Arbitration CAS 2007/A/1355 FC Politehnica Timisoara SA v. FIFA & Romanian Football Federation (RFF) & Politehnica Stintia 1921 Timisoara Invest SA, award of 25 April 2008

Panel: Judge James Robert Reid QC (United Kingdom), President; Mr. Jean-Philippe Rochat (Switzerland); Ms. Margarita Echeverria Bermudez (Costa Rica)

Football
Name, tradename and colours of the club
Definition of the term "decision" of Article 60 of the FIFA Statutes
Enforceability of a CAS Award against a legal person with separate juridical personality

1. **Any FIFA decision which is intended to be made on behalf of the DRC and/or the Players' Status Committee (the PSC) and which is formulated as a final decision must be deemed subject to an appeal in front of CAS; where FIFA informs a Club that the "case was closed" and that any further questions or claims regarding the execution of the award should be addressed to CAS, this is a "final" decision, and, as such, susceptible to an appeal to CAS.**

2. **A legal person with separate juridical personality from the Club bound by a CAS decision may equally be bound thereby, if it acquired the rights of the Club (with which it is plainly closely connected) to participate in Liga 1 (Romania), if it was for all practical purposes the successor of the legal person and if the original CAS Award envisaged that the award might be enforceable against a successor to the Club.**

In this award the Appellant will be referred to as "Timisoara", the First Respondent as FIFA, the Second Respondent as RFF and the Third Respondent (SC Politehnica 1921 Stiinta Timisoara Invest SA) as "the SA". CS FCU Politehnica Timisoara is referred to as "the CS". These nomenclatures are for the purpose of identification only.

Timisoara is in Romanian law a legal person incorporated as a joint stock company pursuant to Law no. 31/1990. It is a football club currently competing in Liga 4 of the Romanian League and (despite its name) plays its home games in Bucharest rather than Timisoara. FIFA is the international sports federation governing the sport of association football worldwide. FIFA is an association established in accordance with Article 60 of the Swiss Civil Code and has its seat in Zurich (Switzerland). RFF is national authority governing football in Romania and is a federation established pursuant to Law no.69/2000 and OG No.26/2000. It has been affiliated with FIFA since 1923. The CS is in Romanian law a legal person, a non-profit-making organisation operating under the Romanian Act on Associations and Foundations (Decree No.26/2000). It currently runs youth and junior teams. The SA is a legal person incorporated as a joint stock company pursuant to Law no. 31/1990. Its registration certificate shows it to have been given its unique registration code

on 13 January 2006. Its name on incorporation was SC FCU Politehnica Timisoara & Invest SA but was changed to its present name after 12 June 2007. It currently competes in the Romanian Liga 1. The CS and the SA share the same address, according to documents emanating from the SA during the course of the hearing.

In these proceedings Timisoara seeks to have what it claims is a decision issued by FIFA on 26 July 2007 annulled and the following substantive relief (as clarified by its Appeal Brief):

1. A fine of at least CHF 50,000 (fifty thousand Swiss Francs) be imposed on the SA.
2. The CS and/or the SA be granted a final deadline of ten days from the notification of the CAS award in this case to comply with the orders contained in this arbitral award, including adopting another name that does not include the risk of confusion with the name of Timisoara (ie SC FC Politehnica Timisoara SA) and to cease imitating the colours, or using the track record, history and logo of Timisoara.
3. The CS and/or the SA be granted a final deadline of ten days from the notification of the CAS award to pay to Timisoara SA EUR 224.000 (two hundred and twenty-four thousand Euro), plus 5% in interest from 30 June 2007.
4. In default of compliance with any of the above within the stipulated time limit, 12 (twelve) points will be deducted from its points total in the current championship, and in the event of persistent default, the CS and/or the SA be relegated to the division below.
5. RFF be ordered to implement all the above directions in case of failure by the CS and/or SA to comply fully with the award within the stipulated time limit.
6. FIFA be ordered to issue a decision directed at the CS and/or the SA and at the RFF, containing all the directions set out 2 to 6 above.
7. The CS and/or the SA and/or the RFF and/or FIFA shall bear the costs, if any, of this arbitration and shall reimburse FC Politehnica Timisoara SA the minimum Court Office fee of CHF 500.
8. The CS and/or the SA and/or the RFF and/or FIFA contribute to the legal and other costs incurred by Timisoara in an amount of CHF 40,000 (forty thousand Swiss Francs).

Timisoara, the CS and the SA are all football clubs registered with the RFF.

In 2006 Timisoara asserted that the CS had, in effect, sought to steal its identity. It complained to RFF and, being dissatisfied with the final decision of RFF given on 12 June 2006, it appealed to CAS. The parties to that appeal were Timisoara and the CS.

Meanwhile on 31 March 2006 the CS agreed to transfer its right to participate in the Romanian Liga 1 to the SA. The SA has chosen not to disclose to CAS the terms of the agreement by which the transfer was made, but the SA informed the hearing that the transfer took effect for the 2006/2007 season. This coincides with a letter from the RFF to Timisoara of 13 April 2007 which

confirms the juridical entity which held the licence for the 2006/2007 season was the CS, in the name "SC FCU Politehnica Timisoara & Invest SA".

