



THE PRINCIPLE OF SPORTING SUCCESSION:
FROM A JUDICIALLY CREATED CONCEPT TO A
CODIFIED TOOL AGAINST FOOTBALL CLUBS'
AVOIDANCE OF MANDATORY FINANCIAL
RESPONSIBILITIES'

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ABSTRACT

This research project examines the notion of sporting succession from the moment of its creation within the jurisprudence of the Court of Arbitration for Sport (CAS) and its evolution throughout the years, including the moment of its official inception into FIFA Regulations which was explicitly formalised later than expected but nevertheless brought some crucial changes regarding the judicial interpretation of the concept from then on. For more than a decade, sporting succession existed within the *lex sportiva* as a judicially created concept. In its early years of development, it used to be placed on an equal footing with the concept of legal succession but this phenomenon in subsequent CAS jurisprudence rapidly ceased to exist.

Through a detailed analysis of CAS jurisprudence, this research project will carefully trace and identify the relevant changes with respect to how sporting succession used to be established in the past and how it is assessed nowadays, in light of the principle's main objective which, as announced by FIFA, is to be considered the prevention of fraud and financial misuse.

Nevertheless, there are other rationales behind the concept that seemed to have a more significant value in the eyes of CAS arbitrators which also might incline the reader to question whether there is a lack of uniformity in sport succession disputes. It shall be seen that, although the concept still continues to exist without having a fixed definition within the *lex sportiva*, it remains extremely relevant in international football law and beyond any doubt reserves special attention, as it has triggered an influential body of case law followed and further developed over the years by CAS and FIFA deciding bodies.



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GLOSSARY OF TERMS

| | |
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| CAS | Court of Arbitration for Sport |
| RSTP | Regulations on the Status and Transfer of Players |
| FIFA | Fédération Internationale de Football Association |
| FIFA DC | Fédération Internationale de Football Association Disciplinary Committee |
| FIFA DRC | Fédération Internationale de Football Association Dispute Resolution Chamber |
| FDC | Fédération Internationale de Football Association Disciplinary Code |

I. INTRODUCTION

The global financial crisis between 2007 and 2010 undeniably left its mark in the world of football whereby many football clubs experienced serious financial struggles and thus entered into the second decade of the 21st century with fear and deep scepticism about their future and stable existence even in the short term. Regrettably, that was a period not solely marked by temporary financial turbulences for certain football clubs and their respective managements to sustain.

Rather, said era witnessed many transformations and bankruptcy proceedings, even among iconic top-tier European teams, that were seen as a direct reflection of the overall financial climate worldwide. Some of these clubs in question found a way to re-emerge on the football landscape, either through being involved in complex transfer of undertakings (including mergers, acquisitions, sales of units of production within the framework of ongoing bankruptcy proceedings or something similar), while others were effectively revived thanks to their supporters' financial contributions or simply relied on direct financial support and diplomacy from the respective local authorities in order to maintain the spirit and ensure the sporting continuity of their teams. That was particularly the reality for those football clubs who ended up being liquidated and were replaced by newly created amateur clubs specifically designated to assume the identity of the original clubs.

With that in mind, some of those newborn teams started their journeys from the lowest and amateur local divisions whereas others pretended to take the competitive spot of the old club by seeking approvals from the local federations in their attempts to find a shortcut to obtaining professional status. This is how the concept of sporting succession came into existence, although it was explicitly incorporated into FIFA Regulations in June 2019, about a decade after the global financial crisis. As Josep Alamilla rightly noted, the explicit recognition of the sporting succession principle in the 2019 edition of the FIFA Disciplinary Code has flooded the FIFA Disciplinary Committee with claims that had been long forgotten, posing with it a great threat to the viability of many resurrected clubs that in most cases could not afford to assume

the debts generated years ago.¹ Therefore, it becomes crucial to explore hereunder the evolution, role, definition, scope and constituent elements of the concept of sporting succession in light of the relevant jurisprudence of the Court of Arbitration for Sport (CAS) from where the principle first found its way into the *lex sportiva*.

Accordingly, as this Chapter 1 will merely guide the reader what to expect in terms of structure, whereas Chapter 2 of this research project will focus entirely on the origins of the principle of sporting succession by analysing the most prominent CAS awards which laid down its foundations already about 15 years ago. Therein, CAS identified the constituent elements of the principle and elaborated on the distinction between the traditional concept of legal succession as known in civil and corporate law and the concept of sporting succession.

Chapter 3 of this thesis will primarily focus on the official codification of the sporting succession principle within the FIFA regulations first in 2019 and then in 2021. Crucially important therein is to assess whether the same criteria as established earlier by CAS still continue to be the same first, and second, whether they have the same relevance and weight in sport succession disputes.

Chapter 4 will dive deeply into more recent CAS jurisprudence in order to identify that, as things currently stand, the public perception in sporting succession matters is to be regarded as the most relevant criteria, something which was not the case in earlier case law where the concept originated, such as the CAS awards in *Rangers de Talca*, *Tammeka* and *Politehnica Timisoara* where the transfer of federative rights used to be the main indication of succession. The cases of the Bulgarian *CSKA Sofia* and the Turkish *Yeni Mersin* will be used to demonstrate exactly how the interpretation of the concept by CAS has evolved over the years.

Lastly, Chapter 5 will explore the link between sporting succession cases and national bankruptcy procedures, as usually these are the most common circumstances giving rise to such disputes before FIFA and CAS. The role of the creditors and the requirement of due diligence will be considered as well having been recognized to have

¹ Josep F. Vandellos Alamilla, *Who Is Competent To Decide Upon The "Sporting Successor" Of A Football Club?* (LawInSport, 19 January 2021).

a fundamental importance in such context. Chapter 6 will contain brief concluding remarks and observations based on the findings identified in the research as a whole.

II. ORIGINS OF THE PRINCIPLE OF SPORTING SUCCESSION

Although the concept of sporting succession has been explicitly integrated into FIFA's legislation for the first time in 2019, it has to be acknowledged that this notion has been incorporated and steadily developed about a decade earlier within the case law of the Court of Arbitration for Sport (CAS) on the one hand, and by FIFA's deciding bodies on the other, in the framework of football-related disputes where it was applied not as innovative but rather as a much necessary legal tool for serving justice. In fact, the actual enactment of the two FIFA provisions² dealing with sporting succession can be considered as the official codification of the relevant pre-existing case law.

Therefore, for obtaining a better understanding of the origin and the very essence of the term, it is essential to analyse the relevant case law of CAS that led to its establishment and integration into the *lex sportiva*. The first cases touching upon that matter arose, first, out of a dispute between Romanian clubs where an alleged takeover of identity characteristics took place of a club that continued to exist by a rival club, as in CAS 2006/A/1109 *SC FC Politehnica Timisoara SA v. CS FCU Politehnica Timisoara* and, second, as a result of a transfer of the rights to compete in the country's first division to a third club in the meantime, as in CAS 2007/A/1355 *FC Politehnica Timisoara SA v. FIFA & Romanian Football Federation (RFF) & Politehnica Stintia 1921 Timisoara Invest SA*.

² As it will be further demonstrated in this research, the formal codification of the concept happened in 2019 through FIFA Circular 1681 which announced the then Article 15(4) of the FIFA Disciplinary Code, 2019 edition, available also at: https://www.ffm.mk/wp-content/uploads/2025/07/fifa-circular-1681_new-disciplinary-code-2019_en.pdf.

II.1 The Politehnica Timisoara (Romania) Succession Saga – CAS 2006/A/1109 and CAS 2007/A/1355

The core issue originated from the fact that two clubs were using a similar name, identical shirt colours and a similar logo simultaneously which logically created serious tensions and confusions. With respect to the former ruling – in CAS 2006/A/1109 – the first club obtained a favourable ruling from CAS after successfully claiming that the second club was illegally using its personality rights. As a result, CAS ordered the second club to: (i) to use its earlier name, or adopt a different one that would not create any confusion with the name of the original club, as well as to abandon using the violet and white colours from its shirt and logo, and (ii) to pay a compensation to the first club.³ However, it is worth noting that during the original proceedings before CAS, the second club assigned its federation rights to compete in the First League to a third club – Politehnica Stintia 1921 Timisoara Invest SA, which was not a party to the CAS proceedings. Subsequently, said third club claimed that it was not bound by the former CAS ruling, and this led to the delivery of the latter award – CAS 2007/A/1355 where the CAS Panel had to determine whether as a result of the third's club acquisition of the federation rights of the second club, the third club shall be considered bound by the original CAS ruling.⁴ Respectively, the CAS Panel held that: “*[a]lthough the third club was indeed not the same legal person as the second club, and thus the two clubs had separate juridical personalities, that did not imply that the third club shall not be bound by the original CAS decision*”.

The actual transfer of the federative rights between the second and the third club was fully sufficient for the CAS Panel in CAS 2007/A/1355 to conclude that the clubs at stake remained “*plainly closely connected*”, implying that the former CAS award CAS 2006/A/1109 shall be considered binding upon the successor of the second club as well. With due consideration of the central purpose of this research project, which is to carefully trace and analyse the genesis on the one hand, and the actual contemporary application of the sporting succession concept in football-related arbitration proceedings before CAS on the other, it is essential to be stressed that while

³ CAS 2006/A/1109, SC FC Politehnica Timisoara SA v. CS FCU Politehnica Timisoara.

