TAS / CAS
TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

CAS 2024/A/10946 DVSC Futball Szervezo ZRT v. Juan Carillo Milan

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator:	Mr Ulrich Haas, Professor in Zurich, Switzerland, and Attorney-at-Law in Hamburg, Germany
Clerk:	Mr Adrián Hernández, Clerk with the CAS in Lausanne, Switzerland

in the arbitration between

DVSC Futball Szervezo ZRT, Hungary

Represented by Messrs Péter Léka and Andor Léka, Attorneys-at-Law in Debrecen, Hungary

- Appellant -

and

Juan Carillo Milan, Spain

Represented by Mr. Kristóf Wenczel, Attorney-at-Law in Budapest, Hungary

- Respondent -

I. PARTIES

1. DVSC Futball Szervezo ZRT (the "Appellant" or the "Club") is a Hungarian professional football club headquartered in Debrecen, Hungary. The Club is affiliated to the Hungarian Football Federation, which in turn is an affiliated member of the *Fédération Internationale de Football Association* ("FIFA").

2. Juan Carillo Milan (the "Respondent" or the "Coach") is a professional football coach of Spanish nationality.

3. The Appellant and the Respondent shall, where appropriate, be jointly referred to as the Parties (the "Parties").

II. FACTUAL BACKGROUND

4. Below is a summary of the relevant facts and allegations based on the Parties' submissions and evidence examined during the course of the present proceedings. Additional facts and allegations found in the Parties' submissions and evidence may be set out, where relevant, in connection with the 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, he refers in this award (the "Award") only to the submissions and evidence it considers necessary to explain his reasoning.

A. Background facts

5. On 7 November 2021, the Parties entered into an employment contract (the "Contract"), valid between 8 November 2021 and 30 June 2023, by which, *inter alia*, the following was agreed:

> *"IV. Benefits*
>
> *8.1 The [Club] pays the [Coach] a basic personal salary, the amount of which is HUF 3.850.000 net per month for the duration of the contract, i.e., HUF 3 million to eight hundred and fifty thousand, gross HUF 4.577.076.*
>
> *[…]*
>
> *9. In addition to the basic salary specified in point 8.1, the [Club] undertakes to pay the following benefits to the [Coach] in addition to the salary, taking into account the position achieved according to the announced final result of the given NB Season I championship:*
>
> *9.1 Benefits based on the ranking achieved in the 2021/2022 league season*

NB I Championship Rank	***Amount of benefit (HUF)***
1st place	*18.000.000*
2nd place	*16.500.000*
3rd place	*15.000.000*

4th place	*12.750.000*
5th place	*12.000.000*
6th place	*11.250.000*
7th place	*9.000.000*
8th place	*8.250.000*
9th place	*7.500.000*
10th place	*6.750.000*
11th place	-
12th place	-

9.2. Benefits based on the ranking achieved in the 2021/2022 league season.

NB I Championship Rank	***Amount of benefit (HUF)***
1st place	*24.000.000*
2nd place	*22.000.000*
3rd place	*20.000.000*
4th place	*17.000.000*
5th place	*16.000.000*
6th place	*15.000.000*
7th place	*12.000.000*
8th place	*11.000.000*
9th place	*10.000.000*
10th place	*9.000.000*
11th place	-
12th place	-

[…]

IX TERMINATION, IMMEDIATE TERMINATION

17. With regard to the status of the [Coach] as a senior employee, the [Club] may terminate this contract with a unilateral legal declaration (termination), without any obligation to state reasons, in spite of the specified period of time, as follows:

- *before the 30th of June 2022, by paying to the [Coach] the amount of the basic salary until the 30th of June 2022 and the end-of-season bonus corresponding to the placement at the time of termination.*

- If the [Club] nevertheless justifies the termination, the Parties shall consider the following in particular as a ground based on the Employee's ability to justify the employer's lawful termination:

- *if the first team is eliminated from NB I, based on the announced final result of the 2021/2022 league season;*

- *if the first team is relegated in three consecutive rounds at any time after the 5th round in the NB I championship season 2022/2023 and it is four or more points behind the 10th placed team.*

[…]

X. MISCELLANEOUS PROVISIONS

[…]

22. The parties agree to seek an amicable settlement of any dispute through negotiation. In the event of failure to do so, the Parties shall have the right to apply to the dispute settlement procedure of the FIFA Dispute Resolution Chamber.

23. The Parties shall apply the rules and regulations of MLSZ, UEFA, FIFA and the rules of Hungarian law to their legal relationship. In matters not regulated in this contract, the Hungarian Civil Code, The Sports Act, the LC and other relevant law and regulation shall prevail".

6. On 27 June 2022, the Appellant unilaterally terminated the Contract pursuant to Article 17 and Article 210.1(b) of the Hungarian Labour Code (the "Hungarian Labour Code"). To that end, the Appellant furnished the Respondent with the following termination letter (the "Termination Letter"):

"In view if the fact that the [Coach] qualifies as a senior employee, pursuant to point b) of Article 210 (1) of the Hungarian Labour Code and the first sentence of point 17 of Chapter IX of the Employment Contract, the [Club] is entitled to terminate the employment relationship of the [Coach] with a unilateral legal declaration (termination), without the obligation to state reasons, on the basis of which the [Club] has decided as described above.

The [Coach] may submit a claim in 3 copies against the present termination notice to the Debrecen Regional Court (1. Perényi utca, Debrecen, H-4026) within 30 days of its receipt. There is no suspensory effect of bringing an action".

7. On 1 July 2022, the Respondent replied to the Appellant's termination, stating that his dismissal was not in accordance with Hungarian labour laws and offering an amicable settlement to the dispute, alongside payment of nine months' worth of his salary and the end-of-season bonus.

B. The Respondent's claims before FIFA and Hungarian courts

8. On 24 July 2022, the Respondent filed as claim against the Appellant with FIFA on the grounds of termination without just cause.

9. On 26 July 2022, the Respondent filed another claim against the Appellant pertaining to his termination, this time before the Tribunal of Székesfehérvár. In his claim, the Respondent argued that the dismissal was invalid, given that it had not been signed and improperly listed possible legal remedies, and unlawful, as it allegedly had no legal basis. Consequently, the Respondent contended, the Appellant was liable to pay HUF 72,924,912 in compensation.

10. On 22 November 2022, FIFA's Player's Status Chamber ("PSC") rendered its decision ("First PSC Decision") on the Respondent's claim, finding that it was inadmissible due to the Respondent's purported forum shopping.

11. On 24 November 2022, the Tribunal of Székesfehérvár determined it lacked jurisdiction to hear the Respondent's claim. Thus, the Tribunal referred the case to the Debrecen Regional Court.

12. On 1 February 2023, the Respondent signed an employment contract with the Spanish club CD Lugo (the "Lugo Contract"), agreeing on a five-month term in exchange for a gross monthly salary of EUR 9,000 (*i.e.*, EUR 45,000 for the total compensation under the Lugo Contract.

13. On 24 February 2023, the Respondent withdrew his claim before the Debrecen Regional Court.

14. On 6 March 2023, the Lugo Contract was terminated by CD Lugo and the Respondent. On account of the early termination, the Respondent was paid EUR 36,000 gross (EUR 34,200 as compensation and EUR 1,800 as outstanding salaries corresponding to February).

15. On 20 March 2023, the Debrecen Regional Court decided to terminate the procedure and order the Respondent to pay the costs of the proceedings and legal fees.

16. On 4 April 2023, the aforementioned decision was notified to the Parties.

C. CAS Appeal

17. On 7 March 2023, the Respondent filed an appeal against the First PSC Decision before the Court of Arbitration for Sport ("CAS"). The proceedings were docketed as CAS 2023/A/9477.

