

**CAS 2008/A/1658 S.C. Fotbal Club Timisoara S.A. v/ FIFA & Romanian Football Federation**

**ARBITRAL AWARD**

delivered by the

**COURT OF ARBITRATION FOR SPORT**

Sitting in the following composition:

President: Mr Lars **Hilliger**, attorney-at-law, Copenhagen, Denmark

Arbitrators: Mr Rui Botica **Santos**, attorney-at-law, Lisbon, Portugal

Mr Ulrich **Haas**, Professor, Zurich, Switzerland

Ad hoc Clerk: Mr Nicolas **Cottier**, attorney-at-law, Lausanne, Switzerland

in the arbitration between

**S.C. Fotbal Club Timisoara S.A.**, Timisoara, Romania,

Represented by Ms Liana Tarjoc, attorney-at-law, Timisoara, Romania and Mr Gianpaolo Monteneri, lawyer, Zurich, Switzerland

As Appellant

and

**Fédération Internationale de Football Association (FIFA)**, Zurich, Switzerland

As 1<sup>st</sup> Respondent

and

**Romanian Football Federation**, Bucharest, Romania

As 2<sup>nd</sup> Respondent

\* \* \* \* \*

## **I. FACTUAL BACKGROUND**

### **1. Parties**

1. FIFA is the International Federation of Football (Fédération Internationale de Football Association) with its registered office in Zurich, Switzerland.
2. The Romanian Football Federation (hereinafter “RFF”) is the national football federation in Romania and affiliated with FIFA since 1923.
3. S.C. Fotbal Club Timisoara S.A. (hereinafter “the Appellant”) is a football club affiliated to the RFF and playing in the Romanian Liga 1.

### **2. Facts**

4. On December 5, 2006, CAS issued an award in the proceedings CAS 2006/A/1109 between the Appellant, acting under its previous name CS FCU Politehnica Timisoara and SC FC Politehnica Timisoara SA. The object of the proceedings was the claim made by SC FC Politehnica Timisoara SA that the Appellant’s club name, colours and logo created a risk of confusion between the two clubs and consequently violated the personality rights of SC FC Politehnica Timisoara SA.
5. The operative part of the CAS award reads as follows:
  - “1. *The appealed decision of 12 June 2006 of the Federal Appellate Commission of the Romanian Football Federation is set aside.*
  2. *FCU Politehnica Timișoara is ordered to continue to use its earlier name CS FC Politehnica AEK Timișoara or to adopt another name, approved by the Romanian Football Federation, that does not include the risk of confusion with the name of SC FC Politehnica Timișoara SA. FCU Politehnica Timișoara is ordered to pay the amount of € 5,000 as compensation to SC FC Politehnica Timișoara SA for each official match played from 5 December 2006, until it effects a name change in accordance with the present award.*
  3. *FCU Politehnica Timișoara is interdicted to imitate the colours, or use the track record, history and logo of SC FC Politehnica Timișoara SA.*
  4. *FCU Politehnica Timișoara is ordered to pay the amount of € 90,000 as compensation for violation with regard to the use of the name, colours, track record, history and logo of SCS FC Politehnica Timișoara SA between 13 June 2006 and 4 December 2006 inclusive. This amount is to be paid within 1 month from the receipt of this award. In case the sum has not been paid to SCS FC Politehnica Timișoara SA by this deadline, FCU Politehnica Timișoara is ordered to pay 5% interest p.a.*

5. *The Federal Appellate Commission of the Romanian Football Federation shall render a decision, within a reasonable timeframe, deciding the amount of compensation to be paid to SC FC Politehnica Timișoara SA by FCU Politehnica Timișoara for each usage of SC FC Politehnica Timișoara SA's name, track record, history and logo and colours between 31 January 2005 and 12 June 2006 inclusive, and shall multiply this amount by the amount of official games played by FCU Politehnica Timișoara during that period to calculate the entire amount of compensation to be paid by FCU Politehnica Timișoara to SC FC Politehnica Timișoara SA for violation of SC FC Politehnica Timișoara SA's personality rights during that period.*
6. *The costs of the present arbitration, which shall be determined and notified to the parties by the Secretary General of the Court of Arbitration for Sport, shall be borne by FCU Politehnica Timișoara.*
7. *FCU Politehnica Timișoara shall reimburse SC FC Politehnica Timișoara SA's costs to the amount of CHF 500. FCU Politehnica Timișoara shall bear its own costs."*

6. Since the Appellant did not comply with this award SC FC Politehnica Timișoara SA initiated proceedings before FIFA against the Appellant. FIFA, however, "closed the case" in a letter dated 26 July 2007. SC FC Politehnica Timișoara SA appealed against this decision to the CAS. On April 25, 2008, CAS issued another award in the proceedings CAS 2007/A/1355 between FC Politehnica Timisoara SA, on one side, and FIFA, the RFF and the Appellant on the other side.
7. In this second award the CAS ruled in application of Art. 71 paragraph 1 of the FIFA Disciplinary Code (hereafter referred to as "FDC"):

*"1. The decision of FIFA contained in its letter of 26 July 2007 is set aside.*

*Ruling de novo, the Court of Arbitration for Sport renders the following decision:*

2. *SC Politehnica 1921 Stiinta Timisoara Invest SA shall no later than 30 June 2008 change its name to a name which does not include the risk of confusion with the name of FC Politehnica Timisoara SA. Such new name shall not include the words "1921" or "Stiinta" and if such new name includes both the words "Politehnica" and "Timisoara" there shall be at least one substantive word not associated with FC Politehnica Timisoara SA or its history between those words.*
3. *SC Politehnica 1921 Stiinta Timisoara Invest SA shall change its club colours so that they no longer include violet.*
4. *SC Politehnica 1921 Stiinta Timisoara Invest SA shall no later than 30 June 2008 pay a fine of CHF 5000 to FIFA.*
5. *If SC Politehnica 1921 Stiinta Timisoara Invest SA fails to comply with the paragraphs 1 to 3 above or any of them by 30 June 2008 6 points will be deducted.*
6. *FIFA, FRF and Politehnica Stintia 1921 Timisoara Invest SA shall each pay one third of the arbitration costs, the amount of such costs to be determined by the CAS Secretary General and notified to the parties at the conclusion of the proceedings.*

7. *SC Politehnica 1921 Stiinta Timisoara Invest SA shall reimburse FC Politehnica Timisoara SA's costs to the amount of CHF 7,500.*
8. *Romanian Football Federation shall reimburse FC Politehnica Timisoara SA's costs to the amount of CHF 2,500.*
9. *The remaining parties shall all bear their own costs.*
10. *All further claims are rejected."*

8. On June 25, 2008, the Appellant, now acting under the name of Fotbal Club Timisoara SA, informed the company SSD Sport System Development S.R.L. (hereinafter referred to as "SSD") in Bucharest, of its obligations according to the CAS award CAS 2007/A/1355 and requested from SSD the delivery of new T-shirts, shorts and socks (hereinafter "kit") with the new colours of the Club, namely Mauve – White – Black. This information was made in writing by the Appellant on a letterhead still referring to "*Polithenica 1921 Stiinta Timisoara*". SSD replied the next day and confirmed that it would "*immediately send a new set of clothing adjusted accordingly to the new requests, complying following this date on so that the equipments and the articles launched after this date to respect the same colors request (Mauve – White – Black )(sic).*"
9. Still on 25 June 2008, the Appellant informed the company De Reinhart, which is in charge of the management of its official website, that CAS ordered the Appellant to change the name and the colours of the Club and instructed this company to use only the new colours, namely mauve, white and black and the new firm name, namely Fotbal Club Timisoara S.A. De Reinhart took note of the changes on 27 June 2008 and confirmed the change of the dominant colour on the Appellant's official website in line with the new colour code adopted by the Appellant.
10. An extraordinary general meeting of the Appellant's shareholders took place on 30 June 2008. According to the minutes of such general meeting, the following decisions were taken:
 

*"(..) the change of name of the trade company from "Politehnica 1921 Stiinta Timisoara & Invest S.A." to "Fotbal Club Timisoara SA" and the change of coulours which shall be mauve, white and black (..)".*

The decision of the Appellant's general meeting was accepted by the competent trade register office on 9 July 2008 and registered on 11 July 2008.
11. On 5 July 2008, the RFF executive committee took a decision where it confirmed that it had "*taken good note of the change of the name of SC Politehnica 1921 Stiinta Timisoara & Invest SA in SC Fotbal Club Timisoara*" as well as of "*the change of colours [of the Club] in mauve (lavender) – white – black*. Based on the foregoing, the RFF executive committee authorised in the same decision its representatives, MMrs Prunea, director international department and Popescu, internal lawyer, "*to inform, in the shortest time, FIFA and UEFA about the application of the CAS decision from 25 April 2008*".

12. On 10 July 2008, FIFA, acting through its deputy secretary to the Disciplinary Committee, Mr. Volker Hesse, sent a letter to the Appellant and explained that it had been informed by FC Politehnica Timisoara SA that the Appellant had not complied with the CAS ruling and granted the Appellant a deadline until 15 July 2008 in order to produce “*any kind of proof that Politehnica Stintia 1921 Timisoara Invest SA [read: the Appellant] respected the CAS-award (CAS 2007/A/1355).*” FIFA further reminded the Appellant that “*in case of non-compliance 6 points will be deducted from Politehnica Stintia 1921 Timisoara Invest SA in accordance with point 5 of the CAS-award*”.
13. By fax letter dated 11 July 2008, Mr. Prunea of the RFF provided CAS, FIFA and UEFA with a copy of the RFF executive committee’s decision dated 5 July 2008 and confirmed on the cover letter to this decision that the Appellant had changed its name to SC Fotbal Club Timisoara and had adopted new colours.
14. On 18 July 2008, the Appellant sent a fax letter to FIFA, to the attention of Mr. Volker Hesse. This fax letter was dated 15 July 2008 and was printed on the Appellant’s new letterhead. However, this fax letter bore the Appellant’s old stamp with “Politehnica 1921 Stiinta” on it and the Appellant’s old fax header indicating “*from: Poli 1921 Stiinta*”. In this fax letter, the Appellant confirmed to FIFA that it had complied with the CAS award 2007/A/1355 dated 25 April 2008, notably the second and third points of this award, as it had changed its name into SC Fotbal Club Timisoara SA and its colours in “*purple – white – black*”.
15. On 20 July 2008, FIFA sent a letter to the RFF. Without referring to the fax letter and to the RFF executive committee’s decision, which had been sent to it on 11 July 2008, FIFA claimed that it had been informed by FC Politehnica Timisoara SA that the Appellant had not complied with the award rendered by CAS on 25 April 2008. The RFF was thus asked to inform FIFA by 27 July at the latest:

*“1) with which official name the respondent club in the CAS-proceedings, Politehnica Stintia 1921 Timisoara Invest SA, is currently registered and affiliated at the Romanian Football Federation;*

*2) which official colours this club uses in the upcoming season. In this respect we would ask you to send us an official uniform (shorts, shirts and socks) of the relevant club for the season 2008/2009 (home and away kit).”*

