Arbitration CAS 2021/A/8238 Cagliari Calcio S.p.A v. RNK Split, award of 8 September 2022

Panel: Mr András Gurovits (Switzerland), Sole Arbitrator

Football
Transfer – Solidarity contribution
Solidarity mechanism applied to national transfers
Applicable FIFA regulations

1. **The obligation to pay a solidarity contribution in national transfers with an international dimension was introduced with the June 2020 edition of the FIFA Regulations on the Status and Transfer of Players (the 2020 FIFA RSTP) with a date of enforcement on 1 July 2020 as per the FIFA Circular 1709.**

2. **Following the FIFA Commentary on the RSTP, edition 2021, the regulations that shall apply are the ones in force at the time the matter was referred to FIFA. However, as an exception, disputes regarding training compensation and the solidarity mechanism are assessed according to the version of the Regulations in force when the disputed facts arose (i.e. at the time the player was registered with their new club, which triggers the payment of the relevant training award). Article 26 para. 2 of the 2020 FIFA RSTP specifies that disputes regarding the solidarity mechanism shall be assessed pursuant to the regulations *"that were in force when the contract at the centre of the dispute was signed, or when the disputed facts arose"*.**

I. THE PARTIES

1. Cagliari Calcio S.p.A. (the "Appellant") is a professional football club affiliated to the *Federazione Italiana Giuco Calcio* ("FIGC"), which in turn is a member of the *Fédération Internationale de Football Association* ("FIFA").

2. RNK Split (the "Respondent") is a professional football club affiliated to *Hrvatski Nogometni Savez* ("HNS"), which in turn is a member of FIFA.

3. The Appellant and the Respondent are jointly referred to as the "Parties".

II. FACTUAL BACKGROUND

4. Below is a brief summary of the main facts and allegations based on the Parties' written submissions, the CAS file and the content of the hearing that took place by video-conference

on 20 December 2021. Additional facts and allegations found in the Parties' submissions, pleadings and evidence may be set out, where relevant, in other parts of this award.

5. On 23 July 2019, the Appellant and Club SSC Napoli ("SSC Napoli") entered into a transfer agreement regarding the transfer of the player M. (the "Player") from SSC Napoli to the Appellant (the "Transfer Agreement"). The Transfer Agreement is based on and consists of various model documents issued by the FIGC.

6. On the same day, the Player and the Appellant entered into a labor contract (the "Labor Contract").

7. By submission of 12 November 2020 and 29 November 2020, the Respondent, using the FIFA Transfer Matching System (the "FIFA TMS"), requested payment from the Appellant of a solidarity contribution in accordance with Article 21 and Annexe 5 of the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP").

8. On 26 February 2021, the Single Judge of the FIFA Dispute Resolution Chamber (the "FIFA Single Judge") passed his decision ordering the Appellant to pay the Respondent the amount of EUR 33'760, plus five percent interest *per annum* as from 2 October 2020 (hereinafter the "Appealed Decision").

9. Following the Appellant's request, on 3 August 2021, the FIFA Single Judge provided the grounds of the Appealed Decision. The FIFA Single Judge held, *inter alia*, that as the Player was registered permanently with the Appellant on 1 September 2020, the August 2020 edition of the FIFA RSTP applied. Therefore, solidarity was due to the Respondent for the permanent registration of the Player with the Appellant on 1 September 2020.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

10. On 16 August 2021, the Appellant, disagreeing with the Appealed Decision, submitted its Statement of Appeal in accordance with Article R48 of the Code of Sports-related arbitration (the "CAS Code").

11. By letter of 24 August 2021, the CAS Court Office acknowledged receipt of the statement of appeal and granted the Appellant an extension of ten days to file its appeal brief. By means of this letter, the Respondent was invited to inform the CAS Court Office whether it agreed that an additional extension of ten more days be granted for the Appellant to file its appeal brief and whether it agreed that the matter be heard by a Sole Arbitrator, as requested by the Appellant.

12. By letter, dated 26 August 2021, the Respondent informed the CAS Court Office, *inter alia*, that it agreed that a Sole Arbitrator was appointed and that the Appellant was granted an additional extension of ten days to file its appeal brief.

13. By letter of 3 September 2021, FIFA informed the CAS Court Office that it renounced its right to request intervention in the present arbitration proceedings.

14. By letter of 9 September 2021, the CAS Court Office informed the Parties about the disclosures made by the Sole Arbitrator nominated by the Deputy Division President, Dr. András Gurovits, in the Arbitrator's Acceptance and Statement of Independence form and reminded the Parties of their right to file a challenge in accordance with Article R34 of the CAS Code.

15. On 16 September 2021, the CAS Court Office forwarded the appeal brief that the Appellant had submitted on 15 September 2021 to the Respondent.

16. By letter of 16 September 2021, the Appellant raised a challenge against the Sole Arbitrator pursuant to Article R34 of the CAS Code.