In the proceedings on Timisoara's appeal to CAS (CAS 2006/A/1109) which were between Timisoara and the CS, CAS ruled as follows:

"The Court of Arbitration for Sport rules:

1. *The appealed decision of 12 June 2006 of the Federal Appellate Commission of the Romanian Football Federation is set aside,*
2. *FCC Politehnica Timisoara is ordered to continue to use its earlier name CS FC Politehnica AEK Timisoara or to adopt another name, approved by the Romanian Football Federation, that does not include the risk of confusion with the name of SC FC Politehnica Timisoara SA. FCU Politehnica Timisoara is ordered to pay the amount of EUR 5,000 as compensation to SC FC Politehnica Timisoara SA for each official match played from 5 December 2006, until it effects a name change in accordance with the present award.*
3. *FCU Politehnica Timisoara is interdicted to imitate the colours or use the track record and logo of SC FC Politehnica Timisoara SA.*
4. *FCU Politehnica Timisoara is ordered to pay the amount of EUR 90,000 as compensation for violation with regard to the use of the name, colours, track record, history and logo of SCS FC Politehnica Timisoara SA between 13 June 2006 and 4 December 2006 inclusive. This amount is to be paid within 1 month of the receipt of this award. In case the sum has not been paid to SCS FC Politehnica Timisoara SA by this deadline, FCU Politehnica Timisoara is ordered to pay 5% interest p,a.*
5. *The Federal Appellate Commission of the Romanian Football Federation shall render a decision within a reasonable time frame, deciding the amount of compensation to be paid to SC FC Politehnica Timisoara SA by FCU Politehnica Timisoara for each usage of SC FC Politehnica Timisoara SA's name, track record, history and logo and colours between 31 January 2005 and 12 June 2006 inclusive, and shall multiply this amount by the amount of official games played by FCU Politehnica Timisoara during this period to calculate the entire amount of compensation to be paid by FCU Politehnica Timisoara to SC FC Politehnica Timisoara SA for violation of SC FC Politehnica Timisoara SA's personality rights during that period.*

(…)".

Following correspondence, on 21 January 2007, the Romanian Football Federation summoned Timisoara to a hearing on 21 February 2007 for the purpose of "revising" the decision of 12 June 2006. In the meantime, the CS lodged with the CAS a request for the interpretation of the Award. This request was dismissed on 1 February 2007 by the President of the CAS Appeal Arbitration Division. This decision was communicated to FIFA on 3 February 2007. Following a hearing on 21 and 22 February 2007 the RFF purported (by a majority) to "revise" the decision of 12 June 2006. As a result of this on 12 March 2007 FIFA wrote to RFF a letter concluding: *"On behalf of the chairman of the FIFA Disciplinary Committee, we have to ask you to fully implement the final and binding CAS award until 23 March 2007 at the latest and to inform us about this implementation within the same deadline".*

This communication resulted in a decision of the Commission for the Player's Statute of the RFF on 20 March 2007 which determined as follows:

> *"It [the Commission for the Player's Statute] obliges FCU Politehnica Timisoara to change its name and to take another name which does not include the risk of being mixed up with SC FC Politehnica Timisoara SA. This obligation will be realized following the conditions of the Article 2.1 from ROAF, until the beginning of the championship -2007/2008 edition.*
>
> *If obliges FCU Politehnica Timisoara to pay to SC FC Politehnica Timisoara SA the amount of EUR 10,000, this sum resulting by multiplying the sum of EUR 5,000 with 2 official games played between the period of 05.12.2006 and the date of the pronunciation of the present decision.*
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> *It forbids FCU Politehnica Timisoara to fake the colors and to use the hymn the history and the logo of SC FC Politehnica Timisoara.*
>
> *It obliges FCU Politehnica Timisoara to pay to SC FC Politehnica Timisoara the amount of EUR 90,000, under the sanction of the payment of a debt of 5% starting with 05.12.2006.*
>
> *It declines to CAP of RFF the execution of paragraph 5 from the disposition of the TAS decision dated the 05.12.2006.*
>
> *It obliges FCU Politehnica Timisoara to pay to SC FC Politehnica Timisoara of the sum of CHF 500, procedure fee to JAS and 300 lei procedure fee to CSJ".*

However the lawyer then acting for the RFF (who appeared before CAS representing the SA, having – as he told the hearing - left the employ of the RFF in July 2007) announced that the CAS decision was addressed to the CS (which he said *"plays in the junior championships and has nothing to do with [the SA]"*) and that *"At this moment, Poli from the first league can continue to play".*

On 21 March 2007, Timisoara wrote to FIFA complaining that the Commission's decision still did not comply with the CAS Award. Further correspondence followed. It culminated in FIFA writing to the RFF on 6 June 2007 a letter containing the following passage:

> *"In case your association fails to send us by 15 June 2007 at the latest the proof that the CAS-award has been implemented against the correct club in all its points, the FIFA Disciplinary Committee will open disciplinary proceedings against the Romanian Football Federation. The sanctions in such proceedings may lead to the expulsion from all FIFA competitions".*

As a result of this letter the executive committee of the RFF on 12 June 2007 decided by consensus as follows:

