



Arbitration CAS 2011/A/2662 Bobariu Sorin v. C.S. Otopeni & Romanian Football Federation, award of 10 April 2012

Panel: Mr Manfred Nan (The Netherlands), Sole Arbitrator

Football

Unilateral termination of the employment contract

Addressee of the obligation to compensate

Discretion of the adjudicating body when calculating the compensation

Mitigation of the damage

- 1. Either under Article 17 of the FIFA Regulations on the Status and Transfer of Players (RSTP) or under the equivalent provision of the FRF Regulations for the Status and Transfer of Player (RSTJF), due to the protective purpose of the mentioned provision, it makes no difference whether a party simply backs away from a contract in the form of unlawful termination of the contract or whether – through a serious breach of duty – it removes the basis of trust necessary for continuing the contract. With regard to both provisions, the addressee of the obligation to compensate is therefore both a party who terminates unlawfully as well as whoever provided the “just cause” for lawful termination of the contract.**
- 2. Contrary to Art. 17.1 RSTP, Art. 18.9.1 RSTJF does not provide for any degree of discretion to the deciding body when calculating the compensation. The rules are very clear: if the club is responsible for the termination of the contract, the calculation grounds are represented by the total amount of the financial rights due to the player until the expiration of the contractual term.**
- 3. The party in breach has the burden of establishing concrete elements that justify a deduction from the total amount of compensation awarded for the damage suffered, in application of the general principle of damage mitigation. If no such elements are adduced, there is no reason to adjust the compensation.**

Mr Bobariu Sorin (“the Player”) is a Romanian professional football player (goalkeeper), born on 15 July 1976.

C.S. Otopeni Sportive Club (“the Club”) is a Romanian professional football club affiliated with the Romanian Football Federation.

Federatia Romana De Fotbal (FRF) is the Romanian Football Association, which in turn is a member of FIFA.

On 3 August 2009, the Player and the Club concluded an employment contract – “*Contract Prestari Sportive*” – (registered with the FRF under no. 7897 on 18 August 2009), valid from 1 July 2009 until 30 June 2010.

On 1 July 2010, the Player and the Club concluded an employment contract – “*Contract de Prestari Sportive*” – valid from 1 July 2010 with a fixed term until 30 June 2013, registered with the FRF under no. 2163 on 9 August 2010 (“the Contract”).

The English translation of the Contract, which is undisputed by the parties, contains the following relevant clauses:

“Art.8 The salary

- 8.1 *The salary for the return of the season 2010/2011 will be of 22.000 euro net, meaning 11 instalments of 2000 Euros (daily BNR exchange rate).*
- 8.2 *The salary for the return of the season 2011/2012 will be of 22.000 euro net, meaning 11 instalments of 2000 Euros (daily BNR exchange rate).*
- 8.3 *The salary for the return of the season 2012/2013 will be of 16.500 euro net, meaning 11 instalments of 1500 Euros (daily BNR exchange rate).*
- 8.4 *The salary for July will be paid on or before 15.08.2010.*
- 8.5 *The salary is paid on: the date of 15 of each month (the first month to be paid is July).*
- 8.6 *Clauses with respect to the objectives: according to ROI.*

Art. 10 The principal rights and obligations of the parties

10.1 The obligations of the Club:

- a) *to pay player salaries and other entitlements, the amounts provided in the contract, as provided on Article 8.*

(...)

- i) *to comply with statutes, regulations and decisions of FIFA/UEFA/FRF and, where appropriate, LPF.*

10.2 The obligations of the player:

(...)

- o) *the player undertakes to obey to the Statutes, Regulations and Decisions of FIFA, UEFA, FRF and, as the case may be, of LPF and AJF.*

Art. 15 Contractual litigations

- 15.1 *Any dispute regarding non-execution or improper execution of obligations by the parties under this contract shall be settled amicably. If such a settlement is not possible, the parties under are entitled to apply to bodies having jurisdiction from FRF/AJF, according to the Statutes and Regulations of FRF/AJF.*

Art. 16 Applicable provisions

16.1 *The football's provisions applicable to this contract are the statutes, regulations and decisions of FIFA, UEFA, FRF or LPF, as the case may be.*

16.2 *The club and the player must obey to the statutes, regulations and decisions of FIFA/UEFA/FRF/AJF/LPF, in this order, as being a part of the present contract and considered by the parties, by signing the present agreement, as obligatory.*

(...)

