Arbitration CAS 2021/A/8061 Association Sporting Club Bastiais & SC Bastia v. Fédération Internationale de Football Association (FIFA) & RCD Espanyol de Barcelona, award of 25 April 2023

Panel: Mr Rui Botica Santos (Portugal), President; Prof. Mathieu Maisonneuve (France); Mr José Juan Pinto (Spain)

Football
Disciplinary sanction for failure to comply with a previous FIFA decision
Applicable version of the regulations and principle of non-retroactivity
Second round of written submissions
Closure of proceedings
Definition of "club"
Distinction between sporting succession and sporting continuity
Protection of bona fide third parties
Alleged violation of national public policy alien to the lex causae

1. **Liability for the debts of a third party is not an offense only committed at a certain specific isolated time. On the contrary, it is an action that continues over time. For this reason, the applicable version of the disciplinary regulations must be that of the date of the assessment of the disciplinary offense and not the version existing at the date when the liability is considered to begin. The principle of non-retroactivity cannot imply that the FIFA Disciplinary Code (FDC) 2017 should apply instead of the FDC 2019 and its Article 15. Indeed, Article 15(4) FDC 2019 is only a codification of the jurisprudence of the FIFA DC and CAS regarding sporting sucession prior to the implementation of this provision. It is therefore not material whether the FDC 2017 or FDC 2019 is applied. *Mutatis mutandis* what has been said for the sporting succession also applies to sports continuity events.**

2. **The CAS Code does not contain any provision by virtue of which a CAS panel would be forced to allow a second round of written submissions. Despite this, the panel is always obliged to respect the parties' right to be heard and – when justifiable – can make adjustments to the procedure in accordance with Article R56 of the CAS Code. A second round of written submissions can be admitted in situations of evident exceptional circumstances in order to avoid delays in the procedure. However, the parties can also orally address, debate, and rebut the position and arguments presented by their counterparts in relation to the case in dispute during a hearing. As long as the parties had the opportunity to present their arguments and views before the CAS panel, their right to be heard was respected.**

3. **According to Article 55 lit. b of the FDC 2019, proceedings may be closed when a party is under insolvency or bankruptcy proceedings according to the respective procedures**

provided for by the relevant national law. Based on the wording of the provision, Article 55 of the FDC 2019 gives FIFA a certain discretion as it merely opens a "possibility" and not an "obligation" for procedures to be closed. Moreover, a distinction must be made between the recognition of the debt and its execution. Proceedings initiated before the FIFA Players' Status Committee (PSC) relate to the recognition of a debt, whereas the proceedings before the FIFA Disciplinary Committee (DC) relate to the enforcement of the FIFA PSC decision. The absence of a similar rule as Article 55 of the FDC 2019 in FIFA Regulations on the Status and Transfer of Players (RSTP) as well as in the FIFA Rules governing the procedures of the Players' Status Committee and the Dispute Resolution Chamber, confirms that FIFA's deciding bodies are competent as long as they are asked to address the issue of the recognition of the claim. It is only when they are seized with a request for the enforcement of the claim, that the FDC comes into play and that disciplinary proceedings may be closed if a party declares bankruptcy.

4. **A club is a sporting entity identifiable by itself that, as a general rule, transcends the legal entities which operate it. Thus, the obligations acquired by any of the entities in charge of its administration in relation with its activity must be respected. The identity of a club is constituted by elements such as its name, colors, fans, history, sporting achievements, shield, trophies, stadium, roster of players, historic figures, etc. that allow it to distinguish from all the other clubs. The continuity and permanence over time of the sports institution prevails over the change of administrator, even in the case of change of management companies completely different from each other. The concept of "club" thus goes far beyond the corporate entities that manage it, the existence of which results from the constant professionalization of clubs and inherent creation of legal obligations of incorporation of commercial companies that aim to provide these entities, in general, with a more robust management structure.**

5. **There is sporting succession, on the one hand, when a new entity, taking advantage of various elements of a club (symbol, colors, history, supporters/fans, members, history, athletes, shareholders, among others ...), seeks to continue the activity of said club which, for various reasons, has ceased its commercial activity. Sporting continuity, on the other hand, is a situation in which a club, despite the disappearance of any corporate entities associated with it, remains in business, even taking over the sporting rights of the entity that ceased to exist, without any interruption in its membership of the respective national federation, through at least one entity that subsists. However, when a club loses its professional management structure, whether corporate or not, and later reestablishes another one, it is not always sufficient that the club remains active to establish with certainty that sporting continuity exists. In cases where in the reality and concept of a club there fit together an association/supporting entity and a commercial sport company/corporate entity, both of which take advantage of common elements, it is still possible that the entities manage to create a meaningful separation between each other which suits the distinct legal personalities of both. However, for this to happen, they will have to consistently act independently and according to their own interests,**

giving third parties the idea that they are distinct from each other and that they do not assume each other's responsibilities.

6. **The protection of legitimate expectations is a general principle of law which cannot be considered to be outside the scope of the *lex sportiva*. Therefore, *bona fide* third parties should be protected from any legal intricacies which limit their rights in favor of those which try to take advantage of the benefits of a certain appearance but fail to honor the responsibilities that come with it.**

7. **FIFA rules, like those of other international sports federations, are certainly not supreme rules that CAS could never question. The latter can, and indeed must, do so on the basis of general principles of law or international public policy, within the meaning of Swiss arbitration law, or even the fundamental rules of European Union law or the provisions of international conventions on fundamental rights. Considering the worldwide scope of such sports rules and the requirements of the principle of equality of competitors before the law, CAS cannot, on the other hand, disregard the rules of international federations on the grounds that they allegedly violate a national public policy alien to the *lex causae*, which by definition varies according to the nationality of the parties in dispute.**

I. PARTIES

1. Association Sporting Club Bastiais (the "First Appellant" or the "Association") is a French club affiliated with the French Football Federation (the "FFF"), which, in turn, is affiliated with the Fédération Internationale de Football Association. The Association was created on 6 August 1987 and it runs all amateur teams of the football club named "SC Bastia".

2. Société Coopérative d'Intérêt Collectif (SCIC) Sporting Club Bastia (the "Second Appellant" or "SCIC") is a French commercial company affiliated with the Ligue de Football Professionel (the "LFP"). SCIC is the legal entity named "Sporting Club Bastia" that deals with the professional football team of the Association and was affiliated to the LFP when its first team acceded to the professional competitions for season 2021/22.

3. The Fédération Internationale de Football Association (the "First Respondent" or "FIFA") is the international governing body for football. FIFA exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials, and players belonging to its affiliates. FIFA is an association under Articles 60 *et seq*. of the Swiss Civil Code with headquarters in Zurich, Switzerland.

4. RCD Espanyol de Barcelona (the "Second Respondent", the "Creditor" or the "Espanyol") is a Spanish football club based in Barcelona, Spain, affiliated to the Real Federación Española de Fútbol (the "RFEF"), which in turn is affiliated to FIFA.

5. The Association, SCIC, FIFA and the Creditor are collectively referred to as the Parties; the Association and the SCIC are collectively referred to as the "Appellants"; and FIFA and the Creditor are collectively referred to as the "Respondents".

II. FACTUAL BACKGROUND

6. Below is a summary of the main relevant facts and allegations based on the Parties' written submissions and pleadings at the hearing. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. This factual background information is given for the sole purpose of providing a synopsis of the matter in dispute. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this award (the "Award") only to the submissions and evidence it considers necessary to explain its reasoning.

(A) The Creditor's rights

7. On 28 July 2016, "SC Bastia" and the Creditor concluded a transfer agreement (the "Transfer Agreement") for the transfer of the player C. (the "Player").

8. In the Transfer Agreement, the Creditor's counterparty is identified as *"**SC Bastia**, a professional football club playing in FRANCE whose registered office is at Stade Armand Cesari – 20600 Furiani – France (…)"* (*Emphasis added by the Panel*).

9. For commercial purposes, it was assumed that "SC Bastia" was the legal entity "Société Anonyme Sportive Professionnelle – Sporting Club Bastia" (the "SASP").

10. Under the Transfer Agreement, "SC Bastia" agreed to pay to the Creditor the amount of EUR 300,000 as a transfer fee (the "Transfer Fee").

11. The SASP was the commercial company named "Sporting Club Bastia" that used to manage the first football team of the Association. The creation of this legal entity was due to the French legislation regarding the administration of the first team when their activities met certain thresholds. Article L122-1 of the French Code du Sport requires the first football team to be managed by a commercial legal entity linked to the Association through a management contract (the "Management Contract") which defines the role of each contractual party.

12. The SASP has never paid the Transfer Fee and for this reason breached the Transfer Agreement.

(B) The Creditor's claim before the FIFA PSC

13. On a date that could not be specified, but that took place between the second half of 2016 and the beginning of 2017, the Creditor initiated a claim before the FIFA Player's Status Committee (the "FIFA PSC").

14. On 10 November 2017, the Single Judge of the FIFA PSC issued a decision (the "FIFA PSC Decision") that ordered the "SC Bastia" to pay the Creditor the following amounts:

"(…)

- *EUR 320,000, plus interest of 5% p.a. as follows:*

  i. EUR 20,000 as of 16 February 2017 until the date of effective payment;

  ii. EUR 300,000 as of 19 February 2017 until the date of effective payment.

(…)".

15. On 22 November 2017, the FIFA PSC Decision was notified to "SC Bastia" (fax +33 4 93 […]) with copy to the FFF and RFEF.

16. "SC Bastia" has never appealed or challenged the FIFA PSC Decision.

(C) The SASP's bankruptcy proceedings

17. At the end of the 2016/2017 season, the football team managed by the SASP was relegated to National 1 (3rd Division) after a financial audit made by the *Direction Nationale du Contrôle de Gestion* ("DNCG").

18. On 5 September 2017, and as per the bankruptcy proceedings, the SASP was judicially liquidated and automatically lost its affiliation to the LFP.

19. The Creditor claimed its credit in the bankruptcy procedure but has never received any payment.

(D) The years after the liquidation of the SASP and the incorporation of the SCIC

20. After the liquidation of the SASP, the Association continued to manage the reserve team which used the name "SC Bastia" and the colours of said club.

21. During the sporting season 2017/2018, the team of the Association competed in amateur competitions, namely in the National 3 (French 5th division).

22. During the sporting season 2018/2019, the team of the Association competed once again in the National 3 (French 5th division) and won the competition, therefore it was promoted for the next season.

23. On 15 May 2019, SCIC was created.

24. During the sporting season 2019/2020, the SCIC managed the reserve team (which had formerly been managed by the Association) which played in the National 2 (French 4th division) and won the competition, therefore it was promoted for the next season

25. During the sporting season 2020/2021, the SCIC managed the reserve team which played in the National 1 (French 3rd division) and won the competition, therefore it was promoted for the next season.

26. After being promoted to Ligue 2, before the season 2021/2022 started, the SCIC got affiliated to the LFP since it was mandatory to compete in the professional competition.

27. During the sporting season 2021/2022, the SCIC managed the reserve team which played in the Ligue 2 (French 2nd division).

(E) The Creditor's claim before the FIFA DC

28. On 5 and 27 January 2021, since the outstanding amounts due to the Creditor were not paid, the latter requested the initiation of disciplinary proceedings against the First Appellant.

29. On 9 February 2021, FIFA Disciplinary Committee (the "FIFA DC") opened disciplinary proceedings against "SC Bastia". The relevant notification was sent to [A.]@sc-bastia.net and [B.]@sc-bastia.net with copy to the FFF, RFEF and Espanyol.

30. In front of the FIFA DC, the First Appellant argued in essence that the Association and the SASP should be distinguished, that the SCIC was only created almost two years after the liquidation of the SASP and that neither the SCIC, nor the Association should be considered as the successors of the SASP.

31. On the other hand, the Creditor contested that in September 2017 it was notified by the Court of Bastia regarding the insolvency proceedings and immediately authorized a French legal counsel to represent it during said proceedings which ended with the Court of Bastia recognizing those credits in the amount of EUR 324,283.48.

32. On 8 April 2021, the Single Judge of the FIFA DC issued its decision (the "Appealed Decision" or the "FIFA DC Decision"), established the following:

"(…)

1. SC Bastia is found guilty of failing to comply in full with the decision passed by the Single Judge of the Players´ Status Committee on 10 December 2017.

