



Arbitration CAS 2022/A/8668 Torino Football Club S.p.A. v. KKS Lech Poznan S.A. & UC Sampdoria S.p.A. & Fédération Internationale de Football Association (FIFA), award of 29 March 2023

Panel: Prof. Martin Schimke (Germany), President; Mr Patrick Stewart (United Kingdom); Mr Patrick Lafranchi (Switzerland)

Football

Solidarity contribution

Production of new exhibits and translations

Legitimate interest

Jurisdiction for domestic transfers

1. The parties are in principle not authorised to produce new exhibits after the submission of the appeal brief and the answer before the CAS, in light of Article R56 of the CAS Code. They may, however, submit translations of original documents at a later stage.
2. A buying club has a legitimate interest in appealing a FIFA Dispute Resolution Chamber (DRC)'s decision requiring it to pay a solidarity contribution to the player's first training club. It may limit its submissions to the refusal to include the selling club as a party and to rule on its possible financial participation.
3. FIFA DRC does not have jurisdiction over disputes relating to solidarity mechanism between clubs belonging to the same association if they originate in a domestic transfer under Article 22(e) of the FIFA Regulations on the Status and Transfer of Players. Notwithstanding the introduction of solidarity contribution for domestic transfers, it shall not extend the scope of this provision without regulatory amendment, nor take responsibility for adjudicating such disputes.

I. PARTIES

1. Torino FC S.p.A ("the Appellant" or "Torino") is an Italian professional football club currently playing in *Serie A* in Italy and affiliated with the Federazione Italiana Giuoco Calcio ("FIGC"), which in turn is affiliated to the *Fédération Internationale de Football Association* ("FIFA").
2. KKS Lech Poznan S.A. ("Respondent 1" or "Lech Poznan") is a Polish professional football club currently playing in *Ekstraklasa* in Poland and affiliated with the Polski Związek Piłki Nożnej ("PZPN"), which in turn is affiliated to FIFA.

3. UC Sampdoria S.p.A (“Respondent 2” or “Sampdoria”) is an Italian professional football club currently playing in *Serie A* in Italy and affiliated with the FIGC.
4. FIFA (or the “Respondent 3”), is the global governing body for football based in Zurich, Switzerland.
5. Lech Poznan, Sampdoria and FIFA are hereinafter jointly referred to as the “Respondents”.
6. Torino, Lech Poznan, Sampdoria and FIFA are hereinafter jointly referred to as the “Parties”.

II. FACTUAL BACKGROUND

7. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the Parties, the hearing and the evidence examined in the course of the proceedings. This background information is given for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in its award only to the submissions and evidence it considers necessary to explain its reasoning.

A. Background Facts

8. On 26 August 2020, Sampdoria and Torino entered into an agreement (the “Transfer Agreement”) for the transfer of Polish professional football player K. (the “Player”) for a total transfer compensation of EUR 7,500,000 payable in three instalments across three seasons. The Transfer Agreement also contained certain potential bonus payments contingent on various targets being achieved by Torino and the Player. Since the Player was registered with Lech Poznan from age 12 to 22, solidarity contribution was due to Lech Poznan, as per the provisions of the FIFA Regulations on Status and Transfer of Players (the “RSTP”), in relation to the transfer compensation paid by Torino to Sampdoria.
9. Subsequently, Lech Poznan initiated discussions with Torino on the payment of EUR 303,287.66 due as solidarity contribution in relation to the Player’s transfer. During these discussions, Torino pointed out that FIGC had not yet acknowledged the regulations regarding the payment of solidarity contribution in cases of transfers between Italian clubs.
10. On 30 March 2021, Torino paid an amount of EUR 100,287.12 to Lech Poznan as partial payment towards the solidarity contribution due to Lech Poznan. Upon being asked to pay the remaining amount, Torino informed Lech Poznan that it is not in a position to pay the remaining amount until the FIGC has put in place a mechanism [for the reimbursement of the solidarity contribution paid in excess to Sampdoria]. In an email to Lech Poznan dated 3 August 2021, Torino stated that “[...] *However, in order to speed up the process, we respectfully suggest that you file a claim with FIFA at your earliest convenience. During such proceedings, which are dealt with in*

an expedited manner on TMS, we will involve Sampdoria and the FIGC in order to facilitate a swift resolution of this matter and make the payment to your club in the shortest time possible”.

B. Proceedings before the Dispute Resolution Chamber of the FIFA Football Tribunal

11. On 27 August 2021, Lech Poznan filed a claim for solidarity contribution amounting to EUR 105,948.49 against Torino before the FIFA Dispute Resolution Chamber (the “FIFA DRC”). Upon being invited by FIFA to provide its comments on the said claim, Torino, on 16 October 2021, sent a letter to FIFA wherein it requested FIFA to call Sampdoria and the FIGC as parties in the proceeding and further requested that the FIFA DRC should condemn Sampdoria to reimburse the overpayment of the transfer compensation to Torino.
12. On 13 November 2021, the FIFA DRC issued its decision (the “Appealed Decision”), with the following operative part:

“1. The claim of the Claimant, KKS Lech Poznan, is accepted.

2. The Respondent, Torino FC, has to pay to the Claimant:

- EUR 105,948.49 as solidarity contribution plus 5% interest p.a. as follows: on the amount of EUR 25,071.78 as from 15 March 2021 until the date of effective payment and on the amount of EUR 80,876.71 as from 1 August 2021 until the date of effective payment.

