



TAS / CAS

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

Arbitration CAS 2023/A/10207 SC Dnipro-1 LLC v. Igor Jovicevic, award of 3 December 2024

Panel: Mr Marco Balmelli (Switzerland), Sole Arbitrator

Football

Activation of a unilateral extension clause

Filing of a separate claim before the FIFA PSC

Validity of a unilateral extension clause

Elements to take into consideration when assessing the validity of a unilateral extension clause

Deadline of the extension clause

Increase of remuneration

Behaviour of the waiving party

1. Article 21 of the Procedural Rules Governing the Football Tribunal only specifies the deadline for the lodging of a counterclaim in the same proceedings for it to be considered. Subject to *res judicata* principle, the said provision does not state that the claim can no longer be lodged after the proceedings have been concluded. In the case of a claim that is related but not identical to the subject matter of the dispute, a party may therefore decide whether to assert it in the form of a counterclaim during ongoing proceedings or after the conclusion of the first proceedings. The latter does not lead to an exclusion of the assertion of the claim, as there is no *res judicata*.
2. Although unilateral options to extend contracts of employment in favour of football clubs limit the freedom of the party that cannot make use of the option in an excessive manner and are not based on reciprocity, since the right to extend a contract is left exclusively at the discretion of one party, they are not *per se* invalid and incompatible with the FIFA regulations (which do not contain any provision that generally prohibit them) and the principle of global labour law. The validity of the clause must always be assessed on a case-by-case basis.
3. The following elements need to be taken into consideration to determine whether a unilateral extension clause is valid: (i) the potential maximum duration of the labour relationship should not be excessive; (ii) the option should be exercised within an acceptable deadline before the expiry of the current contract; (iii) the salary reward deriving from the option right should be defined in the original contract; (iv) one party should not be at the mercy of the other party with regard to the contents of the employment contract; (v) the option should be clearly established and emphasized in the original contract so that the player (or coach) is conscious of it at the moment of signing the contract; (vi) the extension period should be proportional to the main contract; and (vii) it is recommended to limit the number of extension options to one. However, although these criteria are important and must be taken into account, they are not absolute rules whose non-fulfilment would lead directly to the invalidity of the

disputed clause and *vice versa*.

4. A contractual deadline of ten days prior to the expiry of an employment contract to exercise the option to extend it is unreasonable. A player or a coach has the right to know well in advance whether or not the club will be extending the employment agreement so that he can look for another club and thus avoid having to find himself unemployed in case the club decides not to extend the employment agreement.
5. In principle, a unilateral extension option means that a contractual party has waived its contractual right of choice. This waiver of the own right respectively the granting of such a unilateral right to a contracting party should be accompanied by a corresponding compensation on the part of the waiving party. In the case of employment contracts, the compensation for granting such a right should usually be accompanied by an appropriate increase in remuneration.
6. The behaviour of the waiving party must also be considered. It is not *bona fide* and contradicts the principle of *pacta sunt servanda* if a player or a coach invokes the nullity of an extension option on the basis of a better offer from another club.

I. PARTIES

1. SC Dnipro-1 LLC (the “Appellant” or the “Club”), is a Ukrainian Football Club with seat in Dnipro City, Ukraine. It is affiliated with the Ukrainian Association of Football (“UAF”) which in turn is affiliated with the Fédération Internationale de Football Association (“FIFA”).
2. Mr Igor Jovicevic (the “Respondent” or the “Coach”) is a Croatian football coach currently employed by Al-Raed in Buraidah, Kingdom of Saudi Arabia.
3. The Appellant and the Respondent are collectively referred to as the “Parties”.

II. FACTUAL BACKGROUND

A. Facts of the case

4. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the Parties and the evidence examined in the course of the proceedings. This background is set out for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be referred to, where relevant, in connection with the later legal discussion. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence available to him in the present proceedings, only the submissions and evidence necessary to explain the reasoning of the award will be referred to in the following paragraphs.

5. On 23 September 2020, the Club and the Coach entered into an employment contract (the “Contract”), valid from 23 September 2020 until 30 June 2022.
6. In accordance with the Contract, the Parties agreed the following:

- Article 2.1

“The Contract is valid from 23 September 2020 till 30 June 2022 (...). This Contract may be extended on the conditions agreed by the Parties, or may be concluded for a new period by the mutual agreement of the Parties”.

- Article 2.5.3

“This Contract may be terminated by the Head Coach before the expiration of its term (...). In case of payment by the Head Coach or any third party on his behalf to the bank account of the Club of the sum in amount of 250 000 (two hundred and fifty thousand) Euro NET as compensation for unilateral early termination of the Contract by the Head coach”.

- Article 5.2.1

“The Club commits itself financially to the Head coach, such as: (...) payment of salary to the Head coach in the amount of 19 000,00 (nineteen thousand) Euro NET per month (beginning from October 2020) which will be paid by 20th day of the month following the month for which the payment is made (...)”.

- Article 5.3

“If according to the results of competitive season 2020/2021 among the teams of UPL clubs, the Club will be placed not lower than on the fifth position in the league table, the salary of the Head coach will be increased to 22 500,00 (twenty-two thousand five hundred) Euro NET (...)”.