⁴ CAS 2007/A/1355, FC Politehnica Timisoara SA v. FIFA & Romanian Football Federation (RFF) & Politehnica Stintia 1921 Timisoara Invest SA.

the original CAS ruling employed the concept of *legal* succession, in the latter one, the CAS Panel refrained from making references to this term. Instead, it focused on paving the way towards actually broadening its potential scope by using the term *succession* exclusively. As Cambreleng, Samarth and Alamilla rightly point out, although the CAS 2007/A/1355 award did not specifically employ the term “*sporting succession*”, it appears to be ‘*the germ of the concept that has developed thereafter as the same underlying rationale has been applied ever since*’.⁵ In addition, it is crucial to note that both awards heavily emphasised the importance of the name of a club, alongside with the colours of its shirt and the logo as constituent elements of the identity of a club.⁶

II.2 The Rangers de Talca Award and the Birth of the Sporting Succession Concept

The term sporting successor was fully incorporated for the first time in the framework of what turned out to be one of the most significant awards rendered by CAS with respect to the evolution of the notion, namely CAS 2011/A/2646 *Club Rangers de Talca v. FIFA (the Rangers de Talca award)*,⁷ in the sense that it gave clear and instrumental guidance with respect to how to approach and assess an alleged sporting succession’s existence. The dispute was first adjudicated by the FIFA Dispute Resolution Chamber (FIFA DRC) which issued a decision on 18 June 2009 which ruled that the club Social y Deportivo Rangers de Talca from Chile had to pay the amount of USD 21,000 plus interest to one of its former players.⁸ Thereafter, on 30 October 2011, the FIFA Disciplinary Committee (FIFA DC) employed the expression “sporting successor” in a decision that was later on set aside by the CAS panel in *the Rangers de Talca award*, despite confirming the consequences the succession of clubs would trigger for the club being formally recognized as a sporting successor. As a crucial element that took place before the dispute was referred to FIFA bodies shall be considered the fact

⁵ J Cambreleng Contreras, S Samarth and JF Vandellós Alamilla (eds), *Sporting Succession in Football* (International Sports Law and Policy Bulletin 1/2022, Sports Law and Policy Centre 2022), p.50.

⁶ CAS Bulletin 2024/1, page 68.

⁷ CAS 2011/A/2646, *Club Rangers de Talca v. FIFA*.

⁸ Nicolás Rosero Espinosa, Salvador Rojas Núñez, Alonso Magallanes Montalvo, Óscar Yalta Esterripa, ‘There is life after death: Sports succession in football in light of FIFA and CAS’ 46 (Advocatus 2026).

that on the 8 May 2009, the Courts of Chile declared the Club Social y Deportivo Rangers de Talca bankrupt. A public auction was organised within the framework of the ongoing bankruptcy proceedings in Chile at the time with the aim of sell the assets of Club Social y Deportivo Rangers de Talca in August 2010. As part of the terms of said auction, the purchaser undertook the obligation to fulfil all outstanding football-related debts and pecuniary obligations of the liquidated club, as well as to maintain its foundational and historically rooted elements, such as the name, badge, location, image and traditional colours. During the club's liquidation proceedings, the company named PIDUCO S.A.P.D. acquired the federative rights of the insolvent club to participate within the Chilean football championship, including the rights to use its traditional colours, together with the name Rangers de Talca. As a result, PIDUCO S.A.P.D. replaced the insolvent club in the Chilean football championship with a team competing under the name Club Rangers de Talca. The new club named Rangers de Talca did not comply with the earlier FIFA DRC Decision dated 18 June 2009 ordering the payment of a compensation to the former Club Social y Deportivo Rangers player. As a result, Rangers de Talca received a disciplinary sanction issued by the FIFA DC on the basis of Article 64 of the then 2009 applicable edition of FIFA Disciplinary Code. An appeal before CAS has been lodged by the club which resulted in CAS' confirming the findings of the FIFA Disciplinary Committee with regarding the establishment of sporting succession between the "old" and the "new" Chilean club.

II.3 Criteria for Sporting Succession as First Established by CAS

The CAS Panel delivered an instrumental statement in para.10 of the *Rangers de Talca Award*, as follows:

para 10. [...] "the Appellant is to be understood as a successor of Club Social y Deportivo Rangers de Talca. It is clear for the Panel that with the assets purchased to Club Social y Deportivo Rangers de Talca, it continued the activity formerly developed by the referred club with the same image, badge, hymn, representative colours, emblems and placement, and is on the basis of the federative rights acquired in the auction that it has been participating, and currently participates, in the Chilean competitions replacing the former club. In

other words and in practice, the “new club” took the position and activities performed by the former one, with the consent and approval of the Chilean Football Federation.”

In general, three fundamental elements can be extracted from the above which turned out to be decisive in the case at issue for the CAS Panel to recognise Rangers de Talca as the sporting successor of the bankrupt club. Those are the following:

- (1) The main intention behind the creation of the new club has been to acquire the assets of the old club in the public auction, as it ended up doing;
- (2) Rangers de Talca replaced the old bankrupt one in the domestic competitions and maintained same image, badge, trophies, history, achievements hymn, representative colours, emblems and location;
- (3) Under applicable Chilean law, any legal entity enjoying the same federative rights and place within the sporting association would be considered the legal successor of the original club and thus be responsible for its outstanding financial obligations.⁹

Equally important to consider in this context is, as it will be carefully demonstrated in the next chapter of this research project, the fact that the above-mentioned criteria were applied consistently by CAS in other sporting succession matters and proved to be the foundation basis for the establishment of the principle and its incorporation into the *lex sportiva* as it is known today.¹⁰ As demonstrated by the preceding paragraph hereunder, the cases of the different Romanian, clubs each one of them bearing the name “Politehnica Timisoara” in one way or another, gave rise to the gradual evolution and transcendence of the notion of succession between clubs in football-related disputes. Initially, the CAS Panel invoked the term legal successor to motivate and explain its first decision arising out of the “Politehnica Timisoara” saga. Nevertheless, in a short matter of time, within the very next award delivered by CAS in the context of the same dispute, the term successor was deployed by the Panel, showing

⁹ CAS 2011/A/2646, *Club Rangers de Talca v. FIFA*.

¹⁰ The sporting succession in football: A balance between fans' and creditors' interests' *Elite Law* <<https://www.elitelaw.ch/the-sporting-succession-in-football/>> accessed 17 April 2026.

its realisation that the correct approach for it is to be treated and construed as an autonomous concept in such framework,¹¹ rather than as equivalent to the legal succession term as traditionally defined in civil law.¹² Finally, within the *Rangers de Talca* award, the concept of sporting succession was officially employed for the first time in the body of jurisprudence which paved the way towards its establishment as a fundamental principle in international football law, as it is known, construed and applied nowadays.¹³

For proper understanding of the principle of sporting succession, it shall be clearly pointed out that the *Rangers de Talca* award was delivered within the context of a bankruptcy procedure, as explained above. Therefore, the fact that the newly created Club Rangers de Talca took over the right of the liquidated Club Social y Deportivo Rangers de Talca to participate within the same domestic league turned out to have a decisive weight and significance for the CAS Panel to conclude that sporting succession was present in that case, although elements such as the acquisition of the old club's image, badge, trophies, history, achievements hymn, colours and location played a significant role too as part of the assessment.

II.4 Relationship between Sporting Succession, Insolvency Proceedings and Creditors' Due Diligence

The following chapters of this research project will, however, demonstrate that, first, sporting succession can happen without a given club necessarily going through formal insolvency and/or bankruptcy proceedings in its country of origin, and, second, that the question as to whether a transfer of federative rights between an "old" and a

¹¹ See J Cambreleng Contreras, S Samarth and JF Vandellós Alamilla (eds), *Sporting Succession in Football* (International Sports Law and Policy Bulletin 1/2022, Sports Law and Policy Centre 2022), p.50.

¹² See CAS 2016/A/4576, *Ujpest 1885 FC v FIFA*, para. 134., where the CAS Panel explicitly confirmed the following: "with regard to the application of the RSTP, the issue of the succession of two sporting clubs might be different than if one were to apply civil law, regarding the succession of two separate legal entities".

¹³ Vitus Derungs, *Insolvency of Football Clubs and Sporting Succession: Financial Claim Proceedings before FIFA and the Court of Arbitration for Sport* (Stämpfli Verlag 2022), p.93.

“new” club has occurred is still considered by CAS as an important factor that indicates eventual sporting succession but no longer as a decisive and/or definitive element for such conclusion.¹⁴

Nevertheless, the *Rangers de Talca* award stipulated the importance of another crucial principle particularly within the context of such bankruptcy proceedings, namely, the creditor’s *duty of due diligence*. The concept is relevant exclusively in cases in which a judgement debtor (an old club) has been undergoing insolvency and/or bankruptcy proceedings and basically implies that the judgement creditor (in most of the cases being a former Player of the judgement debtor) is required to have an active role in the pursuit of his claim at national level. In other words, the creditor needs to be or have been diligent in their efforts of recovering the respective credit first within the context of such proceedings conducted at national level. That was the main reason that made the CAS Panel not to impose any sanctions on the sporting successor, since it found that the creditor failed to declare their credit in the Chilean bankruptcy proceedings of the then Club Social y Deportivo Rangers de Talca. The rationale is, had that been the case, the creditor would have had at least a ‘feasible theoretical possibility’ to recover his credit as part of those bankruptcy proceedings.¹⁵ This aspect of the *Rangers de Talca* award case has been consistently followed ever since by CAS and FIFA respectively. Equally important to stress here is that CAS specified that there is no blanket rule¹⁶ regarding a creditor’s due diligence check and the outcome of such assessment shall be determined by the specific circumstances pertaining to each particular case.¹⁷ The role and relevance of the principle of due diligence in CAS proceedings on sporting succession disputes will be carefully and thoroughly analysed

¹⁴ The CAS jurisprudence on sporting succession seemed to focus primarily on whether a transfer of federative rights to participate in a competition from the old club to the new club was present after the *Rangers de Talca* case. As the jurisprudence currently stands, the transfer of federative rights is regarded just as another indication of a potential sporting succession and no longer a decisive factor. CAS 2020/A/7092, *Panathinaikos FC v FIFA & Parma Calcio 1913* is regarded as one of the prominent awards in that respect which recognized that a strict adherence to that particular element cannot automatically entail existence or reject a potential sporting succession.

¹⁵ Vitus Derungs, *Insolvency of Football Clubs and Sporting Succession: Financial Claim Proceedings before FIFA and the Court of Arbitration for Sport* (Stämpfli Verlag 2022), p.104.

