Arbitration CAS 2013/A/3364 S.C. FC Steaua Bucuresti S.A. v. Cristiano Bergodi & Fédération Internationale de Football Association (FIFA), award of 13 January 2015

Panel: Prof. Petros Mavroidis (Greece), President; Mr Vit Horacek (Czech Republic); Prof. Massimo Coccia (Italy)

Football
Termination by club of employment contract of its head coach
Exceptional circumstances in the meaning of Article R56 Code
Principle of lis alibi pendens
CAS jurisdiction
Applicable law

1. **The fact that a party changes its attorney without any compelling circumstances imposing it to do so and the late date of appointment of the attorney do not constitute "exceptional circumstances" in the meaning of Article R56 of the Code of Sports-related Arbitration (the Code). In the absence of truly exceptional circumstances, to accept evidentiary documents submitted the day before the hearing would alter the equality between the parties and the other parties' right to be heard in an adversarial proceeding.**

2. **The mere assertion by a party that the question before the panel constituted for the party's case had also been submitted to another court does not, in and of itself, amount to "serious reasons" in the meaning of Article 186.1bis of the Swiss Private International Law Act that would justify a stay in the proceedings. Indeed, by definition, every time the issue of *lis alibi pendens* arises, the same dispute (or part of it) has been submitted to another court; something more is needed to prove the existence of "serious reasons" warranting the stay of the arbitration proceedings. Furthermore, "forum shopping" routinely occurs in international litigation, and its mere existence is not in and of itself a reason for staying proceedings. In fact, the *ratio legis* of Article 186.1bis cited *supra* is precisely the Swiss legislator's will to signal that, unless serious reasons exist, the jurisdiction of international arbitral tribunals sitting in Switzerland should not be put into question.**

3. **A party wishing to challenge the jurisdiction of CAS for an appeal on the basis that the first instance judicial body having rendered the appealed decision had erroneously accepted jurisdiction needs to establish the lack of jurisdiction of the first instance judicial body. In this context it is not sufficient for the party challenging CAS jurisdiction to simply claim that the public policy of the country of the first instance judicial body foresaw exclusive jurisdiction of the respective country's courts for the dispute in question. Rather conclusive evidence as regards the alleged exclusive jurisdiction of a national state court and the public policy nature of the referred to clause foreseeing exclusive jurisdiction will have to be provided by the party challenging CAS**

jurisdiction.

4. Where the parties to an agreement expressly foresee in the agreement that their contractual relationship is primarily governed by the agreement, "supplemented by" the national laws of a country, the parties' will to have any issues beyond the scope of the agreement "supplemented by" the national law of a country constitutes a choice of law to the extent that the agreement is not exhaustive.

I. PARTIES

1. S.C. FC Steaua Bucuresti S.A. (the "Appellant or the "Club") is a football club with its registered office in Bucharest, Romania. The Club is registered with the Football Federation of Romania which in turn is also affiliated to the Fédération Internationale de Football Association.

2. Mr Cristiano Bergodi (the "First Respondent" or the "Coach") is an Italian national and former head coach of the Club.

3. The Fédération Internationale de Football Association (the "Second Respondent" or "FIFA") is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the governing body of international football at worldwide level. It exercises regulatory, supervisory and disciplinary functions over continental confederations, national associations, clubs, officials and players worldwide.

II. FACTUAL BACKGROUND

A. BACKGROUND FACTS

4. Below is a summary of the main relevant facts, as established on the basis of the parties' written submissions and the evidence examined in the course of the present appeals arbitration proceedings. This background is made for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.

5. In June 2009, the First Respondent had been hired as the Club's head coach of its first football team for the period of 25 June 2009 through 24 November 2011 by virtue of an employment contract signed to this effect by the two parties (the "Agreement").

6. On or around 17 September 2009, following a string of disappointing, in the eyes of the Club, results in the Romanian championship and the UEFA Europa League, the Coach was dismissed by the Club.

7. There is dissent between the parties as to the exact circumstances leading to the dismissal of the Coach, particularly whether there was a just cause to dismiss the Coach from the employment contract or not.

B. PROCEEDINGS BEFORE THE SINGLE JUDGE OF THE FIFA PLAYERS' STATUS COMMITTEE

8. On 13 October 2009, the Coach lodged a claim before FIFA's Players' Status Committee (the "FIFA PSC") requesting unpaid salaries in the amount EUR 100'000 as well as in total EUR 65'000 for unpaid bonuses and lost profits allegedly due in the wake of the alleged breach of contract.

