Arbitration CAS 2022/A/8725 HSI Soccer KFT v. F.C. CFR 1907 Cluj S.A., award of 5 April 2023

Panel: Mr Heiner Kahlert (Germany), Sole Arbitrator

Football
Contractual dispute between a club and an intermediary
Time limit for appeal
Consequences of the dismissal of the answer
Modification vs specification of a request for relief
Acknowledgement of debt
Consequences for the lack of form and registration of the contract between the club and the intermediary

1. **Article R49 of the CAS Code accords priority to any time limit for appeal provided in the regulations governing the body that issued the decision appealed against. Article 36(17) of the Romanian Regulations on the Status and Transfer of Football Players (FRSTJ) provides for a time limit of 21 days. However, it does not say when this time limit starts running. As a default rule in this regard, it appropriate to refer to Article R49 of the CAS Code meaning that the time limit starts running upon receipt of the decision appealed against (with the day of receipt not counting against the time limit, further to the first sentence of Article R32 of the CAS Code).**

2. **A respondent's failure to answer the claim does not constitute an acknowledgement of the claim, meaning that the arbitral tribunal must still satisfy itself that the claim is well-founded. The same must apply if the answer is filed out of time and is therefore deemed inadmissible.**

3. **If a party modifies its original prayer for relief to obtain more, additional or different relief, that modification constitutes and amendment (or supplement) to the claim. A mere change of the wording of the prayer for relief or in the legal qualification of a claim is not to be considered an amendment. The same should apply if a party initially puts forward an indeterminate claim and later specifies it (e.g. an unquantified claim that is quantified at a later stage of the proceedings. If a party indicates the interest rate as well as the date from which interest is sought, it merely specifies its request for relief, as opposed to giving it a wider scope or changing the nature of the request for relief.**

4. **The fact that the alleged debtor of a sum of money has remained passive in the first instance proceedings does not mean that it has acknowledged the relevant debt.**

5. **In the absence of any provision to this effect in the applicable regulations, the fact that a contract between a club and an intermediary was not registered with the national federation or was not made in the appropriate form cannot lead to the unenforceability**

of the contract in question as between the parties to the contract.

I. PARTIES

1. HFI Soccer KFT (the "Appellant") is a Hungarian company providing consultancy and intermediary services.

2. F.C. CFR 1907 Cluj S.A. (the "Respondent") is a Romanian football club.

3. The Appellant and the Respondent are hereinafter referred to as the "Parties".

II. FACTUAL BACKGROUND

4. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, this Award refers only to the submissions and evidence considered necessary to explain its reasoning.

A. The dispute

5. In mid-2018, the Respondent contacted the Appellant, the latter being the intermediary representing the interests of the football player X. (the "Player"). The Respondent was requesting in this correspondence for the Appellant to facilitate the transfer of the Player to the Respondent.

6. On 30 June 2018, the Appellant and the Respondent entered into an agreement titled *"Consultancy Contract"* (the "Consultancy Contract"), which provided, in its relevant parts, as follows:

> ***"I. OBJECT OF THE CONTRACT***
>
> *1.1* ***HSI*** [defined term denoting the Appellant] *will provide counselling and intermediation services to the club* ***CFR*** [defined term denoting the Respondent] *in the negotiations conducted with the player* […].
>
> *1.2 The object of the contract shall be deemed to be achieved subject to the conclusion of a civil convention / labor contract between* ***CFR*** *and* ***the Player*** [defined term denoting the Player]*, registered at PFL.*

1.3 If the player will not be registered with CFR 1907 Cluj, then ***CFR*** *will have no financial obligations or other kind of obligations towards* ***HSI****, the contract being canceled* [sic] *by right.*

II. REMUNERATION

2.1 […] *The CFR club shall pay to the* ***HSI*** *the net amount of 20.000/00 EURO (twenty thousand euro) in 10 (ten) working days from the date of Receipt of the Player International Transfer Certificate.*

[…]

III. LITIGATIONS

[…]

3.2 If the parties will not be able to solve amicably the disputes arising in connection with the conclusion, performance, termination and interpretation of the present contract, their settlement shall be in accordance with the provisions of the Romanian legislation, the parties shall address to the competent courts from FIFA" (emphases original).

7. On 6 July 2018, the Player and the Club signed a contract titled *"Sports Activity Contract"* (the "Player Contract"), which was subsequently registered by the Romanian Professional Football League (the "PFL") with a stamp reading *"104 / 10/07/2018"*.

8. On 19 July 2018, the Appellant issued an invoice to the Respondent for the net amount of EUR 20,000.00 (the "Fee"). The invoice indicated a due date of 29 July 2018.

9. By letter of its counsel dated 18 April 2019, the Appellant reminded the Respondent that the Fee had not yet been paid despite repeated warnings, and announced that it would take legal steps should the Fee not be paid by 25 April 2019. The Respondent repeatedly promised payment and asked for an extension of the deadline to pay. To date, the Respondent has not made any payment to the Appellant in relation to the Consultancy Contract.

B. Proceedings before the National Dispute Resolution Chamber and the Appeal Committee of the Romanian Football Federation

10. On 23 March 2021, the Appellant filed a claim in respect of the Fee to the National Dispute Resolution Chamber (the "NDRC") of the Romanian Football Federation (the "RFF") pursuant to Article 26(2)(g) of the Romanian Regulations on the Status and Transfer of Football Players (the "RSTJF").

11. By decision of 20 May 2021, the RFF NDRC rejected the claim, holding that it did not have competence to resolve the case because Clause III.3.2 of the Consultancy Contract referred any disputes to the *"competent courts from FIFA"*.

12. On 9 June 2021, the Appellant appealed against the foregoing decision of the RFF NDRC to the Appeal Committee (the "Appeal Committee") of the RFF.

13. By decision of 22 July 2021, the RFF Appeal Committee upheld the appeal, ruling that the RFF NDRC was competent to decide the dispute in the first instance, and therefore referring the case back to the RFF NDRC.

