorsed by CAS 2016/A/4602, paras. 81 ff.).
78. It follows that when deciding who is the proper party to defend an appealed decision, CAS panels proceed by an analysis of the interests involved and by taking into account the role assumed by the association in the specific case (CAS 2020/A/7356, para. 64).
79. The Sole Arbitrator agrees that, on a general point of view, a sports federation such as the Respondent is deemed to be best suited to represent and defend the interests of its members in cases where a request for relief would have an indirect bearing on all its members (a similar reasoning was adopted in the case CAS 2016/A/4787).
80. However, this is not necessarily the case where a request for relief directly affects one or several specific members (CAS 2020/A/7061, para. 126). In this scenario, the appeal might also have to be directed against the potentially affected member(s) as co-respondent(s) alongside the sports federation from which the appealed decision emanates. This is essential for an arbitral tribunal to ensure that the right to be heard of the member(s) concerned is respected (CAS 2019/A/6351).

81. Consequently, while noting that he would be in principle prevented from granting any request for relief that would directly affect the rights of an absent third party, the Sole Arbitrator deems that he must deal with the Appellant's requests for relief in accordance with the above-mentioned test, *i.e.* in a manner which takes into account all the interests involved, the role assumed by the federation as well as the rights of defence and in particular the right to be heard of the directly affected parties.
82. In the present case, the Sole Arbitrator thus finds that the evaluation of the issue of the Respondent's standing to be sued alone requires an analysis of the Appellant's requests for relief, which read as follows:
- “(a) declare that the Decisions were made in breach of the FRF Statutes and/or the ROFA;*
- (b) declare the Decisions null and void;*
- (c) further or in the alternative, set aside the Decisions;*
- [...]”*
83. Firstly, the Sole Arbitrator notes that the Appellant seeks to receive a declaratory award that would declare that the Appealed Decisions (a) were made in breach of the RFF Statutes and/or the ROFA and (b) are null and void.
84. In accordance with the CAS jurisprudence, declaratory reliefs can be granted only if the requesting party establishes a special legal interest to obtain such declaration (see CAS 2009/A/1870, para. 132; CAS 2011/O/2574, para. 49; CAS 2011/A/2612, para. 48; CAS 2013/A/3272, para. 69).
85. In the present case, the Appellant has not alleged, let alone proven, any legal interest in the declarations sought. It is further noted that even if the Appellant would have an interest in the declarations sought, such interest would not require those declarations in addition to the Appellant's request to set aside the Appealed Decisions.
86. Consequently, because the Appellant failed to show any further legal interest that he could have in the declarations sought under his prayers for relief (a) and (b), such prayers are inadmissible.
87. Secondly, the Sole Arbitrator notes that the Appellant requested *“(c) further or in the alternative, [to] set aside the Decisions”*.
88. The Sole Arbitrator observes that if the Appellant's request for relief (c) is granted, the Appealed Decisions would be annulled and therefore the RFF Executive Committee's approvals in the “Brasov” and “Dacia” cases would be removed.
89. This situation would, for obvious reasons, directly affect the rights of the clubs concerned in the “Brasov” and “Dacia” cases (*i.e.* the clubs Corona Brasov, FC Brasov, ACS Dacia and 1919 Dacia). Indeed, if the Appealed Decisions are set aside, these clubs will necessarily lose the rights specifically granted by the RFF Executive Committee under the Appealed Decisions.