7. On the same date, the Parties signed an additional agreement (the “Additional Agreement”), which stipulated in its Article 5 (the “Extension Clause”) the following:

“Article 5

The Parties have agreed that the term of the Contract may be extended by the Club till 30.06.2023 in case the latter directs to the Head coach a written notice regarding the extension of the term of the Contract not later than on or before 20.06.2022. In case of extension of the term of the Contract by the Club, the salary of the Head coach will be 25 000 (twenty five thousand) Euro NET per month starting from July 2022”.

8. Moreover, the Additional Agreement stipulated the following conditional bonus payments:
 - EUR 2,000 net for every official match win;
 - EUR 4,000 net for a win in an official match against FC Shakhtar Donetsk or FC Dynamo Kyiv;

- EUR 100,000 net for either 1) placing third or higher in the league table; 2) qualifying for UEFA Europa League; or 3) winning the Ukrainian Cup.
9. On 24 February 2022, Russia invaded Ukraine. As a result, all sporting competitions in Ukraine including the Ukrainian Premier League (“UPL”) Championship 2021/2022 (“Championship”) competitive season, were prematurely stopped. The ranking in the UPL was confirmed based on the results of the last round of the Championship played before the invasion.
 10. Until then, the Club won 15 matches in the first half of the season 2021/2022. The second half was cancelled due to the aforementioned.
 11. On 7 March 2022, the Bureau of the FIFA Council (the “FIFA Council”) decided to temporarily amend the Regulations on the Status and Transfer of Players (“RSTP”). Annexe 7 of the RSTP (“Annexe 7”) provided that a contract of an international dimension between a player or a coach and a club affiliated to the UAF is automatically suspended until 30 June 2022.
 12. On 27 April 2022, the Coach gave an interview to the “Tribuna” (a Ukrainian sports magazine), in which he said the following:

“My contract with Dnipro-1 is still valid, and I see myself as the coach of this club in the future as well. Since it all started, I’ve received many offers, I’ve been getting calls all the time, but I refused, and I’ll continue refuse. I can’t just leave like that, it would be unfair to those people, to the club, to everything that Ukrainians are going through, I’m not that kind of person. My thoughts and heart are with them, I believe that soon we will be together again, playing football and picking up where we left off. I am not thinking about leaving the club yet”.
 13. On 17 June 2022, the Appellant sent a letter to the Respondent in which the Appellant informed the Respondent about the extension of the Contract in accordance with the Additional Agreement. The Appellant requested the Respondent to sign an annex to the Contract attached to its letter (“Annex”), which provided for the extension of the Contract until 30 June 2023. The Annex did not define the salary and bonuses of the extended period.
 14. On 20 June 2022, the FIFA Council extended the application of the Annexe 7 until 30 June 2023.
 15. On 29 June 2022, the Respondent replied, stating that he was not bound by the unilateral Extension Clause since the unilateral extension was invalid and unenforceable. Consequently, the Respondent informed the Appellant that the Contract would expire on 30 June 2022. In addition, the Respondent requested the payment of outstanding salaries and various outstanding bonuses.
 16. On 30 June 2022, the Appellant responded to the letter dated 29 June 2022, stating that:
 - The employment relationship was suspended since March 2022 until 30 June 2022 in accordance with Annexe 7;
 - The Extension Clause is valid;

- The question about the extension was not at stake at the moment “[s]ince otherwise was not agreed between your client and SC ‘Dnipro-1’, and, with all responsibility, won’t be agreed till the end of the day (30.06.2022) – in accordance with the ‘Temporary rules governing the war in Ukraine’ (Annexe 7 of the FIFA RSTP, June 2022 edition) – the employment relationship between your client and SC ‘Dnipro-1’ will be suspended as from 01.07.2022 till 30.06.2023 – till the date the Contract expires”.
17. The Club, however, did not refer to Article 2.5.3 of the Contract or to any compensation it would be entitled to claim.
 18. On 14 July 2022, the Coach signed an employment contract with the Ukrainian club FC Shakhtar Donetsk.
 19. On the same date, the Club informed the Respondent of the following:
 - “The employment relationship of [the Coach] with SC Dnipro-1 were suspended since March 2022 till 30 June 2022, so the Club has no obligations to pay to [the Coach] ‘the salaries for March, April, May and June 2022 in the amount of EUR 76,000 net’ due to the suspension of the Contract dated 23.09.2020”;
 - The bonus for the UEFA Europa League “will be paid by the Club during 15 (fifteen) banking days after the Club receives prize money from UEFA for UEFA Europa League group stage participation”.

