Tribunal Arbitral du Sport
Court of Arbitration for Sport

By email and courier

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Lausanne, 16 October 2020/FC/pr(tr)

Re: CAS 2019/A/6380 U Craiova 1948 SA v. Romanian Football Federation (RFF) & U Craiova 1948 Club Sportiv SA

Dear Sirs,

Please find enclosed, by email and courier a copy of the Arbitral Award issued by the Court of Arbitration for Sport in the above-referenced matter.

In accordance with Article R59 of the Code of Sports-related Arbitration, the attached Award is not confidential and can be published in its entirety by the CAS. If the Parties consider that any of the information contained in the Award should remain confidential, they should send a request, with grounds, to the CAS by **23 October 2020** in order that such information could potentially be removed, to the extent that such removal does not affect the meaning or the comprehension of the decision.

Please be advised that I remain at the Parties' disposal for any further information.

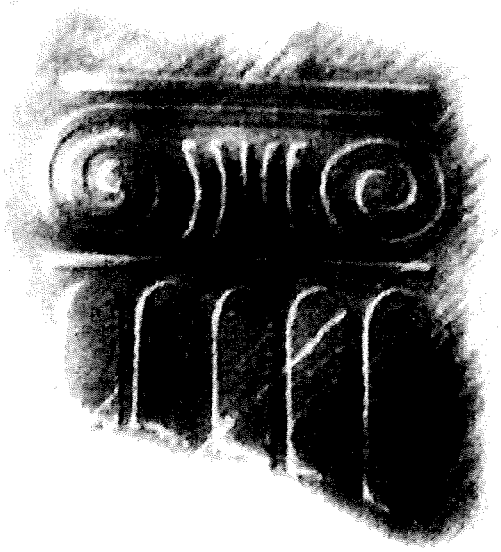
Yours faithfully,

Fabien CAGNEUX
Counsel to the CAS

Enc.
C.c.: Panel

TAS / CAS

Tribunal Arbitral du Sport
Court of Arbitration for Sport
Tribunal Arbitral del Deporte



ARBITRAL AWARD

U Craiova 1948 SA, Romania
v.
Romanian Football Federation (RFF), Romania
&
U Craiova 1948 Club Sportiv SA, Romania

CAS 2019/A/6380 - Lausanne, October 2020

CAS 2019/A/6380 U Craiova 1948 SA v. Romanian Football Federation (RFF) and U Craiova 1948 Club Sportiv SA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr. H. Pat Barriscale, Barrister, Limerick, Ireland

Arbitrators: Dr. Jan Räker, Attorney-at-Law, Stuttgart, Germany

Mr. Patrick Lafranchi, Attorney-at-Law, Bern, Switzerland

in the arbitration between

U Craiova 1948 SA

Represented by Mr. Mititelu Gigi Adrian, President, and by Mr Mircea Moise, Legal Counsel

Appellant

And

1/Romanian Football Federation (RFF)

Represented by Mr. Adrian Stangaciu, RFF Head of Legal, and Mr Paul F. Ciucur, attorney-at-law in Bucharest, Romania

First Respondent

2/U Craiova 1948 Club Sportiv SA

Represented by Mr Josep F. Vandellos Alamilla, attorney-at-law in Valencia, Spain

Second Respondent

I. PARTIES

1. U Craiova 1948 SA (the "Appellant") is a Romanian Football Club affiliated to the Romanian Football Federation.

2. The Romanian Football Federation (the "First Respondent" or "RFF") is the National Governing Body for the sport of football on the territory of Romania with registered offices in Bucharest, Romania. The RFF is affiliated to the Union of European Associations of Football (UFEA) and the Federation Internationale de Football Association (FIFA).

3. U Craiova 1948 Club Sportiv SA (the "Second Respondent") is a Romanian Football Club affiliated to the Romanian Football Federation.

4. U Craiova 1948 SA, the Romanian Football Federation and U Craiova 1948 Club Sportiv SA are collectively named the "Parties".

II. INTRODUCTION

5. The present procedure primarily concerns a commercial dispute between the Appellant and the Second Respondent in relation to the use of the name and colours of the Football Club Universitatea Craiova in competition in Romania or elsewhere. The Appellant believes that the activity of the Football Club Universitatea Craiova was carried out continuously in public under a proprietor name until 20 July 2011 in an organised framework by the affiliates of the RFF, namely Football Club U Craiova SA, FC U Craiova SA and others and that the activity of the Football Club Universitatea Craiova is currently carried out by the Appellant. The Second Respondent argues that it has the right to use and benefit from the crest, colours and name of the Football Club Universitatea Craiova by means of a Partnership Agreement concluded on 8 July 2013 concerning the use of a combined trademark Club Sportiv Universitatea Craiova together with other trademarks which it holds itself.

6. The Executive Committee of the RFF passed a decision on 3 July 2019 (the "Appealed Decision") approving unanimously the request of the Second Respondent to use the name "Universitatea Craiova" in competition, subject to certain conditions. Said decision is being challenged by the Appellant in the present proceedings, together with the competence of CAS to rule on such a matter.

III. FACTUAL BACKGROUND

7. Below is a summary of the main relevant facts as established on the basis of the written submission of the Parties, the hearing and the evidence examined in the course of the proceedings. This background information is given for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion

A. BACKGROUND FACTS

8. The activity of the Football Club Universitatea Craiova, established in 1948, was pursued under a proprietor named by Football Club U Craiova SA and its affiliates until this organized framework seceded on 20 July 2011.

9. The Appellant Company then associated with the Football Club U Craiova SA in order to carry out the activity of the Football Club Universitatea Craiova.

10. On 9 April 2014, a dissolution of the Company, Football Club U Craiova SA, was initiated which eventually led to the dissolution of that Club. The Appellant alleges that a right to ownership of the activity of the Football Club Universitatea Craiova emerged in the patrimony of the Appellant thereafter.

11. The Appellant states that because the activity of the Football Club Universitatea Craiova had been in the possession and in the use of Football Club U Craiova SA, it was then legally transmitted to the Appellant. From this it follows that all the rights relating to the activities of the Football Club Universitatea Craiova were transmitted to the Appellant's patrimony as well. These rights include among others the right to exclusive use of both its own colours, logo/emblem and of the name under which it participates in a competition.

