

Date: 16 November 2020

Sent to

**Respondent:** Fotbal Club Rapid 1923  
c/o Mr. Josep Francesc Vandellos  
Alamilla  
Email: [office@sports-law.eu](mailto:office@sports-law.eu)

**Claimant:** Player Julio Cesar da Silva e Souza  
c/o Mr. Jose Duarte Reis  
Email: [jdr@mrgladvogados.com](mailto:jdr@mrgladvogados.com)

## Notification of the decision

Ref. 140459

Dear Sirs,

Please find attached the grounds of the decision passed in the aforementioned case by a member of the FIFA Disciplinary Committee on 22 October 2020.

The Romanian Football Federation (in copy) is kindly requested to forward this decision to its affiliated club, Fotbal Club Rapid 1923.

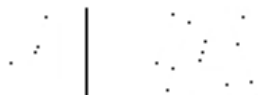
We would appreciate your taking due note of this decision and ensuring its implementation.

Yours faithfully,

FIFA



Carlos Schneider  
Head of the FIFA Disciplinary Department



# Decision of the Disciplinary Committee

passed in Zurich, Switzerland, on 22 October 2020

## COMPOSITION:

Mr. Gudni Bergsson, Iceland (member)

## RESPONDENT:

FC Rapid 1923, Romania

Regarding failure to comply with  
Art. 15 of the FDC (2019 ed)

## I. FACTS OF THE CASE

1. The following summary of the facts does not purport to include every single contention put forth by the actors at these proceedings. However, the member of the FIFA Disciplinary Committee (hereinafter, the Single Judge) has thoroughly considered in its discussion and deliberations any and all evidence and arguments submitted, even if no specific or detailed reference has been made to those arguments in the following outline of its position and in the ensuing discussion on the merits.
2. On 18 December 2012, the Dispute Resolution Chamber decided that the club FC Rapid Bucuresti (hereinafter also referred to as *the Original Debtor*) had to pay to the player Julio Cesar da Silva e Souza (hereinafter also referred to as *the Creditor*), the amount of EUR 400,000, as well as 5% interest per annum on said amount as from 18 December 2012 until the date of effective payment.
3. The findings of the decision of the Dispute Resolution Chamber dated 18 December 2012 (hereinafter also referred to as "*the DRC Decision*") were notified to, amongst others, the Creditor and the Original Debtor, on 11 January 2013. Following the notification of the findings of the DRC Decision, the Original Debtor requested the grounds of the said decision, which were notified on 18 April 2013.
4. In this sense, since no appeal was lodged against the DRC decision, the said decision is final and binding.
5. On 16 July 2014, since the Original Debtor did not pay the outstanding amounts due (cf. point I.2 *ut supra*), disciplinary proceedings were opened against the latter for not complying with the DRC Decision.
6. On 20 August 2014, and following the information provided by the Original Debtor on 7 August 2014, the secretariat of the FIFA Disciplinary Committee (hereinafter, "*the Secretariat*") informed the Creditor, amongst others, that the FIFA Disciplinary Committee was "monitoring and evaluating the situation".
7. To this respect, on 14 January 2015, the Creditor was informed that, since the Original Debtor was undergoing insolvency proceedings, the disciplinary proceedings were suspended until the insolvency proceedings were finalized.
8. Furthermore, on 6 October 2017, and following the information provided by the Romanian Football Federation (Hereinafter, *the Romanian FA*), the Secretariat communicated to the Creditor that, due to the disaffiliation of the Original Debtor from the Romanian FA, the Disciplinary Committee could no longer deal with cases involving the Original Debtor.
9. On 2 December 2019 and 2 June 2020, the Creditor requested the Secretariat to open disciplinary proceedings against the club FC Rapid 1923 (hereinafter also referred to as *the New Club*), which is affiliated to the Romanian FA and, according to the Creditor, the successor of the Original Debtor, for

not complying with the DRC Decision. In particular, the Creditor provided the following arguments and/or evidence to support his allegations<sup>1</sup>:

- In 2016, two clubs were created: Academia FC Rapid Bucuresti, which is a former society of the Original Debtor, and Miscarea Feroviara CFR;
  - These two clubs had teams participating in Liga V, which then promoted to Liga IV, after which Miscarea Feroviara CFR disappeared;
  - On 12 June 2018, Academia FC Rapid Bucuresti bought the “FC Rapid Bucuresti” brand and became the official successor of the Original Debtor;
  - Following the sporting season 2018/2019, the renamed club FC Rapid Bucuresti promoted to Liga 2;
  - On 3 July 2019, FC Rapid Bucuresti became Fotbal Club Rapid 1923 (i.e. the New Club). This change of name was approved by the Romanian FA;
  - The popular name of the New Club is still “Rapid Bucuresti”;
  - The date 1923 included in the New Club’s name refers to the year of foundation, which is also the year the Original Debtor was founded;
  - The New Club and the Original Debtor share the same colours (i.e. purple and white) and used to play in the same stadium (i.e. Giulesti-Valentin Stanescu Stadium);
  - The New Club took the place of the Original Debtor in the competitions organized by the Romanian FA. This is only possible with the recognition of the relevant association.
10. Following the above-mentioned correspondence, on 3 June 2020, the Secretariat contacted the Romanian FA and requested the latter to provide its comments regarding the allegations brought forward by the Creditor, as well as to specify in which divisions from the national championship had the Original Debtor and the New Club played in the last five seasons.
11. On 16 June 2020, the Romanian FA provided the Secretariat with the following information:
- The Original Debtor is still undergoing bankruptcy proceedings;
  - The Original Debtor promoted to the League I on the 2015-2016 season;

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<sup>1</sup> The summary does not purport to include every single contention put forth by the Debtor. However, the FIFA Disciplinary Committee has thoroughly considered in its discussion and deliberations any and all evidence and arguments submitted, even if no specific or detailed reference has been made to those arguments in the following outline of its position and in the ensuing discussion on the merits.

- On the other hand, the New Club participated for the first time in organised football in the 2017-2018 season, during which it participated in League 4 (i.e. "Liga IV"). The following season, the New Club promoted to League 3 and is, currently, playing in League 2;
  - The New Club and the Original Debtor have different addresses, Sports Identification Certificate numbers, identity codes and legal forms;
  - The New Club has not replaced the Original Debtor in Romanian competitions. It is a new established club that started competing from the lowest football category, which is organised by the Bucharest Municipal Football Association.
12. Taking into consideration the information provided by the Creditor and the Romanian FA, on 24 June 2020, the Secretariat opened disciplinary proceedings against the New Club, for a potential failure to respect a decision passed by a body, a committee or an instance of FIFA or a CAS decision. In this sense, the New Club was invited to provide its position regarding the allegations made by the Creditor.
13. Following the opening of disciplinary proceedings, the New Club provided its position in relation to the said proceedings on 30 June and 1 July 2020 (cf. point II/1 below)
14. On 7 September 2020, following the correspondence from the New Club and due to the particular circumstances, the Secretariat asked the Creditor, on behalf of the Chairman of the Disciplinary Committee, to provide his comments in relation to the allegations brought forward by the New Club, namely, information regarding all the measures and actions taken in order to recover the credit recognized in the DRC Decision.
15. The Creditor provided his comments over the allegations of the New Club, which can be summarized as follows<sup>2</sup>, on 1 October 2020:
- The judicial administrator of the Original Debtor's insolvency proceedings was fully aware of who the Creditor was as well as of the credit recognized by the DRC Decision. In this sense, it must be noted that, as confirmed by the Original Debtor itself, during the insolvency proceedings there was a civil case ongoing at the Romanian Civil Court involving the Original Debtor and the Creditor, with the purpose of determining whether the credit recognized in the DRC decision was to be considered as a claim prior to the opening of the judicial reorganization and, therefore, whether it had to be included in the credit table;
  - During the above-mentioned procedure before the Romanian Civil Court, the judicial administrator identifies the Creditor (Mr. Julio Cesar da Silva e Souza) as well as the debt the Original Debtor had towards him (i.e. EUR 400,000 plus the relevant interests). At no point the Judicial Administrator alleged that the mentioned credit did not exist or that it had not been claimed or recognized in the insolvency proceedings;
  - In light of the above, it is clear that the Creditor participated in the Original Debtor's bankruptcy proceedings;

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<sup>2</sup> The summary does not purport to include every single contention put forth by the Debtor. However, the FIFA Disciplinary Committee has thoroughly considered in its discussion and deliberations any and all evidence and arguments submitted, even if no specific or detailed reference has been made to those arguments in the following outline of its position and in the ensuing discussion on the merits.