¹⁶ Georgi Gradev., CAS rules that the *Rangers de Talca* precedent cannot be applied as a blanket rule to sporting succession cases, Football Legal # 14, December 2020.

¹⁷ CAS 2019/A/6461, *Tartu Jalgpallikool Tammeka v. FIFA*.

in Chapter 5 of this research project, in light of recent instrumental CAS awards delivered as part of the famous 2016 Bulgarian CSKA–Sofia FC and the Turkish Yeni Mersin FC club transformation sagas.

Ever since the *Rangers de Talca* award, a number of subsequent CAS awards, including decisions from FIFA bodies, delivered in the framework of sporting succession disputes have been based upon practically the same or virtually similar criteria and elements, as provided and duly assessed by the CAS Panel therein. For more than a decade, the sporting succession concept continued to exist and evolve within the jurisprudence of CAS, without having a formal codification within FIFA legislative tools up until June 2019.¹⁸ The following paragraphs will analyse in chronological order the most significant developments and awards that led ultimately to the codification of the concept within the FIFA legislative framework. Furthermore, the question as to whether a uniform definition and meaning of the principle has been provided and agreed upon will be explored as well by looking into the relevant provisions from the FIFA Disciplinary Code and the FIFA Regulations on the Status and Transfer of Players (RSTP).

II.5 The Distinction Between Legal and Sporting Succession and the Relevance of the Transfer of Federative Rights Element Between the Old and New Club in the Case of Ujpest FC (Hungary) – CAS 2016/A/4576 Ujpest 1885 FC v. FIFA and CAS 2016/4/4550 Darwin Zamir Andrade Marmolejo v. Club Deportivo La Equidad & FIFA

The case of the famous Hungarian club Ujpest 1885 serves as a prominent example to illustrate the way CAS continued the application and assessment of the sporting succession concept. Darwin Marmolejo, a football player, terminated his contract without just cause with Club Deportivo La Equidad and signed for Ujpest FC Kft (the “old” Ujpest) and later on moved to Ujpest 1885 (the “new” Ujpest).¹⁹ Important to note again is that the reason for this subsequent transfer between the two

¹⁸ As already clarified above, the first inception of the term sporting successor was provided within the 2019 FIFA Disciplinary Code, through FIFA Circular 1681.

¹⁹ See CAS 2016/4/4550, Darwin Zamir Andrade Marmolejo v. Club Deportivo La Equidad & FIFA.

Hungarian clubs and their appearance with almost identical names was because the former – Ujpest FC Kft, went into a judicial liquidation procedure.²⁰ As a result of the transfer of Darwin Marmolejo to Ujpest FC Kft, the FIFA DRC imposed a transfer ban on the Hungarian team for inducement to breach of contract in light of Article 17(4) FIFA RSTP. Since Ujpest FC had entered into liquidation proceedings, the FIFA DRC decided that the sanction was to be extended to the new Ujpest 1885 – the legal entity that ended up replacing the old Ujpest FC Kft.

The CAS Panel in CAS 2016/A/4576 Ujpest 1885 FC v. FIFA (*the Ujpest award*) upheld the importance that the issue of succession between two sporting clubs shall not be treated as a classic legal succession under two separate entities through the lens of civil law. In addition, identically to the *Rangers de Talca* award, the Panel noted the following in paragraphs 138–139 in the *Ujpest award*:

138. “Furthermore, with regard to the application of the abovementioned CAS jurisprudence on the matter, the Panel notes that:

(a) Both clubs, Ujpest FC, and the new club, Ujpest 1885., competed in the first division of the Hungarian championship under the name “Ujpest FC”;

(b) The logo and colours of “Ujpest FC” remain identical;

(c) Both the old club and the new club are registered at the same address;

(d) Both the old club and the new club have the same managing director.

139. “The Panel therefore agrees with the FIFA DRC, that Ujpest 1885 and Ujpest FC shall be considered as the same football club, irrespective of any change of management or legal entity which operates the club”.

Sticking to the *Rangers de Talca* award assessment, CAS once again considered the fact that the new club took over the right for participation in the domestic first division from the original club as the decisive element for confirming the sporting succession between the two Hungarian clubs at issue. In addition, the relevance of the other elements establishing the strong linkage and continuity between the two entities and clubs was reiterated by CAS. All those essential features of a sporting continuity,

²⁰ See CAS 2016/A/4576, *Ujpest 1885 FC v. FIFA*.

as directly extracted from the *Ujpest* award cited slightly above, were given significant value in light of the outcome of the case and the consequences resulting out of it for the new club being recognized as the sporting successor of the old one that went bankrupt.

Respectively, it can be concluded from the relevant CAS jurisprudence that the foundational elements of the principle of sporting succession are, among others, the name of the club, its traditional colours and kits, official badge, hymn, stadium location, as well as its federative rights, trophies and sporting achievements. As already mentioned earlier in this research project, an insolvency/bankruptcy proceeding is not a compulsory pre-requisite for a successful case on sporting succession. Nevertheless, in the majority of football law cases, it has existed as a factual circumstance that has given rise to such succession between an “old” liquidated club and a new one that has been created with a view to take over the sporting continuity by mirroring the former’s club logo, kits, colour, history, sporting achievements, anthem, and/or acquiring its federative rights to compete within the exact same division.

III. THE EVOLUTION OF THE SPORTING SUCCESSION CONCEPT: FROM CAS JURISPRUDENCE TO FORMAL CODIFICATION IN FIFA REGULATIONS

For the first time in 2019, the term sporting successor has been formally codified by FIFA through its Circular 1681, dated as of the 11 July 2019 announcing the approval of the FIFA Disciplinary Code (FDC), 2019 edition.²¹ FIFA openly declared that one of the core objectives of the 2019 FDC was to pursue and promote financial justice, and provided the following reasoning:

“(iv) Financial justice: at the core of these changes stands FIFA’s commitment to enforce both financial and non-financial decisions and agreements rendered by the Dispute Resolution Chamber (DRC) and the Players’ Status Committee (PSC), as the natural forums of disputes between clubs, players,

²¹ See FIFA Disciplinary Code, 2019 edition, entered into force as of the 15 July 2019.

associations, coaches and other football stakeholders, through the Disciplinary Committee.

In this area, the new FDC contemplates three main changes:

[...] FIFA will act against the sporting successor of a debtor, a practice that has unfortunately become more common in recent years as clubs attempt to avoid mandatory financial responsibilities towards other clubs, players, managers, etc. (article 15 paragraph 4 FDC)”²²

III.1 Article 15(4) of the 2019 FIFA Disciplinary Code

Article 15(4) of the 2019 FDC stipulated the following:

“The sporting successor of a non-compliant party shall also be considered a non-compliant party and thus subject to the obligations under this provision. Criteria to assess whether an entity is to be considered as the sporting successor of another entity are, among others, its headquarters, name, legal form, team colours, players, shareholders or stakeholders or ownership and the category of competition concerned.”²³

In order to provide a better clarity and understanding to the reader, it shall be duly noted that, under the applicable version of the FIFA Disciplinary Code (Ed.2023) at the moment of writing of this research project, said provision with the exact same wording is contained under Article 21(4) FDC (Ed.2023).²⁴

III.2 Article 24er of the FIFA RSTP

²² See FIFA Circular no. 1681 as of the 11 July 2019, preceding and introducing the FIFA Disciplinary Code, 2019 edition.

²³ See FIFA Disciplinary Code, 2019 edition, Art.15(4) as previously applicable.

²⁴ See FIFA Disciplinary Code, 2023 edition, Art. 21(4).

As of the 1st of January 2021, approximately 18 months after the sporting succession principle has been enshrined in the 2019 FDC for the first time, said concept was originally included in Article 24ter FIFA RSTP at the time, the equivalent provision of what is currently enshrined under Article 25(1) under the relevant version at the moment of writing of the FIFA RSTP (Ed. January 2025).

The current version of Article 25(1) of the FIFA RSTP read as follows:

*“The sporting successor of a debtor shall be considered the debtor and be subject to any decision or confirmation letter issued by the Football Tribunal. The criteria to assess whether an entity is the sporting successor of another entity are, among others, its headquarters, name, legal form, team colours, players, shareholders or stakeholders or ownership and the category of competition concerned”.*²⁵

That is how the codification of a principle that arose in the framework of arbitration proceedings before CAS into FIFA regulations has been formalised in July 2019. That event shall in no case be interpreted to serve as an extension nor as a novation of the term *“sporting successor”*. Rather, it shall be seen as the official codification and inauguration of a well-known concept from CAS pre-existing case law within the regulatory framework of FIFA.²⁶ There shall be no surprise given that the structure of these provisions is identical. As Dr. Vitus Derungs rightly observes, the first sentence deals with the consequences of sporting succession, whereas the second sentence aims at defining the term of sporting succession.²⁷

III.3 Is There a Fixed Set of Criteria for Findings of Sporting Succession?

The definition of sporting succession currently contained in Art. 21 Para. 4 FDC and Art.25 Para.1 RSTP is based on a list of elements and indicating factors of sporting succession. However, as mentioned within the above provisions and also confirmed by

²⁵ See FIFA RSTP, January 2025 Edition, Article 25(1) RSTP.

²⁶ CAS 2020/A/7504 *PFC CSKA–Sofia v. FIFA & Sergio Felipe Dias Ribeiro*, para. 165; in conjunction with CAS 2020/A/7505 *PFC CSKA–Sofia v. FIFA & Francisco Moreno Ruano*, para. 164.

²⁷ Vitus Derungs, *Insolvency of Football Clubs and Sporting Succession: Financial Claim Proceedings before FIFA and the Court of Arbitration for Sport* (Stämpfli Verlag 2022) p. 54.

