

ROMANIA  
HIGH COURT OF CASSATION AND JUSTICE  
FIRST CIVIL DIVISION

Decision No. 1215

Case No. x/3/2017\*

Public hearing of 4 June 2025

The Court has proceeded to examining the second appeal lodged by the appellant-defendant Fotbal Club FCSB S.A. (formerly Fotbal Club Steaua București S.A.) against the interlocutory order of 18 September 2023 and the Decision No. 1285 A of 23 October 2023 handed down by the Bucharest Court of Appeal – Third Division for Civil Matters and Cases Involving Minors and Family, in Case No. x/3/2017\*.

The calling of the case is answered by attorneys-at-law A and B, as retained counsels of the appellant-defendant Fotbal Club FCSB S.A., and by the in-house counsel C, as representative of the respondent-claimant Clubul Sportiv al Armatei “Steaua București”; the intervening respondents Asociația Steaua 1947 LTD and Asociația Salvați Steaua are missing.

The subpoena service procedure has been duly completed.

The assisting magistrate delivers a presentation of the case and states that the case is in its second procedural cycle, as the second appeal has been upheld in principle with the interlocutory order dated 12 February 2025.

D points out that, according to the assisting magistrate’s report, the second appeal is lodged also against the interlocutory order of 18 September 2023; however, from the report on admissibility in principle and the interlocutory order of 12 February 2025 it has been noted that the remedy has been pursued only against the decision.

The High Court notes that the interlocutory order of 18 September 2023 represents the interlocutory order on the oral arguments, which is an integral part of the challenged decision covered by this second appeal.

D requests that the documents on record be admitted into evidence in support of the second appeal. Given the procedural framework and the stage of the second appeal, where documents are the only admissible evidence, D requests that a letter be sent to the Romanian Football Federation, a piece of evidence that all the courts have rejected before.

The High Court finds that the appellant makes a request which is the subject of the appeal grounds, as the party has no documents qualified of new evidence to produce, as regulated by Article 492 of the Code of Civil Proceedings.

D shows that this request has been rooted in the provisions of Article 293 of the Code of Civil Proceedings, bearing in mind that this information is held by third parties, and explains that the request was made before the courts which heard the substance of the case.

The in-house counsel C requests that the letter sought to be sent to the Romanian Football Federation and to the Professional Football League be dismissed as inadmissible evidence, since, in accordance with Article 492 of the Code of Civil Proceedings, the court of appeal may not produce new evidence, other than any new documents which the parties may file, under penalty of forfeiture, together with the second appeal or the statement of defense.

D contends that the need for these documents also stems from the evidence produced one day earlier, which is new evidence, namely UEFA’s position of 2 June 2025, when the Association included FCSB’s logo in the position for year 1986. Since UEFA retroactively recognizes FCSB’s record of achievements, history and legacy (the “honors”), he considers that it extremely useful for the Romanian Football Federation also to articulate its position on the matter.

The in-house counsel C requests that the request be rejected as inadmissible.

After having deliberated on the request to send a letter to the entities indicated in the second appeal application, the High Court shall dismiss it under the regime of new evidence in appeals in cassation, as regulated by Article 492 of the Code of Civil Proceedings, which refers to the admissibility of new documents to be filed enclosed to the second appeal or before the first hearing date. It further holds that these letters had been requested in the first procedural cycle as well, and were then repeated during the appeal retrial proceedings, but they were all dismissed in the interlocutory order on the oral arguments, which is precisely the subject-matter of the second appeal.

There being no other preliminary applications to be filed, the High Court finds the case ripe for judgment and grants the floor on the second appeal.

After having been given the floor, attorney-at-law A requests that the remedy be granted allowed to the effect of setting aside the entire challenged decision; hence, upon retrial, the joined claim should be granted in full and the main claim dismissed. He further requests that the delivery of the judgment be postponed in order to allow them to file written submissions.

With regard to acquiescence, he states that the appellate court is in breach of the provisions of Article 436 of the Code of Civil Proceedings, because the ground of appeal provided by Article 488(1)(5) of the Code of Civil Proceedings is applicable, considering that it was repeatedly contended before the courts which heard the substance of the case, and it was also held in the interlocutory order covered by this appeal, that it is only a partial acquiescence, since the opposing party's retained counsel has acknowledged, both orally before the court and in the statement of defense, that he does not contest that the honors belong to the FCSB team after 2003.

When asked by the High Court which honors have been admitted to by the opposing party, attorney-at-law A states that these are the honors after 2003, so that the court had the possibility to deliver a partial judgment for the period 2003–2017.

The High Court instructs the appellant's representative to address, when making their final submissions, also the defenses raised in the statement of defense filed in the second appeal proceedings on this first ground, namely misapplication of the provisions concerning the partial admission of the honors.

D states that the position of the opposing party's representative is wavering; specifically, while they admit to not having challenged the appellant's honors for the period 2003–2017 before the court, later they wrote in the statement of defenses that they had never recognized it. The appellate court found by an interlocutory order which no second appeal has been lodged against that the opposing party admitted, *i.e.* partially acquiesced, to the honors after 2003.

At the High Court's request to explain whether the honors belong to FCSB or to the former team, attorney-at-law A states that the team is one single entity the continuity of which has been ensured; hence, they hold unique honors.

The High Court notes that the appellant's representative contends that there was a partial admission precisely to the effect of the appellant's asserted claim.

D confirms, and adds that it concerns at least the period after 2003, considering that, as long as continuity has been ensured for the football team, their honors cannot be partitioned.

With regard to the second ground of appeal, *i.e.* that concerning the failure to comply with Article 501(3) of the Code of Civil Proceedings, reading that, upon retrial, the court shall hear the case again, he argues that, in the case at hand, the appellate court did not rehear the case, but instead copied paragraphs from the judgment of the first court of cassation, stated that it understood them, but it nevertheless failed not comply with them. He points out that the appellate court should have tried the case through the lens of its own legal reasoning, but such reasoning is missing, and the procedural framework has been misstated. He adds that, under the procedural framework established by the joined claim, it is requested to be determined that the team's honors belong to the appellant, as it is logical that, since the team was created in 1947 and the statement of claim was filed in 2017, the entire honors are claimed.

He further states that the first court of cassation recommended that the appellate court would clarify the matter aspect, but the latter referred to the time period 2003–2017 without providing any reasons whatsoever in support of such reference and this qualifies as a breach of Article 501(3) by reference to Article 488(1)(5) of the Code of Civil Proceedings because there is no actual judgment in the case.

He goes on to argue that the pleas of lack of interest and inadmissibility were raised at all previous stages of the proceedings, but no court ruled on them. He considers that a claim made in 2017 for a team's honors between 1947–1988 cannot be justified, as there is no practical benefit for the present and there is no evidence whatsoever in support thereof. He further states that these pleas were raised, and while the court does reiterate them in the appealed interlocutory order, it fails to rule thereupon, just as in the first procedural cycle.

As regards the breach of the provisions of Article 249 of the Code of Civil Proceedings in relation to Article 488(1)(5) of the Code of Civil Proceedings, he states that, in civil proceedings, the court grants claims that are effectively made, as long as such claims are supported by evidence; however, in this case, the appellant's requests for evidence were always denied, which qualifies as a breach of the right to fair trial and to effective remedy. He considers that the judgment is flawed because the defendant was unable to secure their evidence, as the courts which heard the substance of the case wanted proof that the transfer had been contract-based; however, such a transfer can also be

completed by other means, not only under a contract. The parties' intention was to transfer (and this can be proven by the letters sent to the Romanian Football Federation and by taking the remaining evidence consisting of an accounting expert report), since the opposing party argues to have an interest in the assets, and an expert report could have determined whether this is present in the company's assets from an accounting perspective, when it came into being, and whether and when it came to an end. Such a failure to act upon their requests for the taking up of evidence stands for a denial of the appellant's fundamental rights.

He further argues that this also infringes the provisions of Article 58 of the Statute of the Romanian Football Federation where it is clearly laid down that disputes between affiliated clubs shall be decided by committees; in this regard, he raised the lack of jurisdiction of the Romanian courts under Article 488(1)(3) of the Code of Civil Proceedings. He explains that he raised this plea before the court which heard the substance of the case, which denied it without providing any reasons or explanations as to why the Romanian courts would have jurisdiction.

The High Court instructs the appellant's representative to explain whether, in their view, this ground has decided one way or the other in the cassation decision in the first procedural cycle.

D states that this is a ground of public policy which was reiterated also in the second procedural cycle, on appeal, just like the pleas of lack of interest and inadmissibility. He adds that a ground of public policy may be raised by any party at any stage of the proceedings, and that all these matters stand for grounds of illegality over and above the grounds for cassation.

He further argues that the positive effect of High Court of Cassation and Justice's Decision No. 3425/2014 has been wrongly held, thereby infringing Article 430 of the Code of Civil Proceedings in relation to Article 488(1)(7) of the Code of Civil Proceedings. He explains that this judgment states that the club's assets shall not be transferred in full to FCSB, while in this case it is submitted that the honors are not a patrimonial right, so that the positive effect of a judgment relating to assets cannot be applicable.

Moreover, he considers that the provisions of Article 5(3) of the Code of Civil Proceedings are infringed by reference to Article 488(1)(5) of the Code of Civil Proceedings, in that the principle of legality is misapplied, namely the subject-matter of the case is changed in the appeal proceedings by misinterpreting the scope of the relief sought in the joined claim. He states that the appellant did not refer to the period 2003–2017, which the court latter erred in holding also as the period 2013–2017, because none of these matters were reviewed by the appellate court so as to cast light on the appealed judgment. Nor is the legal significance of sport and competition-participation continuity clarified, or what their legal effects are and what happens absent such continuity, for instance assuming that the team ceased to exist in 2003; hence, the question that appeared, *i.e.* whether a declaratory action could still have been brought up, namely whether the opposing party would still have had any legitimate interest to assert, remained unanswered by the courts which heard the substance of the case.

With regard to the final ground of appeal, which concerns violation of the provisions of Law no. 69/2000 and of Law no. 29/1967 on the honors, he argues that there is no indication of the legal nature of the honors, or of the rights and legal relationships that arise, change, or come to an end between the parties, nor is there any explanation provided as to how and why the honors are transferred only under contract and not also by other means, as the evidentiary thesis relies on the uniqueness and indivisibility of the honors of a club that has not ceased to operate. He explains that, as long as continuity has been ensured for the club, not for the legal entity that owns the club, the honors are unique and belong to the successor, but the court failed to act upon this request.

After having been given the floor on the final ground of appeal rooted in the provisions of Article 488(1)(8) of the Code of Civil Proceedings, attorney-at-law B contends that a solution can only be delivered on this matter of a number of matters of law which have not hitherto been referred to the court are addressed, as well. First of all, there must be a determination on the legal nature of the right over the honors; hence, he requests that account be taken of the fact that no definition of the sporting honors can be found in either the legislation or the doctrine and either at present or by reference to 1998. Nevertheless, rules were in place both in 1998 and thereafter, including a rich case-law of the Court of Arbitration for Sport and of the jurisdictional bodies affiliated to UEFA, which have dealt with the matter of the sporting honors under many decisions passed to that effect.

To his mind, the appellate court failed to identify and define what the right over the honors is, and although it did rely on statutory and regulatory provisions addressing the right over the honors, how it is transferred and how the transfer of the right over the honors is proven, it eventually did not take them into account. He points out that all changes to the legal structure occurred as a result of legislative amendments, and a shift from amateur to professional football occurred in 1998, as imposed by the rules and regulations of the Union of European Football Associations, which the Romanian Football Federation adhere to by way of affiliation; hence the changes to the legal status were imposed by legislation and did not occur because representatives of the Ministry of Defense intended to spin off the football section.

With regard to these rules which govern the transfer of the right over the honors, he requests that account be taken of the fact that it is necessary to clarify the transfer of the right over the honors, which entails certain requirements under the rules in force in 1998 and thereafter, namely requirements to documents *ad validitatem* and *ad probationem*, since the entire framework of the opposing party's defense boils down to the assertion that there is no evidence and no document concerning the taking over of the right over the honors.

He points out that such evidence does exist, and it is a tangible piece of evidence, namely UEFA's reply of 2 June 2025 showing that FCSB, by continuing the football activity and the sporting activity of Steaua București football team, also holds the legal honors. He explains that, at UEFA level, the legal record of honors, which in Romania, being unregulated, may take on an abstract character, has extremely concrete implications in European competition. He requests that account be taken of the fact that the honors are factored into the UEFA coefficient, an algorithm based on the results achieved by the sports team participating in the European competitions since its establishment; in this case, UEFA referred to 1947 and calculated this coefficient in the light of all the results obtained throughout the history of Steaua București football team, which, by way of continuity, was later named FCSB.

As regards the spin-off of the football section in 1998 under the regulations of the Romanian Football Federation and of the Union of European Football Associations, an entity emerging from such a spin-off may not continue to compete as before, needs to register in the lowest league of the national championship and is not allowed UEFA's competitions for three years. To sum up, there is evidence of the honors taking over because, in the 1998-1999 season, FCSB, having availed themselves of their status as holders of the honors, continued to compete both in Romania, as champion, and in Europe, on the basis of their results from the previous season.

He further requests that account be taken of the fact that, in 1998, there was an effective spin-off which resulted into this new entity, which, as it has been shown, was able to continue to compete by taking over the honors; such continued participation in competitions was granted by the Bucharest Court of Appeal in the first procedural cycle, so that there are no issues left to challenge on this matter, and the right over the honors is indissolubly linked to the participation in competitions, in the light of the rules considered.

The in-house counsel C requests that the second appeal be dismissed for the reasons detailed in the statement of defense, and that account be taken of all documents on record, as well as of all the decisions handed down. He requests that it be found that FCSB continues to act in bad faith and does not act upon decisions delivered by the court.

He considers that the appeal lodged by FCSB is null, as it does not fall under any of the grounds for cassation set out in Article 488 of the Code of Civil Proceedings.