- Also, and according to Romanian Law, the credits of employees are automatically registered in the table of receivables by the judicial administrator without the need of an application;
  - Therefore, the Creditor had no obligation to register his credit;
  - The purpose of article 15 of the FIFA Disciplinary Code is to put an end to the practice of countless clubs to resort to bankruptcy proceedings in order to not comply with their contractual obligations. Consequently, requiring players that have been deprived of their salaries and who resorted to FIFA, to be active parties in insolvency proceedings taking place in foreign countries, deflates this purpose;
16. On 6 October 2020, the Secretariat acknowledged receipt of the Creditor's correspondence (cf. point I. 15 *ut supra*) and informed the New Club and the Creditor that the case was going to be submitted for evaluation to a member of the FIFA Disciplinary Committee on 22 October 2020.

## II. RESPONDENT'S POSITION

1. The arguments and allegations brought forward by the New Club in its correspondences dated 30 June and 1 July 2020 (cf. point I/13 above), can be summarized as follows<sup>3</sup>:
  - Academia Rapid was formed in the summer of 2017, when it was registered to participate in League 4. It was only on 16 April 2018, when the New Club was incorporated and took over Academia Rapid. On 24 July 2018, the New Club acquired the brand of "FC Rapid", which it legitimately licensed from the Original Debtor for the amount of EUR 406,800. However, the New Club has no relation with the Original Debtor, who is the former right holder of the brand;
  - The FIFA Disciplinary Committee is not competent under art. 15 par. 4 of the FIFA Disciplinary Code to determine whether a club is the sporting successor of another club. In this regard, the competence of the FIFA Disciplinary Committee is limited to enforce a decision from the FIFA Dispute Resolution Chamber or the FIFA Players' Status Committee against an alleged club's sporting successor only after the former has established that such club is, indeed, the sporting successor. Consequently, and as established by CAS in the CAS Award 2017/A/5460, the Creditor, within two years from the date on which the New Club acquired the license to use the trademark "FC Rapid Bucuresti" brand for all purposes, should have resorted to the FIFA Dispute Resolution Chamber claiming that the New Club should be considered the sporting successor of the Original Debtor;
  - In addition, it must be noted that more than five years have elapsed since the decision passed by the Dispute Resolution Chamber was rendered. Therefore, the time limit to open disciplinary proceedings and enforce the DRC Decision under the FIFA Disciplinary Code has elapsed, and therefore, the claim of the Creditor is time barred and shall be dismissed;

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<sup>3</sup> The summary does not purport to include every single contention put forth by the Debtor. However, the FIFA Disciplinary Committee has thoroughly considered in its discussion and deliberations any and all evidence and arguments submitted, even if no specific or detailed reference has been made to those arguments in the following outline of its position and in the ensuing discussion on the merits.

- The New Club is not and cannot be considered the sporting successor of the Original Debtor. In this sense, and following CAS jurisprudence, in order for a club to be considered the sporting successor of another club, the acquisition by the current club of the federative and sporting rights of the former club to take part in the relevant championship is a crucial element. In the present case, the New Club “started afresh from the lowest league”. Therefore, since the New Club did not acquire the federative rights of the Original Debtor, it is clear that the former is not the sporting successor of the latter;
- The New Club did not exist when the DRC Decision was rendered and it concerns, exclusively, to overdue payables from the Original Debtor and not from the New Club;
- The Original Debtor entered in insolvency proceedings on 7 December 2012 and was, subsequently, declared bankrupt on 13 June 2016. The Original Debtor’s bankruptcy proceeding is still ongoing;
- The Creditor failed to register his claim during the insolvency and bankruptcy proceedings of the Original Debtor. In this sense and, following the CAS award 2011/A/2646 and Romanian Insolvency Law, it is clear that the Creditor failed to act diligently and, hence, he has lost the right to claim such credit;
- In light of all the above, the New Club requests the FIFA Disciplinary Committee to dismiss the complaint of the Creditor.

### III. CONSIDERATIONS OF THE DISCIPLINARY COMMITTEE

1. In the case at hand, in view of the arguments raised by the parties, the member of the FIFA Disciplinary Committee (hereinafter also referred to as *the Single Judge*) will first assess whether he is competent to decide on the present matter and, should it be the case, whether the club FC Rapid 1923 is to be held liable and responsible for a potential failure to respect the decision passed by the Dispute Resolution Chamber (DRC) on 18 December 2012.