CAS jurisprudence,²⁸ it is of crucial importance to keep in mind that said list is in fact non-exhaustive, meaning that there might be other relevant elements to be considered that must be determined on a case-by-case basis.²⁹ This ultimately implies that the existence of a sporting succession does not require for all those elements to be cumulatively met. This was also confirmed and duly recognized by the CAS Panel in CAS 2020/A/6831 *PFC CSKA-Sofia EAD v FIFA & Civard Sprockel*³⁰ where the following conclusion was reached:

Para. 122: "The Panel observed that all criteria mentioned in the body of Article 15 (4) are, in principle, warranted for the review contemplated under this provision. The Panel already explained that it did not exclude, like the FIFA legislator itself had not excluded, that other criteria as well, might be relevant in assessing the question whether an entity is the sporting successor of another entity".

Accordingly, it would be enough even if only a few of them are present to indicate such finding, as long as they are considered to be more decisive than the remaining criteria that could not be found, in consideration of the unique factual particularities of the case at issue. This is the important conclusion that the CAS stipulated within the famous CAS 2020/A/7092 *Panathinaikos FC v FIFA & Parma Calcio 1913 (the Parma award)*³¹, as follows:

Para. 69. "[...] such analysis is to be made on a case-by-case basis, i.e. elements present in a certain case may tip the balance in one direction, whereas elements present in a lesser or higher degree in another case, may tip the balance in the opposite direction."

²⁸ See CAS 2020/A/6884 *Soukeyna Ba Bengelloun v. FIFA & PFC CSKA-Sofia*, para. 138.

²⁹ Such conclusion is to be derived also from the wording of the provisions in questions where it is said that "*the criteria to assess whether an entity is the sporting successor of another entity are, among others, [...].*" Said formulation clearly indicates that there is a possibility for other relevant criteria to be considered among those which are explicitly mentioned within the wording of Art. 21(4) FDC and Art. 25(1) RSTP. Therefore, a finding on sporting succession shall not be based exclusively on these elements.

³⁰ CAS 2020/A/6831, *PFC CSKA-Sofia EAD v FIFA & Civard Sprockel*.

³¹ CAS 2020/A/7092, *Panathinaikos FC v FIFA & Parma Calcio 1913*.

In conclusion, the list of elements indicating sporting succession, as per the wordings of Art. 15 Para. 4 FDC and Art. 25 Para. 1 RSTP is not only not exhaustive, but the elements may also be weighted differently on a case-by-case basis. Looking at the other side of the same coin, this also indicates that even if creditors satisfy all the elements of this list, CAS and FIFA bodies respectively may consider that no sporting succession can be established. That renders the concept of sporting succession to be a term with a volatile definition, as rightly claimed by Dr. Derungs.³² Based on that, the fact that the two provisions in question do not provide for a fixed definition of the principle shall not be treated as an omission nor as a surprise. Instead, as Cambreleng, Samarth and Alamilla have clarified, *“these articles establish the consequences deriving from a finding of sporting succession: being considered a non-compliant party in the context of Article 15 FDC or being deemed the debtor in proceedings before the Football Tribunal”*.³³ The most common scenarios and transactions that precede a finding of sporting succession between clubs usually involve one of the following: a completed or an ongoing insolvency and/or bankruptcy proceeding, a merger of clubs, as well as from a sale and purchase of a club. Nevertheless, sporting succession is not strictly limited to either of these in order for it to be still established at a later basis between clubs.

While it is true that the majority of cases of that have to a great extent shaped the concept of sporting succession as it is known today and also led to its recent codification within FIFA regulations emanate from bankruptcy or insolvency of the original clubs, it shall be acknowledged that recent CAS jurisprudence on the matter has been based on examples where no such proceedings have taken place, as in the case with the Turkish old Mersin SK and the new Yeni Mersin A.S.³⁴ The relevant CAS jurisprudence delivered on that particular matter will play a central role for the purpose of the current research project and will be analysed in-depth in the following chapters below, as it will show whether and if at all CAS Panels have departed from the initially established criteria when it comes to recent findings of sporting succession.

³² Vitus Derungs, *Insolvency of Football Clubs and Sporting Succession: Financial Claim Proceedings before FIFA and the Court of Arbitration for Sport* (Stämpfli Verlag 2022) p.55.

³³ J Cambreleng Contreras, S Samarth and JF Vandellós Alamilla (eds), *Sporting Succession in Football* (International Sports Law and Policy Bulletin 1/2022, Sports Law and Policy Centre 2022) p.54.

³⁴ CAS 2024/A/10431, *Yeni Mersin Idmanyurdu Futbol A.S. v. Milan Mitrovic & FIFA*.

In general terms, an insolvent club may sooner or later be liquidated and completely disappear from the football landscape which renders the pursuit and enforcement of a claim against that same club virtually impossible.³⁵ That is exactly the main purpose of the principle of sporting succession – to fill in this lacuna within international football law and to provide for an enforceable and protective framework where, in cases of a confirmed sporting succession, the successor club besides from assuming rights of the liquidated club such as its colours, kit, logo, anthem and federative rights to participate in a competition, could also be held liable for the outstanding debts of its predecessor.³⁶ It all comes down to the idea that claims and pending payments that have remained unresolved by the liquidated club could be enforced against the sporting successor instead as a remedy for the creditors. As also demonstrated by the CAS case law examples analysed above, the concept of sporting succession allows sport organisations to look beyond the constraining effects that generally arise out of insolvency or bankruptcy. As such, the term does not intend to correct or modify the insolvency proceedings of the original club. Rather, it serves as a shield against such manoeuvres and transformations of clubs in that position that have been engineered with the purpose of circumventing their accumulated financial burden and obligations.

Sporting succession as a concept in football-related disputes serves as a defensive tool that aims to ensure that outstanding debts of the ‘old’ club are duly paid to other football stakeholders by ‘new’ clubs pretending to have inherited the identity and continued the sporting activity of their predecessors.

Crucial to note here is that only football stakeholders can benefit from the sporting succession concept while all other creditors outside of the structure of the sport are not covered by its scope and thus cannot rely on it for the recovery of their unresolved claims. This category of creditors shall fully rely on obtaining their respective credits within the framework of the insolvency or bankruptcy proceedings governed by the laws of the country where those are administered. Nevertheless, although this approach might appear logical and straightforward at first sight, when it

³⁵ Vandellos Alamilla, Who Is Competent To Decide Upon The “Sporting Successor” Of A Football Club?, Law in Sport Blog, 19 January 2021.

³⁶ Ibid.

comes to the assessment, pursuit and enforcement of such claims within the framework of both national insolvency and/or bankruptcy proceedings and an alternative dispute resolution proceedings before FIFA and CAS, reality has shown that the overall picture is still very nuanced and often blurred. A creditor is allowed in practice not only pursue their claim against an insolvent football club before the bodies of FIFA and CAS, but also before the competent national insolvency authorities. In fact, it will not be exaggerated to state that, based on relevant CAS jurisprudence, creditors are even required to submit their claims in national insolvency proceedings against the original debtor, if they wish to preserve their rights against a potential sporting successor. A creditor that fails to lodge and register their claim as part of the national insolvency proceedings of the original debtor is likely to have their claim against the sporting successor before FIFA and/or CAS rejected due to failure to meet the due diligence requirement which is to be explained thoroughly in the next chapters hereunder.³⁷ This can be identified as a problematic peculiarity, especially in light of the principle of equal treatment to all creditors which is a fundamental concept within the framework of national insolvency or bankruptcy proceedings, also known *as par conditio creditorum*.³⁸

III.4 The Rationale Behind Sporting Succession of Football Clubs

With that in mind, the focus logically shall be transferred to establishing the main rationale behind the sporting succession doctrine. By looking at FIFA Circular No. 1681 which announced the new Article 15(4) FDC on the 11th of July 2019 and officialised the codification of this concept into FIFA regulations as analysed above, it can be fairly concluded that its essential purpose has been to secure the economic succession of the new club in the first place, and in the second place, to discourage football clubs from following this growing tendency among other financially struggling

³⁷ Vitus Derungs, *Insolvency of Football Clubs and Sporting Succession: Financial Claim Proceedings before FIFA and the Court of Arbitration for Sport* (Stämpfli Verlag 2022) p.103.

³⁸ The principle provides for equal treatment of all creditors of an insolvent debtor, implying that no creditor should receive preferential treatment over others in such context.

clubs attempting in such a way to escape from mandatory financial responsibilities towards other clubs, players, managers, etc.

That same position was expressed and reinforced in CAS 2020/A/6831 *PFC CSKA–Sofia EAD v FIFA & Civard Sprockel*,³⁹ containing the following statement of the Panel:

para. 128: [...] ‘the Panel would effectively need to ask whether sporting succession entails economic succession as well? If the response is negative, then, this is the end of the story. Assuming a positive response to this question though, the Panel would have to also decide what is the level of the responsibility that the sporting successor incurs’.

para. 129: “Recall that Article 15 (4) states that the sporting successor is liable as well for liabilities incurred by the club to which it is successor. As a starting point for the discussion, this is quite reasonable. Unless if economic succession was the immediate consequence of sporting succession, the whole purpose of Article 15 (4) would have been defeated. For what is the utility of this provision, if it were to dissociate economic from sporting succession? The only purpose of Article 15 (4) is to ensure that sporting successors will be economic successors as well, both with respect to assets established, as well as with respect to the liabilities incurred by the predecessor”.

The CAS Panel in said award clearly and rightly linked sporting succession with the consequences of economic succession, in the sense that if a succession of the assets of the old club is assumed by the new club, the same shall apply with respect to the liabilities of the predecessor. Otherwise, the whole purpose of Article 15(4) FDC would have been completely defeated.

Furthermore, the CAS Panel identified an additional not so obvious but at the same time an important rationale with respect to the essence of the concept of sporting succession and Article 15(4) FDC, as follows from an earlier paragraph from the award:

³⁹ CAS 2020/A/6831, *PFC CSKA–Sofia EAD v FIFA & Civard Sprockel*.

para. 117: ‘In fact, in the Panel's view, there is an additional rationale for this provision: the protection of competitions. Providing the sporting successor with a carte blanche and exonerating them from the obligation to observe liabilities incurred by the predecessor, would gravely endanger the proper administration of competitions, as it could lead entities transacting in good faith to serious financial problems, and eventually investors away from investing into the football market.’

