Arbitrations CAS 2021/A/8404 & 8405 Golden Toys LLP v. JSC FC Dynamo Moscow, award of 16 March 2023

Panel: Mr Frans de Weger (The Netherlands), President; Mr Jeffrey Benz (USA); Mr Jakub Laskowski (Poland)

Football
Contractual dispute – agent fees
Admissibility of witnesses
The principle of res judicata
Res judicata - triple identity
Pacta sunt servanda
Value of an agent' services
Standing to be sued – sporting sanctions

1. **The question of admissibility of a witness is a different matter than the probative value and credibility of the testimony itself. In application of Article R56 para. 1 of the CAS Code, unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, parties are only allowed to call witnesses and experts which were specified in their written submissions.**

2. **An arbitral tribunal violates procedural public policy if it disregards the *res judicata* effect of a previous decision or if the final award departs from the opinion expressed in an interlocutory award disposing of a material preliminary issue. This aspect of the *res judicata* principle constitutes the so-called "*Sperrwirkung*" (prohibition to deal with the matter = *ne bis in idem*), the consequence of which is that if a matter (with *res judicata*) is brought again before the adjudicatory authority, the latter is not even allowed to look at it, but must dismiss the matter (insofar) as inadmissible. The second aspect of that principle is the so-called "*Bindungswirkung*" (binding effect of the decision), according to which the judge in a second procedure is bound to the outcome of the matter decided in the first matter as a result of the application of the *res judicata* doctrine.**

3. **For a ruling or resolution to have the force of *res judicata*, two preliminary requirements shall be met: (a) the decision making body shall be competent to pass the relevant ruling or resolution; (b) the relevant ruling or resolution shall be passed after following the appropriate contradictory procedure. Furthermore, for a ruling or resolution to have the force of *res judicata*, it has to meet the "triple identity check" which consists of the verification of (i) the identity between the parties to the first decision and to the subsequent one, i.e. the parties were the same in both cases; (ii) the identity of objects between the two decisions; and (iii) the identity of the basis (*causa petendi*) on which the claim is submitted. All three elements of *res judicata* are of equal importance and relevance and have to be concurrently present. The first criterion does not solely depend**

on the role that the parties played in the first or second procedure and does not require the presence of all the claimants/respondents in both proceedings, as long as the parties in the second procedure have also participated in the previous procedure.

4. **The basic legal principle of *pacta sunt servanda*, in essence means that agreements must be respected by the parties in good faith. When applying the doctrine of *pacta sunt servanda*, the proper interpretation of an agreement is of particular importance. In assessing the amount of a commission provided in an agent's contract, an arbitral tribunal is as a general rule required to uphold the doctrine of freedom of contract in determining whether or not a particular commission is excessive unless there manifestly exist exceptional circumstances pointing towards excessiveness of the commission.**

5. **Within the world of sport, a direct correlation does not always exist between the extent of services rendered by an agent in terms of hours spent and the value of such services for the parties involved.**

6. **A party has standing to be sued in CAS proceedings only if it has some stake in the dispute because something is sought against it in front of the CAS. Therefore, it must be examined 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. As a consequence, in an appeal against a decision by a sport federation, by means of which disciplinary sanctions could be imposed on a party for failing to comply with said federation's regulations, it is required the intervention of the relevant sport federation as a party in the appeal proceedings.**

I. PARTIES

1. Golden Toys LLP (the "Appellant") is an intermediary licensed by the Football Union of Russia (the "FUR").

2. The Respondent is a professional football club based in Moscow, Russia. The Club is affiliated to the FUR.

3. Where applicable, the Appellant and the Respondent are hereinafter jointly referred to as the "Parties".

II. INTRODUCTION

4. This case concerns two appeals that are brought by the Appellant.

5. The first appeal is directed towards the decision rendered by the Players' Status Committee of the Football Union of Russia (the "FUR PSC") on 5 August 2021 (Decision No. 033-K/1 –

131-18-O-188-19/II). This first appeal revolves around the payment of an agency fee claimed by the Appellant from the Russian professional football club JSC FC Dynamo Moscow (the "Respondent" or the "Club") in relation to alleged intermediary services.

6. The second appeal is filed against the decision rendered by the FUR PSC on 5 August 2021 (Decision No. 033-K/2 – 131-18-O-188-19/II). This second appeal concerns a request for the imposition of sanctions upon the Club.

7. Both appeals derive from a contractual dispute between the Appellant and the Club.

III. FACTUAL BACKGROUND

8. Below is a summary of the main relevant facts, as established on the basis of the Parties' written submissions on the file, the relevant documentation produced in this appeal and at the virtual-hearing on 30 March 2022. Additional facts and allegations found in the Parties' submissions may be set out, where relevant, in connection with the further legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, the Award only refers to the submissions and evidence it considers necessary to explain its reasoning.

A. Background facts

9. On 17 January 2018, the Parties entered into an 'Intermediary Service Contract', following which the Respondent authorized the Appellant to undertake, on behalf and at the expense of the Respondent, *"to perform legal and other actions aimed at employment of the football player Mr. Konstantin Viktorovich Rausch, born on 15 March 1990 (…) with the Club, inter alia, representing the Club in negotiations with the FC Köln (…) and its representatives for the purpose of entering into a transfer agreement (contract) between the Selling Club and the Club for the transition (transfer) of the Player to the Club. The services shall be provided outside the Russian Federation"* (the "Intermediary Service Contract").

10. On the same date, the Parties also entered into a contract in which the Respondent authorized the Appellant to render services in relation to the conclusion of an employment contract between the Respondent and the Russian professional football player, Mr Konstantin Rausch (the "Player").

11. On 21 January 2018, the Respondent and the German professional football club 1.FC Köln entered into a transfer agreement in relation to the definitive transfer of the Player from 1.FC Köln to the Respondent. On or around the same day, the Respondent also entered into an employment contract with the Player.

12. On 22 January 2018, the Parties signed a Certificate of Work Completion to the Intermediary Service Contract (the "Certificate of Work Completion"). From the Certificate of Work Completion it follows that:

"1. The Intermediary has provided the Club with services of representation of the Club in negotiations with FC Köln (hereinafter referred to as the "Selling Club") and its representatives for the purposes of entering into a transfer agreement (contract) between the Selling Club and the Club for the transition (transfer) of Mr. Konstantin Viktorovich Rausch, born on 15 March 1990 (hereinafter referred to as the "Player"), to the Club.

2. As a result of the services provided by the Intermediary, the Selling Club and the Club entered into a transfer agreement (contract) for the transfer of the Player.

3. The Club has no dissatisfaction about the quality of the services provided.

4. The Intermediary's fee (remuneration to the Intermediary) under the Intermediary Services Contract is Seven Hundred Fifty Thousand (750 000) Euro net payable in the procedure and at the time established by the Intermediary Services Contract".

13. On the same date, the Parties also entered into another 'Certificate of Work Completion' in relation to the services rendered by the Appellant for the Respondent regarding the conclusion of the employment contract between the Respondent and the Player. It follows from this certificate that the Appellant was also entitled to an intermediary fee of EUR 500,000.

14. On 28 February 2018, the Appellant sent an email to the Respondent requesting to comply with its financial obligations and pay the amount of EUR 750,000, deriving from the Intermediary Service Contract as well as the Certificate of Work Completion, to the Appellant, however to no avail.

15. On 12 April 2018, the Appellant sent another email to the Respondent regarding the signed Intermediary Service Contract as well as the Certificate of Work Completion, and requested for a meeting to be held to resolve the matter in relation to the outstanding payment, however again to no avail.

16. On 19 June 2018, due to the fact that the Respondent did not comply with the Appellant's requests, the latter submitted a claim in front of the Dispute Resolution Chamber of the Football Union of Russia (the "FUR DRC"), with reference number No. 131-18, in which the Appellant requested the FUR DRC to order the Respondent to comply with its financial obligations deriving from the Intermediary Service Contract and to pay the outstanding amount of EUR 750,000.

17. On 20 June 2018, the Investigative Department of the Ministry of the Interior of Russia initiated, at the request of the Respondent, a criminal case and commenced an investigation regarding the criminal intent of the Appellant in relation to the payment for the alleged intermediary services rendered by the Appellant.

18. On 5 July 2018, the shareholder of the Respondent, i.e. the Public-State Association the All-Russian Physical Culture and Sports Society "Dynamo" (the "Shareholder"), initiated proceedings in front of the State Economic Court of the City of Moscow, seeking to rule the

Intermediary Service Contract invalid, following which the FUR DRC suspended the procedure No. 131-18.

19. On 5 February 2019, the State Economic Court of the City of Moscow issued a decision (case No. A40-153237/18136-1028) in which it denied the claim of the Respondent as, *inter alia*, *"no evidence was provided to the court showing how the rights of the claimant or the respondent were violated"*.

20. The Shareholder filed an appeal against the decision of the State Economic Court of the City of Moscow in front of the Ninth Appeals State Economic Court, requesting *"to reverse the judgment of the court of first instance, deny the claims, arguing that the court of first instance had violated the rules of substantive and procedural law"*.

21. On 14 March 2019, the Ninth Appeals State Economic Court (ruling No. 09AII-8231/2019) denied the appeal of the Shareholder and upheld the decision of State Economic Court of the City of Moscow, rendered on 5 February 2019.

22. On 4 March 2019, the Shareholder filed a new claim before the State Economic Court of the City of Moscow seeking to rule the Intermediary Service Contract *"an invalid transaction from its inception"*.

23. On 25 November 2019, the State Economic Court of the City of Moscow issued a decision ruling, *inter alia*, the Intermediary Service Contract an *"invalid transaction from its inception"*.

24. On or around 16 December 2019, the Appellant filed an appeal at the Ninth State Economic Appeals Court requesting to reverse the decision of the State Economic Court of the City of Moscow of 25 November 2019, which decided that the Intermediary Service Contract was an *"invalid transaction from its inception"*.

25. On 23 December 2019, the Appellant initiated a new procedure in front of the FUR DRC, procedure No. 188-19, requesting to hold the Respondent *"liable for failing to comply with the rules on mandatory out of court (pre-trial) resolution (settlement) of disputes between subjects of football arising from relationships covered by the FUR Rules on the Status and Transfer of Football Players, and seeking losses (damages)"*.

26. On 30 January 2020, the FUR DRC suspended the procedure No. 188-19 until the date when the decision of the Ninth Appeals State Economic Court (case No. A40-53844/2019) would become final and binding.

27. On 16 June 2020, the Ninth Appeals State Economic Court denied the appeal of the Appellant and upheld the decision of the State Economic Court of the City of Moscow, rendered on 25 November 2019.

28. On 1 October 2020, the State Economic Court of the City of the Moscow Circuit rendered in a cassation procedure a decision, deciding to deny the cassation appeal filed by the Appellant following which the decision of the State Economic Court of the City of Moscow and the decision of the Ninth Appeals State Economic Court were upheld.

29. On 11 November 2020, the Respondent requested the FUR DRC to cease the proceedings No. 131-18.

30. On 21 May 2021, the Appellant submitted a request to the FUR DRC to renew the procedure No. 188-19 and to join the procedures No. 131-18 and No. 188-19 in the same proceedings.

31. On 3 June 2021, both proceedings were joined by the FUR DRC in the same proceedings with reference number No.131-18-O-188-19.

B. Proceedings before the FUR

1. FUR DRC

32. In its application to renew proceedings on case No. 188-19 and to join the proceedings No. 131-18 and No. 188-19 in the same procedure with the request for recovery of the agency fee of EUR 750,000, the Appellant stated the following:

- Due to failure by the Club to pay the fee for the intermediary services provided, the Appellant applied to the FUR DRC requesting to order the Club to pay the outstanding amount under the Intermediary Service Contract, and the FUR DRC initiated the procedure No. 131-18. Later, the proceedings were suspended pending the resolution by the courts of economic proceedings seeking to invalidate the Intermediary Service Contract on which the claims considered by the FUR DRC were based.

- On 23 December 2019, the Appellant applied to the FUR DRC with a new submission demanding to hold the Club liable for failure to comply with the rules on mandatory pre-trial resolution (settlement) of disputes between subjects of football arising from relations covered by the FUR Rules on the Status and Transitions (Transfers) of Football Players, and to recover damages, and the FUR DRC initiated the procedure No. 188-19.

- According to Article 47 para. 4 of the FUR Dispute Resolution Rules, the FUR DRC, upon finding that there are several similar matters at hand, involving the same parties, or several matters at the claim of one party to several respondents or of several applicants to a single respondent, may, with due regard to the parties' opinion, join the matters in the same proceedings for joint consideration and resolution if it decides that such joining will facilitate a correct and timely consideration and resolution of the matter.

- The present matters are similar, because the claims in both cases are based on the Intermediary Service Contract, and, in addition, there is the same audience of parties involved and their procedural status.

- Furthermore, there was a high probability that the decision issued by the FUR DRC would be appealed to the CAS and the review of the CAS in one matter and not two would result in lower costs to the applying party or parties. Reviewing both claims in the same proceedings answers the purposes of procedural economy in every sense, both at the stage of review by the FUR DRC and at the stage of review in CAS.

- With regard to the arguments that there is a final judgment of a state court issued in the dispute between the same parties, on the same subject and with the same causes of action, namely of the Economic Court of the City of Moscow in case No. A40-53844/19-19-501, which was upheld by courts of the appeals and cassation instance, the Appellant noted that the norms of the FUR Dispute Resolution Rules (Article 49 para. 2) allowing to cease proceedings on the case are constructed by analogy with the rules of the Code of Civil Procedure and the Code of Arbitration Procedure of Russia governing similar relations on the cessation of proceedings on a similar matter (dispute) reviewed earlier.

- From the procedural law, legal scholarship, the jurisprudence of courts and the FUR DRC it follows that an identical dispute exists when there is, in addition to the same parties to the case, the subject of the claim and its causes of action are identical. Similarity of matters may only be established where all three of the components are identical, and are together an identity. The matter before the FUR DRC did not involve as a party the FUR, who was a third party in the Economic Court of the City of Moscow, and did not involve the shareholders of the Club who were claimants in the procedure in front of the Economic Court of the City of Moscow. Both parties and their procedural status in the matters before the FUR DRC and the Economic Court of the City of Moscow are clearly not the same. Furthermore, the subject of claim is understood by legal scholarship, courts and the FUR DRC as a substantive legal demand aimed at the Club, *i.e.* a request to recover, order or otherwise compel, usually described by the claimant in the pleading.

- Consequently, the subject of the two claims were different, the cause of action of the matters were different and therefore the FUR DRC should deny the Club's submission to cease the proceedings.

33. In its reply, the Club stated, *inter alia*, the following:

- The disputed Intermediary Service Contract was concluded with the Appellant which was not a registered and accredited intermediary, therefore the dispute is not covered by the competence of the FUR DRC according to the FUR Dispute Resolution Rules.