12. The Second Respondent was incorporated as a company on 24 July 2013 and became an affiliated member of the RFF on 14 August 2013.

13. The Second Respondent states that it is the depository of the sporting acquis of the historical Football Club Universitatea Craiova, founded in 1948, having the right to use and benefit from its crest, colours and name by means of a Partnership Agreement. This Partnership Agreement was concluded between the Second Respondent and "Clubul Sportiv Universitatea Craiova" on 8 July 2013 for a period of 15 years. Said Partnership Agreement concerns the combined trademark Club Sportiv Universitatea Craiova registered under number 115523/15.04.2011.

14. The Second Respondent is also the legal holder of further commercial trademarks and figurative elements duly registered before the remaining trademark office as follows:

    - U Craiova 1948 Club Sportiv under number 149318
    - Universitatea Craiova under number 155728

    These trademarks include the registration of their assigned colours, white and blue, as well as the symbol of the lion all registered as a community trademark before the EUIPO.

15. A long-term dispute has existed between the Appellant and Clubul Sportiv Universitate Craiova, with whom the Second Respondent signed the Partnership Agreement with regards to the use of the name, trademarks and identity of the said football club. There have been

numerous cases both civil and criminal before the Romanian Courts arising out of this long-term dispute.

B. Application before the Executive Committee of the Romanian Football Federation

16. An application was made by the Second Respondent to the Executive Committee of the RFF for approval that the Club would participate in the competitions organised by the RFF under the brand name "Universitatea Craiova" starting the following championship season. This application originally came before the Executive Committee on 13 June 2019, however, it was deferred to the next meeting of the Executive Committee on 3 July 2019.

17. The application to the Executive Committee was made under Article 2 (7) of the Regulations for the Organisation of Football Activity (ROFA). The provisions of Article 2 (7) reads as follows:

> "*The Clubs can request, in compliance with the procedure presented in Article 4 of this Regulation to participate in competitions organised by RFF/PFL under the name of a registered trademark, if the respective club holds the right of use. The use of a trademark of a sponsor or business partner of the respective club, for advertising and/or advertising purposes is not permitted. Also, it is forbidden to use a brand that has in its composition the name of a city other than the one where the club has its registered offices*"

18. On 1 July 2019, the Appellant opposed to the Second Respondent's request.

19. On 2 July 2019, the League of Professional Football (LPF) informed the RFF upon request, that it is their position that the application of the Second Respondent complies with the provisions of the regulations allowing a club to participate in a competition under the brand name that it holds.

20. On 3 July 2019 the Executive Committee made the following decision:

> "*[...] Approves by unanimous vote the request of U Craiova 1948 Club Sportiv SA provided that if a Court decision annulling the trademark registration suspending or limiting the right to use the trademark or annulling the trademark licensing agreement is delivered, the Club shall promptly return to the participation and competitions under the name registered with the Trade Registry Office.* [...]"

IV. Proceedings before the Court of Arbitration for Sport

21. On 23 July 2019, the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport (CAS) against the Appealed Decision, in accordance with Articles R47 and R48 of the 2019 edition of the Code of Sports-related Arbitration (the "CAS Code"). The Appellant nominated Dr. Jan Räker, Attorney-at-Law, Stuttgart, Germany, as Arbitrator.

22. On 9 August 2019, the Appellant informed the CAS Court Office about the fact that the DHL Parcel with the Appeal Brief, originally posted on 2 August 2019, had been returned to the Appellant on 8 August because of problems with missing documents and documents wrongly filled out at the Craiova DHL Office. The Appellant stated that the error was corrected and that the documents were reshipped to the CAS Court Office on the same date, thus on 8 August 2019. The Appellant asked the CAS Court Office, considering the exceptional circumstances independent of their will, to consider the second shipment of the same documents as being done within the time limit set. Said Appeal Brief was sent via DHL Couriers.

23. On 12 August 2019, the Second Respondent requested the CAS to consider the Appeal withdrawn. This by virtue of Article R51 of the CAS Code according to which the Appeal shall be deemed to have been withdrawn, if the Appellant fails to meet the time limit for submitting the Appeal Brief. The Second Respondent stated that the deadline to file the Appeal Brief ended on 5 August 2019. However, it was only filed on 9 August 2019, which is late and must therefore be considered as a withdrawal of the Appeal. The Second Respondent suggested that allowing the Appellant to continue the proceedings under those circumstances would amount to an unfair procedural advantage. It stated, however, that if the matter were to proceed, it would nominate Mr. Patrick Lafranchi, Attorney-at-Law, Bern, Switzerland, as Arbitrator.

24. On 13 August 2019, the First Respondent informed the CAS Court Office that it expressly objected to the late filing of the Appeal Brief and that, pursuant to Article R51 of the CAS Code, this procedure should be terminated. It suggested further that it had no objection to the Arbitrator appointed by the Second Respondent.

25. On 19 August 2019, the Second Respondent stated that pursuant to the DHL T&Cs, the return of the shipment was strictly due to the negligence of the Appellant. It reiterated that therefore, the Appeal Brief was filed late and the procedure should be terminated.

26. On 20 August 2019, the Appellant submitted a letter detailing why the provisions of Article R51 of the CAS Code are not applicable to the current matter and why the current proceedings must not be withdrawn.

27. On 23 August 2019, the Appellant requested that, pursuant to Article R32 of the CAS Code, an extension of the time limit to pay the advance of costs until the objection to the admissibility of the Appeal Brief has been be dealt with by the CAS.

28. On 23 August 2019, the CAS Court Office acknowledged receipt of the Appellant's request for an extension of the time limit and requested the Appellant to specify the duration of the extension of time needed.

29. On 26 August 2019, the First Respondent suggested that it was not acceptable that the Appellant would seek to make the payment of the advance of costs of the procedure conditional upon the objection to the admissibility of the Appeal Brief.

30. On this same day, the Appellant specified its request and asked for an extension of the time limit to pay the advance of costs until 6 September 2019.

31. Also on this same day, the CAS Court Office granted the extension of the time limit and informed the Parties that the President of the Appeals Arbitration Division, or her Deputy, would make a decision regarding the admissibility of the Appeal in due course.

32. On 10 September 2019, the CAS Court Office informed the Parties that the President of the CAS Appeals Arbitration Division had decided that the Appeal is *prima facie* admissible. It also stated that this is to be considered as a decision without prejudice to any final decision taken by the Panel on this issue, once constituted.