9. On 19 March 2013, the Single Judge of the FIFA PSC held (the "Appealed Decision") in its relevant parts:

> *"[…].*
>
> *2. The claim of the Claimant, Cristiano Bergodi, is partially accepted.*
>
> *3. The Respondent, FC Steaua Bucuresti, has to pay to the Claimant, Cristiano Bergodi, within 30 days as from the date of notification of this decision the following amounts:*
>
> *- EUR 100,000 as compensation for termination of the employment contract;*
>
> *- EUR 6,000 as outstanding bonuses.*
>
> *4. If the aforementioned sums are not paid within the aforementioned deadline an interest rate of 5% per year will apply as of expiry of the fixed time limit and the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.*
>
> *5. Any further claims lodged by the Claimant, Cristiano Bergodi, are dismissed.*
>
> *[…].*
>
> *7. The Claimant, Cristiano Bergodi, is directed to inform the Respondent, FC Steaua Bucuresti immediately and directly of the account number to which the remittance under points 3 and 6.3 above is to be made and to notify the Players' Status Committee of every payment received".*

10. On 3 October 2013, the Appealed Decision was notified to the parties by facsimile.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

11. On 23 October 2013, the Club filed the Statement of Appeal with the Court of Arbitration for Sport (the "CAS") in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the "Code"). The Club requested to submit the case to a Sole Arbitrator and submitted the following requests for relief:

"Based on the provisions of Article R57 of the Code, we request CAS to issue an arbitral award that:

1. *State that Players' Status Committee of FIFA had no jurisdiction to settle the case between the coach Cristiano Bergodi and the club S.C. FC Steaua Bucuresti S.A.*

2. *Annul the Decision from 19 March 2013 issued by Players' Status Committee of FIFA in the case Coach Cristiano Bergodi, Italy / Club FC Steaua Bucuresti, Romania having the reference number mdo-1000992.*

3. *Reject the claim of the coach Cristiano Bergodi lodged before Players' Status Committee of FIFA on 13 October 2009 as inadmissible.*

   Subsidiarily, only if the above-mentioned prayers for relief are rejected:

4. *Replace the Decision from 19 March 2013 and state that the claim of the coach Cristiano Bergodi is unfounded. Reject all the prayers for relief formulated by the coach Cristiano Bergodi against S.C. FC Steaua Bucuresti S.A. as unfounded.*

5. *Order the Respondents to jointly and severally bear all the costs incurred in the present procedure (administrative fee of CAS, costs of the arbitrators, expeditions, document translations and others)".*

12. On 13 November 2013, the Club filed its Appeal Brief, in accordance with Article R51 of the Code.

13. On 27 November 2013, and following the Respondents' objection to submit the case to a Sole Arbitrator, the President of the CAS Appeals Arbitration Division decided to submit the matter to a Panel of three arbitrators, pursuant to Article R50 of the Code of Sports-related Arbitration (the "Code").

14. On 4 December 2013, the Appellant nominated Dr. Vit Horacek, Attorney-at-law in Prague, Czech Republic, as arbitrator.

15. On 12 December 2013, the First Respondent nominated Prof. Massimo Coccia, Professor and attorney-at-law in Rome, Italy, as arbitrator with the Second Respondent expressing its consent to the nomination on 16 December 2013.

16. On 20 January 2014, the Appellant filed a petition for challenge of the nomination of Prof. Coccia, in accordance with Article R34 of the Code.

17. On 14 April 2014, the Board of the International Council of Arbitration for Sport rejected the Appellant's petition for a challenge of Prof. Coccia.

18. On 7 January 2014, FIFA filed its answer, in accordance with Article R55 of the Code. In its answer FIFA submitted the following requests for relief:

"1. To reject the present appeal against the decision of the Single Judge of the Players' Status Committee (hereafter also; the Single Judge) dated 19 March 2013 and to confirm the relevant decision in its entirety.

2. To order the Appellant to cover all the costs incurred with the present procedure.

3. To order the Appellant to bear all legal expenses of the second Respondent related to the proceedings at hand".

19. On 17 January 2014, the Coach filed its answer, in accordance with Article R55 of the Code. In its answer the Coach submitted the following requests for relief:

"Mr. Cristiano Bergodi hereby respectfully requests the Court of Arbitration for Sport to:

1) Reject the appeal presented by FC Steaua Bucuresti.

2) Decide that the Appellant must bear all the costs of the present arbitration.

