Arbitration CAS 2021/A/7775 Nyíregyháza Spartacus Football Club Kft. v. Vukašin Poleksić, award of 25 November 2022

Panel: Prof. Ulrich Haas (Germany), President; Prof. Eligiusz Krzesniak (Poland); Mr Rui Botica Santos (Portugal)

Football
Contractual dispute
Counterclaims
FIFA' standing to be sued
International dimension of the dispute
FIFA's jurisdiction and choice of forum clause

1. **Since the 2010 revision of the CAS Code, counterclaims / cross-appeals are no longer admissible in appeal arbitration proceedings before the CAS, with the exception of disputes falling within the scope of application of the World Anti-Doping Code. This means that, if a potential respondent wants to challenge part or all of a decision, it must file an independent appeal with the CAS within the applicable time limit for appeal.**

2. **Disputes in which FIFA' services are limited to providing its dispute resolution mechanism to the parties at first instance, and therefore only assuming adjudicatory powers, are qualified as "horizontal". In such cases, FIFA's interests in no way differ from the interests of a respondent, who equally wants the appealed decision to be upheld. If FIFA takes the view that a respondent is not sufficiently able to protects its general interests, it can request to join the proceedings as a party, further to Article R41.3 of the CAS Code. In all appeal arbitration proceedings against decisions of the adjudicatory bodies of FIFA – even in case the appeal is not directed against it – FIFA is informed by the CAS Court Office of the statement of appeal filed further to Article R52 of the CAS Code and is invited to state whether it wishes to participate in the proceedings as a party, further to Article R41.3 of the CAS Code.**

3. **In accordance with article 22 lit. c of the FIFA Regulation on the Status and Transfer of Players (RSTP), the nationality of a coach is an important factor when deciding whether a dispute has an international dimension. The assessment of the international dimension of a dispute should be made at the time of the event giving rise to the dispute. In application of the principle of *perpetuation fori*, the nature of a dispute (national / international) may not change over the course of the pending proceedings, a court remains competent even if the facts establishing its competence cease to exist after *lis pendens* has arisen.**

4. **Article 22 of the FIFA RSTP, provides a right for the parties to seek redress either before FIFA's adjudicatory bodies or before local courts. In case the parties opt for a local**

forum, the FIFA adjudicatory bodies are no longer competent. FIFA bodies must assess their jurisdiction *ex officio* in such case. Additionally, a default of a party to (timely) participate in adjudication proceedings, cannot be qualified as a tacit acceptance of competence of the adjudicatory body in question.

I. PARTIES

1. The Nyíregyháza Spartacus Football Club Kft. (the "Appellant" or the "Club") is a Hungarian company with its registered seat in Nyíregyháza, Hungary. The Club is registered with the Hungarian Football Association which in turn is affiliated to the Union des Associations Européennes de Football ("UEFA") and the Fédération Internationale de Football Association ("FIFA").

2. Mr Vukašin Poleksić AFC (the "Respondent" or the "Coach") was born on 30 August 1982 and is a professional football coach. He originally held Montenegrin nationality and acquired Hungarian citizenship in mid-2020.

3. The Club and the Coach are jointly referred to as the "Parties".

II. FACTUAL BACKGROUND

A. Introduction

4. The dispute in these proceedings revolves around a decision rendered by the Single Judge of the FIFA Players' Status Committee ("PSC" or the "Single Judge"). Such decision of 18 February 2021 (the "Appealed Decision") concerns an employment-related dispute between the Club and the Coach. The Single Judge found that the Club is, *inter alia*, liable to pay to the Coach compensation for breach of contract in the total amount of HUF […].

5. Below is a summary of the relevant facts and allegations based on the Parties' written submissions[1], the CAS file and the content of the hearing (via videoconference) that took place on 15 July 2021. References to additional facts and allegations found in the Parties' written and oral submissions, pleadings, and evidence will be made, where relevant, in connection with the legal analysis that follows. While the Panel has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, this Award refers only to those submissions and evidence it deems necessary to explain its reasoning.

[1] Several of the documents submitted by the Parties and referred to in this Award contain various misspellings: for sake of efficiency, they are not all identified with a "[sic]".

B. Background facts

6. On 1 October 2019, the Appellant and the Respondent entered into an employment contract (the "Employment Contract") for a fixed period running from the date of signature until 30 June 2021.

7. The contract contains the following relevant provisions for the present procedure:

*"**I. SUBJECT OF THE CONTRACT***

[…]

2. The Employee declares that he is a qualified professional football coach.

3. The Parties hereby agree that by entering into this employment contract (Employment Contract) pursuant to the Sports Act and Act I of 2012 on the Labour Code (Labour Code) an employment relationship shall be established for the position of 'Qualified coach, sports organizer, manager' (2717 in the Hungarian Standard Classification of Occupations).

4. Pursuant to this Employment Contract the Employee shall be employed by the Employer in the position of assistant coach and shall be obliged to perform work at the Football Team.

[…]

II. MEANS AND RULES OF PERFORMING WORK, THE RIGHTS AND OBLIGATIONS OF THE PARTIES

1. The Employee undertakes to pursue his activities as a coach and to use his necessary physical and intellectual capabilities exclusively in favour of the Employer and in order to achieve the objectives of the Employer. The Employee shall make his best endeavours to keep and improve his own professional standard and the professional standard of the football teams managed by the Employer, as well as to keep and improve the reputation of the Employer perceived by the professional public, the fans and the press.

5. The Employee shall be obliged as follows:

a) To take part in team and individual trainings, preparation, training camps, matches organized and assigned to him by the Employer, as well as to participate in other events, programs determined by the Employer and to follow the instructions of the professional management in the course of the above and otherwise as well;

[…]

d) To cooperate at all time with the executives, coaches, athletes of the Employment and to cooperate in a sportsmanlike manner during matches, trainings, training camps and other occasions. To endeavour not to harm or jeopardize with his work or behaviour the physical well-being or the health conditions of others and not to cause monetary or moral damages to others;

[…]

IV. REMUNERATION OF WORK

1. The Employer shall pay salary to the Employee. The Employer shall pay the Employee's base salary (the Salary) until the 10th day of the following month by bank transfer, which Salary shall be a monthly gross amount of HUF […].

[…]

V. PLACE OF WORK

1. The place of work shall be: the administrative area of Hungary, in particular the stadium, sports facilities of the Employer at all times, the sports facilities of other sports organizations, etc. with the condition that – due to the nature of the position – the Employee is obliged to perform work both domestically and abroad according to the unilateral declarations of the Employer, therefore the place of work may be a place different from the registered seat or establishments of the Employer. The actual place of work shall be defined in the Personal Conditions.

VI. WORKING TIME, REST TIME, ALLOCATION OF ANNUAL LEAVE

1. The Parties agree that the Employee shall work under the application of a reference period, in uneven work schedule. The Employee acknowledges that the Employer shall schedule his working time in a 6-month reference period based on 8 working hours per day. The managing director of the Employer shall have the right to schedule the working time within the reference period.

2. The Parties agree that the Employee may be regularly employed on non-working days.

[…]

IX. TERMINATION OF EMPLOYMENT RELATIONSHIP

[…]

5. The Employer may terminate the employment relationship with notice with immediate effect, if the Employee gravely breaches his significant obligations arising out of the employment contract or if the employment relationship cannot be upheld due to the behaviour of the Employee, particularly in the following cases:

- the breach by the Employee of the obligations specified in Section II of the employment contract, or the obligations so specified in the employment contract;

[…]

- impolite, disrespectful behaviour towards the person exercising employer's rights, other superiors, members of the professional staff, or the players, fans, employees, representatives, business partners, supporters of the Employer, or other sports organizations;

[…]

7. The Parties agree that the Employee shall not be entitled to absence fee in the case of termination with immediate effect for reasons set out in Section IX.5.

[…]

XI. MISCELLANEOUS PROVISIONS

[…]

4. The Parties agree to resolve their disputes amicably, by way of negotiations. Should the Parties fail to resolve their dispute amicably, the Parties shall submit themselves – in the cases set out in the regulations of MLSZ and FIFA – to the competent department of MLSZ and FIFA, in the case of labour disputes to the competent Administrative and Labour Court and in every other case to the Permanent Court Arbitration pursuant to Section 47 of the Sports Act. The number of arbitrators shall be 3, the procedure shall be governed by the Procedural Rules of the Arbitration.

5. The Parties agree that the provisions of Hungarian law shall apply to their legal relationship. Matters not regulated by this employment contract shall be governed by the Labour Code, the Sports Act and the other applicable legislation, as well as the rules of the Employer, MLSZ, UEFA and FIFA.

[…]" (emphasis in original).

8. On 5 November 2019, during the preparation ahead of the away match against Siofok BSC, the Coach did not attend the video analysis session.

9. On 6 November 2019, the Club lost to Siofok BSC 6 to 1.

10. On 7 November 2019, via letter, the Club released the Coach from his work duties.

11. On 20 November 2019, the Club terminated the Employment Contract with the Coach with immediate effect. In the pertinent parts of its notice of termination, the Club stated as follows:

*"Your **employment** with our company established on 1 October 2019 is hereby terminated **with immediate effect** pursuant to Section 78(1) a) of Act I of 2012 on the Labour Code (the Labour Code) for a grave breach of significant obligations arising out of the employment.*

I hereby release you from the duty to work as of 7 November 2019, therefore your last day at work was 7 November 2019. You shall receive compensation for the 5 working days of proportionate and unallocated annual leave days for the calendar year of 2019. The termination date of your employment shall be the day when this termination notice is delivered.

Your salary for November 2019 and your absence fee for the period of being released from the duty to work shall be paid to you within 5 working days calculated from today and the documentation related to the termination of your employment shall be sent to you via postal delivery.