14. By decision of 2 November 2021, the RFF NDRC dismissed the Appellant's claim, holding that the parties to the Consultancy Contract had failed to meet their obligations under the RFF Regulations on Working with Intermediaries, specifically (i) to use the RFF's standard form for intermediary contracts (the "Standard Form") as provided in Annex 4 to the RFF Regulations on Working with Intermediaries and (ii) to register the Consultancy Contract with the RFF. On this basis, the RFF NDRC found that even though the Consultancy Contract was valid, it could not be enforced before the RFF's bodies.

15. By decision of 3 February 2022, the RFF Appeal Committee rejected the Appellant's appeal against the RFF NDRC's decision, largely following the line of reasoning employed by the RFF NDRC. The present appeal is directed against the Appeal Committee's decision of 3 February 2022 (the "Appealed Decision").

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

16. On 4 March 2022, the Appellant filed its statement of appeal (the "Statement of Appeal") with the Court of Arbitration for Sport (the "CAS"), in accordance with Articles R47 and R48 of the 2021 edition of the CAS Code of Sports-related Arbitration (the "CAS Code"). The court office fee of CHF 1,000.00 had been paid by the Appellant on 3 March 2022 already. In its Statement of Appeal, the Appellant requested that the dispute be decided by a sole arbitrator and that English be the language of the arbitration.

17. On 7 March 2022, the CAS Court Office invited the Appellant to complete the Statement of Appeal further to Article R48 of the CAS Code by supplying the complete address of the Respondent (namely the Respondent's email address), which the Appellant did on the same date.

18. On 14 March 2022, the Appellant filed its Appeal Brief, in accordance with Article R51 of the CAS Code.

19. By letter of 16 March 2022, the CAS Court Office, *inter alia*, invited the Respondent to indicate whether it agreed to the appointment of a sole arbitrator and whether it had any objections to English being the language of the arbitration. With a separate letter of the same day, the CAS Court Office requested the RFF to declare within 10 days of receipt of that letter whether it intended to participate in this arbitration as a party.

20. By letter of 23 March 2022, the Respondent stated that it agreed to the appointment of a sole arbitrator and to English being the language of the arbitration.

21. By letter of 24 March 2022, the CAS Court Office informed the Parties that a sole arbitrator would be appointed pursuant to Article R54 of the CAS Code and that the language of the arbitration would be English. Moreover, the CAS Court Office set a deadline for the

Respondent to file its Answer according to Article R55 of the CAS Code within 20 days upon receipt of the CAS letter by email. The CAS Court Office informed the Parties that if the Respondent failed to submit its Answer by the given time limit, the sole arbitrator, once constituted, may nevertheless proceed with the arbitration and deliver an award.

22. By letter of 30 March 2022, the CAS Court Office informed the Parties that the RFF had failed to respond to the CAS letter of 16 March 2022 and that the deadline set in that letter had expired. The CAS Court Office noted that, in view thereof, it was understood that the RFF did not request to intervene as a party in the arbitration. With the same letter, the CAS requested the RFF to provide by 4 April 2022 a clean copy of the Appealed Decision and its notification to the Parties.

23. On 30 March 2022, the RFF provided the CAS Court Office with a copy of the Appealed Decision as well as proof of its notification to the Parties.

24. By letter of 14 April 2022, the Respondent submitted its Answer.

25. By letter of 19 April 2022, the CAS Court Office noted that while the 20-day deadline to file the Answer had elapsed on 13 April 2022, the Respondent had filed its Answer (via email and the CAS E-filing Platform) on 14 April 2022. The CAS Court Office invited the Respondent to provide the CAS Court Office by 22 April 2022 with any explanation concerning the deadline and/or proof of filing of its Answer by courier within the applicable deadline.

26. By letter of 26 April 2022, the CAS Court Office noted that it had not received any communication from the Respondent in response to the CAS letter of 19 April 2022, and invited the Appellant to submit by 3 May 2022 any comments it may have in respect of the filing of the Respondent's Answer.

27. By letter of 29 April 2022, the Appellant requested that the Respondent's Answer be dismissed due to the Respondent's failure to comply with the applicable 20-day deadline.

28. By letter of the same day, the CAS Court Office informed the Parties on behalf of the Deputy President of the CAS Appeals Arbitration Division and further to Article R54 of the CAS Code, that Dr. Heiner Kahlert, Attorney-at-law in Munich, Germany, had been appointed as Sole Arbitrator.

29. By letter of 10 May 2022, the CAS Court Office informed the Parties that the Answer was deemed inadmissible by the Sole Arbitrator further to Article 32 of the CAS Code and that the reasons for the Sole Arbitrator's decision would be provided in the final award. With the same letter, the CAS Court Office invited the Appellant to respond to a number of questions posed by the Sole Arbitrator in connection with the Appellant's request for relief for *"legal interest and penalties"*, and to submit any evidence it sought to rely on in this regard, by 20 May 2022.

30. By letter of 20 May 2022, the Appellant submitted its answers to the Sole Arbitrator's questions.

31. By letter of 30 May 2022, the Respondent submitted its comments to the Appellant's 20 May 2022 submission.

32. By letter of 27 June 2022, the CAS Court Office invited the Parties to inform the CAS by 4 July 2022 whether they preferred for a hearing to be held in this matter or for the Sole Arbitrator to issue an award based solely on the Parties' written submissions. Moreover, the Parties were informed that Articles R44.2 and R57 of the CAS Code provide that, after consulting the Parties, the Sole Arbitrator shall decide whether to hold a hearing and if so, whether to hold it by video-conference. Finally, the Appellant was requested to provide by 7 July 2022 the full Romanian text and an English translation of Article 3 of Romanian National Regulation no. 13/24.08.2011 (*ordonanta nr. 13/24.08.2011*) (the "Romanian Regulation"), while the Respondent was requested to clarify within the same deadline whether, in its submission of 30 May 2022, its reference to *"art. 5 and art. 6 of the Procedural Rules"* was in fact a reference to the RFF Regulations on Working with Intermediaries, and to submit the full text and an English translation of the two articles it sought to rely on.