3) Decide that the Appellant must compensate the legal costs of Mr. Bergodi incurred in the present proceedings in their full amount, but no less than CHF 30.000,00 in any event".

20. On 25 April 2014, the CAS Court office acknowledged payment of the advance of costs by the Appellant and informed the parties, pursuant to Article R54 of the Code, that the Panel had been constituted as follows: President Prof. Petros C. Mavroidis and Arbitrators, Dr. Vit Horacek and Prof. Massimo Coccia.

21. On 30 May 2014 following the directions of the Panel, the Appellant filed a certified English translation of the employment contract between the Club and the Coach.

22. On Monday, 15 September 2014, *i.e.* the day before the hearing took place, the Appellant faxed a series of documents to the CAS headquarters. It requested the CAS Secretariat to furnish a copy to the Respondents, which the CAS Secretariat could logistically only do the day after the hearing, i.e. on 17 September 2014.

23. These documents could be divided into three categories: a translation of the Romanian law regulating jurisdiction over employment-related disputes into English; decisions by Romanian courts concerning jurisdiction in employment-related disputes; and court papers concerning a discontinued lawsuit between the parties before a Bucharest court.

24. On 16 September 2014 a hearing was held in Lausanne, Switzerland. The Panel was present throughout and was assisted by Mr Christopher Singer, Counsel to the CAS.

25. The following persons attended the hearing:

For the Club:	Mr Valeriou Argaseala, President of the Club, Ms Roxana Gabrieala Tarmurean, attorney-at-law, Ms Anicuta Jecu, attorney-at-law
For the Coach:	Mr Cristiano Bergodi, Messrs Pekka Alber Aho and Vittorio Rigo, attorneys-at-law

For FIFA: Ms Maria E. Dominguez Rubio and Mr Roy Vermeer, members of FIFA's Players' Status Department

26. The Panel was called to address three preliminary issues. The first concerned the admissibility of the documents belatedly exhibited by the Appellant. In this relation, the Panel asked the Respondents whether they were prepared to accept the documents filed on 15 September 2014. The Respondents rejected all of them, except for the translation of the Romanian law, acknowledging that reference to the Romanian law had already been made in the submissions of the Appellant, and the translation did not add anything new to what had already been argued.

27. In the absence of agreement between the parties, the Panel was called to issue a preliminary ruling regarding the acceptability of the mentioned documents. In the Panel's view, Article R56 of the Code is the appropriate legal benchmark to pronounce on this score. It reads:

> *"[…] Unless the parties agree or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, nor to produce new exhibits, nor to specify further evidence on which they intend to rely, after the submission of the appeal brief and of the answer. […]".*

28. The Panel noted at the outset that the documents distributed during the hearing included various decisions issued by Romanian state courts. There was a considerable time lag between the dates of issuance of the decisions on the one hand (2009, 2012), and the date the hearing was held on the other. The same goes for the documents concerning the discontinued lawsuit between the parties, which went back to 2009 and 2010. Moreover, the Appellant did not adduce any grounds justifying why it delayed to exhibit such documents until the day before the hearing, other than the fact that the attorney litigating this case on behalf of the Club had only been appointed to this capacity the day before the hearing.

29. The Appellant's attorney presented the Panel with a document testifying that its appointment had been made effective only a few hours before the date of the hearing. In the Panel's view, the fact that a party changes its attorney without any compelling circumstances imposing it to do so and the late date of appointment of the attorney do not constitute "exceptional circumstances". In other words, the Panel does not feel that this is a reasonable justification to accept the new evidentiary documents at such a late stage of the proceedings. Given that the Appellant filed its Appeal Brief on 13 November 2013 (more than ten months before the hearing), it had plenty of time to think about its legal representation in this case and to ask leave to exhibit some new evidence without encroaching on the Respondents' right to try and contradict such evidence with other evidence of their own. In the absence of truly exceptional circumstances, to accept evidentiary documents submitted the day before the hearing would alter the equality between the parties and the other parties' right to be heard in an adversarial proceeding (see Article 190.2.d of the Swiss Private International Law Act). The Panel thus, based on Article R56 of the Code, decided to reject such documents and not take them into account for the purposes of issuing its final award.