An interesting and valid point was raised by the Panel in the above paragraph where the consequences of an eventual economic succession were also considered as potential blockage in the future for clubs who might be tempted or induced to act in bad faith with regards to their financial matters and thus endanger the integrity and fairness of ongoing competitions. The role of the investors into the football markets was considered as well together with the risk of them being pushed away if a sporting successor is exonerated from the obligation to observe liabilities by the predecessor.

The Panel also decided to focus on the complexity of the matter and the potential conflicts between specific national laws and FIFA regulations, particularly when the predecessor club has gone through bankruptcy proceedings and how such sensitive matters shall be approached. One of the key facts in the matter was that the Player, Civard Sprockel, was awarded a much lower amount determined by the competent Bulgarian court as a result of bankruptcy proceedings, in comparison to what he was originally awarded following an earlier decision of the FIFA DRC which preceded the bankruptcy of his former club. In that respect, the following observations were made in the award:

para. 130: ‘Yet, in the opinion of the majority of the Panel, this clear and reasonable intention of FIFA in securing the interests that were already explained, might create a direct and, in many cases, impossible conflict between two different legal regimes to which a club is subject: its National Laws and the FIFA Regulations [...]’.

para. 131: ‘When dealing with a direct succession from one owner to another, usually the interference of the National Laws or the conflict between them and the FIFA regime either does not exist at all or can be solved by the parties and the football regulators. In such cases, it would be reasonable and common that FIFA

will impose on its members, the National Federations ("NF"), the duty to establish a licensing system that obliges such transactions to be approved by the NF and the NF will also be obliged to establish a mandatory and regulatory duty imposed upon the new owner to assume responsibility for the debts of the previous owner as part of the ownership transfer agreement”.

para. 132: “The situation becomes complicated when such possibility is neither in the hands of the parties, nor the relevant NF, nor of course FIFA. This may be the case in bankruptcy proceedings that are of course governed by the applicable National Law on bankruptcy proceedings. In such cases, the entity that acquires the assets of the bankrupt club will usually pay an amount of money to the administrator/liquidator appointed under the law to handle the bankruptcy proceedings and secure, as much as possible, the interest of the creditors and the equal treatment of them subject to preferences or special treatment to special debts as may be established by the National Laws. In some jurisdictions it may be the competent Court itself and in other jurisdiction it may be an administrator appointed and acting under the supervision of the Court. Such amount of money goes into the mass of the bankruptcy to be divided in between the creditors according to the different criteria under the applicable National Law (including special status of debts to national authorities, preferred debtors, regular or normal debtors, etc.) The idea is then that the new owner that acquired the assets is released from any other debts and by paying the amount that was decided by the court in the bid it is released from any pending debt. These debts remain under the jurisdiction of the administrator that is responsible to pay them, in full or partially, in accordance with the total amount gathered in the mass account and as instructed by the national law and approved by the Court. In such cases, NFs may be prevented even from inserting a condition in their National Regulations ordering that the acquiring party will be responsible for debts of the bankrupt club, regardless of the amounts that this entity paid to the administrator since such rule will contradict the bankruptcy National Laws and will also establish a deviation from the pivotal principle of bankruptcy proceedings of equal treatment to all creditors, subject to any specific preferences provided by the law. Such a rule, one may say, might (a) establish a preferential regime in between creditors of the same club, i.e that the national players that have no legal possibility to approach FIFA

will be subject to a different treatment than foreign players who will be able to acquire a preferential status that is not acknowledged by the National law, and (b) this might also cause difficulties in finding new buyers for sporting clubs, since new entities will avoid purchasing the assets of bankrupt clubs. This eventually might damage the interest of the sport in general”.

Said analysis from the Panel emphasised its limitations to rectify and intervene with respect to matters and proceedings governed and decided under relevant national law, such as aspects and outcome of a bankruptcy proceedings in a national jurisdiction.

Having explored the purpose and the main inspirations of the concept in light of its creation, first by CAS in its jurisprudence on football law issues, and second, in light of its official codification within the FIFA regulations (2019 within the FDC), followed by the one in 2021 within the FIFA RSTP , now it becomes necessary to evaluate whether the approach of CAS concerning its application has changed over the years.

In order to properly trace the evolution sustained in that regard, the famous examples with the Estonian club Tartu Jalgpallikool Tammeka, the Bulgarian PFC CSKA Sofia and the Turkish Yeni Mersin will be carefully analysed hereunder. All of these clubs sustained serious transformations throughout the years and have been intentionally chosen for the purposes of this research project due to the fact that the awards delivered as a result of their sporting succession sagas reflect the way CAS departed from its initial approach demonstrated within the early chapters hereunder.

III.5 Identification of Objective and Subjective Elements of Sporting Succession in Light of the Tammeka (Estonia) case – CAS 2019/A/6461 Tartu Jalgpallikool Tammeka v. FIFA

The Tammeka case appears to be one of the rare instances where the new club – Tartu Jalgpallikool Tammeka, did not dispute the sporting succession from the old club – Tartu Jalgpalliklubi Tammeka. Nevertheless, both the FIFA Disciplinary

Committee (DC), in its decision dated 31 May 2019,⁴⁰ and subsequently CAS confirmed that a sporting succession existed between the two clubs because the following elements were identical: name, registered address, website, telephone number, contact details, foundation date, logo, stadium, team colours. In addition, it was noted that the squad of the new club in its first season was also identical to the original club's squad in its last season. The Estonian Football Association ended up refusing to issue the old club a license to participate in the national first division and decided to grant it to the new club – Tartu Jalgpallikool Tammeka. An appeal before CAS followed – CAS 2019/A/6461 *Tartu Jalgpallikool Tammeka v. FIFA (Tammeka award)*,⁴¹ where the Panel did not struggle to establish the existence of sporting succession and ruled as follows:

Para. 50: “In the case at hand, the Panel finds that there is overwhelming evidence suggesting that this was a situation of succession at a sporting level. Indeed, all key elements are present. Conspicuously enough, the name of the two clubs is confusingly similar, in fact identical, when used in initials. In addition, as per the Appellant’s own contentions, both clubs had the same offices, contact details, sporting venues and facilities, as well as similar logos and colours. In other words, all elements of a club’s organization and public profile were common. And, also quite importantly, the EFA granted the Appellant license to participate directly in the Estonian top division — and not in a lower division — as of season 2014, namely immediately after this had been denied to the Debtor club, so as to create a distinct impression of continuity.

Para. 51. Against this background, the mere fact that the Appellant and the Debtor club appeared as two separate legal entities operating simultaneously over a certain period of time is not a decisive factor to rule out sporting succession. On the contrary, all other facts indicate that the Appellant had substituted the Debtor club, by participating in its place in the Estonian top division, and by using its identity, in such way as to be perceived as the same club.”

⁴⁰ FIFA DC decision Nr. 180271 dated 31 May 2019 [Tartu Jalgpallikool Tammeka].

⁴¹ CAS 2019/A/6461, *Tartu Jalgpallikool Tammeka v. FIFA*.

Sticking to its previous decisions, the Panel focused again mainly on two elements to confirm the sporting succession between the two clubs. First, the importance of the public appearance of the new club was considered, expressed by the name, logo, colours, stadium, foundation date and second, the new club's participation in the national first division replacing the original club. All those elements combined, created an impression of continuity and widespread acceptance from in the eyes of the general public which seemed to be decisive enough. The fact that the two clubs existed as two different legal entities did not influence the established existence of sporting succession. As a result, legal succession was thus once again not considered to be a precondition for sporting succession.

Since the very first cases on such matters, CAS has treated that sporting succession shall be inextricably linked to an existing transfer of federative rights between the successor and predecessor club, going hand in hand with the other main elements and criteria needed for that assessment, such as name, team colours, founding year, stadium location, players in the squad, management structures, etc.⁴² All those elements which can be categorized as objective ones, have been established within relevant jurisprudence about 20 years back in time and later codified by FIFA in 2019 as the foundational criteria for the identification of sporting succession between football clubs. In essence, federative rights give a football club the authorization to participate in a particular division of a league through which its status is recognized before the respective federation.⁴³ In almost each of the cases (including the *Politehnica Timisoara* saga, the *Rangers de Talca* award, and the *Tammeka* award) analysed under this research project thus far, an important feature and similarity shall strike and attract attention immediately, namely, that from the moment a club or the legal entity administering that same club enters into a liquidation or a bankruptcy procedure, such step is subsequently followed by a disaffiliation from the national federation, leading to the club's loss of rights to compete within the league or the division where it last participated.⁴⁴ It is often also the case that due to financial issues, a club might decide

⁴² As evident from the first CAS awards analysed hereunder – *Politehnica Timisoara* and *Rangers de Talca awards* where the basis of the concept of sporting succession were first identified by the Panels.

⁴³ J Cambreleng Contreras, S Samarth and JF Vandellós Alamilla (eds), *Sporting Succession in Football* (International Sports Law and Policy Bulletin 1/2022, Sports Law and Policy Centre 2022), p.79.

⁴⁴ *Ibid.*

not to compete in the respective division even without having been relegated. In such scenarios, especially when the team in question has a historic significance within the respective country where it competes or is one that has a solid and massive fanbase behind, apart from its historic sporting achievements, many actors on different levels usually become interested and involved in finding ways to revive said club. It is usually a process of collaboration between different football and business stakeholders, fans included in that respect who join forces with the idea of creating a new legal entity that would continue to maintain the history and sporting activity of the financially collapsing club. In such cases, as a rule, the newly established club is supposed to start competing from the lowest tier league within the country concerned. Nevertheless, what happens in reality is that in the majority of cases, such newborn club has no incentives to start from the bottom divisions and wishes to administratively avoid that by filing a request with the respective federation to participate in the same league where the predecessor club stopped competing or was entitled to compete in the season following its insolvency or bankruptcy. As seen in the examples in question, such applications have a high chance of being approved by the federation and thus the new club becomes eligible to compete in the same league as that of the old club, effectively leading to a succession in competition or, in other words, a classic case of a transfer of federative rights from the old to the new club.