> *"Enforcement of the previous TAS decision dated on 05.12.2006 regarding the case between SC FC Politehnica Timisoara SA and CS FCU Politehnica Timisoara. Taking in consideration the FIFA address dated in 06.06.2007 in which the above mentioned will be executed by SC FCU Politehnica Timisoara & Invest SA, affiliated club at RFF which participates in the First League, also the FRP obligations which arise from the quality of FIFA member, SC FCU Politehnica Timisoara & Invest SA is obliged to:*
>
> *a) to change the name in order not create confusion with SC FC Politehnica Timisoara SA;*
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> *b) not to use the history of SC FC Politehnica Timisoara SA from the beginning till now;*
>
> *c) not to imitate the club anthem and the musical overture deposited at RFF;*

d) not to imitate SC FC Politehnica Timisoara SA club badge;

e) not to imitate the color violet in the measure which this is registered at OSIM;

f) to pay the sum of EUR 90,000 + EUR 2,367 representing delay damages for the misuse of the name, colors, badge, anthem, history of SC FC Politehnica Timisoara between 13.06.2006 and 04.12.2006;

g) to pay the sum of EUR 96,000 for the misuse of the name, color, badge, anthem, history of SC FC Politehnica Timisoara SA between 31.01.2005 and 12.06.2006;

h) to pay the sum of EUR 100,000 for the misuse of the name, color, badge, anthem, history of SC FC Politehnica Timisoara SA between 05.12.2006-12.06.2007;

i) to pay the sum of CHF 500, to SC FC Politehnica Timisoara SA being law-sue charges.

The obligations from the sect, a) - i) are going to be fulfilled in a 15 days period from the adoption of the decision. In case in which the obligations above mentioned won't be fulfilled in the above mentioned term, follows to adopt the sanctions regarding the enforcement of the previous TAS decision adopted by the RFF Executive Comity".

It will be observed that the RFF determined that the obligations which had originally been imposed on the CS should be discharged by the SA. Timisoara was not informed of this decision directly but became aware of it as a result of CAS forwarding to it a copy of a letter to CAS from the RFF dated 18 June which set out the substance of the decision of 12 June 2007. Neither the SA nor Timisoara sought to appeal that decision.

Shortly thereafter the SA paid the RFF the sums required by the decision of 12 June and these sums were paid on to Timisoara. The SA then changed its name to its present name. Timisoara wrote to FIFA asking for intervention to enforce the original CAS award. This prompted FIFA to write to the RFF on 13 July and the RFF responded on 17 July to the effect that award had been complied (subject to "practical obstacles" in relation to the colours, the anthem and the logo) save for the question of costs which would be dealt with at a future Executive Committee meeting since the RFF had only been informed of the costs issue on 26 June, after the decision of 12 June.

It was this letter which led to the letter of 26 July 2007 which caused Timisoara to commence these proceedings. The FIFA letter of 26 July 2007 is addressed to the Romanian Football Federation and to S.C.S.F.C. Politehnica Timisoara SA and contains the following sentence: *"After a thorough analysis of this matter, we would like to inform you that this case is closed".*

On 13 August 2007 Timisoara filed its statement of appeal.

On 27 August 2007 Timisoara filed its appeal brief.

On 17 September 2007 RFF submitted its answer.

On 18 September 2007 the SA submitted its answer.

On 19 September 2007 FIFA submitted its answer.

On 10 January 2008 an oral hearing was held in Lausanne, Switzerland.

LAW

CAS Jurisdiction

1. Under Article R47 of the Code, an appeal may be filed before CAS only against *"a decision [of last instance] of a federation, an association or other sports-related organization"* if the statutes or the regulations of the said organization provide for it and insofar as the available internal appeals have been exhausted. Article R58 of the Code provides that a CAS panel shall decide a dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such choice, in accordance with the law of the country in which the federation, association or sports related body which has issued the challenged decision is domiciled or according to the rules of law the application of which the panel deems appropriate. Article 60 of the FIFA by-laws provides that CAS shall apply the FIFA Regulations and in addition Swiss law. This choice of law clause underlies the primary application of the various FIFA Regulations while referring to the CAS Code and also Swiss law. The panel therefore has to apply the various FIFA Regulations and in addition Swiss law.

2. Article 60 para. 1 of the FIFA Statutes provides the following:

   "Only CAS is empowered to deal with appeals against decisions and disciplinary sanctions of the last instance, after all previous stages of appeal available at FIFA, Confederation, Member or League level have been exhausted. The appeal shall be made to CAS within 10 days of notification of the decision".

3. Under this provision, CAS only has jurisdiction to hear appeals against decisions, provided the disputed decision is final, i.e., all otherwise available stages of appeal have been exhausted. In particular, the decision against which the appeal is lodged must not be subject to an appeal before an internal body of FIFA.

4. In the present case, FIFA contends that there has been no decision against which an appeal lies. Its letter of 26 July 2007 was not a decision on the case. FIFA simply informed the parties that *"this case is closed"*. The basis on which it wrote the letter was under the FIFA Disciplinary Code (the "FDC") in force at the material time the relevant article (Article 68) provided a remedy only in cases where there had been a failure to pay money *"even though instructed by a body of the FIFA"*. Except so far as the costs issue went, the complaint made by Timisoara related to matters other than the payment of money and in any event related to a decision of CAS, which is not a "body of the FIFA". As to the costs issue, RFF had made it clear that this would be dealt with at a later meeting. In any event the letter could not properly be described as a decision since it was merely a communication from FIFA's administration and was not the communication of one of FIFA's decision making bodies.

5. This contention raises three issues (1) as to whether FIFA's letter of 26 July 2006 is a decision, and (2) if it was not a decision, whether it amounted to a denial of justice and (3) if it was a decision, whether it was correct in law.