- The decision of the Economic Court of the City of Moscow dated 16 December 2019, found the Intermediary Service Contract entered into between the Club and the Appellant, a void transaction from inception. The decision was upheld in its entirety by the Ninth Economic Appeals Court which became final on the day of issuance. The cassation appeal was denied.

- Therefore, the Intermediary Services Contract, at the centre of the dispute, was ruled a void transaction in the first, appeals and cassation instances. According to Article 170 para.1 of the Civil Code of Russia, a void transaction, that is a transaction made ostensibly only, without any intention to create the relevant legal consequences, shall be null and void.

- Whereas the Intermediary Service Contract is entered into with the Appellant and the Appellant is not a registered and accredited intermediary, the review of the dispute is not

in the competence of the FUR DRC (Article 18 para.1 of the FUR Dispute Resolution Rules). As such, the proceedings should be ceased in accordance with Article 49 para. 2 of the FUR Dispute Resolution Rules.

34. On 3 June 2021, the FUR DRC rendered its decision No. 031-18-O-188-19 deciding, *inter alia,* as follows:

- The FUR DRC agrees with the Appellant's position and was of the opinion that the joining of case No. 131-18 and case No. 188-19 in the same proceedings will facilitate a correct and timely consideration and resolution of the matter.

- The Appellant could be recognized as a FUR-accredited intermediary for the purposes of applying regulatory documents of FUR.

- However, the FUR DRC established that the state courts of the Russian Federation ruled that the Intermediary Service Contract was an invalid transaction in the first, appeals and cassation instances and a null and void transaction shall be invalid from inception and shall not entail legal consequences for the parties.

- Whereas state courts of the Russian Federation have ruled the Intermediary Services Contract a null and void transaction, the FUR DRC believes that the Appellant has no cause of action to apply to the FUR DRC with claims for the fee and damages arising from the Intermediary Service Contract because the contract cannot be deemed concluded.

- Therefore, the FUR DRC agreed in part with the Club's arguments and concluded that the dispute between the Appellant and the Club on the recovery of the agency fee and damages is not in the competence of the FUR DRC.

- The Appellant's claims for the agency fee and damages in the matter before the FUR DRC arise solely from the Intermediary Services Contract which was ruled an invalid (void) transaction by state courts of the Russian Federation, which judgments and rulings of the state courts have become final. Therefore, there is a final judgment of the state court issued in this dispute, involving the same parties, the same subject, and with the same cause of action. Consequently, the proceedings of the Appellant's claims to recover the agency fee and damages, must be ceased.

35. In its request in front of the FUR DRC to hold the Club accountable due to a breach of the FUR Rules on the Status and Transitions (Transfers) of Football Players and to apply sanctions on the Club, the Appellant argued, *inter alia*, as follows:

- The Club's application to a state court seeking provisional measures in the form of an injunction prohibiting a review on the merits of the dispute proceeded on by the FUR DRC, and suspending accreditation of the intermediary (agent) cannot be viewed other than a desire to inflict maximum harm on the Appellant and paralyze its professional

activity performed in compliance with the regulatory documents of FIFA, regulatory documents of FUR and the law in Russia.

- Both the Club and its shareholder openly intended to make the Appellant's business impossible as a whole, and not only as regards the dispute on the Intermediary Service Contract under review. Effectively, the Club and its shareholder were demanding to establish for the Appellant a prohibition for engaging in agency activities on grounds not provided for by the regulatory documents of FIFA, FUR and the law in Russia.

- Together with a violation of the rules of Russian law (Article 10 of the Civil Code and Article 11 of the Code of Arbitration Procedure of Russia), the Club has violated the regulatory norms of FIFA and FUR. Its actions initiating claims to court filed formally on behalf of a shareholder, the support of both the claimant's and respondent's positions within the same dispute by the Club's legal department, cannot be considered other than steps to circumvent the prohibition for subjects of football to apply to state courts that is established by the regulatory norms of FIFA and FUR.

- Therefore, the FUR DRC should impose a prohibition on the registration of new players for two (2) registration periods as a sports sanction on the Club and to impose a fine in the amount stablished by FUR regulatory documents.

36. The Club argued, *inter alia*, the following:

- The Club did not violate the pre-trial dispute resolution procedure. Moreover, by applying to the FUR DRC, the Appellant was not acting in good faith, therefore the request to apply sanctions on the Club for failure to comply with the pre-trial dispute resolution procedure, must be denied. With its actions the Club did not violate the rule on a pre-trial dispute resolution procedure between subjects of football.

- No sanctions can be imposed on the Club for failure to comply with the pre-trial dispute resolution procedure because the Club was not an applicant in the economic proceedings initiated at the claim of a party who is not a subject of football. The bad faith of the Appellant resulted in a loss of any right to demand sanctions against the Club.

- For one and a half years from the submission of the initial complaint, the Appellant did not claim either in the economic court or in the FUR DRC, specifically when there was a discussion on suspending the proceedings in case No. 131-18, a violation by the Club of the pre-trial dispute resolution procedure. If the Appellant had considered the Club's actions unlawful, the Appellant had been aware of them for a year and a half and had the ability to claim the purported violation in due time, and not after the completion of two sets of proceedings in state courts, with one of them reviewed in two instances.

- The request to impose sanctions on the Club for failure to comply with the pre-trial dispute resolution procedure was made after the judgment of the Economic Court of the City of Moscow invalidating the Intermediary Service Contract, which clearly cannot be changed by the FUR DRC. As such, the Appellant is not pursuing a real purpose of

defending its rights and legally protected interests, but has filed the application with the sole intent to inflict harm on the Club. Accordingly, this is an abuse of right and therefore the Appellant's demands to impose sanctions on the Club for violating the pre-trial dispute resolution procedure must be denied.

37. On 3 June 2021, the FUR DRC rendered its decision No. 031-18-O-188-19 amongst others as to the sanctions on the Club, deciding, *inter alia,* the following:

- It follows from the systemic interpretation of the regulatory documents of FUR that the Club, as a subject of football, is not prevented from participating in state court proceedings as a respondent or third party. The regulatory documents of FUR contain a prohibition for subjects of football to (bring out) disputes to be resolved by state courts, that is, to effectively initiate the review of disputes between subjects of football in state courts of the Russian Federation. The Club's involvement in state courts proceedings as a respondent is not a violation of the rule on pre-trial resolution of disputes between subjects of football, because the Club itself did not file a claim in front of a state court.

- Sanctions against the Club for the representation by its employees of the Club shareholders (VFSO Dynamo and JSC Dynamo Management Company) would mean an unlawful indirect restriction of the rights of its shareholders, who are not subjects of football, and holding the Club liable for the actions of third parties. Therefore, the FUR DRC found no grounds for holding the Club liable and imposing the sanctions established by para. 15 of the Consolidated Table of Violations (Schedule No. 3 to the Rules on Status), and denied the claims of the Appellant.

38. The operative part of the decision rendered by the FUR DRC on 3 June 2021 (decision No. 031-18-O-188-19) states as follows:

"1. In accordance with para. 4 article 47 of the FUR Dispute Resolution Rules, to join case No. 131-18 (by application of the Company Golden Toys LLP (…) with respect to the JSC FC Dynamo Moscow seeking recovery of the agency fee) and case No. 188-19 (by application of the Company Golden Toys LLP (…) with respect to the JSC FC Dynamo seeking to hold liable and impose sanctions in accordance with regulatory documents of FUR, and to recover damages) in the same proceedings at No. 131-18-O-188-19.

2. To grant in part the submissions of JSC FC Dynamo Moscow seeking to cease proceedings on case No. 131-18-O-188-19.

3. To cease proceedings on case No. 131-18-O-188-19 with regard to the claims of the Company Golden Toys LLP (…) to the JSC FC Dynamo Moscow seeking to recover the agency fee and damages based on subparagraphs 'a', (…) paragraph 2 article 49 of the FUR Dispute Resolution Rules.

4. To consider on the merits in separate proceedings, the claim of the Company Golden Toys LLP (…) with respect to the JSC FC Dynamo Moscow seeking to hold liable and impose sanctions in accordance with regulatory documents of FUR.

5. This ruling shall become final in the procedure stablished by article 55 of the FUR Dispute Resolution Rules".

2. FUR PSC

39. On 23 July 2021, the Appellant lodged an appeal in front of the FUR PSC with an appeal against the FUR DRC's decisions no. 031-18-O-188-19.

40. The position of the Appellant in the procedure in front of the FUR PSC in relation to the recovery of the agency fee was, *inter alia*, as follows:

- The FUR DRC had failed to evaluate and reflect in its decision the Appellant's argument about the transactions being interrelated, with one of the transactions being the challenged transaction.

- The contract in relation to the services rendered by the Appellant regarding the conclusion of the employment contract of the Player with the Respondent was not ruled invalid and the Club made the payment of EUR 500,000 thereunder. The actions under that contract, as well as under the Intermediary Service Contract, have been effectively completed for the most part by the Appellant prior to the receipt of the intermediary accreditation, and this did not prevent the Club from accepting the Appellant's services under the other intermediary service contract in full, pay for it, and thereafter, having been aware of this position of the Appellant since 2018, nevertheless refraining from challenging the transaction in court and asking to apply the consequences of its invalidity.

- The two intermediary (agency) contracts from 17 January 2018 are interrelated transactions, and are effectively a single transaction aimed at achieving the final goal – employment of the Player with the Club in a transfer from 1.FC Köln.

- Furthermore, the FUR DRC wrongfully stated that the Intermediary Service Contract, on which the Appellant relies for its claims, was not concluded. The contract was ruled invalid by the courts, which however does not allow to argue its invalidity for the purpose of applying the FUR Rules. The matter of the legal nature of invalid and non-concluded transactions has been resolved by legal scholarship. The difference of these institutions, *inter alia,* regarding the different consequences, is also reflected in the courts' jurisprudence. This legal nature consists in the fact that the categories of "invalid transaction" (invalid contract) and "non-concluded (unmade) transaction" are not similar (not identical) legal concepts.

- The consequence of a contract being unmade will entail, under the rules of the Civil Code of Russia, not restitution (Article 167 of the Civil Code of Russia), but an obligation arising from unjust enrichment. It follows from jurisprudence that in these circumstances it was impossible to argue that an invalid transaction was at the same time a non-concluded transaction.

- As of 16 February 2018, the Intermediary Service Contract was concluded, and the Appellant believed that the matter must be reviewed by the FUR jurisdictional bodies on the merits. The argument that the claim to hold the Club liable and to impose sanctions

does not arise from the Intermediary Services Contract, which was ruled an invalid transaction, but is an independent claim, was made by the FUR DRC without foundation.

- The claim in this part was initially filed as interrelated with and arising from the Intermediary Services Contract and in that form, it was accepted by the FUR DRC for proceedings and scheduled for hearing. CAS has repeatedly expressed its position that a final judgment of a competent (state) court will have for CAS the force of *res judicata* (i.e. final, or resolved, case) only with regard to the final conclusions of the court expressed in the resolution part of such decision. Therefore, in this case, the only conclusions with the force of *res judicata* will be the court's conclusions on the validity/invalidity of the Intermediary Service Contract but not whether the Appellant had actually provided the services.

41. The Club argued, *inter alia*, as follows:

- Appealing the FUR DRC's resolution, the Appellant endeavours to argue for some connection between the contracts, erroneously stating that the contracts in question are aimed to a common goal – *'to facilitate employment of the Player'*. The Appellant's suggestion is however, without substance. Otherwise, this would mean that in each transfer the buying club would be forced, engaging an intermediary for entering into an employment contract with the player, to use the services of the same intermediary when agreeing the terms of the transfer with the selling club. This is contrary to the actual situation: the buying club may either involve an intermediary in the negotiations with the selling club (*inter alia*, an intermediary who is not connected with any negotiations on the terms of the player's employment contract), or refrain from using an intermediary's services.

- The Appellant, either in the FUR DRC proceedings, or in the economic courts proceedings, did not submit any evidence that the services under the Intermediary Service Contract had actually been provided. The Club, on the contrary, provided documents showing that there was no representation of the Club whatsoever by the Appellant. Therefore, the claims of the Appellant to apply the consequences of a null and void transaction are without any reason because the courts, in the economic courts proceedings, established that *"no services under the disputed Intermediary Service Contract were ever contemplated to be provided or accepted"*.

- Moreover, a judgment of a competent court has the force of *res judicata* subject to compliance with the so-called triple-identity procedure: a judgment issued in the same dispute, between the same parties and on the same causes of action. As regards the correlation of the subjects of the claims and the causes of action by economic courts, as mentioned before, it was found that *"no services under the disputed Intermediary Service Contract were ever contemplated to be provided or accepted"*. This means that the courts found no grounds for the payment of the debt and have not found any debt due to the Appellant as such. Therefore, the criterion of an identical subject of the claim is complied with.

- In the proceedings before the FUR DRC, the jurisprudence in football clearly shows that the identical composition of the audience of parties involved does not rule out a different

procedural status of the parties to the dispute and an involvement in such dispute of third parties on grounds beyond the parties' control. Both the Club and the Appellant were parties to the case reviewed by the economic courts. The joining of FUR as a third party is the consequence of the FUR rules; the involvement of the Club is caused by the rules of Russian civil law. Clearly these circumstances do not affect compliance with the criterion of identity of the parties. In light of the fact that all three criteria are complied with, the judgment has the force of *res judicata*. This means that the FUR DRC had every reason to terminate the proceedings at the claim of the Appellant.

- According to the established practice of applying the *res judicata* principles by the jurisdictional bodies of FIFA and CAS, its application is impossible separately from the reasoning part of the judgment. Reference to the reasoning part allows to identify clearly the legal meaning and content of the resolution, and this was done by the FUR DRC in the dispute in question. In its appeal, the Appellant erroneously argued that the FUR DRC failed to evaluate the basis for holding the Club liable.

42. The position of the Appellant in the procedure before the FUR PSC, seeking to hold the Club liable and apply sanctions on the Club, *inter alia*, was as follows:

- The Club was of the opinion that the FUR DRC made a conclusion which is contrary to the general principles of the law and sports, those of reasonability and fairness, stating that the imposition of sanctions on the Club because the lawyers who are on the Club's staff, represented the interests of the Club's shareholders (VFSO Dynamo and JSC Dynamo Management Company), will mean *"an unlawful indirect restriction of the rights of its shareholders, who are not subjects of football, and holding the Club liable for the actions of third parties"*. The Appellant stressed that this conclusion allows bad-faith clubs to evade the governing rules with impunity, desiccating the essence and meaning of sports legal relationships, disavowing the provisions of the rules of FUR Charter and FUR Rules prescribing that the review of issues between subjects of football arising from legal relations in the sphere of football, shall be exclusively in the purview of the FUR jurisdictional bodies and CAS.