30. The second preliminary issue concerned a request by the Appellant to have access to the FIFA file. The Appellant had in fact, requested in its Appeal Brief that the FIFA file be produced and

transmitted in its entirety to the parties. The CAS Court Office contacted FIFA to this effect, only to receive in November 2013 the response that the Appellant was already in possession of the whole file. The FIFA response was immediately transmitted to the Appellant. The Appellant did not communicate any additional request after the receipt of the response that FIFA had communicated to the CAS Court Office. The Panel asked the Appellant, during the time devoted to preliminary issues, whether the response of FIFA was satisfactory, and whether it had been in possession of the full FIFA file. The Appellant confirmed that this had indeed been the case. As a result, the Panel considered this issue closed.

31. The third preliminary issue arose during the hearing when the Appellant requested the Panel to stay the proceedings before it until the issuance of a decision by a Romanian Court where the question of jurisdiction to adjudicate the present dispute had allegedly been submitted.

32. The Respondents requested from the Panel to reject the request and proceed to adjudicate the dispute.

33. The Panel rejected the request. In its view, Article 186.1bis of the Swiss Private International Law Act constituted the appropriate legal benchmark to decide on this issue. It reads:

> *"1. The arbitral tribunal shall decide on its own jurisdiction.*
>
> *1bis. It shall decide on its jurisdiction notwithstanding an action on the same matter between the same parties already pending before a state court or another arbitral tribunal, unless there are serious reasons to stay the proceedings.*
>
> *2. Any objection to its jurisdiction must be raised prior to any defense on the merits.*
>
> *3. The arbitral tribunal shall, in general, decide on its jurisdiction by a preliminary decision".*

34. In the Panel's view, even leaving aside the fact that no written evidence was timely submitted by the Appellant concerning the current pendency of such lawsuit brought by the Appellant before a Romanian court, the mere assertion that the question before it had also been submitted to another court did not, in and of itself, amount to a "serious reason" that would justify a stay in the present proceedings. Indeed, by definition, every time the issue of *lis alibi pendens* arises, the same dispute (or part of it) has been submitted to another court; something more is needed to prove the existence of "serious reasons" warranting the stay of the arbitration proceedings. Furthermore, "forum shopping" occurs routinely in international litigation, and its mere existence is not in and of itself a reason for staying proceedings. In fact, the *ratio legis* of Article 186.1bis cited *supra* is precisely the Swiss legislator's will to signal that, unless serious reasons exist, the jurisdiction of international arbitral tribunals sitting in Switzerland should not be put into question (see partial award CAS 2009/A/1881, in CAS Bulletin, 1/2011, 118, at 119-121, in *www.tas-cas.org/bulletins-archives*, affirmed by the Swiss Federal Tribunal, judgment no. 4A_548/2009 of 10 January 2010).

35. For the above reasons, the Panel communicated its decision to proceed and adjudicate the present case.

36. During the hearing, the Appellant also stated that it had made certain payments in favour of the First Respondent into his bank account in Romania towards salaries and bonuses the Coach claimed to be outstanding. The Panel requested the First Respondent to check his bank account in Romania and verify the claims made by the Appellant after the hearing.

37. At the conclusion of the hearing, the parties confirmed that they had no objections regarding the constitution of the Panel and the respect of their right to be heard and that they had been given the opportunity to fully, equally and fairly present their cases.

38. By letter of 6 October 2014, the First Respondent confirmed the Appellant's payments towards outstanding salaries and bonuses on his Romanian bank account in the amount of RON 38,575 on 28 March 2012 and RON 26,782 on 31 March 2014, respectively. The First Respondent further stated in that letter that he had not been aware of the payments as he had left Romania, to the knowledge of the Appellant, in 2009 and communicated his Italian bank details to the Appellant following the notification of the Appealed Decision in 2013.

IV. SUBMISSIONS OF THE PARTIES

39. The following brief overview of the parties' submissions is in summary form and does not purport to include every contention put forward by the parties; in addition some parties' submissions are mentioned in other parts of the award. In any event, the Panel has carefully considered all of the submissions put forward by the parties, even if there is no specific reference to those submissions in the following overview or in other parts of the award.

IV.1. S.C. FC Steaua Bucuresti S.A.

40. The Appellant's submissions, in essence, may be summarised as follows.

41. The Club made three broad claims. First, it requested the Panel to stay the proceedings until the pending litigation before the Romanian Court, where the question regarding jurisdiction over this dispute had been raised, had been concluded. Second, in case the Panel decided to reject the request for the stay of proceedings, to conclude anyway that it lacks jurisdiction to adjudicate the present dispute. Third, were the Panel to reject the request for the stay of proceedings and find that it had jurisdiction to adjudicate the present dispute, to annul the FIFA decision, to oblige the First and Second Respondent to cover arbitral costs as well as the legal fees incurred by the Appellant.