 “As SC ‘Dnipro-1’ didn’t receive the prize money from the UEFA for the UEFA Europa League group stage participation as to the present moment, the ‘bonus for Club qualification to UEFA EL group stage in moment of EUR 100,000 net’ is not due to be paid – nor date of your letter dates 29.06.2022, nor on the date of sending the present Answer”;
 - The bonus owed for every victory achieved in the season 2021/2022 would be paid in “in due course”.
 20. On 7 January 2023, the Respondent requested the payment of the outstanding bonuses in the amount of EUR 130,000 and UHR 626,034.23. The Respondent also stated that he waives the EUR 76,000 net in accordance with the Article 2 of the Annexe 7 (March 2022 edition).
 21. On 22 March 2023, the Respondent filed a claim before the FIFA Players’ Status Chamber (“FIFA PSC”), requesting that the Appellant shall be ordered to pay UHR 626,034.23 and EUR 130,000 plus interest (the “First FIFA Proceedings”).
 22. Despite having been invited to do so, the Club failed to provide its position to the claim during the First FIFA Proceedings.
 23. On 12 June 2023, the FIFA PSC notified the grounds of the decision (the “FIFA PSC Decision”) ordering the Club to pay:
 - UHR 626,034.23 as outstanding remuneration plus 5% interest *p.a.* as from 1 July 2022 until the date of effective payment;
 - EUR 130,000 net as outstanding remuneration plus interest *p.a.* as follows:

- 5% interest *p.a.* over the amount of EUR 30,000 net as from 1 July 2022 until the date of effective payment;
 - 5% interest *p.a.* over the amount of EUR 100,000 net as from 1 October 2022 until the date of effective payment.
24. On 21 June 2023, the Club filed a Statement of Appeal against the FIFA PSC Decision with the Court for Arbitration for Sport (the “CAS”). The Club did not pay the advance of costs. Consequently, on 31 August 2023, the CAS issued a termination order, making the FIFA PSC Decision final and binding.

B. Proceedings before the FIFA Players’ Status Chamber

25. On 15 September 2023, the Appellant lodged a claim before the FIFA PSC (the “Second FIFA Proceedings”), requesting payment of EUR 250,000 as compensation for breach of contract without just cause.
26. On 24 October 2023, the FIFA PSC rendered the following decision (the “Appealed Decision”):
- *The claim of the Claimant, SC Dnipro-1, is rejected.*
 - *This decision is rendered without costs.*
27. In the grounds of the Appealed Decision, issued to the Parties on 17 November 2023, the FIFA PSC evaluated, in summary, the following:
- The matter at stake concerned an employment-related dispute with an international dimension between a Ukrainian club and a Croatian coach. In accordance with Article 23 par. 2 in combination with Article. 22 par. 1 lit. c) of the RSTP (May 2023 edition), the FIFA PSC is competent to deal with the matter.
 - A contractual extension must include the key aspect of remuneration. In the Extension Clause, the exact monthly remuneration had been fixed but no conditional benefits had been included therein. Therefore, the *essentialia negotii* was insufficiently clear for the purposes of leading to a contractual extension.
 - The Extension Clause did not include any reference to the financial terms of the Additional Agreement. Therefore, it was unclear to what extent the benefits contained therein apply to the Contract. This uncertainty questions the applicability of the unilateral extension by the Club.
 - The Club failed to proof its assertions that the Coach allegedly committed to stay with the Club beyond the initial term of the Contract.
 - Consequently, the Extension Clause is invalid, and the Contract was not extended on 17 June 2022.

- The Contract expired on 30 June 2022. The Coach therefore did not breach the Contract when signing a new contract.
- Therefore, no liability could arise for the Coach.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

28. On 8 December 2023, the Appellant filed its Statement of Appeal against the Respondent with respect to the Appealed Decision in accordance with Articles R47 and R48 of the CAS Code of Sports-related Arbitration (2023 edition; the “Code”) with the CAS. The Appellant requested that the case is submitted to a sole arbitrator.
29. On 18 December 2023, the Appellant filed its Appeal Brief in accordance with Article R51 of the Code.
30. On 15 March 2024, the Respondent filed his Answer.
31. On 22 March 2024, pursuant to Article R54 of the Code and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the Panel appointed to hear the dispute was constituted as follows:

Sole Arbitrator: Dr Marco Balmelli, Attorney-at-Law in Basel, Switzerland.
32. On 4 April 2024, the CAS Court Office noted that both Parties preferred for the Sole Arbitrator to issue an award based solely on the Parties’ written submissions.
33. On the same date, both Parties informed the CAS Court Office, that a second round of written submissions was not needed.
34. On 18 April 2024, the CAS Court Office communicated the Order of Procedure, which was duly signed on the same day by the Appellant, hereby confirming that the Sole Arbitrator may decide this matter based on the Parties’ written submissions and its right to be heard had been respected.
35. On 23 April 2024, the Order of Procedure was duly signed by the Respondent, hereby confirming that the Sole Arbitrator may decide this matter based on the Parties’ written submissions and his right to be heard had been respected.

IV. SUBMISSIONS OF THE PARTIES

36. The following outline of the Parties’ positions is illustrative only and does not necessarily comprise each and every contention put forward by the Parties. The Sole Arbitrator, however, has carefully considered all the submissions made by the Parties, even if no explicit reference has been made in what immediately follows. The Parties’ written submissions and the content of the Appealed Decision were all taken into consideration.

