



TAS / CAS

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

Arbitration CAS 2023/A/9851 Nikola Djurdjic v. Chengdu Rongcheng, award of 23 September 2024

Panel: Mr Lars Hilliger (Denmark), Sole Arbitrator

Football

Contractual dispute - FIFA's jurisdiction based on the principles of res judicata

Objection of res judicata pertaining to jurisdiction or admissibility

Importance of a matter pertaining to jurisdiction or admissibility according to Article 190 PILA

Res judicata and its effects

Triple identity test of res judicata

FIFA DRC's jurisdiction pursuant to the RSTP

1. It is not clear whether the objection of *res judicata* pertains to jurisdiction or to the admissibility of a claim. As a rule of thumb, the questions of whether the competence to decide a dispute in a binding way was transferred from the state-court system to arbitration and whether the matter before the arbitral tribunal is within the scope of the arbitration agreement are issues of jurisdiction, whereas all procedural issues that are non-jurisdictional issues and, that may for procedural reasons, cause the end of the arbitration are admissibility issues. The legal literature is split on the question of whether the plea of *res judicata* is a jurisdictional matter or an issue of admissibility.
2. The distinction whether a matter pertains to jurisdiction or admissibility is only important when an appeal is filed against an award according to Article 190 of the Swiss Private International Law Act (PILA). Here, the party appealing and the Swiss Federal Tribunal (SFT) must decide which of the limited grounds in Article 190(2) of PILA they wish to apply. Not all matters related to admissibility can be revisited under Article 190(2)(b) of PILA (lack of jurisdiction); lack of jurisdiction is only one of the elements defining the mandate of a panel. Other elements delimiting the mandate of a court or panel should therefore not be read into Article 190(2)(b) of PILA and can only be taken into account in the context of other subsections of Article 190 PILA.
3. *Res judicata* prohibits an identical claim that has been finally adjudicated from being challenged in a new proceeding between the same parties. The *res judicata* effect extends to all the facts existing at the time of the first judgment, whether or not they were known to the parties, stated by them or considered as proof by the first court. However, it does not stand in the way of a claim based on a change in circumstance since the first judgment. The *res judicata* effect does not extend to the facts after the time until which the object of the dispute could be modified, i.e. to those which took place beyond the last time when the parties could supplement their statements of facts and evidentiary submissions. Such circumstances are new facts (*real nova*) as opposed to the facts already in existence at the decisive time, which could not have been relied

on in the previous proceedings (*false nova*), which under very restrictive conditions may justify the revision of the arbitral award.

4. There is *res judicata* when the claim in dispute is identical to that which was already the subject of an enforceable judgment (identity of the subject-matter of the dispute). This is the case when in both litigations the same parties submitted the same claim to the court on the basis of the same facts. The identity must be understood from a substantive and not grammatical point of view, so that a new claim, no matter how it is formulated, will have the same object as the claim already adjudicated. In this regard, the so-called “triple identity” test has been previously noted and relied upon by some panels, confirming that if arbitral proceedings in Switzerland involve the same subject matter, the same legal grounds and the same parties as previous foreign arbitral proceedings terminated with an award, the so-called ‘triple identity’ test – used basically in all jurisdictions to verify whether one is truly confronted with a *res judicata* question – is thus indisputably met.
5. It does not follow from the FIFA Regulations on the Status and Transfer of Players (RSTP) that the absence of a valid arbitration clause in favour of the CAS in a contract between two parties to a dispute does also exclude the possibility that the CAS can in fact have jurisdiction as an appeal body. On the contrary, it is assumed that in the vast majority of disputes over which the FIFA Dispute Resolution Chamber (DRC) has jurisdiction pursuant to the FIFA RSTP, the parties to such disputes have not entered into any specific arbitration clause in their agreement.

I. PARTIES

1. Mr Nikola Djurdjic (the “Player”) is a former professional football player of Serbian nationality.
2. Chengdu Rongcheng (the “Club”) is a professional football club based in Sichuan, China. The Club is affiliated with the Chinese Football Association (the “CFA”), which in turn is affiliated with the Fédération Internationale de Football Association (“FIFA”).

II. FACTUAL BACKGROUND

A. Background facts

3. Below is a summary of the main relevant facts as established on the basis of the Parties’ written and oral submissions and the evidence examined in the course of these proceedings. Additional facts and allegations found in the Parties’ submissions may be set out, where relevant, in connection with the further legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in

the present proceedings, the Award only refers to the submissions and evidence he considers necessary to explain his reasoning.

4. In early January 2020, Mr Stojanovic, the then agent of the Player (the “Player’s Agent”) was informed by Mr Bao Fei and Mr Sunir Patel – on behalf of the Club – that the Club was interested in contracting the Player. Subsequently, discussions and negotiations concerning a possible transfer of the Player were initiated.
5. Later in the same month, the Club issued two offers, viz. an offer to the Player and an offer to the Player’s then club, the Swedish football club Hammarby IF regarding a possible transfer of the Player to the Club.
6. On or around 18 January 2020, the Player and Mr Stojanovic arrived in China in order to finalise the negotiations of the Club’s offer to the Player. During this trip, the Player met with the Club’s team and passed the necessary medical tests. At the end of the contractual negotiations, the Club made an offer to remunerate the Player the following sums:
 - EUR 1 million in 2020;
 - EUR 1.2 million in 2021;
 - EUR 1.45 million in 2022; and
 - The possibility of doubling the above amounts if the Club gets promoted to the Chinese Super League (the “CSL”).
7. Mr Patel also expressly informed the Player and Mr Stojanovic that two different contracts needed to be signed, viz. an employment contract and an image rights agreement. According to the Player, he was informed that such practice for remuneration was common in China due to “*strict and complicated banking legislation in China*” and doing so would be “*much easier for the clubs to make high payments*”.
8. On 22 January 2020, the Club and the Player had apparently reached a verbal agreement on the terms of the Player’s employment contract and image rights agreement, but the Player alleges that he did not see any draft agreement for review before signature. However, in the late-night hours of the same day, Mr Patel allegedly came into the Player’s hotel to explain that the image rights agreement would need to be executed with a third party, a Dutch company called Supervision Management (“Supervision”) that is run by Mr Patel himself. According to the Player, Mr Patel had informed the Player that the entire deal depended on this technicality.
9. On 23 January 2020, the Club and the Player signed an employment contract valid as from 23 January 2020 until 22 January 2022, with a renewal option until 22 January 2023 (the “Contract”). The pertinent parts of the Contract read as follows:

“ARTICLE 1: Scope and Duration of the Contract

1. *By means of the Contract, [the Club] employs [the Player], who hereby accepts employment as a professional football player of [the Club], subject to the terms and conditions set out in the Contract.*
2. *The term of the Contract (hereinafter referred to as the "Term") shall be from 23/01/2020 (day/month/year) to 22/01/2022 (day/month/year), unless prematurely terminated in accordance with Article 7 or as mutually agreed.*
3. *The Term has an option year from 23/01/2022 (day/month/year) to 22/01/2023 (day/month/year). The option year will be activated when [the Player] reaches one or multiple of the following targets:*

[...]

- *In case [the Club] is promoted to the Chinese Super League (CSL) during the duration of [the Player]'s contract. [...]*

ARTICLE 2: Salary and Bonuses

1. *During the Term, the annual basic salary of [the Player] is 727,272 Euro (in words: seven hundred twenty seven thousand two hundred seventy two euros) (before tax, which shall be amounting to 400,000 euros after tax withheld in China) for the season of 2020, the annual basic salary of [the Player] is 909,090 Euro (in words: nine hundred and nine thousand ninety euros) (before tax, which shall be amounting to 500,000 euros after tax withheld in China) for the season 2021, the annual basic salary of [the Player] is 1,090,909 Euro (in words: one million ninety thousand nine hundred and nine euros) (before tax, which shall be amounting to 600,000 euros after tax withheld in China) for the season of 2022, unless the Contract is prematurely terminated in accordance with Article 6 [7 sic] or as mutually agreed.*

If during the Term [the Club] is promoted to the Chinese Super League (CSL), the salaries that have been determined will be increased by 100% for each applicable season that [the Club] is active in the Chinese Super League (CSL).

[...]

4. *[The Club] shall pay [the Player] performance-related salaries as follows:*

[...]

Euro 181,818 (in words: one hundred eighty one thousand eight hundred eighteen euros, before tax, which shall be amounting to 100,000 euros after tax withheld in China) to be paid 20 days after the last working day before the end of the season in which [the Player] is officially named the topscorer of the Chinese League One (CJL).

[...]

6. *All the salary and bonus and other contractual benefits paid by Party A shall be amounts before taxes. All the salary and performance-related salary and any other contractual benefits have been agreed as net amounts. [The Club] has grossed up these amounts for any tax, social contributions and insurances that might be applicable. Parties hereby explicitly agree that [the Club] shall be responsible for withholding any and all amounts that might be due by [the Player] under this contract, whereby it is the responsibility of [the Club] that [the Player] will receive the agreed net amounts. On request of [the Player] [the Club] shall provide [the Player] or any designated person by [the Player] overviews, calculations and specifications of any amount paid on behalf of [the Player]. In case of changes in the amounts that need to be withheld or paid by [the Player] on the remuneration received under this contract, [the Club] shall make the appropriate changes to the gross amounts, so that [the Player] will receive the (remaining) agreed net amounts in December of every contractual year the latest.*

[...]

ARTICLE 6 IMAGE RIGHTS

[The Player] and [the Club], or an affiliated appointed by [the Player], will conclude a separate Agreement for the use of [the Player]'s image rights in China.

ARTICLE 7 TERMINATION OF THE CONTRACT

The Contract may be terminated by mutual agreement between the Parties.

1. *[The Club] is entitled to terminate the Contract with just cause, free from any liability and entitled to request the pertinent compensation from [the Player] in the following cases:*
- (1) [The Player] commits a material breach of this Contract (including but not limited to severe and/or repeated infringement of obligations stipulated in Article 4 hereof and/or internal regulations of Party A);*
 - (2) convicted in the highest instance for a criminal offense which will lead to imprisonment;*
 - (3) [The Player] fails to observe the reasonable regulations as stipulated by [the Club], CFA or AFC, which may be updated from time to time and have communicated to him beforehand in English, and failed make remedy upon receiving written notification with a copy to [the Player]'s lawyer (christophe.vanmechelen@vlvm.be) within a reasonable time frame of at least 20 (twenty) days;*
 - (4) [The Player] leaves China, fails to return from holidays or leave, or does not participate the activities of [the Club] without just cause for a period of more than 15 (fifteen) days after [the Club]'s written notice without [the Club]'s written approval;*
 - (5) [The Player] is suspended by CFA, AFC or FIFA for more than 12 (twelve) official CSL and Cup matches.*

[...]

