



**Arbitration CAS 2006/A/1118 Octavian Marin v. S.C. Univstiinta Fotbal Craiova S.A., award of 21 November 2006**

Panel: Prof. Michael Geistlinger (Austria), Sole Arbitrator

*Football*

*Representation contract concluded with regard to the collection of a solidarity contribution*

*Legal nature of the representation contract*

*Role of and due diligence expected from the national federations in the registration of representation contracts*

*General principles ruling the cases of total assumption of debts with regard to solidarity contributions*

- 1. FIFA Licensed Players' Agents Regulations do not explicitly rule on the nature of a representation contract, but include a general reference to the national "*public law provisions for arranging employment in the country concerned*". This leads to the conclusion that the provisions to be applied by analogy with regard to the termination of such contract before the expiry of the contractual term must be sought much more in the national labour law rather than by considering it to be a mandate to be revoked.**
- 2. FIFA Licensed Players' Agents Regulations oblige the FIFA member federations to register all representation contracts in the respective countries. The FIFA member federations are obliged to keep a register of these contracts. They, thus, are given the role of public notaries in this field of the sport of football. Therefore, due diligence in all its registration activities is expected from a federation fulfilling such notarial function.**
- 3. It follows from general principles ruling the cases of total assumption of debts that the acquiring club is taking over the rights and obligations – irrespective of their nature – of the acquired club. This also goes for the right to a solidarity payment for the period a player had played with the respective club and for the respective remuneration of the agent.**

The Appellant, Mr Octavian Marin, is a FIFA Players' Agent with the name "Sporttransfers Inc.", licensed by the Romanian Football Federation (Federatia Romana de Fotbal, FRF). Mr Marin was contracted by CSS Resita and S.C. CSM Resita, two Romanian football clubs, to represent their interests with regard to the solidarity payment under art. 25 of FIFA Regulations for the Status and Transfer of Players concerning the Romanian player C., captain of the Romanian national team in 2003 and Romanian player of the year 2002.

The Respondent, the S.C. Univstiinta Fotbal Craiova S.A., formerly and before the CAS also acting under the names SC Fotbal Club U Craiova S.A. and FC Universitatea Craiova, patronat de S.C.

Fotbal Club U Craiova S.A., continues to play in the position of the former S.C. CSM Resita in the third Romanian football division.

The club CSM Resita and the Appellant concluded a contract, which ruled that starting from 18 September 2003 until 17 September 2005 the Appellant was to act as agent and the club CSM Resita authorized the Appellant to

*“take all the necessary steps and request in the name of the club a bonus for training and education for the player C. from any club, which according to the FIFA legislation, must pay such a bonus”.*

According to art. 3 of this contract, the club CSM Resita obliged itself to pay 15 % of the solidarity payment owed by a transfer club to CSM Resita for the Romanian player to the Appellant. The Appellant received the right to act as agent with exclusivity. The parties agreed to respect Romanian law as well as *“the international laws and treaties concerning this issue”*. CSM Resita became further obliged to inform the Appellant of the sum collected as a consequence of the activities of the Appellant and to pay the remuneration due within 7 days from the date of cashing the money.

The contract was submitted to the Romanian Football Federation for confirmation of agreement. This confirmation was received on 14 October 2003 (registration number F.R.F. Comisia pt. Agenti de Jucatori, nr. 485).

By fax dated 25 September 2003, Ajax Amsterdam accepted an offer by AS Roma to have the player C. transferred from Ajax Amsterdam to AS Roma for a certain amount of money and accepted to take care of the solidarity payment *“as referred to in the FIFA regulations for the status and transfer of players (article 25 thereof) up to a maximum of EUR 510,000”*. The full responsibility for any mistakes as to the calculation of this sum and any further obligations related to the transfer of the player were assigned to AS Roma.

The Appellant reported having approached AS Roma repeatedly right after having concluded the Representation Contract claiming the solidarity payment, most times by phone or fax and intending to find an amicable settlement. The Appellant brought forward a letter to the CAS dating from 14 October 2003, addressed to the President of AS Roma, where he calculated the amount of solidarity payment due by AS Roma to CSS Resita and CSM Resita based on the respective FIFA circulars. AS Roma recognized a payment obligation with regard to CSM Resita and FC Universitatea Craiova in a fax to the Appellant dated 16 October 2003, but attached a fax copy of a letter of the Cuatrecasas law firm in Madrid which contained an offer addressed to the Fotbal Club Universitatea Craiova/CSM Resita to act as its agents with regard to the player C.. The offer dates from 2 August 2003 and shows the acceptance by S.C. F.C.U Craiova S.A. (nr. 277/08.09.03), but no registration by the Romanian Football Federation.

The Appellant informed AS Roma of the exclusivity of its rights as agent for the player C. and included – as far as relevant for this case – a letter of confirmation of the status of exclusivity by the manager of the CSM Resita Club, Mr Ianca Muhu, dated 14 October 2003, and the official record of the player as registered by the Romanian Football Federation.