A. Appellant

37. The Appellant filed the following prayers for relief:

- “1. To set aside the Decision of the FIFA Players’ Status Chamber of the Football Tribunal.*
- 2. To rule, that the Contract, concluded between the Club, SC ‘Dnipro-1’ and the Coach, Jovicevic Igor, was prematurely terminated by the Coach without just cause.*
- 3. To obligate the Coach, Jovicevic Igor, to pay in favor of the Club, SC ‘Dnipro-1’, the compensation for premature termination of the Contract without just cause in the amount of 250 000 (two hundred and fifty thousand) EURO”.*

38. The Appellant’s submissions, in essence, may be summarized as follows:

- The Coach verbally informed the Club several times in June 2022 that he wanted to stay with the Club and lead the Club’s main team in the UPL Championship 2022/2023 competitive season.
- The Appellant does not agree with the consideration of the FIFA PSC, that the Extension Clause should be deemed invalid because it did not include any salary increase. According to the Appellant, the salary of the Coach would have been increased by 10%.
- For the reason aforementioned, the Additional Agreement was valid and the duration of the Contract was extended by the Club for one additional sporting season.
- The FIFA Council amended Annexe 7 to provide legal certainty and clarity on several important regulatory matters. FIFA enabled foreign players and coaches to leave the Ukraine despite their employment contracts with Ukrainian clubs. The respective contracts were suspended and players and coaches were able to leave the territory of the Ukraine and seek the employment in a safer place of their choice.
- By entering an employment relationship with another UAF club, the Coach abused his right granted under the Annexe 7.
- Further, FIFA confirmed such approach and introduced certain limitations on the scope of application of Annexe 7 (May 2023 edition). Players and coaches who have, despite the war in Ukraine, decided to arrive in, return to, or not to leave the territory of Ukraine or Russia, cannot rely on Annexe 7 (May 2023 edition) to suspend an ongoing contract. Also, players whose contract have been suspended based on Annexe 7 are not allowed to sign a new contract with another club affiliated to the UAF or Russian Football Union (“FUR”) during such suspension (FIFA Circular no. 1849, 22 May 2023).
- For that reason, the Coach had no justifiable grounds to sign the contract with FC Shakhtar Donetsk. He terminated the contractual relationship with Dnipro-1 without just cause.
- The Coach terminated the Contract unilaterally and prematurely. Consequently, he has to pay a compensation fee of EUR 250,000 net pursuant to Article 2.5.3. of the Contract.

B. Respondent

39. In his Answer, the Respondent filed the following prayers for relief:

“Prayer 1. The Appeal shall be dismissed.

Prayer 2. The Appellant shall be ordered to bear the costs of these proceedings and shall be ordered to contribute to the legal fees incurred by the Respondent”.

40. The Respondent relies, in essence, on the following arguments:

- The Appellant was precluded from lodging its claim before FIFA in September 2023, considering that it failed to lodge a counterclaim in response to the Coach’s initial claim before the FIFA PSC filed in March 2023 within the regulatory deadline and was therefore precluded from doing so at a later point.
- Article 5 of the Additional Agreement is invalid and, consequently, the Contract expired on 30 June 2022.
- Therefore, the Coach did not breach the Contract by signing an employment contract with a new club on 14 July 2022.
- Even if Article 5 of the Additional Agreement were to be valid – *quod non* – the Appellant has forfeited its right to invoke Article 2.5.3 of the Contract and to claim EUR 250,000.00 pursuant to the interconnected principles of good faith and *venire contra factum proprium*.
 - The Club never indicated that it would rely on the Extensions Clause and expected the Coach to pay an amount to the Club;
 - When invited to respond to the Coach’s claim before FIFA, it failed to lodge a counterclaim;
 - The Club never intended to continue the contractual relationship with the Coach. If the Extension Clause was valid, the Club abused its right to unilaterally extend the Contract.
- In the alternative, the Respondent demonstrated that any compensation owed to the Club, *quod non*, shall be denied absent any substantiation of its damage brought forward by the Club.

V. JURISDICTION, ADMISSIBILITY, APPLICABLE LAW

A. Jurisdiction

41. Article R47 par. 1 of the Code provides as follows:

“An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration

agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body”.

42. The jurisdiction of CAS derives from Article 57 par. 1 of the FIFA statutes (2022 edition, “FIFA Statutes”) as it determines that “[a]ppeals 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”.

43. Further, the Contract contains the following provisions in its Article 6:

“6.3. In the event that no agreement is reached between the Head coach and the Club, the FIFA Dispute Resolution Chamber and/or CAS (Court of Arbitration for Sport, Lausanne, Switzerland) consider the dispute”.

“6.4. The Parties undertake to refrain from settling disputes between themselves in the courts of general jurisdiction. For these purposes they are obliged to use the relevant bodies – the FIFA Dispute Resolution Chamber and/or CAS (Court of Arbitration for Sport, Lausanne, Switzerland)”.

44. The jurisdiction of the CAS is undisputed by the Parties. It follows that CAS has jurisdiction to decide on the present dispute.

B. Admissibility

45. Article R49 of the Code provides, in its relevant parts, 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”.

46. In addition, Article 57 par. 1 of the FIFA Statutes states:

“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”.

47. The Appealed Decision was notified to the Parties on 17 November 2023 and the Statement of Appeal was filed by the Appellant on 8 December 2023, i.e. within the 21 days set by Article 57 par. 1 of the FIFA Statutes. The appeal complied with all other requirements of Article R48 of the Code, including the payment of the CAS Court Office fee.

48. It follows that the appeal is admissible.

C. Applicable Law

49. Pursuant to Article R58 of the Code,

“[t]he Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the

federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

50. The Sole Arbitrator notes that Article 56 par. 2 of the FIFA Statutes stipulates the following:

“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”.