33. By letter of 4 July 2022, the Appellant informed the CAS Court Office that it did not request an oral hearing but rather considered that the Sole Arbitrator could decide based on the Parties' written submissions.

34. By letter of 7 July 2022, the Appellant provided the requested translation. On the same day, the Respondent informed the CAS Court Office that it did not request an oral hearing. Moreover, the Respondent confirmed that its reference to the *"Procedural Rules"* was in fact a reference to the RFF Regulations on Working with Intermediaries, and provided the full text and an English translation of Articles 5 and 6 thereof.

35. By letter of 18 July 2022, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to issue the award solely based on the Parties' written submissions, further to Article R57 of the CAS Code.

36. On 18 August 2022, the Appellant returned the signed Order of Procedure.

37. On 25 August 2022, the Respondent returned the signed Order of Procedure.

IV. SUBMISSIONS OF THE PARTIES

38. The following summary of the Parties' positions is illustrative only and does not necessarily comprise every submission advanced by the Parties. The Sole Arbitrator confirms, however, that he has carefully considered all the submissions made by the Parties, whether or not there is specific reference to them in the following summary.

39. The Appellant's submissions, in essence, may be summarized as follows:

- By way of the Consultancy Contract, the Parties agreed on the Appellant's obligation to mediate the transfer of the Player to the Respondent, in exchange for payment of the Fee.

- The Player Contract was registered with the PFL on 10 July 2018. The International Transfer Certificate (the "ITC") must have been issued by that date, as well, because according to the applicable regulations, no player contract shall be registered with the PFL if the ITC has not been received by the registering team. While the Appellant inquired with the Fédération Internationale de Football Association ("FIFA") and the club from which the Player transferred to the Respondent about the exact date on which the ITC was issued, the Appellant did not receive any response to its requests. It would be judicious if the Respondent transmitted this information. If the CAS found it necessary, the Appellant would ask for an extension of the deadline to answer the question about the date of the ITC.

- The Appellant fulfilled its obligations under the Consultancy Contract and is therefore entitled to receive the Fee.

- Although the Consultancy Contract was not based on the Standard Form, it still contains all relevant rights and obligations. In any case, even if the Consultancy Contract did not comply with all requirements of the RFF Regulations on Working with Intermediaries, it would still be enforceable under the doctrine of *pacta sunt servanda*. This is because the RFF Regulations on Working with Intermediaries do not provide for a sanction of nullity. By contrast, Article 5(2) thereof merely provides that if the Standard Form is not used, the contract *"will not be recorded in the* [RFF] *records and will not be opposable to third parties"*, the relevant intermediary may be sanctioned with the exclusion from the list of intermediaries and a monetary fine may be imposed on the other parties.

- The Consultancy Contract is based on a draft provided by the Respondent. In good faith, the Appellant assumed that the Respondent, as the club that won the Romanian national football championship, has played in several international tournaments and has ample experience in transferring football players and working with intermediaries, would fulfil its contractual obligations.

- Based on Article 26(3) of the RSTJF, as referred to in Article 9(1) of the FIFA Procedural Rules, the Respondent should be deemed to have acknowledged its debt because it remained passive during the first three proceedings.

- Interest should be awarded as from 10 July 2018, the date on which the Player Contract was registered at the PFL. The applicable interest rate should be 10%, consisting of 6% legal interest pursuant to Article 4 of the Romanian Regulation, plus 4% legal penalty interest according to Article 3(2) of the Romanian Regulation, for not paying the amount owed in bad faith.

40. In its Appeal Brief[1], the Appellant made the following requests for relief from the Sole Arbitrator:

[1] The requests for relief in the Statement of Appeal are identical, except for the numbering format and the fact that the legal fees sought in Request No. 1.2 were previously expressed as the EUR countervalue.

"1. According to article R57 of the Code, to review the facts and the law applying to the case and issue a new decision:

1.1. To charge the Respondent F.C. CFR 1907 Cluj S.A with the payment to the undersigned of the amount of 20,000 euros plus legal interest and penalties until the actual payment of the amount of money, debt resulting from the Consultation Contract concluded on 30.06.2018, having as object the intermediation by the undersigned of the transfer of the professional football player [X.]*, born on* […]*, amount highlighted in Invoice No. HSIV021 /2018;*

1.2. To oblige the Defendant to pay the costs of the proceedings before the national arbitration courts, procedural fees 2,500 euros and 5.000 RON legal fees;

2. To oblige the Defendant to pay the costs of the proceedings before the Court of Arbitration for Sports, including legal fees for the attorney".

41. The Respondent's Answer was deemed inadmissible since it was not filed in accordance with Article R31 of the CAS Code (see section VII.B. below). The Respondent's submissions of 30 May 2022 and 7 July 2022, in essence, may be summarized as follows:

- The registration of intermediation contracts with the RFF and the use of the Standard Form are mandatory preconditions for such contracts being validly concluded as well as subject to the jurisdiction of the sports courts, as follows from Articles 5 and 6 of the RFF Regulations on Working with Intermediaries. The Consultancy Contract does not comply with the mandatory requirements regarding the form and content of a consultancy contract under the RFF Regulations on Working with Intermediaries.

- The fact that the Appellant is unable to submit the date of the ITC is irrefutable proof that it did not provide any intermediary services.

- The Appellant is not an intermediary legally registered with the RFF and it did not register the Consultancy Contract with the RFF.

- All of the Appellant's explanations as to the interest rate and date from which interest is sought were made too late. Given that the present proceedings concern an appeal, any modification of the claim should have been made in front of the first instance body already. The Sole Arbitrator accepting any modification or clarification would constitute a violation of the right of defense and of the *"principle of multiple degrees of jurisdiction"*. Therefore, the Appellant is not entitled to any interest at all. In any case, the Romanian Regulation only provides for legal interest, but no penalty interest, in legal relations within a foreign element.

