



Arbitration CAS 2015/A/3880 FC Steaua Bucuresti v. Gabriel Muresan, award of 29 July 2015

Panel: Prof. Jacopo Tognon (Italy), President; Mr Bernhard Welten (Switzerland); Mr Mark Hovell (United Kingdom)

Football

Disciplinary sanction against a player for misconduct during a match

Standing to sue arising from an error in procedendo

Standing to be sued

Scope of the disciplinary power of a federation to review a sanction taken by a referee

1. In principle, the standing to sue or to appeal belong to any person putting forward a right of his own in support of his request. In this regard, a club is not directly affected by a disciplinary decision issued to a player of another team. However, standing to sue can arise from an error *in procedendo*. Thus, a challenged decision issued by a national football federation appeal body may erroneously have considered a club a party by deciding to dismiss the complaint filed by this club as inadmissible. As a consequence, even if the applicable regulations effectively limit the right to appeal only to the person sanctioned or the Secretary General of the national federation, the fact that a club has reached the status of “party” in the previous proceeding – since it actively participated in it – cannot be ignored.
2. According to CAS jurisprudence and Swiss law, a party has standing to be sued and may thus be summoned before the CAS only if it has some stake in the dispute because something is sought against it. An appeal against the decision of the disciplinary body of a federation must be directed against that federation. In this respect, it is undoubtedly a mistake to call a player as respondent.
3. According to the applicable regulations, in principle a disciplinary decision taken by a referee on the playing field is final and irrevocable and cannot be re-examined by the jurisdictional authorities except where (i) the serious misconduct of the player is not seen by the referee and there are video recording and (ii) the player is sent off. Therefore, an incident involving the misconduct of a player during a match which is dealt with by the referee who decides to sanction the player with a yellow card is irrevocable as a rule of the game.

I. PARTIES

1. FC Steaua Bucuresti SA (the “Club” or “Appellant”) is a professional football club affiliated to the Romanian Football Federation (the “RFF”), which in turn is affiliated to the Fédération Internationale de Football Association (“FIFA”).
2. Mr. Gabriel Muresan (the “Player” or “Respondent”) is a football player of Romanian nationality who currently plays for the Romanian club FC ASA 2013 Targu Mures.

II. FACTUAL BACKGROUND AND NATIONAL PROCEEDINGS

3. Below is a summary of the relevant facts and allegations based on the parties’ written submissions, pleadings and evidence adduced at the hearing. 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 Panel has considered all the facts, allegations, legal arguments, and evidence submitted by the parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.
4. On 26 October 2014, during the football match between FC Steaua Bucuresti SA and FC ASA 2013 Targu Mures, the Romanian First Division, whilst the Player and Raul Rusescu leapt in the midfield for a header, the Player allegedly used his left arm to deliberately hit Rusescu. The game was stopped by the referee and the Player was booked and given a caution (a “yellow card”).
5. Following this collision, Rusescu was unable to continue. He had to be taken to hospital, where he received first aid, as mentioned in the examination sheet issued on 27 October 2014 at 02.00 AM.
6. In the complaint lodged on 28 October 2014 to the Disciplinary and Ethics Committee of the RFF (“the Disciplinary Committee”) citing art. 107 lett. d) of the Disciplinary Regulations of the RFF (the “DR”), the Appellant requested the Disciplinary Committee to sanction the Player for having committed a gross violation of art. 63 par. 2.4 lett. a) of the DR.
7. This article states (in the translation provided in the annex 10 of the Appeal brief) that: “2. *Penalties applicable to players for committing the abovementioned misconducts are the follows: ... 2.4. for the misconducts provide in art. 63.1 lett. a) and b) (respectively serious misconduct and violent behaviour) the applicable penalties are: a) hitting with the palm of the hand, elbow, arm, fist, head, foot or stepping on the opponent: suspension for 2 to 6 matches if they have not caused physical injury, for 6 to 10 matches if the victim has been caused physical injury or for 16 to 24 matches if serious physical injury of the victim has been caused; in the case of serious physical injury, proof of such is made by medical certificate; b) shoving, carried out by pulling, pushing, holding, body-check, or other similar actions: suspension for 2 or 3 matches*”.