33. On 23 September 2019, the Second Respondent asked the CAS Court Office whether the Appellant had paid the advance of costs until 6 September 2019.

34. On 24 September 2019, the CAS Court Office informed the Parties that the Appellant had paid the totality of the advance of costs within the time limit set and requested the Respondents to submit, within 20 days of that date, their Answers.

35. On 11 October 2019, the Second Respondent requested, in accordance with Article R32 of the CAS Code, an extension of 5 days for the deadline to submit its Answer. On the same day, the request was granted by the CAS Secretary General.

36. On 14 October 2019, the First Respondent requested an extension of 5 days of the time limit to submit its Answer. The requested extension was granted on the same date by the CAS Secretary General.

37. On 15 and 21 October 2019 respectively, the First and the Second Respondent filed their Answers in accordance with Article R55 of the CAS Code.

38. On 28 October 2019, the CAS Court Office provided the Answers of both Respondents to all of the relevant Parties. The Parties were requested to inform the CAS Court Office by 4 November 2019 whether they prefer a hearing to be held in the matter or whether they wished the Panel to issue an award based solely on the Parties' written submissions. By emails dated 28 and 29 October 2019 respectively, both Respondents stated that they preferred a hearing to be held in the present matter.

39. On 30 October 2019, the CAS Court Office informed the Parties that the Panel to decide on this case was appointed as follows:

President:	Mr. H Pat Barriscale, Barrister, Limerick, Ireland,
Arbitrators:	Dr. Jan Räker, Attorney-at-Law, Stuttgart, Germany
	Mr. Patrick Lafranchi, Attorney-at-Law, Bern, Switzerland

40. On 12 November 2019, the Appellant requested that it would be allowed to submit new evidence (a FIFA decision passed in September 2019, and audio and video recording) to its file. In its request, it set out the basis upon which it sought to supplement its Appeal Brief.

41. On 20 November 2019, the CAS Court Office informed the Parties that the Panel found that the Appellant had failed to demonstrate exceptional circumstances which would allow it to provide new evidence pursuant to Article R56 of the CAS Code. Therefore, the Appellant's request was denied.

42. On 27 November 2019, the Appellant challenged all three members of the Panel based on Article R34 of the CAS Code.

43. On 29 November 2019 the CAS Court Office informed the Parties that the Panel had decided to hold a hearing on 9 January 2020 in Lausanne, Switzerland.

44. On 30 December 2019, the CAS Court Office informed the Parties that a Decision had been made by the President of the Challenge Commission of the International Council of Arbitration for Sport (ICAS) regarding the challenge lodged by the Appellant. The full Decision was provided to the Parties, stating *i.a.* the following:

    a. *The Petition for challenge against the nominations of Mr. H Pat Barriscale, Dr. Jan Räker and Mr. Patrick Lafranchi filed on the 27th of November 20191 by U Craiova 1948 SA is dismissed.*
    b. *The costs of the present Order shall be determined in the final award or in any other final disposition of this arbitration.*

45. On 7 January 2020, the CAS Court Office informed the Parties that it had received a letter from the Appellant dated that same day. Attached copies were provided for the Respondents' attention. In that letter, the Appellant requested to submit new documents in this matter. The Respondents were informed that they would be given the opportunity to comment on the admissibility of these documents at the outset of the hearing.

46. On 7 January 2020, the Appellant further submitted to the CAS Court Office that the present matter should be reassigned to the Ordinary Arbitration Division of CAS and it set out the reasons why it was making such a request.

47. On 8 January 2020, the CAS Court Office informed the Parties that the Panel had considered the matter. It found that no change of circumstances which commanded for the reassignment of these proceedings to the Ordinary Arbitration Division existed. The Appellant's corresponding request was therefore denied.

48. On 9 January 2020, a hearing was held in Lausanne, Switzerland. At the outset of the hearing, all Parties confirmed that they did not have any objection as to the constitution and

composition of the Arbitral Tribunal. In addition to the Panel Members, Mr. Fabien Cagneux, CAS Counsel, attended the hearing together with the following persons:

For the Appellant:

- Mr Mititelu Adrian as Administrator
- Mr Moice Mircea as Legal Counsel
- Mr Sorin Ion Cazacu as Interpreter
- Mr Preoteasa Gigel as Interpreter

For the First Respondent:

- Mr Razvan Burleanu as Legal Counsel
- Mr Adrian Stangaciu

For the Second Respondent:

- Mr Joseph Vandellos as Legal Counsel
- Mr Mihai Maxim as Legal Counsel.

49. The Parties had a full opportunity to present their case, to submit their arguments and to answer any of the questions posed by the President and the Arbitrators on the Panel.

50. During the hearing the Panel considered the admissibility of the documentation submitted by the Appellant on 7 and 9 January 2020 and asked the Respondents if they agreed with the admission of such documentation.

51. In this context, the Panel applied Article R56 of the CAS Code which states as follows:

> "*Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer.*"

52. In the matter at hand, there was no disagreement between all of the Parties in relation to the documentation which was filed late being admitted and considered by the Panel if necessary. Consequently, the documentation was allowed into evidence and considered available to the Panel for its consideration, if necessary.

53. In the context of the legal discussion about jurisdiction, the First Respondent requested to hand in to the Panel a declaration which had been completed by the Appellant on 31 July 2018. As there was no objection to the document, it was accepted into evidence as well.

54. The Appellant requested, during the course of the hearing, to be allowed to show video and audio recordings to the Panel which showed clearly the Appellant itself carrying out activities as Football Club Universitatea Craiova, which the Appellant suggested that it was entitled to do as these activities came under the Appellant's patrimony.

55. The Panel, initially, was not inclined to allow the video and audio recordings to be shown and some considerable legal arguments ensued as a result of the same. The Second Respondent at this stage readily conceded to the Panel that the Appellant did in fact carry out activities of Football Club Universitatea Craiova, but that it was not legally entitled to do so. It suggested there was no necessity for the video and audio recordings to be shown in the circumstances.

56. The Panel considered the matter further in private and agreed that it would allow the Appellant to show relevant passages of the video and audio recordings. At that stage, the Appellant deliberately refuse to show the recordings any longer.