3. The requests of the Respondent are not admissible [...]”.
13. In the Appealed Decision, the FIFA DRC stated that “[...] in line with art. 22 lit. f) of the RSTP, FIFA is only competent to hear disputes between clubs belonging to different associations that do not fall within the cases provided for in lit. a), d) and e). As a result, the DRC is not competent to hear and ultimately decide on the request of the Respondent related to the reimbursement by the club Sampdoria of the amount payable to the Claimant as solidarity contribution”. The FIFA DRC further stated that it “is not competent to intervene in a dispute between a club and its own member association”. Accordingly, the FIFA DRC found that Torino’s requests were inadmissible.
14. On 28 January 2022, the grounds of the Appealed Decision were notified to the Parties.
15. On 25 March 2022, Torino paid the full amount to Lech Poznan as ordered in the Appealed Decision.

C. Proceedings before the Court of Arbitration for Sport

16. On 18 February 2022, Torino filed a Statement of Appeal with the Court of Arbitration for Sport (the “CAS”) against the Appealed Decision, in accordance with Articles R47 and R48 of the 2021 edition of the Code of Sports-related Arbitration (the “CAS Code”) and named Lech Poznan, Sampdoria and FIFA as Respondents. In the Statement of Appeal, Torino nominated Mr. Patrick Stewart, Solicitor in Manchester, United Kingdom, as an arbitrator in this procedure.

17. On 11 March 2022, in accordance with Article R51 of the CAS Code, Torino filed its Appeal Brief.
18. On 14 March 2022, Lech Poznan and Sampdoria jointly nominated Mr. Patrick Lafranchi, Attorney-at-law in Bern, Switzerland, as an arbitrator in this matter. Upon being invited by the CAS Court Office to confirm whether it agrees with this nomination, on 16 March 2022, FIFA communicated that it agreed to this joint nomination.
19. On 13 April 2022, in accordance with Article R54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the Panel appointed to decide the present matter was constituted as follows:

President: Prof. Martin Schimke, Attorney-at-law in Dusseldorf, Germany
Arbitrators: Mr. Patrick Stewart, Solicitor and General Counsel in Manchester, United Kingdom
Mr. Patrick Lafranchi, Attorney-at-law in Bern, Switzerland.
20. On the same date, the CAS Court Office informed the Parties that the Appellant had provided two additional exhibits and requested to admit such documents to the case file in accordance with Article R56 para. 1 of the CAS Code. The Respondents were invited to comment on this request within five (5) days.
21. On 19 April 2022, Sampdoria stated that it does not have standing to be sued and requested to be allowed to submit its comments on Torino's new documents and their admission on record together with the Answer.
22. On the same date, FIFA made a similar request.
23. On 20 April 2022, the CAS Court Office informed the Parties that the Respondents were granted the right to comment on Torino's additional documents in their respective Answers.
24. On 6 May 2022, after having been granted extensions, FIFA filed its Answer in accordance with Article R55 of the CAS Code.
25. On 9 May 2022, Sampdoria sent a letter requesting the Panel to (i) establish that Sampdoria has no standing to be sued; (ii) exclude Sampdoria from this procedure; (iii) dismiss the claims against Sampdoria; and (iv) suspend Sampdoria's deadline to file its Answer until the Panel had decided on Sampdoria's standing to be sued.
26. On 11 May 2022, the CAS Court Office, on behalf of the Panel, informed Sampdoria that issues raised regarding its standing to be sued in this procedure is a matter of substantive law, which would be addressed by the Panel in the final award and that Sampdoria's request for a preliminary decision on its standing to be sued was denied. All other requests made by Sampdoria were also rejected by the Panel.

27. On 19 May 2022, after having been granted extensions, Lech Poznan and Sampdoria filed their Answers in accordance with Article R55 of the CAS Code.
28. Upon being invited to express their preference in this respect, Torino stated that it preferred that a hearing be held. Sampdoria and FIFA were of the opinion that a hearing was not necessary and that the Panel should decide without holding a hearing.
29. On 30 May 2022, the CAS Court Office communicated to the Parties that the Panel had decided to hold a hearing, further to R57 para. 2 of the CAS Code. In addition, the Parties were informed that Mr. Vishakh Ranjit, Advocate in Kerala, India, had been appointed as *Ad hoc* Clerk in the present procedure.
30. On 15 June 2022, the CAS Court Office informed the Parties that the Panel had decided to hold the hearing by videoconference pursuant to Article R57 para. 2 of the CAS Code.
31. On 22 July 2022, the CAS Court Office provided the Parties with an Order of Procedure, which was duly signed and returned by Torino on 28 July 2022, by Lech Poznan on 29 July 2022, by Sampdoria on 27 July 2022 and by FIFA on 25 July 2022.
32. On 26 September 2022, Torino sent a letter seeking permission to (i) allow Mr. Bernardelli, General Secretary of the Appellant to make a “party statement” explaining the domestic clearing house system; and (ii) provide English translations of certain documents provided along with the Appeal Brief.
33. On 28 September 2022, the CAS Court Office invited the Respondents to comment on Torino’s requests.
34. On 3 October 2022, Sampdoria and FIFA provided their comments objecting to Torino’s requests.
35. On 10 October 2022, the CAS Court Office informed the Parties that the Panel had decided that (i) the translations provided by Torino are admissible, in principle; and (ii) Mr. Bernardelli is, in principle, allowed to attend the hearing and give a testimony as a party representative during the hearing while limiting his testimony strictly to the scope of Torino’s submissions made in the Statement of Appeal and Appeal Brief. In particular, the request to hear Mr. Bernardelli as a witness on the functioning of the Italian clearing house system was denied. In addition, the Respondents were invited to comment on the accuracy of the translations provided by Torino.
36. On the same date, FIFA stated that it deems that the other Respondents would be in a better position to comment on the accuracy of the translations provided by Torino and suggested that this issue may be addressed as a preliminary matter at the hearing.
37. On 11 October 2022, Sampdoria stated that it maintained its objection against the admission of the translated documents as well as against the admission of the testimony of Mr. Bernardelli. Sampdoria further stated that it considers its procedural rights are being undermined.