6. Timisoara's position is that the letter contains a decision. As an alternative, it was implicit in its submissions that if there is no decision in FIFA's letter, there is a denial of justice, since Timisoara by its letter of 9 July 2007 it expressly requested FIFA to *"take an emergency measure, to respect the TAS decision of 5.12.2007 [sic], and to stop this injustice"*.

7. Neither the RFF nor the SA made any submissions on this point.

8. In the view of the Panel great assistance in resolving this issue is to be gained from the earlier decision of CAS in CAS 2005/A/899 (published in Digest of CAS Awards 1986-1998, p. 539). In that award the panel said as follows:

"58. The applicable FIFA regulations, in particular the FIFA Statutes, do not provide any definition for the term "decision". Thus, in accordance with Article R58 of the Code and Article 59 para. 2 of the FIFA Statutes, the issue must be examined under Swiss law.

59. According to Swiss case law related to administrative procedure, cited in Award CAS 2004/A/659, "the decision is an act of individual sovereignty addressed to an individual, by which a relation of concrete administrative law, forming or stating a legal situation, is resolved in an obligatory and constraining manner. The effects must be directly binding both with respect to the authority as to the party who receives the decision".

60. Although administrative procedural rules are not directly applicable to decisions issued by private associations, the Panel considers that the principles set out in the above-mention CAS precedent correctly define the characteristic features of a decision.

61. In principle, for a communication to be a decision, this communication must contain a ruling, whereby the body issuing the decision intends to affect the legal situation of the addressee of the decision or other parties. However, there can also be a decision where the body issues a ruling as to the admissibility or inadmissibility of a request, without addressing the merits of such request.

62. In addition, if a body refuses without reasons to issue a decision or delays the issuance of a decision beyond a reasonable period of time, there can be a denial of justice, opening the way of an appeal against the absence of a decision (see CAS award of 15 May 1997, be a denial of justice if that body does not rule on its jurisdiction within a reasonable period of time).

63. The Panel considers that the form of the communication has no relevance to determine whether there exists a decision or not. In particular, the fact that the communication is made in the form of a letter does not rule out the possibility that it constitute a decision subject to appeal. The form may only be an indication of the intent of the body issuing the communication, which may be taken into consideration. However, the form is not sufficient to find whether there is a decision or not. On the other hand, and quite obviously, not all correspondence may be deemed as decisions that can be appealed against. What is decisive is whether there is a ruling - or, in the case of a denial of justice, an absence of ruling where there should have been a ruling - in the communication".

14. In that case the panel held that the communication in question did not amount to a decision. In contrast in CAS 2007/A/1251, another panel of CAS held that a communication from FIFA did amount to a decision.

15. In that latter case the panel said:

> *"32. The Panel finds that by responding in such manner to Appellant's request for relief, FIFA clearly manifested it would not entertain the request, thereby making a ruling on the admissibility of the request and directly affecting Appellant's legal situation. Thus, despite being formulated in a letter, FIFA's refusal to entertain Appellant's request was, in substance, a decision.*
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> *33. That being said, the question remains whether FIFA's decision of 16 March 2006 can be deemed a "final" decision, in the meaning of article 61 para. 1 of FIFA's Statutes.*
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> *34. FIFA's Statutes and regulations contain no general definition of what must be considered a "final" decision. However, various provisions of the regulations specify which body's decisions are subject to an appeal in front of CAS. Thus, for example, according to article 24 para. 2 of FIFA's Regulations for the Status and Transfer of Players ("FIFA's Regulations"): "Decisions reached by the Dispute Resolution Chamber or the DRC judge may be appealed before the Court of Arbitration for Sport".*
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> *35. Consequently, the Panel finds that any FIFA decision which is intended to be made on behalf of the DRC and/or the Players' Status Committee (the "PSC") and which is formulated as a final decision must be deemed subject to an appeal in front of CAS".*

16. In our view that statement provides useful guidance for the present case. In the present case FIFA was informing Timisoara that the "case was closed" and that any further questions or claims regarding the execution of the award should be addressed to CAS. The basis upon which the letter was written was that under the applicable FIFA Disciplinary Code it could do nothing more. In our view this was clearly a final decision, based as it was upon FIFA's view as to the terms of the relevant Disciplinary Code. As such that decision was susceptible to an appeal to CAS.

The relevant FIFA Disciplinary Code

17. FIFA's decision was based upon the terms of the FDC which was adopted on 29 June 2005. This Code came into force on 1 September 2005. This code was superseded by another version which was adopted on 15 September 2006 and came into force on 1 January 2007. A yet further version came into force on 1 September 2007, after the FIFA decision with which the case is concerned, but which in the respects material to this case is the same as the version which took effect on 1 January 2007.