18. On 14 February 2024, the CAS issued its decision (the "**First CAS Award**"), ordering the following:

> *"1. The appeal filed on 7 March 2023 by Joan Carrillo Milan against the decision rendered on 22 November 2022 by the FIFA Players' Status Chamber is upheld.*
>
> *2. The decision issued on 22 November 2022 by the FIFA Players' Status Chamber is annulled.*
>
> *3. The case is referred back to the FIFA Players' Status Chamber to decide on the merits of the dispute.*

> *4. The costs of the arbitration, to be determined and served separately to the parties by the CAS Court Office, shall be borne by FIFA.*
>
> *5. FIFA is ordered to pay CHF 3'000 to Joan Carrillo Milan as a contribution to his legal fees and other expenses incurred in connection with this procedure.*
>
> *6. All other and further motions or prayers for relief are dismissed".*

19. In reaching its determination, the sole arbitrator reasoned, *inter alia*, the following:

- The law applicable to the merits consisted of, primarily, FIFA Regulations. In the event that the need arose to interpret or fill a gap within the regulation, Swiss law would apply. Finally, for questions not covered by FIFA Regulations, then Hungarian law would apply as the law chosen by the parties; and

- In order for a Coach to be engaged in forum shopping, this being a manifestation of procedural bad faith from the party bringing the claim, an intent to *"game the system"* must be established. In the sole arbitrator's opinion, there was no bad faith from the part of the Coach as he believed that the *"prudent and careful act was to file his claim"* before Hungarian courts considering the Termination Letter and, importantly, the comparatively short prescription period to bring such claims before Hungarian courts (*i.e.*, 30 days as opposed to two years in the case of claims brought before the FIFA Football Tribunal).

D. The Appealed Decision

20. On 16 February 2024, FIFA acknowledged the First CAS Award and, given that the dispute had been referred back, registered the Parties' dispute under a new reference number.

21. On 5 March 2024, the Coach filed its claim before the PSC, requesting the following:

> *"Please oblige the Respondent Club of*
>
> *5.1. (i) payment of the gross amount HUF 50.805.544,- (in words fifty million eight hundred five thousand and five hundred and fourty-four [sic] Hungarian forints as the remuneration until the 30th June 2023, and*
>
> *5.2. (ii) HUF 24.000.000,- (in words twenty-four million Hungarian forint) as a general calculated compensation for the bonus payment (according to the 'loss of a chance' cases scheme), alternatively HUF 20.000.000,- (in words twenty million Hungarian forints) as a compensation for the bonus payment (regarding the result of the Respondent in fact)*
>
> *5.3. (iii) mitigate the claim with amount of the remuneration received from CD Lugo was 12.778.318,- Ft*
>
> *[41] Alltogether [sic] ((i) + (ii) - (iii)) HUF 62.027.226,- (in words sixty-two million and twenty seven thousand and two hundred and twentysix [sic]) and 12% p.a. Interest rate from the date of 27th June 2022 until the effective payment date of the claim above.*
>
> *Alternatively - with regard to the amount of the compensation of the bonus for the season 2022/23 - HUF 58.027.226,- (in words fifty-eight million and twenty seven thousand and two hundred and twentysix [sic]) and 12% p.a. Interest rate from the date of 27th June 2022 until the effective payment date of the claim above".*

22. The Coach argued, in substantiating his requests, that the Club had unilaterally terminated the Contract without just cause, failing to (i) make full payment of the compensation due under the Contract, (ii) execute the termination by the designated person under the Contract, and (iii) correctly identify the proper forum to file an appeal.

23. On 2 April 2024, the Club filed its answer to the Coach's claims, requesting the PSC to:

> *"Based on the above, the respondent primarily asks the Honourable FIFA to establish the lack of jurisdiction/competence in the matter and to reject the claimant's claim without a substantive investigation and to terminate the proceedings.*
>
> *If the Honourable FIFA does not reject the claimant's claim despite its lack of jurisdiction/competence without a substantive investigation, or does not terminate the proceedings, then the respondent asks, as an alternative, to reject the claimant's claim request, owing to the fact that the claimant's claim is unfounded both in its legal basis and in its amount.*
>
> *The respondent asks the Honourable FIFA to oblige the claimant to pay the respondent's costs arising from the procedure".*

24. In the proceedings before the PSC, the Club challenged FIFA's jurisdiction, contending that the Hungarian labour courts were competent to resolve the dispute. Furthermore, the Club argued that the Coach was estopped from continuing its claim before FIFA as the Hungarian courts had already heard the Parties' case on the merits, with the Coach subsequently withdrawing its claim as it anticipated to lose on the merits.

25. On the merits, the Club refuted the Coach's claims, stating that (i) the Contract did not stipulate any payment of additional benefits by the date of the termination; (ii) the Termination Letter was executed on behalf of the employer and by someone entitled to exercise such rights on its behalf; (iii) the Appellant correctly identified the appeal forum; and (iv) no reasons for the termination had to be given per Hungarian labour laws.

26. On 29 August 2024, the PSC issued its decision on the Respondent's claim ("Appealed Decision"), ordering *inter alia* the following:

> *"1. The Football Tribunal has jurisdiction to hear the claim of the claimant, Juan Antonio Carrillo Milan.*
>
> *2. The claim of the Claimant, Juan Antonio Carrillo Milan, is partially accepted.*
>
> *3. The Respondent, DVSC Futball Szervező ZRT, must pay to the Claimant the following amount(s):*
>
> - *HUF 27,998,835 as compensation for breach of contract without just cause plus 5% interest p.a. as from 27 June 2022 until the date of effective payment.*
>
> *4. Any further claims of the Claimant are rejected.".*

27. On 27 September 2024, FIFA notified the Parties of the grounds of the Appealed Decision, which is summarised as follows:

- FIFA has jurisdiction over the dispute since the case has been referred to it by the First CAS Award;

- The Appellant has terminated the Contract without just cause. Despite recognizing that the Contract included a termination clause (*i.e.*, Article 17 of the Contract), the PSC found that the clause was abusive as it could only be triggered by the employer;

- As a consequence of the PSC's dismissal of Article 17 of the Contract, the Contract did not regulate compensation in the event of termination. As such, the PSC applied Article 6(2) of Annex 2 of the Regulations for the Status and Transfer of Players (the "RSTP"), deciding to award the remaining value of the Contract, minus the mitigated amounts related to payments received by the Respondent on account of the Lugo Contract.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

28. On 18 October 2024, the Appellant filed a Statement of Appeal pursuant to Article R48 of the Code of Sports-related Arbitration (the "CAS Code") against the Appealed Decision, passed on 29 August 2024. Thereby, the Appellant requested that the dispute be heard by a sole arbitrator and named both the Coach and FIFA as respondents.

29. On 22 October 2024, FIFA requested to be excluded from these proceedings, arguing *inter alia* that the dispute between the Parties did not concern FIFA and that the PSC had merely acted as the competent decision-making body in the first instance.

30. On 25 October 2024, the Appellant informed the CAS Court Office that it withdrew its appeal against FIFA.

31. On 28 October 2024, the Appellant filed its Appeal Brief pursuant to Article R51 of the CAS Code.

32. On 31 October 2024, the Respondent consented to having the dispute heard by a sole arbitrator.

33. On 15 December 2024, the Respondent filed his Answer to the Appellant's Appeal Brief pursuant to R55 of the CAS Code.

34. On 17 December 2024, the Parties informed the CAS Court Office that neither of them considered it necessary for a hearing to be held in the present proceedings.