#### A. Jurisdiction of the FIFA Disciplinary Committee

2. First of all, the Single Judge analyzes whether he is competent to assess if the New Club is the successor of the Original Debtor.
3. In these circumstances, the Single Judge begins his analysis by highlighting that the exclusion of the Original Debtor, FC Rapid Bucuresti, from the Romanian Football Federation, is an undisputed fact.
4. Moreover, the Single Judge wishes to recall that, according to art. 53 par. 2 of the FIFA Statutes, the Disciplinary Committee (hereinafter also referred to as “*the Committee*”) may pronounce the sanctions described in the Statutes and the FDC on member associations, clubs, officials, players, intermediaries and licensed match agents.

5. Clubs are affiliated to regional and/or national football associations and these national football associations are members of FIFA. Consequently, football clubs are considered as “indirect members” of FIFA and therefore, are subject to and bound by the FIFA Statutes and all other FIFA rules and regulations, as well as by all relevant decisions passed by the FIFA bodies.
6. The aforementioned principle is embedded in art. 14 par. 1 lit. d) of the FIFA Statutes which requires the member associations “to cause their own members to comply with the Statutes, regulations, directives and decisions of FIFA bodies” as well as in art. 60 par. 2 of the FIFA Statutes that states that the member associations, amongst others, “shall take every precaution necessary to ensure their own members, players and officials comply with these decisions”. The foregoing is only possible to the extent that the so-called “members” are still affiliated to the member associations of FIFA.
7. Therefore, since the Romanian FA has confirmed that the Original Debtor is no longer affiliated to the association, this implies that the Original Debtor has lost its indirect membership to FIFA and, therefore, the Disciplinary Committee can no longer impose sanctions on it. However, the Single Judge notes that, following the disaffiliation of the Original Debtor from the Romanian FA, the Creditor requested the enforcement of the DRC Decision against FC Rapid 1923, which, in his opinion, should be considered as the successor of the disaffiliated club, FC Rapid Bucuresti.
8. In this regard, despite of what the New Club alleges, the Single Judge considers, in line with the jurisprudence of the Court of Arbitration for Sport<sup>4</sup>, that he is not prevented from reviewing and/or making a legal assessment and, therefore, deciding if the New Club, FC Rapid 1923, is the same as – and/or the successor of – the Original Debtor, FC Rapid Bucuresti, especially considering that the former is affiliated to the Romanian FA and, as such, under the jurisdiction of the FIFA Disciplinary Committee.
9. However, the Single Judge observes that, according to the New Club, the claim of the Creditor is inadmissible since it is time-barred. To this respect, the New Club argues that more than five years, which is the limitation period to prosecute infringements related to article 15 of the FDC 2019, have passed between the date the DRC Decision was issued and the date the Creditor requested disciplinary actions against the New Club.
10. In this sense, the Single Judge wishes to refer the New Club to article 10 par. 3 of the FDC, according to which, the limitation period for prosecuting violations of the FDC are “interrupted by all procedural acts, starting afresh with each interruption”.
11. Following the above, it is important to recall that, on 6 October 2017, the Creditor was informed that the Original Debtor was no longer affiliated to the Romanian FA, meaning that it was no longer under the jurisdiction of the FIFA Disciplinary Committee. Therefore, as from this date, the Creditor could no longer resort to FIFA to enforce the DRC decision against the Original Debtor and hence, it is clear that the limitation period for prosecution was interrupted.

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<sup>4</sup> CAS 2018/A/5647 Civard Sprockel v. FIFA & PFC CSKA Sofia, para. 135.



12. Moreover, and as explained in point III A. 8 above, the Single Judge is not prevented from assessing whether the New Club is the sporting successor of the Original Debtor, and eventually, responsible for the debts of the latter. In particular, this assessment is possible since the New Club is affiliated to the Romanian FA and hence, under the jurisdiction of the FIFA Disciplinary Committee.
13. In addition, and for the ease of completeness, it must be noted that the Creditor could only request the enforcement of the DRC Decision against the New Club once the latter became a member of the Romanian FA, as it is in this moment that the New Club came under the jurisdiction of FIFA.
14. As a result of the above, the Single Judge concludes that the claim of the Creditor requesting disciplinary measures against the New Club was lodged respecting the limitation period established in article 10 of the FDC.
15. In light of all of the above, the Single Judge deems he is competent to assess the present matter and to pass a formal decision of a substantive nature with respect to the Creditor's request concerning the liability of the New Club towards the debts incurred by the Original Debtor.