38. On the same date, Torino stated that Mr. Bernardelli will no longer provide a party statement or represent Torino at the hearing.
39. On 17 October 2022, the CAS Court Office noted Sampdoria's objection to the admissibility of the translations filed by Torino and informed the Parties that the Panel will address all outstanding procedural and undecided questions and objections at the hearing.
40. On 19 October 2022, a hearing was held by videoconference.
41. The following persons attended the hearing in addition to the Panel, Mr. Björn Hessert, CAS Counsel, and Mr. Vishakh Ranjit, *Ad hoc* Clerk:
- a) For Torino:
 - 1) Mr. Paolo Lombardi, Counsel;
 - 2) Mr. James Mungavin, Counsel;
 - b) For Lech Poznan:
 - 1) Mr. Mateusz Wlodarczyk, Counsel;
 - c) For Sampdoria:
 - 1) Ms. Anna Smirnova, Counsel;
 - 2) Mr. Gianpaolo Monteneri, Counsel;
 - 3) Mr. Carlo Vitalini Sacconi, Counsel;
 - d) For FIFA:
 - 1) Mr. Miguel Liétard Fernández-Palacios, Director of Litigation, FIFA;
 - 2) Ms. Cristina Pérez González, Senior Legal Counsel, FIFA;
 - 3) Mr. Haukur Hinriksson, Observer.
42. At the outset of the hearing, all Parties confirmed that they had no objection as to the constitution and composition of the Panel. There were no witnesses put forward by any of the Parties.
43. The Parties were given the full opportunity to present their cases, submit their arguments in opening and closing statements, and to answer the questions posed by the members of the Panel.
44. Before the hearing was concluded, the Parties expressly stated that they had no objection to the procedure adopted by the Panel and that their right to be heard had been respected.

III. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF

45. The following outline of the Parties' requests for relief and positions is illustrative only and does not necessarily comprise every contention put forward by the Parties. The Panel,

however, confirms that it carefully heard and took into account in its decision all of the submissions, evidence, and arguments presented by the Parties, even if they have not been specifically summarised or referred to in the present arbitral award.

A. Torino's Position

46. Torino's submissions, in essence, may be summarised as follows:

1. Sampdoria should be a party to the Appeal

- a. The inclusion of Sampdoria as a party falls within the scope of the present appeal, given that one of the Appellant's requests for relief, during the FIFA DRC proceedings that led to the Appealed Decision, was for FIFA to call Sampdoria as a party in the matter. FIFA declined this request.
- b. Compelling reasons of procedural economy justify the inclusion of Sampdoria in this appeal procedure.
- c. The Panel's scope of review in this appeal includes review of FIFA's decision to not include Sampdoria as a party in the proceedings before the FIFA DRC.
- d. In a previous FIFA case (i.e. TMS 8832), by letter dated 1 November 2021, FIFA called a third-party club as a party to the proceedings, given that such club was the former club of the relevant player and ordered to reimburse the payment received from the player's new club. This is a standard practice followed by FIFA.

2. FIFA is competent to decide on reimbursement of overpayment

- a. FIFA has competence as per Article 22 lit. f) of the RSTP, to decide the present dispute. There is an "international dimension" in the present matter given that Lech Poznan is based in Poland and the Player has Polish nationality.
- b. The fact that the solidarity compensation is due to a club from another association is sufficient to establish the necessary "international dimension". The fact that the transferring clubs belong to the same association does not exclude the competence of FIFA.

3. Financial burden of solidarity contribution should be on Sampdoria

- a. Article 1 para. 1 of Annexe 5 of the RSTP stipulates that the solidarity contribution is to be deducted from the transfer fee before payment to the former club. Therefore, Torino was obliged to deduct the solidarity compensation. In the Transfer Agreement dated 26 August 2020, Torino and Sampdoria did not agree for the relevant transfer compensation to be net of solidarity contribution. As such, Torino was entitled to deduct the relevant solidarity contribution from the compensation paid to Sampdoria for the transfer. However, due to the FIGC Regulations and the "clearing house" system in Italy, it was impossible to deduct this amount.

- b. Torino must pay the various instalments of the transfer compensation due to Sampdoria into the “clearing house” which ultimately transfers the relevant amount to Sampdoria without deducting the 5% solidarity contribution due to the Player’s training clubs.
- c. Respecting the FIGC Regulations has prevented Torino from respecting the provisions of the RSTP and forced Torino to make an overpayment to Sampdoria.
- d. The issue with the FIGC system was ultimately addressed for the first time on 30 June 2021 through a circular which stated that all transfer compensation amounts shall be calculated net of solidarity. However, this does not apply in the present case as the transfer occurred in September 2020.
- e. Torino argues that in the period between the approval of the FIFA domestic solidarity contribution provisions on 1 July 2020 and the FIGC’s circular on 30 June 2021, unless the two clubs expressly agreed in writing that the transfer compensation shall be regarded as being net of solidarity contribution, the financial burden should be placed on the old club.
- f. The letter of FIGC dated 11 April 2022 confirms that both clubs involved in a transfer must respect the rules relating to solidarity contribution contained in the FIFA Regulations and that domestic solidarity contribution is entirely regulated by FIFA. This letter shows that Torino was obliged to deduct and distribute solidarity contribution, as provided for in the FIFA Regulations.