- The Appellant emphasised that the Club knowingly and seriously violated the fundamental, basic, and therefore mandatory for all subjects of football, principles, standards and rules established by the standards of FIFA and also set forth in the Charter and regulatory documents of FUR: the principle of resolving disputes between subjects of football exclusively in the FUR jurisdictional bodies with a prohibition to apply to state courts. In addition, the Club abused its right by means of exercising its rights with an intent to inflict harm on the Appellant and circumventing the law (standards mandatory for the Club established by FIFA and FUR).

- In the proceedings on both matters in the Economic Court of the City of Moscow, all of the claimants were shareholders of the Club and were formally not subjects of football which, however, does not rule out the Club's active position in the court dispute and that position needs to be evaluated. The head of the Club's legal department, Ms Kindrashina, during the proceedings in the Economic Court represented both the claimant (shareholder) and the respondent.

- The Appellant further stressed that the claimant's application to a state court seeking provisional measures in the form of an injunction prohibiting a review on the merits of the dispute proceeded on by the FUR DRC, and suspending accreditation of the intermediary (agent) cannot be viewed other that a desire to inflict maximum harm on the Appellant and paralyze its professional activity performed in compliance with the regulatory documents of FIFA, regulatory documents of FUR, the Law 'On Physical Culture and Sport in Russia'. That is, both the Club itself and its shareholder openly intended to render impossible the Appellant's business as a whole, and not only with regard to the dispute in relation to the Intermediary Service Contract. Effectively, the Club and its shareholder were demanding to establish for the Appellant a prohibition on engaging in agency activities on grounds not provided for by the regulatory documents of FIFA, FUR and the Law 'On Sport'.

- Acting in this manner, the Club wished the occurrence of consequences in the form of impossibility by the FUR DRC to consider the matter of the agency fee (case No. 131-18) and the creation of a prejudicial court judgment in a dispute between two subjects of football which the Club intends to use as an argument in justifying its refusal to pay the fee due to the Appellant.

43. The Club argued, *inter alia*, as follows:

- The FUR DRC has correctly evaluated the facts of the case and was justified in denying the Appellant's claims seeking to apply sanctions to the Club for failure to comply with the pre-trial dispute resolution procedure. The Club believes that with its actions it did not violate the rule on a pre-trial dispute resolution procedure between subjects of football.

- Therefore, the Club stressed that no sanctions can be imposed on the Club for failure to comply with the pre-trial dispute resolution procedure because the Club was not an applicant in the economic proceedings initiated at the claim of a party who is not a subject of football, *i.e.* the shareholder of the Respondent.

- For one and a half years from the submission of the initial complaint, the Appellant did not claim either in the economic court or in front of the FUR DRC, specifically when there was a discussion on suspending the proceedings in case No. 131-18, a violation by the Club of the pre-trial dispute resolution procedure. The Club particularly notes that both in the FUR DRC and in state courts, the Appellant was represented by one attorney, Mr S.V. Pronkin, who submitted the appeal to the committee on the Appellant's behalf. Therefore, there is no doubt that if the Appellant had considered the Club's actions unlawful, he had been aware of them for a year and a half and had the ability to claim the purported violation in due time, and not after the completion of two sets of proceedings in state courts, with one of them reviewed in two instances. Accordingly, having the ability to claim the purported violation by the Club of the pre-trial dispute resolution procedure, but only having done so after a judgment was rendered against him, the Appellant is acting in bad faith and loses the right to demand sanctions against the Club.

- The request to impose sanctions on the Club for failure to comply with the pre-trial dispute resolution procedure was made after the judgment of the Economic Court of the City of Moscow invalidating the Intermediary Service Contract, which clearly could not be changed by the FUR DRC. Therefore, the Appellant has not been pursuing a real purpose of defending its rights and legally protected interests, but filed the application to the FUR DRC (and subsequently appealed the FUR DRC's resolution) with the sole intent to inflict harm on the Club. Accordingly, the Club argued that there is an abuse of right and therefore the Appellant's appeal to impose sanctions on the Club for violating the pre-trial dispute resolution procedure must be denied.

44. On 5 August 2021, the FUR PSC rendered its decision No. 033-K/1 – 131-O-188-19/II deciding, *inter alia,* the following:

- The FUR PSC disagrees with the Appellant's position that both intermediary (agency) contracts dated 17 January 2018 are interrelated transactions that are essentially a single transaction aimed at a final goal – employment of the Player with the Club in the transfer from 1.FC Köln. The Club's actions clearly show no connection between the contracts in question. In particular, the Club does not dispute payment under the Intermediary Service Contract as part of the negotiations on the terms of the employment contract between the Player and the Club, treating it as an independent transaction.

- In addition, the subjects of these transactions are different. The criteria of interrelated transactions in the jurisprudence of Russian courts used in the aggregate to prove this fact in a specific situation, cannot be found in this dispute. The FUR PSC found no grounds in the Parties' contractual relations and no indications to such transactions as described in the Ruling of the Plenum of the Supreme Court of the Russian Federation dated 26 June 2018 No. 27. It appears conceptually that any recognition of transactions for the representation of the interests of one subject of football in connection with a transfer and execution of an employment contract *a priori* connected, may open a dangerous precedent for further jurisprudence of the FUR jurisdictional bodies. Thus, any of the parties to the Intermediary Services Contract may evade the consequences of such contract being ruled non-concluded or invalid if it is in a similar contractual relationship with the same subject but on a different basis (assistance in a transfer or the execution of an employment contract), – referring to the connection of the two transactions would be sufficient.

- The FUR PSC disagreed with the FUR DRC's finding that the Intermediary Service Contract was non-concluded. At the same time, the FUR PSC drew the attention to the judgment of the Economic Court of the City of Moscow that ruled the transaction null and void, that is, not giving rise to any legal consequences. As a result, the Intermediary Services Contract is ruled a null and void transaction by the FUR PSC.

- Therefore, the FUR PSC agreed with the FUR DRC's finding that there is a final decision of the state court issued in this dispute involving the same parties, on the same subject and on the same causes of action.

- Consequently, the FUR PSC found no basis for granting the Appellant's appeal from the ruling of the FUR DRC No. 031-18-O-188-19 dated 3 June 2021 terminating the proceedings on the case (claim from the Appellant) to the Club seeking to recover the agency fee, and therefore the ruling of the FUR DRC shall remain unchanged.

45. The operative part of FUR DRC's decision No. 033-K/1 – 131-O-188-19/II reads as follows:

"1. To deny the appeal from the ruling of the FUR Dispute Resolution Chamber No. 031-18-O-188-19 dated 03 June 2021 filed by Golden Toys LLP (…) seeking to terminate the proceedings on the case (claim of Golden Toys LLP to JSC FC Dynamo Moscow seeking to recover the agency fee).

2. To uphold the ruling of the FUR Dispute Resolution Chamber No. 031-18-O-188-19 dated 03 June 2021 (claim of Golden Toys LLP (…) to JSC Dynamo Moscow seeking to recover the agency fee) in its entirety".

46. On the same date, the FUR PSC also rendered its decision No. 033-K/2-131-18-O-188-19/II deciding, *inter alia,* the following:

- The FUR PSC agreed with the FUR DRC's conclusion that the Club's involvement in proceedings in state courts as a respondent is not a violation of the rule on pre-trial resolution of disputes between subjects of football, because the Club itself did not file with a state court.

- The FUR PSC agreed with the Club's arguments and believed that sanctions against the Club for the representation by its employees of the Club's shareholders who are independent legal entities (VFSO Dynamo and JSC Dynamo Management Company) would mean an unlawful indirect restriction of the rights of its shareholders, who are not subjects of football, and holding of the Club liable for the actions of third parties not provided for by FUR rules. The Appellant proposed to *"discover not the formal content of the parties' relationship, not the letter but the spirit of that relationship"*. The FUR PSC has carefully analysed the nature of the relationship between the parties to the dispute in the state court of the Russian Federation. A corporate legal entity, and the Club is such an entity, includes a certain number of shareholders with their own interests that may not be aligned with the Club's economic or sports activity.

- The FUR PSC indicated that the FUR DRC made a correct conclusion that the proceedings on challenging the Intermediary Services Contract (No. A40-153237/18-136-1028 and No. A40-53844/19-19-501) were instituted by state courts on claims of a party who is not a subject of football (shareholder of the Club VFSO Dynamo), and that the Club was involved in the litigation as a respondent which is not a violation punishable under para. 15 of the Consolidated Table of Violations (Schedule No. 3 to the Rules on Status).

- The FUR PSC found no grounds for holding the Club liable and imposing the sanctions established by para. 15 of the Consolidated Table of Violations (Schedule No. 3 to the Rules on Status), and there are, therefore, no grounds to grant the Intermediary's appeal from the FUR DRC's resolution No. 031-18-O-188-19 dated 3 June 2021 seeking to drop

the proceedings on the case (at the claim of the Appellant to the Club claiming the agency fee), and the FUR DRC's resolution shall remain unchanged.

47. The operative part of the FUR DRC's decision No. 033-K/2 – 131-O-188-19/II of 5 August 2021 states as follows:

"1. To deny the appeal from the resolution of the FUR Dispute Resolution Chamber No. 031-18-O-188-19 dated 03 June 2021 filed by Golden Toys LLP (…) (claim of Golden Toys LLP (…) to JSC FC Dynamo Moscow seeking to hold it liable and apply sanctions in accordance with the regulatory documents of FUR).

2. To uphold the resolution of the FUR Dispute Resolution Chamber No. 031-18-O-188-19 dated 03 June 2021 (claim of Golden Toys LLP (…) to JSC FC Dynamo Moscow seeking to hold it liable and apply sanctions in accordance with the regulatory documents of FUR) in its entirety.

3. To order Golden Toys LLP (…) to pay to FUR a fee for the review of the matter in the Committee in the sum of Twenty Five Thousand (25 000) rubles within Thirty (30) days from the date when this resolution becomes final in accordance with article 36 of the FUR Dispute Resolution Rules".

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

48. On 13 October 2021, the Appellant filed two Statement of Appeals with the CAS against the Respondent.

49. The first Statement of Appeal was filed against the decision rendered by the FUR PSC No. 033-K/1-131-O-188-19/II dated 5 August 2021 and Resolution No. 031-18-O-188-19 rendered by the FUR DRC on 3 June 2021. This matter was docketed as CAS 2021/A/8404 ("CAS 8404"). The Appellant nominated Mr Jeffrey G. Benz as an arbitrator.

50. The second Statement of Appeal was filed against the decision rendered by the FUR PSC No. 033-K/2-131-18-O-188-19/II dated 5 August 2021 and Resolution No. 031-18-O-188-19 rendered by the FUR DRC on 3 June 2021. This procedure was docketed as CAS 2021/A/8405 ("CAS 8405"). The Appellant nominated Mr Jeffrey G. Benz as an arbitrator.

51. Both Appeals were submitted in accordance with Article 53 of the FUR Dispute Resolution Regulations and Articles R47 and R48 of the Code of Sports-related Arbitration (2021 edition) (the "CAS Code").

52. On 19 October 2021, the Appellant requested the CAS Court Office for an extension of twenty days to file its Appeal Briefs, *"due to the fact that currently the Appellant is submitting two (2) appeals against four (4) decisions of judicial bodies of the Football Union of Russia that contain a large volume of documents to be translated from Russian into English and submitted together with the Appeal briefs (evidence, explanations, regulatory norms and legislation, certifications by the notary public etc.)"*.

53. On 22 October 2022, the CAS Court Office, *inter alia*, invited the Parties to indicate whether they agree to submit both procedures to the same panel. The CAS Court Office also invited the

Respondent to comment on the Appellant's 20-day extension request no later than 26 October 2021.

54. On the same date, the CAS Court Office informed the FUR, in accordance with Article R41 para. 3 of the CAS Code, about the appeals of the Appellant and stated that in the event the FUR intended to participate as a party in the proceedings, it should file with the CAS an application to this effect.

55. On 26 October 2021, the Respondent informed the CAS Court Office in relation to the request of the Appellant to extend the time limit to file its Appeal Briefs, stating that it does not *"see any reasonable grounds behind the said request. The Appellant had almost a month to complete its position before the CAS. Still, we leave this matter to be decided by the CAS"*. Per the same correspondence, the Respondent informed the CAS Court Office that it accepts to refer both procedures to the same Panel.

56. On the same date, the Appellant informed the CAS Court Office that it agreed to refer the procedures to the same Panel.

57. On 27 October 2021, the CAS Court Office informed the Parties that both procedures would be referred to the same Panel. In addition, the CAS Court Office informed the Parties that the Appellant's extension request would be referred to the President of the CAS Appeals Arbitration Division for a decision.

58. On 28 October 2021, the Appellant informed the CAS Court Office that all days during the period as from 28 October until 7 November 2021, are considered official non-working days in Russia due to a COVID-19 lockdown and consequently the *"Appellant is deprived from the opportunity to perform the necessary legal actions it* [sic] *terms of the procedures (notary public, translation bureau etc.)"*. The Appellant requested that these circumstances were taken into consideration when deciding upon the request for the extension of the time limit to file its Appeal Briefs.

59. On 1 November 2021, the CAS Court Office informed the Parties, on behalf of the President of the CAS Appeals Arbitration Division, that the time limit for the Appellant to file its respective Appeal Briefs had been extended by 10 days.

60. On the same date, the Respondent informed the CAS Court Office that, in accordance with Article R53 of the CAS Code, it appointed Dr Jakub Laskowski as an arbitrator in these proceedings.

61. On 10 November 2021, the Appellant requested another extension of the deadline to file its Appeal Briefs indicating that the period from 28 October until 8 November 2021 were official non-working days due to COVID-19 lockdown. Thus, the Appellant continued that it was deprived from the opportunity to perform necessary actions in terms of the procedure during this period since the translation bureaus, notary publics, etc were closed. In view thereof, it was practically impossible for the Appellant to conduct the required actions during this period.

62. On 12 November 2021, the Respondent confirmed that in the period of 28 October until 7 November there *"were some restrictive measures taken by the Russian regional authorities due to COVID-19 in Moscow and Moscow region"*. As the said period normally included seven business days in Russia, the Respondent indicated that it would except an extension of the deadline of seven days.

63. On 15 November 2021, the CAS Court Office informed the Parties, on behalf of the President of the CAS Appeals Arbitration Division, that the time limit for the Appellant to submit its Appeal Briefs had been extended with 7 days.

64. On 21 November 2021, the Appellant requested an additional extension of the deadline to file its Appeal Briefs due to *"the fact that the Appellant's attorney-at-law Sergey V. Pronkin cannot perform his duties due to personal reasons (funeral in the family"* and the Appellant had to replace him.

65. On 22 November 2021, the Respondent informed the CAS Court Office that it did *"not accept and strongly demur any further extension to file the Appeal Brief"*, indicating that the *"Appellant had enough time with two extra extensions granted, and that any further extension is far too excessive"*.