16.4 *To this contract is applicable the Law 69/2000 of physical education and sport, with subsequent amendments and, accordingly, the labour law.*

Art. 17 Final dispositions and force majeure

17.1 *In case of conflict between laws, the Romanian law prevails.*

(...)"

The Club did not pay any salary to the Player from January 2011 onwards. As a consequence, the Player unilaterally terminated the Contract for financial just cause by letter dated 18 August 2011.

The Player lodged a claim with the judicial organs of the FRF on 21 June 2011 by writ of summons registered at the National Dispute Resolution Chamber, *Camera Nationala pentru Solutionarea Litigiilor* (CNSL), under no 514; such claim was completed on 18 August 2011. The Player requested (as relevant):

- to compel the Club to pay the sum in amount of EUR 8.000 representing ½ of his contractual financial rights for the period January – July 2011;
- to find the termination of the employment contract under Article 18.10, letter a) of the FRF Regulations for the Status and Transfer of Players (the "RSTJF");
- to compel the Club to pay compensation for breach of contract by the Club in the amount of EUR 36.500 allegedly corresponding to the value of the Contract, pursuant to Article 18.9.1 RSTJF.

In its decision no 414 dated 22 September 2011, the CNSL noted that *"the prayers for relief for the sanction of the club, under art. 18.9.1 letter a) of RSTJF, are unfounded, these provisions are not incidents in question, as it relates to the termination of the contract by the club, during the protected period and without just cause"* and decided as follows:

"Upheld in part the claim of the player (...)

Found the termination of the contract between the player Bobariu Sorin and CS Otopeni, starting with 22 September 2011, under Art. 18.10 points a) 2nd sentence of RSTJF.

Order to CS Otopeni to pay to the player Bobariu Sorin the amount of 8.000 Euros as outstanding contractual rights for the period January 2011 – July 2011 and 400 lei procedural fee (...)"

After notification of the CNSL decision to the Player on 5 October 2011, the Player lodged an appeal before the FRF *Comisia de Recurs* ("Recourse Commission").

On 9 November 2011, the Recourse Commission decided to reject the Player's appeal and confirmed the decision of the CNSL.

The English translation of the relevant paragraphs of the decision of the Recourse Commission registered under no 195/2011 – which is undisputed by the parties - reads as follows:

“(…)

Correctly N.D.R.C. retained and motivated the non-payment of the financial rights to the player and applies the provisions of art. 18.10 letter (a) thesis II of the R.S.T.J.F.

The request from the recourse of the erroneous consignment in the findings of the decision issued by N.D.R.C., in the sense that the amount of 8,000 Euros given to the player represents outstanding contractual rights for the period January-July 2011 and not all the financial rights for July 2011 but 1/2 of the contractual rights for the period January-June 2011, (according to the claims addressed to the N.D.R.C.) is not an error of judgement but a substantive error that could be correct under the conditions and the terms provided by art. 36.12-36.16 from R.S.T.J.F.

Regarding the refusal to grant the compensation and the non sanctioning of the club according to art. 18.9.1 letter (a) of R.S.T.J.F. Recourses Committee retains the following:

In question the provisions of art. 18.9.1 letter (a) of R.S.T.J.F. are not incidents in order to give effect to the requests formulated by the player.

This text provides the granting of a compensation and the sanctioning of the party at fault for the initiative of the unilateral denunciation of the contract without just cause in the protected period.

The player requested (had the initiative) the termination of the contract, in accordance with art. 18.1 letter (c) of the R.S.T.J.F., obviously for the just cause but N.D.R.C. found the termination of this contract for the non-payment of the contractual rights pursuant to art. 18.10 letter (a) thesis II of R.S.T.J.F.

The interdiction to terminate the contract unilaterally without fair cause in the protected period (article 18.8 letter (a) and (b) of R.S.T.J.F.) refers to the assumption of the unilateral denunciation of the contract, therefore to the situation of proving of a conduct which produces unequivocally the intention, the obvious expression, clearly abusive not to continue the contractual relationship and which is sanctionable according to art. 18.9.1 from R.S.T.J.F.