On 4 November 2003, the Appellant informed the Romanian Football Federation of his efforts – so far unsuccessful – to have the two Romanian clubs obtain the solidarity payment concerning the transfer of the player from Ajax Amsterdam to AS Roma. The Appellant referred to all his correspondence with Mr Franco Baldini, the person in charge for this matter at AS Roma. The Appellant relied on FIFA's recommendation to have his petition together with the official sheet of the player C. filed to FIFA by the Romanian Football Federation. The Romanian Football Federation did so on 7 November 2003. The FIFA Head of Player's Status, Mr Gianpolo Monteneri, approached AS Roma by fax dated 22 January 2004 and set a deadline of 12 February 2004 for settlement of the solidarity payment. The Romanian Football Federation informed the Appellant on 26 January 2004 accordingly. On 27 January 2004 the Appellant specified to AS Roma the composition of the amount of solidarity payment owed to the two Romanian football clubs.

On 29 January 2004, AS Roma informed the Appellant as well as the two clubs and the Romanian Football Federation that due to its transfer agreement with Ajax Amsterdam the solidarity payment had to be collected from Ajax Amsterdam. AS Roma also mentioned the definitive transfer sum for the player in this letter. This led the Appellant in a letter dated 6 February 2004 to recalculate the sum of the solidarity payment owed by AS Roma and to point at the invalidity of any contractual clause transferring the financial obligation from AS Roma to Ajax Amsterdam.

In a letter dated 24 February 2004, the Appellant informed the Romanian Football Federation that no payment has been received by CSS Resita and CSM Resita before and within the deadline set by FIFA. In a fax dated 8 April 2004, FIFA ordered AS Roma to pay 207,188.98 € to CSM Resita and 207,737.70 € to CSS Resita by the deadline of 22 April 2004. In a letter dated 27 April 2004, the Appellant approached AS Roma by setting a final deadline of 30 April 2004 for the payment, otherwise FIFA will be asked to install a formal procedure against AS Roma.

On 5 May 2004, the President of SC CSM Resita S.A., Mr Vlad Rebega, advised the Appellant to stop all further interventions regarding the solidarity payment for the player C. by arguing that the delay in the receipt of the payment was caused by the Appellant's "*unprofessional and audacious intervention*". The President further wrote:

*"For these prejudices created by the delayed receipt of this compensation, after a thorough analysis of the situation and the identification of the quantum, we shall now take measures against you".*

On 10 May 2004, the Appellant informed the Romanian Football Federation of the above letter and asked for information with regard to the legal power of Mr Vlad Rebega and the specified club. On 17 May 2004, the Appellant requested FIFA to start all necessary measures to resolve the case. On 17 August 2004, Mr Goncalo Almeida from the FIFA's Players' Status Department informed the Romanian and Italian Football Federation that the matter would be brought before the next meeting of the FIFA Dispute Resolution Chamber.

On 18 August 2004, the Appellant referring to a phone conversation before informing Mr Pavel Badea, Universitatea Craiova, of the amount of solidarity payment which the clubs CSM Resita and Universitatea Craiova were to receive following the transfer of the player C. from Ajax Amsterdam to AS Roma. On 26 August 2004, the Appellant offered to be available to FIFA for helping with any information needed and supplied a calculation of the amounts asked for by the two clubs.

The Royal Netherlands Football Association informed FIFA of its opinion that AS Roma was liable to pay the solidarity contribution on 13 October 2004 and on 20 October 2004 due to the fact that Ajax Amsterdam had received the full transfer sum from AS Roma. On 2 November 2004 the General Secretary of the Romanian Football Federation informed FIFA that on 6 August 2004, the Emergency Committee of the Romanian Football Federation had approved the merger through absorption of the club CSM Resita with the club FC Universitatea Craiova. The latter club has assumed the debts as well as incomes of CSM Resita and continues as FC Universitatea Craiova II, playing in the 3<sup>rd</sup> Romanian division in place of CSM Resita. The solidarity payment, therefore, shall be transferred to FC Universitatea Craiova.

On 3 December 2004, the Appellant notified FC Universitatea Craiova that he continued to fulfil his obligations under the agent's contract with regard to FC Universitatea Craiova. The Appellant pointed at all the steps he had undertaken thus far in the interests of CSM Resita/FC Universitatea Craiova and of the obligation of the latter to pay 15 % of the solidarity payment received to the Appellant. On the same day, AS Roma asked Ajax Amsterdam to transfer the sum of 510,000 € for solidarity payment to AS Roma from the whole of the transfer sum received by Ajax Amsterdam.

On 17 February 2005, the Appellant reminded FIFA of the still open solidarity payment owed by AS Roma. On 3 March, FIFA notified FC Universitatea Craiova, the Romanian Football Federation, AS Roma and the Italian Football Federation of the ruling made on 4 February 2005 by the FIFA Dispute Resolution Chamber. The Chamber decided that AS Roma was obliged to pay 98,560 € to the FC Universitatea Craiova within 30 days. In another ruling made on the same day, the FIFA Dispute Resolution Chamber held that AS Roma was obliged to pay the amount of 206,800 € to CSM Resita, also within 30 days. In a third ruling dating from the same day, the FIFA Dispute Resolution Chamber held that AS Roma was obliged to pay the amount of 208,560 € to CSS Resita. The Chamber found that the player was registered with CSS Resita from 14 December 1989 until 6 March 1996, with CSM Resita from 7 March 1996 until 15 July 1998, and with FC Universitatea Craiova from 16 July 1998 until 30 August 1999.