17. By letter of 23 September 2021, the Respondent informed the CAS Court Office that it had no objections against the appointment of the Sole Arbitrator.

18. On 24 September 2021, the Sole Arbitrator provided some further explanations about the disclosures that he had made and offered his resignation if any of the Parties still felt uncomfortable with his appointment.

19. By letter of 28 September 2021, the CAS Court Office granted the Respondent a deadline of 20 days to file its answer to the appeal brief in accordance with Article R55 of the CAS Code.

20. On 29 September 2021, the Appellant informed the CAS Court Office that it renounced the challenge raised against the Sole Arbitrator, and by letter of 30 September 2021, the CAS Court Office sent the Parties the Notice of Formation of the Panel confirming the appointment of Dr András Gurovits as Sole Arbitrator.

21. On 8 November 2021, after having been granted a 20-day extension by the CAS Court Office, the Respondent submitted its answer to the appeal brief, which the CAS Court Office forwarded to the Appellant on 9 November 2021. By the same letter of 9 November 2021, the CAS Court Office invited the Parties to inform the CAS Court Office whether they preferred a hearing to be held in the present matter.

22. By letter of 19 November 2021, the CAS Court Office, in response to an evidentiary request made by the Respondent in its answer, invited the Appellant to submit additional documents as well as copies of two specific FIFA decisions.

23. On 25 November 2021, the Appellant submitted its response to the CAS Court Office's request of 19 November 2021, which the CAS Court Office forwarded to the Respondent on 26 November 2021.

24. By letter of 2 December 2021, the Respondent submitted its comments to the Appellant's submission of 25 November 2021, and by letter of 3 December 2021, the CAS Court Office granted the Appellant a deadline until 10 December 2021 to provide its comments to the Respondent's submission of 2 December 2021. By letter of 10 December 2021, the Appellant submitted its relevant comments.

25. By letter of 10 December 2021, the CAS Court Office informed the Parties that the hearing would be held on 16 December 2021 by video-conference.

26. By letter, dated 15 December 2021, the CAS Court Office informed the Parties that upon the Appellant's request, and with the consent of the Respondent, the hearing had been re-scheduled and would be held on 20 December 2021 by video-conference.

27. On 16 and 17 December 2021, the Respondent and the Appellant, respectivelly, returned the updated versions of the Order of Procedure duly signed.

28. On 20 December 2021, a hearing was held by means of video-conference. The Sole Arbitrator was assisted by Ms Lia Yokomizo, Counsel to the CAS. In addition, the following persons attended the hearing:

    i. for the Appellant: Mr Alberto Porzio (counsel); Mr Paolo Marsilio (counsel); Ms Erika Mazzucotelli (counsel).

    ii. for the Respondent: Mr Jan Schwele (counsel); Mr Thomás Prestes Bosak (counsel).

29. At the opening of the hearing, both Parties confirmed that they had no objections to the composition of the Panel. During the hearing, the Parties made submissions in support of their respective cases. At the closing of the hearing, the Parties confirmed that they had no objections in respect of their right to be heard and that they had been given the opportunity to fully present their cases.

30. On 26 April 2022, the Appellant made an unsolicited submission attaching the findings of a decision issued by the FIFA Dispute Resolution Chamber (the "FIFA DRC") on case Ref. TMS 9596 and requested that it be admitted into the file.

31. On 27 April 2022, the CAS Court Office transmitted the Appellant's request to the Respondent and invited it to present its comments to said request by 4 May 2022.

32. On 29 April 2022, the Respondent objected to the inclusion of the FIFA DRC decision Ref. TMS 9596 into the file.

33. On 3 May 2022, the Parties were informed by the CAS Court Office that the Sole Arbitrator had decided not to admit the FIFA DRC decision Ref. TMS 9596 into the file and were advised that the grounds for said decision would be communicated in the final award.

IV. THE POSITIONS OF THE PARTIES

34. The following is a summary of the Parties' written and oral submissions and does not purport to be comprehensive. However, the Sole Arbitrator has thoroughly considered in his deliberation all of the evidence and arguments submitted by the Parties, even if no specific or detailed reference is made to those arguments in the following outline of their positions and in the ensuing discussion on the merits.

A. The Appellant

35. In its Statement of Appeal, the Appellant submitted the following requests for relief:

"i. To annul and set aside the decision of the Single Judge of the sub-committee of the FIFA Dispute Resolution Chamber dated 2 March 2021;

ii. To rule that Cagliari Calcio has no debt towards RNK Split to the Solidarity Mechanism of the player [M.]*;*

iii. To condemn RNK Split to bear all costs and expenses in relation to the proceedings;

iv. To condemn RNK Split to cover the legal fees of Cagliari Calcio in an amount to be determined by the Panel".