4. Unjust enrichment of Sampdoria

- a. In view of the clear rules (i.e. Annexe 5, Article 1, para. 1 of the RSTP), it is apparent that Sampdoria is not entitled to the overpaid amount (solidarity compensation). For this reason, this is a case of unjust enrichment.
- b. It is also clear from FIFA's commentary to the RSTP that such “100-5” cases entitle the new club that overpaid to a claim of unjust enrichment.
- c. Sampdoria is unjustly enriched and obliged to refund the overpaid amount to Torino.

47. Based on the above submissions, Torino seeks the following reliefs:

“I. to review the present case as to the facts and to the law, in compliance with article R57 of the CAS Code;

II.

(i) to set aside the FIFA Decision, and issue a new decision:

*a) **CONFIRMING** that Sampdoria shall bear the financial burden of the solidarity contribution in connection with the transfer of the Player from Sampdoria to Torino;*

and, as a result,

b) **ORDERING** Sampdoria to reimburse to Torino any and all amounts paid or due to be paid by Torino to Lech Poznan as solidarity contribution in connection with the transfer of the Player from Sampdoria to Torino;

or alternatively,

(ii) *to set aside the FIFA Decision and*

c) **ORDER** FIFA to open a new procedure involving Sampdoria, Lech Poznań and Torino regarding the financial burden of the solidarity contribution in connection with the transfer of the Player from Sampdoria to Torino;

III. *to order the Second Respondent and Third Respondent to jointly bear all costs of these proceedings and to pay a contribution towards the legal fees of the Appellant pursuant to Article R64.5 of the CAS Code”.*

B. Lech Poznan’s Position

48. In its Answer, Lech Poznan does not make any detailed submissions as it states that its claim before the FIFA DRC has been satisfied by the payment of the full claimed amount by Torino. It has been stated that Lech Poznan is not a party to the dispute between Torino and Sampdoria but that the settlement of this dispute may affect the future payments to be made to Lech Poznan. Lech Poznan does not raise any objections to the claims and comments presented by Torino but requests the Panel “*to take into consideration the legitimate interest of Lech Poznań in the present proceeding, as Lech Poznań would like to avoid in the future the necessity to once again pursue its claim through FIFA DRC*”.

C. Sampdoria’s Position

49. Sampdoria’s submissions, in essence, may be summarised as follows:

1. No standing to be sued

- a. Sampdoria cannot legitimately be a party to the appeal as it was not a party to the proceedings before the FIFA DRC and learnt about it only during the present appeal proceedings.
- b. Sampdoria does not give its consent to participate in the present arbitral proceedings. Sampdoria cannot be compelled to participate in the present proceedings.
- c. Under Swiss law, the defending party has standing to be sued only if it is personally obliged by the “disputed right” at stake.
- d. Since the proceedings before the FIFA DRC were (i) not directed against Sampdoria; (ii) did not deal with Sampdoria’s conduct; and (iii) were solely meant to establish the

obligation of Torino as the new club of the Player to pay the solidarity contribution to Lech Poznan as per the RSTP, Sampdoria has no standing to be a party to the present appeal.

- e. The rights of Sampdoria were not the object of the dispute before the FIFA DRC and neither were they anyhow concerned by the Appealed Decision.
- f. The FIFA Statutes and regulations and/or the CAS Code do not contain any specific procedural provisions that would allow Torino to join and/or implead Sampdoria by a process analogous to a third-party notice.

2. Torino has no legitimate interest

- a. According to Article 59 para. 2 lit. a) and Article 60 of the Swiss Code of Civil Procedure (“SCCP”), the appealing party must have a legitimate interest worthy of protection to the annulment of the decision under appeal and the court shall examine *ex officio* whether the procedural requirements are satisfied.
- b. Lack of legitimate interest leads to the appeal being inadmissible and not the dismissal of the appeal. The legitimate interest must already exist at the time the appeal is filed and shall be still there when the judgment is issued.
- c. According to the Swiss Federal Tribunal (“SFT”), if the legitimate interest that initially existed ceases to exist during the course of the process, in particular if the disputed claim is satisfied during the course of the process, the application becomes groundless and can no longer be admitted. (SFT 111 Ib 182, consid. 2a; SFT 109 II 165, consid. 2).
- d. Since Torino complied with the Appealed Decision and is not disputing the operative part of the decision, Torino does not have a legitimate interest in appealing against this decision.
- e. Torino did not address a single request against Lech Poznan who is the beneficiary of the Appealed Decision.

3. Torino has not substantiated the Appeal

- a. As per Article 55 para. 1 of the SCCP and Article 8 of the Swiss Civil Code, there is an obligation on Torino to substantiate its case and prove its arguments. Torino has failed in this regard.
- b. As per the SFT (cf. SFT decision 4A_443/2017 of 30.04.2018, consid. 2.1 or SFT 136 III 322, consid. 3.4.2.), it is sufficient for the facts to be explained at a high-level using everyday language. This may be common and acceptable for simple facts but it fails especially in complex technical contexts, particularly with international circumstances and different legal systems applicable. In such a situation, each individual element of the chain becomes an independent fact that has to be asserted,

substantiated and proven for itself.