ARTICLE 8: *Settlement of Disputes*

1. *Any disputes arising from the fulfilment of, or in connection with the Contract shall be settled, on a first attempt, through friendly negotiation between the Parties.*
 2. *In case no settlement can be reached through negotiation, the dispute shall be submitted to the competent dispute resolution body of FIFA with express waiver to the national courts and with the consequent option of appealing to the Court of Arbitration for Sport (CAS) Lausanne, Switzerland. In case of an appeal to CAS, the Parties hereby choose the CAS Shanghai Alternative Hearing Centre as the hearing place.*
 3. *This Contract is governed by the rules and regulations of FIFA, AFC and CFA. These rules shall be applicable as well to any other matter not regulated herein. Should any clause of the Contract result to be not compliant with any of said rules and regulations, exclusively the concerned clause shall be considered null and void, without interfering with the validity of the remaining clauses of the Contract”.*
10. On the same date, 23 January 2020, Supervision and the Club signed the image rights agreement (the “IRA”) with the written consent of the Player. The pertinent parts of the IRA read as follows:

“Background

1. *The Company [Supervision Management] is the owner of the exclusive rights in China to use, develop and otherwise exploit the image Rights of Nikola Durdic (the image Rights) which exist now or in the future, radio or media appearances, interviews and broadcasts (the "Appearances") by Nikola Durdic ('ND') (other than when he is playing football) and the exclusive right to org-anise ND's attendance at events or engagements for reward (other than one that is directly related to his playing football) and all goodwill in connection with each of the foregoing.*
2. *The Company wishes to permit the Club to use, develop and otherwise exploit the image Rights in China on the terms and conditions of this Agreement' and the club wishes to take a license on such terms and conditions.*

1. *PLAYER CONTRACT*

The Club and the Company acknowledge that ND has purported to grant to the Club certain rights in respect of the image Rights pursuant to the Player Contract between the Company and ND notwithstanding that those rights have in fact been assigned by ND to the Company.

2. *PERMISSION TO USE IMAGE RIGHTS*

In consideration of the payment of the fees set out in clause 3, the Company hereby grants to the Club for the duration of this Agreement an exclusive license to use, develop and otherwise exploit in China (by sub-license or otherwise) the ND's portrait, trademark, patents, sound, name, signature, sport nickname, personal image and related work, any sign and/or mark representing ND as well as other similar rights subject to any exclusive rights granted by the Company or ND to any third party elsewhere in the world.

3. PAYMENTS

In consideration of the rights granted to the Club hereunder, the Club hereby agrees to pay the following sums to the Company:

For the year 2020: EUR 588,235 net (five hundred eighty eight thousand two hundred thirty five Euros after tax) payable on or before 1 June 2020;

For the year 2021: EUR 705,882 net (seven hundred five thousand eight hundred eighty two Euros after tax) payable on or before 1 March 2021;

For the year 2022 (option year): EUR 823,529 net (eight hundred twenty three thousand five hundred twenty nine Euros after tax) payable on or before 1 March 2022;

The Agreement applies to the license of the Image Rights for the years 2020 and 2021. Additionally the Company hereby grants the Club an option to continue its use of the Image Rights under this Agreement for the year 2022 for the above mentioned fee for the year 2022. The Club must exercise this option by giving written notice thereof to the Company at the latest on 10 December 2021.

Only in the event the club promotes to CSL ("Chinese Super League") the yearly fee is increased with 100% to: EUR 1,411,764 (one million four hundred eleven thousand seven hundred sixty four Euros, for 2021) and EUR 1,647,058 (one million six hundred forty seven thousand fifty eight Euros, for 2022). In the event the club relegates from CSL to 2nd division, the fee shall be calculated as originally mentioned above (prior to the promotion to CSL) ...

All sums mentioned in this Agreement are exclusive of any amounts of any Chinese tax or similar levy that might be due or which may be introduced from time to time arising in respect of such supply.

4. TERM AND TERMINATION

4.1 This Agreement shall have effect on and from the date of signature of this Agreement and shall subsist for as long as the Player Contract subsists unless terminated earlier in accordance with this clause. ...

[...]

8. WARRANTIES AND UNDERTAKINGS

[...]

8.2.3 That ND has irrevocably: (i) assigned to the Company all the Image Rights which have prior to the date of this Agreement vested in ND at any time; and (ii) undertaken to assign to the Company all the Image Rights which may vest in ND at any time during the Term, and that no other Image Rights exist at the date of this Agreement nor will arise during the Term; ...

10. CONSEQUENCES OF TERMINATION

[...]

10.2 *The termination or expiry of this Agreement shall not affect in any way any provision under the Player Contract (provided that the Player Contract survives such termination or expiry). On termination or expiry of this Agreement (provided that the Player Contract survives such termination or expiry), the Club shall agree with ND a similar net fee to be paid to ND as the remaining amount that still was payable to the Company by the Club under this Agreement. ...*

[...]

12. GOVERNING LAW AND JURISDICTION

This Agreement is governed by, and shall be construed in accordance with, the laws of the Switzerland. All disputes with respect to this Agreement, including, without limitation its validity, construction and performance, shall belong to the exclusive jurisdiction of the courts of Lausanne, Switzerland”.

11. Finally, and also on 23 January 2020, the Player signed the following consent declaration:

“I hereby retain Supervision Management BV from the Netherlands with company registration number 55606792, represented by Mr. Sunir Patel, to act as my sole and exclusive representative to represent, advice and counsel me in all negotiations and contracts with regards to commercial deals and image rights throughout the People's Republic of China”.

12. For the 2020 season, apparently no issues arose around the contractual obligations of the Parties, and the Player apparently received all amounts due under the Contract. In 2020, the Player also received EUR 588,235 under the IRA. It is unclear whether the amount paid under the IRA was made directly by the Club to the Player or through Supervision.
13. After the 2020 season had ended, the Player alleges that the Club tried to force a premature termination of both Mr Quintana, another foreign player of the Club, and the Player. This was allegedly done by failing to notify both players of when they were expected to return to Chengdu, then making unreasonable requests on their return date – e.g., due to the Chinese travel restrictions arising out of the global pandemic, the Player and Mr Quintana were in mandatory quarantine for a total of 21 days. The Player also alleges that the Club failed to answer every letter from the Player in January and February 2021. When the Player returned to training on 4 February 2021, he was told (together with Mr Quintana) that they were to train with the second team, without an explanation.
14. On 1 March 2021, the Club made the payment to the Player under the IRA in the amount of EUR 705,882 for 2021.
15. On 12 April 2021, the Club and the Chinese club Zhejiang Professional FC (“Zhejiang FC”) signed a loan agreement under which the Player was temporarily transferred from the former to the latter from 12 April 2021 until 31 July 2021.
16. On 8 June 2021, right after Zhejiang FC played its last match of the first stage of the 2021 season, the Player was informed that his services were no longer required, and he was free to go on vacation. The Player was aware that his contractual obligation under the loan agreement

with Zhejiang FC only lasted until 31 July 2021, and he was only required to return to the Club within 7 days of the expiry of the said loan agreement.

17. On 26 June 2021, the Club allegedly wrote to the Player and informed him that his loan with Zhejiang FC would expire on 31 July 2021 and that the Club requested him to return to its premises until 1 July 2021. The letter, furthermore, read as follows: *“if you fail to return on time, the club may apply penalty to you based on the employment contract and rules on team management. Please pay attention to your return and back to our team on time”*.
18. On 8 July 2021, the Club failed to pay the June 2021 salary of the Player. When the Player enquired, he was allegedly told that *“this was the Club’s decision”*.
19. On 26 July 2021, the Player sent the Club a letter requesting the Club to confirm whether it needed the services of the Player. The Player also stressed that if termination documents were not provided by 29 July 2021, he expected to *“show up at the [C]lub on 1 August 2021 in order to resume training and honour his contract”*.
20. On 30 July 2021, the Player wrote to the Club and stressed that he had not received any answer to his previous notice to the Club.
21. On 2 August 2021, the Player went to the Club’s premises, but was informed by the Club then that the claim the Club had lodged before the FIFA DRC in July 2021 (discussed below in the next subsection of this Award) was sufficient to establish that the Contract had been terminated and the Player could seek new employment.
22. On 11 August 2021, the Player signed a new employment agreement with the Swedish club Degerfors IF (“Degerfors” and the “Degerfors Contract”), valid as from the date of signature until 31 December 2023. According to this contract, the Player was entitled to the following remuneration: SEK 60,000 per month during the season 2021; SEK 70,000 per month during the season 2022; and SEK 80,000 per month during the season 2023.
23. On 18 October 2021, and thus after the investigation phase of the FPSD-3035 proceedings before the FIFA DRC was closed (se para 31), the Club informed Mr Patel as follows:

“Dear Mr. Sunir Patel,

We have entered an Image Rights Agreement pertaining to the player Nicola Durdic on 23 January 2020 (hereinafter: Image Rights Agreement), and the attachment is for your reference.

In light of Nicola, Durdic has terminated the Employment Contract between he and Rongcheng FC without just cause, it is impossible for Rongcheng FC to execute the right from the image rights agreement normally. And according to the Image Rights Agreement, Rongcheng FC has the option to continue its use of the image right for the year 2022, and must exercise this option by written notice at the latest on 10 December 2021. Now, Rongcheng FC hereof officially informs SUPERVISION MANAGEMENT B.V. that it would not exercise the option to continue use of the image right for the year 2022, the original Image Rights Agreement dated 23 January 2020 would expire on 31 December 2021.

Nevertheless, Rongcheng FC has paid all the image right fees for the year 2021 in full amount (EUR 705,882), therefore, SMBV should continue to execute the obligations in the Image Rights Agreement, guarantee Rongcheng FC can continue to exploit the image rights under the Image Rights Agreement. Hereof, Rongcheng FC solemnly declare that it not permit SMBV assign the right under the Agreement to any third party before 31 December 2021, or SMBV would bear all the legal liability on this. (...)”.

24. On 25 October 2021, Supervision replied to the Club’s letter as follows:

“(...) Such statement seems a bit premature as player Djurdjic and RONGCHENG FC are currently involved in a FIFA procedure in which parties are blaming each other the unilateral and wrongful termination of the Player’s employment contract.

In the event FIFA would conclude that RONGCHENG FC unilaterally terminated the said employment contract, you will understand that such could also have an impact upon your current termination of the Image Right Agreement.

As one of the issues within the FIFA procedure concerns the wrongful termination of the Player’s contract in order to avoid a possible extended contract year in the event RONGCHENG FC would promote to Chinese Super League (CSL), my client reserves all its rights with regard to the following.