16. SSD delivered the Appellant’s new kits to the Appellant on 4 August 2008. One set of those new kits was sent to the RFF the same day and one set was sent by the Appellant to the UEFA, which issued a decision approving the Appellant’s new kit on 8 September 2008. The RFF sent a kit to FIFA which the Appellant claimed not to have been the right one as the new kit had short sleeves whereas the kit shown by FIFA during the proceedings had long sleeves.
17. FIFA, still acting through its deputy secretary to the Disciplinary Committee, Mr. Volker Hesse, issued a letter dated 3 September 2008 to the attention of RFF which reads – *inter alia* – as follows:

*“As FIFA recognizes the CAS as stipulated in art. 62 of the FIFA Statutes, FIFA has to control the respect of CAS awards and to implement the sanctions provided therein:*

*ad 2) i) As confirmed by the Romanian Football Federation, Politehnica Stintia 1921 Timisoara Invest SA's name was changed by the Romanian Football Federation Executive Committee on 5 July 2008 into SC Fotbal Club Timisoara (FC Timisoara). We consequently deem that point 1 of the mentioned CAS award has been respected. However, we remind SC Fotbal Club Timisoara that this new name has to be used at all occasions and on all means of communications.*

*ii) As the change of the name has been effectuated on 5 July 2008, a compensation of EUR 5,000 shall be paid by FC Timisoara for each official match played from 5 December 2006 until 5 July 2008, as provided for in point 60 of the mentioned CAS award and point 2 of the holding of the award CAS 20061A/1109 SC FC Politehnica Timisoara SA v1 CS FCU Politehnica Timisoara.*

*FC Politehnica Timisoara SA is invited to inform FIFA how many official matches have been played by Politehnica Stintia 1921 Timisoara Invest SA in the period between 5 December 2006 until 5 July 2008 and to provide FIFA with the relevant proof.*

*ad 3) i) After a thorough analysis of the uniforms used by FC Timisoara in the season 2008/2009 and the official homepage of FC Timisoara <http://Uwww.politimisoara.com/> we deem that the dominant colour of the club is still violet and that point 3 of the CAS award (CAS 2007 / A / 1355) has consequently not been respected by FC Timisoara.*

*if) Consequently, we ask the Romanian Football Federation to immediately implement point 3 of the CAS award (CAS 2007 /A /1355) and consequently to deduct 6 six points from FC Timisoara's first team.*

*As a Member of FIFA, the Romanian Football Federation is responsible for implementing this point deduction. Please let us remind you that in case your association fails to send us immediately the proof that 6 points were deducted from FC Timisoara, the FIFA Disciplinary Committee will pronounce an appropriate sanction against the Romanian Football Federation. This can lead to expulsion from all FIFA competitions."*

18. As a consequence of FIFA's letter, the RFF executive committee issued a new decision, namely decision nr 9 of 4 September 2008, which implemented, as requested by FIFA, the six points deduction from the Appellant's first team. The RFF sent the same day a letter to the Appellant referring to FIFA's "notification" dated 3 September 2008 and informing the Appellant of the RFF Executive Committee's decision to deduct six points from the total points obtained by the Appellant in the competition season 2008/2009 and to grant the Appellant a 10 days deadline to comply with CAS ruling dated 25 April 2008. The RFF letter to the Appellant read as follows:

*"We inform you hereby that by Decision of the Executive Committee of the Romanian Football Federation, registered under no. 9/04.09.2008, we decided unanimously the following:*

*1. Considering the FIFA Notification, dated September 3<sup>rd</sup> 2008, SC FOOTBALL CLUB TRIMISOARA SA is sanctioned with 6 points, following the action of not executing point 3 of the TAS decision, sentenced on 25 April 2008 (regarding the banning of using the color violet). The points will be drawn from the total obtained until*

*the present day in the competition season 2008/2009 by SC Football Club Timisoara.*

2. *Considering the notification from FIFA, dated 03 September 2008, we grant SC Football Club Timisoara 10 days to conform point 3 of the TAS decision dated 25 April 2008 (...).*

3. (...)

*We want to add that the decision of the Executive Committee of the Romanian Football Federation is taking legally effect starting on 4 September 2008. (...)*

A copy of this decision was sent to FIFA, to the attention of Mr. Volker Hesse, on 5 September 2008.

19. On 10 September 2008, the Appellant sent a fax letter to FIFA's Appeal Committee on its new letterhead and this time with its new stamp but still with a fax header indicating "From: Poli 1921 Stiinta". This fax letter read as follows:

*"Ref: No. 070076 : The abusive sanctions imposed upon S.C.F.C. Timisoara S.A.; Decision rendered by Deputy secretary to the Disciplinary Committee, Mr. Volker Hesse on September 3rd 2008; compelling the Romanian Football Federation to impose sanctions upon S.C. F.C. Timisoara SA.; deduction of 6 points from S.C. F.C. Timisoara S.A.'s first team.*

*The undersigned, S.C. F.C. Timisoara S.A., headquartered in Timisoara, Romania, Bv. Regele Ferdinand I Street no. 2, registered with Timis Trade Registry at no. J35/58/2006, fiscal code RO 18279006,*

*Pursuant to 127 and 124 of F.I.F.A. Disciplinary Code and article 60 of F.I.F.A Statutes,*

*We hereby inform you of our firm and unequivocal intention **to appeal the decision rendered by Deputy Secretary to the Disciplinary Committee, Mr. Volker Hesse on September 3rd 2008, ref. no. 070076,** compelling the Romanian Football Federation to impose sanctions upon S.C. F.C. Timisoara SA. consisting of a deduction of 6 points from S.C. F.C. Timisoara S.A.'s first team, which we deem groundless.*

*The reasons for the present appeal shall be given in writing within a time limit of seven days, according to article 127 paragraph 2 of The F.I.F.A. Disciplinary Code.*

*Furthermore, we hereby request the commencement of due legal procedures in respect of the provisions of article 71 item 5 of F.I.F.A. Disciplinary Code.*

*Appellant  
S.C. F. C. Timisoara S.A.  
Legally Represented by  
Gheorghe Chivorhian*

*President CD  
and  
Executive Manager”*

20. On 23 September 2008, the RFF sent to FIFA a letter from the Appellant which indicated that the Appellant had changed its kit colours, adopting white as a home kit for shirts, shorts and socks and yellow-black for shirts and black for shorts and socks as to its away kit, blue being the color for shirts, shorts and socks as a third choice. The RFF sent samples of the Appellant’s new kits to FIFA by separate post.
21. Upon the Appellant’s request, the company Vodafone Romania SA sent a memo on 15 September 2008, to the Appellant confirming that the domain politimisoara.com did not belong to the Appellant but was leased by Vodafone Romania SA to a third party. This company further confirmed that the website [www.politimisoara.ro](http://www.politimisoara.ro) belonged to “*another Vodafone client, other than SC Fotbal Club Timisoara SA*”. The Appellant asked from the website’s lessee, namely the company SC De Reinhart SRL, a confirmation that the above website was leased by that company and that there were no contractual relationships between SC De Reinhart SRL and the Appellant. SC De Reinhart SRL issued on 3 October 2008, the requested statement but referred to the existence of a gentleman’s agreement between the parties.
22. The FIFA appeal committee passed a decision on 9 February 2009. After having declared itself competent to deal with the appeal lodged by the Appellant on 10 September 2008, the appeal committee rejected that appeal as it considered that it had been filed outside the time limit provided by the FIFA disciplinary code (hereinafter “FDC”) and as it noted that the appeal fee, which was due notably according to Art. 123 par. 1 and 2. FDC had not been paid by the Appellant.

### **3. Proceedings before the Court of Arbitration for Sport (CAS)**

23. The Appellant sent a letter to CAS on 10 September 2008 where it declared its intention to lodge a statement of appeal “*against [the] decision passed by [the] Deputy Secretary to the Disciplinary Committee, Mr. Volker Hesse on September 3<sup>rd</sup> 2008, FIFA re. no. 070076 compelling the Romanian Football Federation to impose sanctions upon S.C. F.C. Timisoara S.A. consisting of a deduction of 6 points from S.C. F.C. Timisoara’s first team, as a result of our supposed non-compliance with CAS award CAS 2007/A/1355, which we deem groundless and thereby ask to be annulled. Consequently we ask for the annulment of decision no. 9/04.09.2008 passed by the executive committee of the Romanian Football Federation.*”
24. The CAS court office acknowledged receipt of the Appellant’s letter on 17 September 2008 and requested for a copy of the decision appealed against, the name of the arbitrator chosen by the Appellant and a copy of the provisions or the specific agreement granting jurisdiction to CAS.
25. Following CAS court office’s correspondence, the Appellant lodged the very same day a complete statement of appeal containing the documentation and information requested. The

Appellant confirmed that it claimed the “*annulment of the decision rendered by the deputy secretary to the [FIFA] Disciplinary Committee, Mr. Volker Hesse on September 3<sup>rd</sup> 2008*” and the “*annulment of decision no. 9/04.09.2008 rendered by The Executive Committee of the Romanian Football Federation*”.

27. Further to its appeal brief, the Appellant filed on 17 October 2008, an application to stay the execution of the challenged decisions, claiming that it was afraid that FIFA may take further disciplinary decisions against the Appellant and enforce so-called *monetary awards*. The Appellant saw irreparable harm if it were obliged to pay amounts to SC FC Politehnica Timisoara SA, which could not be recovered and if the deduction of six points were maintained until the end of the current season 2008/2009. It was of the opinion that its appeal had a chance to succeed and repeated in this respect the main aspects of the legal reasoning in the appeal brief. Considering that the balance of interests was in its favour, the Appellant concluded in its request for stay that CAS should accept it and, in particular order in particular the RFF to return six points to the Appellant’s first team in the Romanian championship liga 1.
28. The RFF filed its answer on 29 October 2009.
29. On 29 October 2008, FIFA informed CAS that the Appellant had lodged an appeal with the FIFA Appeal Committee and that the proceedings before the FIFA Appeal Committee were still pending. FIFA further explained that “*without entering into the substance of this matter, namely whether the order towards the Romanian Football Federation to deduct 6 points of the Appellant’s first team, signed by the Deputy Secretary of the Disciplinary Committee, is a decision in the sense of article 63 of the FIFA Statutes, it is obvious that the formal prerequisite of the “finality” of the “decision” is not fulfilled, as the proceedings instigated by S.C. F.C. Timisoara S.A. with the FIFA Appeal Committee are still pending. Therefore the appeal filed by S.C. F.C. Timisoara S.A. with the Court of Arbitration for Sport is premature and the CAS has no jurisdiction to hear the present appeal and the attached application for the stay of the execution. With a view to the efficiency of the proceedings, we request that this Panel take an “interim decision” on the question of jurisdiction.*”
30. Based on the foregoing, FIFA requested that CAS:
  1. *suspend the time limit for the First Respondent to lodge its answer to the appeal, with immediate effect;*
  2. *establish that the appeal lodged by the Appellant may not be heard for formal reasons;*
  3. *in case this formal request were to be dismissed, set a new deadline for the first Respondent to file its answer to the appeal as to the substance and a new deadline to file an answer to the application for the stay of execution;*
  4. *in case this formal request were to be upheld, establish that all costs related to the present procedures as well as the legal expenses of the First Respondent shall be borne by the Appellant.*”
31. The Appellant answered to FIFA’s request on 5 November 2008 and explained to CAS that the FIFA challenged decision was subject to Art. 71 paragraph 5 FDC and thus with no doubt final and binding. It added that Art. 125 FDC clearly excludes any appeal before the Appeal Committee in the case of decisions taken on the basis of Art. 71 FDC, which means

that FIFA Appeal Committee has no jurisdiction in the present matter. The Appellant added that it had not paid the appeal fees and that no appeal brief had been filed. It further argued that FIFA had not reacted to the statement of appeal made by the Appellant before the Appeal Committee during fifty days and that this lack of reaction should then at least be considered as a denial of justice justifying that an appeal be lodged before CAS. Eventually, the Appellant claimed that the fact that both FIFA and RFF decisions were appealed against justified that CAS be the competent jurisdiction. Based on the foregoing, the Appellant requested that FIFA's request for an interim decision be dismissed.