- While the Answer was deemed inadmissible and the Respondent's submissions of 30 May 2022 and 7 July 2022 did not contain any formal request for relief, the Respondent concluded as follows in its submission of 30 May 2022:

"[…] *considering that the Consultancy Contract does not fulfill the requirements established through the Internal Regulation mentioned above, the Appellant shall not be entitled to request legal interest and/or any kind of penalties".*

V. JURISDICTION

42. The Respondent has not challenged the jurisdiction of the CAS. Its Answer, which would have had to contain any such challenge in accordance with Article R55 of the CAS Code, was filed late and is therefore inadmissible (see section VII.B below).

43. In any case, the Sole Arbitrator finds that CAS does have jurisdiction to decide the present appeal pursuant to Article R47 of the CAS Code, which reads as follows:

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

44. Article 36(17) of the RSTJF provides as follows:

"The decisions of the [RFF] / [PFL] *Board of Appeal are final and enforceable internally as of* [sic] *and may be challenged only before the Court of Arbitration for Sport within 21 days".*

45. While in the present proceedings both Parties have referred to the body that rendered the Appealed Decision as the *"Appeal Committee"*, not the *"Board of Appeal"*, the Sole Arbitrator has no reason to doubt that these English denominations both refer to the same body, given that the Claimant specifically relied on Article 36(17) of the RSTJF and the Respondent did not take any issue with the applicability of this provision.

46. Therefore, the regulations of the body that rendered the Appealed Decision expressly provide for CAS appeal jurisdiction in this case.

47. Accordingly, the Sole Arbitrator determines that CAS has jurisdiction over this appeal.

VI. ADMISSIBILITY

48. 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 in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. […]*".*

49. Accordingly, Article R49 of the CAS Code accords priority to any time limit for appeal provided in the regulations governing the body that issued the decision appealed against. Article 36(17) of the FRSTJ provides for a time limit of 21 days. However, it does not say

when this time limit starts running. The Sole Arbitrator finds it appropriate to refer to Article R49 of the CAS Code as a default rule in this regard, meaning that the time limit starts running upon receipt of the decision appealed against (with the day of receipt not counting against the time limit, further to the first sentence of Article R32 of the CAS Code).

50. The Appellant has asserted, and the Respondent has not disputed, that it received the Appealed Decision on 11 February 2022. This also seems confirmed by the delivery status notification provided by the RFF to the CAS, which indicates the same date. Accordingly, the time limit for appeal expired on 4 March 2022.

51. The Statement of Appeal was received by the CAS by email on 4 March 2022, i. e. on the last day of the deadline. This email is sufficient to meet the deadline in accordance with Article R31(3) of the CAS Code, given that the Appellant sent the Statement of Appeal on the same day by courier.

52. While on 7 March 2022, the CAS Court Office requested that the Appellant provide the email address of the Respondent, this does not mean that the appeal was filed late. Instead, Article R48(3) of the CAS Code expressly provides that

> *"[i]f any of the above-mentioned requirements of Article 48(3) of the CAS Code are not fulfilled when the statement of appeal is filed, the CAS Court Office may grant a one-time-only short deadline to the Appellant to complete its statement of appeal, failing receipt of which within the deadline, the CAS Court Office shall not proceed".*

53. As the CAS letter of 7 March 2022 set a deadline of three days for the Appellant to complete the appeal, Article R48(3) of the CAS Code implies that the appeal was timely filed if the requested information was submitted within this additional deadline (see also CAS 2014/A/3549, para. 77). As the Appellant did inform the CAS of the Respondent's email address by letter of the same day, the appeal was timely filed.

54. Accordingly, the Sole Arbitrator determines that the appeal is admissible.

VII. OTHER PROCEDURAL MATTERS

55. The present case raises three additional procedural matters:

(i) The Appellant's request for relief seeking payment of the Fee *"to the undersigned"*;

(ii) The admissibility of the Answer; and

(iii) The admissibility of the Appellant's submission on interest dated 20 May 2022.

56. These three issues will be dealt with in turn below.

A. Appellant's requests for relief

57. With its requests for relief, the Appellant seeks payment of the Fee *"to the undersigned"*. Both the Statement of Appeal and the Appeal Brief were signed by the Appellant's counsel, who is not a party to this arbitration and in favour of whom the Sole Arbitrator cannot make any ruling.

58. However, at the same time, both the Statement of Appeal and the Appeal Brief refer elsewhere to *"[t]he undersigned Appellant-Claimant"* (emphasis added), and the term *"Appellant-Claimant"* is expressly defined in both of those submissions as meaning *"HSI Soccer KFT"*, i. e. the Appellant. Under these circumstances, the Sole Arbitrator has no doubt that payment is sought to the Appellant, not its counsel (which does not necessarily mean that the Appellant cannot designate its counsel's bank account as the account into which the Respondent shall pay any sums owed under this award to the Appellant). Therefore, the Sole Arbitrator will rule on this request for relief as interpreted above.

B. Admissibility of the Answer

59. By letter of 10 May 2022, the CAS informed the Parties that the Sole Arbitrator had decided not to admit the Answer, and that the reasons for this decision would be set out in the final award. This section now delivers those reasons.

60. The time limit for the Answer was set by the CAS Court Office to 20 days upon receipt of CAS' 24 March 2022 letter that was transmitted by email of the same date, meaning that the time limit expired on 13 April 2022. Accordingly, when the Answer was filed by email and via the CAS E-filing Platform on 14 April 2022, the applicable time limit had already expired.