On 1 April 2005, the Appellant reminded FIFA that the ruling with regard to CSS Resita had not been duly notified to the party, and pointed out the fact that the Appellant had supported the FIFA rulings in C.'s case at the Romanian Football Federation. On 8 April 2005, the Appellant informed AS Roma that the money due to CSM Resita was to be paid to Club's Universitatea Craiova bank account according to the respective Fusion Agreement. On 13 April 2005, the Appellant gave evidence to AS Roma concerning his agent's status for CSS Resita and CSM Resita and announced that the invoice for CSM Resita was to be issued by Universitatea Craiova Club due to the taking over of CSM Resita. On 14 April 2005, the Appellant informed FIFA of the bank account of CSS Resita and in a letter dated 15 April 2005 announced to AS Roma the accompanying documentation with regard to the authenticity of the signature on the invoice of CSS Resita, including a document confirming the Appellant's right of legal representation for CSS Resita asked for by AS Roma on 5 April 2005.

However, in a fax dated 14 April 2005 and referring to an agreement with FIFA-Services Juridiques, AS Roma informed the Romanian Football Federation that the whole sum due to CSM Resita, to FC Universitatea Craiova and to CSS Resita would be wired to a bank account of the Romanian Football

Federation. In a fax dated 15 April 2005, FIFA asked the Romanian Football Federation for assistance in distributing the sum wired by AS Roma to the clubs concerned. The Romanian Football Federation showed readiness to do so in a letter to FIFA dated 18 April 2005 and confirmed the bank details, indicated by AS Roma as addressee, as correct. On 15 April 2005 the Appellant, referring to his Representation Contract registered by the Romanian Football Federation, informed the President of the Romanian Football Federation of his authorisation to have the solidarity payment to CSS Resita directly transferred to the bank account of CSS Resita by AS Roma and asked for confirmation by the Romanian Football Federation to AS Roma. On 20 April 2005, the Appellant agreed on behalf of CSS Resita to have the solidarity payment transferred to CSS Resita via the Romanian Football Federation. AS Roma insisted on having the necessary documents, including the Power of Attorney of the Appellant for CSS Resita, sent in advance. Such power had to be documented not only for the Appellant as a physical person, but also for his company "Sporttransfers". On 28 April 2005, the Romanian Football Federation confirmed the validity of the Appellant's agent's status for CSS Resita and of his Representation Contract to AS Roma. On the same day, the Appellant confirmed his letter to AS Roma dated 20 April 2005. On 5 May 2005, AS Roma wired the sum due to CSS Resita to the bank account of the Romanian Football Federation and supplied the respective bank evidence on 6 May 2005.

In his Appeal Brief dated 7 July 2006, the Appellant reported the further development with regard to the facts as follows: On 4 May 2005, the Romanian Football Federation advised the Appellant that the amount due as solidarity payment to CSM Resita as well as to FC Universitatea Craiova had been received by the Federation and had been promptly forwarded to FC Universitatea Craiova. On the same day, the Appellant approached FC Universitatea Craiova and claimed the 15% agent fee from the sum due to CSM Resita and actually paid to its successor FC Universitatea Craiova. The FC Universitatea Craiova did not respond to this letter. On 9 June 2005, the Appellant submitted a complaint against FC Universitatea Craiova to the Romanian Football Federation and asked for settlement of the agent fee issue with regard to the solidarity payment for CSM Resita to FC Universitatea Craiova. There was no answer by the Romanian Football Federation. Thus the claim was reiterated on 20 July 2005 and a second time on 22 November 2005. The latter application was registered by the Players' Status Commission of the Romanian Football Federation, which acts as the court of first instance for disputes to be settled by the Romanian Football Federation. In decision n° 7/28 March 2006, the Players' Status Commission dismissed the Appellant's application as unfounded and held that the club entitled to the solidarity payment was AS CSM Resita and not S.C. CSM Resita, the club that had concluded the Representation Contract registered at the Romanian Football Federation with the Appellant. Moreover, it was held that only the obligations of AS CSM Resita had gone over to FC Universitatea Craiova.

The Appellant appealed against this decision with the Federal Appellate Commission of the Romanian Football Federation and contended that based on the FIFA Regulations regarding football-related activities and on the rule that the final classification in the competitions of the previous season determines the championship participation for the next season, it must have been S.C. CSM Resita S.A. that was replaced by FC Universitatea Craiova II to play in the third Romanian football division after Universitatea Craiova had taken over S.C. CSM Resita S.A. The Appellant further confirmed that it was this club which, therefore, was entitled to the solidarity compensation represented by the Appellant based on S.C. CSM Resita S.A. having concluded the Representation Contract with the

Appellant. The Appellant also argued before the Federal Appellate Commission of the Romanian Football Federation, that based on the same FIFA Regulations, in the case of the taking over of one club by another club, the acquiring club assumes the rights and obligations – irrespective of their nature – of the acquired club. This also goes for the right to continue playing according to the qualification achieved by the acquired club. By admitting FC Universitatea Craiova II to continue to play in the position of the acquired club S.C. CSM Resita S.A. the Romanian Football Federation has recognized the respective legal succession. The other club, AS CSM Resita, has assigned its rights for the period the player C. had played with this club (according to the FIFA Dispute Resettlement Chamber: 16 July 1998 until 30 August 1999), to the FC Universitatea Craiova. As a result, S.C. Univstiinta Fotbal Craiova S.A. collected the entire solidarity payment for the player C., and in addition based on the legal title of S.C. CSM Resita (by legal succession) as well as based on that of AS CSM Resita (by assignment).

