



Arbitration CAS 2022/A/8881 Iván Santiago Diaz v. MŠK Žilina, award of 28 November 2023

Panel: Mr András Gurovits (Switzerland), Sole Arbitrator

Football

Employment-related dispute

Choice of law and applicable law

Ambiguous choice of law provision in employment contract with an international dimension

Validity of waiver of remaining salaries and duress under Article 21 SCO

Ascertainment of content of foreign law

1. According to Article 187 para. 1 of the Swiss Federal Act on Private International Law (PILA) and legal doctrine, the choice of law made by the parties can be tacit and/or indirect, by reference to the rules of an arbitral tribunal. By agreeing to arbitrate a dispute according to the CAS Code, the parties have entered into a choice-of-law agreement, and have also agreed to submit to the conflict-of-law rules contained therein. The conflict-of-law provision in the CAS Code is Article R58, which, essentially, provides that the dispute shall be decided first and foremost according to the “*applicable regulations*”. In CAS appeal proceedings against decisions by FIFA judicial bodies the applicable regulations within the meaning of Article R58 of the CAS Code are the regulations of FIFA. Article 56 para. 2 of the FIFA Statutes provides that in case of an appeal before the CAS, the CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law.
2. In case an international employment contract between a football player and a club contains a contradictory choice of law provision (*e.g.* for a foreign law) which does not allow for a clear conclusion as to the parties’ will in respect of the applicable law, taking into account the statutory framework of FIFA regarding disputes between clubs and players with respect to employment contracts with an international dimension, the FIFA Statutes and Regulations shall apply, as foreseen in the FIFA Statutes. Swiss law shall apply subsidiarily.
3. Duress within the meaning of Article 21 of the Swiss Code of Obligations (SCO) requires a manifest disparity between performance and consideration; in addition, the party concerned must have been in straitened circumstances and the other party must have exploited the vulnerability of such party. In circumstances where, following the termination of an employment contract, the player’s old club – without having (or having raised) any claims against the player and without having any reasons to refuse the player’s registration with a new club by which the latter has an offer – requests the player, prior to providing the necessary confirmation of the player’s registration, to sign a document entitled ‘Reconciliation of Receivables’ and stating expressly that the old club would not provide its confirmation of the player’s registration with his new club

unless the player waived his claims against the old club for all unpaid salaries under his former contract, this may constitute “duress” within the meaning of Article 21 of the SCO. As a consequence the Reconciliation of Receivables is invalid.

4. In case foreign law is applicable, pursuant to Article 16 PILA, a CAS panel may request the parties to co-operate in ascertaining the relevant content of the law applicable to the merits. Should the parties fail to establish said content, Swiss law applies.

I. THE PARTIES

1. Mr Iván Santiago Díaz (the “Appellant” or the “Player”) is a professional football player of Argentinian nationality.
2. MŠK Žilina, a.s. (the “Respondent” or the “Club”) is a professional football club in Slovakia, which is affiliated with the Fédération Internationale the Football Association (“FIFA”), the governing body of football with its headquarters in Zurich, Switzerland.

II. THE FACTS

3. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the Appellant and the Respondent (the “Parties”) 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 and is without prejudice to any subsequent finding of fact by the Sole Arbitrator in this proceeding. Additional facts may be set out, where relevant, in connection with the legal discussion.
4. On 16 September 2017, the Player and the Club entered into a ‘Contract on Professional Performance of Sport’ (the “Contract”) with a duration from 1 October 2017 until 31 December 2020.
5. Pursuant to Article II para. 2) let. c of the Contract, the Player was to receive a basic monthly salary of EUR 10’000 net in the period from 1 July 2019 until 31 December 2020. The salary was payable on the 15th day of each following month.
6. Article VI para. 3) let. a of the Contract provides that in *“case the Player fails to meet the obligations arising from the Contract as well as in case of weak and reckless performance of the Player”* the Club has the right to *“1. decrease the basic monthly salary after the prior written notice from the Club, 2. Decrease the basic monthly salary up to 50% for the breach of conditions stated in the article IV sec. 1 of the present contract, 3. Reclassify the Player to the B team of the club with adequate decrease of the basic monthly salary”*. Pursuant to Article VI (3) (b) of the Contract, the Club was, under the aforementioned conditions, also entitled to *“terminate the present contract with immediate effect in accordance with § 42 sec. 1 of the act no. 440/2015 Coll. On Sport”*.