32. The RFF informed CAS on 4 December 2008 that it did not agree with the Appellant's request for stay "*given that the FIFA and Romanian Football Federation stipulate that the disciplinary sanctions are final and binding.*" FIFA informed CAS on 5 December 2008 that it considered the request for stay as premature as it deemed that "*the "decision" appealed at the CAS is not final.*"
33. CAS informed the parties on 5 February 2009 that after having evaluated the arguments put forward by the parties it had decided that the best way to resolve the dispute was to hold a hearing to enable the parties to present their final statements and pleadings and then to take a final decision in due time before the last round of the Romanian championship Liga 1 in June 2009. A twenty days deadline was thus granted to FIFA in order to file its answer.
34. FIFA filed its answer on 25 February 2009.
35. The RFF informed CAS on 19 March 2009 that it would not attend the hearing.
36. A hearing was held in Lausanne on 2 April 2009. On the Appellant's side Mr Iancu, CEO, and Mr Chivorchian, Executive Director assisted by Ms Liana Tarjoc and Mr Gianpaolo Monteneri, Counsels for the Appellant, attended the hearing. FIFA was represented by Mr. Volker Hesse, in house Counsel.
37. The Panel asked the parties to confirm that they had no objection to the Panel's composition. The parties confirmed that they had not such objection and did not raise any prejudicial means or make any other remarks with respect to the procedure. During the hearing, the parties made full oral submissions, confirming their written submissions. No witness was called by the parties.
38. By letter dated 6 April 2009 the Panel sought further clarification on the circumstances surrounding the letter by FIFA dated 3 September 2008. It therefore invited FIFA to produce any evidence showing that the content of the letter dated 3 September 2008 and sent by Mr. Hesse was the result of a decision made by the FIFA Disciplinary Committee.
39. The orders of procedure were signed by all the parties by 14 April 2009.
40. On 17 April 2009, FIFA provided the Panel with a statement of the chairman of the FIFA Disciplinary Committee, Me Marcel Mathier, attorney-at-law, where Me Mathier confirms that "*the content of the communication dated 3 September 2008, sent by the Deputy*

*Secretary to the FIFA Disciplinary Committee, Mr. Volker Hesse, to the Romanian Football Federation in the disciplinary case following the award of the Court of Arbitration for Sport on 25 April 2008 (CAS 2008/A/1658) [recte: CAS 2006/A/1355) reflects a decision of the FIFA Disciplinary Committee taken in Beijing on 18 August 2008.”* Within the deadline set by the Panel to comment on this new document of FIFA, the Appellant expressed again his view that the Decision had been taken by the Deputy Secretary of the Disciplinary Committee and not by the Disciplinary Committee. The Appellant stressed in particular that Me Marcel Mathier was mentioning that the communication dated 3 September 2008 “*reflected*” the decision of the Executive Committee, which, according to the Appellant cannot be the case of the official communication of a decision. Eventually the Appellant referred to the standard formal requirements applicable to FIFA bodies and to the fact that FIFA was not in a position to produce further evidence like minutes of the Disciplinary Committee’s meetings or a tape or transcription of such meeting.

41. On 4 May 2009, the Panel sent another letter to FIFA seeking further and final clarification on the use of the word “*reflects*” by the Chairman of the FIFA Disciplinary Committee in his statement. The Panel therefore invited FIFA to provide additional evidence like a copy of a decision, minutes of the FIFA Disciplinary Committee’s meeting in Beijing, or any other appropriate evidence. FIFA replied on 8 May 2009 and confirmed that “*all available documents pertaining to this case have already been provided to CAS.*” FIFA then added that “*as confirmed by Chairman of the FIFA Disciplinary Committee Me Marcel Mathier in his statement dated 8 April 2009, the decision hereby appealed against was taken by the FIFA Disciplinary Committee on occasion of a meeting held in Beijing on 18 August 2008, and not by its secretary. In this sense we believe that Me Marcel Mathier’s statement leaves no room for interpretation.*”
42. The Appellant replied to FIFA’s letter on 18 May 2009 and maintained the position expressed in the proceedings, notably in its letter dated 27 April 2009.

#### **4. The Position of the parties**

##### **a) The Appellant**

43. The Appellant filed its appeal brief on 6 October 2008. Such appeal brief can be summarised in its relevant parts as follows:
44. The Appellant claims first that it has complied with the operative part of the award CAS 2007/A/1355 within the given deadline, which expired on 30 June 2008. It changed its name into FOTBAL CLUB TIMISOARA S.A. as this follows from the minutes of the extraordinary general meeting of its shareholders, the extract of the register of companies in Timis, Romania, and from the decision taken by the RFF on 5 July 2008. It changed as well its official colours and wrote to its sport equipment’s supplier, the company SSD informing it on the Appellant’s new colours, namely Mauve, White and Black. On 4 August 2008, the new kits were sent to the Romanian Football Federation and to UEFA.
45. As to the website [www.politimisoara.com](http://www.politimisoara.com), the Appellant claims that this website is property

of S.C. Vodafone Romania S.A and currently leased and administered by a company called "De Reinhart", which is an independent legal entity, and is not owned by the Appellant. The Appellant has neither direct influence on the information published on this site nor on its layout. The Appellant claims further that on 25 June 2008 it wrote to the website's administration, informing it that according to the CAS award 2007/A/1355, the Appellant had the obligation of changing the name and colours of the club, and that the new colours would from now on be Mauve, White and Black. The Appellant had thus informed the company De Reinhart about the need to use from now on the new colours and denomination in every material. De Reinhart had replied on 27 June 2008, confirming that following the graphic modifications and changes of the colour codes they were able to present the Appellant the new colours to be published on the website. Then the Appellant points out that in De Reinhart's letter, this company stressed that the Fan forum <http://poli.tm.ro/forum/index.php> was often mistaken with the official website and that the Forum had been created by the fans, with no relations whatsoever with the Appellant.

46. The Appellant then considers the decision no. 6 rendered on 5 July 2008 by the RFF Executive Committee and claims that the RFF acknowledged with this decision that the Appellant had validly changed its name and colours. The RFF Executive Committee even instructed its representatives to inform FIFA and UEFA about the changes occurred.
47. As to what it calls "*the decision rendered by the Deputy Secretary of the FIFA Disciplinary Committee on September 3rd 2008*" and to the decision rendered by the RFF Executive Committee on September 4, 2008, the Appellant explains in its appeal brief that "*they had a devastating effect and have resulted in great detriments for the Appellant's club and stockholders, arising revolt and mutiny on the streets of Timisoara, and sadly enough generating human victims*".
48. Coming to its legal submissions, the Appellant develops its legal arguments on the appeal's admissibility and on CAS jurisdiction.
49. The Appellant stresses first that its appeal is filed against a FIFA decision passed by the Deputy Secretary to the Disciplinary Committee, Mr. Volker Hesse on 3 September 2008 and notified to the RFF on the same day, as well as against the decision of the RFF Executive Committee passed on 4 September 2008 and notified on the same day to the Appellant. As the Appellant notes that its Statement of Appeal was sent to CAS on 17 September 2008 within 21 days of notification of the decision as stipulated in Art. 61 of the FIFA Statutes, it considers that the appeal is admissible. As to the applicable law, the Appellant then argues that the facts covered by the present appeal proceedings are governed "*by the FIFA Disciplinary Code and by the Statutes and Regulations of the Romanian Football Federation. Subsidiary, Swiss law applies pursuant to Art. 60 para. 2 of the FIFA Statutes and the jurisprudence of the CAS*".
50. The Appellant then refers to CAS jurisprudence (CAS 2005/A/899 FC Aris Thessaloniki v/ FIFA & New Panionios NFC; CAS 2007/A/1251 Aris FC v/ FIFA and CAS 2007/A/1355) and draws from this jurisprudence the conclusion that FIFA's notification issued on September 3rd, 2008, was a final decision subject to an appeal before CAS as such notification compelled the RFF to impose sanctions on the Appellant consisting in the

deduction of 6 points from the Appellant's first team.

51. As further legal grounds to its appeal before CAS, the Appellant then refers to Art. R47 of the Code, Art. 63 of the FIFA Statutes as well as to Art 71, in particular Art. 71 paragraph 5, and Art125 of the FDC. Based on these provisions, the Appellant finds that the notification dated 3 September 2008 was a final decision passed by a FIFA legal body, which is therefore subject to an appeal before CAS.
52. Having explained its legal reasoning on CAS jurisdiction, the Appellant then deals in the next part of its appeal brief with what it calls the “*formal and material mistakes that make the decisions null and void*”.
53. As to the formal mistakes, the Appellant claims that the present proceedings have to do with the scope of FIFA’s power to impose sanctions, the possibility of FIFA to interfere in private disputes and the role of CAS, as appeal instance, regarding disciplinary decisions generated through FIFA’s instructions. The Appellant claims first that FIFA infringed article 71 FDC. It reminds CAS that the present proceedings are linked to what was once a dispute between two football clubs in Romania related to intellectual property matters (registered name and trademark). This dispute had been decided by the Romanian sports tribunal, respectively the Federal Appellate Commission of the Romanian Football Federation and subsequently appealed to CAS, in accordance with the RFF Statutes.
54. The Appellant then refers to article 62 paragraph 3 of the FIFA Statutes, which provides that some football related disputes can be taken to CAS directly or through an appeal against a decision taken by a national body, without any previous involvement of a FIFA body being necessary. According to the Appellant, in those disputes, where no FIFA body passed any decision, FIFA has no authority to enforce the respective CAS award by imposing disciplinary sanctions. The Appellant further claims that the purpose of Art. 71 FDC, which deals with the enforcement of CAS awards, is to sanction a club when it fails to enforce a decision previously passed by a FIFA body and later on upheld by CAS. FIFA has therewith the possibility to make sure, by its own Disciplinary Committee that the previous decision of its own body is complied with. On the contrary, if there is no previous decision of a FIFA body and if the dispute is directly decided by CAS but the CAS award is not implemented, the FIFA Disciplinary Committee is not competent to impose sanctions but the parties have to use the legal instruments of international arbitration, namely to seek enforcement of the CAS award on the basis of the New York Convention. Coming back to the origin of the dispute, the Appellant thus claims that it is therefore possible that an intellectual property dispute between clubs is referred to the national sports bodies and appealed before CAS. If this happens, the dispute is outside FIFA's jurisdiction and the FIFA Disciplinary Committee cannot later on impose sanctions when the CAS award is not implemented.
55. The Appellant sees in article 61 paragraphs 1 and 2 of the FIFA Statutes, in CAS jurisprudence (CAS 2005/A/957 Clube Atlético Mineiro and CAS 2005/A/1001 Fulham FC) and in a recent decision of the Swiss Federal Court (FCD 4P.240/2006 of 5 January 2007), the legal ground for its interpretation of the scope of article 71 FDC. The Appellant further

refers to Circular n° 1080 issued by FIFA on 13 February 2007, which in the relevant parts reads:

*"Disputes between associations, clubs, players, coaches etc. regarding payment of salary or player transfers are a daily occurrence in international football. In 2006, a total of 1,530 such cases were submitted to the FIFA Players' Status Committee and Dispute Resolution Chamber for adjudication. [...]"*

*A recent case dealt with by the supreme legal body in Switzerland - the Swiss Federal Court - has now reinforced the strength of FIFA's existing jurisdiction. In its judgment, the Swiss Federal court ratified the decision passed by the FIFA Disciplinary Committee and CAS, and, on the basis of art. 71 (former art. 68) of the FIFA Disciplinary Code, acknowledged the authority of the FIFA Disciplinary Committee to impose sanctions on direct or indirect members that violate their obligations and ignore decisions passed by FIFA bodies. [...]"*

*This has far-reaching implications for FIFA's judicial system and consequently for all parties to a dispute being judged by a FIFA body, in that the FIFA Disciplinary Committee can ensure that decisions reached by the Dispute Resolution Chamber or the Players' Status Committee are enforced. A decision that cannot be enforced is, of course, no use to the successful party."*

56. The Appellant then considers the consequences of a wide interpretation of the scope of article 71 FDC. According to the Appellant this would lead to consequences which would go far beyond the purpose of article 71 FDC. The Appellant puts as an example, an award issued by CAS in relation with a contractual dispute between a football club's employee and the club, which could be enforced by FIFA, even a CAS award related to dispute between two basketball clubs could be enforced by FIFA. The Appellant is thus of the opinion that such an interpretation of article 71 FDC would mean that FIFA, could interfere worldwide in all disputes where CAS rendered an award and impose sanctions for enforcement, although no FIFA body had been involved before.
57. In order to avoid such an extensive interpretation of article 71 FDC, the Appellant suggests in its award to proceed with an interpretation based on the principle of "*good faith and loyalty*" ("*Vertrauensprinzip*"). It reminds CAS that not only the wording of the article has to be taken into account, but also all statements, letters and the whole behaviour of the parties. Therefore the Appellant argues that documents like the FIFA Circular n° 1080 have to be considered. At the same time, the Appellant mentions that the doctrine and jurisprudence as regards general contractual conditions are applicable. Therefore, in case the construction of article 71 FDC does not lead to a clear result, the so called "*Rule of ambiguity*" ("*Unklarheitenregel*"), meaning that article 71 FDC should be construed to the detriment of FIFA.
58. The Appellant reverts again to the origin of the dispute, namely the facts covered by CAS 2006/A/1109 and stresses that the dispute lays clearly in the ownership and exploitation of a

club's name and the history and the colours of a club, which the Appellant argues to be a pure intellectual property issue, on which FIFA has no competence to decide, even at international level. Apart from disputes related to international transfers of players, training compensations and solidarity contributions, as provided under article 22 of the FIFA Regulations for the Status and Transfer of Players, no other FIFA regulations grant any competence to FIFA to decide on disputes between clubs. The Appellant even considers that FIFA would automatically decline jurisdiction if two clubs, furthermore two clubs belonging to the same national association, asked FIFA to decide on a dispute related to intellectual property matters.

59. From the above legal reasoning, the Appellant concludes that since FIFA has no competence to decide on the merits of such dispute, it has at the same time no competence to apply disciplinary sanctions in the event of an alleged disrespect of the decision passed by a third body, *in casu* CAS.
60. The Appellant draws a further argument for its legal reasoning from the principle of sovereignty and independence of the member association. The Appellant is of the opinion that this includes also the independence in the judiciary power of the members. Decisions passed by a national body can only be enforced by the competent bodies of the national association itself, irrespective of the fact that the decision at national level was a final one or that an appeal to CAS was possible. Consequently, by accepting jurisdiction on the matter at stake, FIFA goes beyond its competence, interfering in the sovereignty of the RFF.
61. After having contested FIFA's jurisdiction *ratione materiae*, the Appellant develops a legal reasoning on the lack of jurisdiction of FIFA *ratione personae*. Claiming that SC FC Politehnica Timisoara SA, the party to the award CAS 2007/A/1355 is no longer affiliated to the Second Respondent, and thus indirectly to FIFA, the Appellant argues that FIFA cannot therefore enforce a CAS award which is in favour of this non affiliated "club". Moreover any decision that FIFA or the RFF may wish to take against SC FC Politehnica Timisoara SA could basically not be enforced through disciplinary sanctions. *Mutatis mutandis*, the Appellant wonders how SC FC Politehnica Timisoara SA could benefit from FIFA's disciplinary system but have no sort of obligations towards FIFA and the RFF. In the Appellant's view, such a situation would lack balance and reciprocity.
62. As an intermediary conclusion under point 5 of its appeal brief, the Appellant thus states that the only way to enforce the award CAS A/2007/1355 is in accordance with the New York Convention, which the Romanian State is a party to.
63. In the next chapter of its appeal brief, the Appellant then scrutinizes the formal steps taken by FIFA when issuing its notification dated 3 September 2008 and comes to the conclusion that, if such notification is a decision, it was taken by Mr. Volker Hesse, who was not competent to do so, and not by the FIFA Disciplinary Committee, which is the competent judicial body according to articles 71, 83 and 84 FDC. Moreover, this decision was rendered in violation of article 101 FDC, which granted the Appellant, the right to be heard. If the fundamental proceeding rights had been granted to the Appellant, it would have been in a

position to produce all necessary evidence and present all arguments confirming its compliance with the award CAS 2007/A/1355. The Appellant then claims further that the obvious involvement of SC FC Politehnica Timisoara SA and its active role in the decision taken by FIFA on 3 September 2008, highlights further the serious infringements of the Appellant's procedural rights. The Appellant indeed never had the chance to defend itself against any information or facts provided by SC FC Politehnica Timisoara SA to FIFA.

64. Dealing now with the RFF decision dated 4 September 2008, the Appellant considers that the fact that the FIFA decision is null and void should lead CAS to consider as well the RFF decision as null and void since the latter is exclusively based on the first one. The Appellant considers further that by threatening the RFF with disciplinary sanction, FIFA prevented the RFF from taking an independent and objective decision and committed an abuse of dominant position.
65. The Appellant sees as a further argument leading to declare the RFF decision as null and void, the fact that the RFF did not convene its Executive Committee according to article 34 paragraph 6 of the RFF Statutes, which, to the Appellant's opinion, refers to the decision making process of the RFF's Executive Committee and excludes "*voting by correspondence, mandate (proxy) or any other means*". The Appellant sees as well a "*great degree of inconsistency*" in the RFF's decision dated September 4th, 2008, taking into consideration the RFF's prior decision rendered on 5 July 2008, when the RFF's Executive Committee had acknowledged that the Appellant had fully complied with the award CAS 2007/A/1355.
66. As to the material part of the case, the Appellant simply claims that it has fully carried out the obligations imposed upon it in the award CAS 2007/A/1355. Regarding the third point of the operative part of the award, the Appellant claims that as far as the colours and websites are concerned, all due changes have occurred before the time limit of June 30th 2008 established in CAS 2007/A/1355 award. As to the website [www.politimisoara.com](http://www.politimisoara.com), the Appellant explains that this is not the property of the Appellant. It is being administered by another legal person, De Reinhart, which is in no way or form, directly or indirectly, in connection with the Appellant, therefore the Appellant presently stands in no capacity to compel them or to decide upon the manner they carry out their graphic presentation. On June 25, 2008, the Appellant has written to the owners of the website, informing them that according to the CAS award, the Appellant had the obligation of changing the name and colours of the club, that it had been done and that the new colours shall be mauve, white and black. The Appellant mentions that De Reinhart replied on June 27th, 2008, confirming that following the graphic modifications and changes of the colour codes they were able to present the Appellant the new colour graphics, the Appellant considers that it met its duties. Therefore, the Appellant deems having taken all necessary legal actions in order to carry out its obligations of changing the colours of the website from violet to another colour, respectively to mauve, white and black.
67. As to its sports equipment, the Appellant claims that it has also taken all necessary measures in order to change its colours and specifications. Until the new equipment was supplied to the Appellant by SSD, the Appellant's team played in white during the friendly games against MFK Kosice Slovakia held on 1 July 2008, Metalurg Zaporozje held on 6 July 2008, Dunfermline Athletic Football Club held on July 9th, 2008 and Viktoria Plzen Football Club held on 11 July 2008 and pink-black during the friendly game against Khazar Lankaran

Azerbaijan held on 3 July 2008.

68. The new sports equipment samples have been sent to the RFF and to the UEFA. No objection was formulated by those associations and the Appellant considers that it is evident that the colour was changed from violet to mauve.

69. In order to support its statement, the Appellant produces with its appeal brief the report of an expert in colours and chromatic science, who analysed the two samples of the Appellant's kit used for the season 2007/2008 as to the old kit and for the season 2008/2009, as to the new kit. The expert concludes in his report that:

*“a. The T-shirt identified as sample no. 1 VIOLET with the inscription BKP and no. 19 on the back is colour VIOLET. This colour is formed exclusively out of RED and BLUE pigments, with a dominant RED, due to the larger proportion of red comprised in its pigment composition.*

*b. The T-shirt identified as sample no. 2 MAUVE with the inscription BKP and no. 21 on the back is colour MAUVE. This colour of the analyzed T-shirt is formed by the combination of RED, BLUE and BLACK pigments, resulting in a dominant BLUE of the pigment blend. Chromatically speaking, the colour mauve lies within the family of fuddled colours.*

*In conclusion, the distinction between the two analyzed T-shirts lies in the fact that T-shirt identified as sample no. 1 VIOLET with the inscription BKP and no. 19 is colour VIOLET and The T-shirt identified as sample no. 2 MAUVE, with the inscription BKP and no. 21 on the back is colour MAUVE, („MOV" ) in colloquial Romanian language.”*

70. The Appellant produces as further evidence a statement from SSD, according to which the colour codes for the two different samples are the following:

*“1. Game T-shirt for 2007/2008 Championship - code H4742R, Pantone code colour1 VIOLET U;*

*2. Game T-shirt for 2008/2009 Championship - code K2760R, Pantone code colour 273U ( ruby red/reflex blue).”*

71. The Appellant sees in these two statements a proof that it changed the colour of its sports equipment and reaffirms that the RFF acknowledged and ratified the change of colours of the club to mauve, white and black.