35. On 6 January 2025, the CAS Court Office, pursuant to Article R54 of the CAS Code and in the absence of any challenge under Article R34 of the CAS Code, notified the Parties that the President of the CAS Appeals Arbitration Division had decided to constitute the Panel hearing the present matter as follows:

    Sole Arbitrator: Mr Ulrich Haas, Professor in Zurich, Switzerland, and Attorney-at-Law in Hamburg, Germany

36. On 13 January 2025, the CAS Court Office informed the Parties of the Sole Arbitrator's decision to order a second round of submission, which were limited to the following issues:

> *"- standing to be sued (addressed in the Respondent's Answer at paras 29 et seq. particularly the reference to the award issued in CAS 2016/A/4836). Parties are invited to also include the award CAS 2021/A/7775 Nyíregyháza Spartacus Football Club Kft. v. Vukašin Poleksić in their discussions.*
>
> *- if and to what extent the reasoning on the applicable law in the award CAS 2023/A/9477 is binding in this procedure.*
>
> *- if and to what extent the issue of forum shopping / competence of the FIFA Football Tribunal is binding in this procedure.*
>
> *- whether and to what extent the FIFA Interim Regulatory Framework related to the RSTP has any bearing on this case".*

37. Additionally, on the same date, the CAS Court Office notified the Parties that Mr Adrian Hernandez, CAS Clerk, had been appointed as Clerk in this matter.

38. On 22 January 2025, the Appellant filed its Secondary Submission in accordance with the Sole Arbitrator's instructions.

39. On 31 January 2025, the Respondent filed his Secondary Submission in accordance with the Sole Arbitrator's instructions.

40. On 14 February 2025, the CAS Court Office (i) confirmed that the Sole Arbitrator deemed himself sufficiently informed to issue this Award solely on the basis of the Parties' written submissions, (ii) informed the Parties that the evidentiary phase of the proceedings was closed, and (iii) furnished the Order of Procedure to be signed by the Parties.

41. On 15 February 2025, the Respondent duly signed the Order of Procedure.

42. On 18 February 2025, the Appellant duly signed the Order of Procedure.

IV. SUBMISSIONS OF THE PARTIES

43. This section of the Award does not contain an exhaustive list of the Parties' contentions, its aim being to provide a summary of the substance of the Parties' main arguments. In considering and deciding upon the Parties' claims in this Award, the Sole Arbitrator has accounted for and carefully considered all the submissions made and evidence adduced by the Parties, including allegations and arguments not mentioned in this section of the Award or in the discussion of the claims below.

A. The Appellant's Arguments

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

- Preliminarily, the Appealed Decision did not sufficiently substantiate its ruling, instead merely making a determination without explaining the reasoning behind it or adduce legal provisions to support it;

- The Appealed Decision incorrectly applied FIFA Regulations. Given that the Parties executed an employment relationship in Hungary, the Contract was

governed by Hungarian labour laws. As such, FIFA breached its own regulations (*i.e.*, Article 3 of the Procedural Rules Governing the Football Tribunal), as it did not sufficiently account for *"all relevant arguments, laws, and/or collective bargaining agreements that exist at national level"*;

- The Appellant lawfully terminated the Contract, even without justifications, based on the Articles 64(1)(b), 65(1) and 210(1)(b) of Act I of 2012 of the Hungarian Labour Code. As such, the termination on 27 June 2022 complied with the 30-day-notice requirement. Furthermore, such unilateral terminations are available to employers when the employee qualifies as a *"managerial employee"*. The Coach meets these requirements on account of his position and salary as per Article 208 of the Hungarian Labour Code and acknowledged this fact in Article 2.3 of the Contract;

- On account of the above, FIFA wrongly argued that Article 17 of the Contract created an imbalance of power, since the Coach enjoyed a significant degree of prominence within the Club. Furthermore, he received a significant remuneration for his services compared to the standard salary paid on the Hungarian market; and

- Despite the finding in the First CAS Award, the Respondent has clearly committed acts of procedural bad faith by engaging in forum shopping.

45. Additionally, the Appellant submitted the following answers to the Sole Arbitrators questions dated 13 January 2025:

- Considering the issues of the case, in particular their contractual nature, the present dispute is purely horizonal and, therefore, FIFA's participation in these proceedings is not necessary to render the Award;

- The reasoning found in the First CAS Award as to the applicable law is not binding in these proceedings;

- Likewise, nothing in the CAS Code or CAS jurisprudence points to any binding nature of the findings by the PSC; and

- The FIFA Interim Regulatory Framework related to the RSTP is not applicable to the present case as it came into effect on 1 January 2025, while the Appealed Decision was issued on 27 September 2024.

46. On this basis, the Appellant submits the following requests for relief:

> *"- to set aside the decision passed by the FIFA Players' Status Chamber on 29 August 2024 the grounds thereof sent on 27th of September 2024 or change it in a way according to which the claim Juan Carillo Milan, be fully rejected;*
>
> *- to oblige the Frist Respondent, Juan Carillo Milan, to pay all the costs arising in accordance with the procedure".*

B. The Respondent's Arguments

47. The Respondent's submissions, in essence, may be summarised as follows:

- The appeal must be declared inadmissible as the Claimant withdrew its claim against FIFA. It is true that FIFA stated that this dispute was of a purely horizontal nature. However, this is not correct. The Appellant has objected to FIFA's jurisdiction, based on the forum shopping argument. Such objection – according to the Appellant – changes the nature of the dispute and transforms the latter into a vertical dispute, which requires that the appeal must (also) be directed against FIFA. This finding is further backed by the fact that the Appellant repeatedly questioned the validity of the Appealed Decision, criticising the lack of sufficient;

- The Appellant's arguments are without substance insofar as they rely on Hungarian law. As it has been repeatedly concluded, in particular in the First CAS Award, the applicable law in the matter at hand are the FIFA Regulations and, subsidiarily, Swiss law. Moreover, even if Hungarian law were to apply, it would only come into play subsidiarily, i.e. in case the FIFA Regulations are silent in relation to the issue in question (see, CAS 2021/A/7794, ¶¶ 94-96);

- The lack of reasoning when terminating the Contract is in clear contravention of the well-established notion that early termination is an *ultima ratio* remedy (see, CAS 2021/A/7794, ¶¶ 157-159). Thus, when applying Article 14 (1) of the RSTP, it is clear that the Appellant did not terminate the Contract with just cause, as rightly found in the Appealed Decision (see, CAS 2022/A/8963, ¶ 72);

- Article 17 (1) of the Contract shall is abusive, rendering it null and void, by its potestative nature (see, CAS 2021/A/7794, ¶¶ 161-163). Even if such a potestative clause is agreed upon by the Parties, it is nonetheless null and void per application of the FIFA Regulations;

- The Appellant terminated the Contract without just cause, even by the operation of Article 17 of the Contract, since the Appellant failed to make full payment of the Respondent's salary on or before 30 June 2022; and

- The issue of forum shopping cannot be relitigated in these proceedings, nor decided upon by the Sole Arbitrator, as it is covered by *res judicata* with binding effect. As such, the issue of FIFA jurisdiction was already ruled upon in the First CAS Award. The binding nature of the First CAS Award follows from the triple-identity test (*i.e.*, same object, same parties, and the same cause of actions) (see, CAS 2013/A/3061), the requirements of which are met in the present matter. Notably, the Appellant did not challenge the First CAS Award before the Swiss Federal Tribunal ("**SFT**").

48. Additionally, the Respondent submitted the following answers to the Sole Arbitrator's questions dated 13 January 2025:

- On account of the scope of the appeal filed by the Appellant, including issues pertaining to FIFA's jurisdiction, *"FIFA shall not simply be considered as an adjudicatory body to the current dispute which only provides a platform for their members but should defend their interests for the sake of legal certainty"*. Hence, FIFA should have participated in these proceedings;

- The Appellant conflates the concept of precedent and *res judicata*. When a previous award meets the triple-identity test, it becomes binding in light of the principle of *res judiciata*. As such, given the reasoning of the Sole Arbitrator in the First CAS Award, the applicable law to the case has already been decided with binding effect;

- In line with the above, the forum shopping issue is *res judicata* as it was decided upon in the First CAS Award; and

- The Respondent agrees with the Appellants on the inapplicability of the FIFA Interim Regulatory Framework related to the RSTP due it not being in force at the issuance of the Appealed Decision. Notably, in replying to this question, the Appellant did not challenge the applicability of the FIFA Interim Regulatory Framework related to the RSTP on the basis of Hungarian law being solely applicable, tacitly accepting the applicability of FIFA Regulations.