- c. If a party fails to comply with this obligation to substantiate, so that the court ultimately cannot subsume the facts under the relevant legal norm and take the evidence, the resulting consequence is that the action must be dismissed by a factual judgment without conducting evidentiary proceedings.
- d. Torino, as the appellant, has not adequately discharged its burden of substantiation:
 - Torino did not submit the transfer contract signed with Sampdoria.
 - Torino did not submit any regulations regarding the functioning of the Italian clearing house system for domestic transfers.
 - Torino did not submit any evidence regarding the alleged contact made with Lech Poznan and the FIGC.
 - Torino did not submit any evidence that it has requested the FIFA DRC to include Sampdoria in the first instance procedure and how such request was formulated.
 - Torino did not file English translations for certain evidence.
 - Torino did not specify the amount claimed (as per Article 94 para. 2 of the SCCP).

4. *Lack of FIFA's jurisdiction*

- a. FIFA neither had a legal basis nor did it have jurisdiction to consider the alleged dispute between Sampdoria and Torino in relation to the transfer of the Player.
- b. Pursuant to Article 22 lit. d) and e) of the RSTP, FIFA is competent to hear disputes relating to the solidarity mechanism between clubs belonging to different associations or disputes between clubs belonging to the same association, provided that the transfer of the player at the basis of the dispute occurs between clubs belonging to different associations. None of these conditions were met in the present case.
- c. Contrary to what Torino claims, the present case is not comparable to cases in which the adjudicating body has previously called a party into a proceeding. The FIFA communication in case TMS 8832 submitted by Torino represents solely the opinion of the case-handler in that case and is not a final decision of a competent FIFA body.
- d. Unlike in case TMS 8832, Torino did not “omit to deduct” the solidarity contribution in the present case but acted in conformity with the applicable regulations of the national association by paying 100% of the transfer compensation to Sampdoria and by paying solidarity contribution to Lech Poznan in addition to 100% of the transfer compensation.
- e. The FIFA procedural rules do not provide for the possibility of a third-party action and therefore it was not possible for FIFA to consider the inclusion of Sampdoria in

the first instance procedure due to a lack of legal basis.

5. Torino obligated to pay solidarity contribution

- a. As per Article 2 para. 1 of Annexe 5 of the RSTP, it is the new club's responsibility to pay the solidarity contribution to the training clubs of the Player.
- b. Torino has confirmed its obligation to distribute the relevant solidarity contribution and the obligation according to the Italian "clearing house system" to compulsorily pay to Sampdoria 100% of the transfer compensation.
- c. The FIGC Regulations do not provide the possibility to shift the financial burden of Torino's obligation to Sampdoria. As per Article 1 para. 2 of the RSTP, FIGC is the football association authorized and responsible to establish the regulations with respect to arrangement of the transfers at the Italian national level. Article 21 of the RSTP and Annexe 5 are not specified in Article 1 para. 3 of the RSTP lit. a) as mandatory to include without modification in national associations' regulations. FIGC therefore has the power and the prerogative to put in place a system within the Italian "clearing house" where the full amount of the transfer compensation is payable without any deductions. The logical consequence is that the solidarity contribution is due in addition to the transfer compensation. FIGC decided to introduce a "100+5%" procedure in contrast to the "100-5%" procedure of the RSTP.
- d. The Italian "clearing house" system has at all times remained the same, both before 1 July 2021 as well as afterwards. The FIGC circular letter of 30 June 2021 has therefore only specified for the new season, the approach which was already in force in the previous season, just for clarification purposes.
- e. There was no need for Sampdoria and Torino to agree on the transfer compensation being net of solidarity contribution as all transfers between two Italian clubs are conducted on that basis due to the "clearing house" system. This means that every amount due to a third club as solidarity contribution shall be paid by the acquiring club in addition to the transfer compensation. This approach was already existing in Italy and the FIGC circular of 30 June 2021 endorsed this. This circular did not introduce any new rule but it has specified what the Italian clubs already knew and applied before. This practice existed since the enforcement of the Italian "clearing house" and it was the standard approach when FIFA introduced solidarity payments for domestic transfers.
- f. In general, the parties to a transfer contract have the faculty to decide if the acquiring club shall be able to deduct the solidarity contribution from the transfer compensation. In Italy, however, for domestic transfers, the clubs do not have this faculty simply because FIGC has decided that the transfer compensation shall always be credited to 100% to the selling club without deductions.

- g. Torino did not “forget” to deduct the solidarity contribution and so, the FIFA Commentary on the RSTP quoted by Torino is not relevant. Sampdoria and Torino simply acted in accordance with the applicable Italian regulations. As such, there is no unjust enrichment.