61. While the deadline was missed by only one day, this is not sufficient in and of itself to admit the Answer. Ignoring a late filing merely because the delay is slight would undermine the very purpose of any deadline. Rather, the Respondent would at least have had to explain its late filing so as to put the Sole Arbitrator in a position to decide whether, based on all circumstances, the Answer should be admitted. However, the Respondent chose not to respond to the CAS letter of 19 April 2022, by which it was explicitly invited to provide an explanation concerning the deadline. In the absence of any such explanation, let alone any request that the Answer be admitted despite its late filing, and given that the Appellant expressly did not agree to admit the Answer in the circumstances, the Sole Arbitrator was not prepared to admit the Answer.

62. For the avoidance of doubt, the Sole Arbitrator notes that the dismissal of the Answer does not result in any of the Appellant's requests for relief being deemed acknowledged by the Respondent. First, it is well-established under Swiss arbitration law that a respondent's failure to answer the claim does not constitute an acknowledgement of the claim, meaning that the arbitral tribunal must still satisfy itself that the claim is well-founded (see KAUFMANN-KOHLER/RIGOZZI, *International Arbitration – Law and Practice in Switzerland*, 1st ed., 2015, para. 6.20). The same must apply if the Answer is filed out of time and is therefore deemed inadmissible. Secondly, although the Respondent's submission of 30 May 2022 neither

includes any formal requests for relief nor expressly states that the Appellant's other claims are unfounded, some of the arguments with which the Respondent denies the claim for interest go to the enforceability of the Consultancy Contract as such. This implies that the Respondent likewise does not acknowledge owing any of the other amounts claimed by the Appellant.

C. Admissibility of the Appellant's submissions on interest

63. The Respondent has objected to the admissibility of the additional submissions that the Appellant made on its request for interest, upon request by the Sole Arbitrator. In the Respondent's view, those submissions cannot be accepted in the present appeal proceedings because they have not been made in the previous instance.

64. Indeed, there is no indication in the record that the Appellant specified the interest rate sought by it, or the date from which interest is sought, in the previous instance. Neither did the Appellant provide those details in its Statement of Appeal and Appeal Brief.

65. However, as is evident from the decision of the RFF NDRC of 20 May 2021, the Appellant did seek *"legal and default interest"* already in the first proceeding in this matter. The Sole Arbitrator has no hesitation to find that this request is identical in substance with the request included in the Appellant's Statement of Appeal and the Appeal Brief, namely *"legal interest and penalties"*. Accordingly, this is not a situation where an appellant adds additional requests for relief in the appeal proceedings that were not submitted in the previous instance. Instead, the pertinent question is whether the Sole Arbitrator may take into account the additional information provided by the Appellant in relation to the *same* request for relief that had already been filed in the first instance.

66. The Respondent itself has labelled this additional information as *"explanations"* and *"clarification"*, and the Sole Arbitrator agrees to this characterization more than to the further label of *"modification"* used by the Respondent. In this regard, the Sole Arbitrator notes the view expressed in BERGER/KELLERHALS, *International and Domestic Arbitration in Switzerland*, 4th ed., para. 1213:

> *"If a party modifies its original prayer for relief to obtain more, additional or different relief, that modification constitutes and amendment (or supplement) to the claim. A mere change of the wording of the prayer for relief or in the legal qualification of a claim is not to be considered an amendment. The same should apply […] if a party initially puts forward an indeterminate claim and later specifies it (e.g. an unquantified claim that is quantified at a later stage of the proceedings […])"* (emphases added).

67. By specifying the interest rate as well as the date from which interest is sought, the Appellant merely *specified* its request for relief, as opposed to giving it a wider scope or changing the nature of the request for relief. Therefore, the Sole Arbitrator finds that the Appellant's additional submissions on interest are admissible. As the Respondent was granted (and took advantage of) the opportunity to comment on those additional submissions, the Sole Arbitrator does not agree with the Respondent's argument that its right of defence was violated.

VIII. APPLICABLE LAW

68. Article R58 of the CAS Code provides as follows:

> *"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".*

69. The Sole Arbitrator notes that the Parties did not expressly make arguments with respect to the applicable law, but notes that both Parties have made submissions based on the regulations of the RFF, in particular the RFF Regulations on Working with Intermediaries. The Sole Arbitrator accepts that those regulations are *"applicable regulations"* within the meaning of Article R58 of the CAS Code as their scope of application covers the activity of intermediaries, such as the Appellant, in the context of transfers of players to Romanian clubs, such as the Respondent (cf. Article 1 of the RFF Regulations on Working with Intermediaries). In addition, Romanian law shall apply, as per the Parties' express choice of law contained in Clause 3.2 of the Consultancy Contract (quoted in paragraph 6 above).

IX. MERITS

70. It is undisputed that the Parties concluded the Consultancy Contract. Moreover, neither of the Parties argues (and there is no indication in the record that) the Consultancy Contract is invalid or unenforceable as a matter of Romanian law. Therefore, the questions to be addressed by the Sole Arbitrator are as follows:

(i) Did the Respondent acknowledge its debt by remaining passive in the proceedings before the RFF?

(ii) Is the Consultancy Contract unenforceable in this proceeding due to violations of the RFF Regulations on Working with Intermediaries?

(iii) Did the Appellant provide the agreed services in the Consultancy Contract as a precondition to payment?

(iv) Is the Appellant entitled to the claimed interest?

(v) Is the Appellant entitled to the claimed fees and expenses allegedly incurred in the previous instances?

71. These five questions will be dealt with in turn below.

A. The Respondent's Acknowledgement of debt

72. The Appellant argues that the Respondent acknowledged its debt because it remained passive throughout the first three proceedings before the RFF. While the Respondent has not disputed that it remained passive in the first three proceedings, the Sole Arbitrator is not persuaded that such passive behaviour would be tantamount to an acknowledgement of debt.