36. In its Appeal Brief the Appellant, in essence, repeated its prayers of relief submitted in the Statement of Appeal.

37. In support of its appeal the Appellant submitted, in essence, the following:

1) As to jurisdiction and applicable laws

38. The CAS has jurisdiction by virtue of Article 57 para. 1 of the FIFA Statutes and Article R47 of the CAS Code.

39. The Appellant did not explicitly express itself as to the laws applicable to the present dispute.

2) As to the merits

40. As regards the merits, the Appellant submitted, in essence, the following:

Factual background

a. The Appellant and SSC Napoli signed the national Transfer Agreement on 23 July 2019. On the same day, the Player and the Appellant signed the Labor Contract. Both agreements were based on and signed pursuant to the relevant Italian statutory framework.

b. On 23 July 2019, a version of the FIFA RSTP was in place, pursuant to which the duty to pay a solidarity contribution was limited to transfers between clubs affiliated to different national associations.

c. After the Respondent had uploaded in the FIFA TMS its claim for payment by the Appellant of a solidarity contribution, on 30 November 2020, the FIFA Single Judge submitted a proposal to the Parties suggesting that the Appelant pay the Respondent a solidarity contribution corresponding to 10.36 percent of the relevant solidarity contribution on the first instalment of EUR 6,500,000 payable by the Appellant for the

permanent transfer of the Playeer from SSC Napoli to the Appellant. The Appellant did not concur with this proposal.

d. On 26 February 2021, the FIFA Single Judge issued the Appealed Decision, pursuant to which the Appellant was to pay the Respondent the amount of EUR 33'670, plus five percent interest *per annum* as from 2 October 2020. On 3 August 2021, the FIFA Single Judge issued the grounds for the Appealed Decision.

Legal Considerations

e. The change to the FIFA RSTP, pursuant to which a solidarity contribution was due also in respect of national transfers, came into effect only after the signing of the Transfer Agreement and of the Labor Contract. Said rules may not be applied retroactively.

f. Pursuant to Article 26 para. 2 of the FIFA RSTP, solidarity contribution disputes shall be assessed in accordance with the regulations that were in force when the relevant contract was signed or when the disputed facts arose.

g. The FIFA Single Judge erred when he held that the relevant event giving raise to the dispute was the permanent registration of the player, which occurred after 1 July 2020, *i.e.* after the entry into force of the new version of the FIFA RSTP. The only element that is relevant in the case at hand is the date of the signing of the contract.

h. It is clear that in light of Article 26 para. 2 FIFA RSTP two criteria are relevant in order to indicate the relevant applicable version of the FIFA RSTP. The first is the date of the signing of the relevant contract. Only if this criterion cannot apply will the second criterion apply subsidiarily, *i.e.* the date when the disputed facts arose. The Appealed Decision mistakenly considered the second criterion.

i. In addition, not only did the signing of the relevant contract occur prior to the entry into force of the new version of the FIFA RSTP, but also the authorization of the Player's registration with the Appellant on 23 July 2019.

j. Confirming the Appealed Decision would result in confirming that the new version of the FIFA RSTP, which came into force on 1 July 2020, was to be applied retroactively. This would violate the principles of equality, uniformity and legal certainty as well as non-retroactivity of new rules.

k. In the case at hand, the Appellant and SSC Napoli agreed in the Transfer Agreement, signed on 23 July 2019, *inter alia*, (i) on the temporary transfer of the Player from SSC Napoli to the Appellant; and (ii) on the obligation of the Parties to convert the transfer from temporary to permanent upon the fulfilment of the first of the the two following conditions: (*a*) first point achieved by the Appellant in the Italian Serie A season 2019/2020 after 1 February 2020; or (*b*) first inclusion of the Player in the list of official matches of the Appellant's first team played after 1 February 2020.

l. Pursuant to the applicable Italian regulatory framework, two clubs agreeing on the temporary transfer of a player can agree, in addition, that the temporary transfer shall transform into a permanent transfer, subject to the fulfilment of certain predefined sporting conditions. In such case, the conversion from a temporary to a permanent transfer takes place automatically without the need for any other formal act or agreement between the parties.

m. On 8 August 2019, the *Lega Nazionale Professionisti di Seria A* ("LNPA") issued the so-called *visto di esectività*, pursuant to which the registration of the Player with the Appellant was certified. Pursuant to said document, the Player's registration was valid from 23 July 2019 until 30 June 2024.

n. By signing the Labor Contract on 23 July 2019, the Player was also fully aware of the fact that if the status of his transfer was to change from temporary to permanent, he would be going to play for the Appellant for the following sporting seasons, potentially until 30 June 2024. The Labor Contract provided the agreed economic conditions for the entire period.

o. Against this background, it is evident that the conversion of the Player's transfer from temporary to permanent took place upon the fulfilment of the agreed conditions precedent, and there was no need for any further formal act or agreement between the Parties.

p. Furthermore, had the Appellant known, at the time of the entering into the Transfer Agreement and Labor Contract, that a solidarity contribution was due in addition to the transfer fee, it would have negotiated the conditions of the contract taking into account the solidarity contribution.

q. Finally, in its decisions Ref. TMS 7295 and Ref. TMS 7111, which referred to two identical cases involving Italian clubs, the FIFA DRC had followed the exact approach that, in the Appellant's view, should apply.

r. For these reasons, the Appealed Decision should be annuled and set aside.