57. Before the hearing was concluded, the Appellant sought to have the proceedings adjourned to allow it to challenge the appointment of the President of the Panel. This application was rejected and the matter proceeded to a conclusion. The Appellant was further advised that, if it wishes to challenge the nomination of the President of the Panel, it shall file a formal petition for challenge, in writing, and within the deadline provided for in Article R34 of the CAS Code.

58. Before the final conclusion of the hearing, the President asked the Parties whether they were satisfied that their right to be heard had been respected in these proceedings. Both the First and Second Respondent confirmed that their right to be heard had been respected. Despite repeatedly having asked questions and although these questions had regularly been approved by the Panel, the Appellant's representatives refused to confirm that its right to be heard had been respected. It confirmed that it would challenge the appointment of the President of the Panel as soon as possible.

59. On 14 January 2020, the Appellant challenged the appointment of Mr. H Pat Barriscale as the President of the Panel, pursuant to the provisions of Article R34 of the CAS Code. They set out therein the reason and the basis for such a challenge.

60. On 15 January 2020, the CAS Court Office acknowledged receipt of the Appellant's petition for challenge and invited the Respondents and the members of the Panel to file their observations in this respect.

61. On the same day, the Respondents filed limited observations and concluded to the dismissal of the Appellant's petition for challenge.

62. On 21 January 2020, Mr. H. Pat Barriscale submitted its reply to the petition for challenge, whereas Dr. Räker and Mr Lafranchi did not file any observations in this respect.

63. On 24 January 2020, the CAS Court Office forwarded the Respondents' and Mr. Barriscale's observations to the Appellant and invited the latter, by 31 January 2020, to state whether it maintained of withdrew its petition for challenge.

64. On 30 January 2020, the Appellant informed the CAS Court Office that it maintained its petition for challenge against Mr. Barriscale.

65. On 7 April 2020 the Parties were informed that the Challenge Commission of the International Council of Arbitration for Sport (ICAS) had made a decision in respect of the challenge raised by the Appellant. A full copy of this decision was provided to all of the Parties. The decision ruled as follows:

    a. *In light of the above the Commission does not consider that Mr H Pat Barriscale's independence and impartiality casts any doubt. Based on the above elements, the second challenge filed by U Craiova 1948 SA against the nomination of H Pat Barriscale is dismissed.*

    b. *According to standard CAS practice the costs of this part of the proceedings will be settled in the final award or in any other final disposition of this arbitration.*

V. SUBMISSIONS OF THE PARTIES AND PRAYERS FOR RELIEF

A. The Appellant

66. In its Statement of Appeal, the Appellant requests and argues, in sum, the following:

- *Primarily*, to deliver a preliminary ruling with regard to the CAS competence, or rather its lack of competence.

- According to the Appellant, in view of the compulsory provisions of the EU Regulations and of the other provisions being part of the legislative ensemble of Romania, and having in view that the EU norms do not recognize CAS competence to rule on civil matters in areas which fall under the exclusive jurisdiction of Courts of Law carrying out their activity in an organised framework by the member states of the EU and which enforce the EU Law on the basis of the direct effect principle of the EU norms, the First Respondent and/or CAS have no legal possibility to legislate in those areas.

- *Secondarily*, that if CAS finds it is competent to settle a case which, under the provisions of the EU Law falls within the exclusive competence of a Romanian Court, then in those circumstances, to admit the Appeal and to cancel in part the Appealed Decision.

- The Appellant supports this by arguing that in the absence of the agreement by the holder of the proprietary right for the activity of the Football Club Universitatea

Craiova (the Appellant), the First Respondent has no competence whatsoever to make decisions by means of which, to the detriment of the Appellant, the Second Respondent is put in possession of the activity of the Football Club Universitatea Craiova, a moveable asset under the protection of unquestionable and irrefutable European norms.

- The Appellant further argues that in 2013, the Second Respondent had been established solely for the purposes to steal the activity of the Football Club Universitatea Craiova and to achieve this goal associated with Clubul Sportiv Universitatea Craiova, which had never been affiliated to the Second Respondent. The Appealed Decision was aimed at putting the Second Respondent in possession of an "asset" being in the Appellant's patrimony and under the protection of the EU Rules.

- Further, the Appellant puts forward the suggestion that the right to challenge the Appealed Decision to a Court in Romania has, under the statutes of the First Respondent, been made conditional by the First Respondent, by imposing an obligation to file an Appeal before the CAS. It suggests that CAS would be competent to deal with the Appeal submitted to trial only on the basis of the provisions in the statutes of the First Respondent.

- The Appellant points out that the Appealed Decision, which the Appellant suggests was illegally passed by the First Respondent, is of civil character and impairs, in its substance, both the right to property of the Appellant and the right to access to economic activity in the European Union legally, publicly and under a proprietor name by the Appellant, with the participation of persons affiliated to the Appellant.

- The Appellant states that, pursuant to the provisions of Article 67 and Article 165 of the Treaty of the European Union and under Article 24.2 of Regulation 1215/2012 of the European Parliament and the Council of the European Union, CAS has no competence to analyse the validity of the Appealed Decision as such competence rests exclusively with a Law Court in Romania.

67. In its prayers for relief in the Statement of Appeal, the Appellant therefore requested the following:

- *the admission of the appeal;*

- *the partial annulment of the challenged decision (of 3 July 2019) with regards to the approval of the participation of the Second Respondent U Craiova 1948 Club Sportiv SA in the football competition under the name and with the colours of the football club Universitatea Craiova, established in 1948, whose activity was carried out continuously and publicly, under a proprietor name until 20 July 2011 in an organized framework by the affiliates of the First Respondent, namely Fotbal Club U Craiova SA, FC U Craiova SA and others; the activity of the football club Universitatea Craiova is currently carried out by the Appellant U Craiova 1948 SA;*

- *that the Respondents be ordered to pay for all the costs incurred by the current appeal procedure.*

68. In the Appeal Brief, the Appellant specified its prayers for relief and requested the following:

A) Mainly, to analyse the CAS competence in view of the compulsory provisions of the EU regulations and of the other provisions being part of the legislative ensemble of Romania, applicable in the matter pending before the court, and to deliver a preliminary ruling with regard to the CAS competence or lack of competence, having in view that the EU norms do not recognize CAS competence to rule on civil matters in areas which fall under the exclusive jurisdiction of courts of law carrying out their activity in an organized framework by the member states of the EU and which enforce the EU law on the basis of the direct effect principle of the EU norms.