On 12 June 2006, the Federal Appellate Commission of the Romanian Football Federation dismissed the appeal of the Appellant as unfounded by holding:

*“Even admitting that as of 06.08.2004 – subsequent to the conclusion of the Assignment Agreement of 15.11.2002 and the takeover of 06.08.2004 – all rights and obligations in connection with the federative rights related to the player C. have been transferred into FC UNIVERSITATEA CRAIOVA’s patrimony the Commission deems that by the notification of 05.05.2004 (date that precedes SC CSM RESITA’s takeover by UNIVERSITATEA CRAIOVA) signed by Chairman REBEGA and communicated to Mr. MARIN, SC CSM RESITA unilaterally terminated the Representation Contract no. 2628/13.10. As under the law the nature of a Representation Contract is that of a mandate (remunerated) and as a mandate may be revoked at any time, the Commission deems that by the revocation of the mandate given on 05.05.2004 by SC CSM RESITA no right or obligation such as it may be set out in the said mandate has been transferred into FC UNIVERSITATEA CRAIOVA’s patrimony”.*

The decision of 12 June 2006 was transmitted to the Appellant by fax on 21 June 2006. On the same day, the Appellant submitted a Statement of Appeal against this decision to the CAS requesting the Court

*“to issue a new decision ordering S.C. Univstiinta Fotbal Craiova S.A. (respondent) to pay to the Appellant the 15 % agent fee (namely EURO 31,020.00) for the services provided by the Appellant to the Respondent in relation to the solidarity compensation for the transfer of the player C. from Ajax Amsterdam to AS Roma”.*

The statement was duly supplemented with the necessary documents on 30 June 2006.

In his Appeal Brief received by the CAS on 11 July 2006, the Appellant argued that the main and only argument seen and used by the Federal Appellate Commission of the Romanian Football Federation, namely the revocation of the mandate, which at the same time meant termination of the Representation Contract, had not been used by the Respondent in the course of the legal proceedings, but was raised and used by the Commission on its own initiative. The Commission, thereby, transgressed its competence under Romanian law and acted biased. The Appellant continued to argue that he had tried to clear the legal relevance of the “so-called revocation”, when he had received such fax on 5 May 2004. The revocation fax had been signed by Mr Vlad Rebeaga who was unknown to him. The Appellant had signed his Representation Contract with Mr Inca Muhu, who at the relevant time in October 2003 was the due representative of S.C. CSM Resita S.A. The Appellant received neither

an answer by the club, nor an answer by the Romanian Football Federation. Also, the arguments brought forward against the Appellant's handling of the issue by Mr Rebege in his fax were neither confirmed nor substantiated by the club, as the Appellant had requested to do. Thus, in the absence of any reaction or clarification, the Appellant continued to act in good faith to fulfil his Representation Contract wanting to avoid any penalties for non-compliance that the club might have brought forward against him later. The Appellant held the opinion that his mandate had not been duly revoked and, thus, ignored the fax notification.

In his Appeal Brief, the Appellant admitted that as a rule a mandate may be revoked, and consequently S.C. CSM Resita S.A. could have revoked the mandate without further explanation. But this rule does not apply in the case of a remunerated mandate. Further to that, according to the relevant doctrine in such a case the agent is entitled to receive compensation for damage caused by sudden and unfair revocation of the mandate. The compensation is to be established by court judgement. The principal is obliged to reimburse the agent all expenses and losses incurred prior to the revocation of the mandate. The Appellant adduced art. 391 para. 1 Romanian Commercial Code, which reads as follows:

*"The principal that – with no just cause – discontinues the execution of the mandate by its revocation or decision not to act is liable to pay damages".*

The Appellant, thus, argued in conclusion

*"even if for sake of argument we admitted that in the present case the revocation of the mandate was valid, still Mr. Marin would be entitled to receive a smaller remuneration but directly proportional with his performance prior to the revocation. Though it should be considered that Mr. Marin's efforts prior to 05.05.2004 – the date of the so-called Notification of revocation signed by Mr. Vlad Rebege – and even subsequent to that point were considerable".*

In its Answer submitted by its Executive Manager Ovidiu Costesin on 7 August 2006, the Respondent requested the CAS to reject the appeal and to uphold the decision of the Federal Commission for Appeal of the Romanian Football Federation of 12 June 2006 for the following reasons:

*"1. On October 13th, 2003, the date the agency contract between the players' agent Octavian Marin and CSM Resita was concluded, the club CSM Resita could not assign, in whole or in part, any percentage of the federal rights of the player C., since it had already assigned completely these rights to the club Universitatea Craiova through the contract of assignment made on November 15th, 2002 (exhibit 1);*