66. On 29 November 2021, the CAS Court Office informed the Parties, on behalf of the President of the CAS Appeals Arbitration Division, that the time limit for the Appellant to submit its Appeal Briefs had been extended with one day.

67. On 30 November 2021, the Appellant filed its Appeal Briefs in accordance with Article R51 of the CAS Code.

68. On 1 December 2021, the CAS Court Office acknowledged the receipt of the Appeal Briefs and requested the Respondent, pursuant to Article R55 of the CAS Code, to submit its respective Answers within 20 days.

69. On 17 December 2021, the Respondent requested, in accordance with Article R32 of the CAS Code, an extension of the deadline with 25 days to file its Answers.

70. On 21 December 2021, the Appellant informed the CAS Court Office that it agreed to an extension of the deadline of seven days for the Respondent to file its Answers.

71. On 27 December 2021, the CAS Court Office informed the Parties, on behalf of the President of the CAS Appeals Arbitration Division, that the time limit for the Respondent to file its respective Answers has been extended with 25 days.

72. On 18 January 2022, the CAS Court Office informed the Parties that pursuant to Article R54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the Arbitral Tribunal appointed to hear the appeal was constituted as follows:

President:	Mr Frans de Weger, Attorney-at-Law in Haarlem, the Netherlands
Arbitrators:	Mr Jeffrey G. Benz, Attorney-at-Law in London, United Kingdom

Dr Jakub Laskowski, Attorney-at-Law in Warsaw, Poland

73. On 21 January 2022, the Respondent requested a final extension of the deadline to file its Answer in both cases, until 28 January 2022.

74. On 27 January 2022, the CAS Court Office informed the Parties that, in light of the Appellant's silence, the Respondent's extension request was granted.

75. On 28 January 2022, the Respondent filed its Answer in both cases in accordance with Article R55 of the CAS Code.

76. On 1 February 2022, the CAS Court Office informed the Parties that, in accordance with Article R56 par. 1 of the CAS Code, the Parties shall not be authorized to supplement or amend their requests of their argument, nor to produce new exhibits, nor to specify further evidence on which they intend to rely. In the same letter, the CAS Court Office invited the Parties to inform whether they considered that a hearing should be held in this matter.

77. On 6 February 2022, the Appellant informed the CAS Court Office that it preferred for a hearing to be held.

78. On 7 February 2022, the Respondent informed the CAS Court Office that it does not deem it necessary to hold a hearing in this matter, referring in relation to CAS 2021/A/8404 to its position regarding to *res judicata* and in CAS 2021/A/8405 to the inadmissibility of the appeal.

79. On 11 February 2022, the CAS Court Office informed the Parties that the Panel had decided, in accordance with Article R57 para. 2 of the CAS Code, to hold a hearing in these matters, which would be held by video-conference. In the same letter, the Parties were informed that the Panel had decided to reject the Respondent's bifurcation request and the Parties were advised that the Panel would address the *res judicata* issue in its final award. In relation to the request of the Respondent to dismiss the witnesses called by the Appellant in both proceedings, the CAS Court Office informed the Parties that the Panel does not see a valid reason for the dismissal of the Appellant's witness evidence. As a final note, the Appellant was invited to submit the witness statements of Mr Alan Aguzarov and Mr Rainer Störk as requested in its Appeal Brief in CAS 2021/A/8404.

80. On 16 February 2022, the Respondent requested to supplement its position with a written testimony of Mr Frank Aehlig, the Head of Player Licensing Department at 1.FC Köln at the moment the transfer of the Player from 1.FC Köln to the Respondent took place. Furthermore, the Respondent requested to supplement its position to the merits in CAS 2021/A/8404, due to the authorization of the Appellant's witnesses.

81. On 17 February 2022, the CAS Court Office informed the Parties that they, together with their witnesses, were called to appear at the hearing, which would be held by video-conference on 30 March 2022. Furthermore, the Parties were invited to provide the CAS Court Office, on or before 24 February 2022, with the names of all persons who would be attending the hearing.

82. Per the same letter, the CAS Court Office invited the Appellant to comment on the Respondent's request to call Mr Frank Aehlig as a witness in the proceedings and to provide a written witness statement of Mr Frank Aehlig.

83. On 18 February 2022, the Appellant objected, referring, *inter alia*, to Article R56 of the CAS Code and the absence of any exceptional circumstances, to the Respondent's request to supplement its position with a written testimony of Mr Frank Aehlig and the supplementation of its position on the merits.

84. On 21 February 2022, the Appellant submitted a witness statement of Mr Rainer Störk.

85. On the same date, the Appellant requested an extension of at least 10 days for the submission of the witness statement of Mr Alan Aguzarov as he was unable to provide the Appellant with his written witness statement within the provide time limit due to personal reasons and hectic travel schedule.

86. On 24 February 2022, the CAS Court Office invited the Appellant to submit the witness statement of Mr Alan Aguzarov by 3 March 2022. In addition, the Parties were informed that, in accordance with Article R56 para. 1 of the CAS Code, the Respondent's request to supplement its position with a written testimony from Mr Frank Aehlig was rejected in light of the disagreement between the Parties and in the absence of exceptional circumstances in the present procedures.

87. On 24 and 25 February, respectively, the Appellant and the Respondent provided the CAS Court Office per the same correspondence with the names of the persons who would attend the hearing.

88. On 25 February 2022, the Parties returned duly signed copies of the Order of Procedure in both procedures to the CAS Court Office.

89. On 4 March 2022, the Appellant submitted the written witness statement of Mr Alan Aguzarov.

90. On 5 March 2022, the Respondent requested the Panel to submit written testimony of Mr Frank Aehlig and to review the witness testimony at the hearing. The Respondent argued that the *"refusal of the Panel to adduce witness statement of Frank Aehlig while simultaneously satisfying the Appellant's request to submit witness statement of Mr. Alan Aguzarov puts the parties in an unequal position with respect to the ability to introduce evidence"*.

91. On 7 March 2022, the Panel invited the Respondent to comment on the Appellant's additional witness statement. Per the same letter, the CAS Court Office confirmed the rejection of the witness evidence of Mr Frank Aehlig in accordance with Article R56 para. 1 of the CAS Code.

92. On 18 March 2022, the CAS Court Office informed the Parties that it had not received any communication from the Respondent in relation to the Appellant's additional witness statement.

93. On 29 March 2022, Mr Rainer Störk, who was initially called up as witness by the Appellant, informed the CAS Court Office that he would not be able to attend the hearing and, in the absence of his presence, he confirmed his written witness statement.

94. On 30 March 2022, a hearing by video-conference was held. At the outset of the hearing, the Parties confirmed not to have any objection as to the composition of the Panel.

95. In addition to the Panel and Mr Björn Hessert, Counsel to the CAS, the following persons attended the hearing by video-conference:

a) For the Appellant

1) Mr Dmitry Studenikin, Counsel

2) Ms Elizaveta Kurkina Oka, Counsel

3) Ms Natalia Nikonova, Counsel

4) Mr Dmitry Kulinksky, Interpreter

b) For the Respondent

1) Mr Edward Zadubrovsky, Counsel

2) Mr Dmitrii Dubovskikh, Counsel

3) Ms Svetlana Chavkina, Counsel

96. The following witnesses were heard, in order of appearance:

1) Mr Vagid Iskenderov

2) Mr Evgeny Muravyov

3) Ms Nataliya Kuroedova

4) Mr Alexander Gorlov, expert witness

5) Mr Ilya Kedrin, expert witness.

97. Mr Alan Aguzarov, who was initially called as witness by the Appellant, was not heard during the hearing and was not available for his testimony.

98. All witnesses that were heard during the hearing were invited by the President of the Panel to tell the truth subject to the sanctions of perjury under Swiss law. Both Parties and the Panel had full opportunity to examine and cross-examine the witnesses.

99. Both Parties were given full opportunity to present their cases, submit their arguments and to answer the questions posed by the Panel.

100. Before the hearing was concluded, the Parties expressly stated that they did not have any objection with the procedure adopted by the Panel and that their right to be heard had been respected.

101. As a final question, the Panel requested the Parties whether they preferred one award to be rendered encompassing both proceedings, or two separate awards to be rendered. The Appellant requested some additional time to decide on the matter. The Respondent indicated *"to leave it up to the discretion of the Panel and the position of the Appellant"*.

102. On 16 April 2022, the Appellant informed the CAS Court Office that it prefers one award to be rendered by the Panel encompassing both proceedings. In this regard, no further objections were raised by any of the Parties.

103. On 19 April 2022, the CAS Court Office communicated to the Parties that the Appellant agreed for the Panel to render one award encompassing both proceedings.

V. SUBMISSIONS OF THE PARTIES

104. The following summary of the Parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the Parties. The Panel, however, has, for the purposes of the legal analysis which follows, carefully considered all the submissions made by the Parties, even if there is no specific reference to those submissions in the following summary.

A. The Appellant's Position

105. The Appellant's submissions, in essence, may be summarised as follows:

- The dispute should have been examined by FUR judicial bodies on its merits. Cleary understanding and knowing that the intermediary services on transfer of the Player from football club 1.FC Köln to the Respondent were duly provided by the Appellant, the Respondent made all possible actions to avoid such an examination, since it would lead to an obligation to execute existing overdue payables towards the Appellant.

- The Respondent preferred not to maintain its position in FUR judicial bodies, specializing exclusively on dispute resolution in football, but applied to the State Economic Court that is absolutely unaware of the procedures and specifics of football business, where football related matters are very rare or even unique. The non-state judicial bodies of FUR, FIFA and CAS as sports justice bodies and courts as state authorities, are even guided by different principles and rules of proceedings in the case, subject of proof in the case as well as the means of such proof are defined in different manner.

- The State Economic Court, in its turn, not knowing the specifics of procedures in football business, made an extremely formal approach based on the allegations of the Respondent, which were in fact unsupported by any evidence, except of the letter of 1.FC Köln and the circumstance that the terms of the transfer contract were agreed prior to formal entry into the Intermediary Service Contract. The State Economic Court just refused to scrutinize the real circumstances of the case.

- The evidence provided by the Appellant within the current proceedings clearly shows and proves that the transfer was accomplished due to the actions of the Appellant and its partners. Even though the Intermediary Service Contract was ruled invalid by the State Economical Court, it does not exempt the Respondent from responsibility to pay the Appellant the price of actually rendered services.

- The decisions of the State Economic Court cannot be considered as "*res judicata*". It follows from CAS jurisprudence, that there is *res judicata* when there is a final and enforceable decision issued by a competent court in a case between (i) the same parties, (ii) with the same claim and (iii) basing on the same facts. In the case at hand, the decision of the State Economic Court does not satisfy any of these requirements as:

  (i) the parties to the dispute and their procedural status in cases considered by the State Economic Court and FUR judicial bodies are clearly different. The claimant in the current procedure is an intermediary although in the State Court proceedings this was the shareholder of the Respondent. Furthermore, in the State Court proceedings the respondents were the Appellant and the Respondent.

  (ii) the subject-matters in disputes considered by the State Economic Court and FUR judicial bodies are clearly different (nor in essence nor in nature of the claim). In the State Court proceedings, the validity of the Intermediary Service Contract was the subject of the matter, although in the current procedure the subject of the matter consists of the obligation to pay the overdue debt for the intermediary services actually performed by the Appellant, as well as losses in favor of the Appellant in connection with Respondent's violation of the terms payment for the services of the Appellant.

  (iii) the grounds of the disputes considered by the State Economic Court and FUR judicial bodies are clearly different. Whereas in the State Court procedure the basis of the claim were Articles 166 and 170 of the Civil Code of the Russian Federation on the invalidity of the transaction. In the current procedure the basis of the claim is Articles 1005-1006 (remuneration under an agency agreement) and Article 395 of the Civil Code of the Russian Federation (interest for payment delay), *i.e.* a claim is filed for the recovery of the transaction.

- As a conclusion, the decision of the State Economic Court of the City of the Moscow Circuit does not deprive or limit the Respondent's ability to prove the actual provision of services and does not relieve the Respondent of the obligation to submit a counter performance if the fact of the provision of services by the Appellant is proven.

- Nullity of an agreement does in no way release its parties from obligations. The Appellant's services were engaged by the Respondent long before the representation contract, *i.e.* the Intermediary Service Agreement, was signed. In fact, there was an oral agreement between the Appellant and the Respondent. The Appellant and the Respondent concluded an oral contract between them, according to which the Appellant undertook to provide the services to the Respondent which were ultimately stipulated in the Intermediary Service Contract, while the Respondent undertook to pay for them a fee in the amount of EUR 750,000. The only reason why the Intermediary Service Contract was initially made oral, is due to the fact that the Respondent wanted it to be oral in order to avoid any risk to be penalized by the FUR for concluding a contract with an intermediary that hadn't yet had an accreditation.

- In CAS 2018/O/5836, between football agency Lucid Sport Group Limited (United Kingdom) and FC Dynamo, under which the Respondent was ordered to pay the intermediary fee in dispute in full, convincingly demonstrates that in the time when the intermediary services on transfer and employment of the Player were rendered by the Appellant to the Respondent, it was a common practice for the Respondent to firstly engage intermediaries, order services and give instruction, and after the services were provided to enter into corresponding agreements with the intermediaries.

- The mere annulment of a contract does not release its parties from obligations. To the contrary, according to Article 167 para. 2 of the Civil Code of the Russian Federation in the case a deal becomes null and void all its parties must return to the other party all that was received (collected, saved etc.) during execution of this void deal. When it is not possible to return something (for instance - services), the monetary equivalent must be paid.

- Thus, as the Parties had evaluated the Appellant's services in the sum of EUR 750,000 (which is more than reasonable, taking into account the buy-out sum that the Respondent managed to save thanks to the Appellant's work) and taking into account that it was duly demonstrated that the services were effectively provided and the transfer of the Player became the result of these services, the Respondent must pay EUR 750,000 to the Appellant irrespectively of whether as a service fee or as an obligation under the restitution.

- In addition, rulings of State Economic courts do not contain in the operative part any conclusions on recognition of the Appellant's services as unproven, including before the date of the conclusion of the contract, recognized by the courts as invalid.

- As applicable to the essence of football, legal relations such as the current matter should be reviewed in the jurisdictional bodies of FUR. In the state court proceedings, the Respondent artificially created a fake appearance of another party by presenting its dominant shareholder as independent claimant. This claim in a State Economic Court had only one goal to delay the payments and to put pressure on FUR to disregard the claim of the Appellant.

- By application to the State Economic Court, the Respondent knowingly and seriously violated fundamental, basic and mandatory principles, standards and rules established by FUR, namely: the principle of resolving disputes between subjects of football exclusively in football jurisdictional bodies with a strict prohibition to apply to state courts.