The High Court notes that the appeal has gone through the screening procedure and has been upheld in principle.

After having been given the floor, the in-house counsel C, on the first ground of second appeal states that there is neither acquiescence, nor admission, and that such lies and allegations made by FCSB's representative should be sanctioned because he attempts to present a different situation *de facto* to the court. The casefile contains defenses, statements of defense, written submissions, and clarifications showing the which the FCSB team holds the honors for the period 2003–2017, and that such honors are of no interest to the respondent, who is not pursuing an identity theft. Thus, both the High Court of Cassation and Justice and the Bucharest Court of Appeal found that the relief sought in the joined claim was poorly worded and accommodated the understanding that, in the joined claim, FCSB was referring to the honors of the FCSB team because Clubul Sportiv al Armatei Steaua had not registered any honors for Steaua București football team in the period 2003–2017; hence, there is no acquiescence.

With regard to paragraphs (3) and (4) at page 3 of the first ground of appeal, he explains that he stands by the same submissions and clarifications as upheld during the proceedings on the substance of the case and during the appeal upon rehearing, in the sense that no judge has found any acquiescence.

In reply to the assertions of attorney-at-law A, he considers that the latter attempts to mislead the courts, which have already ruled on the pleas of lack of standing to bring up actions and inadmissibility of the main action, *i.e.* both the review court under the Decision No. 513/2023, and the Bucharest Court of Appeal and the Bucharest Tribunal; yet, the opposing party's representative still pursues for the third or fourth time that these pleas be decided upon.

He further requests that it be found that FCSB is not the successor of the Steaua București football team, and that the High Court of Cassation and Justice, by Decision No. 3425/2014 delivered in Case No. x/3/2011 and by Decision No. 513 of 28 March 2023 delivered in Case No. x/3/2017, held, with *res judicata* authority, that there was no full transfer of assets back in 1999. He considers that, for a correct determination of the situation *de facto*, the courts which heard the substance of the case gave effect to the *res judicata* authority of High Court's Decision No. 3425/2014, where it was held that there was no full transfer of ownership in 1999.

He goes on to state that FCSB relies on grounds and please raised during the hearing of the substance of the case, the appeal proceedings and even during the second appeal proceedings, and that the High Court and the Bucharest Court of Appeal found that the relief sought under the joined claim was poorly worded and failed to lead to the understanding that FCSB referred to the honors of the FCSB football team in the joined claim, since Clubul Sportiv al Armatei Steaua had not registered any honors in the period 2003–2017. Thus, he explains that there is no acquiescence such as that referred to by the opposing party's representative, since FCSB failed to seek determination of the honors for the period 2003–2017 in the joined claim and now attempts to unlawfully requalify this claim. Both the courts which heard the substance of the case and the appellate held that the joined claim had serious flaws, although it was worded by an attorney-at-law, and he considers that it is not allowed to requalify it after five years.

He further considers that the second appeal lodged by FCSB is inadmissible because it relies on assumptions which rather stand for grounds of lack of validity, than of unlawfulness. With regard to the submissions concerning the taking of evidence, he pointed out that these do not qualify as grounds of unlawfulness, but of lack of validity; hence, he requests that the claim be dismissed.

As to the submissions that the decision of the Bucharest Court of Appeal is unlawful because the appellate court misinterpreted the procedural framework of the joined claim, which it erred in limiting to the period 2003–2017, he considers that these cannot be upheld because the review court has very clearly articulated its ruling.

Concerning the substantive provisions that have allegedly been infringed on the ground that the court did not take any additional evidence, he requests that this ground of second appeal be dismissed because it is not a ground of unlawfulness, but a ground of lack of validity.

As regards the alleged failure of the appellate court to examine the substance of the case on the matters of the true successor of the 1947 Steaua București club and of the transfer of the football team's honors, *i.e.* the alleged breach of Article 501(3) of the Code of Civil Proceedings, he requests that this formally-lodged ground of second appeal also be dismissed because it falls outside of the scope of the exclusive grounds under Article 488 of the Code of Civil Proceedings and further because the Bucharest Court of Appeal ruled within the limits of cassation and gave due account of the evidence taken.

Having regard to the defenses set out *in extenso* in the statement of defense, he requests that the second appeal be dismissed, that account be taken of the documents on record, and that the challenged decision be maintained as valid and lawful. He argues that there are judgments delivered by the courts showing that FCSB acts in bad faith, registered the trademark in 2014, does not hold the name and is not the successor of the football team.

The High Court open the floor on the court expenses, noting that the appellant claimed that, but failed to produce any evidence whatsoever in support thereof.

D states that proof of the court expenses is in the casefile of the previous cycles and that, for this stage of the proceedings, these will be claimed through a separate action.

The in-house counsel C states that he makes no claim for court expenses.

The High Court declares the debates closed and reserves judgment on the second appeal.

After having deliberated,

#### THE HIGH COURT,

Ruling on this second appeal on civil matters, holds as follows:

The first procedural cycle

I. The circumstances of the case

1. The subject-matter of the statement of claim

With the statement of claim filed on 29 December 2017 with the Bucharest Tribunal – Fifth Civil Division under No. x/3/2017, the claimant Clubul Sportiv al Armatei “Steaua București” sought, against the defendant SC Fotbal Club FCSB SA, declaration that the honors of the football team of Clubul Sportiv al Armatei “Steaua București”, since its establishment back in 1947 and until 2003, belong to it.

With the application filed on 23 October 2018 with the Bucharest Tribunal – Third Civil Division under No. x/3/2018, the claimant SC Fotbal Club FCSB SA, against the defendant Clubul Sportiv al Armatei “Steaua București”, sought to be declared the lawful holder of the right to use, for commercial and sporting purposes, the honors of the former professional football team “Steaua București”, as well as all sporting derivatives arising therefrom, in its capacity as the sole successor of the football activity of that team.

With the interlocutory order of 23 April 2019, the Bucharest Tribunal – Third Civil Division upheld the plea of joinder, and ordered that the case registered under No. x/3/2018 be joined to the case at hand (Case No. x/3/2017).

2. Judgment delivered by the Bucharest Tribunal

With the Civil Judgment No. 1628 of 5 July 2019, the Bucharest Tribunal – Fifth Civil Division upheld the main claim raised by the claimant Clubul Sportiv al Armatei “Steaua București”, against the defendant SC Fotbal Club FCSB SA; found that the 1947-2003 honors of the football team of Clubul Sportiv al Armatei “Steaua București” belonged to the claimant Clubul Sportiv al Armatei “Steaua București”; ordered the defendant SC Fotbal Club FCSB SA to pay the claimant the amount of RON 100 as court expenses; and dismissed the joined claim filed by the claimant SC Fotbal Club FCSB SA against the defendant Clubul Sportiv al Armatei “Steaua București” as invalid.

3. Decision delivered in appeal proceedings by the Bucharest Court of Appeal

With the Civil Decision No. 1034A of 28 June 2021, the Bucharest Court of Appeal – Third Division for Civil Matters and Cases Involving Minors and Family upheld the appeal lodged by the appellant-defendant SC Fotbal Club FCSB SA (formerly Fotbal Club Steaua București SA) against the Civil Judgment No. 1628 of 5 July 2019 delivered by the Bucharest Tribunal – Fifth Civil Division, against the respondent-claimant Clubul Sportiv al Armatei “Steaua București” (Military Unit 02301 Bucharest); upheld the motions to intervene filed by Asociația Steaua 1947 LTD București and Asociația Salvați Steaua; partly set aside the appealed judgment to the effect uphold the plea of lack of standing to bring up actions of the claimant Clubul Sportiv al Armatei “Steaua București” in respect of the applications concerning the right to the honors for the period 1998–2003 and dismissed this application accordingly; upheld the remainder of the judgment concerning the solution on the challenge that the honors of the football team Clubul Sportiv al Armatei “Steaua București” from 1947 until 1998 belonged to the claimant Clubul Sportiv al Armatei “Steaua București”, and the solution on the joined claim; and ordered the respondent-claimant to pay the appellant-defendant the amount of RON 3,000 as court expenses (attorney fee, stamp duty), with application of Article 453(1) and (2) and of Article 451(2) of the Code of Civil Proceedings.

4. Decision delivered in the second appeal proceedings by the High Court of Cassation and Justice

With the Civil Decision No. 513 of 28 March 2023, the High Court of Cassation and Justice – First Civil Division upheld the second appeal lodged by the defendant Fotbal Club FCSB SA (formerly Fotbal Club Steaua București SA) against the interlocutory order of 10 May 2021 and against the Decision No. 1034A of 28 June 2021, delivered by the Bucharest Court of Appeal – Third Division for Civil Matters and Cases Involving Minors and Family; upheld the second appeal lodged by the intervener Asociația Salvați Steaua against the same decision; and overturned the appealed interlocutory order and decision and send back the case for rehearing to the same appellate court.

Second procedural cycle

5. Decision delivered by the Bucharest Court of Appeal after rehearing of the appeal

With the Civil Decision No. 1285A of 23 October 2023, the Bucharest Court of Appeal – Third Division for Civil Matters and Cases Involving Minors and Family upheld the appeal of the defendant Fotbal Club FCSB SA against the judgment; upheld the motions to intervene filed by Asociația Steaua 1947 LTD București and Asociația Salvați Steaua; and partly set aside the appealed judgment and, after having retried: upheld the plea of lack of standing to bring up actions of the claimant CSA in respect of the claim concerning the right to the honors for the period 1998–2003 and dismissed that claim accordingly; dismissed the pleas of inadmissibility, lack of interest and lack of standing to bring up actions and stand trial raised in connection with the joined claim as unfounded; dismissed the joined claim seeking declaration of the right to use the honors of the former professional football team “Steaua București” in the period 2003–2017 as unfounded; maintained the provisions of the judgment concerning the solution delivered on declaration that the honors of the football team Clubul Sportiv al Armatei “Steaua București” from 1947 until 1998 belonged to the claimant CSA and on the joined claim relating to the period 1947–2003; and ordered the respondent-claimant to pay the appellant-defendant the amount of RON 3,000 as court expenses.

6. Second appeal lodged in the case

The defendant Fotbal Club FCSB SA (formerly Fotbal Club Steaua București SA) lodged an second appeal against the interlocutory order of 18 September 2023 and the Decision No. 1285A of 23 October 2023, both handed down by the Bucharest Court of Appeal – Third Division for Civil Matters and Cases Involving Minors and Family.

With the statement of second appeal’s grounds, based on the provisions of Article 488(1)(3), (5), (6) and (8) of the Code of Civil Proceedings, the appellant-defendant mainly sought the partial overturning of the challenged decision, namely the overturning in full of the challenged interlocutory order and the upholding of the appeal, with the consequence that the joined action be upheld and the main action be dismissed in full, and, in the alternate, the partial overturning of the appealed decision, namely the overturning in full of the appealed interlocutory order and the sending back of the case for rehearing to the appellate court or the first court.

As a preliminary matter, the appellant-defendant stated that the second appeal does not concerning the upholding of the plea of lack of standing to bring up actions of the claimant CSA for the period 1998–2003 and the dismissal of the action in that respect, and that the appealed interlocutory order is levelled criticism against in terms of the dismissal of the request to produce evidence made by the appellant’s representative during the hearing of 18 September 2023, while the appealed decision is levelled criticism against in terms of the dismissal of the joined claim filed by Fotbal Club FCSB SA and the partial upholding of the main claim, including the failure to rule on the procedural pleas raised (the plea of inadmissibility, the plea of lack of interest and the plea of lack of standing to bring up actions of the claimant).

i. The first ground of second appeal relied on is based on the provisions of Article 488(5) of the Code of Civil Proceedings:

- Under a first criticism falling under this first ground of second appeal, the appellant alleges a breach of the provisions of Article 436 of the Code of Civil Proceedings, in that, although it took note of the respondent-claimant’s partial acquiescence to the appellant-defendant’s right to the honors for the period 2003–2017, the appellate court did not deliver a judgment on the recognition matter.

In this regard, he states that the interlocutory order of 18 September 2023 writes that the claimant’s retained counsel explains that the party he represents had not challenged the honors of the “Steaua” team, as held by the appellant-defendant for years 2003–2017, and further that the court confirmed that this partial acquiescence was clarified also in the statement of defense.

The claimant's acquiescence to this point in the appeal proceedings represented an unequivocal, unilateral and voluntary expression of will by the party involved in the dispute, admitting in part to the defendant's claims, and such acquiescence should have led to conclusion of the dispute by a partial admission of the request in the joined claim.

The appellate court's refusal to rule to the effect of taking note of the expressly stated acquiescence is due to a breach of the procedural provisions the non-observance of which renders the appealed judgment null.

- Under the another criticism, the appellant argued that the appealed judgment was delivered in breach of the provisions of Articles 250, 327 and 329 of the same Code, in the sense that, although it is common knowledge that the appellant-defendant took over and continued the sporting activity and the participation in competitions of the "Steaua" football team, it dismissed the joined claim by relying exclusively on the agreements entered into by and between the parties.

He submits that the court could have reasonably concluded that the defendant held the honors of the "Steaua" football team solely by reference to the notoriety of this matter.

According to the appealed judgment, the honors of the historic Steaua București team ended in 1998, although continuity of the football team was ensured through Asociația Fotbal Club Steaua București in the period 1998–2003, and by the appellant since 2003 to the present day.

Besides the fact that these defenses are matters not challenged by the respondent, these are matters of common knowledge, *i.e.* the historic "Steaua" team still continues its sporting activity and participation in competitions today, both domestically and internationally, the change in the name used (from Steaua to the acronym FCSB) having no bearing whatsoever; yet the appellate court ruled without giving any regards to the legal institution of presumptions, which arises from the fact that these matters are generally valid truths.