73. The Sole Arbitrator observes that while the Appellant relies in this regard on *"article 26 point 3 RSTJF referred to in art. 9 para. 3 of the FIFA Procedural Rules"*, it failed to provide the text, let alone an English translation, of Article 26(3) of the RSTJF. Even if the Sole Arbitrator were prepared to rely on the text of that provision as available on the RFF's website, and use the English translation thereof as provided by well-established machine translation services available on the internet, the provision would merely seem to say that the RFF NDRC shall apply the regulations of FIFA/the Union of European Football Associations ("UEFA") by analogy wherever the Statues and Regulations of the RFF do not contain a relevant provision. On that basis, the Appellant's argument would focus on Article 9(3) of the *"FIFA Procedural Rules"*.

74. However, neither the June 2020 edition of the FIFA Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (which was in force when the first proceeding before the RFF NDRC was initiated) nor the October 2021 edition of the FIFA Procedural Rules Governing the Football Tribunal (which was in force when the first proceeding before the Appeal Committee and the second proceeding before the RFF NDRC were initiated) provide in their respective Article 9(3) that a party that remains passive is deemed to have acknowledged the relevant debt. Instead, the former provision merely says that if a party fails to make any submission within the relevant deadline, a decision will be taken based on the record as it stands. The latter provision, in turn, merely requires party representatives to tell the truth and act in good faith in any procedure.

75. The Sole Arbitrator was neither referred to any other provision or jurisprudence that could support the Appellant's argument, nor is he aware of any. Consequently, the Sole Arbitrator finds that the Respondent did not acknowledge the debt simply because it remained passive in the first three proceedings before the RFF NDRC.

B. Enforceability of the Consultancy Contract

76. The Respondent argued that the Consultancy Contract violates the RFF Regulations on Working with Intermediaries mainly because it was not registered with the RFF and because it was not based on the Standard Form. In the Respondent's view, this renders the Consultancy Contract unenforceable under the RFF's jurisdiction (and, presumably, by extension, before CAS upon appeal). The Appellant, by contrast, argues that the principle of *pacta sunt servanda* applies to the Consultancy Contract, given that the RFF Regulations on Working with Intermediaries do not provide that a contract is null and void if it fails to comply with the relevant requirements foreseen in those regulations.

77. It has remained undisputed that the Parties did not use the Standard Form for the Consultancy Contract (even though the Parties disagree on whether, substantively, all relevant provisions from the Standard Form are reflected in the Consultancy Contract). Likewise, it has remained undisputed that the Consultancy Contract was not registered with the RFF. However, it does not fall to be decided by the Sole Arbitrator whether those omissions amounted to violations of Articles 5(1), 5(2) and/or 6(1) of the RFF's Regulations on Working with Intermediaries, as argued by the Respondent. Even if such violations occurred, they would still not render the Consultancy Contract unenforceable under the RFF's jurisdiction.

78. As rightly noted by the Appellant, neither the provisions relied upon by the Respondent (Articles 5 and 6 of the RFF Regulations on Working with Intermediaries), nor any other provisions of which the Sole Arbitrator is aware, provide that the consequence of a failure to register the Consultancy Contract with the RFF, and/or to use the Standard Form, would be the unenforceability of the Consultancy Contract before the RFF's bodies. Instead, in relation to the failure to register the Consultancy Contract with the RFF, the RFF Regulations on Working with Intermediaries do not seem to provide for any consequence at all, at least based on the texts and English translations provided by the Parties. Regarding the failure to use the Standard Form, the RFF Regulations on Working with Intermediaries even expressly provide for *different* consequences than the unenforceability of the intermediary contract in question. In this regard, Article 5(2) reads as follows (in the English translation provided by the Respondent):

> *"The use of another type / form of contract other than the one issued by the* [RFF] *will not be recorded in the* [RFF] *records and will not be opposable to third parties. Also, the signing of an intermediation contract on a form other than the one issued by* [RFF] *represents a violation of this regulation and is sanctioned with the exclusion from the list of intermediaries for the respective intermediary and a penalty of 50,000 lei for the other signatory parties".*

79. Rendering the Consultancy Contract unenforceable as between the Parties is something decisively different than the Parties not being able to invoke the Consultancy Contract vis-à-vis third parties, or being subject to disciplinary sanctions such as the exclusion from the list of intermediaries or a monetary fine.

80. The Sole Arbitrator is not prepared to accept such a harsh consequence as the non-enforceability of a contract as between the parties to that contract, even if only before the competent bodies of the RFF, in view of the fact that the RFF's own rules do not even provide for such consequence.

81. The Sole Arbitrator notes that this position is entirely consistent with well-established CAS jurisprudence. For instance, in CAS 2012/A/2988, referred to by the Appellant, the sole arbitrator ruled as follows:

> *"81. The FIFA PAR [FIFA Players' Agents Regulations] does not determine the consequences for a contract if an agent acted contrary to provisions of the FIFA PAR. As maintained in CAS jurisprudence "the FIFA Regulations do not state the consequences of a failure regarding the form of an agency contract or payment details as to be the invalidity of an agency agreement" (CAS 2007/A/1371 and CAS 2011/A/2660). The Sole*

Arbitrator observes that the FIFA PAR clearly establish what the consequences are if an agent does not comply with its obligations, namely the sanctioning of the agent based upon article 33 of the FIFA PAR ("[t]he following sanctions may be imposed on players' agents for violation of these regulations and their annexes in accordance with the FIFA Disciplinary Code: (…)"), but the invalidity of an agreement is not one of the consequences provided.

[…]

83. Therefore, even if the FIFA Disciplinary Committee would establish (multiple) violations of the FIFA PAR by the Agent, the Mediation Contract is not null and void solely for that reason. As a result, the Sole Arbitrator finds that the Mediation Contract is not null and void only because of a possible (or multiple) infringement(s) of the FIFA PAR by the Agent".

82. To same effect, the panel in CAS 2016/A/4573 held as follows:

"8.33 However, the Panel agrees with the Appellant that the lack of form in the oral agreement and the fact that the latter is apparently in breach of the provision regarding dual representation does not invalidate the entire oral agreement between the Parties.