18. The CAS award of 5 December 2006 therefore took effect at the time when the FDC adopted on 29 June 2005 was in force. Under that version the only relevant article was Article 68, which was in these terms:

"Article 68 - Payment of sums of money

1. *Anyone who fails to pay another person (such as a player, a coach or a club) a sum of money in full, even though instructed to do so by a body of FIFA:*
   a) *will be sanctioned with a minimum fine of CHF 5,000 for failing to comply with the instructions issued by the body that imposed the payment (cf. Article 55 para. 1 c) of the FIFA Statutes);*
   b) *will be given a final time limit by the judicial bodies of FIFA in which to settle the debt;*
   c) *if it is a club, it will be warned and threatened with deduction of points or relegation to the next lower division if it has not the final time limit. Furthermore, a transfer ban may be imposed.*
2. *If the club disregards the final time limit, the body will request association concerned to implement the threat.*
3. *If points are deducted, they shall be proportionate to the owed.*
4. *A ban on any football related activity may also be imposed against natural persons*
5. *Any appeal against a decision passed in accordance with Article 68 shall immediately be lodged to CAS".*

19. Under the version adopted on 15 September 2006 the equivalent article to Article 68 is Article 71. That Article is in these terms:

"1. Anyone who fails to pay another person (such as a player, a coach or a club) or FIFA a sum of money in full or part, even though instructed to do so by a body, a committee or an instance of FIFA or CAS (financial decision), or anyone who fails to comply with another decision (non-financial decision) passed by a body, a committee or an instance of FIFA or CAS:
   a) *will be fined at least CHF 5,000 for failing to comply with a decision;*
   b) *will be granted a final deadline by the judicial bodies of FIFA in which to pay the amount due or to comply with the (non-financial) decision;*
   c) *(only for clubs:) will be warned and notified that, in the case of default or failure to comply with a decision within the period stipulated, points will be deducted or demotion to a lower division ordered. A transfer ban may also be pronounced.*
2. *If the club disregards the final time limit, the relevant association shall be requested to implement the sanctions threatened.*
3. *If points are deducted, they shall be proportionate to the amount owed.*
4. *A ban on any football-related activity may also be imposed against natural persons.*
5. *Any appeal against a decision passed in accordance with this article shall immediately be lodged with CAS".*

20. The version of the FDC adopted on 15 September 2006 contains the following provision as to its application:

"Scope of application: time

4. This code applies to facts that have arisen after it has come into force. It also applies to previous facts if it is equally favourable or more favourable for the perpetrator of the facts and if the judicial bodies of FIFA are deciding on these facts after the code has come into force. By contrast, rules governing procedure apply immediately upon the coming into force of this code".

21. FIFA argued that since the decision of CAS antedated the coming into force of the FDC adopted on 15 September 2006 the relevant provision was the old Article 68. Under that article FIFA had no power to enforce an award by CAS. Its letter of 26 July 2007 (if it was a decision) was therefore correct.

22. Timisoara argued (1) that in practice no attempt to enforce the award could be made until after time for appeal to the Swiss Courts against the award had expired and therefore at the time for enforcement the relevant FDC was that adopted on 15 September 2006; (2) in any event the enforcement provisions were procedural and so the newer code was applicable; and (3) the relevant facts had arisen after the coming into force of the newer code because it was only after 1 January 2007 that there was any failure to comply.

23. Neither the RFF nor the SA made any submissions on this issue.

24. In our view neither of the first two of Timisoara's submissions has any substance.

25. The fact that practical steps could not be taken under Swiss law to enforce the award before 1 January 2007 does not mean that the fact of the award arose after 1 January 2007.

26. The enforcement provisions could not be said to be "procedural" in the context of the FIFA Code. The Code is divided into three Titles: "Preliminary Title"; "First Title. Material Law"; and "Second Title. Organisation and Procedure". Article 71 forms part of Section 9 ("Responsibilities of Clubs and Associations") in Chapter II ("Special Part") of the First Title. "Procedure" forms Chapter II of the Second Title. It is thus clear that the enforcement provisions contained in Article 71 cannot properly be classified as procedural for the purposes of Article 4.

27. However, so far as the third of Timisoara's arguments on this point is concerned, it seems to us to be well-founded. The "facts" alleged by Timisoara which led to the application to FIFA and FIFA's decision were not the making and delivery of the CAS award in December 2006 but the failure to honour it. That occurred after 1 January 2007. The use of a name which is alleged to cause a risk of confusion with the name of Timisoara and the alleged imitation of Timisoara's colours, track record, history and logo are ongoing. Similarly the requirement to pay compensation for the ongoing use of a confusing name is a continuing obligation. The payment of compensation decided by the RFF under paragraph 5 of the ruling in the Award could not take effect until the decision of the RFR as to the amount. The order for payment of costs could not take effect until the determination of the amount by the Secretary General of CAS which did not occur until 10 January 2007. In these circumstances we take the view that the FDC in force from 1 January 2007 was the relevant code for FIFA to apply and it

erred in applying the old Code and on the basis that the old FDC applied rejecting Timisoara's application to it.

The substantive claim

28. Timisoara submitted that the material before CAS showed clearly that the CAS Award has never been fully complied with and that the RFF had not taken all possible action to enforce it.

29. In particular:

(1) The SA continued using a name which obviously included the risk of confusion with the name of Timisoara. In addition to the use of the two characteristic elements of the Appellant's name, that is "Politehnica" and "Timisoara", the SA had introduced in its new name a reference to year 1921, which is the year of foundation of Timisoara and had introduced the word "Stiinta", which was the name by which Timisoara was known for a number of years. The risk of confusion was obvious. This was shown by such things as the entry in Wikipedia.

(2) The SA continues imitating Timisoara's violet and white colours. It keeps using Timisoara's history, amongst other things by including in its new name the reference to year 1921 and to Stiinta.