He explains that the appealed decision must be overturned for the formalism displayed by the appellate court when it ruled on the case exclusively by reference to the "agreements" entered into by and between the parties, although these contain clear clauses on the transfer of the rights relating to the "Steaua" team's honors, and for the lack of an active role, in the sense of relying also on presumptions; he qualifies all of these as violations of their right to a fair trial and to defense.

- Under the another levelled criticism, the appellant argued that the appealed judgment breached both the provisions of Article 397(1) read in connection with Article 501(1), by reference to Article 204 of the Code of Civil Proceedings on the parties' right of disposal, in terms of the limits of the court's vesting with the joined claim, as regulated by Article 9(2), and the right of defense laid down in Article 13 of the same Code, the right to a fair trial and the right to an effective remedy, all the latter as set out in Articles 6 and 13 ECHR.

In developing these criticisms, he argues that the appellate court incorrectly and insufficiently articulated the objective procedural framework of the overturning judgment and the joined claim, by misinterpreting the decision to send the case back for rehearing.

Firstly, the appellate court, having been referred a judgment overturning in full the decision of the first appeal court, the main ground of second appeal of which the upholding of joined statement of claim should be upheld, maintained the reasoning of the first appellate judgment, and erred in interpreting the scope of the referral to the judicial review court, in that it considered itself vested only with a ruling on the right to the honors for the period 2003–2017.

He explains that, upon rehearing, the appellate court misinterpreted the procedural framework of the joined claim, which it erred in limiting it to the period 2003–2017, and neither examined the defenses, nor did it not rule on the pleas raised by the defendant.

He thus submits that the appellate court merely formally copied and cited the reasoning of the overturning decision, which, however, did not finally settle the dispute, but only set the rehearing scope and the duties of the referred court; it did not set out its own judicial syllogism with regard to the grounds identified in the overturning decision that would have to be examined when rehearing the appeal; it took over the respondents' submissions without checking them against the defenses raised and the evidence produced; it did not take any additional evidence; it did not effectively examine the matters *de facto* and *de jure* forming the subject-matter of the case, in the light of the parties' conflicting submissions; it did not give regard to, or analyze, the appellants' arguments and evidence, which it excluded outright; it did not analyze or reviews the matters of unlawfulness raised by the appellant-defendant in relation to the situation *de facto* and *de jure*, as long as it did not take any additional evidence.

He explains that the purpose of the overturning decision was precisely that, upon rehearing, the referred court would effectively examine all the indicated aspects and, if need be, take additional evidence.



He notes in this regard that, although evidence should have been taken to establish situation *de facto* and *de jure* concerning the honors of the “Steaua București” football team, the appellate court dismissed the requested evidence and did not properly clarify the matters indicated in the overturning decision, for which it was necessary to supplement the pool of evidence; this amounts to a breach of the dispositive principle laid down in Articles 9 and 22(2), the principle of finding out the truth provided in Article 22 of the same Code, and the right to a fair trial and the right to effective remedy under Articles 6 and 13 ECHR.

– Under the same criticisms, the appellant further contends that the appellate court did not examine the defenses and did not rule on the pleas raised by the appellant-defendant.

He notes in this regard that he raised the plea of the claimant’s lack of interest in bringing up the statement of claim, the plea of inadmissibility of the statement of claim and the plea of the claimant’s lack of standing to bring up actions, but the appellate court did not examine and did not rule on these pleas, thereby breaching the dispositive principle and the scope of the case referred to the court.

ii. Under the a second ground of second appeal, also based on the provisions of Article 488(5) of the Code of Civil Proceedings, the appellant argued that the appellate court failed to examine the substance of the case as regards the matters of the true successor of the 1947 “Steaua București” club and the transfer/retention of the football team’s honors, in breach of the provisions of Article 501(3) of the Code of Civil Proceedings.

He argues that the failure to take additional evidence, added to ignorance of the evidence taken in the previous procedural cycles, led to a completely opposite conclusion, namely the partial upholding of the main claim and the dismissal of the joined claim.

The failure to examine the substance stems from the failure to review the evidence taken in the previous procedural cycles and in the rehearing of the appeal, but also in the failure to look into the grounds, defenses and arguments put forward by the appellant.

He explains that the appellate court ignored the position of the national and international official football bodies, which identify them as the true successor of the “Steaua București” club, and the evidence submitted by them (an extract from CSA’s website, where there is an admission to the appellant having taken over and continued the football activity of the “Steaua” team).

He argues that the appellate court did not examine matters of essence for the settlement of this case. Thus, for the period 1947–1967, they failed to point to the origin of the respondent-claimant’s rights over the historic honors of the “Steaua București” football team since 1947.

This was overruled by overturning and referral back for rehearing, with a view to accurately determining the scope of the referral to the court due to the appeal court’s failure to review the entire period which rights over the honors are claimed for.

The aforementioned should have been reviewed only after the court clarified the period for which the joined relief was pursued, in particular 1947–2003.

This way of reviewing the grounds of second appeal led to an incorrect and insufficient articulation of the objective procedural framework of the joined claim, and caused a breach of the scope of the case referred to the court under Article 22(6) and Article 397(1) of the Code of Civil Proceedings, the dispositive principle, and the right to a fair trial.

iii. Under a third ground of second appeal, also based on the provisions of Article 488(5) of the Code of Civil Proceedings, the appellant argued that the challenged order was unlawful as a result of the denial of the evidence sought upon the rehearing of the appeal.

When it denied the requested evidence with but a flawed and case-foreign reasoning, the appellate court breached the provisions of Article 501(4) of the Code of Civil Proceedings reading that should a case be reheard after overturning with referral, any evidence allowed under the law shall be admissible.

By doing so, the appellate court breached both the aforementioned legal provisions and the principle of the active role of the judge, the adversarial principle and the right of defense, as well as the right to a fair trial, given the solutions contained in the overturning decision.

He further submitted that, by reversing the burden of proof as regards the ownership of the honors, the provisions of Article 249 et seq. of the Code of Civil Proceedings and Article 6 (1) ECHR were breached because the respondent-claimant was bound to prove that the honors should remain theirs.

In the joined claim, the court is bound both to look into the situation *de facto* and *de jure*, and to clarify the legal relationships involved - by taking any evidence necessary and relevant to the case and capable of helping it find out the truth - by virtue of both its active role and its duty to find out the

truth, and relying also on presumptions, bearing in mind the notoriety of the appellant's continuity of the football and competition-participation activity, the takeover of the team, the place secured in the group in the following season, and in the light of the overturning decision.

He states that the failure to examine the substance was found by the supreme court to have stemmed from the denial of an expert report, cross-examinations and the requests to have letters sent to the Romanian Football Federation and the Professional Football League, which resulted into the overturning of the decision and referral of the case back for rehearing, as such denial of evidence may only be equated with a disregard for the adversarial principle, the right of defense and the right to a fair trial.

He alleges that there was insufficient determination of the objective procedural framework in terms of the time period for which the joined action was brought and the elements specific to an action concerning the right to the honors, the failure to capture the specific football-related nature of this case, and the absence of any legal provision granting the right to the honors to the respondent.

He pointed out that the appellate court breached the provisions of Article 249 et seq., Article 264 of the Code of Civil Proceedings and Article 6 (1) ECHR by disregarding the documents submitted by the appellant and the interveners, since the appellate court did not take any other evidence.

He believes that the burden of proof in the main claim, which is directly connected to the joined claim, rests with the respondent-claimant, who should have proven the transfer to a third party or retention of the honors as their assets, having regard to the nature of application initiating the proceedings.

iv. Under the fourth ground of second appeal based on the provisions of Article 488(6) of the Code of Civil Proceedings, the appellant contended that the challenged decision was ungrounded, on the one hand, and, contained contradictory reasons, unrelated to the nature of the dispute, on the other hand.

He argues that the appealed decision is unreasoned because it does not refer to any legal provision or legal basis supporting the right of the "Steaua București" football team to the honors.

The appealed decision also contains contradictory reasons because, on the one hand, it rejects the evidence sought by the appellant during the hearing of 18 September 2023 and, on the other hand, it upholds the respondent-claimant's actions and dismisses the joined claim, on the ground that the appellant-defendant failed to prove the transfer of the right to the honors.

The challenged judgment contains reasons unrelated to the nature of the dispute as regards the alleged, but non-existent, link between the decision on the trademarks, where it is held that the respondent-claimant did not transfer all their assets, and the right to the honors, since the fact that the honors do not qualify as a patrimonial right has the authority of *res judicata*. Moreover, the trademark allegedly belonging to the respondent-claimant has no connection with the subject-matter of this case.

v. Under the fifth ground of second appeal based on the provisions of Article 488(5) and (8) of the Code of Civil Proceedings, the appellant reiterated their previous submissions, and claimed a breach of the right to a fair trial due to the dismissal of the evidence sought, although, upon rehearing, any evidence should have been admissible under Article 501, and, moreover, as a result of the dismissal of the joined claim on the ground that the transfer of the right to the honors had not been proven, although the appellate court could have relied on a presumption which corroborated with the evidence taken.

vi. Under the sixth ground of second appeal based on the provisions of Article 488(3) of the Code of Civil Proceedings, the appellant requested that the action be dismissed as inadmissible or as not falling under the jurisdiction of the courts of law under provisions of Article 58 of the Statute of the Romanian Football Federation, which makes it an obligation for disputes arising from, or in connection, with the football activity in Romania and involving affiliated clubs to be resolved exclusively by the Romanian Football Federation's committees with jurisdictional powers, and prohibits any settlement of such disputes by the courts of law.

He argues that this dispute arises from, or at least is connected with, the football activity in Romania in which clubs affiliated to the Romanian Football Federation are involved, and that the applicable legislation does not expressly impose an obligation to have this type of dispute settled before the courts of jurisdiction.

He further submits that the respondent-claimant is a club affiliated to the Romanian Football Federation, contrary to the appellate court's findings.

vii. Under the seventh ground of second appeal based on the provisions of Article 488(5) and (8) of the Code of Civil Proceedings, the appellant argues that the appellate court breached the provisions of Article 430 of the Code of Civil Proceedings when it held that the reasoning in Civil Decision No. 3425/2014 of the High Court of Cassation and Justice had positive effect in the pending dispute.

- When developing a first matter falling under this ground of second appeal, he argued that the overturning decision does not establish that the positive effect of the aforementioned decision is applicable to the case, but merely that the appellate court (in the second procedural cycle) failed to examine the aspects relating to the applicability of Article 431(2).

He contends that, acting upon the instruction in the overturning decision that matters aspects be examined, the positive effect of the Civil Judgment No. 3425/2014 is not applicable in this case, because the non-patrimonial nature of the right to the honors has been finally addressed as the aforementioned decision refers strictly to the non-occurrence of a total transfer of assets.

He states that the previous dispute concerned intellectual property rights (a trademark cancellation), and all the findings in that decision refer to such matters, and not to the right to the honors.

He therefore explains that, in the previous case, neither a link with the historic "Steaua" football team nor the team's honors were examined, whereas this dispute reviews the spin-off of the football section, which also took over the honors.

He further states that the previous decision refers to matters that go beyond the scope of this case, namely the notoriety of the name "Steaua" and the annulment of the trademark registered by the parties in that case for bad faith, whereas this dispute only examines the right to the honors.

Against this backdrop, he considers that the previous decision cannot take effect in this dispute, in accordance with the principle of the relativity of the effects of a judgment, as found in Article 435 of the Code of Civil Proceedings.

He further states that, in this case, the previous decision could at most have the evidentiary value of a writ, which had to be corroborated with the direct evidence taken in this case, and that the appellant has produced contrary evidence as to the true successor of the "Steaua București" club/football team, for the purposes of Article 435(2).

The trademark must not be confused with the honors, nor the rights pertaining to/over them, all the more so as, from the perspective under review, the "Steaua" trademark is relevant, as it has been used only by the appellant-defendant, namely by the football section, and solely for football over the last 17 years.

Since the subject-matter of this case is the honors, it follows that there is no connection between the honors and the intellectual property rights over various trademarks; hence, he considers that the Decision No. 3425/2014 has no positive effect stemming from any alleged *res judicata* authority/power in this case.

- Further on, in connection with the same ground of second appeal, the appellant also alleged that the appellate court breached the right to a fair trial, the right to an effective remedy and the principle of immediacy of taking evidence.

Having regard to all the matters and arguments set out above, he considers it necessary to take evidence in order to correctly, fully and realistically identify the true situation of the transfer of the honors of the football section effected in 1998, including as regards the issue of the transfer or retention of the honors of the "Steaua" football team.

He considers that new evidence should be taken directly in this case on the matters of the true successor of the "Steaua" club/football team and the transfer/retention of the honors, in accordance with the provisions of Articles 16 and 22 of the Code of Civil Proceedings and of Article 6 (1) ECHR.

He argues that the appellate court breached the provisions of Articles 327 and 329 of the Code when it applied judicial presumptions concerning the transfer of the honors and the alleged link between the right to the "Steaua" trademark and the honors of the "Steaua" football team.

viii. Under the eighth ground of second appeal based on the provisions of Article 488(5) of the Code of Civil Proceedings, the appellant claimed a breach of the principle of lawfulness in civil proceedings, as laid down in Article 7 by reference to Article 22(2) of the Code of Civil Proceedings, in that the appealed decision does not set out the legal basis and the legal rules allegedly breached by the first court, nor the rules underpinning the reasoning and solution in the appealed decision as regards the matters relating to the right to the honors.

The same conclusion stems also from the fact that the subject-matter and cause of the action were unlawfully altered directly in the appeal proceedings, in respect of matters not raised in the application initiating the proceedings, and which were not covered by the subject-matter of the proceedings, as previously explained.

Under the same ground of second appeal, he also alleges a breach of Article 5(3), since the appellate court appears to have ruled the case in equity, without pointing to any legal provision in support of its findings, disregarding the express legal provisions, and breaching other mandatory legal rules, as well as fundamental principles of civil proceedings.

The appellate court did not clarify why the continuity of the sporting and competition-participation activities of the "Steaua București" football club by the appellant, and the takeover of the place in the groups in the following season do not qualify also as a takeover and holding of the team's honors.