B) Subsidiarily, in case CAS finds it is competent to settle a case which, under the provisions of the EU law falls within the exclusive competence of a Romanian court, to admit our [sic] appeal and to cancel in part the challenged decision with regard to the approval of the Respondent's participation U Craiova 1948 Club Sportiv SA to the football competition under the name and with the colors of Universitatea Craiova football club, first registered to the football competition in 1948.

B. The First Respondent

69. The submissions of the First Respondent may be summarized as follows:

- According to the First Respondent, the CAS is the competent authority to hear this Appeal. This is so particularly as Article 48 (8) of the RFF Statutes provides that any challenge to Executive Committee decisions is subject to the following provision:

  "[…] *Any dispute arising in connection with a decision passed by the Executive Committee must be first referred to the Court of Arbitration for Sport in Lausanne.*"

- The First Respondent argues that the Appellant has no *locus standi* in these proceedings as that issue is to be considered as a *res judicata* under CAS 2018/A/5883. According to that decision, the Appellant had not directly been affected by the Appealed Decision in a fashion that could be eliminated by its annulment. According to the First Respondent it follows from this case that the decision of the RFF Executive Committee does not affect the Appellant directly because the trademark used by the Second Respondent is not the property of the Appellant.

- The First Respondent further states that under the Appealed Decision, an application had been made by the Second Respondent to the RFF Executive Committee to decide on the basis of Article 2 (7) of ROFA, that the Second Respondent Club would be allowed to play in the competitions under the name of Universitatea

Craiova registered trademark. These regulations included certain conditions that needed to be fulfilled in order to grant the application. The Second Respondent had complied with all of those conditions. Article 2 (7) of the ROFA had never been challenged and in those circumstances and the Executive Committee of RFF was entitled to make the Appealed Decision. Further, when the decision of the Executive Committee of the RFF was being made, the Appellant's representatives on the Executive Committee made no objection to the decision thereby giving rise to another presumption that none of the Appellant's rights were being breached on that occasion.

70. On that basis the First Respondent submitted the following prayers for relief

a. To dismiss the appeal lodged by the Appellant against the appealed decision rendered by the Executive Committee of the RFF on the 3rd of July 2019;

b. To maintain and consider the appeal decision undisturbed;

c. Subsequently to deny all the prayers for relief made by the Appellant; and

d. To order the Appellant to pay all costs, expenses and legal fees relating to the arbitration proceedings before the CAS;

C. The Second Respondent

71. The submissions of the Second Respondent may be summarised as follows:

- The Second Respondent argues that it is the depository of the sporting acquis of the historical Football Club Universitatea Craiova founded in 1948, having the right to use and benefit from its crest, colours and name by means of a Partnership Agreement which it concluded on 8 July 2013 for a period of 15 years with Clubul Sportiv Universitatea Craiova.

- It states that the Partnership Agreement these rights are based on concerns the combined trademark club Sportiv Universitatea Craiova registered under number 11552315.04.2011.

- The Second Respondent also stresses that it is the legal holder of two further commercial trademarks and figurative elements duly registered before the Romanian Trademark Office as follows:

  - U Craiova 1948 Club Sportiv under registration number 149318/19.01.2017
  - Universitatea Craiova registered under number 155728/13.07.2018

The above-mentioned trademarks include the registration of their assigned colors that are white and blue as well as the symbol of the lion.

- The Second Respondent further suggests that there has been a longstanding dispute between the Appellant and Clubul Sportiv Universitatea Craiova with regards to the use of the name, trademarks and identity of the football club. It argues that these disputes had come before the Romanian State Courts on three occasions in November 2015, June 2016 and September 2017. Through those three decisions, the Romanian Courts have recognised the exclusive right of Clubul Sportiv Universitatea Craiova to use the name, colours and brand of Clubul Sportiv Universitatea Craiova and annulled any pretention of the Appellant in that regard.

- The Second Respondent then refers to the well-established jurisprudence of the CAS, particularly in relation to Article R58 of the CAS Code, when pointing out that by submitting its Appeal in front of the CAS, the Appellant not only acknowledges the competence of CAS to adjudicate, but also accepts to submit to dispositions of Article R58 of the CAS Code in order to determine the applicable law to decide on the substantial issues of the dispute.

- The Second Respondent also contends that the Appellant filed its Appeal Brief late and that therefore, the Appeal must be dismissed from the outset on admissibility grounds and Article R51 of the CAS Code.

72. On this basis the Second Respondent submitted the following prayers for relief:

a. *To dismiss in full the appeal and confirm the decision of the RFF Executive Committee of the 3rd of July 2019;*

b. *To condemn the Appellant to the payment of all costs related to the present arbitration proceedings;*

c. *To condemn the Appellant to the payment of a sum of €6,000.00 in order to pay the defence fees incurred by the Second Respondent as a consequence of the present procedure*

VI. JURISDICTION

73. The question whether or not the CAS has jurisdiction to hear the present dispute must be assessed on the basis of the *lex arbitri*. As Lausanne, Switzerland, is the seat of the arbitration and not all Parties are domiciled in Switzerland, the provisions of the Swiss Private International Law Act ("PILA") apply, pursuant to its Article 176 (1). In accordance with Article 186 of the PILA, the CAS has the power to decide upon its own jurisdiction ("*Kompetenz-Kompetenz*").

74. Article R47 CAS Code provides as follows:

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

75. Article 48 (8) of the Statues of the Romanian Football Federation 2018 edition (RFF Regulations) states as follows:

> "[...] *any dispute arising in connection with a decision passed by the Executive Committee must be first referred to the Court of Arbitration for Sport in Lausanne.*"

76. The Appellant states that it was in full compliance with Article 48 (8) RFF Regulations and had lodged the appropriate Appeal against the Appealed Decision within the time prescribed.

77. The jurisdiction of CAS is at the same time disputed by the Appellant itself, who argues that it had brought this Appeal properly before the CAS and that it is entitled to the decision which it had sought: that the CAS has no jurisdiction and/or competence to hear this procedure in the circumstances. The Appellant refused/failed to sign the Order of Procedure which was signed prior to the hearing by both the First and Second Respondents. However, in this procedure, the Appellant is not challenging Article 48.8 RFF Regulations or indeed any other part of these regulations.