51. The Contract states the following:

“6.1. The Parties are responsible for the failure or improper performance of their obligations under this Contract in accordance with the current legislation of Ukraine”.

52. The Sole Arbitrator assesses that by submitting the dispute to the CAS, the Parties have chosen to be subject to Article R58 of the Code (CAS 2008/A/1705 para. 9 and references).

53. With regard to Article 6.1 of the Contract, the Sole Arbitrator notes that it is a frequent issue in CAS proceedings that the parties make an implicit (and indirect) choice of law (by submitting their dispute to the CAS) but also an explicit choice of law in the contract. The issue has been discussed in legal literature:

“The latter situation arises if the parties agree not only on the jurisdiction of the CAS as the arbitral tribunal to decide on the case, and thus implicitly also agree on the application of the CAS Code, but also – for example in the contract – directly and explicitly specify the law that applies to the case. In such a case the question then arises as to the nature of the relationship between the implicit choice of law on the one hand and the explicit choice of law on the other. In particular the question is raised as to whether in such a case any room at all is left for the application of Art. R58 of the CAS Code” (HAAS U., Applicable law in football-related disputes - The relationship between the CAS Code, the FIFA Statutes and the agreement of the parties on the application of national law, CAS Bulletin, 2/2015, p. 10).

As to how this contradiction is to be resolved, the Sole Arbitrator follows the approach of HAAS:

“To summarise, it must therefore be concluded that Art. R58 of the CAS Code – because its intention is to mandatorily restrict the parties’ freedom of choice of law – always takes precedence over any explicit (direct or indirect) choice of law by the parties. Hence any choice of law made by the parties does not prevail over Art. R58 of the CAS Code, but is to be considered only within the framework of Art. R58 of the CAS Code and consequently affects only the subsidiarily applicable law” (HAAS U., Applicable law in football-related disputes - The relationship between the CAS Code, the FIFA Statutes and the agreement of the parties on the application of national law, CAS Bulletin, 2/2015, p. 13).

54. A second contradiction arises as the applicable regulations in the matter at hand are the regulations of FIFA, which state that Swiss law shall be additionally applied, whereas the Parties have made a direct choice for Ukrainian law.

55. HAAS addressed this issue as well and concludes that the reference to Swiss law *“only serves the purpose of making the RSTP more specific”* and *“issues that are not governed by the RSTP should not be*

subject to Swiss law” (HAAS U., Applicable law in football-related disputes - The relationship between the CAS Code, the FIFA Statutes and the agreement of the parties on the application of national law, CAS Bulletin, 2/2015, p. 15).

56. In conclusion, the Sole Arbitrator finds that the applicable law is to be determined against the background of Article R58 of the Code and Article 56 par. Of the FIFA Statutes. Therefore, the “applicable regulations” are the FIFA Statutes and regulations, in particular the RSTP. Furthermore, the Sole Arbitrator will apply Swiss law as an interpretative tool should the need arise to interpret FIFA’s rules and regulations. Should the need arise to fill gaps in the various regulations of FIFA, the Sole Arbitrator will address the issue of the subsidiarily applicable law separately. Issues that are not governed by the various rules and regulations of FIFA should be subject to Ukrainian law.

VI. PRELIMINARY ISSUE

57. The Respondent argues that the Club was precluded from filing a separate claim before the FIFA PSC. The Club did not reply to the claim of the Coach in the First FIFA Proceedings and, instead of replying, lodged a new separate claim on 15 September 2023 which led to the Second FIFA Proceedings. The Respondent cites Article 21 of the Procedural Rules Governing the Football Tribunal (“FIFA Procedural Rules”) which states the following in para. 2 and 3:

“2. The respondent(s) may submit a counterclaim with their response to the claim. A counterclaim shall have the same form as a claim and shall be submitted within the same time limit as that for the response to the claim.

3. If a party submits a new claim which is related to an existing case in which it is a respondent, the new claim shall be joined with the existing case and treated as a counterclaim in the existing case. Where the party has already been notified of the existing case, the new claim must have been submitted within the same time limit as that for the response to the claim in the existing case in order to be considered”.

58. The Respondent notes that by not having filed the claim against the Coach in the First FIFA Proceedings, *“the Club was precluded from lodging any claim related to the first one that was decided in a final and binding manner on 12 June 2023”*. The Respondent refers to the commentary on the RSTP which contains a reference to a FIFA DRC decision of 22 October 2020, *Ruijz Torre*. In this case, the respondent missed the deadline for replying to the claim of the claimant and filed a new claim pertaining to the same matter, i.e. the termination of the contract of the player. Therefore, the FIFA DRC concluded that asserting the new claim in a new proceeding *“is to be considered as an attempt to circumvent the Procedural Rules”* as the new claim *“is nothing more than a counterclaim”*.
59. The Sole Arbitrator notes that Article 21 of the FIFA Procedural Rules stipulates by when a respondent must raise a counterclaim for it to be considered (para. 2) and that such a counterclaim, in case it is related to an existing case, shall be raised in such proceedings (para. 3). Taking into consideration that the subject matter of the Second FIFA Proceedings concerns the same parties and is based on the same contractual relationship, the Sole Arbitrator concludes that the Club could in principle have submitted its claims as a counterclaim in the First FIFA Proceedings as the prerequisite of a “related” claim seems to be fulfilled.