49. On this basis, the Respondent submits the following prayers for relief in its Answer:

> *"Please find the Appellant's Appeal inadmissible and dismiss it entirely.*
>
> *Alternatively, if the Honourable Arbitrator would find the Appeal (partially) admissible, please dismiss the Appellant's Request for Arbitration and Appeal Brief entirely.*
>
> *Please order the Appellant to pay the whole CAS administration cost and the Arbitrators fees.*
>
> *Please fix a sum of CHF 12,500 (Twelve Thousand and Five Hundred Swiss Francs) to be paid by the Appellant to the Coach to assist the payment of his legal fees covering the costs of his representation in front of the Court of Arbitration for Sport."*.

V. JURISDICTION

50. Article R47 of the CAS Code provides as follows:

> *"An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body.*
>
> *An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned".*

51. Furthermore, Article 50 (1) of the 2024 edition of the FIFA Statutes (the "FIFA Statutes") provides that *"[a]ppeals against final decisions passed by FIFA and its bodies shall be lodged with CAS within 21 days of receipt of the decision in question"*.

52. Additionally, Article 22 of the Contract states that:

> *"The parties agree to seek an amicable settlement of any dispute through negotiation. In the event of failure to do so, the Parties shall have the right to apply to the dispute settlement procedure of the FIFA Dispute Resolution Chamber".*

53. The Appellant filed its appeal on the basis of Article 50 (1) of the FIFA Statutes, citing Article 57 (1) of the 2022 edition of the FIFA Statutes. On a similar line, the Respondent

does not contest the CAS's jurisdiction, making reference to Article 22 of the Contract. Finally, the Parties signed the Order of Procedure which, *inter alia*, reaffirmed the jurisdiction of the CAS.

54. Consequently, the Sole Arbitrator has jurisdiction to hear and resolve the present dispute.

VI. ADMISSIBILITY

55. The Appellant submitted its Statement of Appeal within 21 days of being notified of the ground for the Appealed Decision in compliance with Article 50 (1) of the FIFA Statutes. The Respondent does not dispute the admissibility of the Appeal on these grounds.

56. Nonetheless, the Respondent argued against the admissibility of the appeal on the basis of FIFA's standing to be sued. While the Sole Arbitrator takes note of the Appellant's contention on this point, for reasons to be given below, FIFA's purported standing to be sued will be analysed on the merits.

57. Thus, the Sole Arbitrator finds the appeal admissible.

VII. APPLICABLE LAW

A. The relevant Provisions

58. 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".*

59. Moreover, Article 23 of the Contract states that:

> *"The Parties shall apply the rules and regulations of MLSZ, UEFA, FIFA and the rules of Hungarian law to their legal relationship. In matters not regulated in this contract, the Hungarian Civil Code, The Sports Act, the LC and other relevant law and regulation shall prevail".*

B. The Submissions of the Parties

60. The Appellant contends that both the First CAS Award and the Appealed Decision incorrectly applied FIFA Regulations, in particular the RSTP, instead of Hungarian law. Primarily, the Appellant argues that the contractual relationship between the Parties must be governed by Hungarian law, specifically the Hungarian Labour Code, as the latter is *"binding on all persons working in Hungary"* since it is one of the *"highest level legislation enacted by the Hungarian parliament after Hungary's Constitution"*. Moreover, not only was the application of the RSTP a violation of Hungarian law, but the Appellant further argues that it represented a breach of FIFA's own rules, in particular Article 3 of the Procedural Rules Governing the Football Tribunal since it did not take *"into account all relevant […] laws"*. Finally, in the Appellant's view, there is no legal

provision that would bind the Sole Arbitrator to the decision on the applicable law reached in the First CAS Award.

61. The Respondent rebuts the Appellant contentions and, instead, argues that FIFA Regulations are primarily applicable, with Swiss law applying subsidiarily. To that end, the Appellant argues that the First CAS Award binds the Sole Arbitrator to its determination on the law applicable to the Contract. Notably, the First CAS Award, in applying Article 187 (1) of the Swiss Private International Law Act ("PILA"), Article R58 of the CAS Code and Article 56 (2) of the FIFA Statues, as well as interpreting Article 23 of the Contract, found the following:

> *"In view of the above, the Sole Arbitrator finds that the dispute in question must be resolved primarily according to the 'applicable regulations', i.c. the rules and regulations of FIFA, in particular the FIFA RSTP (edition July 2022). In addition, Swiss law shall be applied subsidiarily, should the need arise to interpret or fill a possible gap in the various regulations of FIFA. For all questions not covered by the FIFA regulations, the Sole Arbitrator will resort to the 'rules of law' chosen by the parties, i.e. the Hungarian law"* (CAS 2023/A/9477, ¶ 54).

62. The Respondent argues that this finding has *res judicata* effect, as opposed to serving a decision on a preliminary question, since it was determinative to the finding on the merits of the First CAS Award. Additionally, the Respondent highlighted CAS jurisprudence with similar fact patterns (*i.e.*, where the applicability of the Hungarian Labour Code was in dispute), finding that FIFA Regulations prevailed over the parties' choice of law (see, CAS 2021/A/7794, ¶¶ 94-96, citing CAS 2014/A/3527 and CAS 2017/A/5375). In addition, the Respondent emphasizes the restriction on the parties' freedom to choose the applicable law of the contract in favour of the *"applicable regulations"* (see, CAS 2020/A/7605, ¶ 177; CAS 2023/A/9636, ¶ 130).

63. Finally, the Respondent does not believe the PSC improperly applied the Procedural Rules Governing the Football Tribunal as *"the FIFA Football Tribunal has the primary obligation to apply first and foremost the FIFA Statutes and the FIFA regulations whereas it is only optional to take into account the provisions of the national law"*.

C. The Findings of the Sole Arbitrator

1. Ordre public

64. It is beyond dispute that an arbitral tribunal sitting in Switzerland is bound to the Swiss *ordre public*. The SFT differentiates between procedural and substantive public policy. In particular two concepts form part of the procedural ordre public, i.e. *res judicata* and the intra-procedural binding effect ("*innerprozessuale Bindungswirkung*") of decisions. Both concepts must be complied with *ex officio* by an arbitration panel sitting in Switzerland. In SFT 136 III 345 ¶ 2.1 the court held as follows:

> *"Der Ordre public (Art. 190 Abs. 2 lit. e IPRG) hat sowohl einen materiellen als auch einen verfahrensrechtlichen Gehalt. Ein Verstoss gegen den verfahrensrechtlichen Ordre public liegt vor bei einer Verletzung von fundamentalen und allgemein anerkannten Verfahrensgrundsätzen, deren Nichtbeachtung zum Rechtsempfinden in einem unerträglichen Widerspruch steht, so dass die Entscheidung als mit der in einem Rechtsstaat geltenden Rechts- und Wertordnung schlechterdings unvereinbar erscheint ... Das Schiedsgericht verletzt den verfahrensrechtlichen Ordre public, wenn es bei seinem Entscheid die* ***materielle Rechtskraft*** *eines früheren Entscheids unbeachtet lässt oder wenn*

> *es* ***in seinem Endentscheid von der Auffassung abweicht, die es in einem Vorentscheid hinsichtlich einer materiellen Vorfrage geäussert hat****."* (emphasis added)
>
> **Free translation:** Public policy (Art. 190 para. 2 let. e PILA) has both a substantive and a procedural content. A procedural violation of public policy occurs when fundamental and generally recognised procedural principles are violated, the non-observance of which is an intolerable contradiction of the sense of justice, so that the decision appears to be irreconcilable with the legal and value system applicable in a state under the rule of law... The arbitral tribunal violates the procedural ordre public if it disregards **the res judicata effect** of an earlier decision when making its decision or **if it deviates in its final decision from the view it expressed in a preliminary decision regarding a substantive preliminary issue**.
>
> (See also, CAS 2016/A/4408, ¶ 80, CAS 2006/A/1029, ¶ 14; CAS 2008/A/1677, ¶ 15; CAS 2013/A/3380, ¶¶ 139-141; CAS 2019/A/6483, ¶¶ 117, 119, citing SFT 4A_633/2014; CAS 2020/A/6884, ¶¶ 88, 112).