III.6 Interim Conclusion

As a result, such transfer of federative rights entails in practice that the new club is designated and entitled to act as the successor of the old one and can thus maintain and continue the sporting history and achievements of the former club regardless of the insolvency or bankruptcy proceedings of the old one. That way, the sporting continuity is ensured, and the new club effectively maintains the same status in competition as enjoyed by the liquidated one. Nevertheless, it shall be carefully noted that there are cases where a new legal entity might have been again set up with the same purpose of reviving the financially collapsed old club that has been through either insolvency or bankruptcy but subsequently the separate entities/clubs are affiliated to the federation at the same time, entailing that no transfer of federative rights has taken place between them. As a result, the new club starts competing from the lowest division without taking

over the spot of the other one. Therefore, the logical question that comes to mind, in light of the CAS jurisprudence cited above as well, is whether at all a sporting succession can exist in such a framework where no transfer of federative rights between two clubs has occurred. The analysis to be developed and provided in the remainder of this research will demonstrate that, while the importance of such element cannot be disputed, recent CAS jurisprudence no longer treats it as an essential requirement and compulsory condition for the existence of succession. In addition, the post-codification jurisprudence on the principle of sporting succession fragmented the relevant criteria into two categories – an objective and subjective one. Since then, it seems that the perception of the general public and its treatment towards a successor club has been established as the most significant factor to be taken into account when it comes to analyses and findings on sporting succession, as belonging to the objective category of elements, alongside the succession in competition. This is particularly relevant in light of the famous CSKA–Sofia succession saga and the series of awards that were delivered in that context, the most significant ones of which will be discussed further below. On the subjective conditions' side for sporting succession, CAS jurisprudence has identified that in certain cases it is necessary to look explicitly for an abusive intention, such as an attempt to circumvent financial obligations of the original debtor or, as concluded in other awards from the CSKA–Sofia saga again or an identifiable intention from the new club to gain sporting and economic benefits that were pertinent to the original club. Therefore, whether and if at all the term of sporting succession also consists of a subjective condition is a disputed matter in the case law of CAS at the moment of writing of this research project.

IV. DISSECTION OF CAS JURISPRUDENCE ON SPORTING SUCCESSION AFTER THE CONCEPT'S CODIFICATION WITHIN FIFA REGULATIONS IN LIGHT OF THE FAMOUS CSKA SOFIA AND YENI MERSIN SAGAS

These necessary adjustments within the approach and assessment were reflected within CAS awards delivered after the 2019 official codification of the sporting

succession concept within the FIFA Regulations. As already seen earlier, since the formal introduction of the term into the FDC, it was depicted by FIFA mainly to serve as a tool against a growing concerning practice adopted by certain clubs at the time that were “*attempting to avoid mandatory financial responsibilities towards other clubs, players, managers, etc.*”

IV.1 The Case of CSKA Sofia (Bulgaria) and the CAS 2020/A/6884 Ms. Soukeyna Ba Bengelloun v. FIFA & PFC CSKA–Sofia award

This famous sporting succession saga originated more than a decade ago when the famous Bulgarian team PFC CSKA Sofia AD experienced several consecutive seasons within the Bulgarian top tier league marked by serious financial struggles. In one of its most tumultuous years, in 2013, PFC CSKA Sofia AD (the original CSKA) was required to pay certain amounts to a creditor following a decision of the FIFA Players’ Status Chamber (PSC). Said decision ultimately led to the delivery of an instrumental CAS award – CAS 2020/A/6884, *Ms. Soukeyna Ba Bengelloun v. FIFA & PFC CSKA–Sofia (the Bengelloun award)*.⁴⁵ In 2015, the club filed for bankruptcy proceedings and was subsequently declared bankrupt in September 2016 which unleashed a series of events, among which another Bulgarian first division team named Litex Lovech (located in a different city than the Bulgarian capital Sofia) was acquired by new owners. As a result, Litex Lovech changed its name to PFC CSKA–Sofia AD (the new CSKA) in an alleged attempt to rebrand the team originally from Lovech. As a result, the new CSKA continued competing within the Bulgarian first division under the new name of PFC CSKA–Sofia AD using the federative rights of the former Litex Lovech.

Following a request submitted by the creditor – Ms. Bengelloun, to the FIFA Disciplinary Committee (DC), the latter opened disciplinary proceedings against the new CSKA and found the new CSKA to be the sporting successor of the original CSKA which was declared bankrupt under Bulgarian law. In an appeal before CAS, the case was decided by a Sole Arbitrator and the existence of sporting succession between the

⁴⁵ CAS 2020/A/6884, Ms. Soukeyna Ba Bengelloun v. FIFA & PFC CSKA–Sofia.

two clubs was confirmed. The *Bengelloun* award is of critical importance particularly because the Sole arbitrator identified the public perception (objective) element to have a decisive role in the assessment on sporting succession. Therefore, several paragraphs from the award will be extracted hereunder not only to provide a better understanding of the concept itself but mainly to demonstrate the different weight of the criteria duly assessed by the Sole Arbitrator. Particular relevance here shall have, first, the clarification that although the two parties appeared as two separate legal entities, this was not considered as a decisive factor to rule out sporting succession. Second, as opposed to the concept of legal succession, the determination of sporting succession shall be done with due consideration of the general public's perception. Reference is made to the following paragraphs of the award, as follows:

para. 131: "As a starting point, the Sole Arbitrator wishes to emphasize that the issue of the succession of two sporting clubs might be different than if one were to apply civil law regarding the succession of two separate legal entities. As such, the mere fact that two parties appeared as two separate legal entities is, so the Sole Arbitrator finds, not a decisive factor to rule out sporting succession. Put differently, the Sole Arbitrator wishes to underline that the question is not whether the Second Respondent is the legal successor of the Original Debtor (original CSKA). The central question to address by the Sole Arbitrator is whether or not Second Respondent (new CSKA) is the sporting successor of the Original Debtor.

para. 132: Therefore, the arguments by the Second Respondent that the latter is a different legal entity do not last, at least not as to the question whether the Second Respondent must be considered as the sporting successor of the Original Debtor. As the Appellant rightly submitted, the Sole Arbitrator underlines that even if Second Respondent was the legal successor or PFC Litex Lovech, as claimed by the Second Respondent, this is not decisive as to the question whether the Second Respondent is the Sporting successor of the Original Debtor.

para. 133: In addition, and for the sake of further clarity, the Sole Arbitrator emphasises, as opposed to the concept of legal succession, that in the context of sporting succession it is also of relevance to determine this concept in light of the eyes of the general public.

para. 139: Against the above legal background, the Sole Arbitrator finds that there is conclusive evidence that it concerns a matter of succession at a sporting level in the present arbitration. Many relevant criteria, that are clearly listed in Article 15 (4) of the 2019 FIFA Disciplinary Code, as well as the ones derived from the above CAS jurisprudence are present. The Sole Arbitrator, fully agreeing with such reasoning, considers that, in this case Second Respondent is actually the sporting successor of the Original Debtor”.

Likewise, it is equally important to be seen how the finding of sporting succession has been reached by the Sole Arbitrator in that particular case, given that the main argument of the new CSKA was essentially that it shall be treated as the successor of PFC Litex Lovech and not of the old CSKA, regardless of the obvious similarities between the bankrupt CSKA and the new one. In this respect, reference is made to the following paragraphs:

para. 141: “First, the names of the Second Respondent (new CSKA) and the Original Debtor (original CSKA) are practically identical. The Sole Arbitrator underlines that the only difference between the Original Debtor and Second Respondent is the hyphen symbol (between ‘CSKA’ and ‘Sofia’).

para. 142: Further to this, there is no doubt that the Second Respondent publicly portrays itself as the same club as the Original Debtor. The FIFA DC rightly decided that the main idea was to maintain and reflect the sporting history of the Original Debtor. In this regard, the Sole Arbitrator attaches much value to the perception of the public. Moreover, it is clear that the Second Respondent identifies itself as a sports entity founded in 1948 and celebrates its “70th anniversary”, which is the date of existence of the Original Debtor.

para. 143: Moreover, the Sole Arbitrator takes note that the history of the Original Debtor is exactly the same as the Second Respondent and a great number of players who played for the Original Debtor are in fact recognized in the Second Respondent’s history.

para. 144: Additionally, the Sole Arbitrator underlines that the Original Debtor and the Second Respondent have their premises at the same address, have the same stadium, use the same logo, colours and uniform, and also use the same Twitter and Facebook account.

para. 145: In addition, the Sole Arbitrator remarks, and finds it of significant importance to underline, that it is also not disputed, at all, by the Second Respondent that there are intended and undisputable similarities between the Second Respondent and the Original Debtor. In other words, the Second Respondent, at the least, created the impression that it wanted to be legally bound by the obligations of its predecessor.”

The above paragraph clearly shows once again the Sole Arbitrator’s careful consideration on the appearance of the new club in light of the eyes of the public and the emphasis this award places on the point as to whether the established similarities between the new and the old club are sufficient to create an impression among the general public that the predecessor’s club history, image and presence has been continued by the new CSKA in the case at hand.

para. 147: “Despite the above-mentioned elements that support the position of the Appellant that it is a matter of sporting succession, the Sole Arbitrator observes that the Second Respondent also claims that there is no matter of sporting succession because it bought certain intellectual property rights (such as the logo) and other assets out of the bankruptcy mass of the Original Debtor in a public tender, and therefore, it is not a case where a club tries to “clean its balance sheets” to get rid of old creditors and to have a “fresh start”. However, without entering into the question about the intention, in terms of good or bad faith, of the Second Respondent, and whether or not the Second Respondent always acted transparent (taking note of the substantial number of documents as submitted by the Second Respondent in order to demonstrate its acting), this is not a decisive element in light of sporting succession. Indeed, this can be an element that can be taken into account. However, it does not, per definition, rule out sporting succession. Regardless of the intention from the side of the Second Respondent, the Sole Arbitrator feels fully comforted to conclude that, in the context of the specific circumstances of the case

and in light of the legal framework, in particular the criteria, as listed, also considering Article 15 (4) of the 2019 FIFA Disciplinary Code, the Second Respondent is considered to be the sporting successor of the Original Debtor.