2. SC Bastia is ordered to pay to:

RCD Espanyol de Barcelona:

- *EUR 320,000 plus 5% interest p.a. as follows:*

- *5% p.a. on the amount of EUR 20,000 as of 16 February 2017 until the date of effective payment;*
- *5% p.a. on the amount of EUR 300,000 as of 19 February 2017 until the date of effective payment.*

- *CHF 5,000 as final costs of the proceedings.*

FIFA:

- *CHF 16,000 as final costs of the proceedings.*

3. *SC Bastia is granted a final deadline of 30 days as from notification of the present decision in which to settle said amount. Upon expiry of the aforementioned final deadline and in the event of persistent default or failure to comply in full with the decision within the period stipulated, a transfer ban will be pronounced until the complete amount due is paid or the non-financial decision is complied with. The transfer ban will be implemented automatically at national and international level by the French Football Association and FIFA respectively, without a further formal decision having to be taken nor any order to be issued by the FIFA Disciplinary Committee or its secretariat. In addition, a deduction of points or relegation to a lower division may also be ordered in addition to a transfer ban in the event of persistent failure, repeated offences or serious infringements or if no full transfer could be imposed or served for any reason.*

4. *SC Bastia is ordered to pay a fine to the amount of CHF 20,000. The fine is to be paid within 30 days of notification of the present decision.*

(…)".

33. On 3 June 2021, the FIFA DC communicated the grounds of the Appealed Decision, which can be summarised as follows:

a) A "club" is as a sporting entity that goes beyond the legal entity that operates it and its obligations must be respected;

b) A "club" is identified by certain elements such as its name, colours, fans, history, sporting achievements, shield, trophies, stadium, roster of players, historic figures, etc;

c) A "new club" must be considered the sporting successor of another if the "new club" created the impression that it wanted to be legally bounded and associated with the "old club" and the competent federation threated the two clubs as successor of one another;

d) On 7 August 2017, after the Association recovered the sporting rights from the liquidated ASAP (*i.e.* on 15 May 2019), the Association then transferred those sporting rights to the newly created entity SCIC, which currently operates the club SC Bastia;

e) The legal entity SCIC is the same sporting entity called "SC Bastia", which it has just changed its administration due to financial problems;

f) FIFA DC found that there were no elements that could indicate that the Creditor remained passive during the SASP's bankruptcy proceedings and hence it had sufficient elements to conclude that the Creditor was diligent in claiming its credit; and

g) SCIC has to be held liable for the debt incurred by the former management of the "SC Bastia".

III. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

34. On 22 June 2021, the Appellants filed their statement of appeal (the "Statement of Appeal") with the CAS, pursuant to Article R47 *et seq* of the Code of Sports-related Arbitration (2021 edition) (the "CAS Code"), against FIFA and the Creditor with respect to the Appealed Decision.

35. The Appellants filed their Statement of Appeal in English, enclosing a few exhibits both in French and English, and requested that these proceedings be conducted in French because, among other reasons, the majority of the exhibits filed are in French.

36. On 28 June 2021, the CAS Court Office initiated the appeals arbitration procedure and invited the Respondents, *inter alia*, to state their positions on the language of the proceedings.

37. On 2 August 2021 and taking into consideration the Parties' disagreement over the language of the procedure, the Deputy President of the Appeals Arbitration Division of the CAS issue the Order on Language ruling that, *"[p]ursuant to Article R29 of the* [CAS Code], *the language of the arbitral procedure* (…) *is English"*. Furthermore, the Order on Language states that *"unless requested by the Panel* (…) [the Appellants] *shall not file English translations of their Statement of Appeal, exhibits and exhibits submitted during the FIFA proceedings"*.

38. On 15 September 2021, the Appellants filed their Appeal Brief (the "Appeal Brief") together with the documents and evidence their intended to rely on, in accordance with Article R51 of the CAS Code.

39. On 29 October 2021, the Respondents filed their Answers (the "Answers") together with the documents and evidence their intended to rely on, further to Article R55 of the CAS Code.

40. On 2 November 2021, the CAS Court Office informed the Parties that the Panel was constituted as follows:

President: Mr. Rui Botica Santos, Attorney-at-Law in Lisbon, Portugal

Arbitrators: Prof. Mathieu Maisonneuve, Professor in Aix-en-Provence, France

Mr José Juan Pintó, Attorney-at-Law in Barcelona, Spain

41. On 8 November 2021, the Appellants requested (i) the possibility to reply in writing to FIFA's and Creditor's arguments, since it was the first time that such arguments were raised; (ii) to order the Respondents – on the basis of Article R44.3 of the CAS Code, to produce within 15 days all documents from the proceedings before the Single Judge of the FIFA's Player's Status Committee that led to the decision of 10 November 2017; (iii) to reject all exhibits that were produced in French; and (iv) consider that FIFA did not present its exhibits in conformity with the CAS rules, since they were filed *"by the way of a link in order to* [be] *download*[ed]*"*. FIFA has neither used the CAS e-filing platform nor sent them by email in accordance with the CAS rules. Article R31 of the CAS Code states that *"[t]he exhibits attached to any written submissions may be sent to the CAS* (…) *by electronic mail, provided that they are listed and that each exhibit can be clearly identified* (…)*"* and Article R55 of the CAS Code states that *"*(…) *the respondent shall submit to the CAS* (…) *an answer containing* (…) *any exhibit* (…) *which the Respondent intends to rely"*.

42. On 10 November 2021, the CAS Court Office sent the following communication to the Parties:

> *"1. The Respondents are invited (…) to comment on the Appellants' request to be granted a second round of written submissions.*
>
> *2. The First Respondent is invited (…) to produce the entire file related to the decision rendered by the FIFA Player's Status Committee.*
>
> *3. Considering the Appellants' request made in [their] Appeal Brief, the Panel has decided to hold a hearing (…).*
>
> *4. The Panel has taken note of the Appellants' challenge of the exhibits in French language, submitted by the Second Respondent with its Answer. The Parties are given until (…) to liaise with each other in order to determine which exhibits must be translated (or not). Should the Parties failed to each an agreement, they will be required to translate all documents submitted in French so far, including the Statement of Appeal and its exhibits and the exhibits submitted during the FIFA proceedings.*
>
> *5. The First Respondent is invited (…) to comment on the alleged non-compliance with the CAS Rues regarding the communication of the exhibits to its Answer".*

43. On 10 November 2021, the Appellants withdrew their challenge against the filing by the Respondents of exhibits in French.

44. On 15 November 2021, the Respondents objected to the Appellants' request to be granted a second round of written submissions.

45. On 16 November 2021, the CAS Court Office informed the Parties that:

"1. Second round of written submissions

Upon review of the Parties' positions, the Panel considers that there are no exceptional circumstances for granting a second round of submissions pursuant to Article R56 of the Code. Consequently, the Appellants' request in this regard is denied.

Notwithstanding the above, (…) the Appellants will have the opportunity to reply to the Respondents' orally during the hearing.

2. Hearing

(…) the Panel intends to hold a joint hearing and tackle all issues in CAS 2021/A/8060 and CAS 2021/A/8061 at the same time. However, and upon request of one of the Parties, the Panel may consider its position and hold two different hearings.

3. FIFA's exhibits

The Panel has reviewed the filing of the exhibits submitted by FIFA and noted the following:

- *The exhibits have been filed together with the Answer on 29 October 2021, ie. within the deadline provided for Article R55 (1) of the Code and further to the extension of time which the Appellant dd not object to;*

- *The Answer and the cover letter cointaining the link with the exhibits have been sent by email on 29 Ovtober 2021 and duly uploaded on the CAS E-Ffilling Platform on 1 November 2021 at 8:30 CET, in compliance with Articles R31(3) and R32 (1) of the Code;*

- *Each exhibit is clearly identified such as, e.g.: "Exhibit 1 – Decision FDD-7701", "Exhibit 2 – PSC Decision", "Exhibit 3 – bundle disciplinary", "Exhibit 4 – SC Bastia TMS details evolution", etc.;*

- *All exhibits are listed on page 29 of FIFA's Answer.*

Furthermore, the Panel has also noted that the CAS Rules do not forbid a party to transmit exhibits via a link such as dropbox, Wetransfer, etc.

In light of the above, the Appellants' request to exclude FIFA's exhibits is denied and, accordingly, such exhibits are admitted to the file".

46. On 6 December 2021, the CAS Court Office informed the Parties that in accordance with Article R57 of the CAS Code the Panel has decided to hold an in-person hearing and, with the agreement of all Parties, the hearing was scheduled for 24 February 2022 in a location to be confirmed.

47. On 15 December 2021, the CAS Court Office requested the Parties to sign and return the Order of Procedure. All Parties returned duly signed copies of the Order of Procedure to the CAS Court Office.

48. On 8 February 2022, the CAS Court Office informed the Parties that the hearing would take place at the new CAS Court Office's headquarters and alternative dates would be proposed to the Parties.

49. On 1 March 2022, after consultation and agreement of the Parties, the hearing was scheduled for 21 April 2022 in Lausanne, at the CAS Court Offices' headquarters.

50. In addition to the Panel and Mr. Fabien Cagneux, CAS Managing Counsel, the following persons attended the hearing on 21 April 2022:

a) For the Appellants:

1) Ms Patricia Moyersoen – Counsel

2) Mr Amaud Bied – In-house Counsel

3) Mr Clause Ferrandi – President of the SCIC

4) Ms. Alia Rahan – Interpreter

b) For the Respondent FIFA:

1) Mr Miguel Liétard Fernández-Palacios - Director of Litigation

2) Mr Alexander Jacobs – Senior Legal Counsel

c) For the Respondent Club Espanyol:

1) Mr Alvaro Gómez de la Vega – Sports Legal Director

51. The Parties had ample opportunity to present their cases, submit their arguments and answer the questions posed by the Panel. The Panel listened carefully and took into account in its subsequent deliberations all the evidence and arguments presented by the Parties although they have not been expressly summarised in the present Award. After the Parties' final submissions, the Panel closed the hearing and reserved its final award.

52. At the conclusion of the hearing, the Parties expressly stated that they had no objection in respect to the manner in which the hearing had been conducted, in particular the principles of the right to be heard and equal treatment of the parties in the arbitration proceedings. However, the Appellants have reinforced the understanding that their right to be heard was violated because they had no opportunity to reply – in writing – to FIFA's argument that the SASP, the Association and the SCIC are the same club "SC Bastia" and that therefore there is not, in a first analysis, a question of "sporting succession" but rather of "sporting continuity" which implies a join-liability of all those entities. This issue will be addressed by the Panel as a preliminary remark in the merits section.

IV. THE PARTIES' SUBMISSIONS

53. The following summary of the Parties' positions is illustrative and does not necessarily comprise each contention put forward by the Parties. The Panel, however, has carefully considered all the submissions made by the Parties, even if no explicit reference is made in what immediately follows.

(A) The Appellants' Submissions

54. In their Appeal Brief the Appellants submit the following prayers and requests the CAS:

"(…)

1) To deem admissible and uphold in its entirely the Appeal Brief filed by the Appellants; and

2) To set aside the Appealed Decision

To order RCD ESPANYOL:

- *To bear all the arbitration and administrative costs pertaining to these appeal proceedings before the CAS; and*
- *To pay the Appellants a significant contribution towards their legal fees and other expenses incurred in connection with these proceedings in an amount to be determined at the discretion of the Panel in accordance with Article R64(5) of the CAS Code".*

(A.1) The identification and the role of the relevant entities in this dispute

55. The Association was incorporated on 6 August 1987, and it is a non-profit-making football association based in Bastia (France). The Association is affiliated to the FFF which in turn is affiliated to FIFA. The Association only runs all amateur teams of the football club named "SC Bastia".

56. On 7 May 1997, the SASP was incorporated, under the form of a Société à Object Sportif (registration number 412 045 122), to manage the first team of SC Bastia, which earned the right to accede to the professional competition from season 1997/98. The incorporation of this commercial company was due to the new legislation regarding the administration of first team when their activities lead to the exceeding of certain thresholds. French Law requires that this commercial company be linked to the Association through a contract which defines the role of each party (the "Management Agreement). The Management Agreement is the contract binding any sports association to the commercial company in order to compel with the Article L.122-1 of the French Sport's Code. The object of this contract is to delegate the management of the first team. Once the first team accedes to the professional level, it is then affiliated to the LFP.

57. The "Old Club" refers in this part of the Award to the commercial company named SASP that used to deal with the first football team of the Association through the implementation of the Management Agreement signed on 7 May 1997 and renewed on 12 May 2015 for a 5-year period until 30 June 2020. The first team of the club acceded to the professional level, it was affiliated to the LFP according to Article 6 of the LFP Statutes. It was disaffiliated from the LFP following its bankruptcy on September 2017 according to Article 7 of the LFP Statutes.

58. The "New Club" refers in this part of the Award to the commercial company named SCIC that deals with the new first team of the Association. SCIC was affiliated to the LFP when its first team acceded to the professional competitions (season 2021/2022).

(A.2) The relationship between the different entities "SC Bastia"

71. The Association acceded to the professional level in 1995, namely to the second division, actually named Ligue 2. It won the French Football Cup in 1981.

72. Under the Management Agreement, the professional team of SC Bastia participated in all competitions organised by the LFP from 1997/98 up to 2016/17. During this whole period, the Association continued to manage the amateur football teams, including the reserve team.

73. During the 2016/17 season, the professional team managed by the SASP ended up last in the Ligue 1 Championship and it was relegated to Ligue 2. Due to its financial difficulties, the Direction Nationale du Contrôle de Gestion (DNCG – the Authority controlling the French clubs' accounts) after a financial audit, relegated the SASP's professional team to National 1 (3rd Division) for the 2017/18 season.