B. The Respondent

41. In its answer, the Respondent submitted the following prayers for relief:

"a) That the present appeal be rejected in totum;

b) That the Appealed Decision be confirmed in totum;

c) That the Appellant be ordered to bear the entire costs and fees of the present arbitration, as well as to the proceedings before the FIFA DRC;

d) That the Appellant be ordered to pay the Respondent a contribution towards legal fees and other expenses incurred in connection with the proceedings in an amount not less than CHF 10'000, or the amount deemed fair by the Sole Arbitrator".

42. In addition, the Respondent submitted a request for evidentiary measures and requested, in essence, that the Appellant be ordered to provide proof of payment of the first instalment of the transfer fee for the permanent transfer of the Player and to produce the actual transfer agreement. In addition, the Respondent requested to disregard the Appellant's reference to two other FIFA cases to which the latter referred in its Appeal Brief, but in respect of which it had not provided copies.

43. In support of its requests the Respondent submitted, in essence, the following:

1) As to the facts

44. In respect of the facts of the case, the Respondent provided, in essence:

a. On 23 July 2019, the Player was registered on loan with the Appellant.

b. On 1 September 2020, the Player was permanently transferred from SSC Napoli to the Appellant and registered with the latter on a permanent basis.

c. Pursuant to the Transfer Agreement, the Appellant had to pay SSC Napoli a transfer fee of EUR 13,000,000 in total, the first instalment of EUR 6,500,000 being due at the start of the 2020/2021 season.

d. The 2020/2021 season started on 1 September 2020, and the first instalment of the transfer fee became due on such date.

e. On 12 November 2020, the Respondent lodged its claim for solidarity contribution through the FIFA TMS.

2) As to the law

45. In respect of the relevant legal topics of the present matter, the Respondent submitted, in essence, the following:

Jurisdiction of the CAS

a. The jurisdiction of the CAS arises out of Article 58.1 of the FIFA Statutes as well as Article R47 of the CAS Code.

b. It is, thus, clear that the CAS has jurisdiction to hear the present matter.

Applicable law

a. The FIFA Regulations apply. Subsidiarily, Swiss law shall apply.

b. Since the Parties are disputing which edition of the FIFA RSTP shall apply, this question is at the center of the present dispute.

Admissibility of the answer

a. The answer was submitted within the extended time limit.

b. The answer should, therefore, be deemed admissible.

The merits of the case

a. In the case at hand, the June 2020 edition of the FIFA RSTP should apply.

b. The Respondent's solidarity contribution entitlement was triggered by the permanent transfer of the Player to the Appellant, his registration with the Appellant on a permanent basis or the payment of the compensation by the Appellant to SSC Napoli.

c. The Respondent's entitlement for the solidarity contribution arises from the FIFA regulations, thus, by operation of the law. It is not a contractual claim.

d. Under both editions of the FIFA RSTP, the June 2019 edition and the June 2020 edition, the new club shall pay the solidarity contribution no later than 30 days after the player's registration, or, in case of contingent payments, 30 days after the date of such payments. Pursuant to the jurisprudence of the FIFA, it is clear that the date of effective registration or the date of the payment of the instalments of the transfer fee is relevant for the duty to pay the solidarity contribution.

e. In the case at hand, the Player was registered with the Appellant on a permanent basis on 1 September 2020, and, on the same day, the first instalment of the transfer fee became due. Therefore, the Respondent's entitlement to the solidarity contribution arose on 2 September 2020.

f. Pursuant to Article 26 para. 2 of the FIFA RSTP, the version of the FIFA RSTP that shall be applicable was the one in force when the contract was signed or when the disputed facts arose. The solidarity contribution arises when the Player is registered with the new club or when the payment of the compensation becomes due. The solidarity contribution entitlement never arises from a contract.

g. There is no doubt that the disputed facts arose on 2 October 2020, as this is when the Respondent's solidarity contribution entitlement became claimable. On that date, the June 2020 edition of the FIFA RSTP was in force.

h. Pursuant to Article 1, para. 2 of Annexe 5 of the June 2020 edition of the FIFA RSTP, solidarity contribution shall also become payable in case of a permanent national transfer, *i.e.* a transfer between two clubs affiliated to the same association, provided that the training club is affiliated to a different association. The Respondent's entitlement to solidarity contribution is a result of the application of Article 1 para. 2 of Annexe 5 of the June 2020 edition of the FIFA RSTP.

i. There is no retroactive effect of the June 2020 edition of the FIFA RSTP. The introduction of the new edition of the FIFA RSTP respects legal certainty with regard to past transfers whose facts were already closed and completely concluded.