RECOURSE COMMISSION considers that this expression of will cannot be presumed or inferred from the non-payment, for a certain time, of the financial rights under the contract, because this assumption has a different regulation in R.S.T.J.F. (art. 18.10. letter (a) thesis II).

Whether it would were desired the assimilation of the situations and the automatically application of an additional sanction to the clubs, it would have materialized by the fact that would have been expressly and explicitly provided in the art. 18.10. of R.S.T.J.F, which covers only the faculty, the opportunity for the clubs and the players to invoke certain circumstances in order to terminate unilaterally the contract and so it is not excluded the possibility that the parties to accept the continuation of the contract.

In this respect are the provisions of art. 18.12. of R.S.T.J.F.: “The player may request the payment of the outstanding financial rights and the termination of the contract or its continuation.”

In this respect pleads also the conduct of the parties in this dispute: the Club waived at the ratification of the disciplinary penalty consisting in the reduction with 25% of the contractual rights, and the player did not even

requested all the financial rights due to him but only half of them claiming the liberty to decide how much to ask, according to the principle of the availability”.

Based on the above mentioned reasons, the Recourse Commission decided the following:

“Dismisses as unfounded the recourse filed by the professional football player Bobariu Sorin (...) against the decision no. 414 of 22.09.2011 given by the National Dispute Resolution Chamber R.F.F., in contradictory with Sport Club Otopeni (...)

Final and enforceable.

The decision may be appealed to the CAS within 21 days from notification.

Pronounced today 09.11.2011 in non public meeting at FRF of Bucharest, Vasile Serbanica street, no. 12 Sector 2.

(...)”.

On 22 November 2011, the decision of the Recourse Commission was notified to the Player.

By letter dated 12 December 2011, the Player filed its Statement of Appeal with the Court of Arbitration for Sport (CAS) against the Club and the FRF with respect to the decision no 195 taken by the Recourse Commission on 9 November 2011 and the decision no 414 taken by the CNSL on 22 September 2011, followed by an Appeal Brief dated 28 December 2011.

On 2 February 2012, following the Player’s agreement to the late filing of the Respondents’ submissions, the Club and the FRF filed their respective Answers.

On 17 February 2012, the Player withdrew some of his prayers for relief.

On 23 February 2012, the CAS Court Office issued, on behalf of the Sole Arbitrator, an Order of Procedure which confirmed amongst others that CAS has jurisdiction to rule on this matter, that the applicable law would be determined in accordance with Article R58 of the Code of Sports-related Arbitration (the “CAS Code”), that the Sole Arbitrator would decide the case based on the parties’ written submissions and that the parties confirm that their right to be heard has been respected. All parties have duly signed and returned such Order of Procedure to the CAS Court Office.

LAW

Jurisdiction

1. The jurisdiction of CAS, which is not disputed, derives from Article 36.17 of the RSTJF and Article R47 of the CAS Code.

2. It follows that the CAS has jurisdiction to decide the present dispute.
3. Pursuant to Article R57 of the CAS Code, the Sole Arbitrator has full power to review the facts and the law. Therefore, the Sole Arbitrator has the power and the duty to examine the whole case and to decide whether the appealed decision is just and appropriate.

Applicable law

4. Article R58 of the CAS Code reads as follows:
“The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.
5. A likewise approach can be found in Article 187 of the Swiss Private International Law Act of 1989 (PIL), which – *inter alia* – provides that *“the arbitral tribunal shall rule according to the law chosen by the parties or, in the absence of such a choice, according to the law with which the action is most closely connected”.*
6. In the present matter, the parties have not agreed, before CAS, on the application of any particular law.
7. The Sole Arbitrator notes that Articles 16 and 17 of the Contract contain a choice of law clause. The relevant articles provide as follows:
“Art. 16 Applicable provisions
16.1 The football’s provisions applicable to this contract are the statutes, regulations and decisions of FIFA, UEFA, FRF or LPF, as the case may be.
16.2 The club and the player must obey to the statutes, regulations and decisions of FIFA/UEFA/FRF/AJF/LPF, in this order, as being a part of the present contract and considered by the parties, by signing the present agreement, as obligatory.
(...)
16.4 To this contract is applicable the Law 69/2000 of physical education and sport, with subsequent amendments and, accordingly, the labour law.
Art. 17 Final dispositions and force majeure
17.1 In case of conflict between laws, the Romanian law prevails.
(...)”.
8. It stems from Articles 16 and 17 of the Contract that this dispute is primarily governed by the various regulations of FIFA and subsidiary governed by the various regulations of the FRF. Furthermore, the Romanian Law 69/2000 of physical education and sport and accordingly Romanian labour law shall apply.