7. By letter dated 11 August 2020, the Club informed the Player *“that as a consequence of your reclassification to the B team of the Club as of 01 July 2020 your monthly salary as July 2020 will be reduced by 50%”*.
8. On 21 January 2021, the Player lodged a first claim with the FIFA Dispute Resolution Chamber (the “FIFA DRC”) requesting payment of EUR 30’000 net corresponding to half of his salaries between July 2020 and December 2020.
9. On 8 March 2021, the Player signed a document headed ‘Reconciliation of Receivables’ (the “Reconciliation of Receivables”) that was written on the Club’s letterhead. It provided, among others: *“2) The Player required amateur status on 18 February 2021 and would like to be registered with new club ŠKF Sereď [...] although the Player and the new club would like to file second official request for registration of the Player with Registration Department of the Slovak FA, the Club informed the Player that it shall confirm such request only after the Player signs and confirms content of this letter of Reconciliation of Receivables. 3) Provided that the Club confirms the request of the new club and the Player for his registration in the new club, this reconciliation comes into effect and upon which any and all rights, obligations and duties arising from the Contract due to the Player by the Club including any and all monetary obligations are fulfilled, and the Player has no further demands or receivables due from the Club”*.
10. On 12 March 2021, the Player withdrew his first claim before the FIFA DRC.
11. On 17 September 2021, the Player lodged his second claim before FIFA, requesting payment of EUR 30’000 net corresponding to half of his salary between July 2020 and December 2020, plus 5% late payment interest.
12. The FIFA DRC held that it was competent to hear the case between the Player and the Club as the latter had failed to establish that a dispute resolution chamber existed in Slovakia that would fulfil the requirements under Article 22 para. 1 let. B) of the FIFA Regulations on the Status and Transfer of Players (the “RSTP”) and because the dispute at hand was an employment-related dispute between a player and a club of an international dimension within the meaning of Article 22 para. 1 let. b) of the FIFA RSTP.
13. In respect of the merits of the case, the FIFA DRC held that on 8 March 2021 the Player had signed a document, pursuant to which he had validly waived his entitlement for outstanding salary payments. It further held that the Player had not provided sufficient evidence which supported his contention that he had been under straitened circumstances when signing the waiver and that the Club could have blocked the Player’s registration with a new club based on the regulations of the Slovak Football Association. On account of the foregoing, the FIFA DRC concluded that the Player had waived his entitlement.
14. The FIFA DRC, as a consequence, rejected the Player’s claim and passed its decision on 24 March 2022 (the “Appealed Decision”), which was communicated to the Parties with grounds on 28 April 2022.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

15. On 16 May 2022, the Player filed with the Court of Arbitration for Sport (the “CAS”) a Statement of Appeal against the Club with respect to the Appealed Decision, pursuant to Article R48 of the Code of Sports-related Arbitration (2020 edition; the “CAS Code”). The Statement of Appeal *inter alia* requested that this dispute be referred to a sole arbitrator and included an application for legal aid, as well as requested that the Appeal Brief deadline be suspended pending the decision on the Appellant’s application for legal aid.
16. On 19 May 2022, the CAS Court Office initiated the present arbitration proceeding and transmitted the Statement of Appeal to the Respondent.
17. On 24 May 2022, the Respondent objected to the suspension of the Appeal Brief deadline pending the issuance of a decision on the Appellant’s application for legal aid.
18. On 26 May 2022, the Respondent *inter alia* agreed that the dispute be referred to a sole arbitrator and that English be designated as the language of the proceeding.
19. On 30 May 2022, the CAS Court Office informed the Parties, *inter alia*, that further to Article R32 of the CAS Code, the Division President of the CAS Appeals Arbitration Division had decided to suspend the Player’s deadline to file his Appeal Brief until his application for legal aid was decided by the CAS Legal Aid Commission.
20. On 2 June 2022, FIFA stated that it did not request to intervene in the proceeding further to Article R41.3 of the CAS Code, and provided a clean copy of the Appealed Decision to the CAS Court Office.
21. On 28 June 2022, the CAS Court Office informed the Parties that a confidential Order the Appellant’s Request for Legal Aid had been issued to the Player on that date and that, accordingly, the Appeal Brief deadline was no longer suspended.
22. On request of the Player, on 18 July 2022, the CAS Court Office granted the Player an extension of the deadline to submit the Appeal Brief by ten days further to Article R32 of the CAS Code, and on 21 July 2022, the CAS Court Office granted the Player another extension by twenty days in light of the Respondent’s non-objection to such request.
23. On 17 August 2022, the CAS Court Office informed the Parties that the Player had submitted a request for Reconsideration of his Application for Legal Aid and had requested a suspension of the proceedings (including the Appeal Brief deadline) pending the outcome of his Request for the Reconsideration of the Application for Legal Aid. The Respondent was invited to indicate by 24 August 2022 whether it objected to the Player’s request for a suspension of the proceedings and was informed that the Respondent’s silence in this regard would be deemed acceptance of the Player’s request.
24. On 29 August 2022, the CAS Court Office informed the Parties that the Respondent had not responded to the CAS Court Office’s 17 August 2022 letter and that therefore the proceedings had been suspended until further notice from the CAS Court Office.