2. The distinction between res judicata and the internal binding effect of decisions

65. The purpose of *res judicata* is to ensure that the content of a formally final decision is upheld in further separate proceedings. To this end, *res judicata* differentiates between two situations: in case both proceedings are identical, the second seized adjudicatory body is barred from reviewing the first decision. In case the matter decided by the court seized first is prejudicial for the outcome of the court seized second, the latter is bound to the findings of the first court. The effects of *res judicata* are best summarized in KuKo-ZPO/OBERHAMMER/WEBER, 3rd ed. 2021, Art. 236 N. 39 et seq as follows:

> *"The purpose of res judicata is to ensure that the legal peace established by a decision is not called into question again; it is about the binding nature of the judgement. This can be called into question in various constellations. Res judicata initially prevents the same subject matter from being raised again as the subject of an action. [Furthermore,] the binding effect of substantive res judicata becomes apparent when the main issue of the previous proceedings becomes the key issue of the subsequent proceedings."*

66. *Res judicata*, thus, protects the decision issued in one proceeding from being challenged in a new proceeding (cf. SFT 5A_866/2012, ¶ 4.2). Consequently, *res judicata* only comes into play, if the proceedings CAS 2023/A/9477 and CAS 2024/A/10946 are two distinct and separate proceedings.

67. Differently from *res judicata*, the internal binding effect of decisions ("*innerprozessuale Bindungswirkung*") deals with the effects of a decision in the context of the proceedings, in which the decision has been issued. According to this concept, a court cannot deviate from a decision (e.g. a preliminary decision) that it has previously rendered. The court is, thus, bound by its decision. Furthermore, the court is also bound by the legal assessment of the appeal instance, in case the dispute is referred back to it, because here, too, the appeal decision was rendered in the same proceedings. In addition, also the appeal instance itself is bound to its decision should the first instance – after the referral back to it – issue a new decision that is being again appealed. Thus, if CAS 2023/A/9477 and these current proceedings (CAS 2024/A/10946) were one single procedure, the binding effect of the First CAS Award on the pending proceedings before the Sole Arbitrator would have to be determined according to the principles applicable to the internal binding effect of decisions ("*innerprozessuale Bindungswirkung*").

68. According to the SFT the consequences are different, depending what procedural concept applies. The SFT has stated this repeatedly. In SFT 5A_866/2012, ¶ 4.2, the court provided as follows:

> *"4.2 La force de chose jugée formelle (formelle Rechtskraft) ne doit pas être confondue avec l'autorité de la chose jugée (materielle Rechtskraft), dont sont revêtues les décisions sur le fond (ATF 123 III 16 consid. 2a) et qui permet de s'opposer à ce que cette décision soit remise en discussion devant un tribunal par les mêmes parties et sur le même objet (art. 59 let. e CPC; ATF 121 III 474 consid. 2), ni avec l'autorité attachée à l'arrêt de renvoi, qui oblige l'autorité cantonale à laquelle l'affaire est renvoyée de se fonder sur les considérants de droit de l'arrêt (ATF 135 III 334 consid. 2) et qui lie même le Tribunal fédéral saisi d'un recours contre la nouvelle décision rendue par l'autorité cantonale"*
>
> **Free translation** : 4.2 Formal *res judicata* (formelle Rechtskraft) should not be confused with res judicata (materielle Rechtskraft), which is vested in decisions on the merits (ATF 123 III 16 consid. 2a) and which prevents this decision from being reopened before a court by the same parties and on the same subject matter (art. 59 let. e CPC; ATF 121 III 474 consid. 2), nor with the authority attached to the referral decision, which obliges the cantonal authority to which the case is referred to base its decision on the legal grounds of the decision (ATF 135 III 334 consid. 2) and which is even binding on the Federal Court hearing an appeal against the new decision handed down by the cantonal authority.

69. Similarly, the SFT stated in 4A_696/2015, ¶ 3.5.2.2 stated as follows:

> *"Das Bundesgericht setzt allgemein die formelle Rechtskraft, die materielle Rechtskraft und die innerprozessuale Bindungswirkung nicht gleich … Die Bindung der unteren Instanz an die Rechtsauffassung des Rechtsmittelgerichts wird nicht als Folge der Rechtskraftwirkung verstanden, sondern als eine Bindung sui generis, die sich aus der Hierarchie der Instanzen im gleichen Prozess ergibt … Auch die Bindung der urteilenden Instanz selber wird nicht aus der Rechtskraft abgeleitet, sondern aus einem allgemeinen Prinzip der Unabänderlichkeit und Einmaligkeit des Rechtsschutzes."*
>
> **Free translation**: The Federal Court does not equate formal legal force, *res judicata* and the internal binding effect within a single legal process. The internal binding effect of the lower court on the court of appeal is not understood as a consequence of *res judicata*, but as a *sui generis* binding effect that arises from the *hierarchy of instances in the same legal process*. The binding effect of the court itself is not derived from legal force, but from a general principle of irrevocability and the uniqueness of legal protection.

70. Whether the principles of *res judicata* or the principles of the intra-procedural binding effect ("*innerprozessuale Bindungswirkung*") are applied, therefore, may make a difference, because the two concepts are not identical. In the opinion of the SFT, the intra-procedural binding effect ("*innerprozessuale Bindungswirkung*") goes further than *res judicata*. In its decision 5A_591/2015, the SFT states in this regard as follows (¶ 2.2.2):

> *"Diese innerprozessuale Bindungswirkung tritt ein, soweit eine Frage im Zwischenentscheid entschieden worden ist … Inwieweit dies der Fall ist, ergibt die Auslegung des Zwischenentscheides, zu welcher dessen ganzer Inhalt heranzuziehen ist. Zwar kann der unangefochtene Zwischenentscheid nur in jener Form Bindungswirkung entfalten, wie er im Urteilsdispositiv zum Ausdruck kommt, denn nur dieses kann angefochten werden. Doch ergibt sich die Tragweite des Dispositivs vielfach erst aus einem Beizug der Urteilserwägungen (BGE 128 III 191 E. 4a S. 195). Zu beachten ist zudem, dass den Erwägungen eines Entscheides innerhalb eines Verfahrens eine Bindungswirkung zukommen kann, die ihnen ausserhalb des Verfahrens abgeht … Die bundesgerichtliche Rechtsprechung zur Rechtskraft eines Urteils (vgl. BGE 123 III 16 E. 2a S. 18 f.; Urteil des Bundesgerichts 4C.233/2000 vom 15. November 2000, E. 3a) kann daher nicht für die*