72. The Appellant consequently requests the CAS – inter alia - to

*“1. to set aside the decision passed by the Deputy Secretary to the FIFA Disciplinary Committee, Mr. Volker Hesse and/or by the FIFA Disciplinary Committee on September 3<sup>rd</sup> 2008;*

2. to set aside any decision passed by the FIFA Disciplinary Committee sanctioning the Appellant for matters related to the arbitral procedures CAS 2006/A/1109 and CAS 2007/A/1355;

3. to set aside the decision no. 9/04.09.2008 passed by the Executive Committee of the Romanian Football Federation;

4. to establish that the First Respondent has committed several severe formal mistakes that render the decision null and void;

5. to establish that the Second Respondent has committed several severe formal mistakes that render the decision null and void;

6. to establish that the First Respondent is not entitled to pass any disciplinary decision against the Appellant related to the awards CAS 2006/A/1109 and CAS 2007/A/1355;

7. to establish that the Second Respondent is not entitled to pass any disciplinary decision against the Appellant related to the awards CAS 2006/A/1109 and CAS 2007/A/1355.”

**b) The First Respondent (FIFA)**

73. FIFA’s position can be summarised in essence as follows:
74. FIFA explains in the factual part of its answer that its Disciplinary Committee had noted that the Appellant's official webpage, <http://www.politimisoara.com>, was still in violet and that the Appellant was still playing in violet kits. As evidence of this statement of facts, FIFA produced with its answer printed extracts of the websites <http://www.poliaektimisoara.ro/> and <http://www.politimisoara.com/> together with a video of the first games played by the Appellant’s first team at the beginning of the season 2008/2009. FIFA then explains that it ordered the RFF to deduct six points from the Appellant’s first team as it had decided that the “*dominant colour of the club was still violet*”. FIFA then pointed out that the Appellant had then decided to change its kit to white for shirt, shorts and socks.
75. As to the legal arguments related to the case, FIFA claims again that the fact that the Appellant filed an appeal against the “*FIFA decision passed by Deputy Secretary to the FIFA Disciplinary Committee dated 3 September 2008*” leads to the conclusion that the appeal which was filed in the meantime before CAS was premature and directed against a decision which was not final as request under article 63 paragraph 1 of the FIFA Statutes. According to FIFA CAS has consequently no jurisdiction. In any case, FIFA considers that there was at least *litis pendens* in the present matter.
76. Should the Panel decide to enter into the merits of this matter, FIFA refers to article 64

paragraph 1 of the FIFA Statutes which provides that member associations, their affiliated clubs and players are obliged to comply with decisions rendered by CAS. Based already on this article of its statutes, FIFA claims that it has the competence to supervise the respect of awards rendered by CAS involving member associations of FIFA and their affiliated players and clubs. FIFA then claims that this competence is corroborated by article 64 of the FIFA Disciplinary Code (FDC), formerly article 71 (hereinafter systematically referred to as "article 71 FDC"), which provides that sanctions may be imposed if a CAS award has not been respected.

77. FIFA then stresses that in the case at stake, CAS applied article 71 FDC in its award 2007/A/1355, imposed a fine on the Appellant and threatened it with a deduction of six points if it did not change its name and colours within a certain time limit. FIFA concludes that it therefore had the competence to assess whether this CAS award had been complied with. The FIFA Disciplinary Committee's decision was communicated by the Deputy Secretary to the RFF on behalf of the Disciplinary Committee.
78. In reaction to some of the legal arguments raised by the Appellant, FIFA explains that the Appellant is affiliated to the RFF and bound by the latter's and FIFA's regulations. It was given clear orders in the CAS award dated 25 April 2008. As it did not respect those orders, FIFA was right in implementing those sanctions, independently from the fact that FC Politehnica Timisoara SA was still affiliated to the Romanian Football Federation or not. As to the question of the violation of the Appellant's right to be heard, FIFA explains that not only the Appellant had been invited to send a statement on the alleged non compliance with the CAS award dated 25 April 2008 but its attention had been drawn to a possible point deduction.
79. FIFA then further insists on the fact that in various correspondences which were posterior to 30 June 2008, the Appellant still makes use in its letterhead and in two stamps of its previous name Politehnica 1921 Stiinta Timisoara & Invest S.A. Moreover, on the emblem on the jersey, the club's name of reference is still "Politehnica 1921 Stiinta Timisoara". In addition to that, on the official homepage of the club the Appellant was still referring to itself in July 2008 as Politehnica 1921 Stiinta Timisoara. The website <http://www.politimisoara.com>, is mentioned on the Appellant's official letterhead and this website still indicated on 11 July 2008 violet as the dominant colour of the club. Referring to video recordings of the Appellant's games, FIFA then claims that, whereas the Appellant had obviously changed colours for the friendly matches played before the start of the season, it was still using its violet kit for official games played on 26 July 2008 against FC Arges, on 2 August 2008 against Pandurii, on 9 August 2008 against Gaz Metan, on 15 August 2008 against CS Otopeni, and on 24 August 2008 against Gloria Bzand. The Appellant started to play in white kits only after the decision to deduct the points had been taken. FIFA points out that no risk of confusion should exist and that this should be the only criteria independently from the official name of the new colour used by the Appellant, namely mauve.

80. In the light of the above, FIFA asks CAS:

A) Primarily:

1. *To dismiss the appeal as CAS has no jurisdiction.*
2. *To decide that no costs or legal expenses incurred with the present procedure shall be borne by the first Respondent.*

B) Subsidiarily:

1. *To dismiss the appeal and ascertain the deduction of six points from S.C. Fotbal Club Timisoara S.A.'s first team.*
2. *To decide that no costs or legal expenses incurred with the present procedure shall be borne by the first Respondent*

**c) The Second Respondent (RFF)**

81. RFF requests that its decision and FIFA's decision be upheld for the reasons that the Appellant's change of firm name was effective on 11 July 2008 and that the inspection performed by FIFA revealed that the Appellant's official websites were still using violet as a dominant colour after 30 June 2008. The RFF further argues that the Appellant should have lodged immediately its appeal before CAS as provided under article 71 paragraph 5 FDC. The Appellant's appeal is thus belated. Referring to article 13 paragraph 1 lit. a of the FIFA Statutes, the RFF claims that the Appellant is obliged to comply with any CAS award applicable to it and that FIFA is in charge of ensuring the enforcement of any CAS award, pursuant to article 71 FDC. Then the RFF notably refers to article 3 paragraph 4 of the enforcement procedure adopted by the RFF for the enforcement of the awards passed by CAS which provides that "*the Decision on the enforcement of an award passed by the Court of Arbitration for Sport shall be considered as automatically adopted by consensus of the members of the Executive Committee, voting no longer being required*". The RFF stresses in this respect that this article 3 paragraph 4 is deemed to be a special clause which has priority over the general clause contained in article 34 paragraph 6 of the RFF Statutes.

**II. IN LAW**

**5. CAS Jurisdiction**

82. Art. R47 paragraph 1 of the Code provides that:

*"An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the*

*Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.”*

83. The Appellant filed its appeal before CAS against two decisions. The first appealed decision is the “decision rendered by the Deputy Secretary to the Disciplinary Committee, Mr. Volker Hesse on September 3<sup>rd</sup>, 2008” as quoted from the Appellant’s statement of Appeal, (hereinafter “the FIFA Decision”). The second appealed decision is the “decision n° 9/04.09.2008 rendered by the Executive Committee of the Romanian Football Federation” (hereinafter “the RFF Decision”).
84. CAS jurisdiction regarding the appeal must be examined for each decision separately

#### **a) CAS jurisdiction regarding the appeal against the FIFA Decision**

85. CAS jurisdiction relating to the appeal against the FIFA Decision is disputed by FIFA and the RFF. The parties did not conclude a specific arbitration agreement. As the Appeal was filed against a decision of a FIFA body, the Panel, in accordance with article R47 of the Code, must thus refer to FIFA Statutes or regulations in order to decide on CAS jurisdiction.
86. Article 63 of the FIFA Statutes provides that “*appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question*” (par.1). “*Recourse may only be made to CAS after all other internal channels have been exhausted*” (par.2). “*CAS, however, does not deal with appeals arising from: (a) violations of the Laws of the Game; (b) suspensions of up to four matches or up to three months (with the exception of doping decisions); (c) decisions against which an appeal to an independent and duly constituted arbitration tribunal recognised under the rules of an Association or Confederation may be made.*” (par.3).
87. The Panel sees that none of the exceptions provided under article 63 paragraph 3 are applicable in the present case. Therefore, CAS has jurisdiction if the letter by FIFA dated 3 September 2008 meets the following requirements:
- (aa) qualification as a formal decision,
  - (bb) passed by a FIFA legal body (article 63 paragraph 1 of the FIFA Statutes); and
  - (cc) if all internal channels of review were exhausted beforehand (article 63 paragraph 2 of the FIFA Statutes).

#### **aa) Qualification of the FIFA Decision as a formal decision**

88. The first question to be addressed by the Panel is whether FIFA indeed issued a decision according to article R47 of the Code and article 63 of the FIFA Statutes. In the award CAS 2005/A/899 FC Aris Thessaloniki v/ FIFA & New Panionios NFC (published in Digest of CAS awards 1986-1998, p. 539 ), CAS made the following considerations:

*“The applicable FIFA regulations, in particular the FIFA Statutes do not provide for the term "decision". Thus, in accordance with article R58 of the Code and Article 59*

*paragraph 2 of the FIFA Statutes, the issue must be examined under Swiss law. According to Swiss case law related to administrative procedure, cited in Award CAS 2004/A/659, „ the decision is an act of individual sovereignty addressed to an individual, by which a relation of concrete administrative law, forming or stating a legal situation is resolved in an obligatory and constraining manner. This effect must be directly binding both with respect to the authority as to the party who receives the decision.*

*Although administrative procedural rules are not directly applicable to decisions issued by private associations, the Panel considers that the principles set out in the above mentioned CAS precedent correctly define the characteristic features of a decision. In principle, for a communication to be a decision, this communication must contain a ruling, whereby the body issuing the decision intends to affect the legal situation of the addressee of the decision or other parties. (...).*

*The panel considers that the form of communication has no relevance to determine whether there exists a decision or not. In particular, the fact that the communication is made in the form of a letter does not rule out the possibility that it constitutes a decision subject to appeal. (...).*

*What is decisive is whether there is a ruling, or, in case of a denial of justice, an absence of ruling where should have been a ruling in the communication".*

89. In light of this CAS precedent, the Panel is of the view that the purpose of the letter by Mr. Volker Hesse is “to resolve a legal situation in an obligatory and constraining manner” and that, therefore, the letter must be qualified as a decision. The letter of Mr. Volker Hesse did not only contain a ruling on the question whether or not the Appellant complied with the operative part of the award in CAS 2007/A/1355 but also that the “*FIFA Disciplinary Committee will pronounce an appropriate sanction against the Romanian Football Federation*” if RFF would fail to act according to the contents of the letter. As mentioned in the above CAS precedent, the form of the communication has no relevance to determine whether the document is a decision or not. The Panel refers further to CAS 2007/A/1251 Aris FC v. FIFA as well as to CAS 2007/A/1355, whose enforcement led to the FIFA Decision, where CAS considered that letters from FIFA were to be considered as formal decisions as they contained a ruling and affected the parties’ legal positions.