90. Furthermore, only the rights of Corona Brasov, FC Brasov, ACS Dacia and 1919 Dacia would be directly affected by setting aside the Appealed Decisions, but not the rights of any other member of the RFF nor the rights of the RFF itself.
91. It clearly appears from the above that the rights of the clubs concerned in the “Brasov” and “Dacia” cases are directly affected by the Appealed Decisions. It is thus necessary to analyse who was best suited to defend the interests of these clubs and therefore whether the Respondent had standing to be sued alone without them.
92. In this context, the Sole Arbitrator notes that the Appellant’s request for relief (c) rests on two distinct types of arguments. The first set of arguments raised by the Appellant strictly concerns the formal validity of the Appealed Decisions as RFF statutory provisions have been allegedly breached. The second set of arguments concerns the application of the RFF regulations with respect to the RFF Executive Committee’s approvals of the requests submitted by the clubs in the “Brasov” and “Dacia” cases. In the opinion of the Sole Arbitrator, the different types of arguments raised by the Appellant imply a separate analysis of the question of who is best suited to defend the Appealed Decisions, especially considering the administrative nature of the present dispute.
 - a) ***The Respondent’ standing to be sued alone as regards to the formal validity of the Appealed Decisions***
93. In substance, the Appellant alleges that the Appealed Decisions are null and void as a consequence of several procedural violations of the RFF Statutes. The Appellant invokes in essence an alleged lack of information prior to the Meeting and the lack of competence of the RFF Executive Committee to decide on the affiliation/dis-affiliation of clubs, except on a provisional basis.
94. The issues raised by the Appellant are indeed of strictly procedural nature as they concern the circumstances of the decision-making process of the RFF Executive Committee, *i.e.* the organisation of the Meeting and the RFF Executive Committee’s competence to issue the Appealed Decisions.
95. The Sole Arbitrator considers that, despite the fact that third parties would be directly affected by the potential incorrect application of procedural rules by the Respondent, it seems, in principle, that the Respondent would be best suited to defend alone the application of its own procedural rules. For the sake of this specific issue, the Respondent might have standing to be sued alone in this procedure.
96. This question may however be left open in the present case as the Appellant’s position on the alleged procedural issues must in any event be rejected for the following reasons.
 - (i) *The alleged lack of information prior to the meeting*
97. The Appellant alleges that the Appealed Decisions should be considered null and void because he did not receive the relevant documents and information prior to the Meeting, in breach of

Article 47(5) of the RFF Statutes, which reads as follows; “[t]he agenda and the documents to be considered at the meetings of the Executive Committee shall be sent out to the members of the Executive Committee at least three days prior to the meeting”.

98. The Respondent explained that it is a common and long-standing practice of this RFF Executive Committee not to provide documents to its members prior to a meeting. The Respondent also underlines that in the “Brasov” and “Dacia” cases, the Appellant had however access to all the relevant documents on the RFF website at least five days before the Meeting.
99. It shall be first underlined that the Appellant does not indicate which documents were to be submitted before or at the Meeting in addition to the documents available on the RFF website prior to the Meeting. In this context, the Appellant does not indicate why the submission of additional documents would have had – concretely – any effect on the decision making-process of the Appealed Decisions and the outcome of the votes.
100. The Sole Arbitrator also notes that a previous CAS Panel already dealt with this specific issue (CAS 2019/O/6383) and in which it was confirmed that *“it is a common and long-standing practice in the RFF Executive Committee that concrete measures are taken immediately after the debate although no pre-dating material exist”*. The Appellant did not dispute the reality of such “common and long-standing practice” but merely considered that the past conduct of the RFF Executive Committee could not excuse its alleged failure in the present case.
101. Yet, the Sole Arbitrator understands that the Appellant participated in the Meeting and voted favourably for all the other items on the agenda without, apparently, having received the relevant material in advance of the Meeting. It therefore appears that the practice of the RFF Executive Committee was only problematic, for the Appellant, regarding the Appealed Decisions and not for all the other items submitted to a vote during the Meeting. However, the Appellant did not explain why the situation would be specifically different in the case of the Appealed Decisions nor why would it justify a different treatment compared to the other decisions taken during the Meeting.
102. The Sole Arbitrator also notes that the Appellant was the only member of the RFF Executive Committee to vote against the “Brasov” and “Dacia” decisions and the Appellant does not allege that other members also complained about not receiving relevant documents and information prior to the Meeting.
103. In this context, and even if the Sole Arbitrator would agree that the procedure as set by Article 47(5) of the RFF Statutes might not have been strictly followed, the validity of the Appealed Decisions could not be questioned in the present case. Therefore, annulling the Appealed Decisions on this ground and in this context would be qualified as excessive formalism. The Appellant’s position must therefore be rejected.