If FIFA establishes that your club wrongfully terminated the Player’s contract and RONGCHENG FC would at the end of season 2021 promote to the CSL, the Player would have a claim against your club for the missed (optional) contract year of 2022. As a matter of fact, the Player’s contract states that in the event of promotion to the CSL, he would have received an additional contract year (option year) for the upcoming season. In such event, the Image Rights Agreement would also have been renewed for an additional season. Hence, your decision to terminate the Image Rights Agreement, based upon the alleged unilateral termination by the player, would be unlawful and my client would be entitled to a reimbursement of the Image Rights for the season 2022 (at double rate, given the promotion to CSL).

*Therefore, I have been instructed to inform you that (a) in the event FIFA decides to grant the Player’s counter claim based upon a wrongful termination by RONGCHENG FC, (b) the promotion of RONGCHENG FC to CSL, my client shall be entitled to claim the amount of 823.529,00 EUR * 2 (1.647.058,00 EUR) against the club. Reference hereto is made to article 10.2 of the Agreement. In such event, the payment of the Image Rights’ fee shall be payable to mr. Djurdjic in full. (...)”.*

25. On 12 January 2022, the Club won the promotion playoffs against Dalian Professional Football Club and secured the promotion to the CSL.

26. On 24 February 2022, the Player notified the Club as follows:

“... As already ruled by FIFA, your club terminated the Contract without just cause. Clearly, this was done, inter alia, to avoid the scenario described in Article 10.2. (that the Player Contract survives such termination or expiry).

Moreover, after FIFA informed your club and the Player that the investigation-phase was closed and that new submissions would be admitted to the case file, your club informed Supervision Management that it would not extend the IRA to 2022, which triggered the application of clause 10.2.

In light of the foregoing, we herewith invite you to perform the payment of EUR 1,647,058 net to Mr. Djurdjic to his bank account at Komercijalna banka AD Beograd which is stated in Article 7 of the Contract and attached to the FIFA DRC Decision (with Intermediary bank being: Deutsche Bank AG, with swift code: DEUTDEFF).

In this regard, we expect your club to make the payment as soon as possible, otherwise we will request this amount (in net or gross) in a procedure before CAS.

Apart from this, we once again invite you to make the payment of EUR 496,525.47 plus 5% interest p.a. from 10 August 2021 (EUR 509,992.87 in total) as ordered by FIFA, otherwise, the transfer ban will be imposed tomorrow, bearing in mind that 44 days since the grounds of the decisions were notified and from receiving the findings until the grounds were asked for.

This is without prejudice to the Player's right to claim damages sustained from 23 January 2022 to 22 January 2023 in the amounts stated in the Contract (EUR 2,181,818 gross and EUR 181,818)".

B. Previous proceedings before the FIFA Dispute Resolution Chamber and the CAS

a) *Proceedings before the FIFA Dispute Resolution Chamber – (FPSD-3035) (the “First DRC Proceedings”)*

27. On 20 July 2021, the Club lodged a claim against the Player in front of the FIFA Dispute Resolution Chamber (the “FIFA DRC”), claiming that it was forced by the Player to terminate the Employment Contract on 10 July 2021 and that it was consequently entitled to compensation for breach of contract in accordance with Article 17 of the FIFA RSTP.
28. On 16 August 2021, the Player filed his reply to the Club's claim and lodged a counterclaim against the Club, requesting the following payments from the Club (the “Previous Claim”):
 - EUR 433,374.41 corresponding to the residual value of the Contract;
 - EUR 1,200.000 net “*which would constitute the amount the player would be entitled to receive in the event [the Club] would promote to the China Super league and the option clause within the player's contract would become applicable*”;
 - EUR 181,818 “*in the event the club would be promote at the end of the season 2021*”;
 - EUR 50,000 as “*reputational damages and lawyer representation costs*”;
 - Interest at 5% p.a. on the amounts payable to the Player.
29. The Player argued that the termination of the Employment Contract by the Club was without just cause and claimed to be the party entitled to receive compensation for breach of contract as well as outstanding remuneration. No reference was made to the IRA in the Player's submission in the context of the Previous Claim, and the Player alleged that the Club had a deadline until 10 December 2021 to inform the Player about the payment for 2022.
30. On 17 August 2021, the Club was invited to submit its reply to the Previous Claim of the Player, which it did on 4 September 2021.

31. On 7 September 2021, the FIFA DRC informed the Player that “[i]n view of the above we would like to inform you that the investigation-phase of the present matter is now closed. This is, no further submissions from the parties will be admitted on file”.
32. On 27 September 2021, FIFA acknowledged that the Player had entered into a new employment relationship with Degerfors, and as such, and in light of any potential consequences arising under Article 17 (2) and (4) of the FIFA RSTP, Degerfors was invited to submit its position on the case file, which it did on 1 November 2021.
33. On 22 January 2022, the decision of the FIFA DRC on the Previous Claim with its grounds (the “First FIFA DRC Decision”) was notified to the Parties and to Degerfors, finding, *inter alia*, that
 - the Employment Contract was prematurely terminated by the Club on 13 July 2021;
 - the termination was without just cause; and
 - considering the particularities of the case, the Club should be liable to pay to the Player EUR 496,525.47 as compensation for breach of contract plus 5% interest *p.a.* as from 10 August 2021 until the date of effective payment.

No reference was made in the First DRC Decision to the IRA.

b) *Proceedings before the Court of Arbitration for Sport – CAS 2022/A/8621 (“CAS 8621”)*

34. On 30 January 2022, the Player filed an appeal against the Club to the CAS challenging the First DRC Decision, requesting, *inter alia*, (i) the amount of compensation to be increased considering the automatic renewal of the Employment Contract; and (ii) to be awarded additional monies under the IRA, insofar as it is an integral part of his employment relationship and it only became disputed after his counterclaim was lodged in front of the FIFA DRC.
35. The Player’s requests for relief were as follows:
 - “1. The appeal filed on 30 January 2022 by [the Player] against [the First DRC Decision] is upheld.
 2. The First DRC Decision is confirmed, save for paragraph 4 of the operative part, which shall be amended as follows:
 - [the Club] has to pay to [the Player]:
 - an amount of EUR 496,525.47, plus interest of 5% per annum from 10 August 2021 until the payment is effectively made;
 - an amount of EUR 181.818, plus interest of 5% per annum from 13 January 2022 until the payment is effectively made;
 - an amount of EUR 2,082,922.13, plus interest of 5% per annum from 13 July 2021 until the payment is effectively made;
 - an amount of EUR 2,522,075 plus interest of 5% per annum from 13 July 2021 until the payment is effectively made.

3. *[the Club] shall bear its own costs and is ordered to pay [the Player] a contribution towards his legal fees and other expenses incurred in connection with these arbitration proceedings, the amount of which will be specified at a later stage;*
 4. *The entire costs of the CAS administration costs and the arbitration fees shall be borne in their entirety by [the Club].*
36. On 19 April 2022, the Club filed its Answer objecting to the position of the Player, *inter alia*, challenging CAS jurisdiction over the IRA.
37. On 30 December 2022, the CAS issued its award (the “First CAS Award”) with the following operative part:

“The Court of Arbitration for Sport rules that:

1. *The appeal filed on 30 January 2022 by [the Player] against the decision rendered on 11 January 2022 by the FIFA Dispute Resolution Chamber is partially upheld.*
 2. *Point 4 of the operative part of the decision issued on 11 January 2022 by the FIFA Dispute Resolution Chamber is amended as follows:*
[the Club] has to pay to [the Player]
 - a. *an amount of EUR 181,818, plus interest of 5% per annum from 13 January 2022 until the payment is effectively made;*
 - b. *an amount of EUR 2,082,922.13, plus interest of 5% per annum from 13 July 2021 until the payment is effectively made.*
 3. *The costs of the arbitration, to be determined and served separately to the Parties by the CAS Court Office, shall be borne by [the Player] and [the Club].*
 4. *[the Player] and [the Club] shall each bear their respective legal fees and expenses.*
 5. *All other and further motions or prayers for relief are dismissed.”*
38. In the grounds of the First CAS Award, it is stated, *inter alia*, as follows regarding the issue of CAS jurisdiction over the IRA:

“A. No competence of the CAS deriving from the IRA

91. *Article 12 of the IRA provides as follows:*

“This Agreement is governed by, and shall be construed in accordance with, the laws of the Switzerland. All disputes with respect to this Agreement, including, without limitation its validity, construction and performance, shall belong to the exclusive jurisdiction of the courts of Lausanne, Switzerland”.

92. *The Swiss Federal Tribunal (‘SFT’) has defined an arbitration agreement in the case SFT 4A_342/2019 as follows:*

[...]

Free translation: An arbitration agreement is an agreement by which two or more specific or identifiable parties agree to submit one or more existing or future disputes to binding arbitration in accordance with a directly or indirectly determined legal order, to the exclusion of the original state jurisdiction It is decisive that the will of the parties is expressed to have certain disputes decided by an arbitral tribunal, i.e. a non-state court.

93. *It follows from a literal construction of Article 12 of the IRA that the competent forum to decide disputes arising from the IRA are 'the courts of Lausanne'. The Appellant is of the view that this term does not only cover state courts in Lausanne, but also includes arbitral tribunals having their seat in Lausanne. The Sole Arbitrator does not agree with such construction of the clause. The term 'courts' typically refers to state courts. In addition, the Sole Arbitrator notes that – unlike the clause contained in Article 8(2) of the Contract – Article 12 of the IRA does not provide for an 'express waiver to the national courts'. Furthermore, the clause in Article 12 of the IRA does not foresee – e.g. – first-instance proceedings before the FIFA adjudicatory bodies. Absent any clear indication or evidence submitted by the Appellant that the parties to the IRA intended the term 'courts of Lausanne' to cover also arbitral tribunals, the Sole Arbitrator is not prepared to construe the provision as granting a mandate to CAS to adjudicate disputes arising from the IRA. While the word 'Court' appears in the English version of CAS' name, CAS is not a court in the proper sense under domestic law but rather an arbitral tribunal.*
94. *Even, if one were to follow Appellant's argument that the plural 'courts' refer to both state courts and arbitral tribunals, this would not be of any help to the Appellant, since a key requirement of a valid arbitration clause in Swiss law is that it excludes all recourse to state courts (which is not the case here). Furthermore, there is simply no indication on file that the parties to the IRA wanted to give a potential claimant the option either to resort to state courts or to an arbitral tribunal. Finally, the Sole Arbitrator is minded by the jurisprudence of the SFT that a strict threshold must be applied in determining whether the parties wanted to resort to arbitration (contrary to the interpretation of the scope of an arbitration agreement). In SFT 4A_342/2019, consid 3.2, the SFT stated as follows:*

[...]