8. The Disciplinary Committee, after examining the parties' positions, issued the decision n. 174 of 5 November 2014 and ruled *"to dismiss the plea of inadmissibility of the complaint. To uphold the claim and, based on art. 63 par. 2.4. lett a) of the DR, to sanction the player Gabriel Muresan from the club ASA 2013 Targu Mures with a suspension of 16 matches and the imposition of a sporting penalty of 25.000 lei. Based on art. 9 of the DR, it compels the club ASA 2013 Targu Mures to pay the 25.000 lei sporting penalty"*.
9. The Player appealed the decision before the RFF Appeal Committee on 11 November 2014, asking for the complete review of the case citing two main grounds:
 - a) the inadmissibility of the complaint, due to the lack of disciplinary power of the bodies of the RFF under art. 64 and art. 90 of the DR; and
 - b) alternatively, to consider his behaviour as unintentional and to reduce the sanction from 2 to 6 matches (or in alternative, in the range between 6 to 10 matches).
10. With its decision n. 62/2014 (the "Appealed Decision"), issued on 17 November 2014, the RFF Appeal Committee ruled *"to uphold the appeal. To set aside the decision of the Disciplinary and Ethics Committee n. 174/2014. To dismiss the complaint filed by FC Steaua Bucuresti SA as inadmissible. To set aside the sanctions imposed on the player Gabriel Muresan"*.
11. In summary, the RFF Appeal Committee stated that:
 - Art. 90.3 lett. a) of the DR only dealt with offences that were not seen by the referee and not with offences that were misinterpreted by the referee himself.
 - The video footage of the incident (annex 14 to the Appeal brief) shows that, contrary to what was stated in the decision of first instance, the referee was in close proximity of the collision. Without any doubt, he noticed the incident in question.
 - It is undisputed that the referee is the only person entitled to adopt disciplinary decisions during a match. Art. 90 par. 2 of the DR states that *"the decisions of the referee taken during the football match (from when he enters to when he exits) are final"*.
 - Art. 90 par. 3 lett. c) is not applicable in the case at hand since the Player was not sent off (a "red card").
 - The analytic and systematic interpretation of the combined text of art. 64 par. 1 and art. 90 par. 1 and 2 of the DR lead to the conclusion that the referee's decision, even if taken after a wrongful evaluation of the seriousness of the offence, cannot be reversed.
 - In other words, it is impossible to modify a referee's decision because the regulations do not grant this power to the Disciplinary bodies. As a consequence, the Disciplinary Committee did not have the power to apply any sanction to the Player for an offence that was observed by the referee, unless the referee had sent the Player off.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

12. On 5 January 2015, the Appellant filed its statement of appeal at the Court of Arbitration for Sport (the “CAS”) against the Respondent with respect to the Appealed Decision, in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (the “Code”). The Appellant chose to proceed in English and suggested the matter be submitted to a Sole Arbitrator.
13. On 9 January 2015, the CAS Court Office acknowledged receipt of the Appellant’s statement of appeal and, wrote to the RFF noting that the appeal was not directed at the RFF. In this letter, the CAS Court Office requested an unmarked copy of the Appealed Decision together with the facsimile report for the covering letter which sent the Appealed Decision to the parties. The RFF never replied to the requests from the CAS Court Office.
14. On 14 January 2015, the Respondent informed the CAS Court Office that he did not agree with the present dispute being submitted to a Sole Arbitrator *in lieu* of a Panel of three members. The Respondent duly nominated Mr. Mark Hovell (UK) as an arbitrator in the present case.
15. On 15 January 2015, the Appellant filed its appeal brief in accordance with Article R51 of the Code.
16. On 29 January 2015, the CAS Court Office informed the parties that the President of the Appeals Arbitration Division had decided to submit this appeal to a three-member Panel in accordance with Article R54 of the Code.
17. On 9 February 2015, the Appellant nominated Mr. Bernhard Welten (Switzerland) as arbitrator.
18. On 20 February 2015, the CAS Court Office informed the parties that, pursuant to Article R55 of the Code, the Panel responsible for handling the present appeal had been constituted as follows: Mr. Jacopo Tognon, professor and attorney-at-law in Padova, Italy, as President; Mr. Bernhard Welten, attorney-at-law, Bern, Switzerland and Mr. Mark Hovell, solicitor, Manchester, England, as arbitrators.
19. On 3 March 2015, the Respondent filed his answer in accordance with Article R55 of the Code.
20. On 6 March 2015, the Respondent sought to introduce a new exhibit (number 5) to the answer. The Appellant objected to the admissibility of such new exhibit and the Panel, having considered all the elements of the dispute, decided not to admit the exhibit since it was filed out of time.
21. As the Appellant had asked for a hearing to be held, and the Respondent had not objected, on 18 March 2015, the CAS Court Office, on behalf of the Panel, informed the parties that the Panel had decided to hold a hearing in accordance with Article R57 of the Code.