Admissibility of the Appeal

9. The appeal was filed within the deadline provided by Article 57 para 1a of the FRF Statutes and stated in the decision of the Recourse Commission, *i.e.* within 21 days after notification of such decision. Furthermore, it complied with all other requirements of Article R48 of the CAS Code.
10. It follows that the appeal is admissible.

Discussion

11. The Sole Arbitrator notes that the Player requests *“to state that the amount of 8000 Euros admitted by NDRC of RFF represents ½ of the financial rights deserved for the period January 2011 – July 2011”*.
 12. The Sole Arbitrator finds that the Player has insufficient interest in what is claimed in this respect because the Recourse Commission implicitly recognized that the amount of EUR 8.000 represents ½ of his financial rights for the period January – July 2011, since the Recourse Commission acknowledged in its decision that *“the player did not even requested all the financial rights due to him, but only half of them claiming the liberty to decide how much to ask (...)”*. To be superfluous, the Sole Arbitrator notes that Article 8 of the Contract stipulates that the Club is obliged to pay to the Player eleven (the Sole Arbitrator understands monthly) instalments of EUR 2.000. As the Club did not dispute its failure to pay the salary for the whole period of 8 months (January – July 2011), it is obvious to the Sole Arbitrator that the outstanding salary for this period based on the Contract is EUR 16.000.
 13. In continuation, the Sole Arbitrator acknowledges that it is undisputed that the Player – by letter dated 18 August 2011 - lawfully terminated the Contract prior to the expiry of the term for financial just cause.
 14. The main questions to be considered by the Sole Arbitrator are therefore the following:
 - a) what are the – financial – consequences of the termination for just cause?
 - b) did the FRF violate its own regulations; if yes, what are the consequences?
- A. What are the – financial – consequences of the termination for just cause?*
15. The Player argues that the Club breached the Contract *“by failing to pay the amount due to for the period January – July 2011”* and therefore the Club is obliged to pay EUR 36.500 as compensation for that which the Player would have earned had the Contract been terminated by expiry of the fixed term. The Player refers *inter alia* to Article 18 of the RSTJF, Articles 13, 14 and 17 of FIFA RSTP as well as DRC and CAS case law.

16. The Club agrees with the decisions of the CNSL and the Recourse Commission of the FRF and submits that the Player is not entitled to any financial compensation apart from EUR 8.000 for the financial rights for the period January 2011 – July 2011.
17. As mentioned above in par. 13, it is undisputed that the Player – by letter dated 18 August 2011 – lawfully terminated the Contract prior to the expiry of the term for financial just cause. The Sole Arbitrator acknowledges that the unilateral termination by the Player is caused by the breach of contract without just cause by the Club with regard to one of the Club’s main obligations, specifically the obligation to remunerate.
18. The Sole Arbitrator observes that – although the Player and the Club are both Romanian – Article 16.2 of the Contract stipulates that *“The club and the player must obey to the statutes, regulations and decisions of FIFA/UEFA/FRF/AJF/LPF, in this order, as being a part of the present contract and considered by the parties, by signing the present agreement, as obligatory”*.
19. This reflects the agreement between the Player and the Club that the regulations of FIFA are not only a part of the Contract, but are obligatory in the sense that the parties have to obey these rules primarily.
20. As a consequence, the Sole Arbitrator turns his attention to the FIFA RSTP. If a party breaches the contract without just cause, the consequences under Article 17 of the FIFA RSTP apply. This provision provides that “the party in breach” is obliged to pay compensation. In view of the protective purpose of these provisions, it makes no difference whether a party simply backs away from a contract in the form of unlawful termination of the contract or whether – through a serious breach of duty – he removes the basis of trust necessary for continuing the contract. The addressee of the obligation to compensate in Article 17 (1) FIFA RSTP is therefore both a party who terminates unlawfully as well as whoever provided the “just cause” for lawful termination of the contract (see also CAS 2005/A/876, award of 15 December 2005, p. 17; HAAS U., Football Disputes between Players and Clubs before the CAS, in BERNASCONI/RIGOZZI (eds), Sport Governance, Football Disputes, Doping and CAS Arbitration, 2nd CAS & SAV/FSA Conference Lausanne 2008, Berne 2009, p. 235). As a result, the Sole Arbitrator assesses that the Club is obliged to pay compensation to the Player should the FIFA RSTP be applicable.
21. However, the Sole Arbitrator is aware of the fact that the provision of Article 17 of the FIFA RSTP is not binding at national level. Article 1.3 (b) of the FIFA RSTP provide that *“Each association shall include in its regulations appropriate means to protect contractual stability, paying due respect to mandatory national law and collective bargaining agreements”*. It provides that the national federations are obliged to include in their regulations in particular the principles of Article 13 up to and concluding Article 17 of the FIFA RSTP with regard to the protection of contractual stability, which is one of the fundamental principles on which the FIFA Regulations are based. Article 2.4 of the FIFA RSTP provides that *“The associations are, however, free to establish in which way this obligation has to be complied with, since the various principles outlined in par. 3b) are to be considered as a strong recommendation, i.e. every association is allowed to include the principles it deems necessary and appropriate for its own football system in order to reflect the particular needs of the country concerned”*.