Should you wish to challenge this decision, pursuant to Section 287 of the Labour Code you have the right to submit a statement of claim regarding the unlawful termination of your employment with the Administrative and

Labour Court of Nyiregyhaza (seat: 4400 Nyiregyhaza, Toldi utca 1.) within 30 days after the delivery of this termination notice.

REASONING

Section II.5. a) and d) of the employment contract entered into between our company and you on 1 October 2019 (the Employment Contract) specify the following obligations of the employee:

[…]

With respect to the job description, the Employer's notice dated 1 October 2019 (the Notice) specifies the following tasks:

- tasks:

a) to be available to the Employer during working hours at its registered seat (Town Stadium) and on the designated training pitches. On weekends at the location of training and championship matches and cups pursuant to the competition protocol.

b) preparing football players for matches during training and before matches in accordance with the instructions of the head coach.

You had been absent from the video analysis of the team held on 5 November 2019 at the Novotel Hotel in Székesfehérvár, on the night before the 2nd division match against BFC Siófok on 6 November 2019 and you failed to explain your absence to your colleagues in advance or subsequently.

[…]

Pursuant to the consistent practice before your appointment, the assistant coach had always been present at video analysis type 1 and 2. Pursuant to this practice you were present at the meetings. During these meetings information and tactics were told and presented that are relevant regarding the performance of the team and the opponent and could be accounted for later. These meetings were therefore part of the team preparation for the matches during which – obviously and as reference by Section II.5 a) of the Employment Contract and b) of the Notice – the presence of the assistant coach was required. You have been informed of the place and date of the above video analysis from the notification of X. technical director but regardless failed to show up or justify your absence.

The members of the staff informed the person exercising employer's rights of the above breach on 6 November 2019, after the defeat on the following day. The Employer also become aware shortly after, that you failed to conduct the warm up drills with the ball before each match since the beginning of your employment and therefore Y. fitness coach had to conduct these drills alone and had to conduct without your assistance such drills that are the responsibility of the assistant coach. These shall also be regarded as a breach of obligations set out in Section II.5 a) of the Employment Contract and points a) and b) of the Notice.

Football requires more than the coordinated effort of athletes, for the success of the team the athletes and the professional staff shall be organized and cooperate on the trainings and on the preparation before matches as well. Therefore, cooperation with colleagues [Section II.5 d], IX.5 and 6 of the Employment Contract] is a basic

requirement not only for the assistant coach but for all members of the staff as well. The above mentioned behaviour of yours is contradictory to the requirements of organized cooperation and the objections of your colleagues were raised with the management of the Employer.

Having regard to these circumstances and Section IX.5. of the Employment Contract it can be established that with the above behaviour you wilfully or by gross negligence gravely breached your significant obligation arising out of the employment and therefore we decided to terminate your employment with immediate effect. The basis of the termination with immediate effect is the breach of significant obligations set out in Section II.5. a) as well as Section IX.5. paragraph 1 and 6 of the Employment Contract and points a) and b) of the Notice" (emphasis in original).

12. On 2 December 2019, the Coach's counsel informed the Club that the Coach would not accept the termination of the Employment Contract with immediate effect.

13. On 21 February 2021, the Coach provided the Club with a written default notice granting the Club a 15-day period for the payment of the amount of HUF […], which is calculated by the Coach as follows:

"i) - […]HUF, plus the interest as of 11 December 2019 until the payday; as the remaining salary for November 2019;

ii) - […] HUF, plus the interest as of 11 January 2020 until the payday; as the salary for December 2019;

iii) - […] HUF, plus the interest as of 11 February 2020 until the payday; as the salary for January 2019;

iv) - […] HUF, as the remaining salary for period February 2020 – June 2021, in case the club holds its unfounded Decision, since the club did not fulfil its obligations towards the assistant coach and due to the fact that the Employment contract was not terminated with just cause by the Club".

14. On 27 February 2021, the Club rejected the Coach's claims on the grounds that the termination had been lawfully served and that it therefore had no further contractual obligations vis-à-vis the Coach. In addition, the letter maintained that the Coach was prevented from challenging the termination, as he *"did not start a lawsuit against the Club within 30 days of the receiving of the termination note"*.

III. PROCEEDINGS BEFORE THE SINGLE JUDGE OF THE FIFA PSC

15. On 30 April 2020, the Coach lodged a claim before the FIFA PSC against the Club. In the proceedings before the Single Judge, the Coach sought the following prayers for relief:

"i) to establish that the Contract is to be considered terminated without the just cause by the Club as of 20 November 2019, and

To order the Club to pay to the Assistant Coach, within 30 days as of the date of notification of the Honourable FIFA Players' Status Committee, overdue payables in the amount:

ii) for the remaining wage: […] HUF, plus the interest (5%) as stipulated in paragraph 29 of this claim;

iii) for the compensation for breach of the Contract: […]HUF, plus the interest (5%) as stipulated om paragraph 30 of this claim; and

iv) to order the Club to fully reimburse the cost of these proceedings before the Players' Status Committee".

16. On 10 August 2020, the Club filed its reply to the Coach's claim. However, the Club's submissions were not taken on file by the Single Judge pursuant to Article 9(3) of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber, because they were filed late.

17. On 11 August 2020, the Single Judge issued a decision ("First Decision"), in which he partially accepted the Coach's claims.

18. The First Decision dated 11 August 2020 was notified to the Parties without grounds on 12 August 2020.

19. On 18 August 2020, the Club requested the grounds of the First Decision dated 11 August 2020 from FIFA.

20. On 16 December 2020, the FIFA informed the Parties that it had *"proceeded to a rectification of the findings"* (the "Appealed Decision"). In addition, it informed the Parties that *"should one of the parties wish to receive the motivated decision, a new request for the grounds should be submitted within the deadline mentioned in the rectified findings"*.

21. On 22 December 2020, the Club requested the grounds of the Appealed Decision from FIFA.

22. On 18 February 2021, the Appealed Decision with grounds was notified to the Appellant.

23. The operative part of the Appealed Decision states – in its pertinent parts – as follows:

"1. The claim of the Claimant, Vukašin Poleksić, is partially accepted.

2. The Respondent, Nyíregyháza FC, has to pay to the Claimant, the following amount:

- HUF […]as compensation for breach of contract, plus 5% interest p.a. as from 30 April 2020 until the date of effective payment.

3. Any further claims from the Claimant are rejected.

[…]".

24. In substance the Single Judge considered *inter alia* the following:

- *"[…] the Single Judge confirmed that, on the basis of art. 3 par. 1 and par. 2 of the Procedural Rules in connection with art. 23 par. 1 and par. 4 as well as art. 22 lit. c) of the Regulations, he was competent*

to deal with the present matter since it concerned an employment-related dispute with an international dimension.

- *[…] In continuation, the Single Judge considered the documentation on file and deemed that the main issue of the present dispute is to determine whether the contract had been terminated without just cause by the Respondent on 6 November 2019 and, if so, to decide on the consequences thereof.*

- *In this regard, the Single Judge referred to the termination letter of the club dated 6 November 2019, in which it stated inter alia that the reasons for the termination were the coach's alleged attitude 'contradictory to the requirement of organized cooperation' and his alleged absence 'from the video analysis of the team held on 5 November 2019'.*

- *In continuation, the Single Judge was eager to emphasise that only a breach or misconduct which is of a certain severity justifies the termination of a contract without prior warning. In other words, only when there are objective criteria which do not reasonably permit to expect a continuation of the employment relationship between the parties, a contract may be terminated prematurely. Hence, if there are more lenient measures which can be taken in order for an employer to assure the employee's fulfilment of his contractual duties, such measures must be taken before terminating an employment contract. A premature termination of an employment contract can always only be an ultima ratio.*

- *Referring to the concrete circumstances of the case, the Single Judge noted that no evidence was provided of the Respondent's accusations against the coach or of any attempt of the club to preserve the contract before unilaterally terminating it. The coach disputed the Respondent's accusations and the termination of the contract and the claim remained unanswered by the Respondent. Thus, the Single Judge concluded that the Respondent did not have just cause to prematurely terminate the employment contract with the Claimant, since from the documentation and argumentation on file it appears that there would have been more lenient measures to be taken in order to sanction any eventual misconduct of the coach, if any, which is at the basis of the termination of the employment contract by the Respondent.*

- *[…] the Single Judge understood that the contract was terminated on 6 November 2019, and that as of 6 November 2019 until June 2021, the coach would have earned the total amount of HUG […].*

- *[…] The Single Judge recalled that, after the termination of the contract, the coach was not able to mitigate his damages, as he remained unemployed.*

- *In view of the above, the Single Judge concluded that the amount of HUF […]is to be paid by the club to the coach as compensation for breach of contract given that the latter limited his request to HUF […].*

- *Equally, taking into account the Claimant's request for interest, the Single Judge, in accordance with the well-established jurisprudence, decided that the club has to pay to the coach interest of 5% p.a. on the amount of HUF […]as from the date on which the claim was lodged, i.e. 30 April 2020, until the date of effective payment".*

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

25. On 10 March 2021, the Appellant filed its appeal before the CAS against the Appealed Decision and submitted its Statement of Appeal according to Article R48 of the Code of Sports-related Arbitration (2020 edition) (the "CAS Code"). The Appellant also nominated Prof Dr Eligiusz Krzesniak, Attorney-at-law in Warsaw, Poland, as an arbitrator.

26. On 15 March 2021, the CAS Court Office invited the FIFA, if it intended to participate as a party in the present proceedings, to file an application for participation within 10 days.

27. On 22 March 2021, the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code.

28. On the same date, the CAS Court Office noted that the Respondent nominated Ms Petra Pocrnic Perica, Attorney-at-law in Zagreb, Croatia, as an arbitrator.

29. On 24 March 2021, the CAS Court Office acknowledged receipt of the Appellant's Appeal Brief and invited the Respondent to file his Answer within 20 days.