74. The SASP lost its professional status since it was not participating in professional competitions anymore and, on 7 August 2017, the Association terminated the Management Agreement. This situation led to a judicial liquidation of the SASP (declared by the Tribunal de Commerce de Bastia on 5 September 2017) and, consequently, the SASP lost all its sporting rights, and these rights were not reallocated to the Association. The *professional team* was liquidated and the SASP was disaffiliated from LFP.

76. During 2017/2018 and 2018/2019 seasons the Association competed in National 3 Championship with its *"reserve team"* (i.e. the 5th Division). The *reserve team* could be managed by the Association because it was not a *professional team*.

77. Due to its sporting performance the *reserve team* was promoted to National 2 Championship for the 2019/20 season and to National 1 Championship for the 2020/21 season. Then, at the end of 2020/21 season, the *reserve team* acceded to professional level and played in Ligue 2 for 2021/22 season.

79. The New Club was only created after 2-year gap of the liquidation of the Old Club.

(A.3) The incompetence of FIFA DC

(a) The impossibility of initiating a disciplinary procedure due to the judicial liquidation of the Old Club before FIFA PSC rendered its decision

82. The FIFA PSC Decision only concerns the Old Club. The Association was not involved in FIFA PSC proceedings and the Old Club was subject to a judicial liquidation on 5 September 20217 and was already disaffiliated from the LPF and indirectly FFF, before FIFA PSC rendered its decision.

83. As per Article 55(b) and (c) of the FIFA Disciplinary Code (the "FDC") edition 2019 (the "FDC 2019") the disciplinary proceedings may be closed if (i) a party is under insolvency or bankruptcy proceedings according to the respective procedures provided for the relevant national law; and (ii) a club is disaffiliated from an association.

84. Consequently, no disciplinary proceedings could have been initiated by the FIFA DC based on the FIFA PSC Decision. This is also supported by CAS jurisprudence – CAS 2017/A/5460 (para. 18).

(b) The incompetence of the FIFA DC to rule against the New Club

85. The FIFA DC used Article 53(2) of the FIFA Statutes to justify its competence in relation to the New Club. However, under 53(1) of the FIFA Statues, the FIFA DC is only *"(…) competent to sanction any breach of FIFA regulations which does not come under the jurisdiction of another body"*. As per Article 23(1) of the FIFA RSTP, *"[t]he* [PSC] *shall adjudicate on any of the cases described under article 22 c) and f) as well as on all other disputes arising from the application of these regulations, subject to article 24"*.

86. This dispute falls under Article 22(f) of the FIFA RSTP which states *"disputes between clubs belonging to different associations that do not fall within the cases provided in a), d) and e)"*.

87. Neither the Association, nor the New Club were party to the aforesaid Transfer Agreement or to the procedure before the FIFA PSC. So, the Creditor should bring the case before the FIFA PSC instead of requesting the enforcement of the FIFA PSC Decision (concerning the Old Club) against the New Club and the Association.

(c) The misuse of Article 15.4 of the FDC 2019

89. FIFA DC based its decision on Article 15.4 of the FDC 2019.

90. The dispute should be resolved under the aegis of the FIFA Disciplinary Code, edition of 2017 (the "FDC 2017"). This version should be the one applicable to the facts of the case.

91. Article 4(1) of the FDC 2019 states that *"[t]his Code applies to all disciplinary offences committed following the date on which it comes into force"*. The principle of non-retroactivity of the law.

92. Article 4(2) of the FDC 2019 states that *"[t]his Code also applies to all disciplinary offences prior to the date in which it comes into force, subject to any milder sanction that would apply under previous rules"*. The exception is the *mitius* retroactivity which means that milder substantiative criminal law must retroact, so a new law will apply to acts committed before the entry into force of the aforesaid law. The law has to be milder for the defendant.

93. This criminal law principle has been adopted by sports law – CAS 2003/A/447. The FIFA Statutes do not give any guidance on how to apply the retroactivity and its exceptions. For this reason, it is important to check Swiss Law and Article 2(2) of the Swiss Criminal Code states that *"[a]ny person who commits a felony or misdemeanor prior to this Code coming into force is only subject to its terms in the event that the penalty hereunder is less than the penalty that would otherwise apply"*.

94. Article 15(4) of the FDC 2019 ignores the mandatory principle of law and fundamental rights. This provision violates the principle of legality and predictability of sanctions. If the New Club would have been predicted that Article 15.4 of the FDC 2019 would apply, it would have taken due diligence to make clear that it has no connection with the Old Club.

95. It is irrelevant the fact that the FIFA DC stated that the potential failure to comply with the FIFA PSC Decision was committed after the FDC 2019 entered into force, because the supposed disciplinary offense started from the date of the notification of the FIFA PSC Decision which compelled the Old Club to pay the sum on 23 November 2017.

96. The so-called "sporting successor" liability was created by the FDC 2019. The FDC 2017 does not contain such liability.

(A.4) Alternatively, the misapplication of the concept of "sporting successor" applied to the Association and the New Club

a) By applying the criteria of Article 15.4 of the FDC 2019 the New Club is not the "sporting successor" of the Old Club

97. The following elements and grounds should be taken into consideration:

i. Location of the head Office: the Old Club had its administrative permises in the Stade Armand CESARI. The permises and the the Stadium are owned by the City of Bastia and were rented to the Old Club. Upon the liquidation of the Old Club, the Association did not recover its administrative permises and simple kept its own administrative premises. Even if the Old Club and the Association had the same address they were located in different buildings.

ii. The name of the club "SC Bastia": since 1987 this name belongs to the "Association" and the name was made available to the Old Club in return of a fee, in accordance with the Management Agreement. With the termination of the Management Agreement, the Association recuperated the name and the logo "SC Bastia". The New Club is using the name and the logo, after 2 year of the Old Club's liquidation and as per a new agreement

with the Association. Under the FFF General Statutes – *Règlements Généraux* de la FFF – Article 27.2) it is an obligation for the commercial company, which runs the first team, to carry the same name as the Association it is linked.

iii. Legal form of the Old Club and the New Club: they do not have the same legal form. The Old Club is a professional sport limited company (*"Société Anonyme Sportive Professionelle"*) and the New Club is a corporative society of collective interest (*"Société Coopérative d'Intérêt Collectif"*).

iv. The team colours of the clubs: the colours of the New Club are the colours of the city shield (black, blue and white).

v. Team players: only one player (Mr Gilles Cioni) of the professional team of the Old Club integrated the staff of the Association – playing at the National 3 Team (5th Division – amateur competition) for the season 2017/18. This player chose to join the Association because he was born in Corsica and had not received any offer to join another club.

vi. Shareholders and management of the Clubs: there are different individuals as shareholders and directors. It is also noted that the New Club has a different categories of shareholders members, including (i) private partners; (ii) public partners; (iii) supporters; (iv) the employees of Sporting Club Bastia; and (v) the Association Sporting Club Bastiais. None of these stakeholders have the control of the New Club.

vii. The Sports Rights of the Old Club: Neither the New Club nor the Association benefit from the sports rights of the Old Club. The disaffiliation of the Old Club from LPF interrupted the sport's continuity. Only the sporting rights of the *reserve team* were maintained by the Association, but this entity was always responsible for this team; and

viii. The Sports Assets of the Old Club: The New Cub was not incorporated with the aim of acquiring the assets of the Old Club. The New Club was created in 2019 and was affiliated to LPF only in 2021 once the *reserve team* got access to Ligue 2. The Old Club was liquidated in 2017.

98. In light of the above elements neither the New Club nor the Association can be considered as the successor of the Old Club within the meaning of Article 15(4) of the FDC 2019.

b) By applying the the criteria considered by the most recent CAS awards

99. As per CAS jurisdiction the concept of *"sporting successor"* has to be analysed on a case-by-case basis and should be applied in a restrictive way (CAS 2020/A/6873 & 2020/A/7183).

100. The facts related to this dispute have no connection to the cases CAS 2007/A/1355, 2011/A/2646, 2016/A/4550-4576, 2018/A/5618, and 2020/A/7092.

101. The concept of "sporting successor" should be assessed having into consideration the following elements and weight:

i. **Elements of minor importance**: same headquarters; same stadium/training centre.

ii. **Relevant elements**: same name; same legal form; same team colours; same team crest/emblem/logo; same social media.

iii. **Important elements**: same players; same technical staff, same shareholders/stakeholders/ownership/management; registration in the same category of competition; claimed solidarity contributions for players trained by the old club; and reliance on the old club's history.

102. As pointed out by the CAS 2020/A/6873 it is the duty of the Creditor to objectively demonstrate the existence of what he alleges – Article 12(3) of the FIFA Rules Governing the Procedures of the PSC and Article 8 of the Swiss Civil Code.

103. There is no indication that the New Club was incorporated with the purpose of escaping the obligations entered into by the Old Club or of continuing the exact same activities of the Old Club. There is no evidence of any scheme or abuse from the Association or the New Club to be considered the debt successor of the Old Club**.** The criteria of "abuse" is important and was raised by FIFA in its circular No. 1681 related to the introduction of Article 15(4) FDC 2019: *"FIFA will act against the sporting successor of a debtor, a practice that has unfortunately become more common in recent years as clubs attempt to avoid mandatory financial responsibilities toward other clubs, players, managers, etc."*. In the present case there is no evidence to support a finding that the New Club breached any provision and rule and/or harmed any protected interests by its actions.

104. There is no abuse from the Association or the New Club. The New Club was incorporated not to avoid any financial obligations, but rather to comply with the Article 122-1 of the Code of Sport, which compels amateur clubs to create a company when the reserve Team's activity generated assets that exceed the said provision thresholds.

105. Therefore, the New Club cannot be bound by the Old Club's obligations, and neither be bound by the FIFA PSC Decision.

(A.5) Conclusions

106. As summarised by the Appellants, the Panel should have in mind the following:

"(…)

- *There is no indication that the New Club was set up with the specific purpose of escaping the obligations entered into by the Old Club or of continuing the exact same activities as the Old Club since it was created 2 years after and only because the reserve team's activities led to financial exceeds.*

- *There is no evidence on file suggesting that there was any connection whatsoever between the two commercial companies, that they entered into any contractual agreement or that they even shared any common interest.*

- *The New Club did not acquire any right from the Old Club. It only acquires rights from the Association for the reserve team.*

- *The New Club did not replace the Old Club in the championship. The New Club runs only the reserve team which is totally different from the professional team run by the Old Club till 2017.*

- *Neither FFF nor LFP have never treated the New Club as the successor of the Old one. They do not consider the SCIC as a transfer or a succession of SASP's sporting rights.*

- *The New Club has never accepted to be the Old Club's successor.*

- *The premises did not belong to the Old Club, but to the City of BASTIA.*

- *The name of the Club did not belong to the Old Club but to the Association.*

- *The stadium did not belong to the Old Club, but to the Urban Community of Bastia. In fact, the stadium Armand Cesari is the only stadium around, and more specifically the only stadium in whole Corsica that has this accommodation capacity for supporters and staffs. There are around 16,000 seats. So, the reason why they both use the same stadium, is only because supporters would not fit in a smaller stadium.*

- *As for the registered number, the Old Club is registered under the ID number: 412 045 122, whereas the New Club is registered under the ID number: 850 959 131.*

- *As for the technical staffs, it is important to note that no members of the technical staff or coach of the Old Club joined the staff of the Reserve Team during the 2017/2018 season or the staff of the professional team of the New Club during the 2021/2022 season".*

(B) The FIFA's Submissions

107. In its Answer FIFA submitted the following prayers and requests to the CAS:

"(…)

FIFA respectfully requests the Panel to issue an award on the merits:

(a) Rejecting the requests for relief sought by the Appellant

(b) Confirming the Appealed Decision;

(c) Ordering the Appellant to bear the full costs of these arbitration proceedings;

(d) Ordering the Appellant to make a contribution to FIFA's legal costs.

(…)".

(B.1) Which FDC edition is applicable

108. The Appellants' understanding, pursuant to which they would not be liable for the payment of the Creditor's claim if this dispute were analyzed in light of the FDC 2017 – which was in force on the date that the FIFA PSC Decision was issued – is incorrect. The FDC 2019 does not create a new responsibility and sanction.

109. Article 15(4) of the FDC 2019 and Article 64 FDC 2017 share the same *ratio legis* and purposes. Article 15(4) of the FDC 2019 is the codification of the preexisting CAS jurisprudence that has been previously applied when Article 64 FDC 2017 existed.

110. The principle of *sporting succession* already existed and Article 15(4) FDC 2019 has not changed the outcome of these proceedings if Article 64 FDC 2017 would have been applied.