(ii) *The alleged lack of competence of the Executive Committee to decide on the affiliation/dis-affiliation*

104. The Appellant claimed that the Appealed Decisions were null and void because they ordered the affiliation of FC Brasov and 1919 Dacia to the RFF, as well as the disaffiliation of Corona Brasov and ACS Dacia, in breach of Articles 31(2)(i) and 45(4)(g) of the RFF Statutes.

105. However, during the hearing, the Appellant indicated that it withdrew this argument in the present dispute. Consequently, this question does not require any further development and is to be considered as moot.

b) *The Respondent' standing to be sued alone as regards the substantial issues raised by the Appellant*

106. The Appellant raised several substantial issues in this case and, in particular, alleged that the Respondent breached several substantive rules when its Executive Committee decided to approve the "Brasov" and "Dacia" cases.

107. However, the Sole Arbitrator considers that the Respondent cannot be best suited to defend alone the Appealed Decisions on the substantive issues raised by the Appellant and that the clubs concerned should have been part of the present proceedings in order to be able to defend their respective case.

108. In reaching this conclusion, the Sole Arbitrator first notes that the Appealed Decisions have been issued by the RFF Executive Committee exclusively on the basis of the applications submitted by Corona Brasov and ACS Dacia and the subsequent favourable opinions issued by the RFF Legal Department.

109. It also appears that Corona Brasov and ACS Dacia would have had the right to challenge the RFF Executive Committee's decisions if their respective applications had been rejected. In this respect, the Sole Arbitrator is of the view that Corona Brasov and ACS Dacia, being the applicants and the directly interested parties in the "Brasov" and "Dacia" cases, have a legitimate interest to be heard in the present dispute.

110. The Sole Arbitrators further notes that the Appellant's position in this case relies on several key factual elements that only the interested clubs might be able to clarify in both cases, such as:

- In the "Brasov" case: the assignment of the assets and liabilities of Corona Brasov to FC Brasov, the alleged unlawful termination of the contracts of 11 players in the course of such assignment as well as the alleged lack of proof of payment of all financial obligations and debts due towards the former players and coaches of Corona Brasov;
- In the "Dacia" case: the nature and the consequences of the transfer of assets from ACS Dacia to 1919 Dacia under the Reorganisation Plan and the alleged lack of payment of all ACS Dacia's financial obligations.

111. Indeed, in view of the Appellant's arguments, it appears that the analysis of the compliance of the Appealed Decisions with the RFF rules would also require a concrete assessment of the applications submitted by Corona Brasov and ACS Dacia as well as an analysis of the supporting documentation. Thus, the explanations of the clubs concerned would have been necessary in this case.
112. In other words, the Sole Arbitrator deems not to be in a position to decide whether the Appealed Decisions complied with the RFF substantive rules in the absence of the clubs concerned in the present proceedings.
113. On the basis of the foregoing and taking into account the above-mentioned applicable balance of interest-test, the Sole Arbitrator therefore considers that the substantial issues raised by the Appellant in the present case would have required the participation of the clubs Corona Brasov and ACS Dacia and, potentially also of FC Brasov and 1919 Dacia.
114. In conclusion, the Sole Arbitrator finds that the Respondent lacks standing to be sued alone in connection with the Appealed Decisions, and thus that the Appellant erred in filing his appeal only against the RFF and not also against the clubs directly affected by the outcome of this appeal.
115. The appeal shall therefore be dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed on 9 August 2021 by Mr Emilian Hulubei against the Appealed Decisions issued by the Executive Committee of the Romanian Football Federation on 19 July 2021 is dismissed.
2. The Appealed Decisions issued by the Executive Committee of the Romanian Football Federation on 19 July 2021 are confirmed.
3. (...).
4. (...).
5. All other prayers or requests for relief are dismissed.