30. On 25 March 2021, the FIFA renounced its right to request to participate as a party in this matter, further to Article R41.3 of the CAS Code. In addition, the FIFA commented – *inter alia* – on the issue of standing to be sued as follows:

> *"[…] the defending party has standing to be sued (légitimation passive) if it is personally obliged by the 'disputed right' at stake. In other words, a party has standing to be sued and may thus be summoned before the CAS only if it has some stake in the dispute because something is sought against it.*
>
> *As already pointed out by the CAS, when considering 'vertical disputes' such as those concerning decisions on jurisdiction, the Appellant 'has standing to bring a challenge against the Appealed Decision against the CAS, however, that should be directed at the association itself, i.e. FIFA'. More in particular, only if FIFA is summoned as respondent, then all the parties may have the opportunity to ask the Panel or Sole Arbitrator to consider jurisdiction issues and subsequently the merits. In the case at stake, however, this remains moot since FIFA was not summoned. In this respect, we wish to highlight that FIFA is not automatically a party to any CAS procedure and cannot be forced to be a party if not called by the Appellant.*
>
> *In the present proceedings, FIFA is the only entity with a disputed right at stake and with a legitimate interest in relation to its prerogative to establish whether its deciding body has jurisdiction or not, yet it has not been called as a party by the Appellant. Consequently, in light of all the foregoing, the appeal shall be rejected, as the CAS cannot review the decision of the first instance in FIFA's absence. In other words, in the absence of an appeal directed against FIFA, there actually exists no real and/or justiciable dispute between the Respondent and the Appellant. Hence, any request for relief sought in that respect shall also be dismissed".*

31. On 26 March 2021, the CAS Court Office noted FIFA's decision not to intervene in the present proceedings.

32. On 30 March 2021, the Parties were provided with a disclosure made by Prof Dr Krzesniak further to Article R33 of the CAS Code, which none of the Parties subsequently challenged further to Article R34 of the CAS Code.

33. Also on 30 March 2021, the Appellant challenged the appointment of Ms Petra Pocrnic Perica as arbitrator.

34. On 1 April 2021, the CAS Court Office informed the Parties that Ms Petra Pocrnic Perica is listed on the CAS ADD list of Presidents/Sole Arbitrators and was therefore unable to act as an arbitrator in the present proceedings further to Statute S18 of the Statute for the Bodies Working for the Settlement of Sports-related Disputes. In addition, the CAS Court Office invited the Respondent to nominate another arbitrator by 12 April 2021, in accordance with Article R36 of the CAS Code.

35. On 9 April 2021, the Respondent nominated Mr Nicholas Stewart QC, Barrister in London, United Kingdom, as an arbitrator.

36. On 12 April 2021, the Respondent requested – *inter alia* – that the time limit to file his Answer should be set after the payment by the Appellant of its advance of costs.

37. On 13 April 2021, the CAS Court Office granted the Respondent's request for the time limit to file his Answer to be fixed upon receipt of the advance of costs by the Appellant in accordance with Article R55 para. 3 of the CAS Code. In addition, the time limit set in the CAS Court Office's letter dated 24 March 2021 was set aside. Furthermore, the CAS Court Office informed the Respondent that he would be invited to file his Answer once the new deadline was set.

38. Also on 13 April 2021, the Parties were provided with a disclosure made by Mr Stewart further to Article R33 of the CAS Code.

39. On 16 April 2021, the CAS Court Office informed the Parties that the Appellant had paid its share of the advance of costs. In addition, the CAS Court Office set a new deadline for the Respondent to file his Answer within 20 days.

40. On 20 April 2021, the Appellant challenged the nomination of Mr Stewart further to Article R34 of the CAS Code.

41. On 21 April 2021, the CAS Court Office acknowledged receipt of the Appellant's challenge against the nomination of Mr Stewart. In addition, the CAS Court Office informed the Parties that the challenge had been transmitted to Mr Stewart for his consideration.

42. On 22 April 2021, the CAS Court Office informed the Parties that Mr Stewart had declined to accept his nomination as an arbitrator in consideration of the Appellant's challenge. Accordingly, the CAS Court Office invited the Respondent to nominate another arbitrator by 27 April 2021, further to Article R36 of the CAS Code.

43. On 26 April 2021, the Respondent nominated Mr Rui Botica Santos, Attorney-at-law in Lisbon, Portugal, as an arbitrator.

44. On 3 May 2021, the Respondent filed his Answer in accordance with Article R55 of the CAS Code.

45. On 4 May 2021, the CAS Court Office acknowledged receipt of the Respondent's Answer. In addition, the CAS Court Office invited the Appellant to comment, by 14 May 2021, on the Respondent's Objection to the Admissibility of the Appellant's appeal and the Appellant's standing to sue, further to Article R55 of the CAS Code.

46. On 14 May 2021, the CAS Court Office, on behalf of the Deputy President of the CAS Arbitration Division and further to Article R54 of the CAS Code, informed the Parties that the Panel appointed to decide the dispute was constituted as follows:

    President: Prof Dr Ulrich Haas, Professor of Law in Zurich, Switzerland

    Arbitrators: Prof Dr Eligiusz Krzesniak, Attorney-at-Law in Warsaw, Poland

    Mr Rui Botica Santos, Attorney-at-Law in Lisbon, Portugal

47. On the same date, the Appellant requested a five-day extension of the deadline to file its Reply on the Respondent's Objection to the Admissibility of the Appellant's appeal and the Appellant's standing to sue.

48. On 17 May 2021, the CAS Court Office granted the Appellant's request to file its Reply by 19 May 2021, further to Article R32 of the CAS Code.

49. On 19 May 2021, the Appellant filed its Reply on the Respondent's Objection to the Admissibility of the Appellant's appeal and the Appellant's standing to sue.

50. On 20 May 2021, the CAS Court Office acknowledged receipt of the Appellant's Reply. In addition, the Parties were invited to inform the CAS Court Office, by 27 May 2021, whether they preferred a hearing to be held in this matter.

51. On 27 May 2021, the Appellant informed the CAS Court Office that it preferred a hearing to be held in the present proceedings.

52. On the same date, the Respondent informed the CAS Court Office that he would leave it to the Panel to decide whether a hearing should be held in this matter.

53. On 7 June 2021, the CAS Court Office informed the Parties that the Panel had decided to hold a hearing in this matter via videoconference in consideration of the ongoing COVID-19 pandemic, further to Article R44.2 and R57 of the CAS Code.

54. On 15 June 2021, after consulting the Parties, the CAS Court Office informed the Parties that the hearing was to be held on 15 July 2021 and invited the Parties to provide a list of attendees that would attend the hearing on their behalf. Furthermore, the CAS Court Office invited the Parties to a technical videoconference test on 13 July 2021.

55. On 18 June 2021, the CAS Court Office issued an Order of Procedure ("OoP") and invited the Parties to return a signed copy by 25 June 2021.

56. On 21 June 2021, the Respondent and the Appellant returned their signed copies of the OoP. Furthermore, both Parties provided a list of the names of the persons that would attend the hearing on their behalf.

57. On 25 June 2021, the CAS Court Office provided the Parties with a tentative hearing schedule and invited them to provide any comments they might have.

58. On 28 June 2021, the Appellant provided its comments on the tentative hearing schedule.

59. On 30 June 2021, the Respondent advised the CAS Court Office that he did not have any comments on the draft hearing schedule. However, the Respondent objected to the participation of several attendees whom the Appellant had listed as "observers".

60. On 1 July 2021, the CAS Court Office acknowledged receipt of the Parties' comments to the draft hearing schedule and invited the Appellant to comment on Respondent's objections by 6 July 2021.

61. On 7 July 2021, the CAS Court Office noted that it had not received any comments by the Appellant on Respondent's objections and informed the Parties that the Panel would make a decision on that matter.

62. On 8 July 2021, the Appellant provided its comments to the Respondent's objections filed on 30 June 2021.

63. On 9 July 2021, the CAS Court Office acknowledged receipt of the Appellant's letter.

64. On 12 July 2021, the CAS Court Office advised the Parties that the issue relating to the observers will be dealt with at the outset of the hearing and – in addition – provided the Parties with a revised hearing schedule.

65. On 15 July 2021, a hearing was held via videoconference. The Panel was assisted by Ms Kendra Magraw, CAS Counsel.

    For the Appellant, the following persons attended at the hearing:

    - Dr Zoltán Barakonyi, legal representative;

    - Dr Artúr Tamási, legal representative;

    - Dr Réka Vass, observer; and

    - Dr Géza Róka, employee of Nyíregyháza Spartacus and observer.

    For the Respondent, the following persons attended the hearing:

- Mr Vukašin Poleksić, Respondent;

- Mr Davor Lazić, legal representative; and

- A., interpreter.

66. At the hearing, the Parties observed that they had no objection as to the constitution of the Panel. The Respondent upheld his objection against the presence of Dr Géza Róka and Dr Réka Vass from the Club and invited the Panel to take a decision on the issue. The Panel allowed Dr Géza Róka and Dr Réka Vass to attend the hearing. The reasons for the Panel's decision will be addressed further below in this Award. At the closing of the hearing, the Parties expressly stated that they did not have any objections with regard to the procedure. The Parties further confirmed that they were afforded ample opportunity to present their case, submit their arguments and answer the questions posed by the Panel and that their right to be heard had been respected.

V. SUBMISSIONS OF THE PARTIES

67. This section of the Award does not contain an exhaustive list of the Parties' contentions, its aim being to provide a summary of the substance of the Parties' main arguments. In considering and deciding upon the Parties' claims in this Award, the Panel has accounted for and carefully considered all of the submissions made and evidence adduced by the Parties, including allegations and arguments not mentioned in this section of the Award or in the discussion of the claims below.