(B.2) "Sporting Club Bastia" has remained the same club uninterruptedly before and after the change of ownership in 2017

(B.2.1) General remarks

111. FIFA claims that the Appellants shall not be considered a different club than the one that entered into an agreement with the Creditor and it shall be deemed responsible for the failure to comply with the FIFA PSC Decision either because (i) the Panel finds it to be the same club that was created in 1905 (FIFA's primary position) or because (ii) the Appellant is considered the sporting successor of the original club which it contends to be SASP (FIFA's secondary position).

112. The Appellants main line of defense relies on the bankruptcy proceedings of SASP and the change of ownership of SC Bastia. In FIFA's views, these facts have not ceased any responsibility *vis-à-vis* of the debts that were originated prior 2017. The SASP's bankruptcy proceedings never affected the continuity of the Club.

113. The history and sporting activity of SC Bastia has been carried out uninterruptedly before and after 2017 and for this reason this case is not a *stricto sensus* case of sporting succession.

114. Only the Association is affiliated to the FFF and its registration number has always been the same before the FFF and the FIFA Transfer Matching System (the "TMS"). According to the information contained in TMS, the Club has maintained unchanged its Club ID number (which is 1324) since its profile was created in 2008. Similarly, its National ID (508009) has remained the same for more than 13 years. This last identification number also appears in the employment contracts signed by the Club under the nomenclature *"N.º d'affiliation F.F.F."* and it has remained unchanged despite the changes of the entities that managed the first team of the Club during the last 5 years as can be confirmed from information uploaded in the TMS between 2014 and 2021.

115. The fact that the Associations' first team might have to be managed by another entity – as established by the French Regulations – does not change the fact that the club – i.e. the member of the FFF and indirect member of FIFA – has remained the same since it was created in 1905.

116. The Appellants intend to benefit from all the assets and key features of SC Bastia but decline to accept any financial liability from the debts that were generated prior to 2017.

(B.2.2) Continuity of club SC Bastia regardless of the entity that has managed it

117. Article 22 of the FFF's General Regulations confirm that clubs can only be affiliated to the FFF through associations; and Articles 26 and 27 of the FFF's general Regulations also confirm that clubs must have the form of an association and the companies that have to be constituted to run a professional team. This explains why the Appellants have maintained the same sporting elements that identify it as the historic French club since 1905: (i) the same license with the FFF; (ii) the same name "SC Bastia"; (iii) the same history – the Appellants' website refers the existence of the club since 1905; (iv) the same titles – the website includes SC Bastia's past titles since 1922; (v) the same colours; (vi) the same logo; (vii) the same registered address – maintained its headquarters in "Stade Armand Cesari – 20600 – Furiani"; (viii) playing at the same stadium – and it is irrelevant who owns the stadium; and (ix) the same internet domain & social media accounts (internet and twitter accounts). All the elements that constitute the identity of the Appellants as SC Bastia continued to be existing.

118. Regardless of which entity has managed SC Bastia or its first team, that club, through the Association, (i) remained a member of the FFF, (ii) has continued to develop its activity in the same way as before 2017, (iii) has no reason to not be bound anymore by its agreements and the debts accrued before 2017 and consequently (iv) it shall bear the disciplinary consequences of its failure to comply with the PSC Decision under Article 15 FDC 2019.

(B.3) Alternatively, the Appellants' situation can be considered a case of sporting succession case

(B.3.1) The Disciplinary Committee is entitled to analyze the matter of sporting succession

a) The irrelevance of the bankruptcy proceedings of SASP

119. The Appellants claim that the FIFA DC was not entitled to open disciplinary proceedings because, at the time of the PSC Decision, the SASP was no longer affiliated to the LFP (Article 5 of the FDC 2019).

120. The Appellants have not challenged the PSC Decision based on the liquidation of the SASP. The SASP was liquidated on 5 September 2017 and the initiation of the procedure before FIFA PSC was on 10 November 2017. Now it is too late to raise such argument.

121. In 2017, the FIFA PSC could not apply the FDC 2019 as the Appellant argues.

122. Previous CAS awards have already confirmed that the FIFA PSC (as the FIFA DRC) should not terminate its proceedings in case a club enters into insolvency or bankruptcy during horizontal disputes (see CAS 2012/A/2754, para. 56).

123. Article 55 FDC 2019 does not impose an obligation to close a case, it only entitles the Disciplinary Committee to do so at its own discretion – the relevant provision says *"(…) may be closed (…)"*.

124. Article 55(c) FDC 2019 requires a club's disaffiliation from an association and not from a league as it happened.

125. Whenever a club (or the company managing it) becomes insolvent or bankrupt the Disciplinary Committee may close the pertinent proceedings (CAS 202015/A/4162), but it will not do so in cases in which it is informed about the existence of a sporting successor.

b) The Disciplinary Committee was the competent body to adjudicate this matter

126. The Appellants are claiming the revision of the matter by the PSC, but the matter has already been decided by the PSC Decision and this decision is final and binding towards the original debtor club and all sporting successor(s), as confirmed by FIFA and CAS jurisprudence. FIFA DC is competent to rule on the issue of sporting succession of clubs and there is no need to refer the case back to the PSC whenever a sporting succession of a debtor takes place.

c) The Appellants are the sporting successor of SASP

127. General considerations:

(i) The guiding principle behind all cases of sporting succession is the *"(…) new club's intention to be seen by the general public as the same original club that ceased its activities"* (CAS 2017/A/5050, para. 100 & CAS 2020/A/6884, para. 142).

(ii) It is the willingness to take advantage of the original club's goodwill that generates the obligation to, simultaneously, be liable for the debts that remained unpaid by the original club.

(iii) Sporting succession has to be analyzed on a case-by-case basis, as there is no exhaustive list of elements / criteria to identify a sporting successor. The overall context is important in the assessment of the matter.

128. No need for fraudulent conducts:

(i) A finding of sporting succession does not have to derive necessarily from a fraudulent conduct, nor does FIFA have to prove the existence of a malicious intent from the sporting successor. "Abuse" or "fraudulent conduct" can be an element to take into consideration, but it does not constitute a condition *sine qua non*.

(ii) Regardless of the "abusive intention" or "fraudulent conduct" of the Appellants behind the transaction that led to the sporting succession, the Disciplinary Committee is able to analyze and conclude, on the basis of the so-called *"lex sportiva"* and the ensuing specificity of sport, that SCIC has become the sporting successor of SASP.

129. Elements that reveal a sporting succession between SASP, the Association and SCIC:

(i) *in casu,* the following elements demonstrates the existence of a sporting succession: (i) both SASP and SCIC were/are entities owned (at least partially) by the Association, which is the only entity affiliated to the FFF; (ii) both SASP and SCIC have the same object and purposes, which is to run the *first team* of the Association – as per French regulations, the incorporation of a corporate structure to manage the *first team* is required; (iii) the Appellants recognize that the SCIC's rights to become a member of the LFP came from the Association – this is the reason why it mentions the "old" and "new" clubs; (iv) the so-called "New Club" by the Appellants runs the *reserve team* of the club, a team that before SASP was declared bankrupt was the SC Bastia's *first team*. This *first team* was the one that was managed by the Association and thereafter by SCIC. SASP ceased being a member of LFP – due to the bankruptcy proceedings as from September 2017 – however it is undisputed that SC Bastia continued competing in amateur football during 2017/18 season onwards[1] - the evolution of the SC Bastia reveals the sporting continuity between SASP and SCIC even if there was a gap in the categories of competitions in which such entities managed the *first team* of the SC Bastia; (v) the Association's affiliation number at the FFF has remained unchanged for more than 7 years; (vi) the declarations from SCIC's own president which has recently considered that SCIC was returning to professional football in a clear reference to SASP's last stance in Ligue 1 until 2017; (vii) the Appellants use the same stadium with which the original club is identified; (viii) the fan base is the same since 1905; (ix) by identifying itself as the exact same club that had earned popularity in Corsica for over a century, the Appellants have benefited from a pre-existing fan base, commercial value and a legacy that a real new club have never obtained from one day to another; (x) it is irrelevant the different corporate and tax identification numbers – this is a purely administrative aspect, since *"a club is a sporting entity identifiable by itself that as a general rule transcends the legal entities which operate it"*; (xi) it is also no avail the fact that the technical staff or the majority of the players employed by the SASP in 2017 did not continued to be employed after the professional *first team* was obliged to play in amateur football for sporting and financial reasons.

130. As CAS has confirmed, a club is a sporting entity identifiable by itself that transcends the legal entities, which operate it. It is undisputed that since its creation in 1905, the football club

[1] In the 2018/19 the Appellant/SCIC ensured its promotion when there were still 3 matches of the season to be played; In the 2019/20, the Appellant/SCIC won the championship; In the 2020/21 season, the Appellant/SCIC promoted to Ligue 2 being proud of its return to professional football.

known as SC Bastia has been continuously and uninterruptedly identified by its fans and by the general public until today.

131. CAS has relied in the past on the "general principle of law, expressed by the maxim *"guius commode, ejus et incommode"* (meaning that the one who seeks and obtains a benefit must also accept the possible burdens which flow from that benefit – CAS 2009/A/1996, para. 51 of the abstracts published by CAS; CAS 2009/A/1881).

(B.4) The Appellants violation of Article 15 FDC 2019 – Failure to respect a decision

132. The Appealed Decision is the result of the disciplinary proceedings opened against the SC Bastia (*i.e* against the Appellants) for the violation of Article 15 FDC 2019 – due to the failure to comply with the FIFA PSC Decision.

133. The sprit of Article 15 FDC 2019 is to ensure compliance with decisions rendered by a body, a committee, or an instance of FIFA or CAS. The Swiss Federal Tribunal has deemed that the system of sanctions established for the event of non-compliance with FIFA's decisions or those of CAS is lawful.

134. Article 15 FDC 2019 is to be considered not as an enforcement mechanism, but rather as a means to control and compliance with decisions through the imposition of a sanction based on a breach of the association's regulations and under the terms of association laws. It must be highlighted that the FIFA DC cannot review or modify as to the substance a previous decision, which is final and binding and thus become enforceable. The FIFA DC has the sole task to analyze if the debtor complied with the final and biding decision of the relevant body.

135. The main question to be answered by the FIFA DC – and now by the Panel – is limited to the issue whether or not the financial amounts ordered by the Appealed Decision had been paid to the Creditor. Any other consideration would fall out of the scope of the disciplinary proceedings under Article 15 FDC 2019.

136. The Appellants were duly informed of the opening of the disciplinary proceedings on 9 February 2021.

137. The Disciplinary Committee correctly imposed disciplinary measures on the Appellants.

(C) Espanyol's Submissions

138. In its Answer, Espanyol seeks the following prayers and requests from the CAS:

"Based on the foregoing, FIFA respectfully requests the Panel to issue an award on the merits:

a) Rejecting the requests for relief as requested by the Appellant;

b) Confirming the Appealed Decision;

c) Ordering the Appellant to bear the full costs of these arbitration proceedings;

d) Ordering the Appellant to bear or, at least, make a contribution to RCD Espanyol de Barcelona's legal costs".

(C.1) Continuity of the club "SC Bastia"

139. SC Bastia never ceased to exist. As confirmed by the FIFA TMS the Association remained active since 2014 and did not change any important information such as national ID or even the phone number.

140. SCIC presents itself as winner of several championships, contradicting the thesis that SCIC, the Association and SASP are/were different clubs.

(C.2) Alternatively, the Appellants should be considered the sporting successors of "SC Bastia"

141. The Appellants have incorporated all SC Bastia elements, among other its history, its own website, social media, trophies and public declarations from the management such *"Time for reconstruction"* and *"the association then ensures continuity, and the club starts again in 5th division"*.

142. The SCIC has incorporated, at least, six employees who have been working for the Association for a time that includes the bankruptcy proceedings and the creation of the SCIC, which in the Creditor's view makes no sense since there should be a new company and a new employment contract.

(C.3) Conclusions

143. The Appellants should comply the FIFA DC Decision because:

"a) SC Bastia has remained an active club carrying the same name, logo, jersey, stadium;

b) SC Bastia presents itself as a club with more than 100 years of history an proclaims as its own the trophies of that past;

c) SC Bastia has never been disaffiliated from [the FFF]*;*

d) SC Bastia presents its new structure and owners as part of a rebuilding, restructure but never as a new club and never as a different club;

e) SC Bastia maintains employees, social media accounts and many other identifiable assets that are part of the club before its alleged liquidation;

f) Creditor was diligent in claiming its credit under the SASP's bankruptcy proceedings and regardless its duty has never received any payment".

V. JURISDICTION OF THE CAS

144. Article R47 of the CAS Code stipulates:

"An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body".

145. In addition, Article 57 (1) of the FIFA Statutes states:

"FIFA recognizes the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, Members, Confederations, Leagues, Clubs, Players, Officials and licensed match agents and Players' agents".

146. Furthermore, Article 58 (1) of the FIFA Statutes establishes:

"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question".

147. The jurisdiction of the CAS, which is not disputed by the Parties, derives from Article R47 of the CAS Code and Article 58 (1) of the FIFA Statutes in connection with Article 24 (2) Regulations on the Status and Transfer of Players (the "RSTP"). Furthermore, the jurisdiction of the CAS is further confirmed by the Order of Procedure duly signed by all Parties.