*2. As the Federal Commission for Appeal of the Romanian Football Federation established, the agency contract concluded on October 13th, 2003 has the legal nature of a (remunerated) mandate which offered the possibility to revoke him at any time, and CSM Resita did that very thing on April 5th, 2004, through the notification signed by the president of the club, Mr. Vlad Rebege, and addressed to Mr. Octavian Marin (exhibit 2)".*

Exhibit 1 to the Answer of Respondent includes the translation from Romanian of a "Contract for Assignments of Debts", concluded on 15 November 2002 and indicating registration numbers typewritten as a list with regard to the S.C. F.C.U. Craiova S.A. ("Issuing no. 2591/August 15<sup>th</sup>, 2003"), the Professional Football League ("Issuing no. 1609/August 28<sup>th</sup>, 2003"), the Romanian Football Federation ("Registry Office Issuing no. 3097/August 28<sup>th</sup>, 2003"), and the SC CSM Resita S.A. Romania ("Issuing no. 248/August, 2003"). In difference from the documents translated from Romanian language and submitted by the Appellant, the contract neither shows the Romanian original, nor any signature

or stamp, nor any authorization of the translation officially confirming the identity of original and translation. The same goes for exhibit 2 containing an English text, not even shown as translation, of a "NOTIFICATION. To: Mr. OCTAVIAN MARIN Players' Agent" dated 05.05.2004, showing as addresser Sc CSM Resita S.A. and President Vlad Rebeaga ordering Mr Marin "to stop your interventions regarding the solidarity compensation for the player C. to FIFA, RFF, club AJAX Amsterdam and AS ROMA ...". A copy of the original of this latter document was provided by the Appellant, however.

The contract submitted by the Respondent as exhibit 1 is said to have been concluded between the S.C. Fotbal Club Universitatea SA, represented by Popescu Carmen Ioana, Economic Manager, on the one hand, and CSM Resita Association and S.C. CSM Resita, represented by Dinel Staicu, president. The object of the contract lies in the S.C. Fotbal Club Universitatea SA, through its representative Popescu Carmen Ioana, assigning "the debt of 985,800,000 lei paid to the creditor Firiteanu Vasile Dumitru Nicolae, according to the negotiation, at the value of 650,000,000 lei ... in favour of ACSM Resita and SC CSM RESITA".

The assignees accept "the assignment of the debt amounting to 985,800,000 lei whom they understand to pay by:

- Placing at the disposal of and in favour of S.C. FOTBAL CLUB UNIVERSITATEA SA all the money rights due to CSM Resita, in the possibility of future transfers of the player C. and ...".

In the clause "Other terms" it is stated as follows:

"This contract was concluded in 5 (five) confidential copies, with one copy being filed with the Legal Receiver's Office Ciobanu Gheorghe with a view to a definitive conclusion of the foreclosure brief, other copy being filed with RFR (Romanian Football Federation) and the other copies being delivered to the parties.

The parties agree that the money rights due to CSM RESITA from a possible transfer of the player C. be transferred directly to the bank account of S.C. FOTBAL CLUB UNIVERSITATEA SA ... with the transfer fee due to UNIVERSITATEA CRAIOVA CLUB as a result of its contribution to the training of the player C. being transferred to the same bank account.

Once this contract is signed, all present and future rights of the players ... and C. are totally and unconditionally due to S.C. FOTBAL CLUB UNIVERSITATEA SA CRAIOVA".

The contract contains a final so-called "SPECIAL CLAUSE" which reads as follows:

"S.C. FOTBAL CLUB UNIVERSITATEA CRAIOVA, upon taking over the above-mentioned rights, takes over the risk and expenditures incurred by the disputes with the player ..., as well as the risk of not being paid the commission of 5% for the training of the player C. by UEFA or by the buying club".

As can be seen from the decision dated 12 June 2006, in the proceedings before the Federal Appellate Commission of the Romanian Football Federation, the Respondent had argued in addition that subsequent to the conclusion of the contract in November 2002, Universitatea Craiova initiated an independent procedure in order to obtain its solidarity compensation entitlement, "at a first stage through services of a law firm based in Madrid and later through the International Relations Department within the FRF".

On 3 July 2006, the CAS informed the Respondent as well as the Romanian Football Federation of the appeal. On 6 July 2006, the Appellant agreed to have the case heard by a sole arbitrator, due to the relatively low pecuniary value of the issue.