A. The Appellant's Position

68. In its Statement of Appel dated 10 March 2021 and in its Appeal Brief dated 22 March 2021, the Appellant requested as follows:

"In accordance with Article R57 of the Code, Spartacus requests in the first place that the Hon. CAS issues a new decision replacing Decision No. 20-00682 rejecting the claim of the Respondent brought before the Committee in the absence of jurisdiction of the Committee over the claim.

In the alternative, Spartacus requests that the Hon. CAS issues a new decision replacing Decision No. 20-00682 rejecting the claim of the Respondent brought before the Committee on the merits.

In the alternative, Spartacus requests that the Hon. CAS annuls Decision No. 20-00682 and refers it back to the Committee.

[…]

Spartacus claims the reimbursement of the following costs by the Respondent:

- *CHF […] paid to the FIFA for issuing a reasoned decision,*

- *EUR […] legal costs*
- *EUR […] lump sum fee for lawyer's disbursement (other than courier fees, translation fee, travel and accommodation costs)*
- *EUR […] for translation costs and courier fee".*

69. The Appellant's submissions in support of its appeal against the Appealed Decision may, in essence, be summarised as follows:

1. No jurisdiction of the FIFA PSC

70. The Appellant submits that the Single Judge of the FIFA PSC had no competence to decide the employment-related dispute between the Parties:

(a) The FIFA PSC did not have jurisdiction to adjudicate on the private law dispute between the Parties. The Club has never consented to FIFA's jurisdiction in this respect.

(b) In addition, the FIFA Statutes expressly state that recourses to ordinary courts of law are possible if the FIFA regulations so provide. The matter at hand is governed by Hungarian law as stipulated in the Employment Contract between the Parties. According thereto, employment-related disputes shall exclusively be adjudicated by ordinary courts.

(c) Furthermore, the matter at hand has no international dimension and does therefore not fall within the scope of Article 22 lit. c) of the Regulations on the Status and Transfer of Players ("FIFA RSTP"). Apart from his Montenegrin citizenship, the Respondent also holds Hungarian citizenship. In addition, Appellant has been living in Hungary since 15 February 2006 and therefore has his permanent establishment in Hungary. In this regard, the well-established CAS jurisprudence on disputes involving players with double citizenship must be taken into account, e.g. CAS 2016/A/4441 and CAS 2010/A/1996.

2. Procedural flaws

71. The Appellant also submits that the proceedings before the Single Judge suffered from various procedural flaws and therefore violated fundamental procedural rights guaranteed under established international standards and national laws. These alleged procedural flaw included:

(a) All documents sent were in English without any translation.

(b) The Single Judge disregarded the Appellant's reply to the Respondent's claim dated 10 August 2020. The reference to the Appellant's reply proves that the Single Judge was aware of it. He should have taken the Appellant's submissions into account, since the belated submissions did not cause any harm or prejudice nor did they delay the efficient resolution of the case.

(c) In addition, the Single Judge appears to lack independence and impartiality. The Single Judge works for "FIFPro" and was prejudiced against the Club. Furthermore, the Single Judge was not the person who signed the Appealed Decision.

(d) All decisions (First Decision and Appealed Decision) were notified exclusively by email. The Club never agreed to its email address being used by FIFA for official communications.

(e) Consequently, the procedure before the Single Judge of the FIFA PSC violated the basic principles of due process and fair trial.

3. Hungarian law is applicable to the merits

72. The Appellant submits that the Single Judge incorrectly failed to apply Hungarian law to this matter:

(a) The Appealed Decision neither refers to nor applies Hungarian law, *i.e.* the law governing the Employment Contract between the Parties in accordance with Article 2 of the FIFA Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber.

(b) The Single Judge erred when assessing the questions of interest and validity of the termination of the Employment Contract without reference and consideration of the applicable Hungarian law. According thereto, an employee must challenge an alleged invalidity of a termination of an employment contract by filing a petition before the competent judicial body within 30 days of receipt of the termination letter. The Respondent failed to do so. Instead, he filed his claim against the termination of his Employment Contract more than 5 months after being notified of the contract termination.

(c) Furthermore, under Hungarian law the maximum compensation payable to an employee *"may not exceed twelve absentee pay"*.

4. Valid termination of the Employment Contract

73. The Appellant further submits that it terminated the Employment Contract of the Respondent with just cause:

(a) The Respondent breached his obligations under the Employment Contract by not attending the video analysis session on 5 November 2019.

(b) In addition, the Respondent breached his contractual obligations, because he failed to fulfil his pre-match training duties. Only the fitness trainer Y. attended and supervised the ball drills with the players before the matches.

(c) Furthermore, Hungarian employment law does not require any warnings prior to the notice of termination. The Respondent's behaviour constitutes a severe breach of contract, entitling the Appellant to terminate the Employment Contract with immediate effect. The Appellant refers in this context to the importance of the Appellant's role as an assistant coach for the whole team.

B. The Respondent's Position

74. In his Answer dated 3 May 2021, the Respondent sought the following prayers for relief:

"Having in mind the above, pursuant to Article R55 of the Code of Sports-related Arbitration the Respondent hereby respectfully requests the Honourable CAS Panel:

i) to determine the Appeal and accordingly confirm the FIFA Players' Status Committee's Decision in its totality; and

ii) to order the Appellant to pay the following costs of the Respondent:

- *CHF […] paid to the FIFA as advance of costs,*
- *EUR […] legal costs,*
- *All courier fees, translation fees, travel and accommodation costs, per delivered invoices at the end of proceedings before CAS (if applicable);*

or in the alternative,

after the conducting of the hearing and analysing all the written evidence and personal evidence including inter alia the testimony of the Respondent

iii) to order the Appellant to pay the Respondent the amount of […]HUG with the interests of 5% starting from 21 November 2019; and

iv) to order the Appellant to pay the following costs of the Respondent:

- *CHF […]paid to the FIFA as advance of costs,*
- *EUR […]legal costs (predicted);*
- *All courier fees, translation fees, travel, and accommodation costs, per delivered invoices at the end of the proceedings before CAS (if applicable)".*

75. The Respondent's submissions may, in essence, be summarised as follows:

1. The Single Judge had jurisdiction

76. The Respondent submits that the Single Judge of the FIFA PSC was competent to deal with the dispute between the Parties:

(a) The applicable FIFA regulations as well as Clause XI.4 of the Employment Contract assign jurisdiction to the FIFA PSC.

(b) In addition, the dispute has an international dimension within the meaning of Article 22 lit. c) of the FIFA RSTP. The Respondent held only Montenegrin citizenship at the time he signed the Employment Contract, when the latter was terminated and when he initiated the proceedings before the Single Judge of the FIFA PSC. He only acquired Hungarian citizenship in mid-2020 (while keeping his original Montenegrin nationality).

(c) The FIFA has reconfirmed the jurisdiction of the FIFA PSC in its letter dated 25 March 2021.

2. No procedural flaws

77. The Respondent submits that the procedure before the Single Judge of the FIFA PSC did not violate any procedural norms or guarantees:

(a) The Appellant's submissions on the language of the proceedings are incorrect. English is one of the four official FIFA languages. Furthermore, *"CAS jurisprudence is also clear that in a case when the party concerned is assisted by a lawyer having a good command of the language of the procedure and/or interpreter, the right to a fair trial is respected"*. In this regard, the Parties' lawyers have been corresponding in English throughout the entire proceedings before both the FIFA and the CAS.

(b) Furthermore, the fact that the Single Judge works for FIFPro does not impact his independence or impartiality.

(c) In addition, this matter is not a player-related matter. The Appellant employed the Respondent as an assistant coach and not as a player.

3. Hungarian law is not applicable law to the merits

78. The Respondent also submits that the applicable law to the merits of these proceedings must be determined based on FIFA's Procedural Rules and Regulations and the CAS Code:

(a) Clause XI.5 of the Employment Contract stipulates that the dispute between the Parties shall be decided in application of FIFA's Procedural Rules and Regulations.

(b) Therefore, *"the Respondent respectfully submits that the FIFA PSC did not err in its conclusion regarding the applicable law and therefore the Appellant's arguments regarding the applicable law should be disregarded in their entirety"*.

4. Termination of the Employment Contract without just cause

79. The Respondent further submits that the termination of the Employment Contract was unlawful, *i.e.* without just cause and that, therefore, the Appealed Decision of the Single Judge should be upheld:

(a) The Appellant failed to issue a warning prior to terminating the Employment Contract.

(b) In addition, the Appellant told the Respondent that he did not need to attend the video analysis session on 5 November 2019. Consequently, the Respondent submits that he was not in breach of any obligation.

(c) Furthermore, the Respondent submits that he did not receive any payment from the Appellant as of 20 November 2019. Accordingly, *"the Respondent respectfully asks the Honourable CAS Panel to order the Appellant to pay the Respondent the amount of […] HUF with the interests of 5% starting from 21 November 2019"*.

VI. JURISDICTION

80. In accordance with Article 186 of the Swiss Private International Act ("PILA"), the CAS has the power to decide upon its own jurisdiction.

81. Article R47 para. 1 of the CAS Code provides as follows:

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

82. Article 58(1) of the FIFA Statutes (2020 edition) states as follows:

"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question".

83. Article 23(4) of the FIFA RSTP reads – in its pertinent part – as follows:

"Decisions reached by the single judge or the Players' Status Committee may be appealed before the Court of Arbitration for Sport (CAS)".

84. In addition, the Appealed Decision provides as follows:

"According to article 58 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS) within 21 days of receipt of the notification of this decision".

85. Furthermore, Clause XI.4 of the Employment Contract reads as follows:

"The Parties agree to resolve their disputes amicably, by way of negotiations. Should the Parties fail to resolve their dispute amicably, the Parties shall submit themselves – in the cases set out in the regulations of MLSZ and FIFA – to the competent department of MLSZ and FIFA, in the case of labour disputes to the competent Administrative and Labour Court and in every other case to the Permanent Court Arbitration pursuant to Section 47 of the Sports Act. The number of arbitrators shall be 3, the procedure shall be governed by the Procedural Rules of the Arbitration".