22. On 19 March 2015, the CAS Court Office asked to the Respondent to file the annexes 3 and 4 to its answer duly translated into English.
23. On 25 March 2015, the Respondent sent the annexes 3 and 4 translated into English.
24. On 9 and 10 April 2015, the Appellant and the Respondent respectively, signed and returned the Order of Procedure for this appeal.
25. A hearing was held in this appeal on 17 April 2015 in Lausanne. The Panel was assisted by Mr. Antonio de Quesada, CAS Legal Counsel, and joined by Mrs. Jecu Anicuta (counsel for the Appellant) as well as Mrs. Andreea Giorgiana Craciun, interpreter for the Appellant and by Mr. Josep F. Vandellos (counsel for the Respondent).
26. During the hearing, at the request of the Panel, the issue of the standing of the Player to be sued, as opposed to the RFF, was discussed, as the Appellant had identified the Player as the Respondent *in lieu* of the RFF.
27. At the conclusion of the hearing, both parties confirmed that they had no objection to the appointment of the Panel to resolve this appeal and that their right to be heard had been fully respected.
28. On 11 May 2015, the Appellant attached a brief note of the expenses incurred in the abovementioned procedure, requesting to the Panel to order the Respondent to pay the said expenses.

IV. SUBMISSIONS OF THE PARTIES

A. Appellant's Submissions and Requests for Relief

29. The Appellant's submissions, in essence, may be summarized as follows:
 - First, and foremost, the first instance decision of the Disciplinary Committee was correct since the rules of the DR were respected. The Player had hit Rusescu with his elbow and this had not been seen by the referee since in the official match report the referee described the incident as "*reckless charging (incorrect use of arms)*".
 - In light of the foregoing, the jurisdictional body of first instance correctly stated that since the referee and the match officials did not see the actual offence committed, art. 90 par. 3 lett. a) of the DR is applicable.
 - Art. 64 par. 2 and art. 90 par. 3 of the DR set out the exceptions to the general rule stipulated in art. 64 par. 1 and art. 90 par. 2 of the DR and set out the exceptional cases in which, by derogation from the general rule, the disciplinary bodies could sanction the Player.

- From the Appellant's perspective, there was a clear delimitation between the sanctions applied by the referee and the power of the disciplinary bodies. For example, the Disciplinary Committee had to impose the sanctions stipulated in art. 63 par. 2 of the DR if the referee sent the player off.
- Additionally, this body had the power to apply the sanctions for offences committed by art. 63 par. 1 of the DR if the referee did not issue the "red card", but should have done so.
- Notwithstanding the above, art. 90 par. 3 lett. c) of the DR, interpreted logically and exhaustively, grants the Disciplinary bodies to set the sanctions provided in art. 63 par. 2 of the DR (and mentioned in art. 63 par. 1 of the DR) even if the referee failed to impose the correct sanctions.
- Besides, if it were accepted that art. 90 par. 3 lett. c) of the DR would only be applicable if the referee sent the Player off, from the Appellant's point of view this provision would become inapplicable to disciplinary offences that were not sanctioned with a sending off and would render art. 63 par. 2 of the DR inapplicable.
- The provisions of the FIFA Disciplinary Code together with UEFA's disciplinary rules were applicable at the case in hand and lead to the same conclusion reached by the Disciplinary Committee.
- As to the merits of the case, the Appellant submitted that the Player's intention was clearly to injure Rusescu. It was very important to highlight that Rusescu, as a result of this assault, must permanently wear a protection mask for his entire career, since the titanium mesh that was inserted in his face following surgery, can endanger him even if he simply falls down on the pitch.

30. In its prayers for relief, the Club requests as follows:

- i) *to uphold the present appeal against the challenged decision;*
- ii) *to issue a new decision that replaces the challenged decision;*
- iii) *to dismiss as unfounded the plea of inadmissibility raised by the player Muresan Gabriel in the national proceedings regarding the complaint filed against him by FC Steaua Bucuresti, and examine it on the merits based on art. 77 (a), in subsidiary art. 77 (b) of the FIFA DC, as shown above, and by reference to the national rules indicated in the arguments above (supra pt. 2 A);*
- iv) *on the merits, to affirm as founded the complaint filed by FC Steaua Bucuresti against the professional football player Gabriel Muresan, to find that the incriminated action is a serious offence pursuant to art. 48 par. 1 lett d) of the FIFA DC (classified as such also by the relevant national regulations), and consequently to establish the sanction applied to the Respondent player by reference to all circumstances that are relevant in this case (match suspension plus a fine);*