## LAW

### The Jurisdiction of the CAS

1. None of the parties dispute the jurisdiction of the CAS in the present case. The Panel holds that the requirements set forth in art. 71 para. 4 Statute of the Romanian Football Federation, in effect at the relevant time, have been met. The provision reads as follows:

*“4. Under FIFA Regulations the decisions passed by the Federal Appellate Commission as instance of last resort may be appealed against only before the Court of Arbitration for Sport (TAS) based in Lausanne (Switzerland), which is an independent arbitration court whose jurisdiction in football-related cases is acknowledged by FIFA.*

- *a) TAS has competent jurisdiction over any dispute that involves FIFA, any regional confederation, national federation, league, club, player, official, licensed players’ or match agent.*
- *b) TAS Arbitration Code governs the hearing procedure in relation to any dispute submitted to TAS. There are also applicable the relevant FIFA provisions or those of the regional confederations, national federations, leagues, clubs, and subsidiary the Swiss law.*
- *c) TAS has exclusive appellate jurisdiction in respect with appeals from last resort decisions in disciplinary matters provided that all due proceedings available at FIFA, UEFA, national federation, league or club level have been completed. The appeal shall be filed with TAS within 10 days as of the service of the decision.*
- *d) TAS is not competent in any case:*
  - *relating to the breach of the Laws of the Game;*
  - *involving a 4-match or 3-month suspension;*
  - *in relation to any decision passed by an arbitration commission or an arbitration tribunal pertaining to a federation or a confederation”.*

### The Applicable Law

2. Pursuant to art. R58 of the Code, the Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties. In the present case, the parties agreed, in article 5 of the Agency Agreement, *“to respect the Romanian law as well as the international laws and treaties concerning this issue”*. The regulations of the Romanian Football Federation and, where relevant, FIFA will therefore be applicable. Romanian law will apply subsidiarily.

### The Merits

#### *A. Status of the Appellant’s Representation Contract*

3. The Appellant is part of the official FIFA Players Agents’ List. The Representation Contract concluded between the Appellant and the club CSM Resita, according to the contract

represented by its president Mr Muhu Iancu and confirmed by the Romanian Football Federation on 13 October 2003, fulfils all requirements asked for by the FIFA Licensed Players' Agents Regulations dated 10 December 2000. The respective provision of these Regulations reads as follows:

“Art. 12

1. *A players' agent may represent or take care of the interests of a player or a club in compliance with art. 11 only if he has concluded a written contract with the player or club.*
  2. *Such a contract shall be limited to a period of two years but may be renewed in writing at the express request of both parties. It may not be tacitly prolonged.*
  3. *The contract shall explicitly mention who is responsible for paying the players' agent's fee, the type of fee and the prerequisite terms for the payment of the fee.*
  4. *Only the client engaging the services of the players' agent, and no other party, may remunerate him.*
- (...)
9. *A players' agent who has been contracted by a club shall be remunerated for his services by payment of a lump sum that has been agreed upon in advance.*
  10. *FIFA will provide its standard representation contract (cf. Annexe C) to the national associations. Every players' agent is required to use this standard contract. The parties to the contract are at liberty to conclude additional agreements and to supplement the standard contract accordingly, providing the relevant public law provisions for arranging employment in the country concerned are observed without fail.*
  11. *The representation contract shall be issued in quadruple and duly signed by both parties. The player or the club shall keep the first copy and the players' agent the second. The players' agent shall send the third and fourth copies to his national association, or the national association to which the player or club belongs, for registration within 30 days of their having been signed. The national associations shall keep a register of the contracts being received. Copies of the contracts shall be sent to FIFA upon request.*
  12. (...).”

4. The Representation Contract was concluded in writing for a period of two years. It provides for a lump-sum remuneration agreed upon in advance. It was duly signed and was registered by the Romanian Football Federation.
5. Art. 12 n° 10 FIFA Regulations does not explicitly rule on the nature of a Representation Contract, but includes a general reference to the national “*public law provisions for arranging employment in the country concerned*”. This leads to the conclusion that the provisions to be applied by analogy with regard to the termination of such contract before the expiry of the contractual term must be sought much more in the national labour law rather than by considering it to be a mandate to be revoked. However, the question of the legal nature of the contract and of which rules of which national law to apply on its termination can remain open, since the Respondent did not submit to the CAS any legal act suitable to touch on the legal effect of this contract or to end such contract.