Free translation: When interpreting an arbitration agreement, its legal nature must be taken into account; in particular, it must be noted that the waiver of a state court severely restricts the avenues of appeal. According to the case law of the Federal Supreme Court, such a waiver cannot be assumed lightly, which is why a restrictive interpretation is required in case of doubt ... If, on the other hand, the result of the interpretation is that the parties wanted to exclude the dispute from state jurisdiction and submit it to a decision by an arbitral tribunal, but there are differences regarding the conduct of the arbitral proceedings, the utilitarian principle applies; according to this, a contractual understanding must be sought that leaves the arbitration agreement in place.

95. *To conclude, therefore, the Sole Arbitrator finds that the competence of the CAS to adjudicate on claims arising from the IRA cannot be based on Article 12 of the IRA.*

B. *The IRA is not an integral part of the Contract*

96. *The Appellant argues that the CAS is competent to decide on the claim arising from the IRA because the IRA is an integral part of the Contract. The Sole Arbitrator notes that nothing in the Contract points in such direction. Instead, Article 6 of the Contract provides as follows:*

‘ARTICLE 6 IMAGE RIGHTS

[The Player] and [the Club], or an affiliated appointed by Party B, will conclude a separate Agreement for the use of Party B's image rights in China’.

97. *Contrary to what the Appellant states, it follows from Article 6 of the Contract that any regulation pertaining to the use of the Appellant's image rights will not be dealt with in the Contract, but remains reserved for a ‘separate’ contract. Furthermore, the Sole Arbitrator notes that the parties to the Contract and to the IRA are different. Thus, for all of these stated reasons, it cannot be assumed that the contents of the IRA is an integral part of the Contract.*

C. Article 8(2) of the Contract does not extend to the disputes arising from the IRA

98. *In SFT 142 III 239 (consid. 5.2.3), the SFT held as follows:*

[...]

Free translation: According to the group of contracts theory, when several contracts are materially connected, such as the framework agreement and the various related contracts, but only one of them contains an arbitration clause, it is to be presumed, in the absence of an explicit rule to the contrary, that the parties intended to make the other contracts in the same group subject to that arbitration clause as well.

99. *In the case at hand, there can be no doubt that the Contract and the IRA are materially connected. The IRA would have never been executed without the Contract. Furthermore, the Contract and the IRA were signed on the same day. Not only does the history of both contracts indicate that they are materially closely connected, but so does their content. Articles 1, 4 and 10.2 of the IRA specifically refer to the Contract, and Article 6 of the Contract refers to the (separate) IRA. Thus, the question arises whether in light of this interconnection between the contracts, the dispute resolution clause contained in the Contract extends to the (materially connected) IRA.*
100. *It follows from the above jurisprudence of the SFT, however, that such extension cannot be assumed automatically, but only absent any indications to the contrary. In the case at hand, the fact that the IRA contains a separate and different dispute resolution clause clearly speaks against extending the scope of Article 8(2) of the Contract to disputes arising from the IRA. In light of Article 12 of the IRA, there is no indication on file that the parties to the IRA and the Contract (that again are not identical) wanted to submit all disputes arising from these contracts to the CAS. The Appellant submits that the IRA was a sham and that for this reason Article 12 of the IRA shall not be attributed any relevance. However, the Sole Arbitrator, based on the evidence before him, is not prepared to follow this. Consequently, the Sole Arbitrator finds that CAS' competence for the Appellant's claim based on the IRA cannot be derived from Article 8(2) of the Contract.*

D. Summary

101. *To conclude, therefore, the Sole Arbitrator finds that – absent any arbitration agreement of the Parties in favor of the CAS – CAS is not competent to adjudicate any claims arising from the IRA. Thus, Appellant's claim for payment in the amount of EUR 2,522,075.00 including interest must be rejected”.*

c) *Proceedings before the FIFA Dispute Resolution Chamber – (FPSD-10633) (the “Second DRC Proceedings”)*

39. On 20 June 2023, the Player filed the present claim before FIFA requesting the following:

“1 [the Club] has to pay to [the Player] EUR 55,555.50 as outstanding remuneration, plus 5% interest p.a. on this amount as from 21 July 2021 until the date of effective payment;

or, in the alternative

[the Club] has to pay to [the Player] EUR 30,555.52 net as outstanding remuneration, plus 5% interest p.a. on this amount as from 21 July 2021 until the date of effective payment.

2. [the Club] has to pay to [the Player] EUR 2,994,649.56 as compensation for early termination, plus 5% interest p.a. on this amount as from 13 July 2021 until the date of effective payment;

or, in the alternative,

[the Club] has to pay to [the Player] EUR 1,647,058 net as compensation for early termination, plus 5% interest p.a. on this amount as from 13 July 2021 until the date of effective payment”.

40. In support of his claim, the Player recalled the contents of the contracts signed between the Parties – especially the IRA – as well as the factual background to its conclusion. In doing so, he explained that such a contract was an integral part of his relationship with the Club despite being signed with the Company, entailing that it should also be taken into consideration while assessing his outstanding remuneration and compensation for the unlawful termination by the Club.
41. Moreover, the Player recalled the previous proceedings before the FIFA DRC and, in particular, explained that at the time he filed his counterclaim against the Club, the image rights for 2021 were still not due (*i.e.* deadline for payment until 10 December 2021). Therefore, he argued that the amounts now claimed could not have been requested at that time.
42. Furthermore, the Player referred to the First CAS Award, although he suggested that the Sole Arbitrator misinterpreted the facts and arrived at a wrong conclusion as to the lack of jurisdiction.
43. Against this background, and provided that the IRA was not discussed in the First DRC Decision, the Player claimed that FIFA still has jurisdiction over the IRA and should then adjudicate on the matter. He requested to be awarded the outstanding image rights plus the residual value of the IRA as part of compensation for breach of contract.
44. On 29 June 2023, the FIFA general secretariat *i)* acknowledged receipt of the claim of the Player; and *(ii)* informed the Player that his claim raised a preliminary procedural matter that should be analysed by the FIFA DRC *ex officio*.
45. With regard to whether he was competent to deal with the matter, the Chairperson of the FIFA DRC (the “Chairperson”), taking into account Article 19 of the March 2023 edition of the

Procedural Rules Governing the Football Tribunal (the “Procedural Rules”), which were considered applicable, confirmed that he was competent to decide, in an expedited manner, whether the case at stake was affected by any preliminary procedural matters.

46. Subsequently, the Chairman observed that with reference to Article 2 par. 1 of the Procedural Rules and in accordance with Article 23 (1), read in conjunction with Article 22 (1) (b) of the FIFA RSTP (May 2023 edition), the FIFA DRC would – in principle – be competent to deal with the matter at stake, which concerns a dispute with an international dimension between a Serbian player and a Chinese club.
47. The Chairperson further observed that the claim *sub judice* was lodged by the Player against the Club pertaining to outstanding image rights and compensation for breach of contract in connection with the early termination of the employment relationship previously maintained between them.
48. Specifically, and provided that the FIFA DRC had already decided that the termination of the Employment Contract by the Club was without just cause, the Player now claimed that he should also be awarded the monies included in the IRA.
49. While considering the above, the Chairperson confirmed that the claim raised a preliminary procedural matter that should be analysed *ex officio*. In particular, the Chairperson was observant that before submitting this matter to FIFA, the Player had already claimed the same amounts in front of the CAS. Additionally, he took due consideration that the CAS Award went at great length to establish that the CAS had no jurisdiction over the IRA, which the Player now intended to rediscuss. *Mutatis mutandis*, the Chairperson stated that if the CAS lacks jurisdiction to rule the dispute between the Parties as to the IRA, the FIFA DRC equally cannot entertain it.
50. Accordingly, the Chairperson recalled that, on the basis of the principle of *res judicata*, a decision-making body is not in a position to deal with the substance of a case in the event that another – competent – decision-making body has already dealt with the same matter by passing a final and binding decision.
51. The cited principle of *res judicata* ensures that whenever a dispute has been defined and decided upon, it becomes irrevocable, confirmed, and deemed to be just – *res judicata pro veritate habetur*. This principle applies whenever three elements are concurrently present, namely:
 - The same persons - *eadem personae*;
 - The same object - *eadem res*; and
 - The same cause - *eadem causa petendi*.
52. As such, the Chairperson went on to analyse the evidence on file regarding the previous dispute between the Parties. In this respect, he turned his attention to the First DRC Decision and, mostly, to the First CAS Award, which was then final and binding.

53. Subsequently, the Chairperson underlined that the principle of *res judicata* is applicable if cumulatively and necessarily the parties to the dispute and the object of the matter in dispute are identical. In this respect, he noted that both the Player and the Club were the parties to the proceedings leading to the First CAS Award as well as to the dispute at stake. Consequently, the Chairperson concluded that the condition of the identity of parties was fulfilled.
54. In addition, the identity of the object is fulfilled if the reason to claim and the relevant requests of the two claims are similar. When comparing the Player's first appeal at the CAS to the claim at hand, the Chairperson confirmed that both discuss *inter alia* the Player's entitlement to the amounts under the IRA. Consequently, both legal actions were based on the Club's alleged violation of the same contract and materially contained the very same request for relief. Thus, the Chairperson underscored that the condition of identity of the object of the matter in dispute was also fulfilled.
55. In conclusion, the Chairperson determined that both legal actions not only concern identical parties to the dispute but also identical objects and (partial) requests for relief. Therefore, he decided that as the CAS has already dealt with the exact same matter, passing a final and binding decision, the present case is affected by *res judicata*, and the FIFA DRC is not in a position to deal again with the substance of the dispute.
56. For the sake of completeness, the Chairperson also outlined that the fact that the Player did not refer to the IRA in the Previous Claim is immaterial to the above-mentioned conclusion due to the CAS's *de novo* power of review. In the Chairperson's view, as the matter was already decided upon by the appeal body, the Player is prevented for reopening the same discussion.
57. Therefore, the Chairperson decided that the claim at hand is inadmissible, and on 7 July 2023, the Chairperson rendered the Appealed Decision and decided that:

 "1. *The claim of [the Player] is inadmissible.*

 2. *This decision is rendered without costs*".
58. On the same date, the grounds of the Appealed Decision were notified to the Parties.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

59. On 27 July 2023, the Player filed his Statement of Appeal with the Court of Arbitration for Sport (the "CAS") in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the "CAS Code") against the Appealed Decision.
60. On 28 August 2023, and within the granted extension of time, the Appellant filed his Appeal Brief in accordance with Article R51 of the CAS Code.
61. By letter of 11 September 2023 from the CAS Court Office, the Parties were informed that the Deputy President of the CAS Appeals Arbitration had decided to submit the present case to a Sole Arbitrator.