50. Sampdoria seeks the following reliefs in these proceedings:

“1. To establish that Sampdoria has no standing to be sued in the present procedure;

2. To dismiss the claims of Torino against Sampdoria;

In the event that above is not accepted,

3. To establish that Torino has no legitimate interest in the present procedure;

4. To decide that Torino's appeal is inadmissible;

In the event that above is not accepted,

5. To dismiss or reject the appeal;

6. To uphold the Challenged Decision;

And under all circumstances,

7. To condemn Torino to the payment in favour of Sampdoria of all the legal expenses incurred;

8. To establish that the costs of the arbitration procedure shall be borne by Torino”.

D. FIFA’s Position

51. FIFA’s submissions, in essence, may be summarised as follows:

- a. Considering the well-established jurisprudence of the FIFA DRC, as well as the fact that there is no evidence that Torino and Sampdoria agreed that Sampdoria will carry the burden of payment of the solidarity contribution, there is no room for deviation from the clear wording of Article 1 para. 1 of Annexe 5 of the RSTP which states that the amount shall be deducted and distributed by the new club.
- b. There are two possible scenarios: (i) where the new club requests FIFA to involve the previous club in FIFA DRC proceedings, the FIFA DRC can render a decision ordering the former club to reimburse the solidarity contribution that it received from the new club as a transfer or loan fee; and (ii) where the new club submits that the previous club committed itself to pay the solidarity contribution but does not specifically request for a potential reimbursement, FIFA may suggest that the new club lodge a claim against the former club before the FIFA Players’ Status Chamber. Neither of these scenarios apply when the clubs belong to the same national

association.

- c. Since Sampdoria and Torino belong to the same association, FIFA was not competent to hear the dispute under Article 22 lit. f) of the RSTP or any other provision of the RSTP. A claim of reimbursement of the amounts solely concerns the club that is requesting the reimbursement and the club from whom the reimbursement is requested. For this reason, it is irrelevant here that the origin of the dispute is the solidarity compensation payable to Lech Poznan. Since in the present case the two clubs are from the same country, the dispute is solely of a national dimension and, thus, FIFA is not competent to decide on such claim. The fact that this case has a connection to a foreign club is not sufficient to satisfy the requirements of Article 22 lit. f) of the RSTP.
- d. In line with the constant jurisprudence of FIFA and CAS, when the dispute has a national or internal nature *“the rules and regulations of the association concerned must be applied to the matter and the deciding bodies in accordance with the relevant provisions are to rule on the issue”* (cf. CAS 2016/A/4441). In this respect, it is worth recalling that CAS has also confirmed that *“it is a necessary precondition for an effective and dynamic dispute resolution model in the world of football that the competence of FIFA and the competence of its member associations are perfectly defined and respected in order, inter alia, to protect the autonomy of the national associations”* (cf. CAS 2016/A/4441). If FIFA decided to deal with this dispute, the internal competence of the FIGC could have been violated.
- e. Torino was aware that the dispute falls within the FIGC’s sphere of competence and outside FIFA’s. FIFA cannot decide to hear domestic disputes just because Torino deems that the intervention of the FIFA DRC represents “the only remedy”. Torino has several options at its disposal such as the FIGC, or any other national body or court entitled to deal with such disputes.
- f. Torino has called Lech Poznan to be part in the present proceedings with the only intention of artificially creating an international dimension. Lech Poznan does not have any stake in the present dispute and this corroborates that the true intention of Torino is that FIFA ends up resolving a dispute that has an exclusive national nature.
- g. Torino’s reference to the previous case TMS 8832 (which is a typo and the actual reference is 8546) is misplaced as in that case, the two clubs involved were of two different national associations.

52. FIFA submits the following prayers for relief in its Answer:

- “a. To reject the reliefs sought by the Appellant;*
- b. To confirm the Appealed Decision;*
- c. To order the Appellant to bear the full costs of these arbitration proceedings;*
- d. To order the Appellant to make a contribution to FIFA’s legal costs”.*

IV. JURISDICTION

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

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

54. The jurisdiction of CAS derives from Article 57 para. 1 and 2 of the FIFA Statutes which states that:

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

2. Recourse may only be made to CAS after all other internal channels have been exhausted”.

55. The jurisdiction of CAS is not contested and is further confirmed by the Order of Procedure duly signed by all Parties.

56. It follows that CAS has jurisdiction to adjudicate and decide on the present dispute.

V. ADMISSIBILITY

57. 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 of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late”.

58. In accordance with Article R49 of the CAS Code and Article 57 para. 1 of the FIFA Statutes, the time limit for filing the appeal is 21 days. The present appeal was filed within this deadline since Torino received the grounds of the Appealed Decision on 28 January 2022 and filed its Statement of Appeal on 18 February 2022. The Appeal complied with all other requirements of Article R48 CAS Code, including the payment of the CAS Court Office fee, and is therefore admissible.

59. While the Respondents do not contest the jurisdiction of the CAS in relation to the appeal filed by Torino, Sampdoria disputes the admissibility of the appeal in this case.

60. The Panel initially notes that, pursuant to Article 59 para. 1 of the SCCP, “[t]he court shall consider an action or application provided the procedural requirements are satisfied”. Furthermore, Article 59 para. 2 lit. a) of the SCCP sets out the procedural requirement that “the claimant has a legitimate interest”, which, pursuant to Article 60 of the SCCP, “[t]he court shall examine ex officio whether the procedural requirements [of Article 59 SCCP] are satisfied”.