6. Neither the Contract for Assignments of Debts dated 15 November 2002, nor the Notification to stop interventions dated 5 May 2004 were submitted by the Respondent to the CAS in a copy of the original, nor was a certification of the translation added. Neither was any signature, nor any stamp, nor any stamp of registering shown to the CAS on the Contract for Assignments of Debts. With due respect to the integrity of the Respondent, the CAS did not receive any original documents, or copies of the original documents, or any evidence from the Respondent showing that the documents that were submitted in English are true translations of existing documents. Thus, the Panel cannot exclude that the document submitted by the Respondent, purported to be a translation of the Contract for Assignment of Debts, also could be a falsification or an erroneous document. The original of the Notification to stop interventions was submitted to the CAS by the Appellant. It shows the signature of President SC CSM Resita S.A. Vlad Rebeaga and a club registration number, but no Romanian Football Federation registration number.
7. Irrespective of the questionable value of the two documents mentioned above and assuming in the interests of the Respondent that they are real, the documents, nevertheless, could not hinder the entrance into force of the Representation Contract of the Appellant, nor could they terminate its legal effect.
8. The Contract for Assignments of Debts is said to have been concluded on 15 November 2002, but mentions in a list of registrations at its beginning that it was registered by the SC CSM Resita SA Romania only at an undefined date during August 2003. It is also said that the contract was signed on behalf of ACSM Resita and SC CSM Resita by one and the same person, the President Dinel Staicu. Thus Mr Staicu appears to have been the president of both federations at the respective time. Neither the Appellant, nor the Respondent, nor the Romanian Football Federation gave any explanation to the CAS as to whether Mr Staicu was president of both federations at that time, nor did they explain why it took more than eight months to register the contract in the president's own federation, assuming the indication of registration on the contract was correct.
9. Art. 10 n° 11 of FIFA Regulations obliges the FIFA member federations to register all Representation Contracts in the respective countries. The FIFA member federations, including the Romanian Football Federation, are obliged to keep a register of these contracts. They, thus, are given the role of public notaries in this field of the sport of football. The Romanian Football Federation is said to have registered the Contract for Assignments of Debts on 28 August 2003, just 15 to 30 days prior to the conclusion, and one and a half months prior to the registration of the Representation Contract of the Appellant. When registering such a contract, due diligence must be expected from a federation fulfilling such notarial function. Assumed the indication of registration of the Contract for Assignments of Debts was correct and, thus, made known to the world of the Romanian football clubs and to FIFA that the club SC CSM Resita had ceased to exist and had been replaced by its legal successor, the S.C. Fotbal Club Universitatea SA, it cannot be seen as duly diligent to have a contract signed on behalf of a non-existing club by a non-existing president registered only shortly thereafter without raising this issue to the party applying for such registration.

10. The Appellant, thus, was correct in assuming that he had entered a contract with a person duly representing a club in existence. He acted in good faith and could rely on the public character of a duly managed register. Assuming that it is correct that the Contract for Assignments of Debts was also duly registered by the Romanian Football Federation acting in good faith, the same must be assumed in the interests of the S.C. Fotbal Club Universitatea. However, the Appellant clearly acted in the interests of the old as well as the new club and, as can be seen from a long list of letters, faxes, and phone records mentioned above, had decisive influence on the final success of having the new club receive the solidarity payment in full. The Respondent simply contended before the Federal Appellate Commission of the Romanian Football Federation and did not show a single piece of corresponding evidence to the CAS that Universitatea Craiova had initiated an independent procedure in order to obtain its solidarity compensation entitlement, initially through the services of a law firm based in Madrid and later through the International Relations Department of the Romanian Football Federation. Besides the offer of a contract of representation, dated 1 August 2003, of Mr Miguel Terrasa and his law firm Cuatrecasas to the Fotbal Club Universitatea Craiova/CSM Resita and Mr Staicu and Mr Costesin, showing a stamp confirming approval of SC CSM Resita and a register number of S.C. F.C.U. Craiova S.A. (nr. 2771/08.09.03), brought to the attention of the CAS by the Appellant, the Respondent did neither specify to the Appellant, nor to the Federal Appellate Commission of the Romanian Football Federation, nor to the CAS the further fate of this contract and its implementation in practice. The contract does not show any sign of having been registered by the Romanian Football Federation and does not meet all the other requirements for a representation contract in players' transfer matters according to the FIFA Regulations. Mr Terrasa is not part of the official FIFA Players' agents list for Spain. Whereas this does not hinder him in providing all the services as a law firm, the offer of the contract itself shows that he obviously was not aware of the FIFA requirements. In addition, Mr Terrasa also did not answer the letters of the Appellant, which made the exclusivity right of the Appellant with regard to representation of the C. federative rights known to him. Thus, the Panel must conclude that this offer of a contract was received by the club, but was stored there and was not implemented in practice. Even if this conclusion were wrong, the contract could not profit from any public status under FIFA law and, thus, could not cause damage to the Appellant's contract and/or legal position.
11. The Panel also cannot follow the Respondent's contention before the Federal Appellate Commission of the Romanian Football Federation that the club showed its own initiative to settle the solidarity payment issue by involving the International Relations Department of the Romanian Football Federation. The record of letters, faxes and phone calls reported above shows that it was the Appellant who set this initiative, for a long period directly with regard to both clubs represented by him, and for the last period, when the payment obligation had already been set by FIFA, with regard to the club CSS Resita, which indirectly caused the Romanian Football Federation to also involve S.C. Univstiinta Fotbal Craiova S.A., for example by asking for the bank account details and where to wire the solidarity payment for SC CSM Resita/SC Fotbal Club Universitatea Craiova. The International Relations Department of the Romanian Football Federation did nothing more than fulfilling its obligations as a member of FIFA by confirming acts registered by the federation under FIFA law and cooperating to the purposes

of FIFA by accepting the solidarity payment on its account and transferring it, thereafter, to the final assignees.

12. With regard to the so-called Notification to stop interventions dated 5 May 2004, the Panel would like to point out the fact that there is no evidence that this document was registered with the Romanian Football Federation. The Appellant himself registered the document at the Romanian Football Federation pointing out the fact that the document tended to interfere with his Representation Contract. Efforts of the Appellant to clarify the legal relevance of the document were neither answered by the Romanian Football Federation, nor by the club concerned. It follows from the obligation of the Romanian Football Federation to act as public notary under FIFA law with due diligence that a reaction – be it by declaring the Appellant’s Representation Contract as terminated, be it by not accepting a registration of the notification due to the fact that it openly conflicted with an already registered and valid Representation Contract – had to take place. Thus, the Appellant was correct in ignoring the notification and in continuing his obligations under a contract ruled by FIFA law.