> *Tragweite der Bindungswirkung des Zwischenentscheides … herangezogen werden. … Der guten Ordnung und einem beförderlichen Prozessverlauf liefe es zuwider, wenn die Parteien und das Gericht die vorangegangenen Etappen desselben Prozesses immer wieder in Frage stellen könnten … Insoweit ist eine Analogie zur Bindungswirkung eines Rückweisungsentscheides (vgl. hierzu BGE 135 III 334 E. 2 und 2.1 S. 335 mit Hinweisen) zu ziehen … .”* (emphasis added)
>
> **Free translation**: This intra-procedural binding effect occurs insofar as a question has been decided in a preliminary decision... The extent to which this is the case is determined by the interpretation of the preliminary decision, for which its entire content is to be consulted. It is true that the uncontested preliminary decision can only have a binding effect in the form in which it is expressed in the operative part of the judgment, because only this can be challenged. However, the scope of the operative part often only becomes clear when the considerations are also taken into account (BGE 128 III 191, E. 4a, p. 195). It should also be noted that the considerations of a decision within a procedure can have a binding effect, which they lack outside the procedure ... The SFT's case law on *res judicata* (see BGE 123 III 16 E. 2a p. 18 f.; judgment of the Federal Court 4C.233/2000 of 15 November 2000, E. 3a) cannot therefore be used to determine the scope of the binding effect of the preliminary decision ... ... It would be contrary to the good order and expeditious conduct of proceedings if the parties and the court could repeatedly call into question the previous stages of the same process... In this respect, an analogy should be drawn with the binding effect of a rejection decision (cf. BGE 135 III 334 E. 2 and 2.1 p. 335 with references)...

3. The relationship between CAS 2023/A/9477 and CAS 2024/A/10946

71. Which of the two procedural concepts applies in the case at hand depends on whether CAS 2023/A/9477 and CAS 2024/A/10946 constitute a single procedure or two distinct proceedings.

72. At first glance, both proceedings (CAS 2023/A/9477 and CAS 2024/A/10946) appear to be distinct and separate, because they were docketed under different file numbers with the CAS, were referred to different sole arbitrators and because both proceedings deal with appeals against different PSC decisions. However, it is questionable whether such a formalistic view is appropriate.

73. The Sole Arbitrator notes that both CAS proceedings have a common starting point, namely the filing of the claim by the Coach against the Club on 24 July 2022 with FIFA. The matter in dispute has remained unchanged since throughout the various adjudicatory instances. Furthermore, when the sole arbitrator in CAS 2023/A/9477 issued her award, she did not finally dispose of the Coach’s claim against the Club, but only referred the matter back to the “first instance”, i.e. to the PSC. It is true that by doing so, she put an end to the procedure CAS 2023/A/9477. However, from a substantive point of view, the Coach’s claim against the Club remained pending, since the arbitrator in CAS 2023/A/9477 did not decide (either in part or in total) on the Coach’s claim. Instead, she referred the case back to the PSC for a final resolution of the matter. Consequently, from a substantive point of view both arbitral proceedings are not distinct, but constitute a single (ongoing) procedure (stretching over several instances).

74. The Sole Arbitrator further notes that in case one of the Parties would have appealed the First CAS Award to the SFT, the latter would not have undertaken a full review of the grounds listed in Article 190 (2) PILA, but would have qualified the First CAS Award as a preliminary award within the meaning of Article 190 (3) PILA and thus the proceedings

before the various instances as a single procedure. This follows from the decision in SFT 140 III 520, ¶ 2.2.1, where the court held as follows:

> *"En effet, statuant alors comme juridiction d'appel, la Formation du TAS rendra certes une sentence finale au sens de la définition rappelée plus haut, c'est-à-dire une sentence qui mettra un terme à l'instance arbitrale pendante devant elle. Cependant, la procédure au fond opposant les parties ne sera pas nécessairement close par cette sentence. Elle se poursuivra dans l'hypothèse où la Formation annulerait la décision attaquée et renverrait le dossier à la fédération sportive concernée en l'invitant à reprendre l'instruction de la cause et à rendre une nouvelle décision. Considérée sous cet angle, la procédure initiée devant la fédération sportive, puis poursuivie en appel devant le TAS, s'apparente à une procédure étatique ordinaire, soumise à l'exigence de la double instance (cf. art. 75 al. 2, 80 al. 2 et 86 al. 2 LTF). Or, comme le souligne un passage du Message du 28 février 2001 concernant la révision totale de l'organisation judiciaire fédérale (FF 2001 4129 s. ch. 4.1.4.1), repris par BERNARD CORBOZ (in Commentaire de la LTF, 2e éd. 2014, n° 9 ad art. 90 LTF), le critère de la fin de la procédure dépend non seulement de la procédure conduite devant l'autorité qui précède le Tribunal fédéral, mais aussi de la procédure qui s'est déroulée devant l'autorité dont la décision a été déférée à cette instance de recours; il faut donc examiner si la décision attaquée a pour effet de clore la procédure entamée en première instance. En application de ce principe, la décision par laquelle l'autorité de recours annule la décision attaquée et renvoie la cause à l'autorité de première instance pour instruction et nouvelle décision sur le fond est qualifiée de décision incidente par la jurisprudence fédérale, quand bien même elle met un terme à l'instance de recours …*
>
> *Il se justifie d'appliquer par analogie le même principe à la procédure d'appel menée devant le TAS, l'idée étant, ici aussi, de faire en sorte que le Tribunal fédéral ne doive s'occuper qu'une seule fois d'une affaire, sous réserve des exceptions admises par la jurisprudence en la matière (ATF 130 III 755 consid. 1.2). … La présente espèce concerne le même cas de figure. Le TAS a annulé la décision qui lui était soumise après avoir mis en évidence un vice majeur affectant la procédure y relative; puis, usant de la faculté que lui accorde l'art. R57 al. 1 du Code, il a renvoyé la cause à la CRL pour qu'elle statue à nouveau. Ce faisant, il a sans doute clos la procédure d'appel pendante devant lui; il n'a cependant pas rendu une sentence finale, dans l'acception particulière de cette notion retenue ici, mais une décision incidente ayant trait à une question de procédure, à savoir le respect du droit d'être entendu de l'intimé."*

Free translation : Indeed, ruling as a court of appeal, the CAS Panel will certainly issue a final award as defined above, i.e. an award that will bring the arbitration proceedings pending before it to an end. However, the proceedings on the merits between the parties will not necessarily be closed by this award. They will continue in the event that the Panel annuls the contested decision and refers the case back to the sports federation concerned, inviting it to resume the investigation of the case and render a new decision. Seen in this light, the procedure initiated before the sports federation, then pursued on appeal before the CAS, is similar to an ordinary state procedure, subject to the requirement of double instance (cf. art. 75 para. 2, 80 para. 2 and 86 para. 2 LTF). However, as emphasised in a passage of the Message of 28 February 2001 concerning the total revision of the federal judicial organisation (FF 2001 4129 s. ch. 4.1.4.1), taken up by BERNARD CORBOZ (in Commentaire de la LTF, 2nd ed. 2014, no. 9 ad art. 90 LTF), the criterion of the end of the proceedings depends not only on the proceedings conducted before the authority that precedes the Federal Court, but also on the proceedings that took place before the authority whose decision was referred to this appeal body; it is therefore necessary to examine whether the contested decision has the effect of closing the proceedings initiated at first instance. In accordance with this principle, the decision by which the appeal authority annuls the contested decision and refers the case back to the first instance authority for investigation and a new decision on the merits is classified as an incidental decision by federal case law, even if it brings the appeal proceedings to an end.