42. As to the factual circumstances of the Coach's dismissal, the Club alleged in its written submissions that the Coach had been absent from his workplace without justification as of 18 September 2009. It further contended that, following the UEFA Europa League match between the Club and the Moldavian club FC Sheriff Tiraspol on 17 September 2009, the Coach had approached the President of the Club, Mr Valeriu Argaseala, in an agitated manner and had asked for a certain amount of money to terminate the Agreement. According to the Club, it was only after elaborate internal investigations that on 16 October 2009 it issued a dismissal decision

in view of the Coach's inability to behave in a manner consistent with his contractual obligations.

43. Irrespective of the reasons for firing the Coach, the two parties agree, however, that no written notice was provided to the Coach informing him of the reasons that led to this decision. During the hearing, the Club's representatives argued that written notice was not furnished to the Coach only because he had left Romania without providing the Club with his address in Italy or elsewhere.

IV.2. Mr Cristiano Bergodi

44. The First Respondent's submissions, in essence, may be summarised as follows.

45. The Coach maintained that he was fired because of the poor sporting results the Club had achieved prior to the termination of the Agreement. In his recollection of facts, following the UEFA Europa League match against FC Sheriff Tiraspol on 17 September 2009, he was shocked to discover that George Becali, a very influential member of the Club's hierarchy, was being interviewed on Romanian TV right after the match, where he declared that the Coach would be fired with immediate effect as a result of the poor performances of the Club. According to the Coach, he was then approached by Mr Valeriu Argaseala after the match and informed that his services were no longer required and that he had been dismissed. The next day, the Coach had been invited to the office of Mr Argaseala who confirmed that he was no longer the head coach and that Mr Mihai Stoichita had been appointed in his place.

46. The Panel notes in this respect that the Club did not deny that a new coach was in charge for the next game, although it noted that this was the natural thing to do since the First Respondent had left the Club. The Coach remained in Bucharest for a few days, and did all that was necessary to prepare his departure and return to Italy after he had received a letter from the Romanian Football Federation on 24 September 2009 confirming that, on 19 September 2009, the Club had officially notified the federation of his dismissal and the appointment of his successor. The Coach concluded reminding the Panel that five years had passed since his dismissal and asking that the Appealed Decision be confirmed and he could finally receive his long overdue compensation.

IV.3. FIFA

47. The Second Respondent's submissions, in essence, may be summarised as follows.

48. FIFA backed the factual and legal findings of the Appealed Decision according to which the Agreement had been terminated on 17 September 2009 without just cause and that the First Respondent was entitled to the outstanding payments and bonuses as well as the compensation for the early termination that the Single Judge of the FIFA PSC had granted. The Second Respondent also contended that the Single Judge of the FIFA PSC had rightfully assumed its jurisdiction in relation to the claim that the First Respondent had lodged before it in October 2009.

V. ADMISSIBILITY

49. The Appeal was filed within the 21 days set by Article 67(1) of the FIFA Statutes (2013 edition). The Appeal complied with all other requirements of Article R48 of the Code, including the payment of the CAS Court Office fee.

50. It follows that the Appeal is admissible.

VI. SCOPE

51. The Panel, having concluded that it was appropriate to reject the Appellant's request to stay proceedings, moved to examine first whether it has jurisdiction to adjudicate the present dispute, and if so, to decide the case on the merits.

52. Under Article R57 of the Code, the Panel has full power to review the facts and the law and it may issue a new decision that replaces the decision challenged.

VII. JURISDICTION

53. The Panel notes that the Appellant challenges the jurisdiction of the CAS to the extent that it argues that the FIFA PSC erred in accepting jurisdiction and that, therefore, the present case should have never been submitted to the CAS. The Respondents, on the other hand, claim that the FIFA PSC correctly asserted its jurisdiction to adjudicate this dispute at first instance, since, in their view, the contractual will of the disputing parties had been expressed accordingly.

54. To understand the differing opinions in this respect, the Panel deems it appropriate to first cite the three legal provisions that the disputing parties mostly based their claims upon.