86. The Appealed Decision of 18 February 2021 constitutes a decision passed by a legal body of FIFA, *i.e.* the Single Judge of the FIFA PSC. Thus, the above prerequisites are fulfilled. The Panel also takes note of the fact that neither of the Parties objected to the jurisdiction of the CAS and that the OoP was duly signed by both Parties without reservation.

87. It follows from all of the above that the CAS has jurisdiction to adjudicate and decide on the present dispute.

VII. ADMISSIBILITY

88. The Respondent objects to the admissibility of the appeal, because the Appellant did not observe the 21-day time limit after being notified of the First Decision in August 2020. The Appellant, in turn, submits that it filed its appeal in time after FIFA had notified the Appealed Decision to it on 18 February 2021.

89. Article R49 of the CAS Code provides as follows:

"In the absence of a time limit in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for the appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the parties".

90. Article 58(1) of the FIFA Statutes (2020 edition) provides as follows:

"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question".

91. In addition, the Appealed Decision provides – in its pertinent parts – as follows:

"According to article 58 par. 1 of the FIFA Statutes, this decision may be appealed before the Court of Arbitration for Sport (CAS) within 21 days of receipt of the notification of this decision".

92. In the present case the First Decision has been substituted by FIFA with the Appealed Decision. Furthermore, the Panel observes that the Appellant did request the grounds of the First Decision in time. However, the deadline to file an appeal within the meaning of Article R49 of

the CAS Code only starts running – according to established CAS jurisprudence – as of receipt of the reasoned decision.

93. The Panel observes that based on the documents on file, FIFA informed the Parties of the First Decision dated 11 August 2020 on 12 August 2020. On 17 August 2020, the Appellant requested the grounds of said decision and paid the respective costs for such request. The Appellant did not receive any information from FIFA until the latter notified the Parties of the rectification of the decision on 16 December 2020. The Appellant then filed a further request to receive the grounds of the Appealed Decision and did so within the 10-day deadline on 22 December 2021. The Appellant ultimately received the grounds of the Appealed Decision on 18 February 2021. The Panel finds that this is the relevant date for calculating the 21-day deadline. Based on Article R32 of the CAS Code, the time limit, thus, began on 19 February 2021 and ended on 11 March 2021. The Appellant filed its appeal on 10 March 2021 and therefore in accordance with the 21-day deadline provided for in Article 58(1) of the FIFA Statues.

94. Consequently, the Panel finds that the appeal was filed in time and is admissible.

VIII. OTHER PROCEDURAL ISSUES

1. Respondent's Cross-Appeal / Counterclaim

95. In his Answer, the Respondent filed the following alternative prayer for relief:

"iii) to order the Appellant to pay the Respondent the amount of […] HUF with the interests of 5% starting from 21 November 2019" (emphasis added).

96. The above is an alternative counterclaim / cross-appeal, since the Appealed Decision provides in its operative part – inter alia – as follows:

"5% p.a. on the amount of HUF […] as from the date on which the claim was lodged, i.e. 30 April 2020, until the date of effect" (emphasis added).

97. The Respondent, thus, seeks an amendment of the Appealed Decision as to the starting date of the calculation of the amount of interest.

98. However, counterclaims / cross-appeals are no longer admissible in appeal arbitration proceedings before the CAS since the 2010 revision of the CAS Code (with the exception of disputes falling within the scope of application of the World Anti-Doping Code). This is common ground in the legal literature and in CAS jurisprudence: *"[i]t must be noted that, since 2010, counterclaims are no longer possible in appeal procedures. This means that, if a potential respondent wants to challenge part or all of a decision, it must file an independent appeal with the CAS within the applicable time limit for appeal"* (MAVROMATI/REEB, The Code of the Court of Arbitration for Sport, 2015, pp. 249 and 488, with references to CAS 2010/A/2252, no. 40, CAS 2010/A/2098, nos. 51-54, CAS 2010/A/2108, nos. 181-183; see also CAS 2013/A/3432 nos. 54-57 with reference to a decision of the Swiss Federal Tribunal).

99. The Panel shares such view and finds that the Coach's request in relation to interest go beyond a mere statement of defence and that, in case such request were upheld, it would have the effect of prejudicing the position of the Appellant. Accordingly, such claim is declared inadmissible by the Panel. In other words, in order for the Coach to have validly raised this issue, he should have filed his own independent appeal against the Appealed Decision (cf. CAS 2017/A/5481 paras. 42-46, and CAS 2017/A/5336 para. 116). The Panel notes that the Respondent – after having been made aware by the Panel of the above-cited CAS jurisprudence – decided not to pursue his cross-appeal / counterclaim any longer.

2. The issue of the Observer

100. It is recalled that the Respondent objected to the participation during the 15 July 2021 hearing of Dr Réka Vass and Dr Géza Róka, which the Panel ultimately decided to allow for the following reasons.

101. Proceedings in appeals arbitration proceedings are – subject to the limitations in Article R57 (2) of the CAS Code – not public. Thus, in principle, observers are not allowed to attend CAS hearings without the consent of the other party (and the Panel). In the case at hand, the Appellant requested that Dr Réka Vass and Dr Géza Róka attend the hearing as observers. Dr Réka Vass is a lawyer with Hegymegi-Barakonyi and Partner Baker & McKenzie, the Appellant's law firm. Dr Géza Róka is an employee of the Appellant. In view of the functions held by the above persons, the Panel finds that the principle of confidentiality is not violated by allowing these persons to attend the hearing, and accordingly permitted them to do so.

IX. APPLICABLE LAW

102. With regard to the applicable law, the Appellant submits that this dispute is governed by Hungarian law according to Clause XI.5 of the Employment Contract. In turn, the Respondent is of the view that the Parties agreed on the application of the FIFA regulations to the merits, and accordingly, the FIFA rules and regulations apply to this appeal.

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

"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

104. Article 57(2) of the FIFA Statutes (2020 edition) reads as follows:

"The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. The CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law".

105. In addition, Clause XI.5 of the Employment Contract provides as follows:

"The Parties agree that the provisions of Hungarian law shall apply to their legal relationships. Matters not regulated by this employment contract shall be governed by the Labour Code, the Sports Act and other applicable legislation, as well as the rules of the Employer, MLSZ, UEFA and FIFA".

106. The starting point to determine the applicable law is Article 187(1) of the PILA, which reads as follows:

"The arbitral tribunal shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to the rules of law with which the case has the closest connection".

107. The Panel notes that the Parties have submitted their dispute to CAS and therefore decided that the CAS Code, including Article R58 of the CAS Code, shall govern the appeal arbitration proceedings. This finding is further corroborated by the OoP signed by both Parties, which states in relation to the applicable law as follows:

"In accordance with Article R58 of the Code, the Panel shall decide the dispute according to the applicable regulations and, subsidiarily, the rules of law chosen by the Parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

108. The Panel notes that – according to Article R58 of the CAS Code – it shall firstly *"decide the dispute according to the applicable regulations"* and secondly based on the *"the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate"*. By corollary, Article R58 of the CAS Code, in principle, gives precedence to the applicable regulations (of the relevant federation) over the Parties' choice of law.

109. The above finding is not contradicted by Clause XI.5 of the Employment Contract. The latter does not provide for any hierarchy of norms. It rather appears that the clause in question merely lists the various applicable legal regimes that may be applicable to the case at hand. This follows from the fact that the wording of Clause XI.5 of the Employment Contract only refers to "and" instead of "additionally" or "subsidiarily" and therefore does not give precedence to Hungarian law over the rules and regulations of FIFA.

110. Thus, in light of the above, the Panel finds that the dispute in question must be resolved firstly according to the "applicable regulations", *i.e.* the rules and regulations of FIFA (including the FIFA RSTP and Article 57(2) of the FIFA Statutes). In addition, the "applicable regulations" provide that Swiss law shall be applied subsidiarily, *i.e.* when applying and interpreting the various FIFA regulations. For all questions not covered by the "applicable regulations", the Panel will resort to the "rules of law" chosen by the Parties, *i.e.* Hungarian law.

111. The above finding is in line with CAS jurisprudence. In CAS 2017/A/5341, the panel found as follows:

"In the matter at hand, the parties have, besides the above-mentioned implicit and indirect choice of law, however, also made an explicit choice of law […] for the application of Russian law.

[…] Article R58 *of the CAS Code serves to restrict the autonomy of the parties, since even where a choice of law has been made, the 'applicable regulations' are primarily applied, irrespective of the will of the parties. (..) Hence any choice of law made by the parties does not prevail over Art.* R58 *of the CAS Code, but is to be considered only within the framework of Art.* R58 *of the CAS Code and consequently affects only the subsidiarily applicable law …'*

A further question arises as to the relation between the parties' explicit choice of law in the Employment Contract and the reference in Article 57(2) FIFA Statutes to the subsidiary application of Swiss law.

According to [legal literature] *in appeal arbitration* proceedings [Article R58 of the CAS Code] *assumes that the federation regulations take precedence. Consequently, the rules and regulations of a federation also take precedence over any legal framework chosen by the parties (..). If, therefore, the federation rules provide that Swiss law is to be applied additionally (to the rules and regulations of FIFA) then this must be complied with by the Panel. (..) Where* [Article 57(2) of the FIFA Statutes] *'additionally' refers to Swiss law, such a reference only serves the purpose of making the RSTP more specific. In no way is the reference to Swiss law intended to mean that in the event of a conflict between the RSTP and Swiss law, priority must be given to the latter. (..) Consequently the purpose of the reference to Swiss law in [Article 57(2) FIFA Statutes] is to ensure the uniform interpretation of the standards of the industry. Under [Article 57(2) FIFA Statutes], however, issues that are not governed by the RSTP should not be subject to Swiss law' … While* [this] *is not binding on the Panel, the Panel finds it persuasive in its approach".*

112. The Panel is, thus, satisfied that primarily the various rules and regulations of FIFA apply to the merits of this appeal, in particular the FIFA RSTP. Swiss law only serves the purpose to interpret the above rules and regulations. Hungarian law will apply to any matters not covered by the FIFA regulations.