62. On 27 October 2023, and within the granted extension of time, the Respondent submitted its Answer in accordance with Article R55 of the CAS Code.
63. On 31 October 2023, the CAS Court Office informed the Parties that the Arbitral Tribunal appointed to hear the appeal was constituted as follows:

Sole Arbitrator: Mr Lars Hilliger, Attorney-at-Law, Copenhagen, Denmark

64. By email of 10 November 2023 to the CAS Court Office, the Respondent confirmed that it did not need a hearing or a case management conference, but by email of the same date, the Appellant stated, *inter alia*, as follows:

“Given that the Respondent brought many new arguments and factual allegations in its Answer for the first time since the Parties’ engagement and litigious procedures started, the Appellant would prefer a hearing to be held, so that he could challenge the Respondent’s allegations. With regard to the case management conference, the Appellant also finds it necessary.

Please note that the Appellant would like to give his statement about how the Parties’ negotiations went (and how the image rights agreement was concluded) and potentially be examined at the hearing. The same is valid for Mr. Manuel Stojanovic, a witness whose statement was attached to the Appeal Brief. The hearing (if any) would also be attended by prof. Marko Jovanovic.

The Appellant would also ask for the opportunity to ask questions to the Respondent’s representative, Mr. Yao Xia, on circumstances surrounding the Parties’ negotiations and conclusion of the image rights agreement.

At this stage, the Appellant asks the Sole Arbitrator to order the Respondent to produce:

- *all agreements that the Respondent concluded with third parties (except for Supervision Management) in relation to the exploitation of the Appellant’s image (if any);*
 - *all image right agreements that the Respondent concluded with its players who appear on photos from Exhibit 9 to the Respondent’s Answer (if any);*
 - *proof of payment (if any) that would show the amount of taxes paid to the Chinese authorities in relation to the ‘image rights’ fee that the Respondent paid to Supervision Management in 2020 and 2021;*
 - *proof of all payments made to the Appellant (nota bene: the Respondent claims to have paid the salary for June 2021 on 8 June 2021 and the Appellant will argue that this was the payment of the May 2021 salary); [...].”*
65. By letter of 19 December 2023, and following the Respondent’s comments on the Appellant’s request for production of documents submitted to the CAS Court Office by letter of 17 November 2023, the Parties were informed, *inter alia*, as follows:

“[...] Request for document production:

Referring to the Appellant’s email of 10 November 2023, the Sole Arbitrator has decided to reject the Appellant’s following requests for production of documents, namely:

- *'all agreements that the Respondent concluded with third parties (except for Supervision Management) in relation to the exploitation of the Appellant's image (if any);*
- *all image right agreements that the Respondent concluded with its players who appear on photos from Exhibit 9 to the Respondent's Answer (if any);*
- *proof of payment (if any) that would show the amount of taxes paid to the Chinese authorities in relation to the 'image rights' fee that the Respondent paid to Supervision Management in 2020 and 2021'*

The Sole Arbitrator has decided to grant the Appellant's following request for production of documents, namely:

- *'proof of all payments made to the Appellant (nota bene: the Respondent claims to have paid the salary for June 2021 on 8 June 2021 and the Appellant will argue that this was the payment of the May 2021 salary)'".*

66. According to Article R44.3 of the CAS Code applicable in appeal arbitration proceedings on the basis of Article R57 par. 3 of the CAS Code, a party seeking the production of documents in the custody or under the control of the other party has the duty to demonstrate, with specificity in terms of requesting specific documents, whether these documents are likely to exist and to be relevant. A request that is too generic, explorative in nature and not directly relevant to the specific case is going too far within the meaning of being "fishing expeditions" for evidence and must be dismissed. The Sole Arbitrator's partial rejection of the Appellant's request as set out above was based on these considerations and the particularities of this dispute.
67. By letter of 22 December 2023, the Respondent forwarded to the CAS Court Office several documents in Chinese, which had been duly translated into English, while stating, *inter alia*, that *"Those documents are the proofs of the payments made to the Player in 2021, The amounts are after tax amounts of his salary from January to June 2021 and the currency is RMB. The amounts to the Player are Euros. [...]"*.
68. On 3 January 2023, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to hold a case management conference (CMC) in order to discuss a) on which evidentiary measures, including witnesses, the Parties intend to rely during the hearing, and b) the date and expected duration of the virtual hearing.
69. By letter of 16 January 2024, and further to the documents submitted by the Respondent on 22 December 2023, the Appellant was given the opportunity to provide his calculation of the amount paid to him, which the Appellant forwarded to the CAS Court Office on 22 January 2024, following which the Respondent was given a short deadline *"to strictly comment on the Appellant's calculation, or provide its calculation"*. Finally, on 28 January 2024, the Respondent forwarded its *"comments on the calculation of salary"* to the CAS Court Office.
70. By the same letter of 16 January 2024, the Parties were informed that the hearing was to be held by video-conference on 5 March 2024.
71. By letter of 25 January 2024, the Respondent forwarded an Application for Submission of Skeleton Argument, and on 5 February 2024, the Appellant informed the CAS Court Office that he *"is of the opinion that the submitting these arguments, under the given circumstances, is unnecessary"*.

72. By letter of 9 February 2024, the Parties were “*granted the opportunity to file a short-written submission strictly limited to skeleton arguments (max. 2 pages)*”, which both Parties eventually did.
73. Both Parties signed and returned the Order of Procedure, even though the Respondent amended the wording, *inter alia*, objecting to the admissibility of the dispute and challenging the jurisdiction of the CAS to hear this dispute.
74. On 5 March 2024, a hearing was held by Cisco WEBEX.
75. In addition to the Sole Arbitrator and Mrs Andrea Sherpa-Zimmermann, Counsel to the CAS, the following persons attended the hearing:

For the Appellant:

Mr Nikola Djurdjic – Appellant
Mr Filip Blagojevic – Counsel
Mrs Tamara Salazarr – Translator
Mr Manuel Stojanovic – Witness
Mr Stefan Sebez – Witness
Mr Marko Jovanovic – Expert Witness

For the Respondent:

Mr Xia Yao – Party Representative
Mr Lijun Cao – Counsel
Ms Jiaying Yan – Counsel
Ms Jingjing Li – Counsel
Ms Xiaohan Ren – Counsel
Mr Jingnan Wang – Witness
Mr Shixi Huang – Expert Witness
Mr Rex Chen – Interpreter
Mr Rongfeng Sun – Employee of the Appellant/Observer
Mr Zhanhong Zhang – Employee of the Appellant/Observer
Mr Ji Bian – Employee of the Appellant/Observer

Mr Wei Lv – Employee of the Appellant/Observer

76. At the outset of the hearing, the Parties confirmed that they had no objections to the constitution of the Sole Arbitrator.
77. The Sole Arbitrator heard the evidence of Mr Nikola Djurdjic, Mr Manuel Stojanovic, Mr Stefan Sebez and Mr Marko Jovanovic called by the Appellant and the evidence of Mr Jingnan Wang and Mr Shixi Huang called by the Respondent. The witnesses were invited by the Sole Arbitrator to tell the truth subject to the sanctions of perjury under Swiss law. The Parties and the Sole Arbitrator had the opportunity to examine and cross-examine the witnesses and the Player.
78. The Parties were afforded ample opportunity to present their case, submit their arguments and answer the questions posed by the Sole Arbitrator.
79. After the Parties' final submissions, the Sole Arbitrator closed the hearing. The Sole Arbitrator took into account in his subsequent deliberations all the evidence and arguments presented by the Parties although they may not have been expressly summarised in the present Award.
80. Upon the closure of the hearing, the Parties stated that they had no objections in respect of their right to be heard and to have been treated equally and fairly in these arbitration proceedings.
81. By email of 23 April 2024, the Appellant forwarded a copy of the decision passed on 7 March 2024 by the FIFA DRC and notified to the parties to that case on 12 April 2024, submitting that even if the evidentiary proceedings were closed, the said decision should be brought to the attention of the Sole Arbitrator. However, the Appellant at the same time stated that he did not consider the said decision a new piece of evidence or a new argument, but only a new piece of jurisprudence of FIFA.
82. On 1 May 2024, the Respondent submitted its objection to the Player's belated submission and requested this to be disregarded.
83. As the Appellant did not request to have the said decision by the FIFA DRC included in the file and since the Sole Arbitrator considers it as jurisprudence, the Sole Arbitrator finds no need for deciding on the issue.

IV. SUBMISSIONS OF THE PARTIES

84. The following summary of the Parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the Parties. The Sole Arbitrator, however, has carefully considered all the submissions made by the Parties, even if no explicit reference is made thereto in what immediately follows.

A. The Appellant

85. In its Appeal Brief, the Player requested the CAS:

- “1. *to annul [the Appealed Decision] and refer the case back to FIFA*

or, in the alternative,

to annul [the Appealed Decision] and
2. *to order [the Club] to pay to [the Player] EUR 55,555.50 as outstanding remuneration, plus 5% interest p.a. on this amount as from 21 July 2021 until the date of effective payment*

or, in the alternative,

to order [the Club] to pay to [the Player] EUR 30,555.52 net as outstanding remuneration, plus 5% interest p.a. on this amount as from 21 July 2021 until the date of effective payment,
3. *to order [the Club] to pay to [the Player] EUR 2,994,649.56 as compensation for early termination, plus 5% interest p.a. on this amount as from 13 July 2021 until the date of effective payment;*

or, in the alternative,

to order [the Club] to pay to [the Player]] EUR 1,647,058 net as compensation for early termination, plus 5% interest p.a. on this amount as from 13 July 2021 until the date of effective payment
4. *to grant [the Player] a contribution towards his legal fees and other expenses incurred in connection with these arbitration proceedings, the amount of which will be specified at a later stage;*
5. *to condemn the Respondent to pay the entire CAS administration costs and the arbitration fees and to reimburse the Appellant of any and all expenses he incurred in connection with this procedure”.*

86. The Player’s submissions, in essence, may be summarised as follows:

Claim for outstanding salary

- The Club paid the Player his monthly contractual salaries for January – May 2021.
- The Player never received his full salary for June 2021. When requesting the payment of this salary, the Player was informed that it was the Club’s decision.
- Pursuant to the Contract, the Player is entitled to the gross payment of EUR 75,757.50 for the month of June 2021.
- The Player assumes that remuneration for eight days of June 2021 was taken into consideration in the First DRC Decision, which is why the outstanding amount for June 2021 (22 days) amounts to EUR 55,555.50 (gross) / EUR 30,555.22 (net).