- v) *to order the Respondent to pay the costs of the arbitration procedure, as well as the legal fees and other expenses incurred by us in connection to the proceedings*

B. *Respondent's Submissions and Requests for Relief*

31. The Respondent's submissions, in essence, may be summarized as follows:

- First, the Player considered the applicable law for the merits. He stated that the DR should apply since art 123 par. 2 of the DR provides as follows: only *"in case of omissions in this regulations, the competent bodies shall take into consideration the FIFA and UEFA regulations when deciding over a case"*.
- So applying the DR, the Respondent, furthermore, emphasized that there was a lack of standing to appeal of the Club upon the provision of art. 120 par. 4 of the DR.
- In any event, art. 116 par. 2 of the DR stipulated that only the person sanctioned and the Secretary General of the RFF are entitled to challenge the Appealed Decision.
- The reason for this article was very clear: the Club, although being the initial petitioner, is not directly affected by the outcome of the disciplinary procedure conducted against the Player.
- On the merits, the Respondent underlined that his plea of inadmissibility was founded fundamentally on the lack of competence of the Disciplinary bodies to intervene and reverse (or modify) in any way a decision taken by the referee during the course of a match.
- Indeed, the referee's decisions were final and irrevocable unless exceptional situations were verified. In the case at stake, none of these exceptions – according to which the Disciplinary bodies could intervene – were met.
- As for the first exception, the referee, in that case, saw the incident; therefore art. 90 par. 3 lett. a) of the DR could not be applied. He did not sanction the Player with a red card and send him off, so the consequence was that art. 90 par. 3 lett. c) of the DR could not be applied either.
- Under this provision, it is easy to remember that art. 90 par. 3 lett c) of the DR suffices to conclude that it exclusively refers to infringements that have been effectively sanctioned with a red-card and not to infringements which could be possibly sanctioned, but eventually were not.
- Second, the Respondent stressed that art. 103 of the DR was inapplicable because the aforementioned article applied only when there were differences or contradictions between the video recordings and the match reports. Here this was not the case.

- The Player argued that there was no intent or any bad faith in the incident that occurred, it was an accident. Finally and in the alternative, it was stated that also the principle of proportionality had to be respected.

32. In his prayers for relief, the Player requests as follows:

1. *In principal, to fully dismiss the appeal filed by the FC Steaua against the Respondent the Appellant lacking standing to appeal (as being inadmissible ab initio or, in the alternative, as unfounded due to the lack of legal equality).*
2. *In subsidiary, to dismiss the appeal filed by the FC Steaua as unfounded on the merits.*
3. *Also in subsidiary, if the Panel considers that the Disciplinary bodies of the FF were entitled to sanction the Player, to apply the minimum sanction provided by art. 63 (2.4a) of the DR FRF – i.e. a suspension for 6 matches.*
4. *To condemn the Appellant to the payment of the whole CAS administration costs and the Panel fees.*
5. *To fix a sum, to be paid by the Claimant to the Respondent, in order to pay its defence fees and costs in a sum of 10.000 Euro.*

V. ADMISSIBILITY

33. The Appellant contends that the appeal was timely filed in accordance with Art. 120 par. 4 of the DR and the Respondent did not contest the admissibility of this appeal.

34. Therefore, it follows that this appeal is admissible.

VI. JURISDICTION

35. Article R47 of the Code provides as follows:

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

36. Art. 57 of the RFF Statutes, par. 5 to 8, provides as follows:

“5. The rulings of the RFF Appeal Committee are final and executory domestically for all affiliated members, players and their officials, for RFF /AJF (football county association)/AMFB (Bucharest Football Municipal Association) officials, as well as for match agencies and player agencies.

6. The rulings of the RFF Appeal Committee may be appealed only at the Court of Arbitration for sport in Lausanne, under the conditions of the law.

7. Commencement of the proceedings at the Court of Arbitration for sport in Lausanne does not suspend the execution of the RFF Appeal Committee ruling with the exception of disciplinary sports penalties.

8. The decision adopted by the Court of Arbitration for sport in Lausanne are mandatory for the professional football leagues, for the RFF affiliated members, for the players and their officials, for player agencies or match agencies, which are obliged to comply exactly with these decisions, otherwise the Discipline and Ethics Committee would apply the sanctions provided in the current Statute”.