22. The Sole Arbitrator observes that the FRF has implemented the FIFA principle to protect contractual stability in its regulations, and notes that the RSTJF provides for specific regulations on the contractual stability. In continuation, the Sole Arbitrator acknowledges that it is not disputed by the parties that the provisions on contractual stability in the FIFA RSTP and the RSTJF are in line with Romanian law.
23. As already mentioned, it is undisputed that under the Romanian regulations, the Player had the right to terminate the Contract with just cause because it is established that the Player did not receive his contractual rights *“for a period longer than 90 days since the date they were due”* (Article 18.10 sub a, second paragraph, first sentence RSTJF).
24. Furthermore, the Sole Arbitrator finds that Article 18.11 in conjunction with Article 18.12 of the RSTJF entitles the Player to *“lodge a claim with the relevant body within the RFF”* and enables the Player to *“request the settlement of the outstanding financial rights and the termination or the continuation of the contract”*. It is undisputed that the Player notified the competent body of the FRF and did not request the continuation of the Contract, but a confirmation of the termination of the Contract with just cause together with the request for compensation.
25. In continuation, the Sole Arbitrator acknowledges that the Club breached the Contract by failing to fulfil one of its main obligations, *i.e.* to remunerate the Player.
26. To assess the consequences of this breach under the Romanian rules, the Sole Arbitrator turns its attention to Article 18.8 of the RSTJF, which reads as follows (as relevant):

“The unilateral termination of the contract without just cause or without sporting just cause is prohibited, the following rules being applicable:

 - a) (...)
 - b) *For contracts entered between clubs and players after their 28th birthday, the unilateral termination of the contract is prohibited during the first two years of the contract, this being considered the protected period. The protected period starts again when a new contract is concluded or the term of the current contract is extended”.*
27. In this respect, the Sole Arbitrator observes that the Player terminated the Contract with just cause, due to the breach of contract by the Club, on 18 August 2011, confirmed by the CNSL on 22 September 2011. Therefore, the breach of contract has occurred within two years following the entry into force of the Contract, which was 1 July 2010. This means that the breach of contract was within the protected period as provided under the applicable regulations of the FRF (RSTJF).
28. In continuation, the Sole Arbitrator turns its attention to Article 18.9.1 of the RSTJF, which reads as follows:

“Unless the contract stipulates otherwise, if the unilateral termination of the contract occurs during the protected period, the party found to be in breach of contract shall be sanctioned as follows:

a) *The club: - (...). The club shall pay the player a compensation representing the total amount of financial rights that the player is entitled to up to the natural expiry of the contract, except for game and objective bonuses.*

(...)"