148. It follows that CAS has jurisdiction to hear this matter.

149. According to Article R57 of the CAS Code, the Panel has full power to review the facts and the law of the case and can decide the dispute *de novo*. The Panel may issue a new decision which replaces the decision challenged, may annul the decision, or refer the case back to the previous instance.

VI. ADMISSIBILITY

150. Article R49 of the CAS Code provides as follows:

"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late".

151. Article 58 (1) of the FIFA Statutes reads as follows:

"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question".

152. The Panel notes that the admissibility of the Appeal is not contested by the Parties. The grounds of the FIFA Decision were notified to the Appellants on 3 June 2021 and their joint Statement of Appeal was filed on 22 June 2021, *i.e.* within the 21-day deadline fixed under Article 58 of the FIFA Statutes.

153. The joint Appeal Brief was filed on 15 September 2021, in compliance with Article R51 of the CAS Code due to the time extension granted to the Appellants by the CAS Court Office.

154. It follows that this appeal is admissible.

VII. APPLICABLE LAW

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

"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in absence of such 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

156. Article 57 (2) of the FIFA Statutes sets forth as follows:

"The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law".

157. The Panel notes that the Parties agree on the application of the FIFA regulations but have a different view in relation to the applicable version of the FDC. The Appellants submit that the applicable version is the FDC 2017 because it was the one in force at the date of the SASP's liquidation. For their part, the Respondents argue that it should be the version in effect at the date of the FIFA disciplinary proceedings (FDC 2019).

158. Consequently, the Panel will apply primarily the rules and regulations of FIFA, particularly the FDC and the FIFA Regulations on the Status and Transfer of Players (the "RSTP"), and Swiss law on a subsidiary basis. The issue concerning the applicable edition of the FDC will be addressed below.

159. The Appellants argue that the FDC 2017 applies to the present case and that the FDC 2019 cannot be applicable to the present case, as it would be contrary to the principle of the non-retroactivity of the disciplinary/criminal law. In fact, according to Article 4 of the 2019 FDC:

"1. This Code applies to all disciplinary offenses committed following the date on which it comes into force.

2. This Code also applies to all disciplinary offenses committed prior to the date on which it comes into force, subject to any milder sanction that would apply under previous rules".

160. The Appellants' argument is based on the fact that the FDC 2019 introduced the provision of Article 15 (4), which states the following:

"The sporting successor of a non-compliant party shall also be considered a non-compliant party and thus subject to the obligations under this provision. Criteria to assess whether an entity is to be considered as the sporting successor of another entity are, among others, its headquarters, name, legal form, team colours, players, shareholders or stakeholders or ownership and the category of competition concerned".

161. The Appellants believe that the introduction of the above provision constitutes a new incrimination that was created after the disciplinary offense was committed and, under the *in mitius* retroactivity principle, the FDC 2017 should apply to the case at hand. Since FDC 2017 does not contain any provision on "sporting successor", the Association, SCIC and SASP should be considered separate legal entities, and no liabilities between them apply.

162. The First Respondent, on the other hand, argues that Article 15 (4) of the FDC 2019 *"is nothing else than the codification of pre-existing CAS jurisprudence (most of which has even been quoted by the Appellant itself) that had been previously applied also when only Article 64 FDC existed. Hence the Appellant contradicts itself when it comes to this point".*

163. Taking into consideration the Parties' position on the matter, the Panel is of the opinion that Article 4 of the FDC 2019 solves adequately this issue. It cannot be said that the offense in question was only committed at a certain specific isolated time. On the contrary, the offense at issue here is a continuous action – liability for the debts of a third party – that continues over time. For this reason, it is the Panel's view that the version applicable must be that of the date of the assessment of the disciplinary offense and not the version existing at the date when the Appellants' liability is considered to begin.

164. More importantly, the Panel does not see how the retroactivity in *mitius* can apply to the present case, since cases of sporting succession, were also regularly decided before the introduction of the FDC 2019 and its Article 15. This much is confirmed by the award of the CAS 2020/A/7092 (para. 64): *"(…) Article 15(a) FDC 2019 is a codification of the jurisprudence of the FIFA DC and CAS prior to the implementation of this provision. It is therefore not material whether the FDC 2017 or FDC 2019 is applied to the matter at hand".* This is also confirmed by the CAS jurisprudence which the Appellant himself cites in its Appeal Brief (CAS 2017/A/1355; CAS 2011/A/2646; CAS 2016/A/4550) and it is interesting to note that the Appellant himself also makes some arguments, namely the incompetence of the FIFA DC to issue the Appealed Decision, which is based in the FDC 2019. *Mutatis mutandis* what has been said for the *sporting succession* also applies to *sports continuity* events.

165. In line with the above, the Panel is of the opinion that the FDC 2019 applies to the case at hand in line with its Article 4.

VIII. MERITS

(A) What is this case about?

166. The present Appeal has been filed against the Appealed Decision by which the FIFA DC found the Appellants guilty of failing to comply in full with the decision passed by the FIFA PSC on 10 December 2017, based on the fact that the Appellants and the SASP were considered to be the same sporting club.

167. The Appellants only requested the revocation of the Appealed Decision without questioning the proportionality of the imposed sanctions (see para. 30). For this reason, this issue is undisputed and shall not be addressed by the CAS.

168. The Appellants have raised some preliminary issues which the Panel must address prior to the merits of the dispute, namely (i) the violation of the right to be heard during the CAS proceedings; (ii) the applicable edition of the FDC; and (iii) the incompetence of the FIFA DC to decide the dispute, based on the arguments that the FIFA DC was not competent to decide the matter in dispute and that the FIFA PSC should have closed the proceedings against the SASP.

169. After reaching its conclusions regarding said preliminary issues, the Panel will turn its attention in the merits to the main questions at hand: (i) can the Appellants be considered the same club as "SC Bastia" which was ordered to pay an amount to the Second Respondent by the PSC Decision? and, if so (ii) what are the legal consequences?

(B) Was the right to be heard of the Appellants violated?

170. The Appellants have argued that their right to be heard had been violated in the face of the Panel's decision not to allow the second round of written submissions which would be targeted at answering the concerns regarding the argument of the sporting continuity brought forth by the First Respondent (para. 52 above).

171. The Panel would like to emphasize that the CAS Code does not contain any provision by virtue of which the Panel would be forced to allow a second round of written submissions. Despite this, the Panel is always obliged to respect the parties' right to be heard and – when justifiable – can make adjustments to the procedure in accordance with Article R56 of the Code.

172. The Panel reaffirms its position communicated to the Parties on 16 November 2021 (see para. 45 above) and reinforces its position by clarifying the following:

(a) The justification presented by the Appellants does not fall under the concept of "exceptional circumstances"[2]. The admission of a second round of submissions should be decided in situations of evident exceptional circumstances – which was not the case – in order to avoid delays in the procedure.

(b) Despite the position of the Respondents that it was unnecessary to hold a hearing, the Panel decided, in line with the position of the Appellants, that a hearing should be held to further discuss the position and argument of the Parties in relation to the case in dispute. In this circumstance, the Parties could orally address, debate, and rebut the arguments presented by their counterparts. This is the rationale of the hearing.

(c) The decision to refuse the second round of submissions did not preclude the Appellants from submitting – provided the requirements for their admissibility were met – any documents they deemed necessary to rebut FIFA's alleged new arguments. The Panel notes that the Appellants have not requested the production or the admissibility of any new evidence in this regard and that their sole purpose was to discuss the Respondents' arguments regarding the existence of sporting continuity.

173. In addition to the above, the Panel highlights that para. 38 of the Appealed Decision already addressed the alleged new argument presented by FIFA in relation to the "sports continuity":

"In light of the above, and bearing in mind that i) the legal entity SCIC acquired the SC Bastia's brand and ii) shares with the SC Bastia the entirety of the elements identifying a sporting entity, namely the name, the emblem, colours and history, ***the Single Judge has no other alternative but to conclude that the legal entity SCIC, is to be regarded as the same sporting entity as "SC Bastia"****"* (Emphasis added by the Panel).

174. The above-referenced paragraph of the Appealed Decision clearly demonstrates that the argument of the "sports continuity", *i.e.* that the Association and the SCIC are to be regarded as the same sporting entities as "SC Bastia", could not come as a surprise to the Appellants. Therefore, the Appellants had the opportunity to address in their Appeal Brief their position in relation to the FIFA's argument that the Appellants' liability was based on "sports continuity".

175. In any case, the Appellants had the opportunity to present their arguments and views before the Panel. It should also be noted that at the end of the hearing the Appellants confirmed their

[2] In accordance with MAVROMATI/REEB (*"The Code of the Court of Arbitration for Sport, Commentary, Cases and Materials"*, Wolters Kluwer, 2015, p. 498-499): *"(…) The Panel will normally accept the late filing of the submissions if they are related to arguments already presented by the party in the proceedings before the previous instance, if it deems that said submission are necessary in order to establish the facts of the case. It is further possible to accept the late submissions if the new documents merely confirm statements already made in the appeal brief, and such late submissions could thus not harm the respondent.* (…) *The Parties' right to be heard is not violated if the arbitral tribunal denies a piece of evidence that was not submitted in a timely manner.* (…) *Therefore, the Panel's decision to reject untimely filed evidence if it considers that there are no "exceptional circumstances" cannot be reviewed by the SFT on the basis of the parties' right to be heard"* – the same logic applies, *mutatis mutandis*, to a decision of the Panel of not allowing a second round of submissions due to it considering that no "exceptional circumstances" were present *in casu*.

satisfaction with the way the hearing was conducted and that their right to be heard was respected.

176. For all of the above reasons, the Panel finds that there is no basis for the Appellants' complaint that their right to be heard was violated.

(C) Was the FIFA DC competent to issue the Appealed Decision?

177. The Appellants argue that the FIFA DC was not competent to issue the Appealed Decision, based on two main arguments: (i) the FIFA PSC decision could not have been issued, as no judicial proceedings could have been initiated after the judicial liquidation of the SASP and (ii) a new proceeding before the FIFA PSC should have been initiated by the Creditor prior to the lodging of a claim before the FIFA DC.

(C.1) Should the FIFA PSC have closed the proceedings against SC Bastia and refrain from issuing its decision of 10 November 2017?

178. In regard to this issue, the Panel notes the wording of Article 55 of the FDC 2019:

Article 55. Closure of Proceedings

"Proceedings may be closed when:

a) the parties reach an agreement;

b) a party is under insolvency or bankruptcy proceedings according to the respective procedures provided for by the relevant national law;

c) a club is disaffiliated from an association;

d) the alleged violation has not been proven".

179. In the Appellants' views, under paras. b) and c) of Article 55 of the FDC 2019, the FIFA PSC should have closed the proceedings against the SASP, because it was liquidated and disaffiliated from the LFP. On its side, the Respondents argued – in essence – that the FIFA PSC was not obliged to close the proceedings and that the issue of the disaffiliation of the SASP from the LFP is not relevant.

180. As it will be explained below – and contrary to the Appellants' submission – the Panel shares the view that it is irrelevant in the assessment of this issue that (i) the FIFA PSC Decision was indeed issued after the pronunciation of the SASP's judicial liquidation; and that (ii) the SASP was not a member of the LFP when the decision was issued, as it lost that quality after the pronunciation of its judicial liquidation.

181. Moving into the merits of this issue, the Panel starts by emphasizing that Article 55 of the FDC 2019 gives FIFA a certain discretion as to what position it should take in cases described in this provision. Article 55 of the FDC 2019 merely opens a "possibility" and not an "obligation" for procedures to be closed. The Panel's understanding is based on the wording of Article 55 of the FDC 2019, which states *"… proceedings may be closed…"*.

182. Moreover, it is important to note that, while the proceedings initiated before the FIFA PSC related to the recognition of a debt, the proceedings before the FIFA DC were related to the enforcement of a FIFA PSC decision. To further understand this issue, it is worth underlining some parts of the decision rendered in the case CAS 2012/A/2754:

"75. FIFA's position does not differentiate between the recognition of the debt and its execution, which are subject to different proceedings; i.e. ordinary proceedings, respectively enforcement proceedings. As a matter of fact, in order to proceed with the enforcement of its monetary claim, the creditor must establish its validity. Two situations can arise:

i) The creditor is already in possession a) of a valid enforceable judgement confirming the contested debt, b) of an enforceable deed against the debtor, c) of a judicial transaction or d) of a written acknowledgement of debt. Under such circumstances, he can initiate or take part in debt enforcement proceedings.

ii) In all the other cases, the creditor must pursue its claim on the merits in ordinary proceedings or, where applicable, before an arbitral tribunal (Judgement of the Swiss Federal Tribunal of 2 November 2010, 5A_225/2011, consid. 2.1 and 2.3; SCHMIDT A., in DALLÈVES/FOËX/JEANDIN (eds.), Commentaire romand, Poursuite et faillite Bâle, Genève Munich, 2005, ad art. 79, N. 11 et seq., p. 6 and N. 27, p. 12).