## B. Applicable Law

16. With regard to the matter at hand, the Single Judge recalls that the disciplinary offense, i.e. the potential failure to comply with the DRC decision, was committed before the 2019 edition of the FDC (hereinafter FDC 2019) entered into force.
17. Nevertheless, the Single Judge considers that the application of the FDC 2019 is more favourable to the New Club than the application of the 2011 edition of the FDC<sup>5</sup>. In this sense, and following the provision of art. 4 par. 2 of the FDC 2019, the Single Judge establishes that both the merits and the procedural aspects of the present case fall under the FDC 2019.
18. Having determined the above, the Single Judge wishes to recall the content and the scope of the provision here at stake.
19. According to article 15 of the FDC 2019

*“Anyone who fails to pay another person (such as a player, a coach or a club) or FIFA a sum of money in full or part, even though instructed to do so by a body, a committee or an instance of FIFA or a CAS decision (financial decision), or anyone who fails to comply with another final decision (non-financial decision), passed by a body, a committee, or an instance of FIFA, or by CAS:*

- a) will be fined for failing to comply with a decision; in addition:*
- b) will be granted a final deadline of 30 days in which to pay the amount due or to comply with the non-financial decision;*
- c) in the case of clubs, upon expiry of the aforementioned final deadline and in the event of persistent default or failure to comply in full with the decision within*

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<sup>5</sup> Cf, CAS 2020/A/6755

*the period stipulated, a transfer ban will be pronounced until the complete amount due is paid or the non-financial decision is complied with. A deduction of points or relegation to a lower division may also be ordered in addition to a transfer ban in the event of persistent failure, repeated offences or serious infringements or if no full transfer could be imposed or served for any reason.*

(...)

*3. If the sanctioned person disregards the final time limit, FIFA and/or the relevant association (in cases involving clubs or natural persons) shall implement the sanctions imposed. A transfer ban or a ban on taking part in any football-related activity may only be lifted before it has been fully served upon payment of the due amounts, with other disciplinary measures being reserved.*

20. For the sake of good order, it is worth emphasizing that, in line with ar. 54 par. 1 lit. h) of the FDC 2019 edition, cases involving matters under art. 15 of the said code may be decided by one member of the Disciplinary Committee alone, acting as a single judge.

## C. Merits of the dispute

### I. Analysis and determination of the liability and responsibility of FC Rapid 1923

21. Once having confirmed the jurisdiction of the FIFA Disciplinary Committee, the Single Judge moves on to analyse whether the New Club has a connection with the Original Debtor (1) and, should it be the case, whether it can be held liable for the debts of the latter (2).

#### (1) Connection between the New Club and the Original Debtor

22. To begin with, the Single Judge considers relevant to recall the CAS jurisprudence with regard to the topic of sporting succession.
23. To that end, he refers to decisions passed both by the CAS<sup>6</sup> and by the FIFA decision-making bodies<sup>7</sup>, in relation to the question of the succession of a sporting club. In particular, the Single Judge points out that it has been established that, on the one side, a club is a sporting entity identifiable by itself that, as a general rule, transcends the legal entities that operate it, meaning that the obligations acquired by any of the entities in charge of its administration, in relation with its activity, must be respected. On the other side, it has been stated that the identity of a club is constituted by elements such as its name, colours, fans, history, sporting achievements, shield, trophies, stadium, roster of players, historic figures, etc. These elements allow a club to distinguish from all the other clubs. Hence, the prevalence of the continuity and permanence in time of the sporting institution in front of the

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<sup>6</sup> CAS 2007/A/1355; TAS 2011/A/2614 and TAS 2011/A/2646; TAS 2012/A2778.

<sup>7</sup> FIFA DRC 12150569.

entity that manages it has been recognized, even when dealing with the change of management completely different from themselves<sup>8</sup>.