The challenged decision does not objectively clarify the case, since the appellate court speaks of a "historic Steaua team" and of a team owned by the appellant, without clarifying whether this is the same team or two distinct teams.

He further argues that the following considerations are unlawful and unrelated to the nature of the case: "the contention that, absent a takeover of the honors, FCSB could not have continued to participate in competitions, cannot be upheld, since its participation in Divizia A in the following season was based on a special agreement between the Association and FCSB", and "the sporting activity was continued in 1998 by Asociația FC Steaua not in consideration of the takeover of the honors, but in consideration of the provisions of the articles of association", given that approval of the continued competing in Divizia A, in the same place of the table as previously held by the team, in the following season, could not be achieved solely on the basis of a private (special) agreement between two private entities, but it had to be approved also by the Romanian Football Federation.

However, this entity under the private law pursuing a public interest could not have approved continuation, absent the honors.

In reality, by denying the proposed request for information from the Romanian Football Federation, the appellate court did not shed any light on this matter.

In relation to these matters, he argues that the takeover of the honors is the only legal condition for the Romanian Football Federation to approve continued participation in competitions activity the position held in the table in the division in which the "Steaua București" team was playing at the time when its participation in competitions was taken over by the appellant.

The two legal entities which were set up by the very claimant (or at least with its consent), namely Asociația Fotbal Club Steaua București after 1998 and, later, from 2003 onwards, the defendant company Fotbal Club Steaua București SA, took over and continued the activity and tradition of the "Steaua București" football team, a fact that stems from their uninterrupted participation in football competitions and the takeover and supplementation of the honors which is the subject-matter of the case brought before the court.

The honors of the "Steaua" team are unique, since its participation in competition has not been interrupted.

There is a mandatory nexus between the honors and the right to participate in football competitions, since the legal entities subsequently established took over and continued the sport competition activity from the time when the football section ceased to operate in 1998, solely by virtue of the takeover of the honors (the previous results).

Highlighting the factual framework, the appellant-defendant argues that the statutes of the Association and the articles of association of the company initially named Fotbal Club Steaua București SA show that their purpose was to continue the decade-long tradition of professional football of the historic “Steaua București” team, whose support could no longer be provided by the army and later by the association set up by Order of the Ministry of National Defense. When Asociația Sportivă Fotbal Club Steaua București was established in 1998, it continued the activity of Clubul de Fotbal Steaua București; from 2003 to date, the activity of Clubul de Fotbal Steaua București, now Fotbal Club FCSB SA, has been continued within the framework put in place by the latter legal entity, whose support could no longer be provided by the Association set up by the very respondent; against this backdrop, they argue that a legally secure relationship may be found to exist over time, and make reference in this regard to the principle of legal certainty. The honors are not part of anyone’s assets because they are not a patrimonial right; only the legal person managing the team taking part in the competition may invoke it; in the appellant’s case, this is the current company FCSB SA (formerly Steaua București SA), as the sole successor of the competitive football activity. Continuation by the defendant company of the football activity could not have taken place absent the takeover of the honors, since it is not legally possible for a newly formed team to participate directly in a professional sport competition organized in Romania, at League I level, by the Romanian Football Federation.

Furthermore, giving an account of the facts, the appellant-defendant refers to the joined statement of claim and states that the rights claimed over the honors concern the period 1947–2017, whereas the claimant claimed rights for the period 1947–2003 in their initial action.

The respondent’s representatives have not dispute the fact that their football section, established back in 1947, was transformed into a not-profit sports association under the name Asociația Fotbal Club Steaua București in 1998; this was then reorganized as a non-for-profit association which was also reorganized in 2003 by merger into Fotbal Club Steaua București SA, now Fotbal Club FCSB SA.

It thus follows that the appellant-defendant is the successor in rights of the non-profit association founded in 1998, which, in its turn, is the successor of the CSA football section. In 1998, the respondent terminated the football section and transferred the professional football team under the name “Steaua București” and, implicitly, all the rights and obligations associated with it to Asociația Fotbal Club Steaua București, and from 2003 onwards to the appellant. The transfer of the football team, the place in the groups, the players’ federative rights, and the “history and glorious past” also includes the transfer of the club’s honors.

ix. Through a first criticism falling under the ninth ground of second appeal (based on the provisions of Article 488(5) and (8) of the Code of Civil Proceedings), the appellant claimed a breach of the legal rules governing the right to the sporting honors.

Thus, they argued that the appealed decision unlawfully classified the right to the honors as a main right, and not as an ancillary right.

In this regard, they referred to the definition of “honors” (Ro. *palmares*) in the Explanatory Dictionary of the Romanian Language, and noted that regulation of the honors is found in Article 1(2) and Article 13(1) of Law No. 69/2000, where the purpose of sporting activity is to obtain victories.

The honors, together with the rights derived from it, are intangible assets with no book value. The most important elements which not only make up the club, but actually are the club itself, are the non-patrimonial ones: the honors, the history, and the colors.

The right of ownership over the sporting honors is a personal non-patrimonial subjective right, indissolubly linked to the entity (team) taking part in the competition, and ensures continuity of the sporting activity; this is an absolute right, enforceable *erga omnes*, but also an ancillary one to the team that has obtained it.

– Next, setting out the factual framework, they referred to the organization history of the respondent’s sporting activity, and argued that the appellate court had breached and misapplied the substantive rules of law concerning the sporting and football-related particularities of the case and the continuity of football activities, namely the provisions of Law No. 69/2000 and Law No. 29/1967.

In this regard, they stated that the appellate court breached the special provisions governing the specific matter of the sporting honors, and unlawfully asserted that it has disregarded the sporting activity of the parties to the dispute.

In so doing, the appellate court ignored the specific subject-matter of the case, in breach of Articles 29 and 32 of the Code of Civil Proceedings, Article 26 of Law No. 69/2000 and Articles 14 and Annex No. 3 of Law No. 29/1967.

In support of this criticism, the appellant reiterated their submissions that the appellate court ruled on the case without having first conducted a genuine and effective examination of its substance, thereby breaching the right to a fair trial.

Equally, continuation of the sporting and competition-participation activities of the “Steaua” football club has the legal significance of a takeover of the honors.

The honors are not part of anyone’s assets because they are not a patrimonial right; only the legal person managing the team taking part in the competition may invoke, *i.e.* the appellant, as the sole successor of the competitive football activity, but without claiming that they allegedly own it; hence, the relief sought in the joined claim refers to the right to use the honors, and there is no claim to declare the ownership over the honors, as the respondent has done.

Continuation by this entity of the football activity could not have taken place absent the honors, since the Statute of the Romanian Football Federation, and the rules and regulations adopted by the Romanian Football Federation and FIFA provide for no legal possibility for a newly formed team to participate directly in a professional sport competition organized in Romania, at League I level.

A reading together Article 1(2) and Article 13(1) of Law No. 69/2000 (Articles 1, 4, 14 and Annex No. 3 of Law No. 29/1967) shows that there is a natural indivisibility between the honors and the continuity of the football activity. Therefore, the honors at issue cannot fall under the respondent’s right of ownership.

Absent such honors, there was no legal possibility of continuing to compete from the place in the table, that is, in the division in which the team in question was playing at the time when its competitive activity was taken over by the new entity.

Next, setting out the factual framework, the appellant notes that it is a member of the Romanian Football Federation (RFF) and that the respondent has not proved any registration with the Romanian Football Federation or any certification by the Romanian Football Federation of the honors sought in this case.

On the other hand, the respondent has never been affiliated to the Romanian Football Federation and has never had the right to carry out (and has not in fact carried out) any football-related activities, and this could have been proven by the letter requested to be sent to the Romanian Football Federation, hadn’t this request been denied.

Therefore, since the respondent has not been affiliated to the Romanian Football Federation, hasn’t had the right to carry out football activities and has never in fact carried out such activities before the Romanian Football Federation, it clearly follows that the honors claimed in the action does not in reality belong to them, but to the appellant-defendant.

It follows, both from a legal and a logical standpoint, that the honors created by the “Steaua” football team has remained with the football section, *i.e.* it has followed the entity that had created it and to which it was awarded (the football team, which clearly belongs to the football section and thus to the appellant, who, ever since 2003, has taken over and continued the activity of the “Steaua” football team).

In conclusion, a football team cannot be dissociated from its honors, which belong exclusively to the team and not to its temporary owners, in accordance with the legal principle *accessorium sequitur principale*.

They further submit that the football activity has been taken over, continued and organized by the Association (since 1998), and by the appellant (since 2003); after the spin-off, they publicly announced the holding of the team and its associated honors, which was common knowledge; their use has been publicly, legitimately and with unanimous recognition pursued, as evidenced both by the domestic and international media coverages aspects, despite the fact that the appellate court failed to examine these matters.

– With another criticism, also falling under the ground of second appeal based on Article 488(8), the appellant argued that the appellate court misapplied the substantive rules of law on the spin-off of the respondent’s football section and on the Handover Protocol concerning the assets and liabilities, thereby breaching Article 977 of the 1864 Civil Code and Article 1266 of Law No. 287/2009 on the Civil Code.

In this regard, they qualify as unlawful the appellate court's conclusion that the failure to include the honors in the agreements concluded leads to the conclusion that such honors remained with the CSA club, from which the football section was spun off.

The interpretation given by the appellate court to the agreements breaches the principles applied for interpretation of civil legal acts laid down in both the former and the current Civil Code, namely the principle of the parties' true intention (Article 977 and Article 1266(1), in the sense that acts must not be interpreted according to the literal meaning of the terms), and the principle that an act must be interpreted in such a way as to take effect and not in such a way as to take none (Article 978 and Article 1268(3), and further breaches the systematic (Article 982 and, respectively, Article 1267) and teleological (Article 1266(2)), as well as the rule of interpretation according to which the agreement covers only the matters which the parties appear to have intended to contract for, however general the terms in which it was concluded (Article 984 and Article 1268(4)).

Thus, they content that the orders, protocols and legal transaction relied on by the respondent and by the appellate court, as analyzed in the appealed decision, did not and could not regulate anything other than the transfer of tangible property, and not the transfer of personal non-patrimonial rights or intangible assets between the two entities – the club and the football section that was spun off and taken over by the newly established entity.

These did not provide (and could not have provided) for any transfer of the honors from the club to the football section, because the honors could not be handed over, being an intangible asset; furthermore, it was legally logical that the honors created and obtained by the football team should follow the team.

Setting out the facts, they note that another relevant aspect is that the trophies won by the football team, namely cups and medals which formed part of the football section's heritage, were physically handed over by the respondent to the new entities (including to the appellant).

The fact that it was neither necessary nor possible for the agreements concluded by and between the parties to refer also to the historic honors follows from the nature of those acts, which merely documented a material transfer from the club to the spun-off football section, as it is also apparent from Article 78 et seq., including Article 80 of Law No. 69/2000.

Accordingly, the agreements relied on by the appellate court documented only a transfer of tangible assets needed for the activity of the spun-off football section to continue, and, quite obviously, there was no need to document also an alleged transfer of the rights to the honors.

The appellate court examined only superficially the agreements executed for the handover of the assets and liabilities, and failed to review and correlate them with the submissions made or the presumptions arising from the notoriety of the transfer/takeover of the team (initially by the association and, from 2003, by the appellant).

– With another levelled criticism, also falling under the same ground of second appeal, the appellant alleged that the appellate court breached the legal rules on the transfer of assets by legal entities (Articles 41 and 47(2) of the Decree No. 31/1954).

They submit that the transactions consummated between the parties amounted to a reorganization (spin-off) of the respondent, where an universal transfer of rights operates by force of law.

Reiterating their previously levelled criticisms, the appellant argue that the agreements concluded dealt exclusively with the material aspect (the transfer of tangible assets, and not of intangible ones such as the right to the honors).

After having examined the indicated agreements as a whole, they state that the appellate settled only for taking over the arguments in the overturning decision, and failed to take any evidence in order to find out the truth.

Thus, they explain that a partial spin-off of the respondent took place in 1998, whereby the football section was spun off and established as Asociația Fotbal Club Steaua, which carried out football activities, and that the respondent was no longer authorized to, and no longer carried out, any football activities with the "Steaua" team. Even faced with such a partial spin-off, it was still necessary for the latter to prove that it has held, retained or taken over the honors which they claims any rights to.

From the evidence taken in all stages of the proceedings, but not examined by the appellate court upon rehearing, it follows that the football activity was carried out only by the Association (from 1998), and by the appellant (since 2003); this has necessarily involved the use of the honors, which shows that the honors has not been held/used by the respondent, which no longer had a football section.

Accordingly, there was no need to expressly prove any transfer of rights or assets, particularly personal non-patrimonial rights.

Nevertheless, as regards the proof of the transfer of the right to the honors, it is eloquent that the new entity, Asociația Fotbal Club Steaua (established in 2008 after the CSA spin-off), took over these honors, since it was able to continue to compete in the same competitions in which the former football entity had been involved prior to the spin-off, taking over the points obtained by the former entity in the 1998–1999 league season up to the time of the takeover and continuing in the competitions which the team had previously been involved in.

They further explain that, in the 1998–1999 season (the spin-off year), “Steaua” continued to play in national and international football competitions thanks to the points won in the National Championship – Divizia A and to the victories obtained in the Romanian Cup, both before and after the spin-off, by the former and, respectively, by the new entity which continued the football activity.

This shows that the argument of the appellate court, according to which there is no proof of the transfer of the right to the honors from the former to the new entity which continued the football activity, is unlawful.

The appellate court ignored the provisions of Article 41 et seq. of the Decree No. 31/1954 and therefore breached the legal provisions governing the transfer of the honors to the appellant by operation of law and as a result of its ancillary nature and its legal nature as a personal non-patrimonial right, which follows the fate of the entity that had obtained and created it.