(…)

79. Finally, the fact that a distinction must be made between the recognition of the debt and its execution, is actually consistent with the present FIFA Regulations. The absence of a similar rule as article 107 of FIFA's Disciplinary Code in FIFA Regulations on the Status and Transfer of Players as well as in the FIFA Rules governing the procedures of the Players' Status Committee and the Dispute Resolution Chamber, confirms that FIFA's deciding bodies are competent as long as they are asked to address the issue of the recognition of the claim. It is only when they are seized with a request for the enforcement of the claim, that FIFA's Disciplinary Code comes into play and that "[disciplinary] proceedings may be closed if (…) a party declares bankruptcy" (see article 107)".

183. Furthermore, it is also important to highlight the findings of the case CAS 2017/A/5640 (para. 88), a jurisprudence that was brought forth by the Appellants:

"There have been cases before the FIFA DRC where the respondent club has become insolvent during the proceedings there. CAS jurisprudence (see CAS 2011/A/2586, award of 3 October 2012, and CAS 2012/A/2754, award of 8 February 2013) ***has directed the FIFA DRC to continue with such proceedings despite such insolvency procedures, so that the Player can receive a judgment*** *– is he owed money and if yes, how much. The player can then look to enforce that judgment*

against the insolvent club, not through FIFA's Disciplinary Committee, but through the insolvent club's insolvency practitioners or through the courts" (Emphasis added by the Panel).

184. The same line of thought applies to decisions of the FIFA PSC and, therefore, jurisprudence reveals that the FIFA PSC does not close cases on the basis of the FDC 2019 provisions.

185. With respect to the Appellants' argument that the SASP's disaffiliation should have caused the termination of the FIFA PSC proceedings, the Panel clarifies that, as the Appellants correctly state, the Association never lost its affiliation to the FFF. The SASP only lost its affiliation with the LFP, but this fact is not relevant. FIFA's indirect membership comes not from the membership of a club to its national professional league managing entity, but to its national football association and, in this case, said affiliation has never been lost. In fact, according to Article 27 (1) of the FFF's General Regulations:

"L'association sportive affiliée à la Fédération qui constitue une société continue d'exister en tant qu'association de la loi de 1901 et elle seule bénéficie des effets de l'affiliation et, le cas échéant, de l'autorisation d'utiliser des joueurs professionnels. Cette association est alors considérée comme association support de la société. L'association sportive et la société qu'elle a constituée définissent leurs relations par une convention approuvée par leurs instances statutaires respectives. L'article R122-8 du Code du Sport précise les stipulations que doit comporter cette convention".

FREE TRANSLATION BY THE PANEL:

"A sports association affiliated to the Federation which constitutes a society shall continue to exist as an association under the association under the law of 1901 and shall benefit from the effects of the affiliation and, where applicable, the authorisation to use professional players. This association is then considered as the supporting association of the company. The sports association and the company it has formed shall define their relationship by means of an agreement approved by their respective statutory bodies. Article R122-8 of the Code du Sport du Sport specifies the stipulations that must be included in this agreement".

186. In light of the above, the Panel concludes that the FIFA PSC was not obliged to close the proceedings against the SASP and the Association, since it could not have applied Article 55 of the FDC 2019 (or any other similar provision in force at the time), as the application of such a disciplinary provision is reserved for the FIFA DC.

187. Finally, it is noted that neither the Association, nor the SASP's liquidator have decided to appeal the FIFA PSC Decision. The non-exercise of this right/faculty has made the FIFA PSC Decision final and binding. Therefore, the FIFA DC was not prevented from issuing the Appealed Decision due to any flaws or limitations related to the proceedings before the FIFA PSC.

(C.2) Was the FIFA DC competent to issue the Appealed Decision against the Association and the SCIC?

188. The Appellant argued that the FIFA DC was not competent to issue the Appealed Decision since the FIFA PSC was the competent body under Articles 53 of the FDC 2019 and Article 23 (1) of the RSTP. Consequently, the Creditor should have brought the case before the FIFA PSC instead of requesting the enforcement of the FIFA PSC Decision before the FIFA DC. On its side, FIFA argues that the FIFA DC did not rule on any horizontal disputes and that it is not limited to analyzing whether or not a club is the sports successor of a debtor's club. Consequently, FIFA DC is not limited to sanctioning a club for failing to comply with a final and binding FIFA decision.

189. The Appellant relies extensively on CAS 2017/A/5460 to put forward this argument that a "new claim" against a different entity should be brought first before the FIFA PSC. This conclusion, however, cannot apply to the present case since there are a numerous relevant differences with the aforementioned jurisprudence.

190. In the present appeal case, the Creditor essentially brought a claim before the FIFA DC to enforce a decision from the FIFA PSC, but this claim was addressed to the Association and to the SCIC, not against the SASP, with the aim of recognizing those entities as the sporting successors of "SC Bastia".

191. In contrast to the present case, in the CAS 2017/A/5460, the creditor started by asking the FIFA DC to enforce a decision of the FIFA Dispute Resolution Chamber (the "FIFA DRC") against the original debtor and, only after that body declined to do so, the creditor then appealed from that "decision" to the CAS, introducing the argument of the sporting succession. The Sole Arbitrator of that case ended up denying jurisdiction since the "decision" presented by the creditor could not be considered a formal FIFA decision, as it consisted of a letter denying the opening of any procedures against the original debtor. In this context, and because FIFA DC had already denied enforcing the FIFA DRC decision, the referred Sole Arbitrator suggested to the creditor that it should claim its rights against the alleged sporting successors before the FIFA DRC.

192. The details of the present case are totally different. Unlike the case referred above, whose appeal to the CAS was initiated by the creditor, the appealing parties are the clubs considered jointly and severally liable for the debt claimed by a creditor. These differences justify the Sole Arbitrator's decision in the case CAS 2017/A/5460 and its non-application to the present appeal.

193. The above findings are in line with the jurisprudence of the CAS, namely CAS 2019/A/6461 (para. 55-56):

"However, the Panel finds no procedural error or irregularity in this respect. Firstly, the Appellant could have taken part in the proceedings in front of the FIFA DRC at the time when the claim lodged by the Creditor club was being adjudicated. Considering that the two clubs co-existed and shared the same contact details, there

is no doubt that the Appellant had knowledge of the pending FIFA DRC proceedings against the Debtor club. In this way, the Appellant could have intervened on its own initiative, or, could have assisted to rebut the Creditor's claim, if this were the case. Secondly, the Appellant was invited to state its opinion during the disciplinary proceedings, and had ample opportunity to present its case in front of the FIFA Disciplinary Committee in order to contest the issue of succession, if this were the case.

Rather, the Appellant referred to CAS jurisprudence CAS 2017/A/5460 to support its submission that the case should be referred to the FIFA DRC. In that case, a player was in dispute with club A. The dispute went through the FIFA DRC and CAS. The player sought to enforce the CAS award through the FIFA Disciplinary Committee, but it, upon learning of club A's insolvency, ended the process. The player appealed that decision to CAS and at the same time introduced club B (the alleged successor of club A) to the proceedings. ***In that case, the Sole Arbitrator rejected jurisdiction and suggested the matter went to the FIFA DRC to determine if it was club A's sporting successor. However, the case at hand is different, as not only could the Appellant have been involved at an earlier stage, as set out above, here FIFA has already taken a decision on the Appellant being the successor club.*** *In CAS 2017/A/5460, FIFA did not take any such position, hence why the Sole Arbitrator suggested the FIFA DRC should consider that (the Disciplinary Committee had already declined to do so). Ultimately, it does not appear to matter which body at FIFA takes a decision on sporting succession, so long as one does. In the case at hand, the FIFA Disciplinary Committee has taken that decision, and as such the matter does not need to go to the FIFA DRC, as the Appellant argued"* (Emphasis added by the Panel).

194. Moreover, it is clear that a club that may possibly be considered as the sporting successor of the original debtor is never a party in the proceedings which recognized said debt, as otherwise there would essentially be no need to prove any sporting succession. As a result, the Appellants' argument could never justify that a club seeking payment of a debt recognized in a final and binding decision would have to bring said case first before the FIFA PSC.

195. In what concerns the allegation that neither the SCIC nor the Association were a part of the procedures before the FIFA PSC, the Panel once again reminds the Appellants that the PSC Decision was issued against "SC Bastia" and not against the SASP. Therefore, said decision concerned the "club" in itself as the entity which comprised both the Association and the SASP, and became final and binding since it was not appealed by any of those Parties. Therefore, there is no doubt that the FIFA DC had the power to impose sanctions on the Appellants as (i) the Association is affiliated with the FFF and, by virtue of this *link* is an indirect member of FIFA; and (ii) the SCIC is the current entity affiliated to the LFP and, via the Association, also an indirect member of FIFA.

196. Furthermore, it is important to note that the dispute which occurred before the FIFA DC is strictly vertical. As FIFA correctly pointed out, the FIFA DC was merely assessing three issues:

(a) Are the SCIC and the Association the sporting successors or the same club as the "SC Bastia", which was ordered to pay a debt to Espanyol in the PSC Decision?

(b) If so, was the PSC Decision complied with?

and

(c) If not, what is the correct sanction to hand out to the Association and SCIC?

197. As explained in CAS 2016/A/4837 and CAS 2017/A/5359, disputes before the FIFA bodies can be qualified as (i) *"horizontal"* disputes – where FIFA intervenes as an adjudicatory body in a dispute involving two or more direct or indirect members of FIFA and FIFA's prerogatives or disciplinary powers are not in question; and (ii) *"vertical"* disputes – where FIFA is involved in the application of disciplinary sanctions.

198. In the Appealed Decision, it is clear that FIFA acted merely in a vertical dispute since it was concerned only with determining if the Appellants were or not liable for the SASP's sporting debts and, if that was the case, what would be the correct sanction for the non-compliance of the FIFA PSC Decision.

199. The Panel concludes, as such, that the FIFA DC was indeed competent to issue the Appealed Decision against the Association and the SCIC, since (i) the PSC Decision was issued against "SC Bastia", not making reference to any specific legal entity, (ii) the dispute at stake was a merely vertical dispute and (iii) the wording of Article 53 FDC 2019 establishes the competence of the FIFA DC on the matter: *"[t]he Disciplinary Committee is competent to sanction any breach of FIFA regulations which does not come under the jurisdiction of another body"*, as no other body has the competence to decide on the matter of failure to respect decisions (Article 15 FDC 2019).

(D) Are the Appellants the sporting successors or the same club as the "SC Bastia", which was ordered to pay the Creditor's debt in the PSC Decision?

200. Having concluded its examination of the preliminary issues raised by the Parties, the Panel must now focus its attention on the analysis of the substance of the appeal, namely on whether or not the Appellants can be considered as the sporting successors of the club "SC Bastia" which was, via the PSC Decision, ordered to pay a sum to the Creditor.

201. It is important, before moving on to the concrete analysis of this issue, to clarify that the case under analysis has its own very specific contours that distinguish it from the vast majority of cases already decided by the CAS and FIFA's decision-making bodies.

202. In fact, the FIFA DC defended the validity of its thesis that, *in casu,* there was no sporting succession, but rather there was a phenomenon of pure and simple continuity of the sporting activity of the club "SC Bastia". In other words, in the view of the FIFA DC, this club never became extinct or stopped its activity and, therefore, a new entity cannot succeed it. In fact, although the Single Judge of the FIFA Disciplinary Committee (the "Single Judge") begins its reasoning with a brief introduction to the issue of sporting succession, a different path is

almost immediately chosen, as it can be understood by reading paras. 31-36 of the Appealed Decision.

203. The Panel is therefore obliged to analyze the reasoning that was used by FIFA DC in the Appealed Decision in order to be able to decide on the merits of that decision, seeking to determine whether, in the particular case, it makes sense to speak of sporting continuity or sporting succession or whether, as alleged by the Appellants on appeal, neither of these grounds should be upheld because we are dealing with separate entities.

(D.1) What distinguishes a case of "sporting succession" from "sporting continuity"?

204. The first question to be answered has to do with the distinction to be made between *sporting succession* and *sporting continuity*, two concepts that, despite many similarities, are inevitably marked by fundamental differences.