- Such an amount fell due on 20 July 2021, and interest must therefore accrue from 21 July 2021.
- The Club never discharged its burden of proof regarding its alleged payment of this amount to the Player.
- The Player's claim for payment of his June 2021 salary is not affected by *res judicata*.
- The claim for the payment of the rest of the June 2021 salary was neither included in the Previous Claim before the FIFA DRCC, nor in the Player's claim before the CAS in CAS 8621.
- The Player's claim for the payment of his June 2021 salary was only, and for the first time, included in his claim in the Second DRC Proceedings.
- The FIFA DRC did not deal with this part of the Player's claim in the Appealed Decision.

Claim for alleged outstanding payments pursuant to the IRA

- The IRA is a simulated document, prepared and signed with the aim of splitting the Player's remuneration into two documents and had no other purpose.
- Although the IRA was signed with the written consent of the Player, the Player only accepted such an arrangement since it was apparently normal for Chinese clubs, since there were apparently no other options to close the deal, and since the agreed remuneration was very attractive to the Player compared to his remuneration with his former club.
- Moreover, the transfer window was soon to close, and the Player had to some extent ruined his relationship with his then current club in order to be able to facilitate the transfer to the Club.
- The Contract was signed by the Player without prior consultation with a lawyer.
- The Player is claiming the unpaid amounts stated in the IRA, as if they were not fictively transferred from the Contract to the IRA.
- It is not submitted that the IRA is an integral part of the Contract in a formal manner, only that it is an integral part of the Parties' employment relationship.
- The payable amount pursuant to the IRA for 2022 is a part of the Player's remuneration for his services provided to the Club.

- According to CAS jurisprudence, an agreement between a player and a company can be qualified as an integral part of the employment relationship with a club, even if the club is not formally a part of such an agreement.
- This is also in accordance with Swiss law.
- Thus, the amount of compensation payable to the Player as a consequence of the Club's termination of their employment relationship without just cause must encompass both payments pursuant to the Contract and the IRA.
- Based on the Club's promotion, the amount of compensation payable to the Player pursuant to the IRA amounts to EUR 2,994,649.56 (gross) / EUR 1,647,058 (net).
- The Player's salaries pursuant to the Degerfors Contract was already deducted in the amount of compensation awarded to the Player in the First CAS Award.
- The Parties only agreed in the Contract that FIFA and, subsequently, the CAS were to be considered competent forums.
- The dispute resolution clause in Article 12 of the IRA has no impact on the jurisdiction of the FIFA DRC with respect to any payment to the Player pursuant to the IRA, as such payments are part of the Player's remuneration from the employment relationship with the Club, thus making the IRA an element of the Contract.
- The Player never signed the IRA and, thus, is not bound by the dispute resolution clause of the said agreement. The same fact also prevents him from seeking justice before national courts as set out in the IRA.
- As a result, the only competent forums before which the Player can pursue his lost payment pursuant to the IRA are FIFA and, subsequently, the CAS, which, until now, have not decided on the claim.
- It was only in October 2021 that the Player was informed that the Club would not respect its obligations towards the Player pursuant to the IRA. At this moment, the Player could no longer amend his counterclaim in the First DRC Proceeding since the investigation phase of these proceedings had already closed.
- The Player's claim before FIFA for payment pursuant to the IRA is not affected by *res judicata*.
- The Player's claim pursuant to the IRA was never covered by or included in the First DRC Proceedings and was never a part of the Player's claim and, therefore, was never included in the First DRC Decision.
- At the time the Player filed his counterclaim in the First DRC Proceedings, there was no actual dispute over payment pursuant to the IRA.

- It is not disputed that the CAS is not competent to adjudicate on the IRA claim based on the lack of the arbitration agreement in the IRA in favour of the CAS.
- However, the First CAS Award never stated that FIFA is not competent to decide on the Player's claim pursuant to the IRA, nor did it state that the FIFA DRC would not have been competent, had the Player lodged this claim before it during the First DRC Proceedings.
- The grounds of jurisdiction of FIFA need to be assessed independently from the grounds of jurisdiction of other dispute-settlement bodies, including the CAS, since the current proceedings are not an appeal against the First CAS Award.
- If one body is not competent to adjudicate on a dispute due to lack of a valid dispute resolution clause, this does not mean *per se* that another body cannot rule on the same dispute.
- In fact, the CAS cannot prevent FIFA from adjudicating on a dispute only by ruling on its own competence.
- The Appealed Decision never stated that it does not have jurisdiction over the IRA-related claim. On the contrary, it only states that the claim is inadmissible because "*CAS has already dealt with the exact same matter, passing a final and binding decision*", thus being "*affected by res judicata*".
- FIFA is competent to adjudicate on the Player's IRA claim already based on the FIFA RSTP and FIFA Circular 1010.
- Neither the First CAS Award, nor the Appealed Decision states which body would instead be competent to adjudicate on the IRA-related dispute between the Parties.
- During the proceedings of CAS 8621, the Player never indicated that the CAS was competent as a first instance body, but, on the contrary, elaborated on why the CAS should decide the matter as an appeal body.
- If the Sole Arbitrator was to agree with the Appealed Decision that the claim for payment is affected by *res judicata*, the Player will be cut off from having his claim entertained, which would constitute a violation of his right to due process.
- Finally, and in accordance with CAS jurisprudence, it must be noted that the Player has standing to sue in relation to the IRA, even if he did not sign the said agreement.

B. The Respondent

87. In its Answer, the Club requested the CAS to:

- i. *“Dismiss all of the Appellant’s arbitration requests.*
- ii. *Render a decision requiring the Appellant to pay CHF 50,000 to the Respondent as compensation for the Respondent’s losses in this case.*
- iii. *Order the Appellant to bear all CAS administrative and arbitration costs associated with this case”.*

88. The Club’s submissions, in essence, may be summarised as follows:

Claim for outstanding salary

- The Player’s claim for a part of the June 2021 salary has already been conclusively dealt with in the previous proceedings and must consequently be dismissed based on *res judicata*.
- In the First DRC Proceedings, the Player claimed the *“residual value of the Employment Contract”*, which included all outstanding salary for 2021, and the FIFA DRC accepted the Player’s claim in this regard.
- Moreover, the issue was never raised in the CAS 8621, and there was no further appeal to the SFT in relation to the *“residual value”*.
- Since a final and binding arbitral award has already been rendered on this claim, the Player cannot raise the same claim in these proceedings.
- The Player has to exhaust the right of claim at once and cannot submit the same matter to arbitration repeatedly.
- In any case, the Club already paid the alleged outstanding amount for the period of 1 – 22 June 2021 to the Player on 8 June 2021.

Claim for alleged outstanding payments pursuant to the IRA

- The Player’s claim pursuant to the IRA has already been conclusively dealt with in the previous proceedings and must consequently be dismissed based on *res judicata*.
- The Player claimed payments pursuant to the IRA in CAS 8621, in which proceedings the Sole Arbitrator ruled that the CAS lacked jurisdiction over IRA-related disputes. The fact that the Player did not bring this claim before FIFA in the First DRC Proceedings does not have any consequence in this regard.
- As there was no further appeal to the SFT in relation to such a claim, there is already a final and binding arbitral award on this claim, and the Player therefore cannot raise the same claim in these proceedings.

- The Player's request in the Second DRC Proceedings is the same as in CAS 8621, and so is the evidence submitted by the Player in both proceedings.
- As the question of CAS jurisdiction over IRA-related disputes has already been conclusively decided by one CAS panel, the Player is barred from submitting the same question to another CAS panel.
- The Sole Arbitrator in CAS 8621 already reviewed the IRA based on the *de novo* principle and included not only a procedural review (no arbitral clause in favour of the CAS), but also a substantive review (the IRA not being an integral part of the Contract).
- The Player's standing to sue and jurisdiction are two aspects of the same matter, with the standing to sue determining the jurisdiction. The Sole Arbitrator in CAS 8621 found that the Player had no right to sue in IRA-related disputes.
- Any decision by the Sole Arbitrator in these proceedings which would confirm CAS jurisdiction over such disputes would be in direct conflict with the CAS 8621 Award, which is exactly what the principle of *res judicata* aims to prevent.
- The fact that CAS 8621 did not rule on FIFA competence regarding IRA-related disputes is irrelevant. Moreover, the Player never requested this from the CAS.
- In any case, there are no outstanding payments under the IRA.
- As already established in CAS 8621, the Player's submission alleging that the IRA was a "sham or simulated agreement" must be rejected.
- Moreover, the parties to the IRA did in fact perform their contractual obligations in accordance with their agreement, which would not have been the case, had it been a sham or simulated contract.
- Accordingly, the IRA is a normal commercial agreement signed by two equal companies and has nothing to do with the employment relationship of the Player, who is not a party to the IRA either.
- Moreover, the IRA is not covered by FIFA rules, and the jurisprudence submitted by the Player is irrelevant based on that fact alone.
- Moreover, the Sole Arbitrator in CAS 8621 found that the IRA was not "*an integral part of the Contract*".
- Moreover, as the Player undisputedly is not a signatory to the IRA, the Player has no right pursuant to the said contract.
- The image rights fee for 2021 pursuant to the IRA has already been fully paid by the Club, which is undisputed.

- Whether the IRA should be extended to the year 2022 was entirely within the sole discretion of the Club pursuant to clause 3 of the IRA, and a possible renewal of the IRA was not linked to any promotion or relegation of the Club.
- Any possible promotion or relegation of the Club would only affect the size of the image rights fee pursuant to the IRA, not the length of the contractual period.
- Since the Club did notify Supervision that the IRA would not be renewed for 2022, naturally no image rights fee for 2022 ever fell due.
- Thus, the Player is not entitled to receive any further payments pursuant to the IRA.
- Finally, and for the sake of completeness, should the Sole Arbitrator find the Club liable for any additional payments to the Player, such amounts must be set out as a net amount after taxes in order for the Club to be able to act in compliance with Chinese tax rules.

V. JURISDICTION

89. The present arbitration is governed by Chapter 12 of the Swiss Private International Law Act (“PILA”), which provides in Article 186 (1) that the Panel is entitled to rule on its jurisdiction (“*Kompetenz-Kompetenz*”).

90. Article R47 of the CAS Code reads as follows:

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

91. Article 56 par. 1 of the FIFA Statutes reads as follows:

“FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA; member associations, confederations, leagues, clubs, players, officials, football agents and match agents”.

92. The Sole Arbitrator notes that while the Player submits that the CAS is competent to deal with his claims, which are also to be considered admissible, the Club objects to the admissibility of the claims and the jurisdiction of the CAS based on the principle of *res judicata*.