37. With respect to the Appealed Decision, the jurisdiction of the CAS derives from art. 120 par. 4 of the DR and of art. 57, par. 5 to 8 of the RFF Statutes. In addition, neither the Appellant nor the Respondent objected to the jurisdiction of the CAS, and the Parties confirmed the CAS jurisdiction when signing the Order of Procedure.
38. In light of the foregoing, the Panel, therefore, confirms that CAS has jurisdiction to hear this appeal.

VII. APPLICABLE LAW

39. Article R58 of the Code provides as follows:

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

40. The Panel notes that both the Appellant and the Respondent explained in their submissions that various provisions of DR apply; however only the Club considered that the FIFA and UEFA Regulations are also applicable.
41. As foreseen in art. 123 par. 2 of the DR *“in case of omissions in this regulation, the competent bodies shall take into consideration the FIFA and UEFA regulations when deciding over a case”.*
42. This rule, in other words, states that, first of all, the Panel has to apply Romanian rules contained in the RFF Statutes and in the DR. Only in the event that these rules are not sufficiently clear or exhaustive, can the Panel apply UEFA’s and FIFA’s regulations.
43. In light of the foregoing, the Panel thus holds that the DR is the primarily applicable law. However, in case of omissions, the FIFA and UEFA Rules (where necessary) and, secondarily, Romanian law, are applicable.

VIII. MERITS

44. The present dispute, that in essence concerns the disciplinary effects – if any – following a yellow card and the power of the Disciplinary bodies related to the application of a disciplinary sanction – is primarily governed by the following rules, all contained in the DR:

“Art. 63 – Misconducts punished with elimination (red card) by the referee

1. A player must be eliminated by the referee for committing one of the following misconducts stipulated in the “Laws of the game”.

a) serious misconducts;

b) violent behaviour;

...

2. Penalties applicable to players for committing the abovementioned misconduct are as follows:

...

2.4. for the misconducts provide in art. 63.1 lett. a) and b) (respectively serious misconduct and violent behaviour) the applicable penalties are: a) hitting with the palm of the hand, elbow, arm, fist, head, foot or stepping on the opponent: suspension for 2 to 6 matches if they have not caused physical injury, for 6 to 10 matches if the victim has been caused physical injury or for 16 to 24 matches if serious physical injury of the victim has been caused; in the case of serious physical injury, proof of such is made by medical certificate; b) shoving, carried out by pulling, pushing, holding, body-check, or other similar actions: suspension for 2 or 3 matches.

Art. 64 – Disciplinary decisions taken by the referee

1. The disciplinary decisions taken by the referee on the play field are final and irrevocable, are effective during the match and cannot be re-examined by the jurisdictional authorities of the RFF/LPF/AJF/AMFB (Romanian Football federation/ Professional football League/ County football association/Bucharest Municipal Association).

2. The regulatory consequences implied by the disciplinary decisions taken by the referee, namely the sanctioning measures shall not be applied or shall be cancelled by the decision taking authorities, if the person disciplinarily sanctioned by the referee were wrongly identified or were sanctioned erroneously and the error is confirmed in writing by the CCA (Central Referee Committee).

Art. 90 – Authorities competent in disciplinary matters

1. The referee is competent in taking decisions in disciplinary matters during the football match.

2. The decisions of the referee taken during the football match (from when he enters to when he exits the play field) are final.

3. Exceptionally, derogating from the provisions of the abovementioned par. 2, the discipline and ethics committee of the RFF/LPF has the competence to:

a) Sanction serious misconducts which were not seen by the referee and of which there are video recording from several angles;

b) Correct any errors of the referee’s disciplinary decisions, concerning the erroneous identification of the person ascertained by the CCA.

c) Establish applicable penalties regarding the disciplinary misconducts sanctioned with the elimination, in accordance with the dispositions of the disciplinary regulations.

Art. 107 – The beginning of the disciplinary procedure

...

d) Notification of the legal body regarding the committing of a disciplinary misconduct may also be made by complaint by any other person justifying a personal interest directly, currently and legitimately, being a participant in the deed entailing disciplinary liability.

Art. 120 – Decisions in Appeal. Decisions of the Appeal Committee. Appealing decisions rendered by the Appeal Committee before the TAS-CAS.

...

4) The person sanctioned and the Secretary General for the RFF/LPF can lodge an appeal to the CAS in Lausanne against decisions of the Appeal Committee of the RFF/LPF in a term of 21 days from the communication of the decision. In the event the decision of the Appeal Committee is not appealed before CAS in the above mentioned term, the decision becomes final and irrevocable.