25. On 2 November 2022, the CAS Court Office informed the Parties that the proceedings were no longer suspended and granted the Player a deadline until 4 November 2022 to file the Appeal Brief.
26. On 9 November 2022, upon request and in light of the absence of objection by the Respondent, the CAS Court Office granted the Player a new deadline of until 11 November 2022 to file the Appeal Brief.
27. On 10 November 2022, the Player filed the Appeal Brief in accordance with Article R51 of the CAS Code. On the same day, the CAS Court Office notified the Appeal Brief to the Respondent, granting a 20-day deadline to the Respondent to submit the Answer in accordance with Article R55 of the CAS Code.
28. On 8 December 2022, the CAS Court Office informed the Parties that the CAS Court Office had not received the Respondent's Answer and granted the latter a deadline of 13 December 2022 to inform the CAS Court Office whether it had filed the Answer within the prescribed deadline and if so, to provide proof of shipment of the Answer.
29. By letter of 14 December 2022, the CAS Court Office granted the Parties a deadline of 21 December 2022 to inform the CAS Court Office whether they preferred a hearing to be held or for the Sole Arbitrator to issue an award based solely on the Parties' written submissions.
30. On 15 December 2022, the CAS Court Office informed the Parties that the Deputy President of the CAS Appeals Arbitration Division had appointed Dr András Gurovits, Attorney-at-law in Zurich, Switzerland, as Sole Arbitrator in this proceeding, further to Article R54 of the CAS Code.
31. On 22 December 2022, as neither of the Parties had provided their position with respect to whether they requested a hearing, the CAS Court office granted the Parties another deadline of 5 January 2023 to provide their position with respect to a hearing.
32. On 29 December 2022, the Player informed the CAS Court Office that his preference was for the Sole Arbitrator to issue an award solely based on the written submissions.
33. On 6 January 2023, as the Respondent had again failed to respond within the respective deadline, the CAS Court Office granted the Respondent a third and last deadline of 13 January 2023 for the Respondent to express its position regarding a hearing.
34. On 16 January 2023, the CAS Court Office informed the Parties that the Respondent had still not provided the CAS Court Office with its position in regard of a hearing, and that the last and final deadline provided for to it had lapsed.
35. On 18 January 2023, the CAS Court Office informed the Parties that the Sole Arbitrator had deemed himself sufficiently well-informed and had decided to issue an award solely on the basis of the Parties' written submissions, further to Article R57 of the CAS Code.

36. On 10 February 2023, the Respondent sent a letter referring to the CAS' decision of 24 May 2022 to suspend the deadline for the submission of the Appeal Brief and complained about the length of the suspension that, according to the Respondent, had lasted, as per 10 February 2023, for 262 days.
37. On 13 February 2023, the CAS Court Office reminded the Parties that all correspondence from the CAS Court Office to date had been sent to the email addresses that, *inter alia*, the CAS' letter of 24 May 2022 had been sent to. As a courtesy, the CAS Court Office enclosed a copy of all correspondence in this case as from 24 May 2022.
38. On 28 February 2023, the Respondent registered for the CAS E-filing Platform for this proceeding.
39. On 1 March 2023, on behalf of the Sole Arbitrator and further to *inter alia* Article R44.1 of the CAS Code, the CAS Court Office invited the Parties to express their position regarding the applicable laws in this case. The Appellant replied on 8 March 2023, while the Respondent submitted its response on 16 March 2023.
40. On 17 March 2023, the Parties were invited to file their respective simultaneous reply to the other Party's submission on applicable law. The Appellant responded on 17 March 2023, and the Respondent replied on 3 April 2023.
41. On 19 April 2023, the Player returned the signed Order of Procedure.
42. On 25 April 2023, the Club returned the signed Order of Procedure.

IV. THE POSITIONS OF THE PARTIES

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

A. The Appellant

44. The Appellant submitted the following requests for relief and asked the CAS to:

“(vi) uphold the Appeal; and

(vii) set aside the decision of FIFA DRC issued on 24 March 2022 (findings) and notified to the parties with grounds on 28 April 2022; and

(viii) order MŠK Žilina, a.s., to pay to the Appellant, within 3 days as from the date of notification of the decision, the amount of 30.000,00 EUR/NET plus default interest of

- 5% p.a. of 5.000,00 EUR as of 16 August 2020 until effective day of payment;
- 5% p.a. of 5.000,00 EUR as of 16 September 2020 until effective day of payment;
- 5% p.a. of 5.000,00 EUR as of 16 October 2020 until effective day of payment;
- 5% p.a. of 5.000,00 EUR as of 16 November 2020 until effective day of payment;
- 5% p.a. of 5.000,00 EUR as of 16 December 2020 until effective day of payment;
- 5% p.a. of 5.000,00 EUR as of 16 January 2021 until effective day of payment;

(ix) order MŠK Žilina to pay the CAS costs of arbitration in amount of 100%; and

(x) order MŠK Žilina to pay contribution toward legal fees of the Appellant in amount of CHF 25.000”.