- It is also worth to note that the Respondent was not anyhow limited from submitting its claim(s) within the procedure before the FUR DRC, however it chose not to do it but to violate the rules and make recourse to the state court, formally through its shareholder. Acting in this manner, the Respondent wished to avoid proceedings in front of the FUR DRC, specializing exclusively on dispute resolution in football, and create a state economic court judgment in a dispute between two subjects of football to be used by the Club as an argument in justifying its refusal to pay the fee due to the Appellant for the services provided, thus, causing harm and losses to the Appellant.

- As a result of the Respondent's manipulations and its actions contrary to the spirit and essence of fair disputes resolution in the field of football by specialized FUR judicial bodies, the Appellant suffered losses in the amount of the remuneration, which the Appellant had to receive in accordance with the agreement concluded between the Appellant and the Respondent and documents confirming the fact that the Appellant has fulfilled its obligations under the agreement (Articles 10 and 15 of the Civil Code of the Russian Federation). The amount of losses caused to the Appellant by the unlawful actions of the Respondent is the amount that the parties agreed on as the amount of the Appellant's remuneration EUR 750,000.

106. On this basis, the Appellant submitted the following requests for relief in CAS 2021/A/8404:

*"**VII. REQUESTS FOR RELIEF***

The Appellant therefore respectfully requests the Court of Arbitration for Sport:

1. *To uphold the Statement of Appeal of 13 October 2021 and the present Appeal Brief against the Decision № 033-K/1 - 131-18-O-188-19/П rendered by the Players' Status Committee of the Football Union of Russia on 05.08.2021 and Resolution № 031-18-O-188-19 rendered by the Dispute Resolution Chamber of the Football Union of Russia on 03.06.2021.*

2. *To annul the said decision(s), examine the case on the Intermediary's claims and render an award ruling that:*

   (a) FC Dynamo shall pay to the Appellant 750 000 (seven hundred fifty thousand) Euros – indebtedness for services provided by the Intermediary to the Respondent plus an interest for delayed payment for each further calendar day of delay beginning on 01 February 2018 and ending on the day of effective payment at the rate to be determined according to the key interest rate established by the Bank of Russia in effect during the period of delayed payment.

alternatively, and only in the case if the request stated in clauses 2 (a) above is rejected

(b) FC Dynamo shall pay to the Appellant 750 000 (seven hundred fifty thousand) Euros – as return of all FC Dynamo has received from the Appellant under the invalid deal (restitution damages) plus an interest for delayed payment for each further calendar day of delay beginning on 01 February 2018 and ending on the day of effective payment at the rate to be determined according to the key interest rate established by the Bank of Russia in effect during the period of delayed payment.

alternatively, and only in the case if the requests stated in clauses 2 (a) and 2 (b) above are rejected

(c) FC Dynamo shall pay to the Appellant 750 000 (seven hundred fifty thousand) Euros – loses, occurred by the Appellant in the result of the actions committed by the Respondent plus an interest for delayed payment for each further calendar day of delay beginning on 01 February 2018 and ending on the day of effective payment at the rate to be determined according to the key interest rate established by the Bank of Russia in effect during the period of delayed payment.

3. To condemn the Respondent to the payment of the whole CAS administrative costs, the costs and fees of the arbitrators or, more generally, the final amount of the cost of arbitration as per Article R64.4 of the CAS Code.

4. To condemn the Respondent to the payment of reasonable legal and administrative costs incurred by the Appellant during the proceeding in the FUR and CAS, determined at the discretion of the Panel".

107. The Appellant submitted the following requests for relief in CAS 2021/A/8405:

*"**VI. REQUEST FOR RELIEF***

The Appellant therefore respectfully requests the Court of Arbitration for Sport:

1. To uphold the Statement of Appeal of 13 October 2021 and the present Appeal Brief against the Decision № 033-K/2 - 131-18-O-188-19/П rendered by the Players' Status Committee of the Football Union of Russia on 05.08.2021 and Decision № 031-18-O-188-19 rendered by the Dispute Resolution Chamber of the Football Union of Russia on 03.06.2021.

2. To annul the said decision(s), examine the case on the Intermediary's claims and render an award ruling:

(a) Apply to FC Dynamo prohibition on the registration of new players for two (2) registration periods as a sports sanction due to the application to the State Courts.

(b) Impose on FC Dynamo a fine in the amount established by FUR regulatory documents.

(c) FC Dynamo shall pay to the Appellant 750 000 (seven hundred fifty thousand) Euros – loses, occurred by the Appellant in the result of the actions committed by the Respondent plus an interest for delayed payment for each further calendar day of delay beginning on 01 February 2018 and ending on the day of effective payment at the rate to be determined according to the key interest rate established by the Bank of Russia in effect during the period of delayed payment.

3. To condemn the Respondent to the payment of the whole CAS administrative costs, the costs and fees of the arbitrators or, more generally, the final amount of the cost of arbitration as per Article R64.4 of the CAS Code.

4. To condemn the Respondent to the payment of reasonable legal and administrative costs incurred by the Appellant during the proceeding in the FUR and CAS, determined at the discretion of the Panel".

B. RESPONDENT'S POSITION

108. The submissions of the Respondent, in essence, may be summarised as follows:

- The Respondent explicitly denies the Appellant's allegations that the Respondent should pay any amounts under the Intermediary Service Contract to the Appellant. The Respondent relies on a final and binding decision of the Russian state courts, which constituted that the Intermediary Service Contract is null and void from the moment of its execution.

- It is undisputed that the Russian state courts declared the Intermediary Service Contract null and void in all its entirety as of the agreements execution date and the decision of the Russian state courts became final and binding for the Parties. In other words, the Appellant has no legal possibility to appeal against the decision. The Russian state courts clearly assume there is no obligation for the Respondent to pay any amounts to the Appellant under or in connection with the Intermediary Service Contract. What the Appellant tries to do by filing its claims with the FUR and the CAS, is to nullify the state courts decision, which confirmed the Respondent's goodwill in terms of the Player's transfer and legally justifies the Respondent's decision not to pay any amount to the Appellant.

- The FUR regulations leave no room for broad interpretation, the FUR bodies could not have adjudicated on the dispute because there is a final and binding decision of the Russian state court to the same dispute between the same parties, on the same subject on the same grounds and there is no agreement concluded between the Respondent and the Appellant, as expressly confirmed by the Russian state court.

- The CAS may not entertain the merits of these cases because the same matter has already been heard and decided by the Russian state courts with a final and binding decision, which has been confirmed by the Russian Supreme state court. It is a typical *res judicata* exception, which corresponds to both the FUR regulations on disputes settlement and the well-established CAS practice.

- As per the well-established practice of the CAS, an earlier and final adjudication by a court or arbitration tribunal is conclusive in subsequent proceedings involving the same subject matter or relief, the same legal grounds and the same parties (the so-called "triple-identity" criteria). If these prerequisites are successfully met, then CAS is bound by the decision issued in the previous proceedings and cannot issue a new award on the merits in the same matter. In view of the principle of public interest, *res judicata* intends to safeguard

the certainty of rights which have already been adjudicated upon and defined by a judgment.

- In Swiss law, it is not decisive when determining the *res judicata* effects of a decision, to examine what legal arguments were debated and discussed in the first proceedings. Identity of claims must be understood as identity of substance and not from a grammatical point of view. The substance here is of a simple fact that the Intermediary Service Contract is null and void as of the moment of its execution. The Russian state courts ruled that no payment shall be made by the Respondent. In other words, not literally, but substantially the Appellant brings the same claim to the CAS. Furthermore, the criterion of the identity of the parties, does not depend on the role that the parties played in the initial or subsequent procedure and does not require the presence of all the claimants / respondents in both proceedings, as long, as the parties in the subsequent procedure have also participated in the previous procedure. Both the Appellant and the Respondent were the parties to the initial procedure before the Russian state court, so the present dispute brings together the same parties once again. To sum up, the proceedings consist of the same subject matter, the same legal grounds and the same parties. The so-called "triple identity" test is indisputably met.

- It is undisputed by the Appellant that the decision of the FUR PSC does not refer to the merits of the case, rather than to procedural reasons for dismissal of the Appellant's initial claim. In the event that the Panel decides that both the FUR DRC and the FUR PSC could not have terminated the proceedings in accordance with the FUR Regulations on dispute resolution and the Russian law, the claim shall be then referred back to the FUR DRC to be adjudicated upon its merits.

- The mere existence of a written agreement does not necessarily *per se* constitute the existence of any legal / commercial relationship between the Parties. The truth is that the Appellant never presented any documentary evidence (*i.e.* representation contracts, partnership agreements, power of attorney or alike) which could substitute the Appellant's allegations.

- It is undisputed that the *essentialia negotii* of the transfer agreement were agreed on by the Respondent and 1.FC Köln before the Intermediary Service Contract was concluded. The Respondent always contracted directly with 1.FC Köln.

- Furthermore, the supposed commission amount set out in the Intermediary Service Contract is extremely disproportionally high and never reflected the market flows. The Intermediary Service Contract stipulates a commission equalling to 50% of the transfer fee, which is clearly excessive and way above the market and FIFA guidelines on recommended agent commission caps. These facts indicate that the only intention behind the Intermediary Service Contract was pulling the money out of the football family. Such behaviour should never be rewarded, but rather unconditionally condemned by FIFA, CAS and the whole family of football.

- The request to impose sanctions on the Respondent should be dismissed as well, as the FUR is not a party to the procedure. The appeal against the FUR DRC and FUR PSC decisions is to be considered as a challenge to the decisions of the association, implying that the association needs invariably to be sued by the appealing party in order for the appeal to have merit. In the case at stake the Appellant omitted to summon the FUR to the proceedings and addressed its claim solely to the Respondent. This implies that CAS is not competent to impose sanctions as the appeal is inadmissible and/or shall be dismissed. Furthermore, according to the long-standing Russian jurisprudence, the submission of claims against an improper respondent is a self-standing ground for refusal to satisfy the stated claims.

- The Appellant did not vindicate its legitimate interest to ask for sanctions to be imposed on the Respondent. The imposition of the requested sanctions does not have actual and immediate direct consequences for the Appellant. Appellant's only interest might be of a financial nature and not the imposition of sanctions. Thus, in accordance with extensive CAS jurisprudence, the Appellant does not have standing to request sanctions on the Respondent.

- What is more, in relation to the imposition of sanctions for non-compliance with the rule on pre-trial resolution of football disputes the Respondent stressed that based on the systematic interpretation of the FUR Charter and the Regulations on the Status and Transfer of Players, it is the first-hand submission of a dispute to the state court that is an action punishable in accordance with paragraph 15 of the Consolidated Table of Violations. The subject of football is not prohibited from participating in the process as a respondent or a third party. Such a ban would violate the adversarial principle and equality of the parties in the judicial process, provided for, in particular, Article 8 of the Arbitration Procedural Code of the Russian Federation. Otherwise, the FUR itself violated its own Charter by participating as a third party in the proceedings on the recognition of the Intermediary Service Contract's invalidity. Thus, the Respondent's participation in the proceedings as a respondent is not a violation of the rule on the pre-trial resolution of disputes between subject of football, since the Respondent did not file any claim with the state court. The claimant in these cases were VFSO Dynamo, the shareholder of the Respondent and VFSO Dynamo Russian and JSC. Consequently, sanctions cannot be applied against the Respondent for non-compliance with the procedure of pre-trial resolution of disputes, since the Respondent never applied to the state courts on the present matter.

- Moreover, the application of sanctions on the Respondent for non-compliance with the procedure of pre-trial resolution of disputes was made after the State Economic Court of the City of Moscow had taken the decision to declare the Intermediary Service Contract invalid, which, obviously, could not be changed by the FUR DRC and FUR PSC. Accordingly, the Appellant did not pursue and does not pursue a real goal to protect its right and legally protected interests but submitted the application of FUR DRC solely with the intention to harm the Respondent. Therefore, there is an abuse of right, in connection with which the Appellant's appeal on the imposition of sanctions on the Respondent for violation of the pre-trial dispute settlement procedure should be set aside.

- The Appellant never proved the incurred losses, so that its claim in relation to the reimbursement of losses should be dismissed. In order to have the right to claim losses, the Appellant should have proved the existence of the losses and their amount, the illegal behaviour causing harm and the causal link between the illegality of the behaviour and the resulting losses. It is necessary to have indisputable evidence of each of these elements. The absence of at least one of these elements entails a refusal of compensation for losses. The Appellant failed to prove any of the elements and consequently the incurred losses. The only reason for the recovery of the required amount to which the Appellant refers, is the non-compliance by the Respondent with the procedure of pre-trial resolution of disputes. Even if the Panel concludes that the Respondent violated the procedure of pre-trial resolution of disputes, the claim for losses in the form of lost agency remuneration in the amount of EUR 750,000 cannot be satisfied. Based on Russian legislation, non-compliance with the procedure of pre-trial resolution of disputes entails only losses in the form of court expenses and not the basis for recovery of other losses.

- The only compensation that the Appellant could have received is compensation for court expenses, which the Appellant could have recovered in the state court procedure if it had proven that the Respondent is the claimant in the case, the Respondent did not comply with the procedure of pre-trial resolution of disputes, and also that the dispute would have been amicably settled by the parties provided that such procedure had been followed.

- By claiming losses the Appellant did not provide grounds for upholding its claim, did not prove the fact of incurring losses (since it is not possible to incur losses due to non-fulfilment of a simulated contract) and also did not prove that sufficient efforts were made in a timely manner to prevent losses (in particular, timely appeal to the FUR DRC with the corresponding application and the application to the state court for non-compliance with the procedure of pre-trial resolution of disputes). Accordingly, the Appellant did not justify the right to claim compensation for losses incurred in connection with the recognition of the Intermediary Service Contract as a simulated one.

109. On this basis, the Respondent submits the following prayers for relief in CAS 2021/A/8404:

*"**VI. REQUEST FOR RELIEF***

Based on the above, the Club respectfully requests the Court of Arbitration for Sport:

1. *To uphold the decision issued by FUR Dispute Resolution Chamber on 03.06.2021 and FUR Players' Status Committee on 05.08.2021;*

2. *Alternatively, and only if the Panel rules that the proceedings before FUR DRC and FUR PSC were groundlessly terminated – to refer the case back to the FUR DRC to be adjudicated upon the dispute's merits;*

3. *Alternatively, and only if the Panel (i) rules that the proceedings before FUR DRC and FUR PSC were groundlessly terminated and (ii) decides to adjudicate the dispute upon its merits – to dismiss the*

Appellant's claim for any amounts under the Agreement, as no Services were rendered to the Club by the Appellant.