(3) The SA has not paid the due compensation to Timisoara. The compensation should not only cover the violation of Timisoara's rights by the SA's first team, but also by its second team, which plays under exactly the same name in Liga 2. There is no reason at all to suppose that only misuse of the name by the first team causes damage to Timisoara. Therefore, the EUR 5,000 per match compensation should also apply to all the matches played by the SA's second team between 5 December 2006 and the end of the Romanian Championship, and thereafter, until the full compliance with the CAS award. The Second Division team of the Respondent Club had played 16 matches until the end of the 2006/2007 season. Timisoara therefore claimed an additional compensation of EUR 80,000 in that respect.

(4) The damage suffered by Timisoara during the period between 31 January 2005 and 12 June 2006 was arbitrarily fixed at EUR 2,000 per match. The damage should certainly not be lower that the damage suffered as from 5 December 2006, which CAS determined to amount to EUR 5,000 per match. The Romanian Football Federation should thus have calculated the damage at least for EUR 5,000 per match, that is, in total, for EUR 240,000 instead of EUR 96,000. Timisoara therefore claimed for an additional compensation of EUR 144,000 in that respect.

(5) In accordance with Article 71 FDC, the FIFA Disciplinary Committee should have imposed a fine on the SA and given it a final deadline to fully meet the terms of the CAS Award. The FIFA Disciplinary Committee should also have threatened the Respondent Club that in case of further failure to comply with such order to execute the Award, it would face points deduction, relegation to a lower division or even a

transfer ban. FIFA was not correct in considering that the CAS Award had been complied with and that the case had to be closed.

(6) In summary, Timisoara sought for an order by CAS, pursuant to Article 71 of the FDC, that the SA fully abide by the CAS Award in all respects: use of the name, of the colours, of the anthem (or song), of the history, as well as payment of the outstanding amount of EUR 224,000.

(7) Article R57 of the CAS Code provides that the Panel shall have full power to review the facts and the law and may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. In the context of this case and of the apparent reluctance of the RFF and the SA to proceed in accordance with the CAS Award, the Panel should make a new decision replacing FIFA's and issue all appropriate orders accordingly, pursuant to Article 71 FDC. Since it had been demonstrated that the CAS Award had not been fulfilled, no further inquiry by FIFA, which might justify to refer the case back to it, would be necessary.

(8) The SA could not suggest it was not bound by the earlier CAS award. It had taken over the role of the CS, had accepted it was bound by the earlier award by paying the sums found due by the RFF and changing its name, and had participated in the present arbitration. In any event it was clear that the CS (which shared an address with the SA) was not truly an independent body.

30. FIFA requested that in the event that CAS held that it had jurisdiction to determine this appeal CAS should determine whether the Award had been complied with and, in the event that CAS found it had not, it should determine the substantive issues rather than remitting the matter to FIFA to make that decision, since that decision would itself be subject to appeal back to CAS.

31. RFF in its written representations submitted that by the decision of its Executive Committee of June 2007 it had required the SA fully to comply with the Award. The current name Politehnica Stiinta 1921 Timisoara & Invest SA is registered with the Romanian State Office for Inventions and Trademarks and approved by the RFF, which considers the name is in no way connected to the history of Timisoara. The SA has chosen as its official anthem the music score of the Yellow Submarine song, but the RFF could not give an opinion about other songs because the supporters have the right to sing unofficially any song they like. With regard to the emblem chosen by the SA, the RFF consider that it cannot be confounded with that of SC FC Politehnica Timisoara because they are different. As to the colours of the SA, they are white-violet-black. This colour combination could not be confounded with the colors of Timisoara. The SA had settled all its debts to Timisoara, the last payment being on 31 July 2007. So far as there was complaint about Mr. Gheorghe Chivorchian's presence on the RFF Executive Committee, he refrained from appearing at the meeting of the Executive Committee of 5th December 2006 because he had a management position with SC FCU Politehnica Timisoara & Invest SA.

32. The submission of the SA was that it was not the legal entity which had been the Respondent to the earlier CAS decision and was not bound by that decision. Timisoara was acting in bad

faith when it had misled FIFA into believing that the SA had been a party to the earlier CAS decision and so led the RFF into requiring it to comply with the terms of that decision. The entity which had been a party was the SC which in Romanian law was a private legal person, being a registered non-profit association, established pursuant to OG n. 26/2000. The SA is a joint stock company incorporated pursuant to Law n.31/1990. The two bodies were different persons in law. The SA had acquired the rights of the CS to participate in Liga 1 of the Rumanian football league on 31 March 2006 with effect from the start of the 2006-2007 season but that did not have the effect that it was fixed with any obligations under the earlier award. The fact that SA had paid the sums found due by the RFF and the costs awarded by the earlier CAS award was irrelevant. The SA had merely paid those sums in error and to avoid any penalty being imposed on it by the RFF. In those circumstances it declined to address any of the substantive issues of fact, but pointed out that the entry in Wikipedia was not something for which the SA was responsible. It had not had the opportunity to defend itself in the original CAS proceedings and could not therefore be bound by any proceedings (whether of FIFA or the RFF or CAS) having their genesis in those proceedings.