24. In these circumstances, CAS considers that a “new” club has to be considered as the “sporting successor” of another one in a situation where a) the “new” club created the impression that it wanted to be legally bound by the obligations of its predecessor (i.e. the “old” club) b) the “new” club took over the licence or federative rights from the “old” club and c) the competent federation treated the two clubs as successors of one another<sup>9</sup>. By the same token, a “sporting succession” is the result of the fact that 1) a new entity was set up with the specific purpose of continuing the exact same activities as the old entity, 2) the “new” club accepted certain liabilities of the “old” club, 3) after the acquisition of the assets of the “old” club, the “new” club remained in the same city and 4) the “new” club took over the licence or federative rights from the “old” club<sup>10</sup>.
25. Furthermore, the issue of the succession of two sporting clubs might be different than if one were to apply civil law regarding the succession of two separate legal entities. In particular, it is important to recall that according to CAS, a club is a sporting entity identifiable by itself that generally transcends the legal entities that operate it<sup>11</sup>. Consequently, elements to consider are, amongst others, the name, the logo and colours, the registration address and/or the managing board of the club.
26. For the sake of completeness, it is important to emphasise that the aforementioned established jurisprudence from CAS is now reflected in the 2019 FDC edition under art. 15 par. 4. According to this provision, *“The sporting successor of a non-compliant party shall also be considered a non-compliant party and thus subject to the obligations under this provision. Criteria to assess whether an entity is to be considered as the sporting successor of another entity are, among others, its headquarters, name, legal form, team colours, players, shareholders or stakeholders or ownership and the category of competition concerned”*.
27. With the above in mind, the Single Judge focuses on the documentation at his disposal in light of the criteria set by the relevant CAS jurisprudence (now reflected in art. 15 par. 4 of the 2019 FDC edition) and applied by the FIFA Disciplinary Committee in such situations.
28. In this sense, the Single Judge observes that, as also proved by the Creditor, the New Club has a similar name and logo, identical colours and used to play in the same stadium as the Original Debtor did. Furthermore, the New Club, as it can be deduced from its official website and from its name, makes reference to the same founding date as that of the Original Debtor and, apparently, adopts as its own, the history of the latter as well as its sporting achievements.
29. In addition, the Single Judge observes that, as confirmed by the New Club, on 24 July 2018, it acquired the right to use the brand FC Rapid *“which to this day belongs to the debtor (Original Debtor)”* and for which it paid EUR 406,800.

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<sup>8</sup> CAS 2013/A/3425.

<sup>9</sup> CAS 2007/A/1322 FC Politehnica Timisoara SA v. FIFA & RFF & Politehnica Stintia 1921 Timisoara Invest SA.

<sup>10</sup> CAS 2011/A/2646 Club Rangers de Talca v. FIFA.

<sup>11</sup> CAS 2016/A/4576 Ujpest 1885 v. FIFA, para. 134 – 139.

30. In the Single Judge's opinion, the above clearly indicates that the New Club acquired the assets, or at least some of them, of the Original Debtor.
31. However, the Single Judge notes that the New Club alleges that it is not the successor of the Original Debtor since it did not take over the federative rights of the Original Debtor and, hence, it did not continue the activity of the latter.
32. To this respect, the Single Judge stresses that this fact does not constitute a determinant factor when assessing sporting succession. In this sense, attention has to be made to other factors, amongst others, whether the new entity was set up with the specific purpose of continuing the exact same activities as the old entity; whether the new club accepted certain liabilities of the "old" club and whether the elements that distinguish a club, such as name, colours, emblem or history are the same for both the "old" club and the "new" club.
33. Finally, for the ease of completeness, the Single Judge remarks that the Disciplinary Committee already decided, in a previous occasion<sup>12</sup>, that the New Club is the sporting successor of the Original Debtor and hence, that it was liable for the payment of the amounts recognized by a decision rendered by the Dispute Resolution Chamber on 15 December 2016. Moreover, the Single Judge observes that the New Club has already complied with the decision passed by the Dispute Resolution Chamber on 15 December 2016.
34. In light of the above, and considering that the New Club shares with the Original Debtor the entirety of the elements identifying a sporting entity, this is, the name, the emblem, colours and history, in part, as a result of the acquisition of the Original Debtor's brand by the New Club, the Single Judge has no other alternative but to conclude that the New Club, FC Rapid 1923, is the sporting successor of the Original Debtor, FC Rapid Bucuresti.