[…]

8.36 The Panel finds that no such sanction is thus available in the Regulations that would lead to the invalidation of the entire agreement, and the oral agreement between the Parties is therefore considered valid regardless of the Appellant's failure to comply with the Regulations. This is in line with CAS jurisprudence (see CAS 2011/A/2660 and CAS 2013/A/3443). Thus, the Panel confirms that, as a party to a valid agreement, the Appellant has the right to sue in this case".

83. The Sole Arbitrator fully subscribes to the consistent approach reflected in this jurisprudence, and therefore finds that the Consultancy Contract is enforceable before the RFF's bodies and, by extension, upon appeal before the CAS.

C. Provision of the agreed services by the Appellant

84. While the Appellant has argued that it has fulfilled all of its obligations under the Consultancy Agreement, the Respondent has disputed that the Appellant provided any intermediary services. For the following reasons, the Sole Arbitrator finds that the Respondent's assertion does not call into question the Appellant's entitlement to the Fee.

85. First, the Sole Arbitrator notes that only after the Sole Arbitrator had asked the Appellant for the date on which the Respondent received the ITC, and the Appellant responded that it was unable to answer this question, the Respondent commented that *"[t]he fact that the Appellant does not have essential informations* [sic] *for proving that he has fulfilled his contractual obligations is an irrefutable proof that he did not provide the intermediary services"* (emphasis added). While the underlined part of the submission – arguably – qualifies as a proper denial of the rendering of any intermediary services by the Appellant to the Respondent, it was beyond the scope of the submission invited by the Sole Arbitrator, namely comments on the Appellant's replies to the

Sole Arbitrator's questions – none of which questions, or answers, touched upon the provision of the agreed services. Therefore, the Sole Arbitrator finds that the denial was late because it was made in an unsolicited fashion after the deadline for the Answer had already expired.

86. Secondly, under the heading *"Object of the Contract"*, Clause 1.1 of the Consultancy Agreement provides that the Appellant will provide counselling and intermediation services to the Respondent in the negotiations with the Player. Importantly, Clause 1.2 of the Consultancy Agreement then goes on to say that the *"object of the contract shall be deemed to be achieved subject to the conclusion of a civil convention / labor contract between* [the Respondent] *and the Player, registered at PFL"* (emphasis added). Reading both clauses together, the Sole Arbitrator takes this to mean that if a labour contract between the Player and the Respondent is registered at the PFL, as was the case, the Appellant is deemed to have performed the agreed services.

87. Thirdly, even if one considered that this presumption provided for in Clause 1.2 of the Consultancy Agreement could be rebutted by the Respondent, the Sole Arbitrator observes that it is undisputed that the Appellant was the Player's representative at the time and that the Respondent got in contact with the Appellant precisely for the purpose of securing a transfer of the Player to the Respondent. It is likewise undisputed that this resulted in the signing of the Consultancy Agreement on 30 June 2018 and that the Player Contract was signed on 6 July 2018. It is an inherently unlikely proposition that after signing the Consultancy Agreement for the very purpose of intermediating a transfer of the Player to the Respondent, the Appellant was not in fact involved in the signing of the Player Contract that occurred a mere six days thereafter. At the very least, it would have been for the Respondent to explain how this came about, instead of merely denying that the Appellant was involved. Similarly, it is undisputed that the Appellant issued an invoice to the Respondent for the Fee, which referred to *"Counseling* [sic] *and intermediation services* … [X.]*"*, and that the Appellant subsequently sent a warning letter requesting payment of that invoice. Neither does the Respondent claim that it ever objected to the invoice or the warning letter, nor is there any indication in the file that it did so, be it out of court or during the proceedings before the RFF. By contrast, it is undisputed that the Respondent repeatedly promised payment. Again, it is inherently unlikely that the Respondent would have remained silent after receiving the invoice and the warning letter, and even promised payment, if it were true that no intermediary services were in fact provided by the Appellant.

88. Therefore, the Sole Arbitrator is satisfied that the Appellant did provide the agreed services. Consequently, the Appellant is entitled to payment of the Fee, in the amount of EUR 20,000.00 net.

D. Interest

89. As the Sole Arbitrator was not referred to and is not aware of any provision on interest in the applicable sporting regulations, the issue of interest is governed by Romanian law, more specifically by Articles 1, 3 and 4 of the Romanian Regulation relied upon by the Parties.

90. In the translation provided by the Appellant, the relevant articles of the Romanian Regulation provide as follows:

"Article 1

(1) The parties are free to determine, subject to agreements, the interest rate for the repayment of a financial loan and for defaulting on a financial obligation.

(2) The interest owed by the debtor having an obligation to pay an amount of money by a certain term, calculated for the period preceding the due date of such obligation, is called remuneratory interest.

(3) The interest owed by the debtor having a financial obligation for the failure to fulfil such financial obligation by the due date is called penalty interest.

(4) Unless otherwise stated, the term "interest" in this Ordinance shall mean both remuneratory and penalty interest.

[…]

Article 3

(1) The statutory remuneratory interest rate shall be equal to the reference interest rate of the National Bank of Romania […].

(2) The statutory penalty interest rate shall be equal to the reference interest rate plus 4 percentage points. […].

Article 4

In legal relations with an element of foreignness, when the Romanian law is applicable and when the payment in foreign currency has been stipulated, the legal interest is 6% per year".

91. The present case involves an *"element of foreignness"* as the Appellant is not a Romanian party. Moreover, Romanian law is applicable and payment has been agreed in a foreign currency (Euros). Hence, it follows from Article 4 of the Romanian Regulation that interest is owed at a rate of 6% per annum. This much seems to be common ground between the Parties (noting that the Respondent primarily denies owing any interest at all, based on arguments already dismissed above). However, the Appellant requests additional interest of 4% per annum based on Article 3(2) of the Romanian Regulation. For the reasons set out in the following paragraphs, the Sole Arbitrator is not persuaded by this argument.