55. Clause O of the Agreement states:

> *"Any conflict regarding the conclusion, performance, amendment, suspension or termination of the present individual employment contract shall be settled by the court of law with subject matter and territorial jurisdiction, according to the law, RFF, PFL or FIFA".*

56. Article 266 of the Romanian Labour Code states, in the English translation provided by the Appellant in its Appeal Brief:

> *"The purpose of the labour jurisdiction is the resolution of the labour disputes regarding the conclusion, performance, amendment, suspension and cessation of the individual employment contracts or, as the case may be, collective labour agreements provided for by this Code, and of the requests regarding the legal relationships between social partners, as established by this Code".*

57. Article 269§1 of the same statute reads, in the English translation provided by the Appellant at the hearing:

"The competence for judging labour conflicts shall belong to the courts established according to the Civil Procedure Code".

58. Finally, Article 22 and 23 of the FIFA Regulations on the Status and Transfer of Players (the "RSTP") read:

"22 Competence of FIFA

Without prejudice to the right of any player or club to seek redress before a civil court for employment-related disputes, FIFA is competent to hear:

[…].

c) employment-related disputes between a club or an association and a coach of an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings exists at national level;

[…].

23 Players' Status Committee

1. The Players' Status Committee shall adjudicate on any of the cases described under article c) and f) as well as on all other disputes arising from the application of these regulations […]".

59. In light of the above, the Appellant claims that the aforementioned provisions of the Romanian Labour Code, as interpreted by Romanian courts in the jurisprudence that it orally cited before the Panel but had not included in its written pleadings, confer to Romanian courts exclusive jurisdiction to adjudicate employment-related disputes.

60. The Appellant does not dispute that Clause O of the contract signed between the Club and the Coach confers jurisdiction to, *inter alia*, the FIFA instances as well, and hence the FIFA PSC. It does claim nevertheless that Clause O is null and void because of its inconsistency with the provisions of the Romanian Labour Code, which are public policy (*"ordre public"* in French) provisions that do not allow for exceptions contractually agreed.

61. The Respondents maintained that Clause O conferred jurisdiction to the FIFA PSC. Clause O provided contractual parties with a choice of forum, the FIFA adjudicatory bodies (FIFA PSC) being one of them. In that, Clause O could be read harmoniously with Article 22 of the FIFA RSTP, which provides interested parties with a choice of forum: the FIFA PSC or any other court to the jurisdiction of which they have contractually agreed to submit their disputes.

62. Regarding the argument that Clause O was null and void because it contravened a public policy provision of the Romanian Labour Code, the second Respondent raised two counter-arguments. First, if this were true, it would be hard to explain the wide use of clauses conferring jurisdiction to the FIFA PSC that have appeared in dozens of employment contracts signed by Romanian clubs with players or coaches that were brought to the attention of FIFA adjudicatory bodies. How could, in other words, Romanian clubs routinely contravene a public order provision from which exceptions are allegedly legally impossible? Second, and closely connected

to the first point, FIFA has cited a number of cases involving employment-related disputes between Romanian clubs on the one hand, and foreign employees on the other, that have already been adjudicated by the FIFA PSC without the Romanian clubs raising an objection of violation of Romanian public policy.

63. The Panel came to the conclusion that the Appellant's challenge of FIFA's jurisdiction has to be rejected. In the Panel's view, Clause O, on its face, conferred jurisdiction to four alternative fora: (i) the State courts of Romania that are territorially and functionally competent in accordance with Romanian law; (ii) the Romanian Football Federation (RFF); (iii) the Romanian Professional Football League (PFL); or (iv) FIFA. So, the Panel harbours no doubts that under such contractual clause the choice of the forum pertained to the party deciding to act against the other, with the consequence that the Coach had the option to lodge a claim with the FIFA instances, a point that had been already accepted by the Appellant, as noted *supra*. Furthermore, the Appellant did not dispute that Article 22 RSTP conferred jurisdiction to the FIFA PSC, if another forum had not been contractually agreed. The only remaining question was whether the Romanian Labour Code 'trumped' Clause O and Article 22 RSTP.

64. In the Panel's view, the Appellant had not cited enough evidence to persuade it that this was indeed the case. First of all, the Romanian provisions quoted by the Appellant, on their face, did not make any reference to the alleged exclusivity or public policy character of the Romanian labour courts' jurisdiction. Then, the Appellant's counsel certainly did refer, in her oral pleadings, to recent cases where Romanian courts had taken this view. This case law, though, had been belatedly submitted and, for the reasons mentioned *supra*, could not be taken into consideration by the Panel by virtue of Article R56 of the Code.

65. Importantly, however, this is an area where practice points to the opposite direction. First, as already mentioned, there are routinely clauses contracted between Romanian employers and their international employees conferring jurisdiction to the CAS. The evidence submitted by FIFA to this effect is telling.