j. A distinction must be made between 'real' and 'false' retroactivity. The latter is generally permitted and means that a new law may be applied to a permanent situation that is open in time. In such cases the application of the new law is based on circumstances that already arose under the old law and are still ongoing when the new law comes into force. Private individuals cannot simply rely on the continued existence of a law, but must expect its revision.

k. If there was any retroactive effect in the case at hand, it would be a false retroactive effect, as there are circumstances that arose under the previous edition of the FIFA RSTP but remained ongoing when the June 2020 edition came into force. The Transfer Agreement signed on 23 July 2019 was the start of the series of transfers of the Player, while the completion of the permanent transfer only took place on 1 September 2020, when the Player registered with the Appellant on a permanent basis.

l. It is also for this reason that the Respondent deems it necessary that the Appellant produces proof of paymewnt of the first instalment of the permanent transfer fee, which should have been paid to SSC Napoli on 1 September 2020, in order to show that such action was still needed and taken only after the entry into force of the June 2020 edition of the FIFA RSTP.

m. The Transfer Agreement submitted by the Appellant consists of standard forms of the FIGC. It is therefore important that the actual transfer agreement, if existent, is fully presented so that all relevant contract clauses are fully disclosed. In any case, the Transfer Agreement between SSC Napoli and the Appellant consists of two different bilateral declarations of will, *i.e.* the loan transfer and the future and conditional permanent transfer.

n. The conversion from the temporary to permanent transfer was only a possibility, and thus was not certain. There was still a chance that the permanent transfer could not take place, a fact that was accepted by SSC Napoli and the Appellant.

o. Therefore, the Labor Contract was more likely to be a one-year contract covering only one season of the loan with an additional option for four more years.

p. Moreover, the new Commentary on the FIFA RSTP, published on 10 November 2021, provides clear explanations on the correct interpretation of Art. 26 and Art. 2 para. 1 of Annexe 5 of the FIFA RSTP. The Commentary confirms that solidarity contribution disputes are to be ruled according to the regulations that were in force when the disputed facts arose.

q. Finally, the Appellant does not incur any damage as the solidarity contribution would have to simply be withheld by the Appellant and deducted from the transfer fee payable to SSC Napoli.

V. JURISDICTION

46. The jurisdiction of the CAS derives from Article R47 of the CAS Code in connection with Article 58 para.1 of the FIFA Statutes.

47. Article R47 para 1 of the 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".

48. Article 58 para. 1 of the FIFA Statutes reads 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".

49. Moreover, the last page of the Challenged Decision provides, *inter alia*, that *"this decision may be appealed before the Court of Arbitration for Sport within 21 days of notification".*

50. The Appellant filed its appeal to the CAS in accordance with the provisions above, and the Respondent expressly confirmed the jurisdiction of the CAS in its answer. Furthermore, both Parties confirmed the jurisdiction of the CAS by signing the Order of Procedure.

51. It follows from all of the above that the CAS has jurisdiction to decide the present dispute.

VI. ADMISSIBILITY

52. Article R49 of the Code provides as follows:

"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for 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 other parties".

53. Pursuant to Article 58 para. 1 of the FIFA Statutes the Appealed Decision may be appealed within 21 days from its receipt by the respective party.

54. The Appealed Decision was passed on 26 February 2021, while its grounds were notified to the Parties on 26 July 2021. The Appellant filed its Statement of Appeal on 16 August 2021, *i.e.* within the 21-day time limit, and observed all of the admissibility criteria set out in Articles R48 *et seq* of the Code. It follows that the appeal is admissible.

55. The Appeal Brief was sent to the CAS Court Office on 15 September 2021. Given that the Appellant had been granted a total 20-day extension of its deadline to file its Appeal Brief, the Appeal Brief was filed timely.

VII. APPLICABLE LAW

56. The starting point for determining the applicable law on the merits is – first and foremost – the *lex arbitri*, *i.e.*, the arbitration law at the seat of the arbitration. Since the CAS has its seat in Switzerland (Article S1 and Article R28 of the Code), Swiss arbitration law applies. According to Article 176 para. 1 of the Swiss Private International Law Act (the "PILA"), the provisions of Chapter 12 of the PILA for international arbitration proceedings shall apply if the place of residence and/or domicile of at least one party was outside Switzerland at the time of the execution of the arbitration agreement. It is undisputed that this prerequisite is fulfilled in the case at hand.

57. Article 187 para. 1 of the PILA stipulates in regard to the applicable law on the merits as follows:

"1 The arbitral tribunal shall rule according to the rules of law chosen by the parties or, in the absence of such choice, according to the law with which the action is most closely connected. 2 The parties may authorize the arbitral tribunal to decide ex aequo et bono".