205. It is first of all necessary to restate the definition of "club" that has been upheld in the CAS case law (CAS 2016/A/4550 & 4576, para. 135):

"Indeed, as rightfully pointed out by FIFA, CAS jurisprudence considers that "a sporting entity identifiable by itself that, as a general rule, transcends the legal entities which operate it" (CAS 2013/A/3425 at para. 139). The full reasoning of the Sole Arbitrator in the particular CAS case is the following:

> *"The Sole Arbitrator highlights that the decisions that had dealt with the question of the succession of a sporting club in front of the CAS (CAS 2007/A/1355; TAS 2011/A/2614; TAS 2011/A/2646; TAS 2012/A/2778) and in front of FIFA's decision-making bodies (...), have established that, on the one side,* ***a club is a sporting entity identifiable by itself that, as a general rule, transcends the legal entities which operate it****. Thus, the obligations acquired by any of the entities in charge of its administration in relation with its activity must be respected; and on the other side, that the identity of a club is constituted by elements such as its name, colors, fans, history, sporting achievements, shield, trophies, stadium, roster of players, historic figures, etc. that allow it to distinguish from all the other clubs. Hence, the prevalence of the continuity and permanence in time of the sporting institution in front of the entity that manages it has been recognized, even when dealing with the change of management companies completely different from themselves"* (original text in Spanish).

206. It can thus be said that the concept of "club" goes far beyond the corporate entities that manage it, the existence of which results from the constant professionalization of clubs and inherent creation of legal obligations of incorporation of commercial companies that aim to provide these entities, in general, with a more robust management structure. This is a reality in several countries, but especially in countries that have a continental legal tradition (Civil Law).

207. In the view of the Panel, and following the jurisprudence of the CAS, a case is of sporting succession when a new entity, taking advantage of various elements of a club (symbol, colors, history, supporters/fans, members, history, athletes, shareholders, among others ...), seeks to

continue the activity of said club which, for various reasons, has ceased its commercial activity. At this point, it is interesting to look at the writings of Jordi López Batet (*"La sucesión deportiva de clubes de fútbol: consideraciones a la vista de la jurisprudencia del TAS en la matéria",* in CAS Bulletin 2/2020, p. 30-31):

"Así, hemos venido asistiendo a lo largo de los años a la aparición y/o proliferación de fenómenos tales como la conversión de los clubes de fútbol (tradicionalmente de estructura asociativa) en corporaciones o sociedades mercantiles , los negocios sobre las acciones o el patrimonio de dichos clubes (ventas, fusiones, cesiones de activos, etc.) incluso la conducción de procedimientos concursales de clubes de fútbol que han concluido en ocasiones con su liquidación y consiguiente desaparición, si bien como veremos, a veces la real y efectiva "desaparición del club" como tal puede resultar, por lo menos, discutible.

Tales avatares societarios o desplazamientos patrimoniales han dado lugar ***a*** *escenarios en* ***que una entidad futbolística pueda ser considerada continuadora o sucesora de otra que por uno ou otro motivo, ve extinguida su personalidad jurídica o se desprende de su actividad.*** *Ello ha planteado en la práctica múltiples controversias acerca de la existencia o no de tal continuidad o sucesión deportiva y en especial acerca de los efectos o consecuencias de la misma, tanto desde el punto de vista material (mayoritariamente en lo que concierne a la asunción o no de deudas y responsabilidades de la entidad extinta por parte de la entidad supuestamente continuadora) como desde la perspectiva de la traba o constitución de la litis".*

FREE TRANSLATION BY THE PANEL:

"Thus, over the years, we have witnessed the appearance and/or proliferation of phenomena such as the conversion of football clubs (traditionally with an associative structure) into corporations or trading companies, the transactions involving the shares or assets of these clubs (sales, mergers, transfers of assets, etc.) and even the course of bankruptcy proceedings of football clubs which have sometimes led to their liquidation and consequent disappearance, although, as we shall see, sometimes the real and effective "disappearance of the club" as such can be, at least, debatable.

Such corporate or patrimonial displacements have ***given rise to scenarios in which a football entity can be considered the continuator or successor of another one which, for one reason or another, sees its legal personality extinguished or detached from its activity****. This has given rise in practice to many controversies about the existence or not of such continuity or sporting succession and especially about the effects or consequences of the same, both from a material point of view (mainly with regard to the assumption or not of debts and liabilities of the extinct entity by the supposedly continuing entity) and from the perspective of the establishment or constitution of the litigation".*

208. In this sense, for us to be faced with a case of possible sporting succession, prior to the analysis of the elements that may characterize the entities in question, it is necessary to begin by understanding whether the club itself, or the entity targeted by the decision/contract that serves as the basis for the claim, ceased to exist or was detached from its activity at some point in time. If the answer to this question is affirmative, the new entity may only assume the responsibilities or liabilities of the previous one when it is declared as its sporting successor; on the contrary, if the targeted entity never ceased to exist or maintained its activity without

any interruption, then a situation of plain and simple sporting continuity and not sporting succession may be in question.

209. Sporting continuity, on the other hand, is identified with a situation in which a club, despite the disappearance of any corporate entities associated with it, remains in business, even taking over the sporting rights of the entity that ceased to exist, without any interruption in its membership of the respective national federation, through at least one entity that subsists.

210. It is this fundamental distinction that, in this case, makes all the difference. However, it is not sufficient *per se* to be able to state with certainty that continuity exists whenever a club remains active, even if it loses its professional management structure, whether corporate or not, and later reestablishes another one.

211. In cases where in the reality and concept of a club there fit together an association/supporting entity and a commercial sport company/corporate entity, both of which take advantage of common elements, it is still possible that the entities manage to create a meaningful and separation between each other which suits the distinct legal personalities of both. However, for this to happen, they will have to consistently act independently and according to their own interests, giving third parties the idea that they are distinct from each other and that they do not assume each other's responsibilities.

(D.2) Is the present case one of sporting succession or sporting continuity?

212. The Panel, focusing its attention on the case at hand, notes that the FIFA DC considered, as its main argument, that this was a situation of sporting continuity and not sporting succession.

213. The Panel notes that, in fact, the Association never ceased to exist, having at all times maintained its affiliation with the FFF, notwithstanding all the circumstances that led to the liquidation of the SASP, the corporate entity that was in charge of its professional team until 2017.

214. When the SASP collapsed, the Association regained the sporting participation rights it had assigned to that entity when it was set up, but the Parties failed to demonstrate that said rights were indeed used. In fact, and as the Appellants admit, the Association started to manage a first team identified as "SC Bastia", the composition of which bears some similarities to the composition of the reserve team of that same club. This team then carried the prestige of being the first team of "SC Bastia", as is also evident from the fact that there is no record of the existence of a new reserve team until the 2021/2022 season from the description of the seasons of the club's first team available on its official website[3].

215. It should be added that the Transfer Agreement, which is at the origin of the dispute between "SC Bastia" and the Second Respondent and gave rise to the issue of the FIFA PSC Decision,

[3] See https://www.sc-bastia.corsica/classement/2017-2018/equipe-premiere?sort=point&tc=complet (last visited on 03/06/2022).

does not precise, in any of its points, the contractual legal entity associated to the club "SC Bastia". On the contrary, only the name "SC Bastia" is identified as a party, which refers neither to the SASP, nor to the Association specifically, but to the club in general, which can be identified by appeal to the concept of "club" already mentioned above (see para. 205).

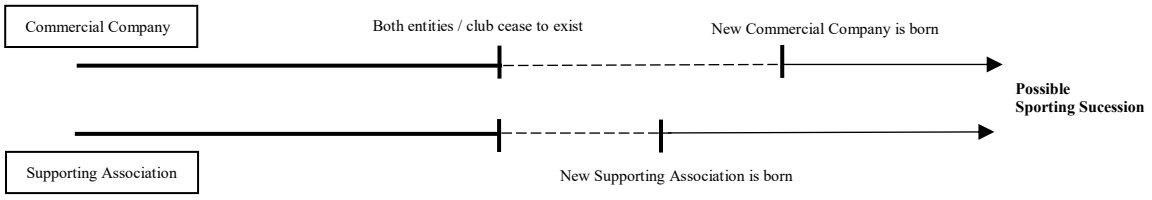
216. The Panel considers that, also for this reason, the proceedings before the FIFA PSC, which culminated in the issuance of the FIFA PSC Decision, were brought against the entity "SC Bastia" and not against the Association or the SASP specifically. This decision was thus addressed to the Party in default of the aforementioned contract, i.e. the club "SC Bastia", which included the Association and the SASP tasked with managing the professional team at the time.

217. Also for this reason it is clear that the Appealed Decision is directed against the club "SC Bastia", failing to directly refer to the SASP or to the Association - in fact, since it is directed at the "club", both entities are in principle covered by it, and certainly also for this reason, they decided to appeal together.

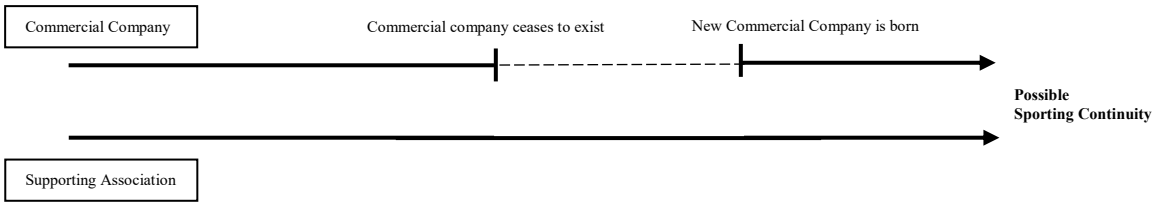
218. Another relevant point is that the federative link was never lost, that the club "SC Bastia" was never extinguished, but only that it was forced to "restart" to "climb" up the competitive levels of the French football leagues system. In fact, from the external point of view, what happened was simply an administrative relegation of the first team of "SC Bastia", which gave rise to a plan of "reconstruction" of "SC Bastia" - indeed, this is precisely how this moment of the club's history is qualified and characterized, as it can be inferred from its website[4].

219. It is true that there is now a 'new entity' in charge of managing the professional team of the 'SC Bastia' club, the SCIC, but the mere fact that the Association has once again set up a corporate structure with a view to competing at professional level is not sufficient to claim that there is a 'successor' to the club. One could indeed theorize that the SCIC could be the sporting successor of the SASP, but this would be irrelevant to the present case, since the Transfer Agreement, the FIFA PSC Decision and the Appealed Decision are all addressed to the club "SC Bastia" and not to the SASP.

220. Thus, the conclusions drawn here can be summarized in the following scheme, for clubs that have a "dual" structure incorporated by more than one entity:



[4] See https://www.sc-bastia.corsica/club/histoire (last visited on 03/06/2022).



221. Considering the above, the Panel will now turn to the most relevant question analyzed by the FIFA DC - are the Association and the SCIC the same club called "SC Bastia" and referred to in the Transfer Agreement and PSC Decision or not?

(D.3) Is there a situation of sporting continuity between the club "SC Bastia" and the Appellants or not?

222. The analysis on the existence or not of sporting continuity should fall on two matters relevant to determine whether the entities that now manage the club "SC Bastia" should be held liable on account of the Transfer Agreement and the PSC Decision that was pronounced against the club:

a) The club's characteristic elements and their use by the entities concerned;

b) The attitudes and behaviors of these entities and the effects these have on third parties which have a relation, business or other, with them.

223. First of all, one of these entities, the Association, founded on 6 August 6 1987, is the same one that has always existed throughout the years and even claims to exist as a club from a much earlier date (according to the history on the club's website, it originated in 1905).

224. The Association has never broken with its past, having kept all the elements that have always characterized the club "SC Bastia", such as the colors, the emblem, the members, the fans, and especially the history, which it has always claimed and has never stopped invoking as its own. The Association has never been extinguished and has constantly remained affiliated to the FFF, so there is no doubt that it fits fully into the concept and universality that is the club "SC Bastia". This much is not disputed by any of the Parties.

225. Thus, and at the outset, the Panel has no doubt that the FIFA PSC Decision was also directed against this entity, as it is clear from the facts that it embodies in itself and identifies clearly with the club "SC Bastia".

226. Furthermore, the commercial entity that previously managed the professional teams of the club "SC Bastia" has ceased to exist, as the SASP has been liquidated and extinguished. In its place came a new commercial entity, constituted by the Association, in the form of *Société Coopérative d'Intérêt Collectif*, the SCIC.

227. The main question then is whether or not SCIC is also integrated into what is to be understood as the "SC Bastia" club, or whether, on the contrary, it can legitimately be considered an independent entity to which the responsibilities of that club cannot be imputed. It is now much more a question of deciding if the decision of the FIFA PSC can or not also affect the SCIC, which did not exist at the time.

228. In order to answer this question, the Panel must first analyze the elements that characterize SCIC, as well as its behaviors and attitudes, and the effects they have on third parties. The logic that the Panel will follow is, *mutatis mutandis*, similar to that which characterizes the cases of sports succession, however, what is sought here is not to assess the possibility of SCIC being the successor of the SASP, but rather to determine whether or not it can legitimately be considered as an integral part of the concept of club that underlies "SC Bastia", which is the entity affected by the PSC Decision and, now, by the Appealed Decision.

(D.3.1) Analysis of SCIC's characterizing elements in relation to the club "SC Bastia"

229. The Panel will now turn its attentions to the characterizing elements of the SCIC in relation to the club "SC Bastia" to determine if there is any resemblance or similarity which should be valued.