60. This question is to be distinguished from the question of whether the assertion of a claim is barred by the principle of *res judicata*. *Res judicata* is the legal principle that precludes a subsequent legal action involving the same claim, demand, or cause of action to be redecided once it has been judged / decided on the merits. The *res judicata* principle avoids the occurrence of two contradicting decisions, which would be contrary to public policy (MAVROMATI D., *Res judicata* in sports disputes and decisions rendered by sports federations in Switzerland, CAS Bulletin 2015/1).
61. The principle of *res judicata* has been assessed by the CAS jurisprudence in several awards as summarized in CAS 2020/A/6912. The CAS panel therein stated that “*res judicata exists when there is (i) an identical claim from a substantive point of view; (ii) the same parties were involved in the proceedings; and (iii) the matter was solved based on the same facts and evidence at the time of the first judgment*”.
62. In the First FIFA Proceedings, the question was decided as to whether the Club must pay the Coach’s salary and bonus for the period up to 30 June 2022. The Second FIFA Proceedings concerned the question of whether the Contract was extended beyond 30 June 2022 and whether the Coach therefore terminated the Contract without cause. The subject matter of the Second FIFA Proceedings is therefore not the same as in the First FIFA Proceedings. The principle of *res judicata* is not applicable.
63. Article 21 of the FIFA Procedural Rules only specifies the deadline for the lodging of a counterclaim in the same proceedings for it to be considered. Subject to *res judicata* principle, the said provision does not state that the claim can no longer be lodged after the proceedings have been concluded. In the case of a claim that is related but not identical to the subject matter of the dispute, a party may therefore decide whether to assert it in the form of a counterclaim during ongoing proceedings or after the conclusion of the first proceedings. The latter does not lead to an exclusion of the assertion of the claim, as there is no *res judicata*.
64. Therefore, the Sole Arbitrator concludes that the Appellant was not precluded from lodging the claim in the Second FIFA Proceedings.

VII. MERITS

65. In the present case, the Sole Arbitrator will assess the question of whether the Respondent owes the Appellant compensation for termination of the Contract without just cause. For this purpose, he must determine whether the Contract has been validly extended by the Appellant, meaning whether the contractual basis for the extension is valid.

A. Validity of the unilateral extension of the Contract

66. The Appellant argues that the Contract was extended on the basis of the Extension Clause in conjunction with the Club's letter dated 17 June 2022.
67. The Sole Arbitrator recalls that the Extension Clause reads as follows:

“Article 5

The Parties have agreed that the term of the Contract may be extended by the Club till 30.06.2023 in case the latter directs to the Head coach a written notice regarding the extension of the term of the Contract not later than or before 20 June 2022. In case of extension of the term of the Contract by the Club, the salary of the Head Coach will be EUR 25,000 net per month starting from July 2022”.

68. The Respondent argues that the unilateral extension option provided in the Additional Agreement is null and void. In particular, the Respondent argues it is imbalanced because the Appellant may unilaterally decide to extend the Contract.
69. Therefore, the Sole Arbitrator will decide first, whether the Extension Clause is valid or not.
70. The FIFA regulations, in particular the RSTP, do not contain any provision that generally prohibit unilateral extension options in employment contracts. There is no jurisprudence known by the Sole Arbitrator which declares such unilateral options as absolutely void under all circumstances. On the other hand, the Sole Arbitrator also notes that CAS jurisprudence and FIFA tend to question the validity of unilateral options (cf. CAS 2004/A/678).
71. The commentary on the RSTP notes that the CAS and the FIFA Dispute Resolution Chamber (“FIFA DRC”) *“have been quite critical and the corresponding decisions state quite explicitly that clauses which put the player at the mercy of the club, which can decide unilaterally to extend the contract without any corresponding gain for the player (such as an increased salary, for instance), are illegal in that they limit the player’s freedom of movement and contravene the general principles of labour law”.*
72. There is a well-established practice of the FIFA DRC that *“unilateral options are, in general, problematic, since they limit the freedom of the party that cannot make use of the option in an excessive manner. Furthermore such options are not based on reciprocity, since the right to extend a contract is left exclusively at the discretion of one party”* (cf. CAS 2004/A/678) and the CAS that *“a system that allows, for the benefit of the club alone, the contract of a player to be extended with limited salary adjustments, (...) is not, in principle, compatible with the time frame that the FIFA Regulations provide”* (cf. CAS 2005/A/983 & 984).
73. Notwithstanding this well-established jurisprudence according to which unilateral options are problematic, the CAS panel in CAS 2013/A/3375 & 3376 stated that *“unilateral options to extend contracts of employment in favour of football clubs are not per se invalid and incompatible with the RSTP and the principle of global labour law. The jurisprudence does not absolutely preclude the valid operation of such a clause and that each specific clause and the circumstances of its purported exercise must be examined on a case by case basis”.*
74. The Sole Arbitrator therefore concludes that unilateral extension options are not prohibited per se by FIFA regulations, but the validity of the clause must always be assessed on a case-by-case basis. The Sole Arbitrator will evaluate the matter considering the spirit and legal framework that FIFA regulations seek to promote. This means that such a clause must not unduly and unjustifiably restrict the players’ respectively the coaches’ freedom of movement and personality rights. CAS jurisprudence also emphasizes the principles of contractual stability, *pacta sunt servanda*, contractual freedom and good faith of the parties and, based on this, declared the unilateral extension option valid in CAS 2005/A/973. The Sole Arbitrator observes that in CAS

2005/A/973, in the opinion of this CAS panel, the player violated the principles of *pacta sunt servanda* and *bona fide* by first accepting the unilateral extension option “*but then to try to escape its obligations by claiming the nullity of the unilateral option clause with the purpose of ensuring for itself a substantial salary increase*”.