4. *At any of the aforementioned scenarios – in light of the extensive unfounded and misguided allegations presented by the Appellant, as well as lack of fault on behalf of the Club, as well as the fact that FUR did not adjudicate on the merits of the case – to order the Appellant to pay whole CAS administrative costs, the costs and fees of the arbitrators or, more generally, the final amount of the cost of arbitration as per Article R64.4 of the CAS Code".*

110. The Respondent further submits the following prayers for relief in CAS 2021/A/8405:

*"**VI. REQUEST FOR RELIEF***

Based on the above, the Club respectfully requests the Court of Arbitration for Sport:

1. *To declare the Appellant's appeal inadmissible and to refuse to satisfy the Appellant's claims:*

2. *Alternatively, if the Panel decides that the appeal is admissible, to dismiss the appeal filed by the Appellant in full, to uphold the decision by FUR Dispute Resolution Chamber on 03.06.2021 and FUR Players' Status Committee on 05.08.2021;*

3. *In light of the extensive unfounded and misguided allegations presented by the Appellant, to order the Appellant to pay whole CAS administrative costs, the costs and fees of the arbitrators or, more generally, the final amount of the cost of arbitration as per Article R64.4 of the CAS Code".*

VI. JURISDICTION

111. Article R47 para. 1 of 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".

112. The jurisdiction of CAS derives from Article 46 and 47 of the Statutes of the FUR:

113. Article 46 par. 1 of the FUR reads as follows:

"The FUR, its members, as well as leagues, clubs, players. official, match agents and players' agents, other football stakeholders recognizing this Statutes, unless otherwise provided for by the legislation of the Russian Federation, do not submit any dispute for resolution by any state court, unless it is stipulated for certain cases in this Statutes and regulations of FIFA, UEFA. Any dispute shall follows under jurisdiction of FIFA, UEFA or the FUR. As the last instance such disputes shall be resolved by either by an arbitration tribunal, indicated in a certain Article of this Statutes, or by CAS".

114. Article 47 of the Statutes of the FUR reads as follows:

> *"1. Pursuant to some stipulations of the Statutes of FIFA, UEFA and the FUR, any appeal against a final and binding decision of FIFA, UEFA and the FUR may be resolved by CAS. This Court of Arbitration for Sport, however, does not deal with appeals arising from some categories of cases, determined by FIFA, UEFA and the FUR, or against decision of an independent and duly constituted arbitration tribunal in the Russian Federation, indicated in Article 45 of this Statutes.*
>
> *2. The FUR ensures the fulfilment of any final decisions made by a bodies of FIFA, UEFA or CAS, by the FUR itself, by its members, leagues, clubs, players, officials, as well as match agents and players' agents".*

115. The jurisdiction of the CAS is further confirmed by the Orders of Procedure duly signed by the Parties, and the fact that no Party objected to the jurisdiction of the Panel at any time, including when requested to do so at the start of the hearing.

116. It follows that CAS has jurisdiction to decide on the present disputes.

VII. ADMISSIBILITY

117. Article R49 of the CAS 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".*

118. Article 53 of the Dispute Resolution Regulations of the FUR provides as follows:

> *"2. A decision of the Players' Status Committee may be appealed only to the Court of Arbitration for Sport (Tribunal Arbitral du Sport) in Lausanne (Switzerland) within 21 calendar days as of the day of receipt of the decision with grounds".*

119. On 13 October 2021, the Appellant filed, in accordance with Article 53 of the FUR Dispute Resolution Regulations and Articles R47 and R48 of the CAS Code, two Statement of Appeals with the CAS against the Respondent.

120. Therefore, the appeals are timely submitted and are admissible.

VIII. APPLICABLE LAW

121. Article R58 of the CAS Code provides the following:

"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 the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

122. Article 11.4 of the Intermediary Service Contract provides as follows:

"In everything not provided for by this contract, the Parties shall rely on the laws of the Russian Federation, regulatory and other documents of FUR. The Parties agree to submit to the rules of the national laws of the state in which this contract is executed".

123. By submitting their dispute to CAS, by signing the Order of Procedure and not filing any objections in this regard, according to the Panel, the Parties have implicitly and indirectly chosen for the application of the conflict-of-law rule in Article R58 of the CAS Code, leading to the primary application of the regulations of the FUR.

124. This conclusion is in line with the main purposes of Article R58 of the CAS Code, which is to ensure that the rules and regulations by which all members are bound in equal measure are also applied to them in equal measure, which can only be ensured if a uniform standard is applied in relation to central issues.

125. The Panel also adheres to the so-called 'Haas-doctrine', from which it follows that Article R58 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"* (HAAS U., Applicable law in football-related disputes – The relationship between the CAS Code, the FIFA Statutes and the agreement of the parties on the application of national law, Bulletin TAS / CAS Bulletin, 2015/2, p. 11-12)

126. The Panel is therefore satisfied to accept application of the various regulations of FUR, and, subsidiarily, Russian law.

IX. PRELIMINARY ISSUES

127. Before turning to the examination of the substantive issues, the Panel has to address some preliminary points, raised during the course of the present arbitration.

A. Admissiblity of witnesses

128. The first issue relates to the position of the Respondent to dismiss the witnesses as called by the Appellant, *i.e.* Mr Alan Aguzarov, Mr Evgeny Muravyov, Mr Iskenderov Vagid and Mr Rainer Störk, due to their irrelevance.

129. On 11 February 2022, the CAS Court Office informed the Parties that the Panel did not see a valid reason for the dismissal of the Appellant's evidence and that the Panel would make use of its unrestricted power to review the case when assessing the relevancy of any witness presented. The Panel will now further explain as follows.

130. As a matter of fact, the Panel shall itself conduct the taking of evidence, as laid down in Article 184 (1) of Switzerland's Private International Law Act ("PILA"). Therefore, there was no reason, the Panel finds, to reject the testimony of any of the above witnesses. Consequently, the Panel, also in light of Article R56 para. 1 and R44.2(3) of the CAS Code (applicable by reference of Article R57 para. 3 of the CAS Code) as these witnesses were specified in the Appellant's submissions, allowed their testimonies.

131. For the avoidance of doubt, the Panel wishes to add that the question of admissibility of a witness is a different matter than the probative value and credibility of the testimony itself (or irrelevance, as was argued by the Respondent). The Panel did not see reason not to admit the admissibility of these witnesses. However, as was also expressed in the letter of 11 February 2022, during the hearing the Panel carefully assessed in its discretion the credibility and the relevance of the witness testimonies, which will be further discussed, where relevant, under the merits.

132. Another issue in relation to the witnesses was related to the Respondent's request to call Mr Frank Aehlig as witness, which request was made per letter of 16 February 2022, for the first time.

133. On 17 February 2022, the CAS Court Office noted that the Respondent intended to call Mr Frank Aehlig as a witness and invited the Appellant to comment on such request within three days, which the latter did the subsequent day, on 18 February 2022, by objecting to such request.

134. On 24 February 2022, the CAS Court Office informed the Parties, that, in accordance with Article 56 par. 1 of the CAS Code, the Respondent's request to hear Mr Frank Aehlig was rejected in light of the disagreement between the Parties and in the absence of exceptional circumstances in the present procedures.

135. By means of its letter of 5 March 2022, the Respondent reiterated its request to hear Mr Frank Aehlig. In reply, the CAS Court Office confirmed, as it did in its letter of 24 February 2022, the rejection of Mr Frank Aehlig's witness evidence. The reasons for such decision are the following:

136. The Panel wishes to note that the Respondent is only allowed to call any witnesses and experts which were specified in its written submissions. The Respondent, however, did not announce Mr Frank Aehlig in its written submissions. Therefore, so the Panel finds, also considering the Respondent's objection and the absence of any exceptional circumstances, his testimony had to be rejected, in light of Article R56 para. 1 and R44.2(3) of the CAS Code (applicable by reference of Article R57 para. 3 of the CAS Code).

B. Rendering of one award

137. Another preliminary issue to discuss relates to the rendering of one award instead of two. The Panel will further describe the basis for its decision in this respect.

138. The Panel finds that both appeals are so closely connected, as also follows from the above presentation of (procedural) facts, that it makes sense to the Panel to decide to render one award.

139. In order to follow such approach, the Panel requested the Parties, at the end of the hearing, whether they preferred one award to be rendered encompassing both proceedings, or two separate awards to be rendered. The Appellant requested some additional time to decide on the matter. The Respondent indicated to leave it up to the discretion of the Panel and the position of the Appellant.

140. On 16 April 2022, the Appellant informed the CAS Court Office that it preferred one award to be rendered by the Panel encompassing both proceedings.

141. In order to avoid any misunderstanding, in the letter of the CAS Court Office of 19 April 2022, the Parties were informed about the preference of the Appellant and no further objections were raised by any of the Parties. Considering the statements made by the Respondent during the hearing and the absence of any further objections from its side as well as the Appellant's confirmation by means of its correspondence of 16 April 2022, the Panel has decided to issue one award in the present appeal proceedings. Nothing in the CAS Code prevents this approach and it is the most economical and efficient approach to rendering an award in these two related appeals.

C. Bifurcation request of the Respondent

142. As a final preliminary note and before addressing the merits of the case, the Panel notes that the Respondent, by means of its Answer, requested to bifurcate the *res judicata* issue by considering the principle's applicability to the present disputes.

143. On 11 February 2022, the CAS Court Office informed the Parties that the Panel had decided to reject the Respondent's bifurcation request and the Parties were advised that the Panel would address the *res judicata* issue in the final arbitral award.

144. In light of procedural efficiency, and in view of the fact that Parties had already informed the Panel well by means of their written submissions as to the *res judicata* issue, the Panel did not find it necessary to bifurcate the proceedings. Further to this, the Panel was aware that the Parties were in the position to make further statements as to this issue during the oral hearing and it was not so obvious at that stage, based on the submissions, that there was a matter of *res judicata*. Therefore, the Panel did not feel the need to bifurcate the present proceedings.

X. MERITS

A. The Main Issues

145. Having dispensed with the above preliminary issues, the Panel can now turn to the main issues to be resolved, which are:

(i) the principle of *res judicata*;

(ii) whether or not to refer the case back to the FUR;

(iii) whether the Appellant was entitled to the outstanding fee;

(iv) interest; and

(v) whether sporting sanctions had to be imposed on the Respondent.

(i) The principle of res judicata

146. Although not having formally disputed the jurisdiction of the CAS, the Respondent claims that the CAS may not entertain the merits of the case in relation to the claim of the agency fee, because the same matter has already been heard and decided by the Russian courts with a binding award which has been confirmed by the decision of the Supreme Court of the Russian Federation dated 10 February 2021 and thus became final. The Appellant, on the other hand, argues that there can only be *res judicata* when there is a final and enforceable decision issued by a competent court in a case between (i) the same parties and (ii) with the same claim and (iii) basing on the same facts, which is, according to the Appellant, not the case here. In this regard, the Panel observes that the Parties both refer to CAS jurisprudence to support their positions, noting that the Appellant also refers to Article 49 para. 2 lit (e) of the FUR Regulations on Disputes from which it follows that the FUR DRC or FUR PSC terminates the proceedings in case there is an award issued to the same dispute between the same parties, on the same subject and on the same grounds, which such an award representing a final decision of a state court or a final decision of the arbitral tribunal, the FIFA decision-making bodies or the CAS. The Panel wishes to note that such provision also reflects the "triple-identity" criteria which also follows from CAS jurisprudence. In this regard, the Parties, in their submissions, also follow the three elements in relation to the "triple-identity" criteria in making their arguments.

147. Against the above background, the Panel notes that the FUR DRC decided, which was confirmed in appeal by the FUR PSC, to terminate the proceedings due to *res judicata* based on Article 49 para. 2 lit (e) of the FUR Regulations on Dispute Settlement. In the present CAS proceedings, the Panel's analysis regarding the *res judicata* issue in CAS 8404 is, thus, twofold: (1) the possible entertainment of the merits in the present appeals procedure in consideration of the decision of the Supreme Court of the Russian Federation dated 10 February 2021 and (2) the decision of the FUR DRC, and in appeal the FUR PSC, not to examine the case on its merits due to *res judicata* following Article 49 para. 2 lit (e) of the FUR Regulations on Dispute Settlement. On the one hand, if the so-called "triple-identity" test is fulfilled with respect to the

first limb of this analysis, the Panel will be prevented from entertaining the merits of the procedure CAS 8404 and would have to dismiss the appeal. On the other hand, if the Appealed Decision in CAS 8404 wrongfully decided not to examine the case in application of Article 49 para. 2 lit (e) of the FUR Regulations on Dispute Settlement, decision No. 033-K/1 - 131-O-188-19/II must already be annulled for this reason and the appeal must be upheld in this respect.

a) Is the CAS prevented from dealing with this appeal due to res judicata?

1) In general

148. The Panel observes that it is generally accepted that the choice of the place of arbitration also determines the procedural law to be applied to the arbitration proceedings. Since the *situs* of this arbitration is in Switzerland, cf. Article R28 of the CAS Code, it is either Articles 353 *et seq.* of the Swiss Civil Code or Chapter 12 of the PILA that applies (DUTOIT B., Droit international privé Suisse, Commentaire de la loi fédérale du 18 décembre 1987, Bâle 2005, N. 1 on Article 176 PILA; TSCHANZ P-Y., in Commentaire romand, Loi sur le droit international privé - Convention de Lugano, 2011, n° 1, p. 1627, ad art. 186 LDIP). Article 176 para. 1 of the PILA provides that the provisions of Chapter 12 of the PILA regarding international arbitration shall apply to any arbitration if the seat of the arbitral tribunal is in Switzerland and if, at the time the arbitration agreement was entered into, at least one of the parties had neither its domicile nor its usual residence in Switzerland.

149. The CAS is recognized as an arbitral tribunal (ATF 119 II 271). It has its seat in Switzerland. The Parties in the present dispute had neither their domicile nor their usual residence in Switzerland at the time the arbitration agreement was entered into. Accordingly, Chapter 12 of the PILA shall therefore apply, including its Articles 182 and 190.

150. In a decision dated 27 May 2014, the Swiss Federal Tribunal ("SFT") has decided that public policy within the meaning of Article 190(2)(e) of the PILA is violated when some fundamental and generally recognized principles are contravened, leading to an insufferable contradiction with the sense of justice, such that the decisions appear incompatible with the values upheld in a state of law (see, *inter alia*, ATF 140 III 278 at 3.1; ATF 132 III 389 at 2.2.1). An arbitral tribunal violates procedural public policy if it disregards the *res judicata* effect of a previous decision or if the final award departs from the opinion expressed in an interlocutory award disposing of a material preliminary issue (ATF 136 III 345 at 2.1, p. 348; ATF 128 III 191 at 4a, p. 194).