They further submit that the reasoning of the appealed decision contains a sophism, since the 1998 spin-off of the football section led to the transfer of all the results obtained by the football team first to the new entity, Asociația FC Steaua București, and to the appellant in 2003; these are matters of common knowledge which the respondent has never challenged.

Essentially, the honors were created by the football team and belongs to the “Steaua” football team and, therefore, given its nature as an intangible asset and personal non-patrimonial right of an ancillary nature, are closely linked to the fate of the person that had created them, namely the fate of the football team.

Accordingly, their nature as a personal non-patrimonial right indicates the close connection with the holder of the said right, its *in personam* and strictly personal nature being of its very essence; furthermore, its ancillary nature shows that this intangible asset followed the fate of the holder of the related right.

These legal characteristics of the right to the honors lead to the conclusion that it was not for the appellant to prove the transfer of the right to the honors; rather, it was for the respondent to prove that it has retained or transferred such right into their assets, or those of another third party.

Therefore, contrary to the conclusion of the appellate court, it follows that the honors were transferred from the respondent to the newly created entity in 1998 and, on the same grounds, to the appellant in 2003, through the spin-off of the football section, which actually took over the “Steaua” football team.

They contend that the transfer occurred both by virtue of the nature of the right to the honors and as an effect of the law (in the broad sense), more precisely on the basis of the 1991 orders.

Thus, they argue that the appellate court’s conclusion that the honors of the football team was retained by the entity from which the football section was spun off, a conclusion drawn solely from a series of presumptions, is unlawful.

– With another submission, likewise falling under the ground of second appeal based on Article 488(8), the appellant argues that the appellate court breached the legal rules on the sporting succession.

In developing this submission, they refer to an expert scientific opinion, the content of which they present, and then conclude that the respondent could not have taken part in European competitions in 2003 due to the lack of permission from UEFA (failure of the condition to have been affiliated to the Romanian Football Federation for more than three years).



Therefore, the respondent, which has not been affiliated since 1998, is not the football successor of the “Steaua” football team and, accordingly, is not entitled to claim the honors after that year.

Also, further pursuing that expert opinion, they contend that, on the basis of the criteria established by the international case-law, UEFA, the Romanian Football Federation and the Professional Football League held that the appellant was the sporting successor of the previous club, Asociația Fotbal Club Steaua București.

#### 7. Defenses raised in the case

– As at 1 August 2024, the respondent-claimant, *i.e.* Clubul Sportiv al Armatei “Steaua București”, filed a statement of defense in which it raised a plea of *res judicata* in respect of the main action and, in the alternate, requested that the second appeal be dismissed as merely formal, since the grounds relied on did not fall under the strictly exhaustive grounds set out in Article 488 of the Code of Civil Proceedings, and, in any event, as unfounded.

In support of the plea of *res judicata* in respect of the main claim, the respondent-claimant argued that this had been finally addressed by the Bucharest Court of Appeal – Third Division for Civil Matters and Cases Involving Minors and Family in the Decision No. 1034A of 28 June 2021 (which became final by virtue of the overturning decision delivered in the first procedural cycle), whereby the appellate court in the first procedural cycle found that the 1947-1998 honors of the football team Clubul Sportiv al Armatei “Steaua București” belonged to the claimant, Clubul Sportiv al Armatei Steaua București.

The respondent-claimant explained that, with the second appeal lodged, the appellant-defendant raised grievances and matters of lack of validity, rather than grounds of illegality, and sought in the second appeal what they had already requested in the proceedings on substance or in the previous appeal.

As regards the first ground of second appeal, they explain that there is no acquiescence on their part, which would have required a special power of attorney; rather, the clarifications they have consistently filed were to the effect that the defendant has no right to use the name “Steaua”/“Steaua București”, whose honors was won by the athletes of Clubul Sportiv al Armatei “Steaua București” and not by the football players of the appellant, who play for a club, a company established in 2003.

From the joined claim it does not appear that the defendant requested a declaration on the honors for the period 2003–2017; in their submissions on the substance, they unlawfully attempt to requalify their claim.

Setting out the facts, they note that in years 2003–2014 the appellant unlawfully used a “Steaua București” trademark, which it registered in bad faith with the State Office for Inventions and Trademarks without the respondent-claimant’s consent and which was annulled at the latter’s request in 2014 by the Supreme Court with the Decision No. 3425/2014.

They further explained that, in 2016, the appellant was ordered to change its name from Fotbal Club Steaua București to Fotbal Club FCSB SA, pursuant to the Decision No. 989A/2016 of the Bucharest Court of Appeal – Fourth Civil Division, which became final upon dismissal of the second appeal (Decision No. 1628/2018 of the High Court of Cassation and Justice – First Civil Division).

The respondent-claimant further relies on the *res judicata* effect of the Decision No. 989A/2016 in respect of the joined claim, arguing that, since the appellant has no right to use the signs “Steaua” and “Steaua București”, it is not the successor of “Steaua București”, which embodies the “Steaua” honors, the “Steaua” trademark, the history and victories of its athletes, as well as the medals obtained in the period 1947–2024.

They explain that the submissions alleging breaches of Articles 250, 327 and 329 amount to criticisms of lack of validity, which cannot be set aside by the court of judicial review, since they concern the manner in which the evidence was taken and construed.

They point out that the ground of second appeal alleging a breach of Article 501(1) is merely formal, given that the joined claim did not seek a declaration that the honors of the “Steaua București” football team for the period 1947–2017 were unique by virtue of the sporting and competitive continuity, and that this allegedly belonged to the appellant, but rather that the appellant would be declared as the lawful holder of the right to use, for commercial and sporting purposes, the honors of the former professional football team Steaua București, as well as all sporting derivatives arising therefrom, in their capacity as the sole successor of the football activity of that team.

As regards the first criticism levelled under the third ground of second appeal, relating to the procedural framework of the joined claim, which was allegedly wrongly limited to the period 2003–2017, they submit that the matters relating to the honors of the “Steaua București” team for the period 1947–1998 were finally settled by dismissing the defendant’s second appeal, the overturning decision stating that “as regards, however, the other grounds of second appeal, the High Court will dismiss them

(...)”; the decision of the court of appeal in the first procedural cycle has remained final.

They point out that the matters addressed to in the second section of the third ground of second appeal, relating to the failure to rule on the pleas raised by the defendant in connection with the main statement of claim, have become *res judicata*; those grounds of second appeal were already raised in the first appeal and were examined by the Supreme Court.

As regards the remaining criticisms levelled under the third ground of second appeal, they note that the appellant did not specifically indicate the substantive provisions allegedly infringed and therefore request that those criticisms be dismissed as unfounded.

With regard to the criticisms levelled under the fourth ground of second appeal, they contend that these are grounds of lack of validity, since the appellant failed to substantiate the second appeal in relation to those matters (which additional piece of evidence should have been taken by the court, when that evidence was proposed and when it was denied), referring in this respect also to Decision on the Appeal in the Interest of the Law No. 9/2020.

As regards the second ground of second appeal (consisting in failure to examine the substance of the case as to the matter of limits the true successor of the 1947 club “Steaua București”, and as to the matter of the transfer/retention of the honors of the football team), they submit that this ground is merely formal, the court of appeal having ruled within the overturning scope and having regard to the evidence taken.

As regards the failure to take the evidence requested upon the appeal rehearing, they submit that this ground also concerns the lack of validity, as the appellant failed to specify which pieces of evidence were not taken and when they were requested.

Moreover, when delivering its ruling, the court of appeal examined all the evidence and the situation *de facto* for the period which it was vested with, in accordance with the overturning decision.

Furthermore, the court of appeal also examined the situation the continuation of sporting activity as at 1998, and found that this was carried on by Asociația Fotbal Club Steaua București “having regard to the provisions set out in the deeds of establishment concerning continuation of sporting activity”.

As regards the submissions that the appellate court ignored the position of the domestic and international football bodies which determined who is the true successor of Clubul Sportiv al Armatei “Steaua București”, they point out that these are irrelevant, since the domestic bodies (the Romanian Football Federation and the Professional Football League) have no jurisdiction to determine intellectual property rights or to adjudicate disputes.

Likewise, the international bodies did not take any measures as long as the Romanian Football Federation did not inform UEFA of the dispute between “Steaua București” and FCSB.

They further submit that they hold the “Steaua București” football team, which is the successor and which plays in League II; in this respect, they refer to the content of a reply from the National Sports Agency, which states that any sports club may maintain an inactive sports section, depending on a number of factors, and that its activity may be resumed at any time once the cause has been remedied, as they claim is the case of the CSA football section.

As regards the third ground of second appeal, concerning the unlawfulness of the challenged decisions as a result of the denial of the requested evidence, the respondent-claimant stated that the court of appeal correctly dismissed the evidence requested, in view both of the solution delivered in the given by the Decision on the Appeal in the Interest of the Law No. 9/2020 and the usefulness of the evidence requested.

Moreover, the criticisms concerning the way in which the courts which heard the substance of the case interpreted the evidence cannot stand for grounds of unlawfulness that may be brought before the court in extraordinary second appeal proceedings.

With regard to the fourth ground of second appeal, they submit that the same arguments were raised by the defendant also in the previous appeal, but they were dismissed.

They further note that the appellant failed to indicate the allegedly contradictory grounds or the grounds foreign to the nature of the case, nor did they argue how the dispositive principle or the right of defense were infringed.

As regards the fifth ground of second appeal, consisting in a breach of the right to a fair trial, they submit that the arguments put forward concerning evidence and the manner of taking such were matters of validity.

The respondent-claimant also refers to the solutions delivered in the overturning decision concerning the honors and their transfer.

With regard to the sixth ground of second appeal, concerning the failure to observe the public policy jurisdiction resulting from application of the Romanian Football Federation’s Statute, they submit that this ground has already been settled by the High Court’s decision in the first procedural

cycle, which overturned the judgment of the court of appeal only as regards the rehearing of the joined claim, and that this ground of second appeal is abusively reiterated.

Moreover, since Clubul Sportiv al Armatei "Steaua București" operates under Article 29 (sports club under the public law), and not under Article 31 (not-for-profit association or joint-stock company) of Law No. 69/2000 on physical education and sport, the provisions of the Romanian Football Federation's Statute are not enforceable against them and therefore neither is the arbitration clause.

As regards the seventh ground of second appeal, concerning the incorrect holding of the positive effect of the Decision No. 3425/2014 of the High Court, they submit that the effects of *res judicata* were correctly upheld, since in the reasoning of that decision the supreme court found that CSA "Steaua București" was the proprietor of a well-known trademark, that they never assigned that mark, that there was no agreement of theirs to its registration by FCSB, and that CSA's assets were not transferred and thus neither the honors.

The reasoning of the first-instance court, which has become final for the period 1947–1998, is correct in holding that the honors "is not an accessory of the football team, since the team represents the group of athletes taking part in competitions together. The honors are not ancillary to the federative rights over the players, because, irrespective of any changes made to the team, there is no change in the person entitled to the honors. The trophies do not belong to the athletes, but to the club."

As long as the appellant has not proven the transfer of the honors (since no such transfer exists), there can be no question of legal grounds based on assumptions. Since the appellant did not take over either the "Steaua" trademark or the assets back in 2004, it is clear that they cannot be the successor of Clubul Sportiv al Armatei "Steaua București", and the sporting activity has been carried out by the respondent-claimant's own athletes.

As regards the criticism falling under the same ground of second appeal, concerning an alleged breach of the right to a fair trial and an effective remedy and of the principle of immediacy in taking of evidence, they submit that the manner in which the court of appeal took the evidence, this is a ground of invalidity.

Moreover, the court of appeal examined the evidence and set out at length the reasons for which it delivered the challenged decision.

With regard to the eighth ground of second appeal, consisting in a breach of the principle of lawfulness, they submit that no applicable legal provisions are identified and therefore requests that it be dismissed.

As regards the ninth ground of second appeal, they request that it be dismissed, given that the main claim, seeking a declaration as to the honors for the period 1947–1998, has been finally determined.

- As at 13 August 2024, out of time, the respondent-intervener Asociația Steaua 1947 Ltd filed a statement of defense to the second appeal, requesting that the defendant's second appeal be upheld.

- As at 19 August 2024, the appellant-defendant filed a reply to the respondent-claimant's statement of defense, requesting that the submissions made therein be dismissed and that the appeal be upheld.

Essentially, the appellant-defendant argued that the Decision No. 1034A/2021 of the Bucharest Court of Appeal had no *res judicata* effect, since it was overturned in its entirety by the Decision No. 513/2023 of the High Court of Cassation and Justice; likewise, the Decision No. 989A/2018 of the Bucharest Court of Appeal neither had *res judicata* effect, since it is not applicable in this case due to the lack of the triple identity.

They also explained that the acquiescence stems, in part, also from the defenses raised by the respondent-claimant in their statement of defense to the joined statement of claim.

– As at 5 September 2024, the respondent-claimant filed a reply to the statement of defense of the respondent-intervener Asociația Steaua 1947 Ltd.

#### 8. Screening procedure

The report prepared in the case under Article 493(2) and (3) of the Code of Civil Proceedings was examined by the screening panel and was served on the parties; with the interlocutory order of 12 February 2025, the screening panel upheld the second appeal in principle and set a date for a public hearing for a ruling thereon on 4 June 2025.

#### II. The solution and reasoning of the High Court of Cassation and Justice

After having examined the appealed in the light of the criticisms levelled, and with reference to the documents and proceedings on record and the applicable legal provisions, the High Court finds that the second appeal is unfounded for the reasons set out below.

II.1. As a preliminary matter, after having observed how the appellant has structured, presented and developed their grounds, it should be recalled, on the one hand the second appeal proceedings are intended to review the lawfulness of the judgment against the grounds for overturning expressly and exhaustively laid down in Article 488(1)(1)–(8) of the Code of Civil Proceedings, none of which is designed to permit a reassessment of the means of evidence and/or the situation *de facto*. In other words, the facts are finally determined by the courts hearing the substance of the case, whereas the review court tries the judgment, not the proceedings, the purpose of the second appeal being to check whether that challenged judgment complies with the applicable rules of law, pursuant to Article 483(3) of the same Code.