45. In support of the above, the Appellant has submitted, in essence, the following.

a) As to the facts

46. The Player was registered with the Club based on the Contract that was effective as from 1 October 2017 until 31 December 2020. As from 1 July 2019 onwards, the Player was to receive a monthly salary of EUR 10'000 net. The Club was to pay the monthly salary by no later than the 15th day of the following month.
47. The Club complied with its payment obligations until June 2020. On 3 August 2020, however, the Player received a text message from the coach of the Club informing the Player that he could not train with the B team, but only individually. On 13 August 2020, the Player received a letter, dated 11 August 2020, from the Club informing the Player that as a consequence of his reclassification to the B team as of 1 July 2020 his monthly salary would be reduced by 50% until further notice.
48. On 13 August 2020, the Player sent a ‘First Notice of Breach of Contract’ to the Club challenging his reclassification to the Club’s B team as well as the salary cut; he requested his immediate reinstatement with the first team.
49. The Club replied by letter, dated 18 August 2020, and explained that under the terms of the Contract the Club was entitled to reduce the salary and that the Contract did not specify to which team the Player shall be assigned. The assignment was, according to the Club, in the full discretion of the Club.
50. On 31 December 2020, the Contract expired pursuant to its relevant terms.
51. On 6 January 2021, the Player sent a ‘Notice of Overdue Payment’ to the Club and requested payment by the Club of EUR 25'000 net, corresponding to 50% of his salary in the months July 2020 until November 2020. The salary for December 2020 was not yet due at that time. The Club responded by letter, dated 11 January 2021, and denied the existence of any claim of the Player against the Club.

52. On 19 January 2021, the Player filed his first claim with the FIFA DRC against the Club for payment of overdue salaries.
53. As the Player was not able to find a new professional club during the winter 2021 transfer window, he agreed with the Slovak club ŠKF Sereď to join the club as a non-professional.
54. On 18 February 2021, the Slovak Football Association confirmed the “re-amateur” status of the Player. On the same day, the new club ŠKF Sereď applied for registration of the Player through the electronic registration system of the Slovak Football Association. While the Player promptly confirmed the transfer, the Respondent remained silent. As a consequence, the transfer of the Player to ŠKF Sereď could not be approved.
55. Also on 18 February 2021, the Player sent an email to a representative of the Club asking whether the Club would approve the transfer to a new club if the Player waived his rights against the Club. The Club’s representative responded “Yes, that is correct”.
56. On 22 February 2021, the club ŠKF Sereď sent a ‘Confirmation of Interest in Player Registration’ to the Slovak Football Association explaining, *inter alia*, that: (i) on 17 February 2021, ŠKF Sereď and the Player had agreed on a contract according to which the Player would be engaged by ŠKF Sereď until the end of the 2020/2021 season; (ii) that in order to effect the registration with his new club, the Player had requested his amateurization; and that (iii) ŠKF Sereď had received a note rejecting the registration of the Player on the grounds that the Respondent had not approved the registration of the Player with ŠKF Sereď within the respective deadline.
57. Also on 22 February 2021, the Player lodged an ‘Application for Interim Measures on Player Registration’ with the Dispute Resolution Chamber of the Slovak Football Association, requesting the registration of the Player with the status as an amateur player with ŠKF Sereď.
58. On 4 March 2021, the Dispute Resolution Chamber of the Slovak Football Association rejected the Player’s request for provisional registration.
59. On 8 March 2021, the Player signed the ‘Reconciliation of Receivables’ that was written on the Club’s letterhead. It provided, among others: “2) *The Player required amateur status on 18 February 2021 and would like to be registered with new club ŠKF Sereď [...] although the Player and the new club would like to file second official request for registration of the Player with Registration Department of the Slovak FA, the Club informed the Player that it shall confirm such request only after the Player signs and confirms content of this letter of Reconciliation of Receivables.* 3) *Provided that the Club confirms the request of the new club and the Player for his registration in the new club, this reconciliation comes into effect and upon which any and all rights, obligations and duties arising from the Contract due to the Player by the Club including any and all monetary obligations are fulfilled, and the Player has no further demands or receivables due from the Club*”.
60. On 11 March 2021, ŠKF Sereď filed another application for registration of the Player, which the Respondent promptly confirmed so that the Player could be registered with his new club.

61. On 17 September 2021, the Player lodged his second claim with the FIFA DRC against the Respondent for payment of overdue salaries.
62. On 24 March 2022, the FIFA DRC issued the operative part of the Appealed Decision denying the Player's request.

b) As to the merits

63. The legal framework applicable to the case at hand is the FIFA Statutes and Regulations. In addition, Swiss law shall apply subsidiarily in accordance with Article IX para. 1) of the Contract.
64. Article IX para. 1) of the Contract also provides that the determining law shall be the law of the Slovak Republic. However, the Appellant argued that this clause does not provide for a clear choice of law and, therefore, the FIFA Statutes and Regulations and Swiss law shall apply by default.
65. The FIFA DRC erred when it rejected the Player's claim. The Player had found himself in straitened circumstances created by the Slovak Football Association. These circumstances were exploited by the Club to force the Player to sign the Reconciliation of Receivables. There was a clear disparity between performance by the Player and consideration by the Club.
66. The Reconciliation of Receivables does not amount to a waiver of the Player's claims against the Club. It is rather merely a statement of untrue facts. For a waiver to be valid under Swiss law, it must contain a clear and unequivocal declaration by the party concerned. In respect of salaries due under an employment contract, a waiver only exists if it was unmistakable that the renouncing employee had indeed intended to waive his rights under applicable law.
67. In the present case, however, it clearly follows from the wording of the Reconciliation of Receivables that the Player never waived or renounced his right to receive his salary; it is only stated that the Club's "*obligations are fulfilled*" and the Player "*has no further demands or receivables due*" from the Club. The Reconciliation of Receivables document thus only states a fact. It states that the Respondent has fulfilled its obligations towards the Player, including monetary ones, arising under the Contract if the Club allowed the Player to be registered with the new club.
68. However, the Club failed to pay 50% of the Player's salary for the last six months of his Contract. Therefore, the statement according to which fulfilment of the Club's obligations is confirmed, is a false statement of facts and shall not be considered as a valid waiver or renouncement of rights to receive salary.
69. What is more, even if one were to conclude that the statements made in the Reconciliation of Receivables meet the criteria for a valid waiver of the Player's right to receive salary, it would have to be disregarded. It would violate applicable law as it was aimed at exploiting the straitened circumstances of the Player.
70. In particular, the Reconciliation of Receivables would violate Article 21 para. 1 of the Swiss Code of Obligations ("SCO"). A party, whose straitened circumstances were exploited by the