Art. 123 – Purpose of the disciplinary regulation. Omissions

...

2) If there are any omissions in these regulations, the decision taking bodies will take the decision in accordance with the provisions of the FIFA and UEFA regulations”.

45. In view of the above, the main issues to be resolved by the Panel are:

- a) Has the Appellant the standing to sue, *id est* the right to lodge the appeal?
- b) Which parties have the standing to be sued in appeal proceedings concerning decisions taken by the RFF Appeal Committee?
- c) Do the Disciplinary bodies of the RFF have the power to apply disciplinary sanctions when a player commits an offence sanctioned by a yellow card?

A. Has the Appellant the standing to sue, id est the right to lodge the appeal?

46. As is well known, the standing to sue or to appeal belong to any person putting forward a right of his own in support of his request (in doctrine, for an exhaustive analysis see DE LA ROCHEFOUCAULD E., “*Standing to sue, a procedural issue before the CAS*”, in CAS Bulletin 1/2011, p. 13 *et seq.*). According to the CAS jurisprudence, the requirement of legitimate interest is satisfied if it can be stated that the appellant (i) is sufficiently affected by the appealed decision and (ii) has a tangible interest, of financial or sporting nature, at stake.

47. On the other hand, it has also been stated (for example, in FIFA disciplinary cases) that if the appellant is not a party of the procedure leading to the appealed decision, it/he does not have a legal interest to appeal against that decision. The mere fact that the appellant erroneously received a copy of the appealed decision does not turn it into a party of an agreement to which

it was never a party of, nor to a procedure to which it/he never participated (see CAS 2004/A/790, par. 46).

48. Furthermore, it is evident that the person having standing to sue can be the person entitled to the right but also, in certain circumstances, a third party who can act along the same lines as the owner of the right pursuant to an express provision of the law or pursuant to the applicable jurisprudence (in these words, see TAS 2009/A/1869 par. 85).
49. In another case, that Panel has decided that in any event, third parties (other than those to whom the decision was addressed) may have the standing to appeal exclusively if they are directly affected by the measure taken by the association. In this respect, the right of the appeal of a party must be denied if it has no tangible or legitimate interest, of financial or sporting nature, at stake and is not affected by the appealed decision (in this term, CAS 2008/A/1726 par. 66; see also for the completeness of the example of the questions arisen CAS 2014/A/3665, 3666 & 3667).
50. Regarding the “legal nature” of the standing to sue, the Panel stresses that the Swiss Federal Tribunal has clearly established that the standing to sue (together with the standing to be sued) belong to the material conditions of the claim. As a result, the lack of quality to sue leads to the dismissal of the claim as unfounded (ATF 114 II consid. 3a; 126 III 59 consid. 1a).
51. The burden of proof related to the existence of a legal interest worthy of protection lies on the party that has introduced the appeal. Indeed, the active legitimization is a question of material law; and it's the party's duty to objectively demonstrate the existence of its subjective rights and that it possesses a legal interest for its protection (ATF 126 III 59 consid. 1; 125 III 82 consid. 1a; 123 III 60 consid. 3a).
52. Bearing in mind these clear principles, the Panel considers that in the case at hand it is very hard to find the prima facie legitimate interest of the Appellant.
53. As correctly observed by the Respondent, the Club is not really directly affected by a disciplinary decision issued to a player of another team. Concerning the tangible interest, the Panel finds it is very difficult to see that the Appellant has a tangible one. During the hearing the Appellant failed to demonstrate either a sporting interest (maybe sanctioning the player would weaken the Player's current club and that might result in it losing points in other games?) or a financial interest.
54. On this issue, the Appellant stated that, in case of sanctioning the Player, the Club would have the opportunity to recover the medical expenses, which were indicated in the annexes. However, the Panel assumes that it seems very strange (and in any case it was not proved) that a club in case of sanction of a player of the opposite team has the right to ask for a compensation concerning the medical expenses through a disciplinary procedure. Presumably, with the benefit of a successful award from the CAS, the Club would commence a civil claim against the Player or his club for the recovery of such expenses. The Panel would imagine such a claim could be commenced in any event, but that any positive finding by the CAS

would make such a case more likely to succeed. However, the Appellant was not particularly clear in this regard.