113. As for the question which version of the FIFA RSTP apply, the Panel is mindful of Article 26 (1) of the FIFA RSTP (version 2021), which reads as follows:

"Any case that has been brought to FIFA before these regulations come into force shall be assessed according to the previous regulations".

114. The FIFA RSTP (version 2021) entered into force on 4 December 2020. The Respondent initiated the proceedings before the FIFA PSC on 30 April 2020, thus, well before the entering into force of the new FIFA RSTP. Thus, it is the FIFA RSTP 2020 that apply to the case at hand. The Panel notes that the FIFA RSTP 2020 only regulate questions of competence of the FIFA adjudicatory organs in relation to disputes involving coaches (Article 22 of the FIFA RSTP 2020). Unlike the FIFA RSTP 2021, the FIFA RSTP 2020 do not provide for substantive provisions in relation to the employment of coaches. Furthermore, it is standing jurisprudence of the CAS that the provisions on players contained in the FIFA RSTP do not apply by analogy to coaches (CAS 2015/A/4161). It follows from the above that the scope of application of Hungarian law being the "rules of law" chosen by the Parties is quite considerable in the case at hand.

X. MERITS

115. The relevant questions that the Panel needs to answer in this appeal can be grouped into four sets of issues:

i. Does the Respondent have standing to be sued alone?

ii. In case the previous question is answered in the affirmative, did the Single Judge correctly accept jurisdiction to adjudicate and decide on the Coach's claim against the Club?

iii. In case the previous questions is answered in the affirmative, should the Appealed Decision be annulled for procedural flaws?

iv. In case the previous question is answered in the affirmative, did the Club have just cause to terminate the Employment Contract prematurely and, if so, what are the consequences thereof?

A. Does the Respondent have Standing to be Sued alone?

116. The Respondent submits that he has no standing to be sued. He refers to the letter of FIFA dated 25 March 2021 in which the FIFA stated that *"in the present proceedings, FIFA is the only entity with a disputed right at stake and with a legitimate interest in relation to its prerogative to establish whether its deciding body has jurisdiction or not […]"*. By contrast, the Appellant submits that the dispute before the CAS is of a purely civil law nature. FIFA only acted as an adjudicatory body in order to solve the employment-related dispute between the Club and the Coach.

1. Question on the Merits

117. At the outset, the Panel notes that the question of standing is a matter of substantive law. This has also been confirmed by well-established CAS jurisprudence (see CAS 2020/A/7356; CAS 2016/A/4602; CAS 2013/A/3047; CAS 2008/A/1639). Thus, the Panel will apply the FIFA regulations and – in case of a *lacuna* – Swiss law (see supra paras 112 et seq.). Such finding is backed by CAS jurisprudence. In CAS 2016/A/4836 para 116, the panel rightly found as follows:

"As established above, (…) [Article 58 (1) of the] FIFA Statutes dictates that any appeals against decisions of a body such as the FIFA PSC should be lodged with the CAS. It does not specify which party the appeal should be brought against i.e. which party has standing to be sued. This lacuna can be filled using Swiss law and in particular article 75 of the SCC".

2. Vertical Disputes versus Horizontal Disputes

118. Article 75 of the Swiss Civil Code ("SCC") foresees that an appeal against a decision of an association must be brought against the association that has issued the decision. Thus, according to this provision, only the association has standing to be sued. Article 75 of the SCC, however, can only serve as a guidance if the dispute in question is akin to the matters dealt with in said

Article. The latter deals with disputes arising from a legal relationship (membership) between a member of an association and the association itself. Consequently, Article 75 of the SCC deals with a "vertical" dispute. However, as the panel in in CAS 2014/A/3489-3490 rightly noted, not all disputes pertaining to the life of an association are necessarily *"vertical in nature"*. Instead, there are also disputes that are qualified as "horizontal" in which FIFA does not assume executive, but only adjudicatory, powers without having any direct involvement. At para 119, the panel in CAS 2014/A/3489-3490 noted as follows:

"(…) if a party to an horizontal dispute adjudicated by a FIFA body – i.e., a dispute between two or more direct or indirect members of FIFA (such as clubs, players, agents or coaches) which does not involve FIFA's disciplinary powers and where FIFA has nothing directly at stake – appeals to the CAS without summoning FIFA, the appointed CAS panel may still proceed to examine the matter and adjudicate the dispute. This is so because a decision adopted by a FIFA body on a dispute between its direct or indirect members, being a decision of an association, is not an award but it has a contractual value for the members of the association. (…)"

3. The Nature of the Dispute in Question

119. The Respondent is of the view that the matter at hand is a "vertical" rather than a "horizontal" dispute and that, therefore, he alone does not have standing to be sued. Since the Appellant failed to direct its appeal also against FIFA, the claim must be dismissed according to the Respondent. The latter relies on the FIFA letter dated 25 March 2021 that in turn refers to a CAS decision (CAS 2017/A/4836), in which the panel stated as follows:

"123. (…) notes above that certain decisions such as sporting sanctions or purely disciplinary issues, along with eligibility or registration matters (such as in CAS 2008/A/1639, as cited by Rubin Kazan), fall clearly within the 'vertical' criteria. The issue at hand does not concern sporting sanctions, etc., however, there was not an underlying decision taken by FIFA on the merits either.

124. The Panel takes the view that the matter at hand is clearly directed at FIFA. The contractual claim is not before this Panel. Mr. Gonzalez was quite particular with his prayers for relief. It was that the FIFA PSC was wrong to decline jurisdiction, that the Panel should overturn FIFA's decision, tell FIFA that it does have jurisdiction and to take the case back to deal with it on the merits.

125. This is clearly a 'vertical' issue – a dispute between Mr. Gonzalez and FIFA. The Panel can see that Rubin Kazan has an indirect interest, but it would be able to advance its position on the merits before the FIFA PSC, should the matter have returned there. Article R57 of the CAS Code does provide the Panel with de novo powers and perhaps if both FIFA and Rubin Kazan had been summoned as respondents, then all parties may have asked the Panel to consider jurisdictional issues and subsequently the merits, but this can remain moot, as FIFA were not summoned".

a) No uniform CAS jurisprudence

120. The Panel notes that the above jurisprudence is far from unanimous. In the case CAS 2016/A/4554, the previous instance (*i.e.* the FIFA PSC) had rejected the claim of a football agent against a player as "inadmissible". The agent lodged an appeal against said decision to the

CAS solely against the player. The sole arbitrator in that case saw no issue of standing to be sued and set aside the first instance decision of FIFA even though the latter had not been called as a party by the agent.

121. In addition, in the case CAS 2013/A/3278, the FIFA PSC accepted competence and upheld the claim filed by a Brazilian Club against a Portuguese Club for compensation. The latter appealed against the decision of the FIFA PSC before the CAS. The appeal was solely directed against the Brazilian Club. Therein the Portuguese Club requested that the FIFA PSC decision be set aside for lack of competence. The panel in CAS 2013/A/4378 accepted the Brazilian's Club standing to be sued and stated (under paras. 57 et seq.) as follows:

"57. […] the majority of the Panel takes the view that Appellant is in essence invoking a contractual right not to be subject to the obligation to pay contractual compensation to the Respondent based on a contractual right not to be sued in front of the Single Judge of the FIFA PSC. In other words, the Appellant's prayers are aimed at obtaining the enforcement of contractual rights it alleges to own under the Second Agreement.

58. Thus, the majority of the Panel finds that in the circumstances of this case a decision concerning the competence of FIFA under its Transfer Regulations can be taken without FIFA being named as co-respondent because the Appellant's claims involve its contractual rights and it has standing to sue with respect to those prayers for relief.

59. Furthermore, the Parties being bound by a bilateral contract under which the Parties' rights and obligations have not been assigned or taken over in any manner by a third party, the Respondent owns the corresponding contractual obligations and hence is the only person against whom the Appellant can seek to enforce them. FIFA, on the other hand, does not own any of the contractual rights or obligations in dispute and therefore has no standing.

60. In other words, respective rights and obligations of the Appellant and the Respondent as to the validity, scope and effects of the choice-of-forum clause and their financial rights and obligations under the contract are at stake – meaning that they respectively have standing to sue and to be sued.

61. The foregoing conclusion is reinforced by the fact that no fine or other form of sanction was inflicted on the Appellant by the Single Judge of the FIFA PSC or any other FIFA internal body, and the fact that FIFA itself elected to renounce taking part in the proceedings although under the FIFA Regulations it could have requested to participate as an intervening party".

b) The nature of the dispute

122. The Panel finds that the nature of a dispute ("vertical" or "horizontal") depends on what is claimed by the parties, *i.e.* the interests at stake. It is, thus, the matter in dispute that defines the nature of the dispute and not the reasons based on which an adjudicatory body dismisses or accepts a claim. The matter in dispute is defined by the requests of the parties and the facts underlying the respective requests. In the view of the Panel, the nature of the claim / appeal ("vertical" or "horizontal") and also the matter in dispute stays the same before all instances. The function performed by the adjudicatory body in question does not vary depending on the legal reasons it invokes or that are invoked by the parties. The Panel, thus, finds that if the

dispute was horizontal in nature before the FIFA PSC, it also stays horizontal after being brought before the next instance, *i.e.* the CAS.

c) The interests of FIFA

123. The Panel has contemplated whether the case at hand affects the interests of FIFA to such an extent that it must be called as a party into this procedure, *i.e.* that the CAS cannot dispose over the rights and obligations at stake without FIFA being heard. The Panel is of the view that this threshold is not met in the case at hand. FIFA "merely" performed adjudicatory functions when providing its dispute resolution mechanism to the Parties at first instance. Furthermore, FIFA's interests (when acting as a purely adjudicatory body) are not affected differently depending on the arguments invoked by the parties at first or second instance (jurisdiction, admissibility or merits). In all these cases, FIFA's interest is rather general in nature, *i.e.* – in essence – that its rules and regulations are being applied and enforced between the stakeholders in the football industry.