78. On behalf of the First Respondent, it is argued that it is clear under the Regulations and Article 48 (8) RFF Regulations in particular, that CAS has full jurisdiction to deal with this matter. In this context, the First Respondent refers to the declaration signed by the Appellant on 31 July 2018. The First Respondent maintains that every club participating in its leagues and/or competitions had to sign this declaration before being entitled to participate.

79. The Panel notes that, *inter alia*, the declaration contained:

- The acceptance of the obligations stipulated by the RFF Regulations;
- An undertaking to observe the statutes, regulations, directives and decisions of FIFA, UEFA and RFF to ensure that the same were also observed by its members, clubs, officials and players;
- The recognition of the authority of the Court of Arbitration of RFF (if applicable) and the Court of Arbitration for Sport in Lausanne according to the RFF Regulations.

80. On behalf of the Second Respondent, it is argued that the Appellant has no basis upon which to challenge the competence of CAS as the competence of the latter is clearly set out in Article 48 (8) of the RFF Regulations. If the Appellant wished to challenge the provisions of those regulations, then this was not the forum for it to do so. As the Appellant had not challenged those regulations, the Second Respondent states that CAS has jurisdiction to deal with this matter in the circumstances.

81. Notwithstanding the challenge by the Appellant in this regard, the Panel is satisfied that the Appellant had consented to the applicability of the RFF Regulations by signing the above-mentioned declaration. The clear and unambiguous provision of Article 48 (8) RFF Regulations provides jurisdiction for CAS, which is why the Panel finds that it can adjudicate and decide on the present dispute.

VII. ADMISSIBILITY

82. Article R51 of the CAS Code states as follows:

> "*Within ten days following the expiry of the time limit for the appeal, the Appellant shall file with the CAS Court Office a brief stating the facts and legal arguments giving rise to the appeal, together with all exhibits and specification of other evidence upon which it intends to rely. Alternatively, the Appellant shall inform the CAS Court Office in writing within the same time limit that the statement of appeal shall be considered as the appeal brief. The appeal shall be deemed to have been withdrawn if the Appellant fails to meet such time limit.*"

83. There is a dispute between the Parties as to whether the Appeal Brief had been filed within the deadline of 10 days as set out above. A preliminary objection had been raised by both the First and Second Respondents in detail before the formal constitution of this Panel.

84. The Appellant is clear that the Appeal Brief was sent via DHL to the CAS Court Office on 2 August 2019. The 10-day period allowed under Article R51 had not expired until 5 August 2019. The Appellant was made aware that the said package had been returned to DHL in Bucharest on 6 August 2019. Such notice was not received by the Appellant until 8 August 2019. The Appellant immediately sent the Appeal Brief back to the CAS Court Office that same day by way of amended documentation.

85. The Appellant argues that the problem arose by reason of an employee of DHL Offices in Craiova and it had been that person who had made a mistake with the paperwork. The Appellant argues that there was no negligence on its part or any intention of misleading the Respondents in any way. There had been no prejudice whatsoever to the Respondents and the Appellant did not get any unfair procedural advantage as a result of the error on the part of DHL.

86. The First Respondent states that the Appellant's Appeal Brief was filed late by reason of the fact that the documents completed on the Appellant's behalf to submit the Appeal Brief were incorrect and that this was the responsibility of the Appellant. The First Respondent argues that this was not the fault of the employee in DHL Offices and that the ultimate responsibility of the same rests with the Appellant. Mention is also made that there were different weights on the two packages, the first which was sent allegedly on 2 August 2019 and the second package sent on 8 August 2019. The First Respondent suggests that the conclusion of this should be, pursuant to R51 of the CAS Code, that the procedure is to be terminated.

87. The Second Respondent argues that the return of the shipment by DHL was due to the negligence of the Appellant. The reasons given for the return of the DHL package were as follows:

- The set of documents were incomplete;
- The set of documents was wrongly filled out, not having a declared value;
- The AWB was processed by a legal person and the accompanying document of the package was made by a natural person.

88. The Second Respondent suggests that these reasons were all due to the fault of the Appellant and as a result of the same, the Appeal Brief was filed late. Therefore, the Appeal should not be allowed to proceed and the procedure should be terminated.

89. The Panel has considered the matter carefully and is satisfied that genuine and *bona fide* efforts were made by the Appellant to submit the Appeal Brief within the time limit prescribed. The Panel finds that the return of the package to the Appellant is to be attributed to the negligence of the DHL personnel. Ultimately, the Appeal Brief was received late at the CAS Court Office, but no prejudice to the Respondents or unfair advantage to the Appellants was suffered/gained as a result. The Panel therefore considers that the negligence of DHL cannot be held against the Appellant. Finally, the Panel observes that the Appellant re-sent the package to CAS with no undue delay upon becoming aware of the situation.

90. In the circumstances, the Panel is satisfied that the Appeal Brief was filed within the prescribed time.

VIII. APPLICABLE LAW

91. Article R58 of the CAS Code provides as follows:

> "*The Panel shall decide the dispute according to the applicable regulations and subsidiarily 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 that the Panel deem appropriate. In the latter case, the Panel shall give reasons for its decision.*"

92. In the course of its detailed submissions, the Appellant suggests that in relation to the consideration of the applicable law and regulations, consideration has to be given to the regulations of the European Parliament and of the Council of the European Union, Article 1 of Protocol 1 and Article 13 of the Convention for Human Rights and Fundamental Freedoms, Article 17 of the Charter of Fundamental Rights in the European Union, Article 6, Article 67 and Articles 165 of the EU Treaty together with Articles 5, 11, 218, 555, 1255 and 1325 of the Romanian Civil Code.

93. In particular, the Appellant states that both Parties are of Romanian nationality and that there is no question of a dispute with foreign elements. It refers to Article 1 PILA that speaks of litigating parties that do not have the same nationality, which is not the case here.

94. According to the Appellant, the arbitral tribunal shall rule according to the law chosen by the Parties, or in absence of such choice, according to the law with which the action is most closely connected (as follows from Article 178 (4) PILA, which it therewith seems to consider being applicable). According to the Appellant, the statutes and the regulations referred to by CAS are subsidiary to that law, whereas the law relied on by the Appellant has a principal character.