55. Notwithstanding the above theoretical considerations, the Panel determines that in this particular type of matter the Club would not ordinarily have standing to appeal.
 56. However, as seen in the national proceedings, Steaua Bucuresti was a party of such proceedings in both of the two phases; which is undoubtedly an *error in procedendo* of the Romanian disciplinary bodies. Indeed, as correctly stated by the Respondent, the Club should only have been a whistle-blower (or a petitioner) not a party. In the case at stake, however, it is easy to verify that Steaua Bucuresti participated actively in the RFF appeal proceedings, in which it filed a statement of defence whereby it requested the dismissal of the appeal lodged by the Player. Finally, the Appealed Decision issued by the RFF Appeal Committee erroneously considered the Appellant a party as it was decided to dismiss the complaint filed by the Club as inadmissible (for different reasons that the Panel will analyse further).
 57. The Romanian bodies had, probably, considered the case as an economic one instead of a disciplinary one and had introduced the Club as a party. As a consequence, even if art. 120 par. 4 DR effectively limited the right to Appeal only to the person sanctioned or the Secretary General, this Panel cannot ignore that the Club had really reached the status of “party” in the previous proceeding (since it actively participated in it) so that in this particular case the Panel determines that it has the standing to sue.
 58. In any case, the Panel underlines that this standing to sue arises from an *error in procedendo* of the RFF Disciplinary bodies and that this solution facilitates compliance with the procedural rights of the Appellant.
- B. *Which parties have the standing to be sued in appeal proceedings concerning decision taken by the RFF Appeal Committee?*
59. Another very important issue to be addressed in this case is the so called “standing to be sued”, discussed at the hearing held on 17 April 2015 in Lausanne.
 60. The Swiss Federal Tribunal states that the prerequisite of the standing to be sued is to be treated as an issue of merits and not as a question for the admissibility of the appeal (cf. ATF 128 II 50, 55; ATF 126 III 59 c. 1a; ATF 123 III 60c 3a. See for an interesting analysis DE LA ROCHEFOUCAULD E., “*Standing to be sued, a procedural issue before the CAS*”, in CAS Bulletin 1/2010, p. 51 *et seq.*).
 61. The DR does not specify, however, against whom the appeal must be directed. According to CAS jurisprudence and Swiss law, a party has standing to be sued and may thus be summoned before the CAS only if it has some stake in the dispute because something is sought against it.
 62. In other words, the defending party has standing to be sued if it is personally obliged by the “disputed right” at stake. As a consequence, *mutatis mutandis*, in a recent case was stated that

“in an appeal against a decision of FIFA, by means of which disciplinary sanctions have been imposed on a party, only FIFA has standing to be sued....in other words, only FIFA can be the correct Respondent having standing to be sued” (see CAS 2012/A/3032, par. 43; CAS 2008/A/1620, par. 4.7; CAS 2007/A/1367 par. 43 *et seq.*).

63. Having established the foregoing, the Panel notes that in its statement of appeal the Appellant had indicated the Player as the Respondent and not the RFF, which is the body that has the power to impose the sanctions.
64. In this respect, the Panel also recalls that in case the wrong party is sued in appeal proceedings in front of CAS, *i.e.* a party which does not have standing to be sued, this would lead to the rejection of the appeal as to the substance. Moreover in the CAS system for a statement of appeal against a given respondent to be admissible, it is necessary that it summons not only that respondent, but that it contains also an actual claim against the subject indicated as respondent.
65. As a general principle, moreover, the disciplinary proceedings in a National Federation are primarily meant to protect an essential interest of the Federation itself, *i.e.* the full compliance with the decision rendered by its bodies.
66. Indeed, an appeal against the decisions of the Disciplinary bodies must regard only the existence of a disciplinary infringement under RFF rules, the power of RFF to impose sanctions and the appropriateness and proportionality of such sanctions.
67. In this respect, it is undoubtedly a mistake to call the Player as respondent. The Club should have summoned the RFF as a party. After having read the requests for relief, the Panel notes that these are all directed against the RFF, yet it was not summoned as a party in these proceedings. As a consequence, a decision taken by the CAS in this case without the RFF as a party could not be enforceable even if the appeal should be upheld.
68. The Panel therefore decides that only the RFF has standing to be sued with regard to matters at hand; and since the Club had only directed its appeal against the Player and not against the RFF, it could not seek relief for the disciplinary sanctions (cf. for a similar case, CAS 2008/A/1677 par. 92-96).
69. Thus, the appeal has to be rejected for lack of standing to be sued of the Player. However, the Panel, for completeness, will in any case continue to answer the third question mentioned before.
- C. *Do the Disciplinary bodies of the RFF have the power to apply disciplinary sanctions when a player commits an offence sanctioned by a yellow card?*
70. The substance matter of the present appeal proceedings, in essence, concerns the question as to whether the RFF bodies are entitled to impose disciplinary sanctions in this case at hand.