61. Furthermore, the Panel notes that such a legitimate interest must already exist at the time the appeal is filed and must still exist when the judgment is issued, as confirmed by the SFT (cf. SFT 146 III 416, consid. 7.4; SFT 111 Ib 182, consid. 2a; SFT 109 II 165, consid. 2). If a legitimate interest that initially existed ceases to exist during the course of the process, the application or appeal becomes groundless and is to be dismissed as without relevance (*als gegenstandslos abgeschrieben*).
62. Sampdoria submits that since Torino complied with the operative part of the Appealed Decision during these appeal proceedings, it has no legitimate interest in contesting the Appealed Decision. Sampdoria further submits that the appeal was never sufficiently substantiated. Based on that, Sampdoria requests the Panel to establish that the appeal is inadmissible. However, the Panel notes that, based on Torino's submissions, it understands that the appeal is (at least in essence) directed against the findings of the FIFA DRC on whether or not to include Sampdoria in the proceedings before the FIFA DRC.
63. In this regard, Torino did, in fact, request FIFA to include Sampdoria as a party to the FIFA DRC proceedings as a party and to order the said club to reimburse it for the relevant proportion of the transfer compensation that was not deducted for the solidarity contribution. However, such a request was not upheld by the FIFA DRC since, *inter alia*, as explained by FIFA during these proceedings, the dispute between Torino and Sampdoria fell outside the competence of the FIFA DRC. As such, the Panel finds that the primary scope of the appeal is in fact the alleged jurisdiction of the FIFA DRC.
64. Based on the above, the Panel finds that Torino indeed has a legitimate interest with regard to the question concerning the competence of the FIFA DRC, which falls within the scope of the appeal. As such, it follows that the Appeal is admissible.

VI. APPLICABLE LAW

65. Article R58 of the CAS Code provides as follows:
"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".
66. Article 56 para. 2 of the FIFA Statutes states that:
"The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law".
67. Finally, it follows from Article 26 para. 2 of the RSTP that disputes regarding, *inter alia*, the solidarity mechanism *"shall be assessed according to the regulations that were in force when the contract at the centre of the dispute was signed, or when the disputed facts arose"*.

68. Accordingly, the applicable regulations in the present case are the FIFA Regulations, in particular the August 2020 edition of the RSTP and, subsidiarily, Swiss law. The Panel notes that the Parties agree that these are the applicable regulations.

VII. PRELIMINARY ISSUES

69. The Panel notes that on 13 April 2022, Torino filed certain additional documents citing Article R56 of the CAS Code. The Respondents were provided the opportunity to comment on this issue in their respective Answers. FIFA did not comment on this issue at all and Sampdoria and Lech Poznan, in turn, have stated that they have no objections. Accordingly, the Panel decides that these additional documents shall be admitted on file.
70. On 26 September 2022, Torino submitted a request seeking permission to (i) allow Mr. Bernardelli, General Secretary of Torino to make a “party statement” explaining the clearing house system; and (ii) provide English translations of certain documents provided along with the Appeal Brief. The Panel notes that Torino ultimately withdrew the first request regarding Mr. Bernardelli and as such, this issue need not be decided by the Panel.
71. The Panel notes that Sampdoria objected to admitting the translations filed by Torino on file citing Article R56 para. 1 of the CAS Code. Sampdoria stated that Torino did not invoke any exceptional circumstances that could justify submitting new evidence at a late stage of the procedure. Further, Sampdoria argued that since Torino’s case in the present proceeding is based on the alleged malfunctioning of the “clearing house”, Torino should have provided the translations of the regulations of the clearing house along with the Appeal Brief. The Panel notes that FIFA also expressed its objection to the translations being admitted on file.
72. As communicated to the Parties on 10 October 2022 by the CAS Court Office, the Panel decided that the translations filed by Torino are admissible. According to Article R56 para. 1 of the CAS Code, arguments that have already been made, may only be supplemented and/or further specified if the parties agree or if the President of the Panel orders this, provided that this is justified by exceptional circumstances. With regard to the present case, however, the translations submitted are the same submissions, which have already been submitted in time. Thus, it cannot be argued that an already existing submission has been supplemented or specified by further, new evidence.
73. The Respondents were provided the opportunity to comment on the accuracy of the said translations but did not express any objections in this regard. As such, the Panel shall treat the translations as accurate.
74. In summary, the documents filed by Torino on 13 April 2022 and 26 September 2022 are admissible.

VIII. MERITS

75. At the outset, the Panel notes that since the present appeal by Torino does not challenge the FIFA DRC's findings in the Appealed Decision on the amount of solidarity contribution due to Lech Poznan, this issue will not be considered by the Panel. The core question involved in the present dispute is whether the FIFA DRC was competent to decide on Torino's claim of reimbursement of the solidarity contribution from Sampdoria. If the Panel finds that the FIFA DRC was indeed competent to decide this issue, it would have to consider Torino's argument that the financial burden of paying solidarity compensation rests on Sampdoria. Additionally, the Panel notes that the issue of Sampdoria's standing to be sued is intrinsically linked with the aforesaid issue of jurisdiction of the FIFA DRC. However, the Panel can leave the question of whether or not Sampdoria has standing to be sued undecided if FIFA was in fact not competent to adjudicate on the dispute between Torino and Sampdoria.

76. In the Appealed Decision, the FIFA DRC stated that it does not have the competence to hear and decide on the dispute between Torino and Sampdoria. Article 22 of the RSTP provides for the various scenarios where FIFA would be competent to decide upon disputes:

"22. Competence of FIFA

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

- a) disputes between clubs and players in relation to the maintenance of contractual stability (articles 13-18) where there has been an ITC request and a claim from an interested party in relation to said ITC request, in particular regarding the issue of the ITC, sporting sanctions or compensation for breach of contract;*
- b) employment-related disputes between a club and a player of an international dimension; the aforementioned parties may, however, explicitly opt in writing for such disputes to be decided by an independent arbitration tribunal that has been established at national level within the framework of the association and/or a collective bargaining agreement. Any such arbitration clause must be included either directly in the contract or in a collective bargaining agreement applicable on the parties. The independent national arbitration tribunal must guarantee fair proceedings and respect the principle of equal representation of players and clubs;*
- c) employment-related disputes between a club or an association and a coach of an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings exists at national level;*
- d) disputes relating to training compensation (article 20) and the solidarity mechanism (article 21) between clubs belonging to different associations;*
- e) disputes relating to the solidarity mechanism (article 21) between clubs belonging to the same association provided that the transfer of a player at the basis of the dispute occurs between clubs belonging to different*

associations;

f) *disputes between clubs belonging to different associations that do not fall within the cases provided for in a), d) and e)*”.