#### **bb) Decision of a FIFA Body**

90. Having decided that the letter by FIFA is to be qualified as a decision, the Panel then needs to clarify if it was taken by a FIFA body as provided under article R47 of the Code and article 63 of the FIFA Statutes.
91. The Appellant claims that Mr. Volker Hesse, deputy secretary to the FIFA Disciplinary Committee, issued the letter from 3 September 2008, on his own initiative and on behalf of FIFA. FIFA on the contrary answers that the decision was taken by the FIFA Disciplinary

Committee on 18 August 2008 in Beijing and produced as evidence a written statement of Me Marcel Mathier, attorney-at-law and Chairman of the FIFA Disciplinary Committee dated April 8, 2009, who confirms that the FIFA Decision “*reflects a decision taken by the FIFA Disciplinary Committee in Beijing*”.

92. On one side, the Panel noted that FIFA confirmed that there were no minutes of the meeting held by the Disciplinary Committee in Beijing and that the communication made by Mr. Volker Hesse did not even refer to a meeting of the Disciplinary Committee and to the decision taken by it. The communication addressed to the RFF is however made under FIFA letterhead and is signed by FIFA. Mr. Volker Hesse signed the document on behalf of FIFA and in his capacity as Deputy Secretary to the Disciplinary Committee, as provided under article 123 paragraph 2 FDC (version of September 2007). Eventually, the RFF seemed to have had no doubt on the binding nature of the communication and issued its decision accordingly. The Panel is thus sure that the FIFA Decision was taken by the FIFA Disciplinary Committee and not by Mr. Volker Hesse *ad personam*. The FIFA Decision was thus taken by a FIFA body in the sense of article 63 of the FIFA Statutes.

### **cc) Final decision**

93. Having decided that the FIFA Decision was issued by a FIFA body, the Panel now needs to determine whether the Decision is final or not, i.e. if all internal means of recourse were exhausted as required under article 63 of the FIFA Statutes.
94. According to article 86 FDC, “*the Appeal Committee is responsible for deciding appeals against any of the Disciplinary Committee’s decisions that FIFA regulations do not declare as final or referable to another body.*”
95. The Appellant claims that the FIFA Decision is final and binding as it was issued on the basis of article 71 FDC (see in further detail below no. 116 and ff), which provides under its paragraph 5 that “*any appeal against a decision passed in accordance with this article shall immediately be lodged with CAS.*” The Panel notes further that article 125 FDC provides that “*an appeal may be lodged to the Appeal Committee against any decision passed by the Disciplinary Committee, unless the sanction pronounced is (...) decisions passed in compliance with art. 71 of this code.*” (art. 71 lit. e FDC).
96. Based on the foregoing, the Panel considers that any decision of the FIFA Disciplinary Committee taken on the basis of article 71 FDC is indeed final within FIFA and can be directly appealed before CAS.
97. FIFA submits however that CAS has no jurisdiction as the Appellant had previously lodged an appeal before its Appeal Committee on 10 September 2008, which leads FIFA to conclude that, by doing so, the Appellant admitted that the FIFA Decision could be appealed before its Appeal Committee. The Appellant however claims back that it did not pay the Appeal fees and did not proceed further before the FIFA Appeal Committee. The FIFA Appeal Committee considered in its decision dated on 2 February 2009 that “*it is in principle responsible to deal with the appeal*” because the FIFA Decision “*was of a special nature, as it implemented a*

*CAS-award*” and that the decision did not belong to the exceptions listed under 125 FDC lit. a to e. The FIFA Appeal Committee eventually rejected the appeal on the ground that it had been lodged outside the time limit of three days provided under article 127 paragraph 1 FDC (now article 120 par. 1 FDC) and that the appeal fee, requested under article 130 paragraph 1 (now article 123 par.1FDC) had not been paid

98. The Panel does neither share FIFA’s opinion nor the one of its Appeal Committee. The Panel notes that, in principle, if a party files an appeal before the wrong jurisdictional body, this cannot create a valid appeal procedure before this body. A statement of appeal must of course be supported by a valid procedural rule.

#### **b) CAS jurisdiction regarding the appeal against the RFF Decision**

99. The RFF did not raise during the proceedings any objection on CAS jurisdiction or on the admissibility of the Appeal against its decision. Although the order of procedure signed by the parties provides that “the jurisdiction of CAS in the present case is disputed”, the Panel concludes from the legal arguments brought by all parties and from the FIFA and RFF regulations at hand, that CAS jurisdiction on the appeal directed against the RFF Decision, is not disputed and is given.

#### **5. Timeliness of the appeal**

100. The RFF claims in its answer that the appeal lodged by the Appellant to CAS against the FIFA decision was late for the reason that article 71 paragraph 5 FDC provides that “any appeal against a decision passed in accordance with this article shall immediately (red.) be lodged with CAS.” The Panel notes that the term “immediately” has clearly not the meaning which the RFF wants to give to it. In the German version of this article, the term used is “sofort” which can mean without delay but also “directly”. What is meant is therefore that any decision taken under article 71 FDC can be lodged before CAS “directly” or “immediately” in its literal meaning, which is “without means of internal recourse”.
101. The Panel thus decides that the standard time limit of 21 days provided under article 63 paragraph 1 of the FIFA Statutes is applicable. The Appellant heard of the FIFA Decision on 4 September 2008 at the earliest and the Appellant lodged its statement of appeal on 17 September 2008, which is not disputed. The appeal was therefore lodged within the statutory time limit set forth by the 2008 FIFA Statutes.
102. The Panel notes further that the Appeal against the RFF Decision was filed within 21 days after the notification of the RFF Decision. The Panel thus concludes that the Appeal against the RFF Decision is filed in time, which is as well not disputed

**6. Applicable law**

103. Art. R58 of the Code provides the following:

*“The Panel shall decide the dispute according to the applicable regulations and 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 application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision. ”*

104. As the Appeal was lodged against two decisions issued by two different bodies of two different associations, namely the FIFA Disciplinary Committee on one side and the RFF Executive Committee on the other side, the Panel needs to address the issue of the applicable law, separately.

105. As to the RFF Decision, the Panel decides that the Statutes and Regulations of the RFF are applicable, as provided under article R58. The parties having not agreed on the application of any other rules of law, the Panel decides that Romanian law shall be applied in addition to the RFF Statutes and Regulations, if needed.

106. Considering now the FIFA Decision, the Panel notes that the Appellant does in particular not contest that the FIFA Decision is subject to the FIFA Disciplinary Code (FDC) but argues that a correct interpretation of the FDC should lead the Panel to conclude that the FIFA Decision is null and void. The Panel notes further that the parties did not agree on other applicable regulations or rules of law and that the FIFA Decision was issued within FIFA, the International Federation of Football domiciled in Switzerland. Referring to article 62 paragraph 2 of the 2008 version of the FIFA Statutes, which entered into force on 1 August 2008 and thus applies to the present dispute, the Panel eventually stresses that CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law.

107. The Panel thus concludes that it shall decide on the appeal against the FIFA Decision according to the 2008 FIFA Statutes and the applicable FIFA regulations, primarily and to the laws of Switzerland, additionally.

**7. Mission of the Panel**

108. The mission of the Panel follows, in principle, from article R57 of the Code, according to which the Panel has full power to review the facts and the law of the case. Furthermore, article R57 of the Code provides that the Panel may issue a new decision which replaces the decision challenged or may annul the decision and refer the case back to the previous instance.

**8. Standing to appeal**

109. The RFF Decision was notified to the Appellant, which is directly affected by it, as a result of a 6 points deduction being imposed on its first team through this Decision. The Panel finds

that there is no doubt that the Appellant has a standing to file an appeal with CAS against the RFF Decision. This is actually undisputed.

110. Although the issue was not raised by the parties, the Panel must now consider whether the Appellant also has a standing to file an appeal with CAS against the FIFA Decision. The Appellant is indeed not the addressee of the FIFA Decision which was only notified to the RFF and not to the Appellant. However, it follows from the contents of the letter that the Appellant is materially affected in case the addressee of the FIFA letter, i.e. the RFF would execute the FIFA order.
111. The FIFA rules do not provide a specific provision as to who is entitled to lodge an appeal against decisions by FIFA to the CAS. However, there is a provision regulating who is entitled to file an internal appeal within the instances of FIFA. Article 126 FDC provides in this respect that “*anyone who is affected and has an interest justifying amendment or cancellation of the decision may submit it to the Appeal Committee.*” In principle, there is a presumption that the question of the standing to appeal is regulated in a uniform manner throughout all internal and external channels of review. Since the Appellant is at least indirectly affected by the decision of FIFA this would speak in favour of accepting a standing to appeal to the benefit of the Appellant.
112. The foregoing is all the more true as no independent evaluation and assessment of the facts is made at the RFF level. In this respect the Panel refers to article 3 paragraph 4 of the RFF enforcement procedure of a CAS award, which provides that “*the decision on the enforcement of an award passed by the Court of Arbitration for Sport shall be considered as automatically adopted by consensus of the members of the Executive Committee, voting non longer being required*”. In light of the foregoing it would be overly formalistic to accept that only the RFF is affected by the FIFA decision and, thus, is accorded standing to appeal.
113. Based on the foregoing, the Panel stresses that the fate of the RFF Decision is linked to the FIFA Decision. This opinion is shared by all parties, notably by the Appellant. The Appellant did not only lodge two appeals against the FIFA Decision, one before the FIFA Appeal Committee and one before CAS but based the main parts of its legal reasoning on the validity of the FIFA Decision, limiting its arguments against the RFF Decision to procedural issues.
114. In requesting from the RFF that it deducts 6 points from the Appellant’s first team, the FIFA Disciplinary Committee did not only dispose in its decision of the RFF rights with regard to the classification of a Romanian club, namely the Appellant, in the Romanian Liga 1 but obviously also of those of the Appellant, which saw six points deducted by the RFF from its first team. The Appellant is thus directly affected with the consequence that the Appellant must have a right of appeal against the FIFA Decision. In this respect, the Panel finds that article 126 FDC is applicable per analogy to appeals before CAS. FIFA did obviously not intend to have two different groups of persons with standing to appeal, one larger when it comes to appeals lodged before the FIFA Appeal Committee, one smaller when appeals can be directly lodged before CAS. Moreover, the Panel refers to CAS jurisprudence and to the jurisprudence of the Swiss Federal Court on the standing to appeal against decisions passed by an organ of an association or on resolutions (see the developments on this subject in CAS 2008/A/1583 Sport Lisboa e Benfica Futebol SAD v/ UEFA&FC Porto Futebol SAD ad 9.1 et seq.).
115. The Panel therefore finds that the Appellant has the standing to file an appeal before CAS against the FIFA Decision.