71. The Panel finds that the original complaint, as correctly underlined by the RFF Appeal Committee, was since the beginning inadmissible.
72. Recalling the rules just written in par. 50, the Disciplinary system of RFF could be strictly summarized as follows:
 - a. the disciplinary decisions taken by the referee on the play field are final and irrevocable, are effective during the match and cannot be re-examined by the jurisdictional authorities; however
 - b. there are two relevant exceptions in which Disciplinary bodies could intervene: 1) when the serious misconducts are not seen by the referee and there are video recording from several angles; 2) when the player is sent off, in accordance with the dispositions of the DR.
73. It is the Panel's determination that neither of these exceptions are relevant in the case at hand.
74. Considering the first exception (stated upon art. 90 par. 3 lett. a), it is sufficient to underline – and the Panel hereby confirms – that the referee clearly saw the incident. The video footage clearly demonstrated this fact. Indeed the referee intervened and sanctioned the Player with a yellow card.
75. It is important to remember that even if the Panel considered that the referee made a mistake (*id est* the foul should have been sanctioned with a red card *in lieu* of a yellow card), the consequences would be the same. The referee had seen the incident and he decided that a yellow card was enough: after sanctioning the Player with a caution no other disciplinary sanction can be imposed by any Disciplinary body.
76. It is important to note that the description included in the official report of the game (“*reckless charging – incorrect use of arms*” instead of “*elbow hit*”) does not affect the decision itself.
77. As said before, a retrospective action by the Disciplinary Committee was not possible because the incident did not escape to the referee's attention and was dealt with, finally, on the pitch. Any problem related to the possible misrepresentation of the facts, even if that is of general interest, it could not be examined for the simple ground that the decision taken is irrevocable (a rule of the game).
78. In summary, the referee saw the incident and sanctioned the Player with a yellow card. Given that, the first exception is not applicable.
79. The Panel also determined that the second exception (stipulated in art. 90 par. 3 lett. c) is also not applicable: the Player was not sent off from the field so the principle prerequisite required (*i.e.* the red card) was lacking.
80. The DR rules are clear and not subject to other different interpretation. As such the FIFA and UEFA rules will not apply subsidiarily. Nevertheless the Panel wants to briefly address the theme of the disciplinary consequence after a yellow card.

81. The Panel notes to art. 90 lett. b) of the DR since it is the only case where it is possible *to change* a caution in the very rare case in which the referee misidentifies a player. In all the others cases, the yellow cards cannot be disputed even if the referee would have made serious judgment errors.
82. Thus, when a referee shows a yellow card, the conclusion leads to respect the decision as part of the rules of the game.
83. In summary, since the referee clearly saw the incident and did not send the Player off, the Disciplinary bodies have no power to impose a sanction to the Player. This is perfectly understandable in the football order that has as its cornerstone the respect and the intangibility of the referee's decisions (a rule of the game).
84. The inadmissibility of the original complaint absorbs all other arguments introduced by the Parties. *A contrario*, it is evident that if the Player had been sent off or the referee had not seen the incident (but not if he simply incorrectly evaluated such incident) the elbow hit could be sanctioned in accordance to the rules provided by art. 63 par. 2.4 lett. a) of the DR with an additional period of disqualification. The referee's job on the field is to determine whether the foul merits a red or a yellow card (or none at all). If the decision is that a red card should be issued, then it is the job of the Disciplinary bodies to determine, following the DR, and being able in due course to take into account the damage caused to the other player, the sanction against the player that committed the foul. In the Panel's determination, art. 63 par. 2.4 lett. a) of the DR does not open the door for a judging panel to determine that the referee should have issued a red card, so it can issue sanctions. As stated many times above, the judging body are only activated if the referee issues the red card – the decision regarding the colour of the card (or whether to issue one at all) remains with the referee on the field of play, so long as he sees the foul and the correct player.
85. For all these grounds, the appeal is rejected and all the other prayers for relief are dismissed. Therefore the decision of the RFF Appeal Committee shall be fully confirmed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal of FC Steaua Bucuresti SA is rejected.
2. The decision of the Appeal Committee of the Romanian Football Federation is upheld.
- (...)
5. All other motions or prayers for relief are dismissed.