other party, may declare within one year that he or she will not honour the contract and demand restitution of any performance already made.

71. In order for Article 21 para. 1 of the SCO to apply in the present case, the Player: (i) must have been in straitened circumstances when he signed the Reconciliation of Receivables; (ii) the Club must have exploited the Player's vulnerability; and (iii) there must have been a clear disparity between performance and consideration. These conditions are fulfilled in the case at hand.
72. The factors demonstrating that the Player was indeed in straitened circumstances include, among others, the following: the Player was unemployed in the second half of the 2020/2021 season. During the short winter 2021 transfer window, he was not able to find a new professional club and was only able to sign a contract for non-professionals. While his request for re-amateurization was granted, the registration of the transfer with his new club ŠKF Sereď was denied because the Club had not approved it. The Club confirmed to the Player that it would only confirm the registration of his transfer to his new club if he waived his claims for payment of unpaid salary against the Club. The Player faced considerable time constraints as the spring part of the season was to start soon. He was, therefore, left with only two options – either to continue his claim with the FIFA DRC against the Club and accept that he could not play, or to sign the Reconciliation of Receivables document so that he could continue his career as a football player.
73. The Club exploited the Player's vulnerability, *i.e.* his unemployment and his need to sign up with a new club, as it withheld its confirmation of the registration of the Player's transfer to his new club. Pursuant to the pertaining rules of the Slovak Football Association, any registration of an amateur player must be confirmed by his former club; any silence or non-action of the former club is deemed a rejection of the application. Being conscious of this fact, the Club informed the Player that it would not confirm his registration as long as he did not waive his claims against the Club. It is obvious that there was no valid reason whatsoever for the Club not to confirm the Player's registration.
74. Finally, it is evident that there was a clear disparity between performance and consideration. There was no *quid pro quo* in signing the Reconciliation of Receivables. While the Player was to waive a claim of EUR 30'000, he did not receive anything in return, except what he should have been given to him anyway, *i.e.* consent to the registration, and thus free and unhindered access to a new employment.

B. The Respondent

75. The Respondent failed to submit its Answer and did not submit any requests for relief.
76. After the proceeding was initiated, the Respondent participated in the present proceedings. On 24 May 2022, it acknowledged receipt of the Statement of Appeal and objected to the Player's request for a suspension of his deadline to file the Appeal Brief pending the CAS' decision related to his request for Legal Aid. Furthermore, on 26 May 2022, the Respondent informed the CAS Court Office that it did not object to the appointment of a Sole Arbitrator, that it

agreed with the selection of English as the language of the proceedings and that it was not interested in submitting the dispute to CAS mediation.

77. Thereafter, however, the Respondent missed numerous deadlines granted by the CAS Court Office, including the deadline for lodging its Answer. The Respondent remained silent until 10 February 2023 when it complained about an allegedly inadequately long suspension of these proceedings.
78. On request of the Sole Arbitrator and further to *inter alia* Article R44.1 of the CAS Code, the Respondent expressed itself on the law applicable to the case at hand. The Respondent argues that pursuant to Article IV para. 1) of the Contract, the laws of the Slovak Republic shall apply.

V. JURISDICTION

79. In accordance with Article 186 of the Swiss Federal Act on Private International Law (“PILA”), the CAS has the power to decide upon its own jurisdiction.
80. Article R47 of the CAS Code states that “*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*”.
81. The Player did not express himself on the question of the jurisdiction of the CAS.
82. While according to the Appealed Decision, the Club had challenged the competence of the FIFA DRC to deal with the dispute, a challenge that the FIFA DRC rejected, the Club did not contest the jurisdiction of the CAS in the present proceedings.
83. The Sole Arbitrator noted that section 30 of the Appealed Decision provides that the FIFA DRC “*emphasized that in accordance with art. 22 par. 1 lit. b) of the Regulations on the Status and Transfer of Players, FIFA is, in principle, competent to hear an employment-related dispute between a club and a player of an international dimension*”, but also that “*the parties may explicitly opt in writing for such dispute to be decided by an independent arbitration tribunal that has been established at national level within the framework of the association and/or collective bargaining agreement*”. In section 31 of the Appealed Decision, the FIFA DRC went on to explain, however, that “*the Respondent failed to provide any documentary evidence which could prove that the NDRC of Slovakia meets the requirements established in art. 22 par. 1 lit. b) of the Regulations on the Status and Transfer of Players*”. For this reason, the FIFA DRC “*established that the Respondent’s objection towards the competence of FIFA to deal with the present matter must be rejected, and FIFA is competent [...] to consider the present matter as to the substance*”.
84. The Sole Arbitrator does not see any reason to deviate from these findings of the FIFA DRC. Given that the FIFA DRC was competent to hear the Player’s claim, Article 57 par. 1 of the FIFA Statutes applies, pursuant to which the Appealed Decision may be appealed against before the CAS within 21 days of receipt of the Appealed Decision.