> It is justified to apply the same principle by analogy to the appeal procedure before the CAS, the idea being, here too, to ensure that the Federal Tribunal only has to deal with a case once, subject to the exceptions allowed by the case law in this area (ATF 130 III 755 consid. 1.2). ... The present case concerns the same scenario. The CAS annulled the decision submitted to it after having highlighted a major flaw affecting the related procedure; then, using the power granted to it by art. R57 para. 1 of the Code, it referred the case back to the CRL for a new decision. In doing so, it undoubtedly closed the appeal proceedings pending before it; however, it did not hand down a final award, in the particular sense of this concept used here, but an interlocutory decision relating to a procedural issue, namely respect for the respondent's right to be heard

75. Thus, according to the SFT, the sports-judicial appeal process is similar to the ordinary instances before state courts ("*... la procédure initiée devant la fédération sportive, puis poursuivie en appel devant le CAS, s'apparente à une procédure étatique ordinaire, soumise à l'exigence de la double instance*"). The SFT, therefore, applies the principles applicable to state court instances by analogy to the dispute resolution mechanism in sport. According thereto a decision by the appeal instance (CAS) is only deemed final, if it not only puts an end to the proceedings before the appeal instance, but also before the first instance. Consequently, a decision by the second instance to refer the case back to the first instance does not qualify as a final decision. Rather, such remittal decision is to be qualified as preliminary decisions, because – substantively – the dispute between the parties is still ongoing and pending.

4. The Consequences of the above for the case at hand

76. It is not necessary to decide whether the present case involves two separate proceedings or a single proceeding, since the application of the principles of *res judicata* or intra-procedural binding effect ("*innerprozessuale Bindungswirkung*") will lead to the same outcome.

a. Application of the res judicata principles

77. It is undisputed that the parties in these pending proceedings are also the parties in CAS 2023/A/9477. It is true that in the proceedings CAS 2023/A/9477 also FIFA was involved. However, this does not undermine the fact that all parties in the current proceedings were already parties in the previous CAS proceedings. It is also undisputed that the claim forming the basis of the proceeding in CAS 2023/A/9477 is the same as in 2024/A/10946.

78. The starting point for determining the scope of *res judicata* is – according to Swiss law – the operative part of the award and not the grounds of the respective decision (see, CAS 2018/A/5898, ¶ 54; CAS 2020/A/7183, ¶ 102; CAS 2020/A/7551, ¶ 74, citing 4A_536/2018, 16 March 2020, consid. 3.1.1). Albeit, the grounds of the decision may be complimentary assessed in order to derive the meaning and/or the scope of the operative part (see, CAS 2018/A/5898, ¶ 54, citing NOTH/HAAS, Article R46 CAS Code, in: ARROYO M., Arbitration in Switzerland – The Practitioner's Guide, 2018, p. 1567; CAS 2020/A/7183, ¶ 102; CAS 2020/A/7551, ¶ 74, citing 4A_536/2018, 16 March 2020, consid. 3.1.1). This view is also backed by the jurisprudence of the SFT. The latter held in SFT 144 I 11, ¶ 4.2 as follows:

> *"Die materielle Rechtskraft eines früheren Entscheids bedeutet grundsätzlich nur eine Bindung an das Dispositiv. Allerdings können zur Feststellung der Tragweite des Dispositivs*

weitere Umstände, namentlich die Begründung des Entscheids herangezogen werden"

Free translation: The res judicata effect of an earlier decision basically only means that the operative part of the decision is binding. However, further circumstances, namely the reasons for the decision, can be used to determine the scope of the ruling of the operative part.

79. Similarly, the SFT held in SFT 136 III 345, ¶ 2.1 as follows:

"Die Rechtskraftwirkung beschränkt sich auf das Urteilsdispositiv. Die Urteilsbegründung wird davon nicht erfasst. Die Urteilserwägungen haben in einer anderen Streitsache keine bindende Wirkung, sind aber gegebenenfalls zur Klärung der Tragweite des Urteilsdispositivs beizuziehen."

Free translation: The binding effect is limited to the operative part of the judgment. It does not extend to the grounds for the judgment. The considerations set out in the judgment are not binding in another dispute, but may be consulted to clarify the scope of the operative part of the judgment.

80. Additionally, when it comes to the binding nature of preliminary questions, the SFT has found that (BGE 137 III 8, ¶ 3.3.1):

"'"Nach schweizerischer Rechtsauffassung sind Gerichte und Behörden befugt, Vorfragen aus einem anderen Zuständigkeitsbereich zu beurteilen, solange darüber die hiefür zuständigen Behörden und Gerichte im konkreten Fall noch keinen rechtskräftigen Entscheid getroffen haben. Die Antwort auf die Vorfrage ist dabei lediglich Urteilserwägung und nimmt an der Rechtskraft des Urteils nicht teil (vgl. BGE 90 II 158 E. 3 S. 161; BGE 131 III 546 E. 2.3 S. 551)"."

Free translation*:* According to Swiss interpretation of the law, courts and authorities are authorised to assess preliminary questions from another area of responsibility provided that the competent authorities and courts have not yet issued a judgment with *res judicata* effect in the specific case. The answer to the preliminary question is merely a consideration of the judgement and does not participate in the res judicata effect of the judgement (see BGE 90 II 158 E. 3 S. 161; BGE 131 III 546 E. 2.3 S. 551)

81. Thus, the Sole Arbitrator in the context of *res judicata* is not bound by preliminary considerations in the First CAS Award that are not reflected in the conclusions of said award. Since the findings on the applicable law in the First CAS Award are preliminary considerations only, they do not enjoy *res judicata* effects. Consequently, if one were to apply the principles of *res judicata*, the Sole Arbitrator would be free to make his own assessment on the issue of the applicable law.

82. In doing so, the Sole Arbitrator – in any event – concurs with the First CAS Award, namely: (i) by operation of Article R58 of the CAS Code, the applicable regulations are primarily applicable to the merits of the dispute, *in casu*, being FIFA Regulations (*i.e.*, the RSTP); (ii) Swiss law shall apply subsidiarily to FIFA Regulations, to be used in the event that the latter needs to be interpreted; and (iii) in view of Article 23 of the Contract, Hungarian law shall apply to any issue on the merits not addressed by FIFA Regulations seeing the none-hierarchical nature of the laws listed in the provision (*i.e.*, *"regulations of MLSZ, UEFA, FIFA and the rules of Hungarian law"*).

b. Application of the principles related to intra-procedural binding effects ("innerprozessuale Bindungswirkung")

83. If one were to apply the principles applicable to intra-procedural binding effects ("*innerprozessuale Bindungswirkung*") the Sole Arbitrator would be bound to the findings related to the applicable law in the First CAS Award. The extent of such binding effects are best described in the following decision of the SFT (131 III 91, ¶ 5.2):

> *"Le juge auquel la cause est renvoyée voit donc sa cognition limitée par les motifs de l'arrêt de renvoi, en ce sens qu'il est lié par ce qui a été déjà tranché définitivement par le Tribunal fédéral (ATF 104 IV 276 consid. 3b p. 277; ATF 103 IV 73 consid. 1 p. 74) et par les constatations de fait qui n'ont pas été attaquées devant lui (ATF 104 IV 276 consid. 3d p. 278). ... Il en découle aussi que le recourant qui a obtenu gain de cause en instance de réforme ne peut, dans la nouvelle procédure cantonale, subir une aggravation de sa position juridique; dans l'éventualité la plus désavantageuse pour lui, il devra s'accommoder du résultat que la partie adverse n'a pas attaqué."*
>
> **Free translation** : The judge to whom the case is referred therefore has his jurisdiction limited by the grounds of the referral decision, in the sense that he is bound by what has already been definitively decided by the Federal Court (ATF 104 IV 276 consid. 3b p. 277; ATF 103 IV 73 consid. 1 p. 74) and by the findings of fact that have been challenged before it (ATF 104 IV 276 consid. 3d p. 278). … It also follows that the appellant who has won his case in the proceedings for review cannot, in the new cantonal proceedings, suffer a worsening of his legal position; in the most disadvantageous eventuality for him, he will have to accept the result that the opposing party has not challenged

84. The extent to which the courts and parties are bound by the First CAS Award follows from the grounds for the referral, which provided both the framework for the new findings of fact and that for the new legal grounds. When reading the section on the applicable law in the First CAS Award it becomes clear that the sole arbitrator definitely resolved the issue of the applicable law in the matter at hand and that, therefore, neither the PSC nor the Sole Arbitrator can deviate from these findings.