124. Be it as it may, the Panel finds that the Appellant cannot be burdened with the question whether or not the (general) interests of FIFA are threatened to such an extent that FIFA must be found to have the right of standing to be sued. This would clearly be in conflict with the principle of legal security. Furthermore, the Panel is of the view that the question at hand does not fundamentally threaten FIFA's interests. This case is about the interpretation of a contract entered into between the Parties and – more particularly – on the interpretation of a dispute resolution clause. It clearly does not "threaten the football system" in any way.

d) FIFA's interests are sufficiently protected

125. The Panel also finds that FIFA's interests in the case at hand are sufficiently taken care of and defended by the Respondent. The Panel refers in this respect to CAS 2020/A/7356 in which the sole arbitrator – in reference to CAS 2015/A/3910 – held as follows:

> *"[W]hen deciding who is the proper party to defend an appealed decision, CAS panels proceed by a balancing of the interests involved and taking into account the role assumed by the association in the specific circumstances. Consequently one must ask whether a party 'stands to be sufficiently affected by the matter at hand in order to qualify as a proper respondent within the meaning of the law' (cf. CAS 2017/A/5227, para. 35). Similarly, the CAS panel in 2015/A/3910 held as follows:*
>
> > *'[T]he Panel holds that in the absence of a clear statutory provision regulating the question of standing to be sued, the question must be resolved on basis of a weighing of the interests of the persons affected by said decision. The question, thus, is who […] is best suited to represent and defend the will expressed by the organ of the association'".*

126. In the light of the above, the Panel finds that FIFA's interests in no way differ from the interests of the Respondent, who equally wants the Appealed Decision to be upheld. In addition, the Panel notes that it is ultimately the Respondent who is solely competent to dispose of the claims in questions (e.g. by entering into a settlement agreement, acknowledging the claim filed, etc.).

He can do so without the involvement of FIFA. In particular, he does not need FIFA's consent when settling the dispute inside or outside the court. All of this proves that FIFA in this case does not have an interest of its own worthy of protection, *i.e.* to be found to have standing to be sued in horizontal disputes to an extent that its absence in a proceeding is fatal.

127. On a final note, the Panel finds that if FIFA had taken the view that Respondent was not sufficiently able to protects its general interests, it could have requested to join these proceedings as a party, further to Article R41.3 of the CAS Code. In all appeal arbitration proceedings against decisions of the adjudicatory bodies of FIFA – even in case the appeal is not directed against it – FIFA is informed by the CAS Court Office of the statement of appeal filed further to Article R52 of the CAS Code and is invited to state whether it wishes to participate in the proceedings as a party, further to Article R41.3 of the CAS Code. In the case at hand, FIFA decided not to request to join the proceedings as a party, most likely because it thought that its (general) interests would be sufficiently taken care of and defended by the Respondent.

B. Did the FIFA PSC correctly accept jurisdiction?

128. The Appellant objects to the jurisdiction of the FIFA PSC and submits that the Respondent holds – *inter alia* – Hungarian citizenship and that, therefore, the dispute lacks an international dimension within the meaning of Article 22 lit. c) of the FIFA RSTP. Furthermore, the Appellant finds that the competence to decide employment-related disputes rests exclusively with the Hungarian courts because of the Parties' agreement in Clause XI.4 of the Employment Contract. The Respondent, on the contrary, submits that the jurisdiction of the Single Judge follows from Clause XI.4 of the Employment Contract. Furthermore, the Respondent denied that he held Hungarian citizenship at the relevant moment in time during the dispute, but rather that he acquired it subsequent to the facts giving rise to the dispute.

1. The applicable provisions

129. Article 22 of the FIFA RSTP provides – in its pertinent parts – as follows:

"Without prejudice to the right of any player, coach, association, or club to seek redress before a civil court for employment-related disputes, FIFA is competent to hear:

c) employment-related disputes between a club and an association and a coach of an international dimension; the aforementioned parties may, however, explicitly opt in writing for such disputes to be decided by an independent arbitration tribunal that has been established at national level within the framework of the association and/or collective bargaining agreement. Any such arbitration clause must be included either directly in the contract or in a collective bargaining agreement applicable on the parties. The independent national arbitration tribunal must guarantee fair proceedings and respect the principle of equal representation of coaches and clubs; […]".

130. In addition, Article 23(1) of the FIFA RSTP reads as follows:

"The Players' Status Committee shall adjudicate on any of the cases described under article 22 c) and f) as well as on all other disputes arising from the application of these regulations, subject to article 24".

131. Furthermore, Clause XI.4 of the Employment Contract states as follows:

"The Parties agree to resolve their disputes amicably, by way of negotiations. Should the Parties fail to resolve their dispute amicably, the Parties shall submit themselves – in the cases set out in the regulations of MLSZ and FIFA – to the competent department of MLSZ and FIFA, in the case of labour disputes to the competent Administrative and Labour Court and in every other case to the Permanent Court Arbitration pursuant to Section 47 of the Sports Act. The number of arbitrators shall be 3, the procedure shall be governed by the Procedural Rules of the Arbitration".

2. The international dimension of the case

132. The nationality of a coach is an important factor when deciding whether a dispute has an international dimension according to Article 22 lit. c of the FIFA RSTP. There are CAS decisions that deny any international dimension in case the coach holds the nationality of the club or in case he holds dual citizenship (including the citizenship of the club). In CAS 2016/A/4441, the sole arbitrator held as follows (paras 8.5 et seq.):

"Initially, the Sole Arbitrator notes that the FIFA DRC is entitled, ex officio, to decide on its own competence, including the competence to determine whether or not a dispute is of an international dimension in accordance with the Regulations.

In order to decide on the existence of such international dimension in this particular case, it is first necessary to establish the time that is material to this assessment.

In connection with that, the Sole Arbitrator notes that it is undisputed between the Appellant and FIFA that at the time of signing the Contract with the First Respondent, i.e. in January 2011, the Appellant held Dutch nationality only.

However, the Sole Arbitrator is in agreement with the FIFA DRC in its decision that the analysis of the Appellant's nationality should be made at the time of the event giving rise to the dispute, and not the time of the signing of the Contract.

In this particular case, the events giving rise to the dispute are the alleged non-payments of costs and salaries to the Appellant for the months of March, April and May 2012, which, according to the Contract, fell due "on 30th date of each month", for which reason the Sole Arbitrator considers this to be the relevant time for the analysis of whether or not this case is of a international dimension in accordance with Article 22 of the Regulations. …

As it can be assumed in these circumstances that the Appellant, at the relevant time when the dispute arouse, had obtained and held Indonesian citizenship, it is up to the Sole Arbitrator to assess whether the fact that the Appellant at the same time held Dutch nationality provides the necessary international dimension to the case in order for the FIFA DRC to be competent to decide the case. …".

133. It follows from the above that the decisive moment in time to assess the international dimension of a case is the moment the dispute arises. It may be debatable when a dispute arises, *i.e.* whether this is the moment of the alleged breach of contract or the moment a claim is filed. However,

the Panel does not need to decide this controversy, since – undisputedly – the Respondent only held Montenegrin citizenship at both moments in time. The Panel does not agree with the Appellant that the nature of a dispute (national / international) may change over the course of the pending proceedings. Instead, the Panel is of the firm view that the principle of *perpetuatio fori* must apply. According thereto, a court remains competent even if the facts establishing its competence cease to exist after *lis pendens* has arisen.

3. The Parties' agreement in Clause XI.4 of the Employment Contract

134. As a starting point, the Panel notes that both Parties are indirectly affiliated to FIFA and, therefore, subject to the FIFA regulations (including the FIFA RSTP). Furthermore, the Panel notes that the Parties have submitted themselves in the Employment Contract – *inter alia* – to the FIFA regulations. Therefore, Articles 22 et seq. of the FIFA RSTP apply, in principle, to this matter.

a) Do the Parties have the autonomy to opt out of Article 22 lit. c) of the FIFA RSTP?

135. According to Article 22 lit. c) of the FIFA RSTP, FIFA's competence in employment-related disputes is not absolute. According to the first sentence of Article 22 FIFA RSTP, FIFA is only competent subject to *"to the right of any player, coach, association, or club to seek redress before a civil court"*. Article 22 of the FIFA RSTP, thus, provides a right for the parties to seek redress either before FIFA's adjudicatory bodies or before local courts. In case the parties opt for a local forum, the FIFA adjudicatory bodies are no longer competent.

136. The question is, whether the parties to an employment contract can limit such choice provided for in Article 22 of the FIFA RSTP by entering into an agreement that obligates a party seeking judicial recourse to do so before the local forum only. The Panel finds that the parties, in principle, have such autonomy (cf. also CAS 2016/A/4554 paras 60 et seq.). This follows from Article 22 lit. c) of the FIFA RSTP that provides that the parties can substitute the FIFA adjudicatory bodies with "an independent arbitration tribunal". If, however, the parties can substitute one option through another option, the better arguments speak in favour of granting the parties full autonomy with respect to the competent adjudicatory instance. Thus, the Panel finds that parties may enter into a contractual or procedural agreement that excludes recourse to FIFA and obliges them to seek judicial redress only before the local courts. For purely informative purposes and merely as a subsidiary note, the Panel wishes to make reference to CAS 2013/A/3278, where the panel found at paras 66 et seq. as follows:

"66. At the same time, under the freedom of contract and Swiss provisions on choice-of-forum clauses (e.g. article 5 of the PIL Act and article 17 of the CPC) parties to an international contract are entitled to include a choice-of-forum clause in their contract; and under Swiss law, a choice-of-forum clause is deemed exclusive, unless expressly provided otherwise.