75. According to the recent jurisprudence, the following elements need to be taken into consideration in order to determine whether or not a unilateral extension clause is valid (cf. CAS 2013/A/3260):
- The potential maximum duration of the labour relationship should not be excessive;
 - The option should be exercised within an acceptable deadline before the expiry of the current contract;
 - The salary reward deriving from the option right should be defined in the original contract;
 - One party should not be at the mercy of the other party with regard to the contents of the employment contract;
 - The option should be clearly established and emphasized in the original contract so that the player (or coach) is conscious of it at the moment of signing the contract;
 - The extension period should be proportional to the main contract; and
 - It is recommended to limit the number of extension options to one.
76. The Sole Arbitrator follows the view of the CAS panel in CAS 2014/A/3852 that the criteria mentioned are important and must be taken into account but are not absolute rules whose non-fulfilment would lead directly to the invalidity of the disputed clause and *vice versa*.
77. In the case at hand, the Extension Clause is unilateral in favour of the Club. The Club had the right to extend the Contract (ending on 30 June 2022) until 30 June 2023 if the Coach was informed of the extension in writing on or before 20 June 2022, i.e., ten days before expiry, at the latest. In case of extension, the Coach received EUR 25,000.00 net per month starting from July 2022. This meant a salary increase of 10%.
78. First of all, it is undisputed that the Parties have signed the Additional Agreement mutually and with free will. Also, the Additional Agreement is an integral part of the Contract (cf. Article 8 of the Contract).
79. With reference to the jurisprudence mentioned in para. 75, the Sole Arbitrator deems the following points decisive: i) the deadline for exercising the Extension Clause, ii) an appropriate increase of the remuneration under an extended contract and iii) if the Coach was at the mercy of the Club with regard to the contents of the Contract. The other criteria are of secondary importance in this case as they seem to be unproblematic. Finally, regarding previous CAS jurisprudence, in particular CAS 2005/A/973, the behaviour of the Coach has to be taken into consideration.

i. Deadline

80. First, the deadline of the Extension Clause will be examined. The Contract was valid from 23 September 2020 until 30 June 2022. The Club had the right to exercise the Extension Clause until 20 June 2022 at the latest. The Club informed the Coach about the extension of the Contract on 17 June 2022.
81. The Sole Arbitrator observes that in CAS 2013/A/3260 it was held that *“it is generally unreasonable for a club to wait so late (for example until only five days before the start of the transfer-period) before exercising its right to extend an employment contract with a player”* and that *“the player has the right to know well in advance whether or not the club would be extending the employment agreement so that he can take advantage of the transfer period and look for another club and thus avoid having to find himself unemployed in case the club decides not to extend his employment agreement”*.
82. The Club had to notify the Coach of its intention to exercise the option no later than ten days prior to the expiry of the Contract. This would leave the Coach with little time to find an alternative employer and a highly uncertain professional future before the end of the Contract. The Club on the other hand was in the comfortable position to take its time until shortly before the end of the Contract to decide whether it wanted to continue working with the Coach for another year or part ways.
83. As previously mentioned, the Coach was unable to plan his professional future until ten days before the end of the Contract. The employee must be granted a certain period to explore other professional opportunities. Therefore, the Sole Arbitrator considers the contractual deadline of ten days as too short.

ii. Appropriate increase of remuneration

84. In principle, a unilateral extension option means that a contractual party has waived its contractual right of choice. This waiver of the own right respectively the granting of such a unilateral right to a contracting party should be accompanied by a corresponding compensation on the part of the waiving party. In the case of employment contracts, the compensation for granting such a right should usually be accompanied by a salary increase or an increased variable salary component. Therefore, the second question to be considered is whether the waiver of the Coach's rights is compensated by an appropriate increase in remuneration. In this context, it must be considered whether the conditions of employment resulting from the extension of the Contract are fair and adequately reflect the right (the unilateral extension) that the Coach has granted to the Club. The base salary and bonus payments are therefore considered.
85. The Extension Clause only refers to two aspects: the Club's right to extend the Contract and the increase of the base salary in the event of an extension. There is no reference to the various bonus payments set out in the Additional Agreement (e.g. EUR 100,000.00 for qualifying for the UEFA Europa League group stage, EUR 4,000.00 for each win against Shakhtar Donetsk or Dynamo Kyiv, etc.). Some of the bonus payments are explicitly connected to the season 2020/2021.