**9. Request to set aside the FIFA decision**

116. The FIFA decision is to be set aside if it either violates the formal or the material prerequisites of the applicable FIFA rules. In order to know what these requirements are the Panel has to determine in a first step the legal basis for the FIFA decision. The Second Respondent claims in that respect that Art. 71 FDC forms the legal basis of its decision to ask the RFF to deduct 6 points from the Appellant. The provision reads as follows:

*"1. 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 CAS (financial decision), or anyone who fails to comply with another decision (non financial decision) passed by a body, a committee or an instance of FIFA or CAS:*

*a) will be fined at least CHF 5,000 for failing to comply with a decision;*

*b) will be granted a final deadline by the judicial bodies of FIFA in which to pay the amount due or to comply with the (non financial) decision;*

*c) (only for clubs:) will be warned and notified that, in the case of default or failure to comply with a decision within the period stipulated, points will be deducted or demotion to a lower division ordered. A transfer ban may also be pronounced.*

*2. If the club disregards the final time limit, the relevant association shall be requested to implement the sanctions threatened.*

*3. If points are deducted, they shall be proportionate to the amount owed.*

*4. A ban on any football-related activity may also be imposed against natural persons.*

*5. Any appeal against a decision passed in accordance with this article shall immediately be lodged with CAS."*

117. Article 71 provides for a two-stage procedure to enforce decisions by FIFA or CAS. In a first step according to article 71 paragraph 1 FDC a standard fine in the amount of CHF 5,000 is imposed on the party that failed to comply with the respective decision. In addition the debtor is granted a final deadline to comply with the decision. Furthermore the party is threatened with a specific sanction (deduction of point, demotion to a lower division or transfer ban) in case of non-compliance with the deadline. If the deadline has elapsed and the party has failed to comply with the decision to be enforced the enforcement procedure arrives at the second stage. In such case article 71 paragraph 2 FDC provides that the relevant association will be "requested" to implement the sanctions which were threatened on the basis of article 71 paragraph 1 FDC.

118. In the case at hand FIFA advised the RFF in its letter dated 3 September 2008 to deduct 6 points from the Appellant. Hence, the appealed decision by FIFA is obviously based upon article 71 paragraph 2 FDC and, therefore, relates to the second enforcement step.

**aa) Did the competent body decide according to Art. 71 paragraph 2 FDC?**

119. Having determined the legal basis of the FIFA decision the Panel has to consider whether in the case at hand the competent body within FIFA took the appealed decision. Article 71 paragraph 2 FDC does not state which FIFA organ is competent to ask the national federation to implement the sanction. Article 83 FDC, however, provides that the FIFA Disciplinary Committee is authorised to sanction any breach of FIFA regulations which does not come under the jurisdiction of another body. Even though – literally speaking – a decision according to article 71 paragraph 2 is not about issuing a sanction (but rather requests someone else to implement a sanction) the matter is so closely related to article 83 FDC that this provision should apply also in these instances. Furthermore, none of the parties claimed that another body than the FIFA Disciplinary Committee had the competence to take the FIFA Decision, which is based on article 71 paragraph 2 FDC. The Appellant itself admits that *“it is the exclusive prerogative of the Disciplinary Committee to render decisions on the matter of imposing any sanctions upon a party”* (page 21, nr 6.1.1 of the appeal brief). Article 125 FDC confirms indirectly that the FIFA Disciplinary Committee is competent to pass decisions in compliance with article 71 FDC, as it expressly provides that for such decisions the Appeal Committee cannot decide on an appeal lodged *“against any decision passed by the Disciplinary Committee.”*
120. Based on all the above, the Panel decides that the FIFA Disciplinary Committee had the competence to pass the FIFA Decision.

**bb) did the decision comply with the formal requirements?**

121. The FIFA Decision consisted in a simple letter signed by the deputy secretary of the FIFA Disciplinary Committee. However, decisions by the Disciplinary Committee that are issued on the basis of the FDC must comply with certain formal requirements that are enumerated in Art. 123. Some of the prerequisites are met in the case at hand. For example, according to article 123 paragraph 2 FDC the decision has to be signed by the committee Secretary of the Disciplinary Committee. Other conditions of said provision, however, have not been met. According to article 123 paragraph 1 FDC, a decision of the Disciplinary Committee must contain information on the composition of the committee and the notice of the channels of appeal. Both of these conditions were missing from the FIFA decision in the case at hand. However, the letter contained all the material grounds of the decision. As to the exercise of its right to be heard, the Appellant had the opportunity to provide FIFA with the necessary information during the investigation procedure which started in July 2008. Proceedings before FIFA are in general conducted in writing, as provided under article 119 paragraph 1 FDC, and, in any case, the Appellant did not ask for a hearing, although article 119 paragraph 2 FDC granted the Appellant the right to request for it.
122. Based on CAS jurisprudence and on the jurisprudence of the Swiss Federal Supreme Court (ATF 106 Ib, p. 179), the above mentioned formal mistakes are not of such nature to render the FIFA decision null and void. Whether the formal mistakes are of such weight to render the decision of FIFA annulable is irrelevant, because, even if this were the case, the mission of this Panel according to article R57 of the Code and in view of the requests and submissions by

the parties would be broad enough to issue a decision on the basis of the applicable rules in lieu of FIFA.

**cc) Is there an enforceable decision?**

123. Article 71 paragraph 1 FDC stipulates that decisions by “a body, a committee or an instance of FIFA or CAS” are enforceable under the provision. In the case at hand FIFA sought to enforce the CAS award CAS 2006/A/1109. In the operative part of the award CAS 2006/A/1109, the association CS FCU Politehnica Timisoara which is identical to the Appellant was – inter alia - ordered to change name and not to imitate the colours, track record and logo of SC FC Politehnica Timisoara SA. Hence, looking at the language of article 71 paragraph 1 FDC the prerequisite that there must be an enforceable decision is fulfilled.
124. The Appellant claims, however, that article 71 paragraph 1 FDC has to be construed narrowly. The provision does – according to the Appellant – not grant FIFA any competence to enforce other CAS awards than the ones which were issued after proceedings involving FIFA jurisdictional bodies. FIFA and the RFF answer that article 71 FDC makes no distinction between CAS awards passed after an appeal was lodged against decisions of FIFA bodies or after an appeal was lodged against decisions of national bodies.
125. It is true that the CAS award CAS 2006/A/1109 - the enforceable decision - did not result from internal FIFA proceedings. However, whether this fact renders the CAS award CAS 2006/A/1109 unenforceable under article 71 FDC can be left unanswered here. This issue was part of the matter in dispute submitted to the CAS in the proceedings CAS 2007/A/1355. The Panel in said procedure decided at the time in the ambit of the first step of the enforcement procedure according to article 71 paragraph 1 FDC that the CAS decision CAS 2006/A/1109 was enforceable under this provision. The question therefore arises whether or not the Appellant is precluded in raising his objection at this stage of the enforcement procedure. The Panel answers this in the affirmative. All the parties to the present procedure have been a party to the CAS procedure CAS 2007/A/1355. This Panel is, therefore, bound by this previous CAS decision according to which the award CAS 2006/A/1109 constitutes an enforceable decision under article 71 FDC.
126. Subsidiarily, the Panel would like to point out that - as rightly mentioned by FIFA and the RFF - article 71 FDC does not in its wording make any distinction between CAS awards delivered in relation with a decision issued by FIFA or with a decision passed by a national federation. It is well known that the purpose of the jurisdiction of CAS provided in the FIFA Statutes is to ensure a coherent jurisprudence in the matter of football both at national and international level. Article 62 of the FIFA Statutes thus provides for a wide jurisdiction clause in favour of CAS in order “*to resolve disputes between FIFA, Members, Confederations, Leagues, clubs, Players, Officials, and licensed match agents and players agents.*” As to article 63 of the FIFA Statutes, the Appellant omits to quote in its appeal brief, the part which provides that not only final decisions passed by FIFA but as well “*decisions passed by Confederations, Members or Leagues shall be lodged with CAS*”. The Panel does not see how the Appellant can deduct from the reference under article 63 paragraph 2 of the FIFA Statutes to “*all other internal channels*” that CAS can only examine a previous decision of a FIFA body. With reference to article 63 paragraph 1 of the FIFA Statutes it is indeed clear that article 63 paragraph 2 of the

FIFA Statutes refers as well to “*internal channels*” of Confederations, national federations or leagues.

127. Article 64 paragraph 1 of the FIFA Statutes provides further that “*the Confederations, Members and Leagues shall agree to recognise CAS as an independent judicial authority and to ensure that their members, affiliated Players and Officials comply with the decisions passed by CAS.*” It is the Panel’s view that this recognition by FIFA of CAS competence to resolve disputes at all levels of the family of football and the obligation to comply with CAS decisions is not only anchored in the FIFA Statutes but also in article 71 FDC. Through this article, FIFA recognises that all CAS awards issued in favour or against members of the family of football should be enforced and that FIFA will make use of its competences as the international association for football to reach this objective. Therefore not only a literal construction of article 71 FDC but as well a systematic construction of this article leads to the conclusion that FIFA has indeed a general competence to enforce CAS awards within the family of football. The Panel consequently does not see any ambiguity with this construction, which is coherent with the FIFA disciplinary system and does thus not violate the principle of good faith and loyalty applicable to the FIFA regulations.
128. The Appellant is wrong when it draws the conclusion from the FIFA Circular n° 1080 dated February 13, 2007 and the related jurisprudence of the Swiss Federal Court that FIFA and the Swiss supreme court acknowledge the authority of FIFA to impose sanctions based on article 71 FDC only when there has been previously to the CAS award a decision of a FIFA body. To support its opinion, the Appellant indeed uses precedents where FIFA and the Swiss Federal Court dealt with enforcement of CAS awards related to FIFA decisions. The Swiss Federal Court did not have to decide on FIFA competence to enforce a CAS award which was not related to a FIFA decision. The statements of the Swiss Federal Court are thus limited by the nature of the case it had to deal with. The Appellant cannot have the Swiss Federal Court decide on something that it was not asked to decide on. As correctly mentioned by the Appellant at page 16 of its appeal brief, “*in the present dispute, the situation is completely different*”.
129. Based on the foregoing, the Panel decides that in the present case there is an enforceable decision according to article 71 FDC.

**dd) Was the Appellant threatened with the deduction of 6 points?**

130. Before requesting the national federation to implement a sanction according to article 71 paragraph 2 FDC the respective party must be threatened with said sanction in case it does not comply with its obligations within a certain deadline according to article 71 paragraph 1 FDC. In the case at hand the Appellant was threatened in the CAS award CAS 2007/A/1355 that “[i]f SC Politehnica 1921 Stiinta Timisoara Invest SA<sup>1</sup> fails to comply with the paragraphs 1 to 3<sup>2</sup> above or any of them by 30 June 2008 6 points will be deducted”(see operative part no. 5). Hence, also this requirement is complied with.

<sup>1</sup> This is the former name of the Appellant.

<sup>2</sup> This is an obvious typing mistake in the operative part of the award. It should read “2 to 4”.

**ee) Did the Appellant comply with its obligation in time?**

131. According to the letter of FIFA dated 3 September 2008 the Appellant has failed to comply with its obligation to “change its club colours so that they no longer include violet” (no. 3 of the operative part of the award CAS), since – according to the Second Respondent – the dominant colours of the club on the uniforms of the Appellant and on the Appellant’s homepage were still violet after the deadline.