The appellant-defendant have relied their appeal on the grounds for overturning laid down in Article 488(1)(3), (5), (6), (7) and (8) of the Code of Civil Proceedings.

However, apart from the criticisms of unlawfulness that can fall under the scope of the aforementioned grounds for overturning, the second of the second appeal also included criticisms falling under the scope of a validity review, which are incompatible with the purpose of the second appeal; furthermore, in a procedurally inappropriate manner and disregarding both the judgment delivered in the previous procedural cycle, the regime and effects of the overturning decision, as well as the nature of this extraordinary remedy, they reiterated the majority of the ideas argument construct submitted to judicial review in the previous procedural stages, under the pretext that these would fall in the indicated grounds for overturning, without effectively levelling any point criticism against the appeal rehearing court. Those matters which fall outside the scope of the judicial review allowed to this court of second appeal will be stated when examining the criticisms on which it has been lawfully vested, in connection with the particular ground for overturning which they are alleged to fall under.

Secondly, again as a preliminary matter, it should be noted that Article 501(1) of the Code of Civil Proceedings enshrines the rule that the solution delivered by the second appeal court is binding on the court which heard the substance of the case fact (court of appeal or court of first instance) which rehears the case, which means that those matters can no longer be reopened for discussion, and less can they receive a different solution, as this would amount to disregarding the binding force and *res judicata* authority of the judgment of the court hearing the second appeal; and, under paragraph (3), the rehearing has to stay within the overturning scope, that is to say within the limits of the instruction given by the second appeal court and taking into account all the grounds relied on in relation to those matters of the case which a rehearing retrial was ordered for.

Following up on these preliminary considerations and before proceeding to effectively examining the grounds of second appeal, the High Court must review the essential elements of the procedural history of the pending dispute, in so far as they are relevant to the criticisms levelled in the second appeal, as this has been framed by the joined claims submitted to the courts hearing the substance of the case and by the proceedings that are relevant to this review, as follows:

With the statement of claim filed with the Bucharest Tribunal, Fifth Civil Division, and registered under No. x/3/2017 of 29 December 2017, the claimant Clubul Sportiv al Armatei “Steaua București” (hereinafter “CSA”) sought, against the company Fotbal Club FCSB S.A. (hereinafter “FCSB”), a declaration that the honors of the football team of Clubul Sportiv al Armatei “Steaua București” belongs to them since their establishment back in 1947 and until 2003.

After their counterclaim had been dismissed as time-barred in the interlocutory order of 27 September 2018, FCSB filed a joined claim registered under No. x/3/2018 of 23 October 2018, by

which, in opposition to CSA, they sought a declaration that they were the lawful holder of the right to use, for commercial and sporting purposes, the honors of the former professional football team Steaua București, as well as all sporting derivatives arising therefrom, in their capacity as the sole successor of the football activity of that team.

In the first procedural cycle, the proceedings before the courts which heard the substance of the case of fact (the devolution judicial review court partly reforming the judgment of the court of first instance) concluded with a interlocutory order upholding the main claim in part and dismissing the joined claim as unfounded, to the effect that it was held that the honors of the football team Clubul Sportiv al Armatei "Steaua București" from 1947 until 1998 belonged to the claimant CSA, and that main claim seeking recognition of the right to the honors for the period 1998–2003 was dismissed to them for lack of standing to bring up actions.

Under the Overturning Decision No. 513 of 28 March 2023, the High Court of Cassation and Justice – First Civil Division upheld the second appeals lodged by the defendant FCSB and by the intervener Asociația Salvați Steaua and ordered that the interlocutory order of 10 May 2021 and the decision of the court of appeal be overturned in full and the case be sent back for rehearing, in order to determine whether the defendant had a right over the honors for the period 2003–2017, giving the referred court instructions on the need to assess the relevance, conclusiveness and usefulness of allowing the evidence requested for the purpose of proving the joined claim, as well as on the need to examine the defendant's defenses.

Accordingly, the court hearing the second appeal found that the ground of second appeal provided in Article 488(5) was applicable, as a result of an insufficient and incorrect determination of the objective procedural framework of the joined claim, having regard to the time limits of the court proceedings initiated by FCSB, and dismissed all the other grounds of second appeal as unfounded.

When rehearing the appeal, the Bucharest Court of Appeal – Third Division for Civil Matters and Cases Involving Minors and Family, under an interlocutory order dated 18 September 2023 and the Civil Decision No. 1285A of 23 October 2023 (the subject of this second appeal), dismissed the requests for additional evidence made by the appellant-defendant and the interveners (new documents, cross-examinations and an accounting expert report) as not useful in the light of the rehearing scope (settlement of the joined claim for the period 2003–2017). It also upheld the appeal lodged by the defendant FCSB and the motions to intervene in their favor, set aside in part the appealed decision and, after having reheard the substance: - upheld the plea of lack of standing to bring up actions of the claimant CSA in respect of the claim concerning the right to the honors for the period 1998–2003 and dismissed that claim accordingly; - dismissed the pleas of inadmissibility, lack of interest and lack of standing to bring up actions and stand trial raised in connection with the joined claim as unfounded; and dismissed the joined claim seeking declaration of the right to use the honors of the former professional football team "Steaua București" in the period 2003–2017 as unfounded; - maintained the provisions of the judgment of the first court concerning the solution delivered on declaration that the honors of the football team Clubul Sportiv al Armatei "Steaua București" from 1947 until 1998 belonged to CSA and the solution on the joined claim relating to the period 1947–2003.

With the levelled criticisms, the pending second appeal concerns the rulings denying the requests for evidence made by the appellant-defendant during the hearing of 18 September 2023, and dismissing the joined claim and upholding the main claim in part (including the alleged failure to rule on the procedural pleas raised in connection with that claim).

II.2. The ground for overturning laid down in Article 488(1)(3) of the Code of Civil Proceedings covers the criticisms developed under ground 6 of the statement of second appeal.

Essentially, with the specific criticism of unlawfulness, the appellant argued that the provisions of Article 129(2)(1) of the Code of Civil Proceedings and of Article 58 of the Romanian Football Federation's Statute had been infringed, which provisions imperatively lay down the obligation that disputes arising from, or in connection, with football activity in Romania and involving affiliated clubs be settled exclusively by the Romanian Football Federation's committees with jurisdictional powers, and prohibits that such disputes are settled by the courts of law.

These criticisms are unfounded.

It should be noted that, having been previously vested with a similar appeal ground in the earlier procedural cycle, the Supreme Court dismissed it as unfounded, and argued in the overturning decision that: “The court of appeal conducted an exhaustive review of the relevant provisions of the Romanian Football Federation’s Statute, following which it correctly found that at least one of the parties to the dispute – the claimant – does not have and cannot have the status of member of the Romanian Football Federation by virtue of their legal status (a sports club under the public law), and hence they have no obligation whatsoever to comply with the Romanian Football Federation’s Statute and, implicitly, or to submit to arbitration.”

The review court went on to hold that, having regard to the provisions of Article 129(2) reading that the general jurisdiction of the courts is a matter of public policy and a derogation from the statutory provisions can be made only under the conditions expressly laid down by the law, there being no applicability of the Romanian Football Federation’s Statute and absent an arbitration agreement, the court vested with the settlement of the pending dispute is not in the situation referred to in Article 554 of the Code of Civil Proceedings and cannot decline jurisdiction, so that the submissions alleging that the dispute is arbitrable were correctly rejected and the general jurisdiction of the Romanian courts was correctly upheld.

Thus, with binding force and *res judicata* effect, the matter in dispute concerning the general jurisdiction of the courts of law to settle the case has been finally addressed and can no longer be reopened for discussion or contradicted, which is the conclusion required under Articles 430 and 501 of the Code of Civil Proceedings.

II.3. The ground for overturning laid down in Article 488(1)(5) of the Code of Civil Proceedings covers the criticisms developed under grounds 1, 2, 3 and 5 of the statement of second appeal.

Essentially, with the specific criticisms of unlawfulness, which must be summarized, structured, grouped and addressed as a whole, the appellant argued as follows: (i) a breach of Article 436 of the Code of Civil Proceedings, by refusing to deliver a judgment on the basis of CSA’s partial acquiescence to FCSB’s right to the honors for the period 2003–2017; (ii) the disregard of the rehearing scope and the instructions given in the overturning decision and infringement of the dispositive principle and the principles of the right to defense, a fair trial and an effective remedy, by erring in limiting the procedural framework of the joined claim only to the period 2003–2017 and by failing to examine FCSB’s submissions and the procedural pleas raised in the main claim; (iii) a breach of the rules of law governing the evidence, by failing to use the judicial presumption arising from the notoriety of the honors of the historic team Steaua București, by unlawfully dismissing the evidence requested upon the rehearing of the appeal, by ignoring the documents filed by the appellant and by reversing the burden of proof of the right over the honors, thereby disregarding the principles of adversarial proceedings, the right of defense, the right to a fair trial and the active role of the judge.

– As regards the first matter which criticisms has been levelled against, the appellant states that both the interlocutory order of 18 September 2023 and the statement of defense filed in the appeal proceedings clearly show that CSA did not challenge their honors of the “Steaua” team for the period 2003–2017, and that such acquiescence stands for an unequivocal, unilateral and voluntary expression of the intention accept, in part, the claims made in the joined claim, which should have led to the dispute being brought to an end accordingly.

This criticism is invalid.

The dispositive principle, which is specific to civil proceedings, gives effect to the parties’ right to end it by dispositive proceedings under Article 9(3) of the Code of Civil Proceedings, which implies, among other things, the right to acquiesce in the other party’s claims (Article 436 of the Code expressly regulating the effects of such an act of acquiescence (at the claimant’s request, the court shall hand down a judgment to the extent of such acquiescence – in whole or in part).

Contrary to the appellant’s submissions, there was no expression of intention as that alleged in the statement of second appeal in the proceedings, as a dispositive procedural act; more specifically, there was no acquiescence, either orally before the court rehearing the appeal or in writing in the statement of defense filed in the appeal proceedings in the first procedural cycle, so that, since the reality of (partial) admission of FCSB’s claims, *i.e.* the condition in the assumption of the legal rule, has not been demonstrated, there is no basis for applying the rule enshrined in Article 436(1) and for delivering a judgment in the sense desired by the appellant.

This is because the submissions made orally by CSA's retained counsel and documented in the interlocutory order of 18 September 2023 (page 4, last paragraph, and page 5, paragraphs 4 and 8), and also cited in the second appeal, were to the effect that "for this period (i.e. 2003–2017), nobody has challenged FCSB's honors".

Likewise, in the defenses contained in the statement of defense filed in the appeal proceedings in the first procedural cycle, the respondent-claimant CSA unequivocally articulated their procedural position of not challenging the fact that the honors of the FCSB football team for the period 2003–2017 belonged to FCSB, and frequently and consistently asserted that CSA was the holder of the honors of the football team "Steaua București" starting from 1947. Relevant in this regard is the line of argument accompanying the plea of lack of interest raised with reference to the joined claim (page 22, paragraph 2 of the statement of defense).

Moreover, the variety and length in time of the entire litigation history between the two parties (for instance, cases No. x/3/2011 and No. x/3/2015, in which they disputed the use of the "Steaua București" trademark and of the signs "Steaua" and "Steaua București") are manifestly inconsistent with any alleged acquiescence in the claims relating to the honors of the former football team "Steaua București".

Accordingly, absent any dispositive procedural act embodying a genuine intention to admit to the claims in the joined statement of claim, the referred court could not rationally deliver a judgment on the basis of the rule laid down in Article 436 of the Code of Civil Proceedings, as the appellant invalidly alleges.

- As regards the second matter which criticism has been levelled against, the appellant relied on a failure to comply with the rehearing scope and to act upon the instructions given in the overturning decision and on an infringement of the dispositive principle and the principles of the right to defense, a fair trial and an effective remedy (the provisions of Article 397 read in connection with Article 501 in relation to Article 204, Articles 6, 9 and 13 of the Code of Civil Proceedings, and Articles 6 and 13 ECHR).

Specifically, they argued that the court rehearing the appeal, on the one hand, erred in limiting the procedural framework of the joined claim only to the period 2003–2017 and, on the other hand, neither examined the submissions they had made nor ruled on the procedural pleas raised in the main claim (inadmissibility, lack of interest and lack of standing to bring up actions).

These criticisms are unfounded.

From a first angle of analysis, the High Court notes that the notion of the subject-matter of the statement of claim covers not only the material object (the specific claim brought before the court), but also the substantive right attaching to that material object, and that the subject-matter of the civil action is specified according to the procedural element relied on by the interested party.

It should be noted that the definition of the subject-matter of the case, as an essential element of the joined statement of claim and the focus of the appellant's criticisms, was challenged and finally settled in judicial proceedings by the overturning decision, and the referred court complied in full with the objective procedural framework settled by a judgment which has binding force and *res judicata* authority.

Thus, since it concerned the ground of second appeal provided in Article 488(5) (applicable as a result of the courts hearing the substance of the case having insufficiently and incorrectly determined the objective procedural framework of the joined claim, by reference to the time limits applicable to the court proceedings initiated by FCSB), the judicial solution delivered by the court hearing the second appeal in the previous procedural cycle, which is immutable and not open to challenge, is clear in terms of the rehearing scope.

This is because, building its statement of legal reasoning on the finding that "the head of the joined claim has been poorly worded", the review court held that: "It is, however, beyond doubt that the court of appeal correctly found that both the claimant and the defendant sought a declaration that they are holders of the honors of the Steaua team for the period 1947–2003, and that this has not been disputed by either party. (...) The court of appeal reviewed the parties' submissions, clarified the situation *de facto* and determined the parties' rights, ruling, in respect of the claim of both the claimant and the defendant, on the legal entity to which the honors for the period 1947–1998 belong. What the appellants do challenge however is, in essence, the fact that the transfer of the honors did take effect for the appellant-defendant company Fotbal Club FCSB S.A. and for the period 2003–2017, the latter having the right to hold the honors, in spite of the change in the names of the legal persons which used to hold it."