## **(2) Whether the New Club is liable for the debts of the Original Debtor**

35. Once having determined that the New Club is the sporting successor of the Original Debtor, the Single Judge moves on to analyse whether the New Club is to be held liable for the debt recognised by the Dispute Resolution Chamber on 18 December 2012.
36. In this sense, the Single Judge recalls that, according to art. 15 par. 4 of the FDC 2019, the sporting successor of a non-compliant party shall also be considered a non-compliant party and thus, subject to the obligations under art. 15 of the FDC 2019. Therefore, in the Single Judge's view, in principle, whenever a club is considered the sporting successor of a non-compliant party that does no longer exist or is no longer under FIFA's jurisdiction, it is automatically responsible of the debts of its predecessor.
37. Notwithstanding the above, the Single Judge observes that the New Club claims that it cannot be held liable for the Original Debtor's obligations and therefore, sanctioned for not complying with the DRC

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<sup>12</sup> Disciplinary case reference 180204

Decision, since the Creditor did not announce and register his credit in the relevant liquidation proceedings and hence, was not diligent in recovering his credit, contributing with this attitude to the already mentioned breach.

38. In this sense, the New Club relies on previous CAS decisions, namely, in the reasoning of the Panel in the proceedings CAS 2011/A/2646, as well as in the Romanian Insolvency Law.
39. First of all, it is important to leave clear that, in principle, the assessment of the creditor's diligence has to be made based on the specific circumstances of each case<sup>13</sup>.
40. In light of the above, it is clear for the Single Judge that in the present case, there are no signs that indicate that the Creditor knew, on time, that he could announce his credit in the liquidation process of the Original Debtor or that, being aware of this possibility, that he had the intention to claim the credit but in the end did not do it.
41. Furthermore, the Single Judge believes it appropriate to bring back some of the facts of the present case in order to duly assess the issue of the Creditor's diligence in recovering his credit.
42. The Creditor and the Original Debtor concluded an employment contract on 27 June 2008. On 31 December 2008, the Creditor lodged a complaint before FIFA against the Original Debtor for outstanding salaries and compensation for breach of contract, which concluded in the decision of the Dispute Resolution Chamber from 18 December 2012 and which grounds were notified to, amongst others, the Creditor, on 18 April 2013.
43. In this sense, the Single Judge observes that, it was not until 20 August 2014 after the Creditor had already requested disciplinary proceedings to be opened against the Original Debtor for failing to comply with the DRC Decision, that the Creditor was made aware by FIFA about the insolvency proceedings of the Original Debtor. Furthermore, it was only on 6 October 2017 when the Creditor was informed that the Original Debtor was no longer affiliated to the Romanian FA.
44. In this context, the Single Judge acknowledges that almost five years passed between the disaffiliation of the Original Debtor from the Romanian Football Federation and the decision of the Dispute Resolution Chamber and more than nine years since the Creditor lodged the relevant claim in front of the Dispute Resolution Chamber.
45. Furthermore, the Single Judge observes that, according to the documentation on file, together with the communication made to the Creditor on 20 August 2014 regarding the Original Debtor's insolvency proceedings, the Creditor received a document that clearly showed that the judicial administrator, who had been appointed for the Original Debtor's insolvency proceedings, was aware of the identity of the Creditor and of the existence of the credit recognised in the DRC Decision.

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<sup>13</sup> CAS 2019/A/6461

46. In addition, the Single Judge has serious concerns as to whether the Creditor, a national from Brazil who terminated his contractual relationship with the Original Debtor almost four years before the relevant insolvency proceedings started and seven years since he was informed by FIFA regarding the said proceedings, should, or even, could have register himself in the relevant list of creditors.
47. Moreover, the Single Judge observes that the Creditor never received the amounts from the Original Debtor's insolvency or bankruptcy proceedings, despite being the judicial administrator aware that the relevant credit existed.
48. In light of all the above, in the Single Judge's opinion, there are no signs in the present case that could suggest that the Creditor remained passive and hence, contributed to the New Club failure to comply with the DRC decision.
49. Consequently, and taking into consideration the specific circumstances of the case, the Single Judge considers that there are sufficient elements in the present case to conclude that the Creditor was diligent.
50. As a result, the Single Judge has no other alternative but to declare that the New Club is liable for the debts incurred by the latter – namely the one related to the decision passed by the Dispute Resolution Chamber- and that therefore, FC Rapid 1923, is found responsible for non-complying with a financial decision, under the terms of article 15 of the FDC 2019.

## II. Summary

51. In view of the foregoing, the Single Judge concludes that the New Club, by its conduct as described above, violated article 15 of the FDC 2019.
52. Therefore, the Single Judge considers that the New Club is to be sanctioned for the abovementioned violation.