58. The Parties have entered into a choice-of-law agreement by submitting the present dispute to the CAS. Reference is made insofar to the CAS jurisprudence, in particular to CAS 2014/A/3850, nos. 45 *et seq.*, where the Panel held as follows:

"The PILA is the relevant law. ... Art. 187 para. 1 of the PILA provides – inter alia – that 'the arbitral tribunal shall rule according to the law chosen by the parties or, in the absence of such choice, according to the law with which the action is most closely connected' ... According to the legal doctrine, the choice of law made by the parties can be tacit and/or indirect, by reference to the rules of an arbitral tribunal. In agreeing to arbitrate the present dispute according to the CAS Code, the Parties have submitted to the conflict-of-law rules contained therein, in particular to Article R58 of the CAS Code. ...".

59. The conflict-of-law provision in the Code is to be found in Article R58 of the CAS Code, which 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 the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

60. Article R58 of the CAS Code provides, in other words, that the dispute shall be decided first and foremost according to the *"applicable regulations"*. In the case at hand, the applicable regulations are the regulations of FIFA, in particular the FIFA RSTP.

61. Consequently, the Sole Arbitrator will, first, revert to the regulations of FIFA as the *"applicable regulations"* within the meaning of Article R58 of the CAS Code in order to resolve the dispute. Subsidiarily, and only for questions not covered by FIFA's regulations, the Sole Arbitrator shall apply Swiss law, which is the law of the country where FIFA, as the body that issued the Appealed Decision, is domiciled.

VIII. PRELIMINARY ISSUES

62. In its answer, the Respondent requested production by the Appellant of a proof of payment of the first instalment of the fee due to SSC Napoli for the permanent transfer of the Player to the Appellant arguing that such payment would demonstrate that specific action was required to change the transfer from temporary to permanent. Moreover, the Appellant requested production of the entire Transfer Agreement, if and to the extent existent, in order, as it explained, to have the terms of the transfer fully disclosed. In addition, the Respondent requested the Sole Arbitrator to disregard the FIFA decisions referenced as TMS 7111 and TMS 7295 that the Appellant referred to in its appeal brief arguing that the Appellant had not produced any evidence in respect of those decisions.

63. The Sole Arbitrator held that, indeed, the documents the production of which the Respondent requested could, to the extent existent, be helpful in establishing the facts and assessing the merits of the present case. He further held that the two FIFA decisions referred to by the Appellant in its appeal brief could be pertinent to the present matter. For these reasons and considering that CAS arbitrators have ample powers over evidentiary matters, the Sole Arbitrator decided to order production by the Appellant of the documents requested by the Respondent as well as of the two FIFA cases referenced in the appeal brief as TMS 7111 and 7295.

64. In respect of the decision of the FIFA DRC on case Ref. TMS 9596 that the Appellant submitted on 26 April 2022, the Sole Arbitrator, however, held that it was filed long after the hearing and closure of the evidentiary proceedings. In addition, said document did neither allow to draw any conclusions as to the context in which the FIFA DRC had taken its decision, nor did it provide any reasoning of the FIFA DRC. The Sole Arbitrator, therefore, decided not to admit the FIFA DRC decision on case Ref. TMS 9596 into the file.

IX. MERITS OF THE APPEAL

1) The main question to be considered

65. According to Article R57 of the Code and in line with the consistent jurisprudence of the CAS, the Sole Arbitrator has full power to review the facts and the law. The Sole Arbitrator therefore deals with the case *de novo*, evaluating all facts and legal issues involved in the dispute.

66. The Sole Arbitrator holds that it is undisputed that the obligation to pay a solidarity contribution in national transfers with an international dimension was introduced with the June 2020 edition of the FIFA RSTP (the "2020 FIFA RSTP"). This is also reflected in the FIFA Circular no. 1709, dated 13 February 2020, which provides in section a) that *"the solidarity mechanism has ben extended to national transfers with an international dimension. Subject to whether compensation is paid, the transfer of a player during the course of a contract between clubs affiliated to the same association will now be subject to the payment of a solidarity contribution to any of the player's training clubs affiliated to a different association"*. FIFA Circular no. 1709, further, states that the amendment under the aforementioned section a) would come into force on 1 July 2020.

67. The same is provided, in essence, in Article 29 of the 2020 FIFA RSTP, which states: *"These regulations were approved by the FIFA Council on 10 June 2020 and come into force immediately, with the exception of article 1 paragraph 2; article 20; article 22 e); Annexe 5, article 1 paragraphs 1 and 2 which will come into force on 1 July 2020"*.

68. In light of the foregoing and the Parties' submissions, the main question to be considered in the case at hand is whether the 2020 FIFA RSTP or the previous edition of the FIFA RSTP applies to the (permanent) transfer of the Player from SSC Napoli to the Appellant.

2) Which edition of the FIFA RSTP is applicable?