230. Firstly, the Panel notes that the headquarters of "SC Bastia" have been for many years, and remain to be, the "Stade Armand CESARI, 20600 - Furiani, France". This is also the headquarters of the SCIC and of the Association and is even the identified headquarters of the entity "SC Bastia" in the Transfer Agreement, PSC Decision and Appealed Decision. While the Panel considers perfectly understandable that the SCIC chose to establish its headquarters in the stadium where the team plays, said choice is capable of clearly demonstrating that the SCIC follows a line of action that favors its "confusion" and almost "identification" with the club "SC Bastia".

231. Secondly, in relation to the name used by the SCIC, the Panel notes that it uses the name "SPORTING CLUB BASTIA", a name that was already used by the former SASP and that also appears in the Transfer Agreement, the PSC Decision and the Appealed Decision. In fact, only the Association uses a slightly different name, referring to "Sporting Club Bastiais", but this slight difference is irrelevant, since both the Association and the SCIC rely on, and commonly use, the name "SC Bastia", as is evident from their website, their social networks, their registration in the TMS system and before the FFF[5]. The use of the name "SC Bastia" is not surprising, since there is a legal obligation to assume the name of the Association under the terms of Article 27 (2) of the FFF General Regulations, however, it shows right away that SCIC does not intend, and has never intended, to differentiate itself from the club "SC Bastia", from which it assumes the responsibility of managing the professional teams.

[5] In fact, both entities are even aggregated in the FFF website, as can be seen by analysing the following link: https://www.fff.fr/competition/club/508009-sc-bastia/information.html (visited on 02/06/2022).

232. However, in this instance, and considering the context of sporting continuity, the Panel is of the opinion that this factor is very relevant, since (i) the name of SCIC is the same name as the name of the club "SC Bastia" which was condemned by the PSC Decision and (ii) this entity has the clear intention to remain associated with that same club, assuming its name in its entirety, without any change, thus also benefiting from the same support of the supporters, members and fans who have already marked and continue to mark the ongoing history of the club"SC Bastia".

233. Thirdly, the SCIC takes the legal form of a *Société Coopérative d'Intérêt Collectif*, while the SASP was a *Société Anonyme Sportive Professionnelle* and the Association kept its legal form of a non-profit association, which was never extinguished. The legal form is not, however, a relevant criterion as regards the analysis of whether there is sporting continuity or not, because it does not have a decisive influence on the question whether SCIC is an integral part of the club "SC Bastia" or not. Moreover, the identification of the contracting legal entity is not precisely mentioned in the Transfer Agreement, the PSC Decision or the Appealed Decision, so it is of little relevance to the issue of sporting continuity - the Panel thus concludes that this is an irrelevant element for the present analysis.

234. In addition to this, the following elements are also indicative of the Association and the SCIC's intention to continue the club's activity and to remain faithful to all the traces of its identity:

a) The Panel notes that the SASP, Association and SCIC all use the club's colors, which have been, since its founding and to this day, the same, namely blue, white, and black.

b) The SASP, Association and SCIC all identify themselves with an emblem or logo that is officially linked with "SC Bastia" since at least 2012, which reads 'SC Bastia', accompanied by the same signs and in blue. There is therefore no doubt that SCIC also uses what is the club's official emblem, under which it is recognized worldwide by all third parties having dealings with it.

c) It is important to note that the shareholders of SCIC are different from the shareholders of the SASP, however, there is a common element that actually constitutes the "umbilical" link of this entity to the club "SC Bastia", namely the fact that the Association is one of the shareholders.

d) The first team of "SC Bastia" never stopped competing in the French sports system at any time. There is no doubt that the Association always continued to compete, and even achieved great success and managed to return to professional competitions in a very short time.

e) The rankings of all the sports seasons of the "SC Bastia" first team, available in the Association and SCIC website, clearly demonstrate that while in 2016/2017 they were in Ligue 1, the following year already that first team was competing, according to data from the website itself, in the fifth French division.

f) This team did not start its journey in the last division of the French Football League System (which is the 9th division, divided in regional leagues), as would be expected from an absolutely new club, but rather remained in the national leagues, in the 5th division (National 3). This is a highly demonstrative fact that the club "SC Bastia" took advantage of the existence of a second team to maintain and continue the sporting activity it had been having.

g) It was not disputed that the SCIC and Association team always continued to use the Armand Cesari Stadium, which has been the "home" of "SC Bastia" since its inauguration.

h) The assets of the club SC Bastia have never left its sphere, because the Association is itself also an integral part of this concept of club. It simply happened that these assets were, later on and with the constitution of SCIC, again subject to an agreement between this entity and the Association, which allows their use

i) The SCIC was created in 2019 when the main team of "SC Bastia" was still in the non-professional leagues. It would therefore have arisen by the Association's own choice to once again set up a corporate entity that would allow for a clearer and more professionalized *governance of* its main team and not strictly as an obligation set forth by French law at the time.

235. On the other hand, the Panel also notes the following relevant factor which fail to demonstrate any meaningful intention of the Appellants of being identified with the club "SC Bastia":

a) The Panel is not aware, nor has it been proven, that the Appellants have benefited from any credit on behalf of the club "SC Bastia", such as training compensation and solidarity mechanisms resulting from transfers of players.

b) According to the Appellants, and not contested by the Respondents, only one player from the professional squad of "SC Bastia" remained employed at the club after the demotion to the French 5th division. The transfer to the Association and later to the SCIC of any coach or part of the technical staff was not proven.

236. Finally, and more importantly, the Panel notes that the Appellants take advantage of and use all the elements that characterize the memory and history of the club "SC Bastia". Indeed, the Appellants draw on the same achievements, same titles, same moments and stories that have marked the existence of "SC Bastia" and all this is visible, right from the start, in the brief historical description contained in their website which tells a continuous story from 1905 to the present day[6]. This is a very relevant factor in demonstrating a *sporting continuity* between these entities.

[6] See https://www.sc-bastia.corsica/club/histoire (visited on 02/06/2022).

237. The Association essentially took advantage of the rights it had previously ceded to the SASP, such as SC Bastia's image, its history, its fans, supporters and all that "mystique" of a historic French club. All of these elements started to be exploited in full by the reserve team managed by the Association, which became, in fact, the main team of the club "SC Bastia", as indeed the Appellants themselves admit in their writings, as well as it is taken from the analysis of the club's website. In this sense, the team which the SCIC took over is still essentially identified as the "SC Bastia" club and may not be considered as a "new" or "independent" team.

238. Considering all the above reasoning and being certain that in this type of case the conclusions must be analyzed from a case-by-case perspective, the Panel considers that the existence of sporting continuity between the Appellants and the club "SC Bastia" is evidenced, at the level of the characterizing elements.

(D.3.2) Appellants' actions and behavior towards bona fide third parties

239. In addition to the assessment of the characterizing elements of these entities and their similarity or correspondence with those that mark the identity of the club "SC Bastia", it is also relevant to assess the actions of the Association and the SCIC, because the "removal" of their legal personality in order to hold them liable for the debt and decisions in question must also take into account their possible intention to "confuse" themselves, in a consistent manner, with the club "SC Bastia". Basically, the Panel must determine the "appearance" of these entities in the eyes of third parties with whom they relate, as well as the "consistency" of the behaviors which created such "appearance".

240. Firstly, there is no denying that both the Association, SASP, and now the SCIC, have assumed the common identity associated with the club "SC Bastia", which includes *"(...) its name, colors, fans, history, sporting achievements, shield, trophies, stadium, roster of players, historic figures, etc. that allow it to distinguish from all the other clubs"* (see para. 205). This is sufficient to say, also in light of the extensive analysis made in the previous part of this Award (see **D.3.1**) that there is a notorious intention of the Appellants to be recognized as the "SC Bastia" club, especially with the benefits that such could imply.

241. Said behavior is clearly consistent and coherent with the appearance they want to give to *bona fide* third parties, as it has been the *modus operandi* of the Appellants since the liquidation of SASP - firstly of the Association, which managed the club's "new" main team and, later on, of the SCIC which took over the reins of that same enterprise.

242. In light of this, the Panel has no doubt that all football fans would recognize the Appellants as the club "SC Bastia". More importantly, the Panel is also satisfied that any other business partner, sponsor or even club would also see the Appellants as the club "SC Bastia".

243. In the world of sport, football clubs are seen by one another on the basis of their characteristic elements and the history with which they identify with. Therefore, *in casu*, a diligent third club which entered into business with the Appellants, or even competed against them, would not

have any reasons to doubt that this is the same club called "SC Bastia" – this can be easily explained by the use of almost all elements which characterize said club.

244. It can be said then that third parties trust the appearance that the Appellants intentionally try to be identified with. In this regard, the Panel notes that the protection of legitimate expectations is a general principle of law which cannot be considered to be outside the scope of the *lex sportiva*. Therefore, *bona fide* third parties should be protected from any legal intricacies which limit their rights in favor of those which try to take advantage of the benefits of a certain appearance but fail to honor the responsibilities that come with it.

245. Thus, the Appellants were not able to demonstrate that their activity was somehow able to distance them from the "SC Bastia" club.

246. To hold otherwise would be unfair on all third parties who negotiated in good faith with the "SC Bastia" club and who would see the club's obligations disappear despite the existence of two entities, including a new commercial entity, which have always continued to identify with it and to pursue the same sporting activity. It would basically be "rewarding" the insolvency of the SASP and forgetting that the Association had guaranteed, by itself and later through the SCIC, the continuity of the club "SC Bastia".

247. In short, the Appellants cannot dispel their appearance of being fully identified with the club "SC Bastia", which is why these entities have to be considered not as the successors, but as the same "club" that entered into the Transfer Agreement with the Second Respondent and which was condemned by the FIFA PSC Decision.

248. During the hearing, the Appellants claimed that it would be contrary to French public policy to consider them jointly and severally liable, pursuant to FIFA rules and without the legal framework provided by their national law, for the debts incurred by a liquidated sports company. Although the Panel was sympathetic to this argument, it is nevertheless an inadmissible argument that should be dismissed.

249. As another CAS panel stated, *"le sport est par nature un phénomène transcendant les frontières. Il est non seulement souhaitable, mais indispensable que les règles régissant le sport au niveau international aient un caractère uniforme et largement cohérent dans le monde entier. Pour en assurer un respect au niveau mondial, une telle réglementation ne doit pas être appliquée différemment d'un pays à l'autre, notamment en raison d'interférences entre droit étatique et réglementation sportive. Le principe de l'application universelle des règles de la FIFA – ou de toute autre fédération internationale – répond à des exigences de rationalité, de sécurité et de prévisibilité juridique. Tous les membres de la famille mondiale du football sont ainsi soumis aux mêmes règles, qui sont publiées. L'uniformité qui en résulte tend à assurer l'égalité de traitement entre tous les destinataires de ces normes, quel que soit le pays où ils se trouvent"* (CAS 2005/A/983 & 984, para. 24).

FREE TRANSLATION BY THE PANEL:

"sport is by nature a phenomenon that transcends borders. It is not only desirable, but essential that the rules governing sport at the international level be uniform and broadly consistent throughout the world. In order to

ensure global compliance, such rules should not be applied differently from country to country, particularly because of interference between state law and sports regulation. The principle of universal application of FIFA rules - or any other international federation's rules - meets the requirements of rationality, security and legal predictability. All members of the global soccer family are subject to the same rules, which are published. The resulting uniformity tends to ensure equal treatment of all recipients of these rules, regardless of the country in which they are located".

FIFA's rules, like those of other international sports federations, are certainly not supreme rules that CAS could never question. They can, and indeed must, do so on the basis of general principles of law or international public policy, within the meaning of Swiss arbitration law, or even the fundamental rules of European Union law or the provisions of international conventions on fundamental rights. Considering the worldwide scope of such sports rules and the requirements of the principle of equality of competitors before the law, CAS cannot, on the other hand, disregard the rules of international federations, in particular FIFA, on the grounds that they violate, as argued in the present case, a national public policy alien to the *lex causae*, which by definition varies according to the nationality of the parties in dispute.

(E) Conclusions

250. For all the above reasons, the Appealed Decision should be confirmed in the part in which it considers the Association and SCIC as the entities that ensured the sporting continuity of "SC Bastia" and, consequently, the Appellants shall be considered as the entities responsible for the payment of the obligations assumed by the club "SC Bastia".

251. The Appellants do not dispute that the debt in question has not been paid but have based their defense solely on their lack of liability. As such, the Panel does not need to consider the issue of default, which is deemed to be established since it is not part of the scope of the appeal.

252. Accordingly, the Panel decides to uphold the Appealed Decision in its entirety.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by the Association Sporting Club Bastiais and Société Coopérative d'Intérêt Collectif (SCIC) Sporting Club de Bastia against the decision rendered by the FIFA Disciplinary Committee on 8 April 2021 is dismissed.

2. The decision rendered by the FIFA Disciplinary Committee on 8 April 2021 is confirmed.

3. (…).

4. (…).

5. All other and further motions or prayers for relief are dismissed.