[...]

para. 149: In addition, and for the avoidance of further doubt, the fact that bankruptcy proceedings are also not mentioned in light of Article 15 (4) of the 2019 FIFA DC, as submitted by the Second Respondent, does not mean that such provision should not be applicable to the present arbitration. Moreover, the fact that this provision was created to avoid abuse of clubs trying to escape from financial obligations, is also not put in doubt by the Sole Arbitrator. However, the Sole Arbitrator wishes to underline that even if any abuse is absent or cannot be demonstrated, Article 15 (4) of the 2019 FIFA Disciplinary Code can still apply. As a consequence, the Sole Arbitrator concludes that FIFA did not misapply such provision by opening disciplinary proceedings against the Second Respondent.

para. 150. Further to this, the Sole Arbitrator does not want to leave unmentioned that according to the so-called “Rangers de Talca case” (CAS 2011/A/2646), a new club acquiring in the bankruptcy proceedings the “economic unit composed of all the assets seized” from another club, was to be understood as a successor of the old club since it was clear that the new club, by purchasing the assets of the old club, continued the activity formerly developed by the old with the same image, badge, hymn, representative colours, emblems and placement. In the present case, it is the exact same situation. Also here, the Second Respondent bought the intellectual property rights out of the Original Debtor’s bankruptcy mass, and is also considered as the sporting successor in this case.

para. 151: In view of the above, the “Rangers de Talca case” is to no avail to the Second Respondent, although the Second Respondent is right that not all elements in that case apply to the present arbitration and that there are differences as compared to this case. However, the Sole Arbitrator carries more weight to the elements that exist in the present arbitration that clearly point in the direction of sporting succession. The fact that the Second Respondent did not take over

federative rights or the football team of the Original Debtor are not prevailing in the present arbitration, as clearly set out above.”

IV.2 Has CAS’ Reasoning Departed from the Landmark Rangers de Talca Award?

Although the Sole Arbitrator stuck to the approach of the CAS Panel in the *Rangers de Talca* award as analysed above, there are significant differences that need to be identified in the case at issue which led to the finding of sporting succession in the *Bengelloun* award between the original CSKA and the new CSKA–Sofia. First and foremost, the *Bengelloun* award established that, in light of the peculiarities of the CSKA Sofia saga background, sporting succession exists even though all criteria were not met, such as the one regarding transfer of federative rights. While this turned out to be a decisive element within the *Rangers de Talca* award, the Sole Arbitrator was at the opinion that other elements carried more weight and thus prevailed over the lack of takeover of federative rights between the original liquidated CSKA and the new CSKA (previously named Litex Lovech). Important to mention here is that in both cases the old club went through a bankruptcy procedure under national law before the existence of sporting succession was confirmed. However, as it will be demonstrated further, such a procedure is not a *conditio sine qua non* for succession in that context, although it remains undisputed that the majority of CAS case law on sporting succession has been related to an insolvency or bankruptcy procedure conducted in the respective clubs’ national jurisdiction.

IV.3 Is There a Uniform Approach Towards the Analysis and Relevance of Subjective Elements in the Context of Sporting Succession in CAS Jurisprudence?

An additional crucial feature and peculiarity of the *Bengelloun* award is the fact the Sole Arbitrator considered that there is no requirement for the fulfilment of a subjective criterion for the confirmation of sporting succession between the two Bulgarian clubs. Rather, it was established that the objective ones alone were fully

sufficient, as they were clearly creating the impression among the general public that the new CSKA shall be seen as the successor of the original one.

Interestingly, in paragraph 147 of the award, as provided above, the Sole Arbitrator established that sporting succession shall not be tied to the existence of an abusive intention of the successor club to avoid financial liabilities of the original debtor. This is a matter that still leaves a grey area in the jurisprudence as to how it should be approached by CAS arbitrators, particularly in light of the influential CAS 2020/A/7092 *Panathinaikos FC v FIFA & Parma Calcio 1913* (*Parma award*), as well as the CAS 2020/A/7183 *Sofiene Moussa v. ACS Petrolul 52 Ploiesti & FIFA* (*Petrolul award*),⁴⁶ where it was established that the objective conditions of sporting succession must be paired with the subjective condition – specifically whether there was an intention of the former and the new club to avoid the fulfilment of financial obligations of the former club, also in line with FIFA Circular No.1681 spirit and purpose. In the *Parma award*, the Panel found the following:

para. 76: “The Panel finds that the concept of “sporting successor” is mainly implemented in order to avoid abuse. In this respect, FIFA indicated in Circular no. 1681 that one of the three main changes in the FDC 2019 was as follows:

FIFA will act against the sporting successor of a debtor, a practice that has unfortunately become more common in recent years as clubs attempt to avoid mandatory financial responsibilities towards other clubs, players, managers, etc. (article 15 paragraph 4 FDC).

para. 77: The Panel will therefore mainly endeavour to establish whether the bankruptcy of Parma FC and the creation of Parma Calcio 1913 was a set-up to avoid their financial responsibility.

para. 78: It is the task of this Panel to try and distinguish such potential contemplated set-up from a genuine bankruptcy of Parma FC and the initiative to set-up a new football club in the city of Parma that, merely in order to increase its chances of becoming an economic and sporting success over time, identifies itself with the past of Parma FC to attract fans and sponsorship. 79. This is a thin line,

⁴⁶ CAS 2020/A/7183, *Sofiene Moussa v. ACS Petrolul 52 Ploiesti & FIFA*.

because the more a newly established club associates itself with the bankrupt club and the more similarities there are, the more one is inclined to consider the newly established club as the sporting successor of the bankrupt club.”

It is important to note that a similar conclusion was reached by another CAS Panel in CAS 2020/A/7183 *Sofiene Moussa v. ACS Petrolul 52 Ploiesti & FIFA*. These particular case law examples essentially contradicted the Sole Arbitrator’s findings in the *Bengelloun* award, according to which sporting succession could exist regardless of any abusive or other specific intention. With regards to the needed presence of subjective conditions for findings of sporting succession, it would be safe to say that the CAS jurisprudence appears to lack a uniform approach in that regard.

This statement is also supported by delving into another important award originating from the CSKA Sofia saga, namely, CAS 2020/A/7504 *CSKA Sofia v. FIFA & Sergio Felipe Dias Ribeiro (Sergio Felipe award)*,⁴⁷ where the Panel took the position that neither an abusive nor fraudulent intention was required. Rather, it concluded that a general intention for sporting succession was needed which is to be identified in the attempts of the new club to benefit and take advantage of the history of a former club and its long-established public image and appearance. The findings are derived from the following paragraphs from the award:

para. 196: The majority of the Panel is satisfied, at least to a satisfactory extent, that the main aim of the shareholders of the New CSKA is to give continuity to the values and the history that has always been connected to the historical club of the city of Sofia. Therefore, there is a clear umbilical connection with the history, the fanbase and the most relevant intangible assets that define and distinguish a club from the rest. Although the Panel may consider that the new owners did not create the club with the fraudulent intention of misleading the financial obligations of the former club, the majority of the Panel does not wish to turn a blind eye to the fact that the New CSKA is indeed taking advantage of all the history gained by the Old CSKA in the past what clearly implies a sporting and economic benefit for the club.

⁴⁷ CAS 2020/A/7504, *CSKA Sofia v. FIFA & Sergio Felipe Dias Ribeiro*.

Para. 198 [...] “The Panel does consider the intention of the New Club as a decisive element in order to analyse the existence of sporting succession.”

Based on the above, it can be derived that the recent CAS jurisprudence on the subjective side of the sporting succession assessment is dispersed in various directions which do not provide for a clear guidance as to how this side of the assessment shall be structured and approached in the future. As things currently stand at the moment of writing, supported by the above case law examples, there is no uniform answer in the CAS jurisprudence as to whether a subjective condition is required at all in the first place for establishing sporting succession. Beyond any doubt, this is matter that shall be further developed and consistently solidified.

As already mentioned within the first chapters of this project, the *Rangers de Talca* award did not solely provide authoritative guidance as to how the different criteria on sporting succession shall be applied but it also incorporated for the first time the *due diligence check* notion as an essential requirement for a successful claim of a creditor against the original debtor or the sporting successor of a debtor club in the framework of bankruptcy and/or insolvency proceedings to which the debtor club has been subject. Said concept will be carefully studied in the following chapter to come. Nevertheless, it is important to mention that the same CAS awards from the CSKA Sofia saga – the *Bengelloun* award and the *Sergio Felipe* award, will be compared once again with the *Rangers de Talca* award exclusively in relation to the doctrine of due diligence.

IV.4 The Case of (Yeni) Mersin Idmanyurdu (Turkey) and the CAS 2024/A/10431 Yeni Mersin Idmanyurdu Futbol A.S. v. Milan Mitrovic & FIFA

Before proceeding to the next chapter, it is important to carefully focus on another prominent sporting succession saga between the Turkish clubs having the name Mersin – Mersin Idmanyurdu Kulubu (original Mersin) & Yeni Mersin Idmanyurdu (new Mersin). An interesting distinguishing feature of this sporting succession matter can be identified in the fact that there was no bankruptcy procedure of the old Mersin,

leading to a situation where a New Mersin was created while the other one continued and still continues to exist under a different name – Mersin Talim Yurdu SK (formerly named as Mersin Idmanyurdu Kulubu) while it has ceased its professional activity. As a result, the two clubs' co-existence is marked by the fact that since the creation of the new Mersin, these two clubs competed in different categories and, at the time of the dispute before CAS, the New Mersin played in the Fourth professional Turkish division, whereas the Old Mersin had a long-established presence in the Local Amateur League for 5 consecutive seasons and thus did not exercise any activity in professional football.