86. On 17 June 2022, the Club informed the Coach of the extension of the Contract. Attached to this letter was the Annex. The Annex also fails to specify the Coach's future salary or any bonus payments.
87. The increase in the base salary amounts to 10% in the event of extension of the Contract. Previous CAS jurisprudence assumed that salary increases of 25% (CAS 2005/A/973) or over 160% (CAS 2014/A/3852) were significant enough to constitute monetary compensation for the ceded freedom of choice of the coach. In most cases, the unilateral extension clause was also accompanied by a substantial increase in the variable salary components.
88. As mentioned, in the present case, it is unclear whether the bonus payments are part of the extended Contract, as neither the Extension Clause nor the Annex refer to such payments. It does not seem very likely that the bonus payments should be applied again, because (i) the salary was explicitly mentioned and, conversely, the bonus payments should not be part of the extended Contract and (ii) certain bonus payments are linked to the 2020/2021 season, which prevents them from being applied again.
89. Moreover, even if they were, with a 10% salary increase and the variable salary components remaining the same, in light of past CAS jurisprudence, the Coach's adjusted salary does not adequately reflect the lost freedom of choice.
90. The Sole Arbitrator concludes that the terms of the Contract under the Additional Agreement are no better overall for the Coach. Therefore, the Sole Arbitrator follows the view of the Single Judge of the Appealed Decision that this lack of clarity questions the applicability of the unilateral extension option.

iii. Mercy

91. The ambiguous terms of the Contract after its hypothetical extension, combined with the circumstance that the Club was obligated to notify the Coach of the Contract's extension merely 10 days prior to the expiration of the contractual term, resulted in the Coach being at the mercy of the Club.
92. Also, in particular, regarding the principles of *pacta sunt servanda* and good faith, the Club's conduct does not comply with the principle of good faith. The Coach was informed in the letter from 30 June 2022 that in the event of a contract extension, the Contract would be suspended until the end of the extended term on the basis of Annexe 7.

iv. Behaviour of the Coach

93. Finally, the behaviour of the Coach must also be considered. According to CAS 2005/A/973, it is not *bona fide* and contradicts the principle of *pacta sunt servanda* if a player invokes the nullity of an extension option on the basis of a better offer from another club. Further, the Panel of said decision has not identified any imbalance in the contractual provisions.

94. The Appellant argues that the Coach repeatedly made similar statements in public stating that rejected many offers and is *“not thinking about leaving the Club yet”*. He stated as well that *“of course, if all this, God forbid, continues, then I will see what happens, but now I am definitely the coach of Dnipro-1 and I want to stay”*. This interview was given by the Coach in April 2022.
95. The Appellant further argues that the Club and the Coach started *“intensive consultations [...] regarding the preparation for the new competitive season”* and the Coach assured that the rumors that he was in negotiations with another club were false. The Appellant provides no evidence in support of these statements.
96. The Club accuses the Coach of not having acted in good faith when he said in public that he would stay with the Club and then invoked the invalidity of the Extension Clause. In fact, there is evidence that the Coach made such statements in public. However, it is customary in the football business to publicly declare one’s allegiance to one’s current club. No great significance can therefore be attached to these statements. It is not apparent to the Sole Arbitrator why the Club waited until three days before the deadline to exercise the extension option if the Parties had apparently already planned the next season. The Club only exercised the extension option when the rumors about a change of Coach to another club emerged. Furthermore, the Club does not prove that the Coach invoked the invalidity of the Extension Clause because he received an offer from the new employer with a substantial salary increase.
97. The Sole Arbitrator therefore concludes that there is no significant evidence that the Coach did not act in good faith. The reliance on the invalidity of the Extension Clause does not appear to be abusive in this context.

v. *Conclusion on the validity of the unilateral extension of the Contract*

98. Taking into account the jurisprudence of the CAS and FIFA DRC and the aforementioned assessment of the specific circumstances in the case at hand, the Sole Arbitrator concludes that the Extension Clause is not valid.

B. *Termination of the Contract without just cause*

99. The Appellant argues that the Contract was prematurely terminated by the Respondent without just cause and, therefore, the Respondent is obliged to pay a compensation to the Appellant.
100. Since the application of the Extension Clause is denied in the present case, the Contract expired on 30 June 2022. In his letter dated 29 June 2022, the Coach made it clear that he was duly ending the Contract by 30 June 2022 and that he no longer saw his future with the Club. Consequently, the Contract expired after its regular term. Therefore, the Sole Arbitrator is not addressing the Appellant’s arguments regarding early termination without just cause. Consequently, no compensation is owed to the Club for termination without just cause.

D. Conclusion

101. Based on the foregoing and after taking into due consideration all the evidence produced and all arguments raised, the Sole Arbitrator finds that:
- The Extension Clause is not valid and the application of the clause is denied.
 - The Contract duly ended on 30 June 2022 without termination of the Coach and therefore there is no basis for the Appellant's claim of EUR 250,000.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by SC Dnipro-1 LLC on 18 December 2023 against the decision rendered on 24 October 2023 by the Players' Status Chamber of the *Fédération Internationale de Football Association* is dismissed.
2. The decision rendered on 24 October 2024 by the Players' Status Chamber of the *Fédération Internationale de Football Association* is confirmed.
3. (...).
4. (...).
5. All other and further prayers or requests for relief are dismissed.