Furthermore, the overturning solution and the reasoning underpinning it, together with the instructions given to the court rehearing the case, are to the effect that "the case is sent back for

rehearing to the same court of appeal in order to determine whether the defendant-claimant (*i.e.* FCSB) holds a right over the honors for the period 2003–2017”.

Consequently, during the rehearing of the appeal, the referred court fully and lawfully complied with the binding solution delivered as regards the subject-matter of the joined claim, from the point of view of the legal benefit sought and of the substantive right asserted by FCSB.

In this regard, the court rehearing the case correctly found that, from the express content of the joined claim and from the arguments put forward in support of the claims, what the defendant FCSB seeks is a declaration that they hold the right to use the honors of the former team Steaua București in the period 2003–2017, in its purported capacity as the sole successor of that team’s football activity, and not of the current football team.

Consequently, taking into account the matters finally settled by the Supreme Court, the court of appeal correctly drew the conclusion that “upon rehearing, it is vested with the settlement of the appeal and the motions to intervene only from the perspective of the ground of appeal alleging that the first court did not rule in full on the joined claim, and the claim seeking a declaration that the appellant-defendant Fotbal Club FCSB SA is the lawful holder of the right to use, for commercial and sporting purposes, the honors of the former professional football team Steaua București, as well as all sporting derivatives arising therefrom, in their capacity as the sole successor of that team’s football activity for the period 2003–2017”.

From the other angle of analysis required by the appellant’s criticisms, namely that the court rehearing the case examined neither their defenses, nor the procedural pleas raised in the main claim (inadmissibility, lack of interest and lack of standing to bring up actions), the High Court notes, first of all, that the very limits of the rehearing did not allow the referred court to extend its review also to the means of defense relied on in relation to the statement of claim filed by the claimant CSA, since the overturning was ordered on account of the failure to examine the claims brought up before the court in the joined claim diked by FCSB, for a specifically determined period of time (2003–2017).

In other words, the overturning was indisputably a partial one, having been held that one single ground of unlawfulness (Article 488(5)) was applicable, and related to a breach of the rules of judgment (the dispositive principle and the right of defense) explicitly restricted only to the subject-matter of the joined claim and only within the indicated time limits, so that there was a definitive procedural obstacle preventing the referred court from reassessing the solution delivered on the main claim, including the pleas raised as means of defense in relation to the latter.

Moreover, the appellant ignores the clear and entirely unequivocal grounds of the Overturning Decision No. 513 of 28 March 2023 (set out at pages 14-15), by which a ground similar to that reiterated in the pending second appeal was examined and dismissed as unfounded.

Secondly, it should be noted that the instructions given to the referred, *i.e.* to examine “also the defenses of the respondent-claimant Fotbal Club Steaua București, to the effect that the football activity was carried out within different legal entities, subject to distinct legal regimes, which operated in the periods 1947–1998, 1998–2003 and after 2003”, were implemented during the rehearing of the appeal, since the obligation to examine such defenses was fulfilled in the case, as it will be shown below as part of the examination of the grounds for overturning laid down in Article 488(7) and (8).

Moreover, the appellant claims that their “submissions”, “arguments and evidence” or “unlawfulness matters” were not examined, without detailing the levelled criticism. However, since the appellant received an adequate response, which it did not, however, challenge in an effective manner, this amounts to an apparent criticism of unlawfulness, which runs counter to Article 486(1)(d) read in connection with Article 488(1) of the Code of Civil Proceedings. Accordingly, the court hearing the second appeal is not in a position to examine whether the judgment is consistent with the applicable rules of law, since the appellant’s allegations were not, in practical terms, accompanied by an actual criticisms of unlawfulness corresponding to the grounds of the appealed decision.



– As regards the third matter which criticism has been levelled against, the appellant alleged a breach of the principles and rules of law governing evidence, thereby disregarding the principles of adversarial proceedings, the right of defense, the right to a fair trial and the active role of the judge (Articles 249, 250, 264–265, 327 and 329 in relation to Articles 6, 13, 14 and 22 of the Code of Civil Proceedings and Article 6 ECHR).

Specifically, the appellant argued that the court rehearing the case erred in relating only to the agreements concluded by and between the parties, and did not turn also to the judicial presumption arising from the notoriety of the honors of the historic team Steaua București; likewise, it unlawfully dismissed the evidence requested upon the rehearing of the appeal and ignored or disregarded the documents lodged by the appellant in both procedural cycles; in addition, it unlawfully reversed the burden of proof of the right over the honors, although CSA was the party bound to prove that the honors had remained in their assets or had been transferred to a third party.

These criticisms are unfounded.

The High Court notes that the overturning decision held as follows: “having regard to the fact that the appealed interlocutory order of 10 May 2021 is closely connected to the joined claim, since by that order the court of appeal dismissed the requests for evidence made by the company Fotbal Club FCSB S.A. in order to prove their joined of claim, upon rehearing, the court of appeal must assess the relevance, conclusiveness and usefulness of allowing the requested evidence”.

During the hearing of 18 September 2023, after having established, in conditions of adversarial proceedings and orality, the framework within which requests for evidence would be made, discussed and allowed – a framework arising from the scope of the rehearing and from the instructions of the review court – the court of appeal dismissed the additional evidence requested (opinion poll, information requested from the Romanian Football Federation, cross-examinations and an accounting expert report), on the basis of Articles 258 and 255 of the Code of Civil Proceedings, on the ground that they “are not useful to the settlement of this case”.

In the interlocutory order on the oral arguments of 18 September 2023 (page 8, paragraphs 1–6), the court of appeal set out a detailed, clear, logical and persuasive reasoning (and by no means “flawed and unrelated to the nature of the case”, as the appellant baselessly submits), in which it justified its decision to deny the evidence, by reference to the evidentiary proposition stated for each means of evidence proposed by the appellant-defendant FCSB and to the subject-matter of the rehearing.

Subsequently, in the body of consideration of the appealed decision, devoted to checking the situation *de facto* determined by the first court and to reassessing all the evidence on record, in accordance with Article 479(1) of the Code of Civil Proceedings, the court of appeal thoroughly interpreted each means of evidence and explained the way in which all the evidence was weighed, compared and cross-checked.

However, in countering the arguments upon which the decision to refuse the additional evidence was based, the appellant presented in the statement of second appeal a consistent selection of theoretical arguments extracted from the relevant case-law of the Supreme Court regarding principles and rules of evidence, yet without grounding them in a concrete and effective manner upon the reasoning of the appealed interlocutory order; as such, the criticisms levelled rather denote the appellant's disagreement with the ruling given on the request for evidence, which places their endeavor outside the scope established by Article 488(1) of the Code of Civil Proceedings.

Furthermore, when contending that the decision to deny the proposed evidence was allegedly unlawful, the appellant relies on matters relating to the circumstances *de facto* established on the basis of the evidence by the court rehearing the appeal, while the criticism levelled seeks in reality a reassessment of the evidence and an alteration of the situation *de facto*, all of which are matters that fall outside the scope of the review of lawfulness allowed to the court hearing the second appeal.

Therefore, the challenged measure is the consequence of the referred court's assessment that the evidence on record sufficed to clarify the case in its entirety; consequently, the legal and logical reasoning underpinning that conclusion falls within the scope of the process of assessing the evidence allowed and taken in the earlier procedural stages, which scope is reserved exclusively to the courts hearing the substance of the case.

Moreover, the appellant's criticism concerning the lack of an active role on the part of the court of appeal, which allegedly related only to the agreements concluded by and between the parties and did not also turn to the judicial presumption arising from the notoriety of the honors of the historic team Steaua București, cannot be upheld, having regard to Article 254(6) of the Code of Civil Proceedings, which provides that a court's failure to order *ex officio* the supplementation of the evidence or the taking of new evidence cannot be challenged in appeal proceedings.

Equally unfounded is also the criticism that the court of appeal unlawfully reversed the burden of proof, on the ground that the claimant CSA was the one bound to prove that the honors had remained in their assets or had been transferred to another third party, and not the defendant FCSB was required to prove the takeover/transfer of the honors.

In the case at hand, there can be no question of an incorrect determination of the party bearing the burden of proof, contrary to Article 249 read in connection with Article 482 of the Code of Civil Proceedings, since, in their capacity as holder of the right asserted in the joined claim (the claimant in civil action No. x/3/2018, joined to the main claim of the claimant CSA), the appellant FCSB was indisputably placed in the procedural position of the party required to prove their claim concerning the right to the honors, in accordance with the general rule *onus probandi incumbit actori*.

Moreover, the appellant impermissibly disregards the fact that, in the overturning decision, the favorable outcome obtained by the claimant CSA for the period 1947–1998 was finally determined in court proceedings, so that it was not for CSA to prove that there had been no transfer of their right, but, on the contrary, the burden was on the appellant to prove the alleged takeover of the right to the honors.

Accordingly, it cannot be validly argued that the decision of the court of appeal disregarded any fundamental principles of the civil proceedings, such as those relied on in the statement of second appeal.

II.4. The ground for overturning laid down in Article 488(1)(7) of the Code of Civil Proceedings, covering the criticisms levelled under ground 7 of the statement of second appeal, concerns the incorrect finding that the positive effect of the *res judicata* authority of Civil Decision No. 3425 of 3 December 2014 of the High Court of Cassation and Justice – First Civil Division was applicable in this case.

In essence, with their specific criticisms of unlawfulness, the appellant argued that no equation can be drawn between the right to the trademark and the right to the honors, so that the earlier determinations have no effect in the pending proceedings, which review the spin-off of the football section and debate on the disputed matter of the true successor of the Steaua football team and the transfer/retention of their honors.

These criticisms are unfounded.

Contrary to the appellant's submissions, in the overturning decision handed down in the first procedural cycle, the Supreme Court validated "the logical reasoning (n.n. of the court of appeal) from which the conclusion that the right over the honors for the period 1947–1998 remained with the claimant (*i.e.* CSA) was correctly drawn. In determining the situation *de facto* concerning the absence of any transfer of the right to the honors to the appellant-defendant, the courts which heard the substance of the case correctly gave effect to the *res judicata* authority of the Decision No. 3425/2014 of the High Court, which irrefutably held that, in 1999, there was no transfer of the entire assets, as the appellant-defendant alleges."

Furthermore, the court rehearing the appeal subjected to its own analysis and harmoniously integrated, in its legal and logical reasoning, the effect of the *res judicata* authority (in its positive manifestation) of the Decision No. 3425/2014, with reference to the determination that "back in 1999, there was no (total) transfer of assets from the claimant to Asociația Fotbal Club Steaua București, but only a transfer of the right to use certain premises free of charge, a secondment of employees of the former professional football section, and a takeover of amounts payable and receivable dating from before 8 July 1998 in connection with that football section".

At this point in the analysis in this second appeal, it should indeed be noted that it is self-evident that there can be no question of any identical purpose or overlap between the substantive rights relied on in these proceedings and in the previous ones (Cases No. x/3/2017 and No. x/3/2011), given that identity of subject-matter of the statement of claim generally presupposes that the same immediate legal benefit as that previously brought before the court is claimed, and that the same claim is made, not only with reference to the material object but also to the substantive right attaching to it.

However, in the previous proceedings, which concluded in the final Decision No. 3425/2014, the parties disputed the right over the Steaua trademark, whereas in the pending dispute the right over the honors of the former Steaua football team is being asserted; this difference underlies the consistent finding, in all assessments carried out in the earlier procedural stages, that only the positive function of the *res judicata* authority, as laid down in Article 431(2) by reference to Article 430 of the Code of Civil Proceedings, is applicable.

Thus, in Case No. x/3/2011, where, at the request of the claimant Clubul Sportiv al Armatei "Steaua București", the trademark STEAUA BUCUREȘTI registered in the name of the defendant Fotbal Club "Steaua" București SA was cancelled, the court hearing the second appeal examined the bad faith in registration of the trademark subject to cancellation from the perspective of three mandatory conditions, including the disloyal intent of the trademark owner, and held, in the final Civil Decision No. 3425/2014, that the cumulative fulfilment of the statutory and case-law requirements justifying the annulment had been proven.

In examining whether the prerequisite situation existed, namely that "the assets of the trademark owner are transferred in their entirety" (and not merely certain asset elements), a transfer which would have had the effect "also the transfer of the rights to the trademark", the court hearing the second appeal settled the dispute concerning the alleged transfer of the assets of the claimant CSA by the following consideration (page 19, paragraph 2 of the Decision No. 3425/2014): "However, under the 1999 protocol, the non-profit association essentially received the right to use certain premises free of charge; employees of the former professional football section were seconded to it; and the amounts payable and receivable contracted before 8 July 1998 in connection with that football section were transferred; there having been no transfer of the claimant's assets to the non-profit association."

Accordingly, the High Court notes that, although the positive effect of the *res judicata* authority, unlike its negative effect, does not preclude a second try, it is nevertheless generally accepted that it eases the burden of proof, in that what has previously been determined by a court is binding in the new proceedings between the parties and can no longer be contradicted.

This is because the basis of the *res judicata* authority lies in the opportunity which the parties had to make claims and bring up defenses, to set out their reasons and arguments, to produce, take and examine evidence, and to debate all relevant matters *de facto* and *de jure*, and only the decisive grounds – which necessarily support the solution delivered in the operative part – and the decisive grounds – by which a disputed matter is resolved – falling of course, within the authority of the matter resolved.

Accordingly, in these proceedings, the court rehearing the appeal lawfully based its legal reasoning on the argument that it could not rule contrary to what had previously been determined, namely that it could not find that there had been a full transfer of assets; that court then went on to develop its line of reasoning and concluded that there was no transfer of the right to the honors from CSA to Asociația Fotbal Club Steaua București and, subsequently, to FCSB (this latter part of the reasoning will be examined below, in the context of the ground for overturning laid down in Article 488(8)).