13. In addition, the Respondent itself set activities showing that the Appellant’s Representation Contract continued to stay in force. The Appellant submitted to the attention of the CAS a letter dated 18 August 2004 to Mr Pavel Badea, club Universitatea Craiova. This letter reads in the certified English translation as follows:

*“Dear Sir,*

*Please find attached, as we have agreed upon in the telephone discussion, the calculation of the solidarity bonus that the clubs CSM Resita and Universitatea Craiova have to receive following the transfer of the player C. from Ajax Amsterdam to AS Roma.*

*I would like to mention that these calculations have been made according to the FIFA regulations and they take into account each day the player C. has been registered as a player at the two clubs. The Romanian Football Federation has communicated the exact periods in the document from October the 17<sup>th</sup> 2003 (attached to the present letter).*

*As we have agreed upon, the rest of the documents shall be sent Thursday, the 19<sup>th</sup> of August 2004, both through fax as well as via courier.*

*With best regards*

*Octavian Marin*

*...”.*

14. Assuming that Mr Rebeaga was the president of the club SC CSM Resita S.A. or FC Universitatea Craiova at the time, the club officials irrespective of his Notification to stop interventions obviously continued to rely on the knowledge and experience of the Appellant with regard to the FIFA solidarity payments. The Appellant could understand such behaviour as supporting his understanding that the Representation Contract continued to stay in force.

15. Based on the foregoing reasons, the Panel holds that the finding of the Federal Appellate Commission of the Romanian Football Federation that the Appellant’s Representation Contract

was unilaterally terminated by the Notification to stop interventions dated 5 May 2004 cannot be upheld.

B. *Legal continuity between the SC CSM Resita SA and SC Univstiinta Craiova SA with regard to the solidarity payment*

16. Since neither the Federal Appellate Commission of the Romanian Football Federation, nor the Respondent in the procedure before the CAS upheld the reasoning of the Players' Status Commission in the first instance that the club entitled to the solidarity payment was AS CSM Resita and not S.C. CSM Resita, the Panel deems sufficient to state that he is fully satisfied by the Appellant's respective arguments in his Appeal Brief. It was S.C. CSM Resita S.A. that was replaced by FC Universitatea Craiova II to play in the third Romanian football division after Universitatea Craiova had taken over S.C. CSM Resita S.A. with legal effect of the take over of S.C. CSM Resita as of 6 August 2004.
17. Whereas the Appellant was not correct in having argued before the Federal Appellate Commission of the Romanian Football Federation and in his Appeal Brief, that there were "FIFA Regulations regarding football-related activities" which rule the case of the taking over of one club by another club, it follows from general principles ruling the cases of total assumption of debts that the acquiring club is taking over the rights and obligations – irrespective of their nature – of the acquired club. This also goes for the right to a solidarity payment for the period the player C. had played with the respective club and for the respective remuneration of the agent.
18. The Respondent and also the Federal Appellate Commission of the Romanian Football Federation did not dispute the identity of "CSM Resita" according to the wording of the Appellant's Representation Contract, with "SC CSM Resita". Thus, the obligations of the club CSM Resita under the Representation Contract were legally inherited by FC Universitatea Craiova II and ultimately by S.C. Univstiinta Fotbal Craiova S.A., formerly known as F.C. Universitatea Craiova.

C. *Calculation of remuneration*

19. In a fax dated 15 April 2005, AS Roma – as ordered by decision of the FIFA Dispute Resolution Chamber – recognized owing € 206,800.00 as solidarity payment to CSM Resita and stated being prepared to pay this sum to the bank account of the Romanian Football Federation. On 18 April 2005, the Romanian Football Federation agreed to receive the sums for the three clubs in its bank account and to immediately distribute them to the clubs thereafter. On 4 May 2005, the Romanian Football Federation advised the Appellant that the sum for CSM Resita had been forwarded to F.C. Universitatea Craiova.

20. According to art. 3 of the Appellant's Representation Contract with CSM Resita/S.C. Univstiinta Fotbal Craiova S.A., 15 % of this sum must be paid by the club to the Appellant as the agent's remuneration.
21. The Panel, therefore, rules S.C. Univstiinta Fotbal Craiova S.A. to pay the sum of € 31,020.00 to the Appellant. This sum has to be paid within two weeks from the receipt of this award. In case the sum has not been paid to the Appellant by this deadline, the Respondent is obliged to pay 5% interest p.a.

**The Court of Arbitration for Sport rules that:**

1. The Appeal filed by Mr Octavian Marin on 21 June 2006 is upheld.
2. The decision of the Federal Appellate Commission of the Romanian Football Federation dated 12 June 2006 is dismissed.
3. The S.C. Univstiinta Fotbal Craiova S.A. is ordered to pay € 31,020.00 to the Appellant within two weeks from the receipt of this award. In case the sum has not been paid to the Appellant by this deadline, the Respondent is ordered to pay 5% interest p.a.
4. (...).