In that regard, the Sole Arbitrator's findings in CAS 2024/A/10431 *Yeni Mersin Idmanyurdu Futbol A.S. v. Milan Mitrovic & Fédération Internationale de Football Association (Milan Mitrovic award)* deserve to be included hereunder, particularly because of the unique facts showing that despite the absence of bankruptcy proceedings against the Old Mersin, as well as in the absence of a fraud or intention to circumvent financial liabilities by the creation of the New Mersin, and given the clear lack of transfer of federative rights between the two clubs who were also found to have different founding years, the New Mersin was still found to be the sporting successor of the Old Mersin. The Sole Arbitrator therefore concluded in the *Milan Mitrovic* award, that in light of the applicable standard of proof in sporting succession cases shall be the standard of "comfortable satisfaction", in line with previous CAS jurisprudence.

para. 59: "The three most common standards of proof which are applied in CAS proceedings are, by hierarchy of degree of requirement, "beyond reasonable doubt", "comfortable satisfaction" and on the "balance of probabilities". In the context of this matter, the Sole Arbitrator defines as appropriate the standard of "comfortable satisfaction", in line with previous CAS jurisprudence from which there is no reason to depart from (see, among others, CAS 2020/A/7314)."

In continuation, the Sole Arbitrator further established that the close similarities between the two club's logos/crest, colours, including the fact that the same stadium was used by the new Mersin, combined with the overlap in management from the Old Mersin to the New Mersin and the 23 players which were originally part of the Old Mersin and subsequently registered by the New Mersin, put together with the same

fanbase behind the New Mersin which undeniably backed up the new club after adopting the colours, crest and stadium of the old Mersin outweighed the other lacking elements. As a result, the New Mersin was declared to be the sporting successor of the Old Mersin, even in the rare circumstances where the two clubs coexist without the old one having been declared bankrupt, as in the majority of classic sporting succession cases analysed hereunder and decided previously. Accordingly, reference is made to several important paragraphs from the award, as follows:

para. 179: "The Sole Arbitrator is comfortably satisfied that the New Mersin's transformation to become similar to the Original Mersin allowed it to reap some advantages which would otherwise be impossible, namely the extra visibility, support and sporting success in such a short period of time. There is little doubt that the success of the New Mersin as well as its public perception would be wholly different if it had opted to ignore the pressure and maintained its original identity –which, despite what the Appellant portrays, was always a possibility.

para. 180: Essentially, the sporting succession in this case results from the fact that New Mersin has chosen to progressively associate itself with the image of the Original Mersin. There are no elements or even indications that this identity was made with the intention of evading responsibility. The Sole Arbitrator understands, based on the facts analysed, that New Club intended to "fill" the gap left by the Original Mersin, choosing to do so by associating its image with the Original Mersin, in order to capture the respective positive synergies."

V. THE CONCEPT OF DUE DILIGENCE AND THE ROLE OF A CREDITOR IN NATIONAL INSOLVENCY PROCEEDINGS

If an adjudicative decision of FIFA shall be enforced against the sporting successor of a liquidated club, there is one additional condition that must be compulsorily met: the creditor must be able to demonstrate that the financial claim against the original debtor club was duly registered in the framework of the national bankruptcy proceedings. If the creditor has failed to properly lodge the financial claim within the national bankruptcy proceedings of the original debtor, the request for enforcement of such adjudicative decision against the sporting successor might be dismissed on the basis of lack of due diligence of the creditor. What matters the most in that respect is the effort of the creditor to effectively pursue such a claim. Following the case law of CAS in the *Rangers de Talca* award where the concept was invoked for the first time, the FIFA DC has also adopted the doctrine of the due diligence check in its jurisprudence.

V.1 The Compulsory Registration of a Creditor's Claim against a Debtor Club in the National Bankruptcy Proceedings

In order to properly understand the concept, careful look shall be paid to the *Rangers de Talca* award once again, having also in mind the analysis presented at the beginning hereunder. The following paragraphs from the award are thus referenced as follows:

para. 27: [...] "the Player apparently decided not to claim for his labour debt in the bankruptcy proceedings, in spite of (i) being aware of these proceedings and (ii) having announced his intention to do so.

para. 28: This, in the Panel's opinion, is to be considered as a lack of diligence of the Player in recovering his credit that shall have an impact in the present case.

para. 29: It has been proven in the present proceedings that the Appellant paid a considerable amount of money to acquire the assets of the bankrupt entity, and

that this amount was used to pay the credits of such entity. The Player, who held a privileged labour credit, could thus have moved forward to recover such priority credit from this amount arising out of the assets' sale, but he failed to do so.

para. 30: Therefore, the Player somehow contributed not to remove the prerequisite leading to the sanction imposed on the Decision: the lack of payment of the debt ordered in the FIFA DRC decision of 18 June 2009. His inactivity did not foster the recovery of the debt and hence the elimination of the circumstances of fact which gave rise to the sanction imposed by the Decision.

para. 31: At the present stage the Panel cannot ascertain if the Player would have received the sum of his credit in case he had duly claimed for it in the bankruptcy proceedings, but it was at least a feasible theoretical possibility that could have happened (especially taking into account the privileged nature of his credit) and which would have provoked that the order of payment issued by the FIFA DRC was complied and thus, that the sanction imposed in the Decision became groundless. The Panel is of the view that the Player should have explored such possibility, should have communicated his credit in the bankruptcy proceedings as he previously announced, should have tried to get the money and not simply remain passive, additionally pretending that disciplinary sanctions are imposed irrespective of his diligence or negligence in trying to achieve a result (recovery of the debt) that would remove the ground of the sanction.

para. 32: In this state of affairs, the Panel considers that no sanction shall be applied in this case.”

Regrettably for the Player, even after a positive decision from the FIFA DRC first against the original debtor, and second, a FIFA DC decision against the sporting successor, CAS found that the Player lacked diligence expressed in his omission to register the claim before the national authorities at the time of the insolvency proceedings.

Interestingly, the *Bengelloun* award from the CSKA Sofia saga, also analysed in the previous chapters, becomes again a useful example in light of the due diligence concept. The *Bengelloun* case concerned an appeal against the FIFA DC decision Nr. 140533 dated 12 February 2020 where the FIFA DC denied the creditor's claim against

the bankrupt Bulgarian club concluding that the creditor has been aware of the national bankruptcy proceedings and still has not registered the relevant claim therein. The following paragraphs clearly demonstrate and reiterate CAS reasoning, as established in the *Rangers de Talca* award:

para. 159: [...] “the Sole Arbitrator observes that [the Appellant] received a letter from the Secretariat on 13 October 2015, as outlined above, by means of which she was informed about and became aware of the bankruptcy proceedings. As from that moment, at any event, the Appellant knew, or at the least should have known, about the bankruptcy proceedings.

para.162: [...] the fact that the Original Debtor went bankrupt was not only public information, but also published in the commercial register of the Republic of Bulgaria [...]

para. 163: Therefore, it is clear for the Sole Arbitrator that the Appellant decided not to claim her credit in the bankruptcy proceedings in spite of her awareness of these proceedings.”

In addition, the Sole arbitrator in that case, has once again reinstated a well-established approach concluding that had Ms. Bengelloun declared her credit while being fully aware of the ongoing proceedings, she would have had at least a theoretically feasible opportunity of recovering that credit at national level. The Sole Arbitrator concluded that there was a decisive lack of diligence as a result.

V.2 CAS 2020/A/7504 CSKA Sofia v. FIFA & Sergio Felipe Dias Ribeiro

In CAS 2020/A/7504 *CSKA Sofia v. FIFA & Sergio Felipe Dias Ribeiro*, the creditor registered his claim in the bankruptcy proceedings, but the registration of the claim was rejected by the bankruptcy trustee. The creditor therefore filed an objection against the rejection of the trustee before the competent court in Sofia, Bulgaria. The objection was dismissed on the grounds that FIFA DRC decisions have no binding effect in Bulgaria. Nevertheless, CAS concluded that the creditor could not have done more

to recover his debt at national level and therefore logically determined that the Player acted with the required due diligence.

The above award clearly demonstrates the consistency of CAS when it comes to applying the due diligence check on a creditor. Said approach has not sustained any changes since the Rangers de Talca award and, as seen in the *Sergio Felipe award*, when it is obvious to that the creditor has been diligent in the framework of national bankruptcy proceedings, then this element is easily declared satisfied.

VI. CONCLUSION

In consideration of all the above chapters, it follows as a conclusion that the sporting succession concept has a crucial role in international football law and serves as an effective but also as a flexible tool implying that a successor club, besides assuming rights and benefits of the liquidated club, such as its brand and sporting value, historic achievements, fanbase, popularity, social support, colours and image may also be held liable for its debts, so that claims which remained uncovered by the liquidated club could be adjudicated and enforced against the sporting successor instead. This is fully in line with the main rationale of the concept, also clarified by FIFA at the moment of its official codification in 2019 – namely, “*to prevent clubs from avoiding mandatory financial responsibilities towards other clubs, players, managers, etc*”.

Important to note once again is that the concept emerged from CAS jurisprudence first and not from FIFA legislation, meaning that its importance has been recognised long time before 2019. Nevertheless, the principle continues to exist without a fixed definition which does not seem to be a problematic element at all, given that its invocation before CAS and FIFA deciding bodies has not been prevented. Instead, it has further fostered its development and expansion to a point where Panels and Sole Arbitrators are showing flexibility with respect to the case-specific elements that need to be assessed and decide a given case, having recognised that the FIFA DC and FIFA RSTP definitions do not contain an exhaustive list. Nevertheless, it shall be admitted that there is certain room for criticism regarding an alleged lack of uniformity in the

jurisprudence, especially when it comes to evaluation of the subjective criteria for sporting succession, as demonstrated within Chapter 5.

Finally, it shall be concluded that although there has been a considerable degree of flexibility in jurisprudence where sporting succession has been found, the principle has also its limitations, one of which is the element of *due diligence* which applies to a creditor in the framework of insolvency proceedings and essentially requires them to have registered and declared a claim before the national authorities in order to be able to stand a chance for a favourable outcome before either FIFA and/or CAS.

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