II.5. The ground for overturning laid down in Article 488(1)(8) of the Code of Civil Proceedings covers the criticisms developed under grounds 2, 8 and 9 of the statement of second appeal.

In essence, with the specific criticisms of unlawfulness, which must be grouped and addressed as a whole, the appellant argued as follows: i) the absence of a legal basis underpinning CSA's right to the honors, as resulting from the failure to take into account the fact that FCSB is the successor in title to the non-profit association established in 1998, which in turn is the successor to CSA's football section; ii) a breach of the statutory provisions governing the right over sporting honors laid down in Law No. 69/2000 and Law No. 29/1967, with reference to the legal nature of that right, the reorganization and spin-off of CSA's football section, which acquired legal personality and its own assets in 1998, as well as the uniqueness and indivisibility of the honors resulting from the uninterrupted competitive activity of the football team; iii) a breach and incorrect application of the provisions of Laws No. 69/2000 and No. 29/1967, by disregarding the football-specific nature of the disputed matters *de facto* and *de jure*, and the continuity of the sporting and competitive activities of the Steaua football club, and by failing to attach the correct legal significance to the elements *de facto* demonstrating the appellant's affiliation to the National Football Federation and the nexus between the honors and the football team; iv) a misapplication of the rules of interpretation of agreements laid down in the Civil Code, with reference to the spin-off of CSA's football section and the protocol concluded for the handover of the assets and liabilities; v) a breach of the provisions of the Decree No 31/1954 on the transfer of assets in the case of legal entities, with reference to the legal transactions carried out in 1998 and 2003 as a result of the reorganization of CSA by spin-off, through the spin-off,

of the football section and the establishment of the non-profit association; vi) a breach of the legal rules on sporting succession, since the true successors in title of the historic football team are the non-profit association (from 1998) and FCSB (from 2003).

These criticisms are unfounded.

As it has been addressed at length above, only a partial overturning decision was delivered in the previous procedural cycle, by which the favorable outcome obtained by the claimant CSA in respect of the right to the honors for the period 1947–1998 was finally determined in court proceedings and the scope of the appeal rehearing were set out, namely a determination as to whether the defendant FCSB had a right to the honors for the period 2003–2017. At the same time, all the other grounds of second appeal, as examined from the perspective of the overturning assumptions laid down in Article 488(3), (5), (6) and (8) of the Code of Civil Proceedings, were dismissed as unfounded.

The instructions given to the court rehearing the case where that it should also take into account FCSB's submissions that the football activity was carried out within different legal entities, subject to distinct legal regimes, which operated in the periods 1947–1998, 1998–2003 and after 2003, as well as the agreements concluded by and between the parties, in order to determine whether Asociația Fotbal Club Steaua București, which took over from CSA a number of expressly listed rights, had the legal possibility of transferring the honors for the period stated in the joined claim.

The main elements of the factual context, as determined by the court of appeal and which can no longer be reassessed in this extraordinary proceedings, and which are useful for a better understanding of the line of reasoning challenged by the appellant, are as follows:

In 1947, Asociația Sportivă Armata was established, which, from 1961, bore the name Clubul Sportiv al Armatei – Steaua.

With the Order No. 266 of 8 May 1992, the Professional Football Laws of the Romanian Football Federation were approved; Article 3 thereof reads that: “1. Football clubs may be organized, according to Law no. 24/1924, as non-profit or non-for-profit associations also in accordance with the provisions of the Decree no. 31/1954 concerning legal entities. 2. Professional football clubs may be organized as companies in accordance with Law No. 31/1990.”

In 1998, with the Civil Judgment No. 186 of 8 July 1998 of the Bucharest Tribunal, legal personality was conferred on Asociația Fotbal Club Steaua București (hereinafter “the Association”) and its entering into the court's special register was ordered.

According to Article 1 of its Articles of Incorporation, it is a not-for-profit sports association for the purposes of Law No. 21/1924 and in accordance with the provisions of the Decree No 31/1954, which continues the high-performance sporting activity of CSA's Football Section and fully takes over its glorious traditions. Its main scope of business, according to Article 5, is the organization and conduct of professional football sporting activities by training high-performance athletes in this field and by participating in domestic and international sporting competitions. The Association's assets consisted of the sum of (...) lei (ROL).

On the basis of Government Decision No. 66/1999, Protocol No. 21 of 7 March 1999 was concluded by and between the Ministry of National Defense and the Association, under which the former granted the Association the right to use free of charge certain premises and land under the ministry's administration, gave it the right to use certain sports facilities with CSA's consent, and undertook to provide the means of transport needed for the conduct of high-performance sporting activity, as well as accommodation for athletes and referees; the protocol further provided that the officers and non-commissioned officers on the staff of the former professional football section would be seconded to the Association, and that the amounts payable and receivable of CSA Steaua and of the former professional football section, contracted before 8 July 1998 exclusively for the members of the football team, technicians and coaches and those relating to the team's participation in domestic and international competitions, would be taken over by the Association under a separate handover protocol.

Later, in 2003, with the Protocol of 24 January 2003, the General Meeting of the Association decided to establish a joint-stock commercial company in which the Association would participate as a shareholder. On the same date, the Out-of-Court Settlement No. 76 of 24 January 2003, prepared in authentic form, was concluded and provided for the undertaking of the Association and of four other natural persons to establish the company Fotbal Club "Steaua" București SA.

The transaction stipulated that the Association would transfer, for business purposes, the football players (senior and youth) and the coaches to the new company, which would, without further formalities, take over the place in Division A, subrogating itself into all the rights of the Association (obtain a sports certificate, register with the Ministry of Youth and Sport, have the sports certificate replaced with the Romanian Football Federation and the Professional Football League, in accordance with Law No. 69/2000).

With the Resolution of the General Meeting of the Association of 6 February 2003, it was decided as follows: approval of the Association's participation in the share capital by a contribution in kind consisting of the ROTORILL installation; approval of the company's articles of association; free assignment of the rights to participate in Division A as from the date of the lawful registration of the newly incorporated company; approval of the free assignment of the federative rights over all players validly registered with the Association; approval of the company's registration as a duly established sports structure with the Ministry of Youth and Sport from the date on which it would acquire legal personality as a professional football club, and that all advertising, sponsorship, TV rights and similar contracts, concluded directly or indirectly in connection with the main sporting activity, be assigned free of charge to the company.

In Authentic Deed of Establishment No. 144 of 6 February 2003, it was stipulated that the purpose of the company is to participate in professional sporting competitions, to promote and develop sporting activities and other activities related or ancillary to its corporate object, thereby taking over the place of the Association's football team in Division A and that of its other teams, the Association's obligations towards the football payers, the Professional Football League and the Romanian Football Federation, as well as the promotion of young talent in high-performance professional football.

With the interlocutory order of 19 March 2003 of the judge delegated to the Trade Register Office attached to the Bucharest Tribunal, the incorporation of the company Fotbal Club "Steaua" București was authorized and the company was entered into the trade register.

The High Court further notes that the court rehearing the appeal complied with the instructions set out in the overturning decision and, having regard to the agreements concluded by and between the parties, examined the defendant FCSB's submissions concerning the legal value and effects of their right to participate in Division A competitions.

To that end, in constructing its legal reasoning, the court rehearing the case properly started from the matters in dispute that had been finally settled in the previous procedural cycle, namely matters *de facto* and *de jure* resolved on by the court of appeal in the Decision No. 1034A/2021 and upheld by the court hearing the second appeal in the Decision No. 513/2023, which have the positive effect of the *res judicata* authority attached to them.

Thus, on the one hand, the final determinations concerning the legal nature of the right to the honors were correctly extracted and appropriately integrated into the legal reasoning set out in the challenged decision, namely that, in the absence of an express regulation, that right has the legal nature of "a non-patrimonial right whose content consists exclusively in the inclusion of the sporting result obtained in the relevant ranking (the right to public recognition of that result, with the correlative obligation on third parties not to prejudice that public recognition of the position in the ranking)".

With regard to the same element, the court rehearing the case also took into account another attribute of the right to the honors, which had previously been finally determined, namely that "it may be divided in relation to each sporting competition in which such a victory is obtained and, in the case of team sports, may be allocated both to the sports club for which that team plays at the time the victory is obtained and to a particular line-up of the team at a particular moment in time".

Likewise, it was held that, in the previous procedural cycle, the submissions of FCSB (reiterated, however, in the pending second appeal) were debated and dismissed, namely that the right to the honors was unique, or that it is an absolute right inextricably linked to the sports club, or that it was an element of the goodwill transferred, or that it was subject to an ancillary relationship of the type claimed by the defendant.

On the other hand, the legal reasoning of the court rehearing the case incorporated the final determinations by which the parties' primary dispute was settled, namely that there was no transfer of the right to the honors in favor of the Association and later in favor of FCSB.

That final determination, namely that there was no takeover of the right to the honors of the

former "Steaua București" football team either as an effect of the law or as an effect of the parties' agreement, is based, in essence, on the following arguments: a) the provision in the Association's Articles of Association and in its deed of establishment cannot lead to the conclusion that the newly-established entity took over the honors accrued up to 1998; (b) the continued participation in Division A in the following season was based on a specific expression of intent (point 8 of the Authentic Settlement No. 76/2003 concluded by and between the Association and the defendant); c) the right to participate in Division A, although deriving from the position held in previous rankings, is distinct from the right to the honors; d) continuation by the Association of sporting activity in 1998 was based not on the takeover of the honors, but on the provisions in the incorporation referring to such continuation; e) with the Decision No. 3425/2014 it was established, with *res judicata* authority, that, in 1999, there was no (total) transfer of assets from CSA to the Association, but only of the right to use free of charge certain premises, and that employees of the former professional football section were seconded, and that the amounts payable and receivable contracted before 8 July 1998 in connection with that football section were taken over; f) the right to the honors was not subject of any transfer from the Association to FCSB, the 2003 settlement transferring only the ancillary right to participate in the next competition season.

Moreover, by reiterating, in these proceedings and relying on the same arguments, the contention that it is the successor in title of the Association which, in turn, is the successor of CSA's football section, the appellant FCSB fails in any way to engage with the reasoning of the overturning decision, in which it was unequivocally held that "criticism is levelled against the court of appeal's determination as to the fact that there was no assignment of the honors, either as an effect of the parties' agreement, or as an effect of the law, or as an effect of the continuation of the sporting and competitive activities, a matter which cannot be examined by the court hearing the second appeal, since it presupposes an assessment of the evidence and could amount to a reassessment of the situation *de facto*".

In the light of the entire line of reasoning followed by the court rehearing the case, based on the relevant elements of the determinations previously made final in court proceedings, which were subjected to its own scrutiny and appropriately integrated into the framework of its argumentative construction, the High Court finds that the conclusion of the legal reasoning set out in the challenged decision is entirely lawful, namely that, since it was determined by the Civil Decision No. 1034A/2021, which became final by the Civil Decision No. 513/2023, that, in the context of the legal relationships arising from the instruments concluded as of 1998, there was no takeover by the Association of the right to the honors of the former "Steaua București" football team which it could subsequently have transferred to the defendant under the instruments concluded in 2003, it is evident that, even for the period 2003–2017, the defendant FCSB is not the holder of any right to that honors, and the joined claim is unfounded.

Accordingly, this ground of second appeal must also be dismissed.

II.6. The ground for overturning laid down in Article 488(1)(6) of the Code of Civil Proceedings covers the criticisms developed under ground 4 of the statement of second appeal.

In essence, the appellant argued that the decision of the court rehearing the appeal is either unreasoned, in that it does not contain a legal basis regarding the holder of the right to the honors, or reasoned in a contradictory manner, in that it found that the transfer of the honors had not been proven, although the evidence requested was dismissed, or reasoned on grounds not related to the nature of the dispute, such as those contained in the decision on the cancellation of the Steaua trademark.



These criticisms are unfounded.

The High Court finds that both the interlocutory order on the oral argument of 18 September 2023 and the appealed decision meet the requirements of Article 425(1)(b) of the Code of Civil Proceedings and the case-law principles developed in relation to the right to a fair trial, as guaranteed by Article 6 (1) of the European Convention on Human Rights, reaffirming the principle that clear reasoning and analysis are not only fundamental requirements of a court judgment and indispensable elements of the right to a fair trial, but also a precondition for proper exercise by the higher court of its judicial review powers.

Thus, the alleged flaws in the reasoning of the decision are clearly disproved by the specific, explicit and comprehensive arguments and by the detailed, clear, coherent and persuasive legal logical reasoning, which have made it possible to carry out this review of lawfulness; the appellant's criticisms are answered, point by point, in the grounds set out above, devoted to the examination of the grounds for overturning laid down in Article 488(5), (7) and (8), which the ground of second appeal now under discussion is closely interdependent with.

In a nutshell, this last ground for overturning is also unfounded.

For the reasons set out above, after having found that the grounds of second appeal laid down in Article 488(1)(3), (5), (6), (7) and (8) of the Code of Civil Proceedings are unfounded, on the basis of Article 496 of the same Code, the High Court will dismiss, as unfounded, the second appeal lodged by the defendant.

FOR THESE REASONS,  
IN THE NAME OF THE LAW,  
DECIDES:

To dismiss as unfounded the second appeal lodged by the appellant-defendant Fotbal Club FCSB S.A. (formerly Fotbal Club Steaua București S.A.) against the interlocutory order of 18 September 2023 and the Decision No. 1285 A of 23 October 2023 handed down by the Bucharest Court of Appeal – Third Division for Civil Matters and Cases Involving Minors and Family, in Case No. x/3/2017\*.

Final.

Delivered in public hearing, this day of 4 June 2025.

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*The undersigned, SOROIU LAURENȚIU, certified translator under no. 10309/08.12.2003, hereby certify the accuracy of the translation into English of the document written in Romanian, which has been seen by me.*