29. The Sole Arbitrator notes that the Contract does not contain any provision with regard to the consequences of a premature termination of the Contract. It follows that the Player and the Club did not beforehand agree upon an amount of compensation for breach of contract. As a result, the Sole Arbitrator is of the opinion that pursuant to Article 18.9.1 of the RSTJF, the Club is obliged to pay the Player a compensation representing the total amount of financial rights that the Player is entitled to up to 30 June 2013, which is the expiry date of the Contract.
30. The Sole Arbitrator disagrees with the findings of the CNSL and the Recourse Commission that the non-payment of the financial rights by the Club, for a period longer than 90 days since the date they were due, is not "*a conduct which produces unequivocally the intention, the obvious expression, clearly abusive not to continue the contractual relationship and which is sanctionable according to Article 18.9.1*". Although the RSTJF provide for the possibility to choose for a continuation of the relationship, as a general rule, the basis of good faith between the contract parties is disrupted in such a way that continuation of the Contract is hardly possible any more. As a result, the Player was justified to end the relationship with the Club.
31. As already mentioned with regard to Article 17 of the FIFA RSTP, in view of the protective purpose of the mentioned provisions, it makes no difference whether a party simply backs away from a contract in the form of unlawful termination of the contract or whether – through a serious breach of duty – he removes the basis of trust necessary for continuing the contract. Contrary to the findings of the CNSL and the Recourse Commission, the Sole Arbitrator has no hesitation to believe that the addressee of the obligation to compensate in Article 18.9.1 of the RSTJF is therefore both a party who terminates unlawfully as well as whoever provided the "just cause" for lawful termination of the contract. In case of failure to perform the undertaken obligations, the failed party (debtor) falls under the obligation to pay damages to the creditor (see also TATU G., Contractual Stability in Football Compensation in case of breach of contract in Romanian Civil Law, in European Sports Law and Policy Bulletin, Contractual Stability in Football, Issue I-2011). As a result, the Sole Arbitrator assesses that the Club is obliged to pay compensation to the Player, not only under the applicable FIFA RTSP, but also under the applicable RSTJF.
32. With respect to the calculation of the compensation, the Sole Arbitrator notes that it appears that Article 18.9.1 of the RSTJF does not provide for any degree of discretion to the deciding body when calculating the compensation. The rules are very clear: if the Club is responsible for the termination of the Contract, the calculation grounds are represented by the total amount of the financial rights due to the Player until the expiration of the contract term.
33. Before the CNSL and the Recourse Commission, the Player claimed the payment of an amount of EUR 36.500, being his financial rights due from 18 August 2011 until 30 June 2013, in other words, the remaining value of the Contract as compensation for the breach of contract.

34. The Sole Arbitrator notes that the Club disputed only the obligation to pay compensation, not the alleged amount.
 35. The Sole Arbitrator also notes that the burden of proof is with the injured party, as it requests the compensation for the Club's breach.
 36. The Sole Arbitrator observes that for the season 2011-2012, Article 8.2 of the Contract provides for a salary of EUR 22.000 net, payable in 11 equal instalments. However, the first instalment of this season with regard to the month of July is obviously already integrated in the granted amount of EUR 8.000 for outstanding contractual rights. Therefore, the Sole Arbitrator finds it reasonable that the remaining net salary to be paid for the 2011-2012 season must be fixed at EUR 20.000 (10 x EUR 2.000).
 37. With regard to the season 2012-2013, Article 8.3 of the Contract provides for a salary of EUR 16.500 net, payable in 11 equal instalments. Therefore, the Sole Arbitrator finds that the net salary to be paid for the 2012-2013 season must be fixed at EUR 16.500, corresponding to the agreed yearly salary for this season.
 38. As mentioned in par. 32, the Sole Arbitrator notes that it appears that Article 18.9.1 of the RSTJF does not provide for any degree of discretion to the deciding body when calculating the compensation. As a matter of fact, the Club did not dispute the amount of EUR 36.500 and also did not state as an alternative that the Player did not mitigate the damage that he claims suffering by for instance not entering into any new agreement with another club after leaving the Club. Anyway, should the general principle of damage mitigation be applicable, the Sole Arbitrator notes that the Club has the burden of proof, but failed to establish concrete elements which would have justified the application of a deduction. The Club did not adduce any material on this issue and did not file any evidentiary requests. It follows that there is no reason to adjust the compensation determined above.
 39. As a consequence, the Sole Arbitrator concludes that the Club has to pay the amount of EUR 36.500 to the Player, as compensation for breach of contract.
- B. *Did the FRF violate its own regulations; if yes, what are the consequences?*
40. The Player alleges that the FRF violated its own regulations by delaying the proceedings, ignoring the Player's multiple requests and not notifying the decision of the Recourse Commission on 9 November 2011. The Player refers to Articles 28 (4), 28 (5), 34 (10) and 36 (9) of the RSTJF. Furthermore, the Player alleges that the FRF is not only liable for the decision of the CNSL and Recourse Commission to deny the Player's claim for compensation, but also for a future impossibility of recovering the damage suffered from the breach of contract by the Club because of the procedural delays.
 41. The Sole Arbitrator observes the following relevant facts in chronological order:

- on 21 June 2011 the Player submitted his claim to the CNSL;
 - on 26 July 2011 the Club submitted its response;
 - between 26 July 2011 and 15 September 2011 the case was suspended in connection with the disciplinary case;
 - on 18 August 2011 the Player completed his claim to the CNSL;
 - on 22 September 2011 the CNSL took a decision;
 - on 5 October 2011 the decision of the CNSL was notified to the Player;
 - on 7 October 2011 the Player filed his appeal to the Recourse Commission;
 - on 28 October 2011 or 3 November 2011 debates were held at the Recourse Commission;
 - on 9 November 2011 the Recourse Commission took a decision;
 - on 22 November 2011 the Player collected the decision of the Recourse Commission at the FRF headquarters.
42. All these facts considered, the Sole Arbitrator notes that the dispute resolution at the CNSL and the Recourse Commission jointly and separately is within reasonable time. As a consequence, the Sole Arbitrator concurs with both Respondents that there is no undue delay.
43. With regard to the alleged violation of some provisions as mentioned by the Player, the Sole Arbitrator observes that the non compliance with these kind of provisions is apparently not sanctioned in the applicable regulations. Although it is clear to the Sole Arbitrator that the FRF did not comply with some provisions related to the administrative side of the proceedings, it does not justify the conclusion of the Player that the FRF should be liable for the alleged impossibility of recovering the damage suffered from the breach of contract by the Club. This judgement could have been different if the Sole Arbitrator would have concluded that the proceedings at the CNSL and/or the Recourse Commission were not settled within reasonable time, including the notification of the decision of the Recourse Commission by the FRF.
44. The Sole Arbitrator notes that the Player submits that the FRF is responsible for the substantive opinion of the CNSL and the Recourse Commission. The FRF submits that both CNSL and the Recourse Commission are independent and impartial jurisdictional bodies established in accordance with the provisions of FIFA Circular no. 1010 and with the principle of equal representation. The FRF argues that it has no possibility to censor a decision made by the jurisdictional bodies as their relation to the Federation is purely administrative in nature.
45. The Sole Arbitrator establishes that the Player has the burden of proof, but fails to prove that the Romanian first instance bodies in his case were not to be classed as independent and duly constituted under the terms of Article 60 par. 3 (c) of the FIFA Statutes (as mentioned in FIFA Circular no. 1010). In continuation, the Sole Arbitrator also determines that the Player fails to prove that the FRF has had any involvement in the decisions of the Romanian jurisdictional bodies, other than administrative support.

46. It therefore follows that the Sole Arbitrator dismisses the claims of the Player with regard to the liability of the FRF.

Conclusion

47. Based on the foregoing and after taking into consideration all evidence produced and all arguments made, the Sole Arbitrator finds that the Contract between the Player and the Club was terminated by the Player with just cause and that following the breach of contract by the Club, the Player is entitled to a compensation to the amount of EUR 36.500 net. The Sole Arbitrator notes that the Player did not claim any interest.
48. The other requests for relief are rejected.
49. The Appeal is therefore partially upheld.

The Court of Arbitration for Sport rules:

1. The Appeal filed on 12 December 2011 by Mr. Bobariu Sorin, against the decision no. 195/2011 of the Romanian Recourse Commission - *Comisia de Recurs* on 9 November 2011 is partially upheld.
2. The decision no. 195/2011 issued by the Romanian Recourse Commission - *Comisia de Recurs* on 9 November 2011 is set aside.
3. C.S. Otopeni Sportive Club is ordered to pay to Mr. Bobariu Sorin the amount of EUR 36.500 (thirty six thousand five hundred Euro).
- (...)
6. All other motions or prayers for relief are dismissed.