67. Consequently, in light of the above legal framework, the question here is whether in the circumstances of this case, the Appellant and the Respondent could validly include a choice-of-forum clause in their Second Agreement and, if so, whether it also had the effect of excluding the competence of the FIFA internal bodies (in this case the

Single Judge of the FIFA PSC) as the primary instance to pronounce itself on a dispute deriving from their contract.

68. With respect to the first aspect, given that we are dealing with an international contract between indirect members of FIFA and a purely contractual dispute which does not involve FIFA as a party or any sanctions taken by FIFA, the Panel finds that under Swiss law the Appellant and Respondent were entitled to validly adopt between themselves a choice-of-forum clause in favour of State courts (here the common courts of Funchal's Judicial District).

69. Concerning the second aspect, i.e. the scope of the parties' contractual choice-of-forum clause/exclusion of FIFA's competence, the majority of the Panel finds that the intent of the parties to the Second Agreement was clearly to choose the common courts of Funchal's Judicial District as the only body to decide any contractual dispute between them, since clause 5 of the Second Agreement refers to those courts 'For all legal consequences…' and there is no wording included which indicates the parties deemed the Portuguese courts in question would merely be an appellate body against a primary decision by FIFA; while at the same time this was a commercial contract and there is a presumption under Swiss law that a choice-of-forum is exclusive.

70. For the above reasons, the majority of the Panel finds that when including clause 5 in the Second Agreement the parties' intention was to exclude – in favour of the common courts of Funchal's Judicial District – any resort to a FIFA body in case of a dispute, and finds that such choice of the parties was valid under Swiss law".

137. On a further purely subsidiary note, the Panel also refers to a decision of the FIFA Dispute Resolution Chamber dated 25 February 2020 (Petkovski v/ Vicente et al), in which the adjudicatory body found as follows.

"II.6. Taking into account all the above, the Chamber emphasised that in accordance with art. 22 of the Regulations, FIFA is competent to hear employment-related disputes between a player and a club with an international dimension 'without prejudice to the right of any player or club to seek redress before a civil court for employment related disputes'.

II.7. In the present matter, the DRC duly noted that the player and the club had unambiguously and exclusively decided that any dispute that would arise from the contract would be the 'Labor Court of the Judicial Court of Barcelos'.

II.8. The DRC recalled that parties may freely agree to give jurisdiction to a civil court, and that such choice shall always prevail. In fact, the Chamber, recalling its jurisprudence as well as CAS jurisprudence in this regard, and in particular CAS 2013/A/3278, highlighted that even if the choice of law does not specify which courts are competent (e.g. a generic reference is made to a region/city), FIFA is not competent when the parties have exclusively agreed to the jurisdiction of a civil court. In addition, the DRC emphasized that art. 22 of the Regulations provide a clear hierarchy in favor of contractual autonomy.

II.9. In view of all the above, the Chamber concluded that it was not competent to hear the dispute between the player and club, and consequently declared the claim of the player inadmissible".

138. The Panel is well aware that Article 22 of the FIFA RSTP is an important pillar of legal protection for the persons belonging to the football industry. Only before the FIFA

adjudicatory bodies will the protections provided for in the FIFA RSTP be enforced and guaranteed. Thus, an opting out from Article 22 lit. c) of the FIFA RSTP should not be accepted easily. Only where such opting out was entered into by the Parties freely and willingly should such agreement be accepted in order to avoid any misuse undermining access to justice under Article 22 of the FIFA RSTP. In the case at hand, nothing points towards such misuse by one of the Parties. It was not submitted that there was unequal bargaining power between the Parties, that the choice of the forum was arbitrary or detrimental from the outset for any of the Parties or that undue influence (whether economic or otherwise) had been exercised to pressure a party into acceptance of the terms and conditions of the Employment Contract. Thus, the Panel accepts that in the case at hand an opting out of Article 22 of the FIFA RSTP provided that such intention of the Parties can be derived from Clause XI.4 of the Employment Contract.

b) Did the Parties opt out of Article 22 lit. c) of the FIFA RSTP?

139. Whether the Parties wanted the employment-related dispute to be decided solely by the Hungarian courts needs to be assessed through interpretation of the relevant clause of the Employment Contract. The Panel applies Swiss law to this question of interpretation, since the adjudicatory body that has been allegedly derogated from (FIFA PSC) is located in Switzerland. Furthermore, the Parties have not submitted that applying Hungarian law to this question of interpretation would lead to a different outcome. The relevant part of the Clause XI.4 of the Employment Contract reads as follows:

"[…] the Parties shall submit themselves – in cases set out in the regulations of MLSZ and FIFA – to the competent department of MLSZ and FIFA, in the case of labour disputes to the competent Administrative and Labour Court and in every other case to the Permanent Court Arbitration pursuant to Section 47 of the Sports Act".

140. The clause is – at first sight – not very clear. It refers to four different adjudicatory bodies, *i.e.* MLSZ, FIFA, the Administrative and Labour Court and to the Permanent Court Arbitration. All these different *fora* are – according to the will of the Parties – not competent alternatively or concurrently. This follows from the wording of the clause according to which – *e.g.* – the departments of FIFA and MLSZ are only competent *"in cases set out in [their respective] regulations"*. Furthermore, the clause provides that the Hungarian Administrative and Labour Court shall only be competent for *"labour disputes"* and that *"in every other case"* the Permanent Court Arbitration shall be competent. Thus, it follows from an interpretation of the clause that each of the different *fora* shall be – according to the will of the parties – competent for specific types of disputes only.

141. The question at stake is what jurisdiction shall be competent, if there is – contrary to the assumption of the Parties – an overlap between the competences of the different *fora, i.e.* in case not only the state courts but also FIFA adjudicatory bodies are, in principle, competent to deal with the labour disputes (Article 22 of the FIFA RSTP). Such jurisdictional conflict may be solved – in principle – either by giving preference to the FIFA bodies or to the local courts. The Panel finds that – when interpreting the clause in light of the principle of good faith – the latter interpretation best reflects the interests and intentions of the Parties. By referring explicitly to *"labour disputes"* and conferring jurisdiction for such disputes expressly to the state courts, the

Parties wanted to establish exclusive jurisdiction in favour of such courts. Since the present case is – undisputedly – an employment-related dispute, it follows from Clause XI.4 of the Employment Contract that the Parties bindingly conferred jurisdiction to the competent Administrative and Labour Court in Hungary to adjudicate and decide the matter between them. In addition, the Panel notes that the competence of the local court was not restricted to national or local disputes. Instead, the Clause XI.4 of the Employment Contract states that Hungarian courts are competent for all matters pertaining to labour disputes. Thus, based on the principle of reasonableness and good faith, the Panel finds that the Parties by agreeing on Clause XI.4 excluded the option to seek redress before the FIFA organs in labour-relate disputes and opted for a single forum, *i.e.* the competent national *"Administrative and Labour Court in Hungary"*. Such agreement shall override the FIFA rules and regulations, particularly Articles 22 and 23 of the FIFA RSTP.

c) Did the Appellant forego its right to object to FIFA jurisdiction?

142. The Respondent submits that the Appellant – in any event – forfeited its right to object to FIFA's jurisdiction. The Panel does not agree with this proposition. The Panel notes that the Appellant did not enter unconditional appearance before the FIFA PSC and did not thereby accept FIFA jurisdiction. The Appellant filed its objections in this respect before the FIFA PSC. The Panel also notes that the Appellant's submissions were not taken into account by the Single Judge because they were filed late. A default of a party to (timely) participate in adjudication proceedings, however, cannot be qualified as a tacit acceptance of competence of the adjudicatory body in question. Instead, it is the Panel's view that the FIFA bodies must assess their jurisdiction *ex officio* in such case.

143. The Panel also contemplated whether the Appellant forewent its right to object to FIFA's competence by accepting the jurisdiction of the CAS. The Panel, however, finds that this is not the case. First, the Panel notes that the Appellant's principal claim is to *"rejecting the claim of the Respondent brought before the Committee in the absence of jurisdiction of the Committee over the claim"*. Thus, by appealing to the CAS, the Appellant did not accept the competence of the previous instance. Second, the Panel finds that such procedural behavior of the Appellant is not contradictory. In case the FIFA adjudicatory body wrongly accept jurisdiction there must be a way of access to justice for the Appellant to set aside such decision. This is all the more true considering that a FIFA decision can be enforced against a party outside the court enforcement system.

C. Conclusion

144. To conclude, the Panel finds that the Parties have contractually derogated from the default competence of the Single Judge pursuant to Article 22 lit. c) of the FIFA RSTP. Clause XI.4 of the Employment Contract explicitly gives precedence to the jurisdiction of the competent Hungarian Administrative and Labour Court in employment-related disputes. Consequently, the FIFA PSC did not have jurisdiction to decide the matter and the Appealed Decision must be set aside.

145. Since the Panel in appeals arbitration proceedings is only mandated to decide the dispute within the limits of the previous instance, it cannot enter into the merits of the case, but must accept the appeal and set aside the Appealed Decision.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 10 March 2021 by the Nyíregyháza Spartacus Football Club Kft. against the decision rendered on 18 February 2021 by the Singe Judge of the FIFA Players' Status Committee is upheld.

2. The decision issued on 18 February 2021 by the Single Judge of the FIFA Players' Status Committee is set aside.

3. The Single Judge of the FIFA Players' Status Committee has no jurisdiction to adjudicate and decide on the claim brought by Vukašin Poleksić against the Nyíregyháza Spartacus Football Club Kft.

4. (…).

5. (…).

6. All other and further motions or prayers for relief are dismissed.