85. The Appellant filed its appeal in application of the above provisions to the CAS and FIFA. In addition, both Parties signed the Order of Procedure confirming the jurisdiction of the CAS to hear the present dispute.
86. It follows from all of the above that the CAS has jurisdiction to decide the present dispute.

VI. ADMISSIBILITY

87. Article R49 of the CAS Code provides, *inter alia*, 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”.

88. The Appealed Decision was notified to the parties on 28 April 2022. The Appellant filed the Statement of Appeal on 16 May 2022, *i.e.* within the 21-day time limit. It follows that the appeal is admissible.

VII. APPLICABLE LAW

89. The Appellant argues that the FIFA Statutes and Regulations and, subsidiarily, Swiss law shall apply in the present case. The Respondent, on the other hand, is of the opinion that the laws of the Slovak Republic shall be applicable.
90. The starting point for determining the applicable law on the merits is – first and foremost – the *lex arbitri*, *i.e.*, the arbitration law at the seat of the arbitration. Since the CAS has its seat in Switzerland (Article S1 and Article R28 of the CAS Code), Swiss arbitration law applies. According to Article 176 para. 1 of the PILA, the provisions of Chapter 12 of the PILA for international arbitration proceedings shall apply if the place of residence and/or domicile of at least one party was outside Switzerland at the time of the execution of the arbitration agreement. It is undisputed that this prerequisite is fulfilled in the case at hand.
91. Article 187 para. 1 of the PILA stipulates in regard to the applicable law on the merits as follows:

“1 The arbitral tribunal shall rule according to the rules of law chosen by the parties or, in the absence of such choice, according to the law with which the action is most closely connected.

2 The parties may authorize the arbitral tribunal to decide ex aequo et bono”.

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

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

93. The conflict-of-law provision in the CAS Code is to be found in Article R58 of the CAS Code, which provides as follows:

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

94. Article R58 of the CAS Code provides, in other words, that the dispute shall be decided first and foremost according to the ‘applicable regulations’. The Sole Arbitrator notes that the applicable regulations within the meaning of Article R58 of the CAS Code are the regulations of FIFA.
95. Article 56 para. 2 of the FIFA Statutes provides that in case of an appeal before the CAS, the *“CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”*. The Sole Arbitrator will, therefore, apply the FIFA Statutes and Regulations and, subsidiarily, for matters not dealt with under the FIFA Statutes and Regulations, Swiss law.
96. The Sole Arbitrator noted that the Respondent made reference to Article IX para 1) of the Contract and argued that the laws of the Slovak Republic shall apply and further noted that, indeed, said provision makes reference to such laws. The Sole Arbitrator, however, also notes that the same Article IX para. 1) of the Contract also provides that the *“contractual parties agree that their mutual rights and obligations shall be exercised under the regulations of Slovak Football Association, UEFA and FIFA”*. The choice of law provision under the Contract is thus contradictory, as the Appellant argues. Considering that Article IX para. 1) of the Contract does not allow for a clear conclusion as to the Parties’ will in respect of the applicable law, the Sole Arbitrator holds that taking into account the statutory framework of FIFA regarding disputes between clubs and players with respect to employment with an international dimension, the FIFA Statutes and Regulations discussed above shall apply also in the matter at hand and, as foreseen in the FIFA Statutes, Swiss law shall apply subsidiarily.