66. Second, responding to a question by the Panel during the oral hearing, the Appellant accepted that the contract that had been offered for signature to the Coach was a standard-contract, *e.g.* a contract offered by the Club (as well as by other Romanian clubs) to all international employees, and yet it contained Clause O. This raised a serious concern. These contracts were routinely offered to employees, routinely deposited with the Romanian Football Federation, and routinely litigated before FIFA adjudicatory bodies, and yet no one had ever pointed to the alleged illegality of Clause O.

67. Third, following a question by the Panel, the Appellant accepted that Romanian employers could acquiesce to jurisdiction for courts other than the Romanian courts. But if the statutory rule conferring exclusive jurisdiction to Romanian courts were public policy (*jus cogens*) indeed, how could then contractual deviations be permitted?

68. Fourth, the FIFA PSC practice signalled by FIFA was providing further support to the thesis that Romanian law did not confer exclusive jurisdiction to Romanian courts. Indeed, following the FIFA PSC jurisprudence on this score, neither was the Romanian statute amended so as to

make recourse to FIFA's adjudicatory bodies a legal impossibility, nor did the competent Romanian instances protest against jurisdiction exercised by the FIFA PSC on an issue of public policy.

69. For all these reasons, the Panel holds that the FIFA PSC had jurisdiction to adjudicate the claim lodged before it by the Coach.

70. Having established jurisdiction of the FIFA PSC, the Panel refers to Article 67(1) of the FIFA Statutes (2013 edition) which read as follows:

"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question".

In addition, Article R47 of the Code reads:

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

71. It follows from these provisions that the CAS has jurisdiction to hear the present appeal.

VIII. APPLICABLE LAW

72. Article R58 of the Code provides the following:

"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in 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".

73. The Panel notes that Article 66(2) of the FIFA Statutes stipulates the following:

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

74. The Appellant maintains that all legal issues in relation to the present dispute have to be examined by applying Romanian (labour law) pursuant to Clause N of the Agreement which reads as follows:

"N. Final provisions

The provisions of the present individual employment contract are supplemented by Law no. 52/2003 – Labor Code […]".

75. The First Respondent maintains in this respect that the wording *"supplemented by"* cannot mean more as such, a supplement, and cannot be considered as a choice of law.

76. The Panel respectfully disagrees with the First Respondent's view. While the Panel agrees that the parties chose to have their contractual relationship primarily governed by the Agreement, the parties' will to have any issues beyond the scope of the Agreement *"supplemented"* by the Romanian Labour Code does indeed, in the Panel's view, constitute a choice of law to the extent that the Agreement is not exhaustive.

77. Having determined that the Coach legitimately submitted the case to the FIFA's adjudicatory bodies, as the Agreement provided as one of four alternatives (cf. *supra* paras. 55, 63), the applicable regulations to this dispute are, pursuant to Article R58 of the Code, the FIFA regulations, additionally Swiss law and, subsidiarily, the Romanian Labour Code.

IX. MERITS

A. THE MAIN ISSUES

78. There was lack of clarity with respect to some minor issues, but agreement between the parties regarding the essential facts. Notably, there was no disagreement between them that:

a) the Coach had acted in his capacity as Coach of the team for the football game against FC Sheriff Tiraspol for the UEFA Europa League on 17 September 2009;

b) a different Coach had been in charge of the team three days later for the next game for the Romanian championship which took place on 20 September 2009.

79. Different opinions were expressed regarding the facts that led the Club to the decision to fire the Coach. According to the Appellant, the Coach had adopted a hostile attitude following the game of 17 September 2009. He declined invitations to appear before the Club's authorities in order to discuss the reasons for the mediocre performances of the team. He eventually disappeared altogether, leaving Romania apparently without the Club knowing his whereabouts. It is for these reasons that the Club's officials were led to the decision to fire the coach and hire someone else in his place.

80. The Coach does not dispute that he had probably misbehaved in the evening of 17 September 2009 following the match against FC Sheriff Tiraspol, without however acting in disproportionate manner. He claims, though, that his disconcerted manner was due to the fact that moments before he met the Club's officials, he had seen a TV show in the dressing room while he was meeting with his players where the former owner of the Club and very influential figure, George Becali, had announced the termination of his contract. The Coach had found it hard to understand how this had happened without him having a chance first to discuss with the Club's officials.