151. In some circumstances (depending on the legal effects at stake arising out of the *res judicata*), the existence of a previous decision or judgment will entail the lack of jurisdiction of a subsequent arbitral tribunal. As recalled by the CAS panel in case CAS 2018/A/5888, the SFT has held that *"[q]uant à l'autorité de chose jugée, ce principe interdit au juge de connaître d'une cause qui a déjà été définitivement tranchée; ce mécanisme exclut définitivement la compétence du second juge"* (ATF 127 III 279), which can be freely translated to English as follows: *"[w]ith regard to the res judicata authority, this legal principle prevents the judge from entertaining a case that has been already and definitively decided; this mechanism excludes the competence of the second judge"*. Indeed, under Swiss law, *res judicata* is part of

the procedural public policy, and it applies both domestically and internationally (SFT 4A_633/2014).

152. This aspect of the *res judicata* principle constitutes, as confirmed by several CAS cases (see e.g. CAS 2013/A/3256, CAS 2018/A/5800 and CAS 2019/A/6483), the so-called *"Sperrwirkung"* (prohibition to deal with the matter = *ne bis in idem*), the consequence of which is that if a matter (with *res judicata*) is brought again before the adjudicatory authority, the latter is not even allowed to look at it, but must dismiss the matter (insofar) as inadmissible. The second aspect of that principle is the so-called *"Bindungswirkung"* (binding effect of the decision), according to which the judge in a second procedure is bound to the outcome of the matter decided in the first matter as a result of the application of the *res judicata* doctrine.

153. In addition to the above, and also following the jurisprudence of the SFT, the Panel notes that the principle of *res judicata* prohibits an identical claim that has already been decided in a final manner being reheard in a new procedure between the same parties (SFT 4A_536/2018, 16 March 2020, consid. 3.1.1). Hence, the Panel notes, a previous and final adjudication by a court or an arbitration tribunal is conclusive in subsequent proceedings involving the same subject matter or relief, the same legal grounds and the same parties (the so-called "triple-identity" criteria) (see, *inter alia*, CAS 2015/A/3959, CAS 2018/A/5888, CAS 2020/A/6767 and CAS 2021/A/7807). The three criteria have to be cumulatively met (see, *inter alia*, CAS 2013/A/3380). The same principles apply to foreign court judgements: *"[i]f an arbitral tribunal seated in Switzerland is seised of an identical claim between the same parties that has already been decided by a state court outside Switzerland, it must declare that claim inadmissible if the foreign judgement is capable of being recognized in Switzerland"* (BERGER/KELLERHALS, International and Domestic Arbitration in Switzerland, 4th edn., para. 1661).

154. The Panel notes that the three elements of the "triple-identity" criteria are further discussed in CAS jurisprudence, such as CAS 2013/A/3380, in which the CAS panel noted:

> *"For a ruling or resolution to have the force of res judicata, two preliminary requirements shall be met: "(a) the decision making body shall be competent to pass the relevant ruling or resolution; (b) the relevant ruling or resolution shall be passed after following the appropriate contradictory procedure.*
>
> *Furthermore, for a ruling or resolution to have the force of res judicata, it has to meet the "triple identity check" which consists of the verification of (i) the identity between the parties to the first decision and to the subsequent one, i.e. the parties were the same in both cases; (ii) the identity of objects between the two decisions; and (iii) the identity of the basis (causa petendi) on which the claim is submitted. All three elements of res judicata are of equal importance and relevance and have to be concurrently present".*

155. Further to this, the Panel also refers to CAS 2016/A/4408, from which it follows that:

> *"There is res judicata when the claim in dispute is identical to that which was already the subject of an enforceable judgment (identity of the subject matter of the dispute). This is the case when in litigations the same parties submitted the same claim to the court on the basis of the same facts. The identity must be understood from a substantive and not grammatical point of view, so that a new claim, no matter how it is formulated, will have the same object as the claim already adjudicated".*

2) In particular

156. The Panel notes that the Parties have different positions as to the question whether or not there is a matter of *res judicata*, as set out above. Before analyzing the three elements in relation to the *res judicata* principle, which legal framework, as discussed above, will be considered a leading, and gating, issue for the Panel, the Panel brings in mind, as set out above, that the Respondent claims that the CAS may not entertain the merits of the case in relation to the claim of the agency fee, because the same matter has already been heard and decided by the Russian courts with a binding award which has been confirmed by the Supreme Court of the Russian Federation and had thus become final, which is strongly disputed by the Appellant. Therefore, as set out above, the Panel will analyze whether the CAS is prevented from dealing with this appeal due to *res judicata*.

157. Specifically looking at the three elements that derive from the above-mentioned CAS jurisprudence and that need to be cumulatively met in order to establish that *res judicata* exists, as to the first element the Respondent argues that *"the parties and their procedural status in cases considered by the Economic State Court and FUR judicial bodies are clearly different"*.

158. It is true, so the Panel observes, that the Parties' roles were different when the Panel examines the proceedings before the Russian state courts and CAS, on the one hand, and the Russian state courts and the FUR decision-making bodies, on the other hand. In fact, before the FUR decision-making bodies, i.e. the FUR DRC and the FUR PSC, and CAS, it was the Appellant that initiated arbitral proceedings against the Respondent, whilst before the Russian state courts - i.e. consecutively the State Economic Court of the City of Moscow in first instance, the Ninth Appeals State Economic Court in appeal and, in cassation, the State Economic Court of the Moscow Circuit - it was the Shareholder (of the Respondent) that acted as the claimant against the Appellant. Carefully analyzing the decisions of the Russian state courts, also the Respondent was involved as a party in these proceedings although it acted as a respondent therein.

159. Notwithstanding the above, the Panel notes that it is decisive that the Parties have participated in the previous proceedings before the Russian state courts and the FUR decision-making bodies. In other words, this first criterion does not solely depend on the role that the parties played in the first or second procedure and does not require the presence of all the claimants/respondents in both proceedings, as long as the parties in the second procedure have also participated in the previous procedure (ATF 127 III 279 at 2c, p. 285; MAVROMATI D., *Res judicata* in sports disputes and decision rendered by sports federations in Switzerland, Bulletin TAS / CAS Bulletin, 2015/1, p. 40-52).

160. It is undisputed that both the Appellant and the Respondent participated in the previous proceedings before the FUR decisions-making bodies as well as the Russian state courts, which follow from such Russian decisions, as the Appellant and the Respondent were both clearly involved. However, although the Panel is aware that the role of parties may change, as set out above, the Panel wishes to note in the present proceedings that the Parties did not stand in an adversarial relation to each other in both proceedings.

161. In this regard, and as mentioned before, in the Russian state court proceedings the Shareholder acted against the Respondent and in the proceedings before the FUR decision-making bodies the Appellant acted against the Respondent. The Parties were so only in an adversarial relation to each other in the proceedings before the FUR. The same is true for the present procedure before CAS in relation to the proceedings before the Russian state courts. Accordingly, the Parties are in an adversarial relation before the CAS, whilst the Shareholder of the Respondent litigated against the Appellant in front of the Russian state court proceedings.

162. As the principle of *res judicata* is examined under the procedural law of the seat of arbitration, cf. Article 182(2) of the PILA, which is in the present CAS proceedings Swiss law (see, *inter alia*, CAS 2009/A/1968), in order to meet this first criterion, the Panel finds it decisive that the Parties had to stand in an adversarial relation to each other in both the Russian proceedings, so before the decision-making bodies of the FUR as well as the Russian state courts proceedings (HABSCHEID W., Schweizerisches Zivilprozess und Gerichtsorganisationsrecht, para. 502) and CAS. This was, however, not the case. The Panel recalls that the Parties were only in an adversarial relation in the FUR proceedings and CAS proceedings.

163. Therefore, the Panel concludes that the Parties in the proceedings before the Russian state court proceedings were not identical and therefore this first criterion of the "triple-identity" test is not met in the present dispute.

164. The Panel notes that this could be the end of the analysis, this finding of the failure to satisfy the first element required for application of the *res judicata* doctrine. But here the Panel has determined each element, and it turns out that the first element is not the only element missing.

165. Even if this first criterion would have been met, the second criterion, i.e. the identity of the objects, has also not been satisfied. In this regard, it follows from CAS jurisprudence that the matter at issue in both proceedings ought to be identical (see, *inter alia*, CAS 2013/A/3380; also cited above). Carefully analyzing the decisions of the Russian state courts as well as the FUR DRC and, in appeal, the FUR PSC, the Panel observes that the proceedings before the Russian state courts only dealt with the question whether the Intermediary Service Contract was invalid or not, whilst the FUR's decision-making bodies had to deal with the question whether the Respondent had to comply with its financial obligations towards the Appellant as well as the latter's losses in favour of the Appellant in relation to the Intermediary Service Contract. The latter which is also the object of the present procedure before CAS.

166. Against the above background, the Panel concludes that the identity of object is clearly different as it follows, and the Panel finds, that the relevant decisions of the Russian state courts and the FUR DRC and PSC have not been rendered based on the same object. In addition, the object of the proceedings before the Russian state courts and CAS are also different.

167. Therefore, the Panel finds that this second criterion is also not met in the present case.

168. For the sake of completeness, the Panel notes that even if the first and second criterion had been met, the third criterion is also not fulfilled. In fact, this last requirement would only be met if the "cause" or "grounds" or *"causa petendi"* of the claims in the Russian state court, the FUR

proceedings and CAS proceedings were also the same. In this regard, the claim of the Shareholder in the Russian state court proceedings was based on Article 166 and 170 of the Civil Code of the Russian Federation following which the invalidity of the Intermediary Service Agreement was claimed. However, before the FUR's decision-making bodies, which is under appeal in the matter at hand, it was the Appellant that claimed the remuneration under the Intermediary Service Contract based on Article 1005-1006 of the Civil Code of the Russian Federation. The Panel is mindful that the identity of claims must be understood as identity of substance and not from a grammatical point of view, as set out above (CAS 2016/A/4408). However, the Panel finds that the substantial differences as to the grounds of the claims in both Russian proceedings do not demonstrate the existence of an identity of substance. Therefore, this third criterion is also not fulfilled in the present proceedings.

169. In view of the above, the Panel concludes that there is no matter of *res judicata*. As such, the Panel concludes that the CAS is not prevented from dealing with the present appeal due to *res judicata*.

b) Did the Appealed Decision wrongfully terminate the procedure pursuant to Article 49 para. 2 lit (e) of the FUR Regulations on Dispute Settlement?

170. In the light of the above and in the absence of *res judicata*, the Panel also finds that the FUR DRC and the FUR PSC wrongfully terminated the proceedings in accordance with Article 49 para. 2 lit (e) of the FUR Regulations on Dispute Settlement as the criteria in such provision are not fulfilled in this case. As a consequence, the Appealed Decision No. 033-K/1 - 131-O-188-19/II must be annulled and the appeal upheld in this respect.

(ii) Refer the case back to the FUR PSC

171. In its Answer, the Respondent argued that in the event that the Panel decides that both the FUR DRC and the FUR PSC could not have terminated the proceedings in accordance with the FUR Regulations on Dispute Settlement and the Russian law, the claim should be referred back to the FUR DRC to be adjudicated upon its merits.

172. The Panel does not follow this line of reasoning of the Respondent.

173. It follows from Article R57 para. 1 of the CAS Code that the Panel may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. Therefore, the Panel notes that pursuant to such provision, it could return the matter back, but it also has the ability to issue a new decision of its own.

174. The CAS' power to annul a decision appealed against and to replace it by a new decision is a common CAS practice and will also be followed in the present dispute, not least for prominent reasons of procedural economy of the procedure as well as fairness to the Parties in receiving a decision from an independent and impartial tribunal that is seeing the matter for the first time. Therefore, the Panel will now entertain the merits of the case regarding the claim of the agency fee.

(iii) Outstanding fee

175. Having established that there is no *res judicata* and that the Panel will issue a new decision in this dispute, as set out above, the Panel will now address the question whether the Appellant is entitled to the outstanding fee as claimed from the Respondent.

176. In this regard, the Appellant claims the amount of EUR 750,000 for services provided by the Appellant to the Respondent in relation to the transfer of the Player from 1.FC Köln to the Respondent. The Respondent, however, argues that it does not owe anything to the Appellant. The Respondent argues that the mere existence of a written agreement does not necessarily constitute the existence of any legal/ commercial relationship between the Parties. To support its position, the Respondent also refers to a letter of 1.FC Köln from which it follows that the German club denied any partnership with the Appellant and that the latter never presented any documentary evidence which supports its position. The Respondent takes the position that it always contacted directly with 1.FC Köln. As to the claimed commission, the Respondent further argues that the amount of EUR 750,000 is disproportionally high and is clearly excessive.

177. Considering the above positions, the Panel, as a point of departure, emphasizes that the Parties on 17 January 2018 signed the Intermediary Service Contract following which the Respondent authorized the Appellant to undertake, on behalf of the Respondent, *"to perform legal and other actions aimed at employment of the football player Mr. Konstantin Viktorovich Rausch, born on 15 March 1990 (.) with the Club, inter alia, representing the Club in negotiations with the FC Köln (.) and its representatives for the purpose of entering into a transfer agreement (contract) between the Selling Club and the Club for the transition (transfer) of the Player to the Club"*.

178. In addition, the Panel reiterates that a few days later, on 22 January 2018, the Parties also signed the Certificate of Work Completion, in which the Parties agreed that:

> *"1. The Intermediary has provided the Club with services of representation of the Club in negotiations with FC Köln (hereinafter referred to as the "Selling Club") and its representatives for the purposes of entering into a transfer agreement (contract) between the Selling Club and the Club for the transition (transfer) of Mr. Konstantin Viktorovich Rausch, born on 15 March 1990 (hereinafter referred to as the "Player"), to the Club.*
>
> *2. As a result of the services provided by the Intermediary, the Selling Club and the Club entered into a transfer agreement (contract) for the transfer of the Player.*
>
> *3. The Club has no dissatisfaction about the quality of the services provided.*
>
> *4. The Intermediary's fee (remuneration to the Intermediary) under the Intermediary Services Contract is Seven Hundred Fifty Thousand (750 000) Euro net payable in the procedure and at the time established by the Intermediary Services Contract".*

179. Based on these signed documents, i.e. the Intermediary Service Contract and Certificate of Work Completion, the Panel feels comfortably satisfied that clear arrangements were made regarding the representation in the negotiations and the financial conditions.

180. The Panel is mindful that a letter from 1.FC Köln was provided by the Respondent in which the German club denied any partnership with the Appellant. However, during the hearing, it was sufficiently demonstrated with evidence by the Appellant, by means of the testimonies of several witnesses that were called by the Appellant, that the latter had performed tasks under the Intermediary Service Contract, that it also instructed other intermediaries to conclude the transfer of the Player in reliance on the Intermediary Services Contract, and that it acted on behalf of the Respondent. As such, Mr Evgeny Muravyov, the former General Director of the Respondent, and during the time of the transfer of the Player active in such position, confirmed that the Appellant was instructed. Further to this, also Ms Nataliya Kuroedova confirmed during the hearing that her firm, Gestifute, was instructed by the Appellant to participate in the transfer of the Player to the Respondent.