VIII. MERITS

97. The Sole Arbitrator holds that the main issues to be resolved by him in the present matter are the following:

1. Does the Reconciliation of Receivables provide for a waiver by the Player?

2. Is the Reconciliation of Receivables valid?
 3. What are the consequences of the findings?
98. The Sole Arbitrator will address these issues in turn.
- 1. Does the Reconciliation of Receivables provide for a waiver by the Player?**
99. The Reconciliation of Receivables states the following:
- “1) The contract on professional performance of sport concluded between the Player and MŠK Žilina, a.s., hereinafter referred to as the Club, concluded in Zilina on 16 September 2017 and registered by Slovak Football Association under the file no. H/07281, hereinafter referred to as the Contract, has expired on 31 December 2020.*
 - 2) The Player reacquired amateur status on 18 February 2021 and would like to be registered with new club ŠKF Sered', based in Sered, Slovakia, hereinafter referred to as the new club; although the Player and the new club would like to file second official request for registration of the Player with Registration Department of the Slovak FA, the Club informed the Player that it shall confirm such request only after the Player signs and confirms content of this letter of Reconciliation of Receivables.*
 - 3) Provided that the Club confirms the request of the new club and the Player for his registration in the new club, this reconciliation comes into effect and upon which any and all rights, obligations and duties arising from the Contract due to the Player by the Club including any and all monetary obligations are fulfilled, and the Player has no further demands or receivables due from the Club”.*
100. The Player argues that by signing the Reconciliation of Receivables, he did not waive his rights under the Contract, because for a waiver to be valid it must contain a clear and unequivocal declaration by the party waiving the rights. This is not the case under the Reconciliation of Receivables. The Club did not submit any arguments in this present case since it did not file an Answer Brief.
101. The Sole Arbitrator, however, finds that para. 3 of the Reconciliation of Receivables provides for a waiver by the Player of his rights under the Contract. The statement *“any and all rights, obligations and duties arising from the Contract due to the Player by the Club including any and all monetary obligations are fulfilled, and the Player has no further demands or receivables due from the Club”* must be understood, under the given circumstances, that the Player, indeed, confirmed to waive his claims for payments that were due under the Contract.
102. The Reconciliation of Receivables was executed on 8 March 2021, *i.e.* more than two months after expiry of the Contract. At that date, all the Player's alleged claims for unpaid salaries had fallen due.
103. The Sole Arbitrator also noted that the waiver was conditional upon the Club confirming the Player's registration with the new club. It is undisputed that the Club had actually confirmed the registration, and thus this condition was fulfilled.

104. Against this background, the Sole Arbitrator holds that by signing the Reconciliation of Receivables, the Player did sign a waiver. The Sole Arbitrator, therefore, will next analyze whether the Reconciliation of Receivables was valid, or whether it was null and void as the Player contends.

2. Is the Reconciliation of Receivables valid?

105. Para. 2 of the Reconciliation of Receivables expressly provides in respect of the contemplated registration of the Player with the new club that *“the Club informed the Player that it shall confirm such request only after the Player signs and confirms content of this letter of Reconciliation of Receivables”*. It is, in other words, expressly stated in the Reconciliation of Receivables that the Club would not provide its confirmation of the registration of the Player with his new (amateur) club, unless the Player waived his claims against the Club under the Contract for all unpaid salaries.

106. Article 21 of the SCO reads, translated freely in English, as follows:

“1 Where there is a clear discrepancy between performance and consideration under a contract concluded as a result of one party’s exploitation of the other’s straitened circumstances, inexperience or thoughtlessness, the person suffering damage may declare within one year that he will not honour the contract and demand restitution of any performance already made.

2 The one-year period commences on conclusion of the contract”.

107. In accordance with the long-standing practice of the Swiss Federal Tribunal (“SFT”), duress within the meaning of Article 21 of the SCO cited above requires a manifest disparity between performance and consideration; in addition, the party concerned must have been in straitened circumstances and the other party must have exploited the other party’s vulnerability (*cf. e.g.* decision of the SFT 123 III 292, consid. 4).
108. The Sole Arbitrator holds that the Club’s conduct is a textbook example for duress within the meaning of Article 21 of the SCO. In this respect, on 8 March 2021, when the Player signed the Reconciliation of Receivables, the Player was without contract. It is undisputed that at that time the Player had an offer to join a new club, but that his registration with the new club required a confirmation by the Respondent. Instead of giving such confirmation, the Club requested the Player to sign the Reconciliation of Receivables and thus waive his claims for unpaid salaries under the Contract. The Club did so although the Contract had already expired more than two months earlier and although the Club had not raised, and did not have, any claims against the Player. Because of the Club’s refusal to confirm the Players’ registration with the new club, the Player had to give up his claim for payment of unpaid salary in the amount of EUR 30’000 and sign the Reconciliation of Receivables, while the Club, in exchange, only confirmed the registration of the Player with the new club as a non-professional, for the refusal of which it had no valid reasons whatsoever.
109. In light of the foregoing, the Sole Arbitrator concludes that the Player acted under duress within the meaning of Article 21 of the SCO when he signed the Reconciliation of Receivables. In addition, the Player had signed the Reconciliation of Receivables on 8 March 2021 and filed the

second claim with FIFA on 17 September 2021, *i.e.* approximately five months after execution of the Reconciliation. The Player, thus, complied with the one-year period for challenge set out in Article 21 para. 2 of the SCO.

110. Against this background, the Sole Arbitrator holds that the Reconciliation of Receivables is invalid.
111. For the sake of completeness, the Sole Arbitrator notes that the result would be the same if the laws of the Slovak Republic were applicable. The Appellant explained that the wording of Paragraph 39a of the Slovak Civil Code is almost identical to the one of Article 21 para. 1 of the SCO as it provides the following:

“A legal act made by a natural person, a non-entrepreneur, in which someone exploits the person’s distress, inexperience, mental maturity, agitation, trustworthiness, recklessness, financial dependence or inability to fulfill obligations of the other party and makes himself or another person promise or provide performance, the economic value of which is in gross disproportion to the performance received, is null and void”.