Discussion of the substantive claim

33. So far as the SA's claim that it is not the same legal person as the CS, this is plainly correct. The two legal persons have separate juridical personalities and are different kinds of artificial legal person: one is a joint stock company and the other is a registered non-profit association. It does not however follow that the SA is not bound by the original CAS decision. The SA acquired the rights of the CS (with which it is plainly closely connected) to participate in Liga 1 and thereafter treated itself as being bound by the Award. It was for all practical purposes the successor of the CS which was then reduced to turning out junior and youth teams. The original CAS Award envisaged that the award might be enforceable against a successor to the SA at par 6.19 where it stated: *"In case the sum [of compensation] has not been paid to [Timisoara] by this deadline, FCU Politehnica Timisoara or whoever might be its legal successor at present is ordered to pay 5% interest p.a"*.

34. Both FIFA and the RFF treated the SA as being the successor of the CS for the purposes of being bound by the Award. The SA itself accepted that it was bound by the Award. When the RFF made its determination on 12 June 2007 the SA could have appealed against the decision or sought to persuade the RFF to respond to FIFA asserting that the SA was not the entity bound by the CAS Award. It did neither: it chose to purport to honour the decision of the RFF without demur. It thereby gave all the world the impression that it accepted that it was bound by the CAS award. We are not persuaded by the suggestion (unsupported by any evidence) that the SA complied with the RFF's decision of 12 June simply in order to avoid sanctions by the RFF. Whilst it is true that the SA was not a party to the original CAS proceedings and could not participate in them, it had every opportunity to challenge the RFF decision that it was bound. Had it had any doubts about the efficacy of the RFF decision it could perfectly well have taken steps to challenge it. It is, in our view, far too late for the SA now to seek to recant. We therefore conclude that the SA is now bound by the original CAS Award.

35. The question then is whether the SA has fulfilled the obligations under that Award. Insofar as the RFF has purported to vary the Award or discharge the SC or the SA from any obligation under it, the RFF had no power to do so and the purported variation or discharge is a nullity.

36. The first substantive question is whether the SA has adopted a name, approved by the Romanian Football Federation, which does not include the risk of confusion with the name of Timisoara. The name which it has adopted has apparently been registered with the Romanian State Office for Inventions and Trademarks. The RFF submission to us makes it clear that the current name has the blessing of the RFF, though formal decision approving it was disclosed to us. In our view neither the registration of the name with the Romanian State Office for Inventions and Trademarks nor the approval of the RFF prevents us from ruling that the current name does include a risk of confusion with the name of Timisoara.

37. The conjunction of Timisoara and Politehnica with a date and a word which have a distinct connection with the history of Timisoara is clearly capable of causing confusion. Indeed, so far as the material put before us is concerned, there is no explanation for the adoption of those two elements of the name other than to seek to indicate that the SA is the true successor of Timisoara. There has been no reason put forward why a company incorporated in 2006 should have the date 1921 in its title. Whilst we were told that the word "Stiinta" is an ordinary Romanian word it has very obvious connections with Timisoara and no reason was advanced as to why it should have been included in the SA's new name. In these circumstances we hold that the current name of the SA does include the risk of confusion with the name of Timisoara, that the apparent approval of the name by the decision of RFF was wrong and that the SA must change its name to a name that does not include any risk of confusion.

38. Under the original CAS Award it is open to the SA to change its name to the old name of the CS (provided of course the CS has no valid objection to that being done). If the SA cannot or will not take that course, given the problems which have arisen so far in this case we take the view that we should give as clear guidance as possible as to what would be permissible.

39. The earlier CAS Award envisaged that a name including both the words "Politehnica" and "Timisoara" was permissible with the interposition of the initials "AEK" but that was in circumstances where use of that combination would be a reversion to the CS's old name. Timisoara is a place name and since that city contains the home ground of the SA it would clearly be inappropriate to forbid use of that place name as part of the SA's new name. The material before us indicated that the current abbreviation by which both Timisoara and the SA are known is "Poli", being an abbreviation of "Politehnica". Neither the SA nor Timisoara has any current connection with the Politehnica, but Timisoara does have an historical connection. Nothing before us indicates any reason why the SA should include the word "Politehnica" in its title other than to try to suggest a connection with the history of Timisoara. Were we approaching the case *de novo* we would be minded to direct that any new name for the SA should not include the word "Politehnica", but the earlier CAS Award did not go so far. If the Panel in that case had thought it appropriate, it could have indicated that

any new name should not include the word "Politehnica". It did not do so. We do not think we should go behind that decision. We therefore direct that if the new name to be adopted by the SA does include both the word "Politehnica" and "Timisoara" those two words must be separated by at least one other substantive word that has no connection with the Appellant or its history.

40. As to the timing of the change of name, we appreciate that the SA's conduct has now continued for a considerable period but we take the view that a realistic period must be allowed for the change and that such a change cannot take place overnight. We bear in mind that compensation will be payable over any period during which the SA continues to use its existing name. In our view the sensible answer is to give a final deadline for the change to take effect pursuant to Article 71 1b) of the relevant Football Disciplinary Code of 30 June 2008 (ie the last day of the current football year). This will enable the SA to complete its current fixture list under its present name but will require it to start its next year's activities under a new and inoffensive name.

41. As to the issue of the colours used by the SA, the RFF determined that the colours of the SA *"are white-violet-black"* and *"this color combination cannot be confounded with the colors of the SA"*. On its face this would be an unexceptionable conclusion. It does not, however reflect the reality. Whilst white also appears (and is the dominant colour in the SA's away strip), there is barely a hint of black and the SA's dominant colour is violet. This appears from the emblem adopted by the SA (a shield with a violet border bearing diagonal violet and white stripes with a black helmet superimposed), from one of the club's nicknames ("the violets"), and above all from the first team home strip which is primarily violet with two thin white stripes down the front of the shirt and along the top of each sleeve, with violet shorts.