69. Article 26 of the 2020 FIFA RSTP provides that:

> *"1.*
>
> *Any case that has been brought to FIFA before these regulations come into force shall be assessed according to the previous regulations.*
>
> *2.*
>
> *As a general rule, all other cases shall be assessed according to these regulations with the exception of the following:*
>
> *a) disputes regarding training compensation;*
>
> *b) disputes regarding the solidarity mechanism;*
>
> *c) labour disputes relating to contracts signed before 1 September 2001.*

Any cases not subject to this general rule shall be assessed according to the regulations that were in force when the contract at the centre of the dispute was signed, or when the disputed facts arose".

70. The 2020 FIFA RSTP provides, in other words, that disputes regarding the solidarity mechanism shall be assessed pursuant to the regulations *"that were in force when the contract at the center of the dispute was signed, or when the disputed facts arose"*.

71. Both, the Transfer Agreement and the Labor Contract were signed on 23 July 2019, *i.e.* before the entry into force of the 2020 FIFA RSTP. It is undisputed that the previous edition of the FIFA RSTP did not provide for the application of the solidarity mechansim in respect of national transfers.

72. The Respondent, however, argues that the matter at hand must be determined by taking into account the time when the *"disputed facts arose"*, rather than when *"the contract at the centre of the dispute was signed"*. The disputed facts arose, according to the Respondent, on 1 September 2020, *i.e.* when the transfer of the Player changed from temporary to permanent and the Player was registered with the Appellant on a permanent basis.

73. In oder to underline its position, the Respondent, *inter alia*, refers to the FIFA Commentary on the Regulations on the Status and Transfer of Players, edition 2021 (the "FIFA Commentary"). In section 26.1.a), the FIFA Commentary confirms the general principle according to which the regulations that shall apply are the ones in force at the time the matter was referred to FIFA. In section 26.1.b), the FIFA Commentray then deals with the specific rules applicable to training compensation and the solidarity mechanism. Said section provides, in particular, that *"it is possible that an amendment to the Regulations could have the effect of retrospectively depriving a training club of a right to training compensation or a solidarity contribution that arose when the player concerned originally transferred"*. It then moves on to provide that it *"was with this in mind that the first exception to the general rule was incorporated into the Regulations. According to this exception, disputes regarding training compensation and the solidarity mechanism are assessed according to the version of the Regulations in force when the disputed facts arose (i.e. at the time the player was registered with their new club, which triggers the payment of the relevant training award)"*.

74. In the Sole Arbitrator's view, the aforementioned text in the FIFA Commentary covers a scenario that is different from the one at hand. The FIFA Commentary addresses a scenario where a club could be retroactively *deprived* from a training compensation or a solidarity contribution that arose when the player concerned originally transferred. The FIFA Commentary, in other words, addresses a scenario where the training club would be deprived from the compensation if the case was to be determined pursuant to the regulations that are applicable when the case is lodged with FIFA because the regulations were changed after the relevant facts arose (*i.e.* the transfer took place), but before the case was lodged with FIFA.

75. The case at hand, however, is different. In the case at hand, the former club would become entitled to receive (as opposed to being deprived from receiving) a solidarity contribution as a result of a change of the regulations that came into force after the execution of the relevant agreement, but before the case was lodged before FIFA. In addition, the FIFA Commentary does not expressly address the notion of the signing of the agreement, which is also an

important element under Article 26 para. 2 of the 2020 FIFA RSTP. It therefore does not provide any comment as to when the time *"when the contract at the centre of the dispute"* was signed and when the time *"when the disputed facts arose"* must be taken into consideration in order to assess a club's entitlement to solidarity contribution.

76. With this in mind, the Sole Arbitrator moved on to review the case CAS 2014/A/3652 that is referred to in section 26.1.b) of the FIFA Commentary.

77. In case CAS 2014/A/3652, the Panel had to determine, inter alia, the same question that is at the heart of the present matter – *i.e.* which edition of the FIFA RSTP is applicable. It came to the conclusion that the FIFA RSTP applicable at the time when the contract was signed was relevant by holding, inter alia, that *"La Formation arbitrale relève que la version applicable en l'espèce du Règement du Statut et du Transfert des Joueurs de la FIFA est celle de 2010. En effet, le RSTJ FIFA est la version applicable à la date de la signature du contrat litigieux, c'est-à-dire le contrat professionnel conclu entre […] et le joueur D., intervenue en août 2011"*, which the Sole Arbitrator freely translates into English as *"The Panel notes that the version of the FIFA RSTP applicable in this case is the 2010 version. Indeed, the FIFA RSTP is the version applicable at the date of the signature of the disputed contract, i.e. the professional contract concluded between […] and player […], which took place in August 2011"*. In other words, the FIFA Commentary, by referring to case CAS 2014/A/3652, confirms that the time when the contract at the center of the dispute was signed may be relevant to determine the edition of the FIFA RSTP that shall apply.

78. The Sole Arbitrator then reviewed the FIFA cases that the Respondent was referring to on page 8 of its answer. The Sole Arbitrator, however, found that those decisions were not pertinent for the case at hand, as the issues to be determined were different, in substance, from the main issue to be determined here.