81. It follows that the two parties agree that the Coach did not behave properly the evening of 17 September 2009, but this is all they agree upon. The Coach explained the rationale for his anger,

and added that he still managed to avoid overreacting to the news he had just received. It is impossible for the Panel to know what exactly happened that evening, as apart from the evidence provided by the Coach and the President of the Club, none of the parties called neutral witnesses to testify the truthfulness of their respective statements. It is also unnecessary to proceed in this way. Indeed, in any event, the Panel finds that the evidence at its disposal points to the fact that the Club dismissed the Coach in the days between the two games, more exactly on or before 19 September 2009, as proven by the Romanian Football Federation's letter of 24 September 2009 (see *supra* para. 46).

82. At first instance, the Single Judge of the FIFA PSC had concluded that the Club was, under the circumstances and in accordance with the Agreement, liable to compensating the Coach by paying to him all salaries due until the end of the competition season. The Panel saw no reason to disturb this finding, as the Appellant adduced no evidence to persuade it otherwise.

83. The Panel wishes to add in this respect and where the applicable regulations, *i.e.* the RSTP, provide room for the application of the Agreement and the Romanian Labour Code, the following remarks.

84. Clause L b) of the contract states that:

> *"The notice period in case of dismissal is 20 working days, according to the Law no. 53/2003 Labor Code or the collective labor contract".*

85. In the present case, this deadline was not respected. Actually, there is no proof at all that a dismissal notice was ever sent to the Coach. It is for the Appellant to carry the burden of proof demonstrating that a dismissal notice was sent and/or that the notice period of 20 working days had been respected. The Appellant failed to do so. Furthermore, as stated *supra*, the new coach had already been in place to take over for the game of 20 September 2009.

86. Moreover, Clause L e) of the contract states:

> *"If the coach is dismissed during a season, he shall receive his salary until the end of the ongoing competition season".*

87. It follows that the contract obliges the Club to pay the Coach all his salaries until the end of the competition season irrespective of the reason for dismissing him. In this case, as we stated *supra*, the rationale for firing the Coach had never been communicated to him in writing prior to, or on the occasion of his dismissal, occurred on or before 19 September 2009.

88. Following the Appellant's statement and the First Respondent's confirmation of bank transfers to the effect that the outstanding salaries and bonuses in the amount of RON 38,575 and RON 26,782 respectively had been paid to the Coach's Romanian bank account, the order of payment included in the Appealed Decision is amended accordingly. The First Respondent's claim for outstanding bonuses is satisfied as the payment of RON 26,782 on 31 March 2014 at the valid exchange rate at that time equals EUR 6,001. Further the First Respondent's claims for

compensation are reduced by EUR 8,818, the equivalent to RON 38,575 at the exchange rate of the date of payment.

B. CONCLUSION

89. Based on the foregoing, and after taking into due consideration all the evidence produced and all submissions made, the Panel dismisses the appeal, irrespective of the partial payments made by the Appellant, which were not notified to either FIFA or the Coach before and after the Appealed Decision was issued (they were mentioned by the Appellant for the first time at the CAS hearing) and, thus, confirms the Appealed Decision.

90. The Appealed Decision is declared to be satisfied to the extent that the Appellant has paid EUR 8,818 towards the compensation payable to the First Respondent and that the amount of EUR 6,000 as outstanding bonuses has been paid in its entirety. As a consequence, the Panel holds that the Appellant shall pay EUR 91,182 (ninety-one thousand one hundred eighty-two Euros) to the Coach, plus interest of 5% *per annum* on such sum from 2 November 2013 (that is, 30 days after the notification of the Appealed Decision) until the actual date of payment.

91. Any further claims or requests for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 23 October 2013 by S.C. FC Steaua Bucuresti S.A. against the decision issued on 19 March 2013 by the Single Judge of the Players' Status Committee of the Fédération Internationale de Football Association is dismissed.

2. The decision issued on 19 March 2013 by the Single Judge of the Players' Status Committee of the Fédération Internationale de Football Association is affirmed.

3. The decision issued on 19 March 2013 by the Single Judge of the Players' Status Committee of the Fédération Internationale de Football Association is declared to be partially satisfied to the extent that S.C. FC Steaua Bucuresti S.A. has paid EUR 8,818 towards the compensation payable to Cristiano Bergodi and that the amount of EUR 6,000 as outstanding bonuses has been paid in its entirety, with the consequence that S.C. FC Steaua Bucuresti S.A. is ordered to

pay EUR 91,182 to Cristiano Bergodi, plus interest on such sum of 5% *per annum* from 2 November 2013 until the actual date of payment.

(…)

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