95. Reference is further made to Article 2557 of the Romanian Civil Code, which provides rules for establishing the applicable law to an international private law relation. According to this provision, the application of the foreign law shall be removed if it is in breach of the public order of the Romanian international private law or if the foreign law became competent by breaching the domestic law. In case the application of the foreign law is removed, the Appellant states that Romanian law shall be applied. The Appellant also stresses that public order is violated if the application of the foreign law leads to a result incompatible with fundamental principles of the Romanian law or of EU law and human fundamental rights, which it considers to be the case here.

96. Therefore, according to the Appellant, Romanian law is applicable to the dispute at hand.

97. However, the Appellant does accept that, under the Statutes and Regulations of the RFF, the right to challenge the decision of the Executive Committee of the RFF to a Romanian Court, was made conditional by the First Respondent, following the obligation to file an Appeal with CAS.

98. Consequently, by submitting its Appeal to the CAS, the Appellant not only acknowledges the competence of the CAS to adjudicate on the dispute, but also accepts the provisions of Article R58 in order to determine the applicable law to decide on the substantial issues of the dispute.

99. According to CAS jurisprudence and legal doctrine, the starting point for determining the applicable law is thus firstly the *lex arbitri*, i.e. the arbitration law at the seat of arbitration. Since the CAS has its seat in Switzerland, Swiss arbitration law, and the PILA in particular, applies (see Haas, Applicable law in football-related disputes - The relationship between the CAS Code, the FIFA Statutes and the agreement of the parties on the application of national law, in CAS-Bulletin 2015/02 p. 7 f).

100. Article 187 (1) of the PILA provides - inter alia - that '*the arbitral tribunal shall rule according to the law chosen by the parties or, in the absence of such choice, according to the law with which the action is most closely connected*'... *According to the legal doctrine, the choice of law made by the parties can be tacit and/or indirect, by reference to the rules of an arbitral tribunal.*" (CAS 2014/A/3850, no. 45 et seq.; see also Mavromati/Reeb, The Code of the Court of Arbitration for Sport, 2015, Art. 58 no. 101)

101. Thus, in CAS proceedings, the Parties have invariably made a choice of law, since the agreement on the CAS as the Court of Arbitration always also entails an implicit (and indirect) agreement in relation to the provision of Article R58 of the CAS Code.

102. This implicit agreement on Article R58 of the CAS Code takes precedence over any explicit choice of law by the Parties and restricts the autonomy of the Parties by providing a mandatory hierarchy of the applicable legal framework. Thus, the Parties can only determine the subsidiarily applicable law while under Article R58 of the CAS Code, the "applicable regulations" always primarily apply, regardless of the will of the Parties (see Haas, Applicable law in football-related disputes - The relationship between the CAS Code, the FIFA Statutes and the agreement of the parties on the application of national law, in CAS-Bulletin 2015/02 p. 7 f).

103. The Panel is satisfied that it is a pre-condition to any challenge to a decision of the Executive Committee of the RFF, that it must be first referred to the CAS. The Appellant accepted this condition and availed of it, so is therefore bound by all of the provisions of the CAS Code in the circumstances.

104. In all of those circumstances, the Panel is satisfied that the Statutes and Regulations of the Romanian Football Federation are to be applied primarily and Romanian Law subsidiarily, if necessary.

IX. MERITS

105. The Appellant strongly argues that it is the universal successor of the Football Club Universitatea Craiova which was set up in 1948 and that "the activity" of said club was pursued up until 2011 under a proprietor named Football Club Craiova SA and its affiliates. This changed in July 2011 when the First Respondent disaffiliated Fotbal Club U Craiova SA and as a result thereafter, it had very significant debts which led to its dissolution in 2013. The Appellant company was established in 2013 and associated with the company Fotbal Club U Craiova SA in order to carry out the activity of the Football Club Universitatea Craiova, in case the affiliated Club was dissolved, which subsequently happened. Thereafter, the Appellant argued that a right came into existence in the Appellant's patrimony, over the activity of the Football Club Universitatea Craiova.

106. It is suggested by the Appellant that in 2013, the Second Respondent was set up solely for the purpose of stealing the activity of the Football Club Universitatea Craiova and to this end associated with a third party, which was never even affiliated to the RFF.

107. The First Respondent requests that the Appeal shall be dismissed, as there is no realistic ground for this Appeal and as nothing particular had been put forward to undermine Article 2 of the Regulations for the Organisation of Football Activity (ROFA). This Article was and still is in force as it has not been challenged either before the RFF or the Romanian Courts.

108. The First Respondent points out that there is nothing retroactive in the Appealed Decision of 3 July 2019 and that it only concerns the Club "going forward". The decision is clearly conditional on the trademarks which are held by the Club and if there would be any change in those circumstances, the decision made provision for the same. Other clubs within the Romanian Football Federation have made use of this provision under Article 2 of ROFA, too. The First Respondent states that it is in a position to provide the names of three other clubs who had used exactly the same provisions.

109. The Second Respondent argues that the Appellant has not discharged the burden of proof which is upon it as far as this case is concerned.

110. It emphasized that it had complied with all of the requirements necessary before the Executive Committee of the RFF and was thus entitled to pass the Appealed Decision on 3 July 2019 as it stands. The Second Respondent reiterates that the Appealed Decision was correctly made and that there was no basis shown to overturn or change the same.

111. It concludes by emphasizing that it owns the appropriate trademarks and had entered into the necessary licensing agreements to give it the legal entitlement to carry on the activity in dispute.

112. The Panel carefully analyzed these arguments put forward by the Parties in order to assess whether the Appealed Decision has any flaws.

113. It observes that the decision of the ExCo of the RFF is based on Article 2 (2) and 7 ROFA. This Article reads as follows:

> "*(1) ... clubs may submit a request to RFF to change their name, under which they appear as affiliated members, only during the period of time [...]*
>
> *(2) The name of the club cannot include the name of another city other than the one in which the club has its registered headquarters. In order to approve the change of name, the club must obtain a prior mandatory notice from the RFF, otherwise, its application will be rejected. The prior notice can be issued by RFF up until 30 June of the competition year, provided the applicant submits the new name reservation issued by the Ministry of Justice, respectively the availability of the name issued by National Office for Trade Registry. [...]*
>
> *(7) The club can request, in compliance with the procedure presented in art. 4 of this regulation, to participate in competitions organized by RFF/PFL under the name of a registered trademark, if the respective club holds the right of use. The rejection of a club's request to compete under a brand name other than the name of the legal entity – affiliate member of the RFF determines the participation in competitions of that affiliate member under the name with which the legal entity is registered in the public registers (...).*"

114. As this provision has never been challenged, the Panel notes that it stands valid as it is and an application of a club is to be assessed accordingly. The Panel further notes that it is not

disputed that the ExCo was the competent body to issue the decision. The question is thus, whether the criteria set out in the provision were met or not.