77. The Panel notes that a plain reading of this provision makes it clear that the present fact situation is not covered directly within this provision. During the hearing, Torino’s counsel made it clear that Torino seeks to establish jurisdiction of the FIFA DRC over this dispute under Article 22 lit. e). In fact, the Panel understands that Torino acknowledges that the current wording of Article 22 lit. e) of the RSTP does not cover the present dispute but seeks the expansion of the said provision to include the present fact situation. In this regard, Torino points to case TMS 8546 wherein a third-party club was invited by FIFA in a dispute allegedly similar to the present one. Based on this Torino argues that there is longstanding FIFA jurisprudence which can be used to expand the jurisdiction of FIFA.

78. The Panel notes that Torino’s primary argument is that there is a *lacuna* in the relevant provisions in the RSTP regarding FIFA’s competence to resolve disputes. Torino argues that since FIFA introduced solidarity contribution for domestic transfers, it has to also take responsibility for adjudication of disputes in relation to this. Torino relies on a letter issued by FIGC on 11 April 2022 to argue that FIGC has indicated that it does not have jurisdiction over the dispute. In response, FIFA has stated that this is not a *lacuna* but an intentional decision that FIFA will not assume jurisdiction over such disputes and will instead, let the concerned national federations resolve them. FIFA argues that its involvement in such domestic disputes would be interference in the relevant national federations’ competence. FIFA clarified that the TMS case cited by Torino involved clubs from different national associations. FIFA also states that the FIGC’s letter relied on by Torino does not state that they do not have competence to deal with the dispute. FIFA argues that it is not for CAS to decide which type of dispute FIFA should exercise jurisdiction over.

79. The Panel does not find Torino’s arguments to be convincing. While it may be the case that there was some scope for confusion with regard to the appropriate adjudicatory body in this case, the Panel cannot agree with Torino’s contention that CAS should expand the jurisdiction of the FIFA DRC to ensure that its dispute is adjudicated. This is especially so, considering that Torino has not attempted to approach any national body within Italy to adjudicate this issue. During the hearing, Sampdoria confirmed that there is indeed a national arbitration tribunal that deals with claims at the national level in Italy. Torino did not deny this or explain why it did not approach this body to resolve this dispute. Torino referred to a letter dated 11 April 2022 from Mr. Marco Brunelli, General Secretary, FIGC, but the Panel does not see anything within that letter which excludes the FIGC or any national body from having jurisdiction over this dispute. In the Panel’s opinion, Torino did not provide sufficient evidence to establish that the FIFA DRC was the “only remedy” for Torino and in the absence of any denial by a national body to adjudicate the dispute, there is no reason for CAS to intervene and expand FIFA’s jurisdiction.

80. The Panel finds that, as FIFA argued, in order to protect the autonomy of national

associations, it is necessary that FIFA does not get involved in decision making in areas which are purely within the control of a national association as per existing regulations. In the present case, if FIFA were to hear and decide on the dispute between Torino and Sampdoria, it would be impeding on the FIGC's internal competence as there is no basis for FIFA's competence in the RSTP. This finding also follows from the fact that, according to the relevant FIFA regulations, it is clearly allocated to the competence of the national associations (here FIGC) to issue regulations on the handling of purely domestic transfers (cf. Article 1 paras. 2 and 3 of the RSTP).

81. Until an amendment is made in the relevant provisions of the RSTP or any other applicable regulations, the competence to decide on a dispute such as the present one remains with the relevant national association and not with FIFA. As such, the Panel finds that the FIFA DRC was correct in holding that it did not have competence to adjudicate on Torino's request for reimbursement by Sampdoria of the solidarity contribution.
82. The Panel notes that the above finding does, in no way, affect Torino's right to approach any relevant national or international body, to resolve its claim of reimbursement against Sampdoria. Rather, it is the logical consequence of this. It is also open to Torino to approach the relevant stakeholders in football to address the alleged *lacuna* in the RSTP.
83. Having come to the conclusion that the FIFA DRC did not have the competence to adjudicate on Torino's claim against Sampdoria, the Panel need not consider the arguments put forward by Torino with regard to the merits of its claim. The Panel further notes that due to the result arrived at by the Panel, the issue of standing to be sued raised by Sampdoria need not be considered.

Conclusion

84. Based on the foregoing, the Panel finds that:
 - i) Torino has a legitimate interest and substantiated its appeal.
 - ii) FIFA DRC was not competent to decide Torino's solidarity contribution reimbursement claim against Sampdoria.
85. Based on the above conclusions, 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 18 February 2022 by Torino Football Club S.p.A. against the decision of the FIFA Dispute Resolution Chamber dated 13 November 2021 is dismissed.
2. The decision rendered by the Dispute Resolution Chamber of the FIFA Football Tribunal on 11 February 2022 is confirmed.
3. (...).
4. (...).
5. All other and further motions or prayers for relief are dismissed.