79. The Sole Arbitrator then went on to analyze the case FIFA TMS Ref. Nr 7111, referred to by the Appellant. He noted that, indeed, the facts in that case are comparable to the facts of the present case. In that case too, a loan agreement was concluded in 2019, which indicated that the loan would become permanent if the relevant club earned one point in the 2019/2020 Seria A championship after 3 February 2020. The FIFA DRC held in that case that while the exact date when this condition was fulfilled was unknown, it was uncontested that the condition was fulfiled in the period between 3 February 2020 and 1 July 2020. Like in the present case, the player was registered with the new club on a permanent basis on 1 September 2020 only, *i.e.* at the start of the 2020/2021 season. The FIFA DRC held in that case, in particular, that it was uncontested that such registration occurred as a consequence of the loan having become permanent before 1 July 2020 and without the further intervention of the parties to the agreement.

80. The Transfer Agreement in the case at hand provides that the transfer of the Player shall transform from temporary to permanent on the occurrence of either of the following conditions precedent: (i) on the first point scored by the Appellant in the 2019/2020 season after 1 February 2020 or, altenatively, (ii) on the first inclusion of the Player in the match list of the Appellant's first team played after 1 February 2020. The Transfer Agreement does not foresee

any further condition that would have to be fulfilled in order for the transfer to change from temporary to permanent.

81. The Sole Arbitrator noted that in section 5 of part I of the Appealed Decision, the FIFA DRC found that the Appellant had won the first point after 1 February 2020, on 23 June 2020, when the Appellant won against the club SPAL with the result of 0:1. This was confirmed by the Appellant during the hearing where the Appellant also confirmed that the Player made his first appearance in the first team of the Appellant after 1 February 2020, on 1 March 2020 specifically. Both statements remained uncontested by the Respondent.

82. It, thus, follows that both conditions precedent under the Transfer Agreement triggering the change of the transfer from temporary to permanent occurred before 1 July 2020, *i.e.* before the 2020 FIFA RSTP came into force. Like in FIFA case TMS Ref. Nr 7111, in the present case, only the formal registration of the Player on a permanent basis with FIGC ocured after the entry into force of the 2020 FIFA RSTP.

83. The Sole Arbitrator concurs with the findings of the FIFA DRC in TMS Ref. Nr 7111 stating that: *"Applying the June 2020 edition to a transaction that was agreed between the parties one year before and was triggered before its entering into force, when solidarity contribution was not yet payable in the context of a national transfer, would go against the principle of legal certainty. It would not be fair for the parties to be subjected to a provision that was not applicable at the moment they discussed the possibility of the player's loan to become permanent nor when the loan became de facto permanent with the option having been activated".*

84. It is undisputed in the case at hand that the conditions precedent under the Transfer Agreement for the transfer to become permanent were fulfilled before the entry into force of the 2020 FIFA RSTP. In addition, the Transfer Agreement does not require any further discussions or measures from the parties in order to confirm the permanent transfer of the Player once any of the two conditions precedent is met. In light of the foregoing, the registration of the Player with FIGC appears to be a formal act only that cannot be considered as the "disputed facts" within the meaning of Article 26 para. 2 of the 2020 FIFA RSTP.

85. Having been established that both, the signing of the Transfer Agreement and the fulfilment of the conditions precedent specified in the Transfer Agreement required for the transfer to change from temporary to permanent, occurred prior to the entry into force of the 2020 FIFA RSTP, the Sole Arbitrator takes the view that it is not relevant for the outcome of the present matter to determine the relationship between *"when the contract at the centre of the dispute was signed"* and *"when the disputed facts arose"* as per Article 26 para. 2., last sentence, of the FIFA RSTP, *i.e.* to determine whether, in the case at hand, the time when the Transfer Agreement was signed or when any of the conditions precedent was fulfilled is relevant to determine which edition of the FIFA RSTP is applicable. Both occurred before the entry into force of the 2020 FIFA RSTP.

86. In light of the foregoing, the Sole Arbitrator holds that the 2020 FIFA RSTP is not applicable in the case at hand. As it is undisputed that under the previous edition of the FIFA RSTP no solidarity contribution was payable in case of a national transfer with an international dimension, the Appellant has no obligation to pay the Respondent a solidarity contribution.

3) Conclusion

87. Considering the above, the Sole Arbitrator concludes that the appeal must be upheld and the Appealed Decision must be annulled.

88. All other motions or prayers for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Cagliari Calcio S.p.A on 16 August 2021 against the decision issued by the Single Judge of the sub-committee of the FIFA Dispute Resolution Chamber on 26 February 2021 is upheld.

2. The decision rendered by Single Judge of the sub-committee of the FIFA Dispute Resolution Chamber on 26 February 2021 is annulled.

3. As a consequence, no amounts are due as a solidarity contribution by Cagliari Calcio S.p.A to RNK Split in respect of the football player [M.].

4. (…).

5. (…).

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