115. In its response of 2 July 2019, upon the request for clarification of the First Respondent with regard to the upcoming RFF ExCo meeting, the Romanian Professional Football League ("PFL") elaborated that it considered the following regulatory conditions stipulated by Article 2 (7) ROFA for a club to participate in competitions under the brand name for which it holds a right of use to be relevant:

- *The trademark must be registered as required by applicable laws;*
- *The Applicant must have the right to use the name of the trademark;*
- *The procedure provided by art. 2 para 4 of the ROFA must be observed;*
- *The application has to respect the interdictions imposed by art. 2 (7) of the ROFA (not to use the trademark for advertising purposes; not to be included in the trademark name the name of another city than the one where the club is located in its registration documents).*

116. It has not been disputed by the Appellant that these are the criteria that need to be met or that these criteria should in any way lead to an arbitrary outcome when deciding upon a request such as the one brought forward by the Second Respondent.

117. The Panel finds that the criteria set out above are in line with Article 2 ROFA. Furthermore, it considers that all these criteria are met here as the Second Respondent is the trademark holder and consequently has the right to use the name of the trademark. The Panel does not see any flaws regarding the requirement of observing the procedure provided by Article 2 (4) ROFA. The function of the Panel is to review the decision of the First Respondent and no to solve domestic trademark disputes.

118. The Panel does therefore deem the decision to be lawful, especially considering that there is a condition mentioned in the Appealed Decision itself, which would protect the Appellant from any possible misuse or violation of the trademark by third parties, if that were the case:

> "*In case a legal ruling is issued cancelling the trade mark, suspending or limiting the right to use such trade mark or cancelling the contract for the use of the trade mark, the club making such request shall immediately revert, during competitions, to its own name as registered in the records of the Trade Register*"

119. However, the Appellant never argued that this condition was met and that therefore, the Appealed Decision should be overturned. The Panel does not see any reason why it should choose such an approach as there is neither any argument nor any evidence put forward by the Appellant in this regard. The Panel therefore finds that that the condition laid out above is not fulfilled at this point.

120. In the circumstances, the Panel is satisfied that the Appealed Decision was properly and correctly made and that there was no basis for changing or overturning the same.

X. CONCLUSION

121. Based on the foregoing the Panel finds that:

a. The CAS has jurisdiction to hear this Appeal and is competent to do so.

b. The Appeal Brief was filed within the prescribed time, and that the Appeal is thus admissible.

c. The Appealed Decision was properly and correctly made and there is no basis for changing or overturning it.

XI. COSTS

122. Article R64.4 of the CAS Code provides the following:

> "*At the end of the proceedings, the CAS Court Office shall determine the final amount of the costs of the Arbitration which shall include: The CAS Court Office fee, administrative costs of CAS calculated in the CAS Scale, the costs and fees of the Arbitrators, the fees of the Ad-hoc Clerk, if any, calculated in accordance with the CAS fee scale, a contribution towards the expenses of the CAS and the costs of the witnesses, experts and interpreters.*
>
> *The final account of the Arbitration costs may either be included in the Award or communicated separately to the parties. The advance costs already paid by the parties are not reimbursed by the CAS with the exception of the portion which exceeds the total amount of the arbitration costs.*"

123. Article R64.5 of the CAS Code states as follows:

> "*In the Arbitral Award, the panel shall determine which parties shall bear the arbitration costs or in which portion the parties shall share them. As a general rule, the panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and in particular, the costs of witnesses and interpreters. When granting such a contribution, the panel shall take into account the complexity and outcome of the proceedings, as well as the conduct and financial resources of the parties.*"

124. Having taken into account the outcome of the arbitration, in particular the fact that the Appellant's appeal has been dismissed, the Panel considers it reasonable and fair that the

costs of the arbitration, in an amount which will be notified to the Parties by the CAS Court Office, shall be borne by the Appellant in their entirety.

125. Furthermore, pursuant to Article 64.5 of the CAS Code and in consideration of the complexity and outcome of the proceedings as well as the conduct and financial resources of the Parties, notably the fact that the Appellant filed two separate petitions for challenge, that the Appellant's Appeal has been dismissed in its entirety, that the First Respondent was represented by its Head of Legal but also hired an external counsel and that the Second Respondent incurred expenses in being present at the hearing, the Panel rules that the Appellant shall pay a contribution towards the legal fees and other expenses incurred in connection with the present arbitration proceedings in the amount of CHF 5,000 (five thousand Swiss francs) to the First Respondent and CHF 5,000 (five thousand Swiss francs) to the Second Respondent.

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ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Court of Arbitration for Sport has jurisdiction to hear the appeal filed on 23 July 2019 by U Craiova 1948 SA

2. The Appeal filed on 23 July 2019 by U Craiova 1948 SA against the decision rendered by the Executive Committee of the Romanian Football Federation issued on 3 July 2019 is dismissed.

2. The Decision issued on 3 July 2019 by the Executive Committee of the Romanian Football Federation is confirmed.

3. The costs of the arbitration, to be determined and served on the Parties by the CAS Court Office, shall be borne by U Craiova 1948 SA in their entirety.

4. U Craiova 1948 SA shall bear its own legal fees and is ordered to pay an amount of CHF 5,000 (five thousand Swiss Francs) to the Romanian Football Federation and an amount of CHF 5,000 (five thousand Swiss Francs) to U Craiova 1948 Club Sportiv SA being the contribution towards their legal expenses and other expenses incurred in connection with these arbitration proceedings;

5. All other and further motions and prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 16 October 2020

THE COURT OF ARBITRATION FOR SPORT

Mr. H. Pat Barriscale
President of the Panel

Dr. Jan Räker
Arbitrator

Mr Patrick Lafranchi
Arbitrator