92. To begin with, if at all, Article 3(2) of the Romanian Regulation could only entitle the Appellant to interest at 4 percentage points above the reference interest rate of the National Bank of Romania. This is not the same as 4% per annum unless the reference interest rate – on which no submissions were made by either Party – is zero.

93. In addition, and in any case, the Appellant has failed to establish that Article 3 of the Romanian Regulation could be applied on top of Article 4 of the Romanian Regulation. In fact, such interpretation seems rather implausible for at least two reasons.

94. First, contrary to Article 3 of the Romanian Regulation, which differentiates between *"remuneratory"* and *"penalty"* interest, Article 4 therein uses the more general term *"interest"* without any qualification (except being preceded by the term *"legal"*, which however seems to serve the same purpose as the term *"statutory"* in Article 3). According to Article 1(4) of the Romanian Regulation, the term *"interest"* refers to both *"remuneratory"* and *"penalty"* interest. It would seem inconsistent with this terminology chosen by the Romanian legislator if, on top of *"interest"* pursuant to Article 4 of the said Regulation, which term already encompasses *"penalty"* interest, further *"penalty"* interest were payable under Article 3(2).

95. Secondly, contrary to Articles 3(1) and 3(2) of the Romanian Regulation, which provide for a dynamic interest rate that depends on the reference interest rate of the National Bank of Romania, Article 4 therein provides for a non-dynamic interest rate. There is no indication that this different approach to interest rates taken in Articles 3 and 4 of the Romanian Regulation is a clerical mistake. Accordingly, the Sole Arbitrator must assume that the Romanian legislator was of the (plausible) view that in a case with a foreign element, it is not appropriate to refer to a domestic reference interest rate. This decision would be undermined if one applied Articles 3 and 4 of the Romanian Regulation in parallel because this would entail the application of a domestic reference interest rate in foreign cases – i.e. precisely what that the Romanian legislator apparently sought to avoid.

96. Consequently, the Sole Arbitrator finds that the applicable interest rate is 6% per annum. As to the starting date, the Sole Arbitrator finds that in view of Articles 1(2) and 1(3) of the Romanian Regulation, the decisive point in time is – in principle – the due date of the underlying principal claim. Clause 2.1 of the Consultancy Contract provides that the Fee is payable within ten working days from the date of receipt of the Player's ITC. Accordingly, the Appellant's request for interest as from 10 July 2018 could only be upheld if the ITC was received ten working days before 10 July 2018. However, the Appellant has failed to establish that this was the case, given that it was unable to identify the exact date of the ITC. While the Appellant has suggested that the Respondent should provide this information, the Appellant has failed to file a request for document production and the Sole Arbitrator is anyway of the opinion that based on the information before him, the Respondent was not obliged to produce the ITC (or provide information about its date) in these proceedings. Similarly, while the Appellant sought to be granted another deadline to again try and obtain the date of the ITC, the Appellant did not provide any indication as to why there were reasonable grounds to believe that those further attempts would be successful, given that its requests to FIFA and to the club from whom the Player transferred to the Respondent had remained unanswered. Also, the deadlines granted for the Answer and for the additional submission on interest should have been sufficient to retrieve the relevant information, if it was possible for the Appellant to obtain it at all.

97. That said, the Sole Arbitrator accepts the Appellant's undisputed submission that a player contract cannot be registered with the PFL before the ITC is received. As the Player Contract

was registered with the PFL on 10 July 2018 as per the PFL's stamp on the document, this means that, at the latest, the ITC was received on 10 July 2018. Consequently, the Fee became payable, at the latest, ten working days after 10 July 2018. As neither of the Parties has argued that there were any bank holidays around this time, the Fee became payable either on 23 or 24 July 2018, depending on whether Saturdays count as working days in Romania. However, the Sole Arbitrator observes that in its invoice, the Appellant itself indicated 29 July 2018 as the due date. Accordingly, the Arbitrator is not prepared to award any interest before 29 July 2018. In fact, as payment on the due date would still have been in time and therefore should not carry interest, the appropriate starting date for interest is 30 July 2018.

98. While the Sole Arbitrator notes that the Appellant took almost three years after the due date before he filed his claim, the Sole Arbitrator was not referred to (and is not aware of) any provision or principle of Romanian law pursuant to which a failure to diligently pursue one's claim would affect one's right to claim interest for the whole period of time from the day after the due date until payment. Accordingly, the Sole Arbitrator is satisfied that interest is due at 6% per annum from 30 July 2018 until payment.

E. Fees and Expenses from the previous instances

99. The Appellant requests that the Respondent be ordered to pay the costs incurred by the Appellant in relation to the proceedings before the previous instances, comprising procedural fees in the amount of EUR 2,500.00 and attorney fees in the amount of RON 5,000.00. The Appellant has provided evidence of those payments in the form of wire confirmations and the Respondent has neither disputed the payments nor argued that they should not be reimbursed.

100. However, there is no indication in the record that the Appellant had requested reimbursement of those amounts in the proceeding before the RFF Appeal Committee that led to the Appealed Decision. Accordingly, this request for relief is beyond the scope of the present appeal arbitration, which is limited to the object of the dispute before the previous instance (see, *ex multis*, CAS 2007/A/1396 & 1402, para. 45 with further references). Therefore, the request must be dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by HSI Soccer KFT on 4 March 2022 against CFR 1907 Cluj S.A concerning the decision issued by the Appeal Committee of the Romanian Football Federation dated 3 February 2022 is partially upheld.

2. The decision of the Appeal Committee of the Romanian Football Federation dated 3 February 2022 is set aside.

3. CFR 1907 Cluj S.A. is ordered to pay EUR 20,000.00 (twenty thousand Euros) net to HSI Soccer KFT, plus interest at a rate of 6% per annum from 30 July 2018 until the date of effective payment.

4. (…).

5. (…).

6. All other motions or prayers for relief are dismissed.