## III. The determination of the sanction

53. With regard to the applicable sanctions for the present case, the Single Judge observes that the New Club is a legal person and as such, it can be subject to the sanctions described under art. 6 par. 1 and 3 of the FDC 2019.
54. The fine to be imposed under the above-referenced art. 15 par. 1 a), in combination with art. 15 par. 2 of the FDC 2019 and according to the provisions of art. 6 par. 4 of the FDC 2019, shall range between CHF 100 and CHF 1,000,000.
55. The Original Debtor and, subsequently, the New Club, withheld the amount unlawfully from the Creditor. Even FIFA's attempts to urge them to fulfil their financial obligations failed to induce them to pay the total amount due. In view of all the circumstances pertaining to the present case and by taking

into account the outstanding amounts due, the Single Judge regards a fine amounting to CHF 20,000 as appropriate. This amount complies with the Committee's established practice.

56. In application of art. 15 par. 1 b) of the FDC 2019, the Single Judge considers a final deadline of 30 days as appropriate for the amount due to be paid to the Creditor.
57. In accordance with art. 15 par. 1 c) of the FDC 2019, the New Club is hereby warned and notified that, in the case of default within the period stipulated, a transfer ban (at national and international level) will be automatically imposed until the complete amount due is paid.
58. The Romanian Football Federation is hereby reminded of its obligation to automatically implement the transfer ban following the notification of the present decision. In this respect, and for the sake of clarity, the Romanian Football Federation is referred to art. 34 of the FDC 2019 in what concerns the calculation of time limits. Should the Football Union of Russia fail to automatically implement said sanction and provide the Secretariat with the relevant proof of implementation of the transfer ban at national level, disciplinary proceedings – which may lead to an expulsion from all FIFA competitions – may be opened against it.

#### IV. DECISION OF THE DISCIPLINARY COMMITTEE

1. The club FC Rapid 1923 (hereinafter, the Debtor) is found guilty of failing to comply with the decision passed by the Dispute Resolution Chamber on 18 December 2012, according to which it was ordered to pay to the player Julio Cesar da Silva e Souza (hereinafter, the Creditor), the amount of EUR 400,000, plus 5% interest p.a. as from 18 December 2012 until the date of effective payment.
2. The Debtor is ordered to pay a fine to the amount of CHF 20,000. The fine is to be paid within 30 days of notification of the present decision.
3. The Debtor is granted a final deadline of 30 days as from notification of the present decision in which to settle its debt to the Creditor.
4. If payment is not made to the Creditor and proof of such a payment is not provided to the secretariat to the FIFA Disciplinary Committee and to the Romanian Football Federation by this deadline, a ban from registering new players, either nationally or internationally, will be imposed on the Debtor. Once the deadline has expired, the transfer ban will be implemented automatically at national and international level by the Romanian Football Federation and FIFA, respectively, without a further formal decision having to be taken nor any order to be issued by the FIFA Disciplinary Committee or its secretariat. The transfer ban shall cover all men eleven-a-side teams of the Debtor – first team and youth categories –. The Debtor shall be able to register new players, either nationally or internationally, only upon the payment to the Creditor of the total outstanding amount. In particular, the Debtor may not make use of the exception and the provisional measures stipulated in article 6 of the Regulations on the Status and Transfer of Players in order to register players at an earlier stage.

5. As a member of FIFA, the Romanian Football Federation is reminded of its duty to implement this decision and provide FIFA with proof that the transfer ban has been implemented at national level. If the Romanian Football Federation does not comply with this decision, the FIFA Disciplinary Committee will decide on appropriate sanctions on the member. This can lead to an expulsion from FIFA competitions.
6. The Debtor is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the Romanian Football Federation of every payment made and to provide the relevant proof of payment.
7. The Creditor is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the Romanian Football Federation of every payment received.

FÉDÉRATION INTERNATIONALE  
DE FOOTBALL ASSOCIATION



**Gudni Bergsson**

Member of the Disciplinary Committee



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**NOTE RELATING TO THE LEGAL ACTION:**

According to article 49 together with article 57 par. 1e) of the FDC and article 58 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision. Within another 10 days following the expiry of the time limit for filing the statement of appeal, the appellant shall file a brief stating the facts and legal arguments giving rise to the appeal with the CAS.

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