112. The Respondent did not contradict this nor did it argue otherwise.
113. Pursuant to Article 16 of the PILA, the content of the foreign law shall be established by the courts. For this purpose, the cooperation of the parties may be requested; in matters involving an economic interest, the task of establishing foreign law may be conferred to the parties. The Sole Arbitrator notes that in the present proceedings, the CAS Court Office has expressly requested the Parties to provide their positions on the applicable laws to this dispute. The Sole Arbitrator thus holds that the conditions under Article 16 of the PILA would have been satisfied if the laws of the Slovak Republic were applicable. The Sole Arbitrator further holds that the scope and purpose of the respective provisions under Article 21 of the SCO and Paragraph 39a of the Slovak Civil Code are, indeed, similar, and that the Reconciliation of Receivables would have to be held invalid, even if the laws of the Slovak Republic were to apply instead of Swiss law.

3. What are the consequences of these findings?

114. Having determined that the Reconciliation of Receivables was invalid, the Sole Arbitrator assessed, in a next step, the consequences of such determination.
115. The Player has established in the present arbitration proceedings that he had only received 50% of the agreed salary for the remaining six months of the Contract and that the aggregate amount of unpaid salary was EUR 30’000. The Club did not argue otherwise. In particular, the Club did not explain in the present proceedings whether it had any justifiable ground to unilaterally reduce the salary. The Sole Arbitrator, therefore, concludes that it is established that the Club must pay the Player an amount of EUR 30’000 as unpaid salary, plus late payment interest.
116. In accordance with article 108 para. 3 of the SCO, no time limit must be set to put a debtor in default if a precise point in time has been set for performance. Pursuant to Article II para 2) of the Contract, in the period from 1 July 2019 to 31 December 2021, the Club should have paid

a monthly salary of EUR 10'000, and such monthly salary was payable on the 15th day of the following month to the account of the Player.

117. In the relevant period the Club, however, only paid EUR 5'000, and failed to pay another EUR 5'000, for each month between July 2020 and December 2021. The Club was in default as from the 16th day of each following month in respect of half of the basic salary for the preceding month.
118. The Contract is silent about the amount of the late payment interest. In accordance with Article 104 of the SCO, the late payment interest is five percent per annum. The Club must therefore pay the Player EUR 30'000 as unpaid salary plus late payment interest of five percent per annum: (i) over the amount of EUR 5'000 as from 16 August 2020 until the date of effective payment; (ii) over the amount of EUR 5'000 as from 16 September 2020 until the date of effective payment; (iii) over the amount of EUR 5'000 as from 16 October 2020 until the date of effective payment; (iv) over the amount of EUR 5'000 as from 16 November 2020 until the date of effective payment; (v) over the amount of EUR 5'000 as from 16 December 2020 until the date of effective payment; and (vi) over the amount of EUR 5'000 as from 16 January 2021 until the date of effective payment.
119. As a final step, the Sole Arbitrator must analyse the Club's argument brought forward against the Player that it had the right to reduce the salary based on Article VI para. 3) a) of the Contract because of weak and reckless performance of the Player. The Sole Arbitrator, however, notes that the Club did not bring forward this argument in the present arbitration proceedings. In addition, according to the evidence on file, the Club had never given any prior warning to the Player that his performance was not satisfactory before it reduced the salary. This argument, therefore, appears to be merely pretextual and it is to be concluded that the Club had reduced the salary only because had become clear that the Contract would expire by the end of the year 2020 and the Player would no longer play for the Club after the expiry of the Contract.

IX. CONCLUSION

120. Against this above background, the Sole Arbitrator finds that the Appealed Decision must be set aside and the Club must be ordered to pay the Player EUR 30'000 as unpaid salary plus late payment interest as follows:
 - Five percent per annum over the amount of EUR 5'000 as from 16 August 2020 until the date of effective payment;
 - Five percent per annum over the amount of EUR 5'000 as from 16 September 2020 until the date of effective payment;
 - Five percent per annum over the amount of EUR 5'000 as from 16 October 2020 until the date of effective payment;
 - Five percent per annum over the amount of EUR 5'000 as from 16 November 2020 until the date of effective payment;

- Five percent per annum over the amount of EUR 5'000 as from 16 December 2020 until the date of effective payment;
- Five percent per annum over the amount of EUR 5'000 as from 16 January 2021 until the date of effective payment.

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

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Iván Santiago Diaz against the decision issued by Dispute Resolution Chamber of FIFA on 24 March 2022 is upheld.
2. The decision rendered by the Dispute Resolution Chamber of FIFA on 24 March 2022 2022 is set aside.
3. MŠK Žilina shall pay Iván Santiago Diaz the amount of EUR 30'000 net.
4. MŠK Žilina shall pay Iván Santiago Diaz late payment of:
 - five percent per annum over the amount of EUR 5'000 as from 16 August 2020 until the date of effective payment, plus
 - five percent per annum over the amount of EUR 5'000 as from 16 September 2020 until the date of effective payment, plus
 - five percent per annum over the amount of EUR 5'000 as from 16 October 2020 until the date of effective payment, plus
 - five percent per annum over the amount of EUR 5'000 as from 16 November 2020 until the date of effective payment, plus
 - five percent per annum over the amount of EUR 5'000 as from 16 December 2020 until the date of effective payment, plus
 - five percent per annum over the amount of EUR 5'000 as from 16 January 2021 until the date of effective payment.
5. (...).
6. (...).
7. All other motions or prayers for relief are dismissed.