93. In this regard, the Sole Arbitrator initially notes that, based on the above provision, he is at least competent to decide on whether FIFA was correct in declaring the Player’s claim inadmissible based on the principles of *res judicata*.

Qualification of the plea of *res judicata*

94. It is not clear whether the objection of *res judicata* pertains to jurisdiction or to the admissibility of a claim. The Swiss legal literature is of the view that the “*distinction between jurisdiction and admissibility is complex*” (GIRSBERGER/VOSER, International Arbitration, 4th ed. 2021, no. 1182a; cf. also STACHER, Jurisdiction and Admissibility under Swiss Arbitration Law – the Relevance of the Distinction and a New Hope, Bull-ASA 2020, 55 ff.). As a rule of thumb, the questions of whether the competence to decide a dispute in a binding way was transferred from the state-court system to arbitration and whether the matter before the arbitral tribunal is within the scope of the arbitration agreement are issues of jurisdiction, whereas all procedural issues that are non-jurisdictional issues and, that may for procedural reasons, cause the end of the arbitration are admissibility issues (GIRSBERGER/VOSER, International Arbitration, 4th ed. 2021, no. 1182). The legal literature is split on the question of whether the plea of *res judicata* is a jurisdictional matter or an issue of admissibility.

95. The Sole Arbitrator also notes the jurisprudence of the Swiss Federal Tribunal (“SFT”) on this matter. In its decision of 14 May 2001, the SFT emphasized that a conflict of jurisdictions could generate a situation of *res judicata* which would constitute a violation of public policy (SFT 127 III 279, 283). The decision states as follows in its relevant parts:

“Il est contraire à l'ordre public qu'il existe, dans un ordre juridique déterminé, deux décisions judiciaires contradictoires sur la même action et entre les mêmes parties, qui sont également et simultanément exécutoires (cf. ATF 116 II 625 consid. 4a). (...)”

Quant à l'autorité de chose jugée, ce principe interdit au juge de connaître d'une cause qui a déjà été définitivement tranchée; ce mécanisme exclut définitivement la compétence du second juge”.

Free translation: It is against public policy that, in the same particular legal order, two judiciary contradictory decisions exist, in the same lawsuit and with the same parties, which are also simultaneously enforceable.

With regard to *res judicata*, this principle precludes a judge from entertaining a case that has already been finally decided; such mechanism definitively excludes the jurisdiction of the second judge.

96. In SFT 136 III 345 (consid. 2.1), on the contrary, the Tribunal did not qualify the plea of *res judicata* as a jurisdictional issue, but as a procedural issue and – in the context of an appeal against an arbitral award – examined the matter in light of the public-policy exception in Article 190(2)(e) of the Private International Law Act (“PILA”) only. The SFT stated insofar as follows:

“Das Schiedsgericht verletzt den verfahrensrechtlichen Ordre public, wenn es bei seiner Entscheid die materielle Rechtskraft eines früheren Entscheids unbeachtet lässt oder wenn es in seiner Endentscheid von der Auffassung abweicht, die es in einem Vorentscheid hinsichtlich einer materiellen Vorfrage geäußert hat”.

Free translation: The arbitral tribunal violates procedural public policy if, in its decision, it disregards the substantive legal force of an earlier decision or if, in its final decision, it deviates

from the opinion it expressed in a preliminary decision with respect to a substantive preliminary issue.

97. At the end of the day, the Sole Arbitrator agrees with the Panel in (e.g.) CAS 2023/A/9404, that he can leave the above question open. It is clear that the Sole Arbitrator must address the question of whether he/FIFA is/was barred from looking at the merits of this dispute because of alleged *res judicata* effects of the First CAS Award, be it under the heading “jurisdiction” or “admissibility”. The distinction whether a matter pertains to jurisdiction or admissibility is only important when an appeal is filed against an award according to Article 190 of PILA. Here, the party appealing and the SFT must decide which of the limited grounds in Article 190(2) of PILA they wish to apply. The SFT has stated that not all matters related to admissibility can be revisited under Article 190(2)(b) of PILA (lack of jurisdiction) and that lack of jurisdiction is only one of the elements defining the mandate of a panel. Other elements delimiting the mandate of a court or panel should therefore not be read into Article 190(2)(b) of PILA and can only be taken into account in the context of other subsections of Article 190 PILA:

“Sur un plan plus général, il ne faut pas perdre de vue que la compétence à raison de la matière et du lieu du tribunal saisi ne constitue qu'une condition de recevabilité parmi d'autres, comme l'existence d'un intérêt digne de protection, la capacité d'être partie et d'ester en justice ou encore l'absence de litispendance et de force de chose jugée (cf. l'art. 59 al. 2 CPC, qui énumère, à titre exemplatif, six conditions de recevabilité, dont la compétence du tribunal [let. b], que l'on désigne communément, sous l'angle négatif, par le terme de fins de non-recevoir). Si une ou des conditions de recevabilité ne sont pas remplies, le tribunal n'entrera pas en matière sur le fond mais prononcera un jugement d'irrecevabilité (HOHL, op. cit., n. 585).

On veillera donc à ne pas assimiler toutes les conditions de recevabilité à l'une d'entre elles - en l'occurrence, la compétence -, sauf à vouloir étendre indûment le pouvoir d'examen de l'autorité de recours dans l'hypothèse, qui se vérifie en droit suisse de l'arbitrage international, où la loi énonce limitativement les griefs susceptibles d'être invoqués dans un recours en matière civile visant une sentence et ne prévoit qu'un seul motif de recours tiré d'une fin de non-recevoir, à savoir le fait pour le tribunal arbitral de s'être déclaré à tort compétent ou incompétent (art. 190 al. 2 let. b LDIP)” (SFT 4A_394/2017, consid. 4.2.4).

Free translation: On a more general level, it should be borne in mind that jurisdiction by reason of the subject-matter and the place of the court seized is only one condition for admissibility among others, such as the existence of an interest worthy of protection, capacity to be a party and to institute proceedings, or the absence of *lis pendens* and *res judicata* (cf. art. 59 para. 2 CPC, which lists, by way of example, six conditions of admissibility, including the court's jurisdiction [subpara. b], which are commonly referred to, in negative terms, as ‘grounds for dismissal’). If one or more of the conditions for admissibility are not met, the court will not enter into the merits of the case but will rule that the claim is inadmissible (HOHL, op. cit., n. 585).

Care must therefore be taken not to assimilate all the conditions of admissibility to one of them - in this case, jurisdiction - without wishing to unduly extend the review authority's power of review in the event, as is the case in Swiss international arbitration law, where the law sets out an exhaustive list of the complaints that may be raised in an appeal in civil matters against an award and provides for only one ground of appeal based on a plea of inadmissibility, namely the fact that the arbitral tribunal has wrongly declared itself competent or incompetent (Art. 190 al. 2 let. b PILA).

98. In view of the above, the Sole Arbitrator will address the issue of *res judicata* not under the heading jurisdiction, but in light of admissibility.

VI. ADMISSIBILITY

99. With regard to admissibility, 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 [...]”.

100. Moreover, Article 57 (1) of the FIFA Statutes reads:

“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”.

101. The grounds of the Appealed Decision were notified to the Appellant on 7 July 2023, and the Appellant’s Statement of Appeal was lodged 27 July 2023, i.e. within the statutory time limit of 21 days set forth in Article R49 of the CAS Code and in Article 57 of the FIFA Statutes, which is not disputed.
102. Furthermore, the Statement of Appeal and the Appeal Brief complied with all the requirements of Articles R48 and R51 of the CAS Code.

A. The First CAS Award is vested with *res judicata*.

103. With regard to the principle of *res judicata*, initially the Sole Arbitrator notes that the First CAS Decision is an arbitral award and thus has *res judicata* effects that must be observed by this Panel sitting in Switzerland subject to the conditions set out in PILA.

B. The effects of *res judicata*

104. According to the SFT, the effects of *res judicata* are as follows (SFT 4A_394/2017, consid. 4.2.3):

“L'autorité de la chose jugée interdit de remettre en cause, dans une nouvelle procédure, entre les mêmes parties, une prétention identique qui a été définitivement jugée”.

Free translation: *Res judicata* prohibits an identical claim that has been finally adjudicated from being challenged in a new proceeding between the same parties.

105. The *res judicata* effect extends to all the facts existing at the time of the first judgment, whether or not they were known to the parties, stated by them or considered as proof by the first court (ATF 139 III 126 consid. 3.1, p. 129). However, it does not stand in the way of a claim based on a change in circumstance since the first judgment (ATF 139 III 126 consid. 3.2.1, p. 130). The *res judicata* effect does not extend to the facts after the time until which the object of the

dispute could be modified, i.e. to those which took place beyond the last time when the parties could supplement their statements of facts and evidentiary submissions. Such circumstances are new facts (real nova) as opposed to the facts already in existence at the decisive time, which could not have been relied on in the previous proceedings (false nova), which under very restrictive conditions may justify the revision of the arbitral award (ATF 140 III 278 at 3.3; judgment 4A_603/2011 of November 22, 2011, at 3).

C. The conditions of *res judicata*

106. There is *res judicata* when the claim in dispute is identical to that which was already the subject of an enforceable judgment (identity of the subject-matter of the dispute). This is the case when in both litigations the same parties submitted the same claim to the court on the basis of the same facts. The identity must be understood from a substantive and not grammatical point of view, so that a new claim, no matter how it is formulated, will have the same object as the claim already adjudicated (ATF 140 III 278 at 3.3; ATF 139 III 126 at 3.2.3).

107. In this regard, the so-called “triple identity” test has been noted and relied upon in previous CAS cases, including CAS 2010/A/2091, in which the Panel confirmed that:

“If arbitral proceedings in Switzerland involve the same subject matter, the same legal grounds and the same parties as previous foreign arbitral proceedings terminated with an award, the so-called ‘triple identity’ test – used basically in all jurisdictions to verify whether one is truly confronted with a res judicata question – is thus indisputably met”.

108. The ratio behind the *res judicata* principle is to ensure the finality of judgments and to ensure that the same matter is not decided upon over and over again. However, the Sole Arbitrator appreciates that it must be applied with caution in order to not deprive any parties of access to justice, which by itself would also be a violation of Swiss public policy.

109. The Appellant’s claim before FIFA was declared inadmissible in the Appealed Decision because the Chairperson found, *inter alia*, that:

“on the basis of the principle of res judicata, a decision-making body is not in a position to deal with the substance of a case in the event that another – competent – deciding body has already dealt with the same matter by passing a final and binding decision”.