42. The point was taken that many clubs use similar colours without there being a risk of confusion. Indeed the similarity of club colours is recognised by the need for clubs to have separate home and away strips and the not infrequent need for clubs to use change strips to avoid confusion on the field. This does not answer the objection to the SA's present colours. In our view the predominant use of the colour violet produces a clear risk of confusion. In order to avoid the continuance of such confusion the SA must change its colours so that they no longer include violet. Again, the final deadline for this change to be effected will be 30 June 2008.

43. Timisoara made it plain to the Panel that its primary objective was to protect its intellectual property or personality rights and that its claim for compensation was secondary. This resulted in there being a paucity of information before the Panel on the basis of which the RFF's decision as to the quantum of compensation could be challenged. Timisoara relied on two points: the supposedly arbitrary fixing of compensation by the RFF for the period from January 2005 to June 2006 at EUR 2.000 per match and the failure to award any compensation for the activities of the SA's second team. It was suggested that the figure should be EUR 5,000 per match for both first and second team matches, that being the figure fixed in the previous award for matches from June 2006 to December 2006.

44. Although reference was made in Timisoara's statement of appeal, the body of the appeal brief and in oral argument to compensation for infringement of its personality rights after the date of the original award no similar claim was made in the prayer for relief at the end of the Appeal Brief. In those circumstances we do not think it right to consider that apparently ongoing right to compensation at this stage. The original award provided: *"FCU Politehnica Timisoara is ordered to pay the amount of EUR 5,000 as compensation to SC FC Politehnica Timisoara SA for each official match played from 5 December 2006, until it effects a name change in accordance with the present award"*. By its decision of 20 March 2007 the RFF has awarded EUR 10,000 in respect of two matches played between 6 December 2006 and the date of that decision. The original Award remains in force and compensation has accrued and will continue to accrue due until the Original Award is complied with. When that has happened and a final sum has accrued due Timisoara can seek to enforce the original Award with proper evidence as to the number of matches played, as to which there should be little room for argument.

45. So far as concerns the complaint that the RFF was wrong to fix compensation at EUR 2,000 per match for the matches in the January 2005 to June 2006, we take the view that we do not have adequate evidence to hold that the RFF was wrong. The amount was fixed by the national federation which has a unique knowledge of local conditions. The fact that a far higher figure was fixed by the earlier CAS Award in relation to matches played in a later season may cause the lower figure to be regarded with suspicion, but no evidence or detailed reasoning was supplied to us to undermine the RFF's decision in this regard.

46. As to the question of compensation for the breaches of Timisoara's personality rights by reserve team games, this was not contemplated by the earlier CAS award. Whilst in principle a separate award might be justified, it seems to us that the separate damage arising from the activities of the second team must be limited and that it is sufficiently compensated for by the ongoing liability to pay EUR 5,000 per match for first team games.

47. There remain the issues of (i) whether a fine should be imposed and if so of what amount, and (ii) what point deduction should be directed against the SA in the event it fails to comply with this decision in the time limited.

48. Article 71 1 a) is on its face in mandatory terms and requires the imposition of a fine of at least CHF 5,000 on anyone who fails to comply with a decision of a body, a committee or instance of FIFA or CAS whether that decision is financial or non-financial. The complaint by Timisoara to FIFA was on the basis that the SA had failed to comply with the earlier CAS Award. Whilst there may be an excuse in respect of the form of the change of name in that the new name was sanctioned by the RFF, it is clear (not least from the introduction of the words 1921 and Stiinta into the new name that there was a continuing attempt to trade on the history and record of Timisoara. Its disinclination to do anything to distance itself from Timisoara's history is clear from its failure to alter or have altered the entry in Wikipedia. In all the circumstances we take the view that (a) the imposition of a fine is mandatory under Article 71, (b) if there were a power to remit the fine in special circumstances, this would not be a case in which the fine should be remitted and (c) there is no reason to impose a fine in excess

of the minimum CHF 5,000. The fine shall be paid no later than 30 June 2008, so that the dates by which all parts of this award must be complied with are the same.

49. Under Article 71 1.c) the SA is warned and notified that, in the case of default or failure to comply with this decision within the period stipulated, 6 points will be deducted. We do not consider this a case for demotion to a lower division or a transfer ban.

The Court of Arbitration for Sport rules:

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

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

2. SC Politehnica 1921 Stiinta Timisoara Invest SA shall no later than 30 June 2008 change its name to a name which does not include the risk of confusion with the name of FC Politehnica Timisoara SA. Such new name shall not include the words "1921" or "Stiinta" and if such new name includes both the words "Politehnica" and "Timisoara" there shall be at least one substantive word not associated with FC Politehnica Timisoara SA or its history between those words.

3. SC Politehnica 1921 Stiinta Timisoara Invest SA shall change its club colours so that they no longer include violet.

4. SC Politehnica 1921 Stiinta Timisoara Invest SA shall no later than 30 June 2008 pay a fine of CHF 5,000 to FIFA.

5. If SC Politehnica 1921 Stiinta Timisoara Invest SA fails to comply with the paragraphs 1 to 3 above or any of them by 30 June 2008, 6 points will be deducted.

6. (...).