**(1) Contents of the obligation**

132. In order to determine whether or not the Appellant complied with his obligation the exact contents of the latter has to be determined. The Panel notes in this respect that there is a certain discrepancy between the obligation of the Appellant stipulated in the enforceable decision (CAS award 2006/A/1109) and in the CAS award 2007/A/1355 implementing the first step of the enforcement procedure according to article 71 paragraph 1 FDC. While the CAS award CAS 2006/A/1109 interdicts “to imitate the colours ... of SC FC Politehnica Timisoara SA” (see operative part n. 3) the CAS award 2007/A/1355 obliges the Appellant “to change its club colours so that they no longer include violet”. The majority of the Panel holds that in view of the severity of the sanction in question and in view of the necessity of legal certainty the Appellant can only be expected to comply with the obligation stipulated in CAS 2007/A/1355 and that the obligation contained therein cannot be interpreted in the light of the decision to be enforced. Hence, in order to determine whether or not the Appellant complied with its obligations it is not decisive whether the Appellant “imitated” the colour violet, but whether he changed the colour “so that it no longer includes violet”.
133. Both CAS awards (2007/A/1355 and 2006/A/1109) are open for interpretation as to the exact extent of the obligation. In particular it is open to debate on what objects the colours have to be changed in order to comply with the obligation. The Panel holds that the change of colours applies to such objects that serve to identify the club in the public.

**(2) Did the Appellant breach its duty by using its old kit before August 4?**

134. The uniforms used by a club during matches is a very important means of identification for a club. Hence, there is no doubt that the obligation in no. 3 of the operative part of the CAS award CAS 2007/A/1355 “change its club colours so that they no longer include violet” applies to the uniforms used by the Appellant.
135. The Panel notes that the Appellant ordered new kits to the company SSD on 26 June 2008 and obviously never played since then in violet. Until 4 August 2008 when the new kit was delivered to the Appellant and filed with the RFF and the UEFA, the Appellant played friendly games in black and yellow. The First Respondent submitted, however, that the Appellant still played with a violet kit in other matches prior to 4 August 2008. In support of its allegation the First Respondent submitted a DVD which was played and looked at during the hearing. However, the DVD did not support the First Respondent’s allegation. To the contrary the team playing in colours close or identical to violet was identified as not belonging to the Appellant.

In support of its allegations the First Respondent further provided the Panel with a kit supposedly used by the Appellant during that summer and which had been forwarded to it by the RFF. This kit which looked similar to the one taken in picture and produced by FIFA with its answer is a winter kit. The Panel found that the RFF obviously sent the old violet winter kit of the Appellant to FIFA and not the new summer kit used by the Appellant. To sum up, therefore, the Panel comes to the conclusion that the Second Respondent failed to prove, that the Appellant played in violet after the expiration of the deadline on 30 June 2008.

**(3) Did the Appellant breach its obligation by not changing the website?**

136. As to the change of colours on the Appellant's websites, the Panel notes that the Appellant addressed a letter on 25 June 25 2008 to the website manager informing him of the change of the club's colours and of the need to adapt the website immediately due to the sanctions threatened by CAS. It appears that the websites colours were still in violet in September when FIFA passed its decision but that they have since been changed. In this respect, the Panel agrees with FIFA and the RFF that the website colours must be changed and not contain violet. Apparently this was the official website of the club and its internet address is even indicated on the Appellant's letter head. Furthermore, there is no doubt that the name and the colours of the club belong to the Appellant, which should be in a position to impose the change of its colours on its official website. However, it remains that the Appellant did ask for the change of the website colours before end of June, 2008 and it had received a positive answer from the website manager within the deadline set by CAS. As the official website was eventually modified and adapted to the new colours of the club, the Panel sees here again that a deduction of 6 points cannot be decided only for the reason that the colours of the website were effectively changed by the website manager, a third party to the Appellant, only shortly after 30 June 2008.

**(4) Did the Appellant breach its duty by using the colour mauve instead of violet?**

137. There is no question that the colours "violet" and "mauve" are close. The question, therefore, arises whether the Appellant breaches its duty of "changing its colours so that they no longer include violet" by changing his colours from "violet to "mauve". Technically the colour "mauve" is a different colour from "violet", as confirmed in a report from the Dean of the Faculty of Arts and Design of the west University of Timisoara. Furthermore this change of the Appellant's colours was recognised by the RFF on 5 July 2008 and the RFF Executive Committee requested two of its legal representatives to inform FIFA that the Appellant had complied with the CAS award 2007/A/1355. To sum up, therefore, the Panel comes to the conclusion that also in this respect there was no breach by the Appellant.

**(5) Summary**

138. To sum up, therefore, the Panel comes to the conclusion that the Appellant did not breach its obligation “not to include violet in its club colours” and that therefore the decision of FIFA is erroneous.

**ff) Can the decision of FIFA be upheld on other grounds?**

139. In its Answer brief the Second Respondent submitted that the FIFA decision could also be upheld on the ground that the Appellant still used its old name after the deadline. In the exchange of submissions and during the hearing also the Appellant expressed itself on this point.

140. It is true that the threatening to deduct 6 points in the CAS award 2007/A/1355 does not only refer to the obligation to change the colours but also to the obligation to change its name. In this respect the CAS award stipulates in no. 2 of the operative part of the award: “*SC Politehnica 1921 Stiinta Timisoara Invest SA shall no later than 30 June 2008 change its name to a name which does not include the risk of confusion with the name of FC Politehnica Timisoara SA. Such new name shall not include the words “1921” or “Stiinta” and if such new name includes both the words “Politehnica” and “Timisoara” there shall be at least one substantive word not associated with FC Politehnica Timisoara SA or its history between those words.*”

141. The Panel deems that the Appellant’s change of name was made within the deadline fixed by the CAS award 2007/A/1355. This is not only confirmed by the RFF decision passed on 5 July 2008 where the RFF clearly indicates that the Appellant’s change of name was validly done, but also by the FIFA Decision where the FIFA Disciplinary Committee decided that “*point 1 [red: the point related to the change of name] of the mentioned CAS award has been respected*”. The RFF Decision does thus logically not refer to the question of the Appellant’s change of name but only sanctions the Appellant on the basis of its alleged late change of colours.

142. The RFF and FIFA however claimed in their answers that the Appellant continued using its previous name on its letterhead and stamps. The Panel indeed noted that the correspondence in the days following the Appellant’s change of name had not been adapted to the new name, yet. The question therefore arises whether this constitutes a violation of the Appellant’s obligations according to the CAS award CAS 2007/A/1355. The latter obliges the Appellant to “change its name”. It is not without hesitation that the Panel comes to the conclusion that the obligation in the CAS award CAS 2997/A/1355 has to be construed and interpreted narrowly. The occasional or sporadic use of the Appellant’s old name or logo shortly after the formal change of name does, therefore, not constitute a – at least substantial - breach of the duties embedded in the CAS award CAS 2007/A/1355. The Panel is comforted in its view by the fact that some of the correspondence using the old name and logo was addressed to the RFF and to FIFA before the FIFA Decision and the RFF Decision were taken and that the two associations did obviously not see in it a reason for not recognising the Appellant’s change of name. Eventually, it appears from the file that the Appellant changed its letterhead and stamp

a while ago. To sum up, therefore, the Panel comes to the conclusion that the FIFA Decision cannot be upheld on other grounds and, hence, must be set aside.

#### **10. Request to set aside the RFF Decision**

143. The Appellant claims that the RFF Executive Committee was not called according to the procedural rules provided under the RFF Statutes and that therefore the RFF Decision should be declared null and void. However, the Panel refers to article 3 paragraph 4 of the RFF enforcement procedure of the CAS award, which provides that “*the decision on the enforcement of an award passed by the Court of Arbitration for Sport shall be considered as automatically adopted by consensus of the members of the Executive Committee, voting non longer being required*”. The Panel notes that the RFF Executive Committee adopted the FIFA Decision without deliberation. In the specific case, there is thus no need to call the Executive Committee and the Appellant’s submissions on the validity of the RFF Decision must thus be rejected.
144. However, since the FIFA decision has to be set aside this also infects the RFF decision which is designed to give the FIFA decision effect in Romania and therefore has to be set aside as well.

#### **11. As to the further requests by the Appellant**

145. The Appellant requests the CAS – inter alia – to establish that the First and the Second Respondent are not entitled to pass any disciplinary decisions against the Appellant related to the awards CAS 2006/A/1109 and CAS 2007/A/1355. The Panel is of the view that this request must be dismissed for several reasons:
146. The Appellant is not freed from the obligations provided under CAS award 2007/A/1355 in the future. Should it decide to again adopt violet not only on its kit but as well in other means of communication designed to identify the Appellant, it would be obviously exposed to sanctions as the facts would then be different to the ones submitted to the Panel in the present proceedings. In this respect, the Panel rejects the prayer of the Appellant preventing FIFA and the RFF from passing any disciplinary decision against the Appellant related to the CAS awards 2007/A/1355.
147. Furthermore the Panel would like to point out that enforcement proceedings according to Art. 71 paragraph 1 FDC were not initiated for all the obligations contained in the enforceable decision CAS 2006/A/1109). This is in particular true for no. 2 of the operative part of CAS award CAS 2006/A/1109 stipulates that “*FCU Politehnica Timișoara is ordered to pay the amount of € 5,000 as compensation to SC FC Politehnica Timișoara SA for each official match played from 5 December 2006, until it effects a name change in accordance with the present award.*” The reason why the first step of enforcement according to article 71 paragraph 1 FDC was not initiated at the time was that the final calculation of the damages was impossible as long as the official name change had not taken place. The situation is different now. The name change was effected on 30 June 2008 and registered on 9 July 2008. Therefore, the overall calculation of the damage can be done at this point in time with the consequence that FIFA could initiate the first step of the enforcement proceedings according to

Art. 71 paragraph 1 FDC regarding this obligation. To sum up, therefore, the request of the Appellant that the Respondents are not entitled to pass any disciplinary decision against it related to the CAS award CAS 2006/A/1109 must be dismissed.

**12. Summary**

148. Based on all the above the Panel decides that the appeal must be upheld insofar as it is directed against the validity of the FIFA Decision and the RFF Decision. However, all other prayers for relief of the Appellant are rejected.

**13. Costs**

149. (...)

**ON THESE GROUNDS**

The Court of Arbitration for Sport rules:

1. The appeal filed by S.C. Fotbal Club Timisoara S.A. is partially upheld.
2. The FIFA Disciplinary Committee's decision dated September 3, 2008 is set aside.
3. The decision of the Executive Committee of the Romanian Football Federation dated September 4, 2008 is set aside.
4. The deduction of six points from S.C. Fotbal Club Timisoara S.A.'s first team ordered by the FIFA Disciplinary Committee on September 3, 2008 and implemented by the RFF by decision of September 4, 2008 is cancelled.
5. FIFA may still enforce item two of the operative part of CAS 2006/A/1109 according to Art. 71 paragraph 1 of the FIFA Disciplinary Code.
6. All other motions or prayers for relief are dismissed.
7. (...)

Operative part done in Lausanne, 11 June 2009  
Complete award done in Lausanne, 13 July 2009

**THE COURT OF ARBITRATION FOR SPORT**

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Lars **Hilliger**  
President of the Panel

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Rui Botica **Santos**  
Arbitrator

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Ulrich **Haas**  
Arbitrator