110. The Chairperson further found:

“that both the player and the club were the parties in the proceedings leading to the [First] CAS Award as well as in the dispute at stake” and that “the identity of the object is fulfilled if the reason to claim and the relevant requests of the two claims are similar. When comparing the player’s appeal at CAS to the claim at hand,” and then “confirmed that both discuss inter alia the player’s entitlement to the amounts under the IRA. Consequently, both legal actions were based on the club’s alleged violation of the same contract and materially contained the very same request for relief”, underscoring thus “that the condition of identity of the object of the matter in dispute is also fulfilled”.

111. In conclusion, the Chairperson determined that both legal actions not only concerned identical parties to the dispute but also identical objects and (partial) requests for relief, and based on that decided that as the CAS has already dealt with the exact same matter, passing a final and binding decision, the case before him was affected by *res judicata*, and the DRC was not in a position to deal again with the substance of the dispute.

D. Applying the above principles to the case at hand

112. The Sole Arbitrator initially notes that the question regarding the possible application of the principle of *res judicata* to this case concerns two issues: i) whether the Player's claim for outstanding salary was already decided on in a definitive matter in the First DRC Proceeding and subsequently in CAS 8621, and ii) whether the question of FIFA's possible jurisdiction over the Player's claim for compensation for termination of contract without just cause was dealt with in a definitive manner by the Sole Arbitrator in CAS 8621.
113. As already set out above, there is *res judicata* when the claim in dispute is identical to that which was already the subject of an enforceable judgment (identity of the subject-matter of the dispute from a substantive and not grammatical point of view) and this is the case when in both litigations the same parties submitted the same claim to the court on the basis of the same facts.
114. Thus, in order to assess whether the Player's two claims in these proceedings are covered by *res judicata* as submitted by the Club, the Sole Arbitrator needs to apply the "*triple identity*" test.
115. In this regard, the Sole Arbitrator notes that it is not disputed that the parties to the First and the Second DRC Proceedings, in CAS 8621 and in the present proceedings are identical, being the Player and the Club.
116. Thus, the first part of the test is met.
117. With regard to the subject-matter and the legal grounds, the Sole Arbitrator notes that these have to be assessed separately regarding the Player's two claims.

a) Claim for outstanding salary for June 2021

118. With regard to the Player's claim for outstanding salary for a part of June 2021, the Sole Arbitrator initially notes that the Player on the one hand claimed in CAS 8621 that he "*did not claim before FIFA his overdue salaries for 2021*" (in the First DRC Proceedings) and that the FIFA DRC did not elaborate on the exact period it took into account when encompassing the damage compensation.
119. The Club, on the other hand, submits that the Player in the First DRC Proceedings claimed "*the residual value*" of the Contract, which included all outstanding salary for 2021, and that the FIFA DRC granted him his claim in this regard.

120. In this regard, the Sole Arbitrator initially notes that the FIFA DRC in the First DRC Decision only granted the Player “*compensation for breach of contract*” but did not grant the Player any entitlement to outstanding salary.
121. The same appears to be the case in the First CAS Award, according to which the Player was only granted compensation for breach of contract.
122. In the view of the Sole Arbitrator, this approach appears to be in line with the nature of the claim of the Player in the First DRC Proceedings, since the term “*residual value*” of a contract in general refers to the cumulative value of “remaining” payments according to a contract which will fall due from the time of the termination of the said contract until the original expiry date of such a contract.
123. Any such outstanding payments which have already fallen due before the termination of the contract is not to be considered as a part of a compensation payable due to the termination of the contract without just cause, but simply as payments which, in line with the principle of *pacta sunt servanda*, must be respected by the debtor in any case.
124. As such and based on the wording of the First DRC Decision and of the First CAS Award, the Sole Arbitrator finds that the Player’s claim was only, and for the first time, included in his claim before the FIFA DRC in the Second DRC Proceedings, which the Sole Arbitrator finds no reason for not to be allowed.
125. However, this claim was apparently never decided on by the FIFA DRC in the Second DRC Proceedings, which not appear to be disputed.
126. Based on that, the Sole Arbitrator rejects the Club’s submission that there is already a final and binding arbitral award regarding this claim, which is why the Player is not barred from claiming this amount based on the principle of *res judicata* as this part of the Player’s claim against the Club does not meet the “triple identity test”.

b) *Claim for outstanding payment pursuant to the IRA*

127. With regard to the Player’s claim for payment pursuant to the IRA, the Sole Arbitrator notes that the Player did not include this claim in the First DRC Proceeding based on the circumstances on the said agreement, but the Player did include it in his subsequent appeal before the CAS in CAS 8621.
128. Moreover, and since the claim was rejected by the Sole Arbitrator in the First CAS Award, the Player submitted the same matter to the FIFA DRC in the Second DRC Proceedings, just to have it rejected by the Chairperson, who found the claim inadmissible “*as CAS has already dealt with the exact same matter, passing a final and binding decision, the present case is affected by res judicata and the DRC is not in a position to deal again with the substance of the dispute*”.
129. However, in order to assess whether the Chairperson was correct in his decision, which is disputed by the Player and is the main object of this appeal, the Sole Arbitrator needs to analyse

what was in fact decided on in the First CAS Award with regard to the IRA claim and what was in fact the subject-matter covered by the Appealed Decision as decided by the Chairperson.

130. In the Appealed Decision the Chairperson notes that the First CAS Award established that the CAS had no jurisdiction over the IRA, which is in fact not disputed by the Player to be a correct assessment by the Sole Arbitrator based on his considerations. However, based on that, the Chairperson apparently found, *mutatis mutandis*, that if the CAS lacks jurisdiction to rule on the dispute between the Parties as to the IRA, then the FIFA DRC equally cannot entertain it.
131. However, the Sole Arbitrator cannot confirm that this is a correct consequence of lack of jurisdiction of the CAS in every situation and with regard to any possible claim between two parties.
132. In the First CAS Award, the Sole Arbitrator found with regard to the claim based on the IRA that “i) the competence of the CAS to adjudicate on claims arising from the IRA cannot be based on Article 12 of the IRA; ii) it cannot be assumed that the content of the IRA is an integral part of the Contract; and iii) Article 8(2) of the Contract does not extend to the disputes arising from the IRA”.
133. Apparently, and as mentioned above, the Player does not dispute that the CAS does not have jurisdiction to adjudicate on any claim arising from the IRA based on the lack of an arbitration agreement in the IRA in favour of the CAS, nor was it a matter in dispute under the Second DRC Proceedings that Article 8(2) of the Contract, and thus in an arbitration clause, does not extend to any disputes arising from the IRA.
134. However, the Sole Arbitrator in the First CAS Award apparently did not, and was never requested to, decide on whether or not FIFA was or could have been competent to adjudicate on the IRA claim, e.g. based on the provisions of the FIFA RSTP.
135. In the same manner, the Chairperson apparently never specifically assessed whether the FIFA DRC did in fact have/could have had jurisdiction to decide on disputes between the Parties based on the IRA, but instead only rejected the Player’s claim based on lack of admissibility, “as CAS has already dealt with the exact same matter”.
136. As a matter of fact, in the Appealed Decision, the Chairperson did observe that “the DRC would – in principle – be competent to deal with the matter at stake, which concerns dispute with international dimension between a Serbian Player and a Chinese club”.
137. Based on these considerations, the Sole Arbitrator finds that even if the Player’s claim for compensation based on the IRA was raised before the CAS in CAS 8621, and even if such claim was rejected based on lack of jurisdiction of the CAS pursuant to the IRA, combined with the fact that the IRA was not considered to be an integral part of the Contract, the question of whether FIFA had/has jurisdiction to entertain a dispute between the Parties based on the IRA in accordance with, e.g., the FIFA RSTP was never dealt with and never decided on.
138. The Sole Arbitrator notes in this regard that it does not follow from the FIFA RSTP that the absence of a valid arbitration clause in favour of the CAS in a contract between two parties to a dispute does also exclude the possibility that the CAS can in fact have jurisdiction as an appeal

body. On the contrary, the Sole Arbitrator assumes that in the vast majority of disputes over which the FIFA DRC has jurisdiction pursuant to the FIFA RSTP, the parties to such disputes have not entered into any specific arbitration clause in their agreement.

139. Based on the wording of the Appealed Decision, the Sole Arbitrator finds that the initial main subject-matter in the Second DRC Proceedings was in fact the matter of jurisdiction, and the claim was therefore declared inadmissible based on the alleged *res judicata* effect of this issue.
140. However, as the question of FIFA jurisdiction based on the FIFA RSTP was never decided on in previous proceedings, no final and binding decision on this issue was ever issued.
141. In view of the foregoing, the Sole Arbitrator concludes that the “triple identity” test is not met in the present dispute with regard to the issue of FIFA jurisdiction, based on which the Sole Arbitrator finds that the Chairperson erred in declaring the Player’s claim inadmissible based on the principles of *res judicata*.

VII. APPLICABLE LAW

142. Article R58 of the CAS Code provides as follows:

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

143. Article 56 par. 2 of the FIFA Statutes determines 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”.

144. Based on the above, and with reference to the filed submissions, the Sole Arbitrator is satisfied that the various regulations of FIFA are primarily applicable, and that Swiss law is subsidiarily applicable should the need arise to fill a possible gap in the various regulations of FIFA.

VIII. MERITS

145. As set out above, the Sole Arbitrator found that the Chairman was wrong in declaring the Player’s claim for outstanding payment pursuant to the IRA inadmissible based on the principles of *res judicata*.
146. Furthermore, the Sole Arbitrator found that the FIFA DRC did not decide on the Player’s claim for alleged outstanding remuneration and that no previous decision was ever issued covering this claim.
147. The Sole Arbitrator notes in this regard that he agrees with the Club that the *de novo* powers of the CAS extend to, *inter alia*, the jurisdiction of FIFA and the merits of the Player’s claims, even

though such issues were not examined or decided upon by the FIFA DRC in the Second DRC Proceedings.

148. However, based on the circumstances of this particular case, and based on the nature of the dispute, the Sole Arbitrator finds it appropriate that the FIFA DRC is given the opportunity to deal with the entire dispute in the first instance.
149. As such, the Sole Arbitrator finds that the Appellant's claims against the Club must be referred back to the FIFA DRC, which will then decide the case *de novo*, including the question of whether FIFA has in fact jurisdiction to adjudicate any claim based on the IRA, even if the Player is not a formal party to said contract.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 27 July 2023 by Mr Nikola Djurdjic against the decision rendered by the Dispute Resolution Chamber of the FIFA Football Tribunal on 7 July 2023 is upheld, and the matter between these two Parties is referred back to the Dispute Resolution Chamber of the FIFA Football Tribunal for a decision.
2. (...).
3. (...).
4. All other motions or prayers for relief are dismissed.