181. This also explains, the Panel, why 1.FC Köln did not have contact with the Appellant directly. Be that as it may, the fact that 1.FC Köln did not have direct contact with the Appellant and issued such letter, does not rule out that the Appellant did not act on behalf of the Respondent. As set out above, the Panel is comfortably satisfied that the Appellant instructed other intermediairies to assist in relation to the transfer.

182. In other words, it is clear to the Panel that the Appellant performed the tasks required under the Intermediary Service Contract in relation to the transfer of the Player to the Respondent.

183. What is more, and what cannot be ignored under these circumstances, the fulfilment of the activities by the Appellant, although clearly disputed by the Respondent now, was also explicitly confirmed by means of the Certificate of Work Completion form contemporaneously with the transfer, as set out above. As a matter of fact, from such form it explicitly follows that the Appellant actually provided the services of representation on behalf of the Respondent in the negotiations with 1.FC Köln for the purposes of entering into a transfer agreement.

184. The fact that the Respondent also had direct contact with the Appellant does not make this any different, as this makes sense given that the object was to finalize the transfer of the Player. Obviously, the entire process had to be finalized with a transfer agreement that was concluded between 1.FC Köln and the Respondent. The Panel finds that any direct contact does also not rule out that the Appellant performed services under the Intermediary Service Contract in relation to the Player's transfer and that other intermediaries were instructed by the Appellant to assist in the transfer, all the more so because this was proven by the Appellant by means of the witnesses, as set out above.

185. Consequently and in accordance with the basic legal principle of *pacta sunt servanda*, which in essence means that agreements must be respected by the parties in good faith (see, *inter alia*, CAS 2012/A/2988), and given that the Appellant had duly fulfilled its obligations in relation to the conclusion of the transfer agreement between the Respondent and 1.FC Köln, the Panel is comfortably satisfied that the Appellant provided the services to the Respondent under the Intermediary Service Contract.

186. As to the matter of whether the commission is disproportionately high and is clearly excessive, as argued by the Respondent, the Panel does not agree with the Respondent.

187. Not only did the Respondent not substantiate its position as to this matter with any further argumentation and/ or evidence, at all, but the Panel emphasizes that, in principle, the doctrine of *pacta sunt servanda*, as set out above, is the guiding general principle by which the merits of the present case will be examined. In this regard, the Panel further notes that when applying the doctrine of *pacta sunt servanda*, the proper interpretation of an agreement is of particular importance (CAS 2017/A/5077). In this respect, the Panel observes that the Intermediary Service Contract and Certificate of Work Completion is clear in its terms that the Respondent will pay to Appellant the amount of EUR 750,000 corresponding to the Appellant's commission for negotiating the Player's transfer. What is more, it not only follows from the Certificate of Work Completion that the Respondent provided the services, as set out above, but also that the Respondent confirmed that it had no dissatisfaction about, and in fact was satisfied with, the quality of the services provided.

188. Further to this, the Panel also notes, that within the world of sport, a direct correlation does not always exist between the extent of services rendered by an agent in terms of hours spent and the value of such services for the parties involved (CAS 2016/A/4573). Pursuant to CAS jurisprudence, an arbitral tribunal is as a general rule required to uphold the doctrine of freedom of contract in determining whether or not a particular commission is excessive unless there manifestly exist exceptional circumstances pointing towards excessiveness of the commission (ATF 106 II 56, JdT 1980 I 279). The Panel finds that no such exceptional circumstances exist in the present matter.

189. Relating the above to the case at hand, and for the avoidance of doubt, the Panel notes that also no evidence has been adduced to the effect that the Respondent was either coerced or unduly influenced into agreeing on the commission that was fixed. The presumption therefore is that the Parties freely and voluntarily agreed on the amount.

190. Additionally, the Panel does not want to leave unmentioned and wishes to bring in mind that an amount of EUR 500,000 had already been paid by the Respondent to the Appellant for the services rendered in relation to the employment contract of the Player with the Respondent. This indicates that similar amounts were paid by the Respondent. Apparently, such sums are not unusual to pay by the Respondent and, so the Panels further notes, the amount of EUR 500,000 does not seem to be that far apart from the amount claimed (EUR 750,000) as it is more or less at the same order of magnitude.

191. There is simply no basis for the Panel to look behind the Parties' written expression of the terms of their agreement given that those terms were never challenged as inaccurate. Parties are free to enter into good deals and to enter into bad deals, and it is not within the province of CAS panels to interfere in hindsight.

192. In view of the foregoing, and pursuant to the principle of *pacta sunt servanda*, the Panel concludes that the full amount of EUR 750,000 is neither disproportionally high nor excessive. The amount must therefore be paid by the Respondent to the Appellant.

(iv) Interest

193. Regarding the Appellant's claim for interest, the Panel observes that Clause 6 of the Intermediary Service Contract provides that in the event of a default under this contract or failure to properly perform its obligations hereunder, the Parties shall be liable under the applicable laws of the Russian Federation, as well as the regulatory documents of FIFA and FUR, unless otherwise established in this contract. In this regard, the Appellant also claims interest from the Respondent for delayed payment for each further calendar day of delay beginning on 1 February 2018 and ending on the day of effective payment at the rate to be determined according to the key interest rate established by the Bank of Russia in effect during the period of delayed payment.

194. In order to establish the applicable interest rate, the Panel also refers to Article 395 of the Russian Civil Code, from which it follows that interest is due and shall be determined by the key rate of the Bank of Russia as of the date of the corresponding periods, which is also claimed by the Appellant and not disputed by the Respondent unless there is a different interest amount that has been established by law or contract.

195. Therefore, in the absence of any specific interest rate deriving from either the Intermediary Service Contract or the Certificate of Work Completion, the Panel concludes that the Respondent is obligated to and shall be obliged to pay the remuneration provided for in the Intermediary Service Contract and Certificate of Work Completion in the amount of EUR 750,000 together with the key interest rate of the Bank of Russia calculated as from 1 February 2018 ending on the day of effective payment during the period of delayed payment, as was claimed by the Appellant.

(v) Imposition of sanctions

196. Finally, the Panel will turn to the request of the Appellant to impose sporting sanctions upon the Respondent. In this regard, the Appellant claims that according to, *inter alia*, Article 41 para. 1 of the FUR Charter, Article 29 of the FUR Regulations on the Status and Transfer of Players and FUR Regulations on Dispute Settlement as well as paragraph 15 of the Consolidated Table of Violations (which is schedule no. 3 of the FUR Rules on the Status and Transitions (Transfers) of Football Players and FUR Regulations on Dispute Settlement), sporting sanctions should be imposed on the Respondent.

197. The final question for the Panel to address in this matter, therefore, centres around the question whether or not sporting sanctions should be imposed on the Respondent.

a) Introduction

198. The Panel notes that the FUR PSC decided to deny the appeal from the Appellant to hold the Respondent liable and to impose sanctions on the Respondent in accordance with the regulatory documents of the FUR. In this appeal, the Appellant requested the CAS to impose sanctions on the Respondent consisting of a ban on the registration of new players for two (2) registration

periods due to the application to the State Courts and impose a fine in the amount established by FUR regulatory documents. The Respondent argues, however, that this request must be rejected as the FUR is not a party to the CAS arbitration. In this case, so argues the Respondent, the Appellant omitted to summon the FUR and addressed its claim only to the Club as Respondent. Further to this, the Respondent states that the Appellant does not have standing to appeal to request sanctions on the Respondent as it does not have a legitimate interest.

199. The Panel, however, takes note that there is, indeed, an issue here with the identification of the required respondents. In fact, in its submissions the Appellant only mentioned the Club as a respondent, and not the FUR. This issue raises the legal question whether the Panel can impose the requested sporting sanctions without the mandatory intervention of FUR as a respondent. Put differently, the question in this part of the case is whether, in view of the Appellant's prayers for relief, and in the context of standing to be sued (i.e. *"légitimation passive"*), the Appellant has named all required respondents for the Panel to be entitled to impose the requested sanctions.

200. The Panel observes that the Respondent argues that the Appellant's claim to impose sanctions must be dismissed because FUR is not a party to the CAS proceedings. In this regard, the Respondent motivates its position by making reference to long-standing CAS jurisprudence and Swiss law. The Panel notes that the Appellant did not address this issue during the hearing. In fact, also after being invited by the Panel to address this issue, which was again raised by the Respondent during the hearing, the Appellant chose to be silent on this matter.

201. Against the legal framework under Article R58 of the CAS Code, as set out above, the Panel notes that the issue of standing to sue and standing to be sued is not addressed in the FUR regulations. Taking into account the attitude of the Parties, not only throughout their submissions and the references by the Appellant to CAS jurisprudence and Swiss law, but also adopted during the hearing by the Appellant by remaining silent on this issue, under the circumstances, the Panel feels comforted to apply Swiss law on this separate issue as it is permitted in CAS arbitrations to apply different laws for different issues (see, *inter alia*, CAS 2006/A/1024, CAS 2008/A/1558 & 1578. See also MAVROMATI/REEB, The Code of the Court of Arbitration for Sport, 2015, p. 543, 547, 551).

202. In this sense, and as established in the longstanding jurisprudence of the CAS, confirmed by the Swiss Federal Tribunal (the "SFT"), the Panel wishes to note that, under Swiss law, standing to sue and standing to be sued are to be treated as an issue of merits, and not as a question for the admissibility of the appeal (see, *inter alia*, CAS 2017/A/5359, CAS 2017/A/5322, CAS 2017/A/5227, CAS 2016/A/4585, CAS 2015/A/4131, and ATF 114 II consid. 3a; 126 III 59 consid. 1a). Therefore, the question of standing to be sued shall be treated by the Panel as a substantive matter or, to put in a different way, as an issue of the merits.

b) Consequences not naming FUR as party

203. In this regard, referring to the Appellant's prayers for relief, the Appellant requests the CAS to impose sporting sanctions on the Respondent.

204. The Panel wishes to recall that, pursuant to the CAS jurisprudence, a party has standing to be sued in CAS proceedings only if it has some stake in the dispute because something is sought against it in front of the CAS (see, *inter alia*, CAS 2015/A/4310, CAS 2014/A/3831, CAS 2014/A/3850 and CAS 2019/A/6646). In other words, it must be examined *"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; CAS 2020/A/7356). Therefore, the only body that would have the authority to impose the sanction on the Club and be sufficiently affected in the present case, would be the FUR.

205. As a consequence, in an appeal against a FUR decision, by means of which disciplinary sanctions could be imposed on a party for failing to comply with the FUR Regulations, it is required the intervention of FUR as a party in the appeal proceedings. Therefore, in order to grant the relief as requested by the Appellant in relation to the sporting sanctions, the Appellant must include FUR, as the body that has the power to impose disciplinary sanctions (see, *inter alia*, CAS 2017/A/5359, CAS 2015/A/4310 and 2007/A/1367). The Panel fully adheres to this consistent CAS jurisprudence.

206. Turning to the case at hand, the Appellant only identified the Club as sole respondent, and not the FUR or the specific body that had issued the decision No. 033-K/2-131-18-O-188-19/II. In this regard, the Panel notes that the FUR, and not the Appellant, is the legal body with the power to impose disciplinary sanctions on the Respondent in the event of a violation of the FUR Regulations.

207. It goes without saying that the Appellant does not have the power to directly affect the legal situation of the Club in this respect. In fact, as to the sporting sanctions, there is nothing that the Appellant can do to alleviate the burden of the Club as to this issue. In essence, the Club seeks relief from the FUR, which is not a party in the current CAS proceedings.

208. Under the circumstances of the present case, the Panel considers that, in light of the claim of the Appellant made to CAS with respect to the request for imposition of sporting sanctions, the respondent in this appeal cannot be only the Club. It should have also been the FUR itself. Yet, as set out above, the FUR has not been identified as a respondent by the Appellant, neither in its Statement of Appeal, nor in the Appeal Brief. *In casu*, the Panel wishes to underline that the Appellant should have directed its appeal also against FUR as the party with standing to be sued in addition to the Club as respondent or separately – the latter only if the prayers of relief concerned the disciplinary (sporting) sanctions (see, *inter alia*, CAS 2017/A/5359).

209. In consideration of the above, the Panel finds that the Appellant erred in filing the appeal procedure aiming to impose sanctions on the Respondent only against the Club, as the latter lacks standing to be sued (alone) in connection with the awarded sporting sanctions. In this sense, the Panel also finds that parties to proceedings in front of CAS must be aware of the differences regarding the question as to who has standing to be sued in such proceedings. Put differently, the Panel stresses that parties which fail to name the required respondent(s) for obtaining the relief requested in CAS proceedings, must, as a general rule, bear the legal consequences. Also, during the hearing no further explanation was given by the Appellant as to the Respondent's position that this part of the claim must be rejected.

210. In view of the above, the consequences in this case in which the appeal was not filed against the FUR on the matter requesting the imposition of sanctions by the FUR itself have long been settled – the CAS cannot uphold the appeal. Consequently, the Appellant's request to impose sanctions on the Respondent must be dismissed.

B. Conclusion

211. Based on the foregoing, and after having taken into due consideration all the specific circumstances of both the cases, the evidence produced and the arguments submitted by the Parties, the decision of the FUR PSC No. 033-K/1-131-O-188-19/II is annulled and the decision of the FUR PSC No. 033-K/2-131-18-O-188-19/II is upheld.

212. The Panel orders the Respondent to pay the amount of EUR 750,000 to the Appellant plus interest at the interest rate of the Bank of Russia calculated as from 1 February 2018 ending on the day of effective payment during the period of delayed payment.

213. With regard to the Appellant's request for sporting sanctions on the Respondent, the Panel decides that this part of the claim must be rejected.

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

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 13 October 2021 by Golden Toys LLP against JSC FC Dynamo Moscow with respect to the decision No. 033-K/1 - 131-O-188-19/II issued on 5 August 2021 by the Players' Status Committee of the Football Union of Russia is upheld.

2. The decision No. 033-K/1 - 131-18-O-188-19/II issued on 5 August 2021 by the Players' Status Committee of the Football Union of Russia is set aside insofar that JSC FC Dynamo Moscow is ordered to pay the amount of EUR 750,000 to Golden Toys LLP plus interest at the interest rate of the Bank of Russia calculated as from 1 February 2018 ending on the day of effective payment during the period of delayed payment.

3. The appeal filed on 13 October 2021 by Golden Toys LLP against JSC FC Dynamo Moscow with respect to the decision No. 033-K/2 - 131-18-O-188-19/II issued on 5 August 2021 by the Players' Status Committee of the Football Union of Russia is rejected.

4. The decision No. 033-K/2 - 131-18-O-188-19/II issued on 13 October 2021 by the Players' Status Committee of the Football Union of Russia is confirmed.

5. (…).

6. (…).

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