VIII. MERITS

85. Having addressed the preliminary issues relevant to this case, and after taking due consideration of the arguments presented by the Parties and the facts relevant to the case, the Sole Arbitrator will consider the following points when resolving the Parties' dispute:

A. To what extent, if any, is the Appellant's claim frustrated by its decision to release FIFA as a respondent in the present case?

B. If the Appellant's claim proceeds, to what extent, if any, is the Sole Arbitrator bound by the First CAS Award's ruling on the issue of FIFA jurisdiction by virtue of the *res judicata* doctrine?

C. Finally, did the Appellant validly terminate the Contract?

A. FIFA's Standing to be sued

1. Issue on the merits

86. The issue of FIFA's standing to be sued in the present case was raised by the Respondent as an admissibility issue, arguing that the Appellant's claim should be dismissed on account of an improperly constituted *litis consortium* (see supra, ¶ 56). As it is well-

established in CAS jurisprudence, the issue of standing to be sued is a merits issue, as opposed to a question of admissibility (see, CAS 2020/A/7356; CAS 2016/A/4602; CAS 2013/A/3047; CAS 2008/A/1639). The Sole Arbitrator notes that, while Article 50 (1) of the FIFA Statutes provides that appeals against FIFA decisions must be filed with the CAS, the remainder of FIFA Regulations are silent on the issue of standing to be sued. Thus, the Sole Arbitrator must resort to Swiss law for guidance to resolve this matter arising from Article 50 (1) of the FIFA Statutes.

2. The law applicable to standing to be sued

87. Turning to the Swiss Civil Code ("SCC"), the Sole Arbitrator takes note of Article 75, which provides that *"[a]ny member who has not consented to a resolution which infringes the law or the articles of association is entitled by law to challenge such resolution in court within one month of learning thereof"*. At first glance, this Article seems to support the Respondent's contention: FIFA should have remained a respondent in this case. However, as already analysed by CAS jurisprudence, Article 75 SCC is not determinative for every kind of disputes that may arise within the context of an association but rather deals with "vertical disputes" only (see, CAS 2021/A/7775, ¶ 118, citing CAS 2014/A/3289-3490, ¶ 119).

88. CAS jurisprudence differentiates between disputes arising from decisions issued by organs of an associations, namely vertical and horizontal disputes. As referenced above, Article 75 SCC prescribes that for vertical dispute the appeal must be directed against the association. Vertical disputes are *"characterized by the fact that the association issuing the decision thereby shapes, alters, or terminates the membership relation between itself and the member concerned"*, often manifesting in decisions *"such as sporting sanctions or purely disciplinary issues, along with eligibility or registration issues"* (CAS 2022/A/8758, ¶ 103, citing CAS 2013/A/3140, ¶ 8.12; CAS 2017/A/4836, ¶ 123. See also, CAS 2021/A/7775, ¶ 119; CAS 2022/A/8758, ¶ 103).

89. A horizontal dispute pertains to disputes between association members and does not involve the association as a party. In horizontal disputes the association merely acts as an adjudicator and does not have a direct interest in the outcome of the dispute other than applying the applicable provisions in a proper and just way (see, TAS 2016/A/4443 & TAS 2016/A/4444, ¶ 83; CAS 2019/A/6233, ¶ 121; CAS 2020/A/7144, ¶¶ 91-94). The panel in CAS 2014/A/3489-3490 defined a horizontal dispute rightly as follows:

> *"[I]f a party to an horizontal dispute adjudicated by a FIFA body – i.e., a dispute between two or more direct or indirect members of FIFA (such as clubs, players, agents or coaches) which does not involve FIFA's disciplinary powers and where FIFA has nothing directly at stake – appeals to the CAS without summoning FIFA, the appointed CAS panel may still proceed to examine the matter and adjudicate the dispute. This is so because a decision adopted by a FIFA body on a dispute between its direct or indirect members, being a decision of an association, is not an award but it has a contractual value for the members of the association"* (CAS 2014/A/3489-3490, ¶ 136).

3. The nature of the dispute follows from the matter in dispute

90. Importantly, in order to determine the nature of the dispute in relation to the parties, one must look at the matter in dispute and the interests at stake that follow from such dispute. Put simply, it is *"the matter in dispute that defines the nature of the dispute and not the*

reasons based on which an adjudicatory body dismisses or accepts a claim. The matter in dispute is defined by the requests of the parties and the facts underlying the respective requests" (CAS 2021/A/7775, ¶ 122).

a. The position of the Parties

91. The Respondent's contends that FIFA should have remained a party to this arbitration on the grounds that (i) FIFA's jurisdiction has been challenged by the Appellant, putting in questions FIFA's interest, in particular legal certainty, (ii) the Respondent cannot protect FIFA's interest as an indirect member of the association, and (iii) additionally, the Appellant has impugned the validity of the Appealed Decision by *"by criticising the lack of (satisfying) reasoning FIFA has provided"*. The Respondent refers to CAS jurisprudence (CAS 2016/A/4836) to back its position. The award reads in its pertinent parts as follows:

> *"Disputes adjudicated by FIFA bodies can be qualified of 'horizontal' disputes where they involve two or more direct or indirect members of FIFA (such as clubs, players, or coaches) and did not involve FIFA's particular prerogatives or disciplinary powers and where FIFA has nothing directly at stake. In such context, and provided the relevant other conditions are met, a CAS panel will proceed to examine the appeal and adjudicate the dispute although FIFA was not summoned as respondent. Other decisions involving the application of sporting sanctions, purely disciplinary issues, **jurisdiction**, eligibility or registration matters fall within the **'vertical' criteria**"* (CAS 2016/A/4836, Preliminary Summary; emphasis added).

92. The Appellant, who had initially named FIFA as a respondent in its Statement of Appeal, submits that the dispute in this matter is of a horizontal nature, since *"FIFA has nothing directly at stake"*.

b. The findings of the Sole Arbitrator

93. The Sole Arbitrator agrees with the Appellant that FIFA, when acting as a mere adjudicatory body in a dispute between indirect members, has "nothing at stake" and that in such circumstances FIFA's interest are not directly affected.

94. In case FIFA decides on a jurisdictional challenge within the context of a contractual dispute between indirect members, this does not put in play any issue that affects FIFA's relationship with its members. Moreover, FIFA's interest in legal certainty and in its rules being applied properly cannot override the basic principle that the resolution of contractual disputes between indirect members first and foremost serves the private interest of the parties. If it were, otherwise, the differentiation between horizontal and vertical disputes would become completely obsolete. FIFA's interest in enforcing its rules and regulation and, thus, the rule of law is not in itself sufficient to confer to it standing to be sued.

95. In any event, the Sole Arbitrator finds that FIFA's interests, being general in nature, are sufficiently protected on account of (i) the shared interest of the Respondent and FIFA, (ii) FIFA's desire to be severed from the case, and (iii) FIFA's participation in case CAS 2023/A/9477.

96. Additionally, if FIFA were of the view that its "general interests" would not be sufficiently taken care of by the Respondent, it could have simply continued to be a party in this arbitration and not requested to be removed from these proceedings. FIFA's

procedural behaviour, thus, shows that its interest in this arbitration is such that the claim can be adjudicated without FIFA to be heard.

97. In view of all of the above the Sole Arbitrator is comfortably satisfied that the Respondent has standing to be sued alone.

B. The Findings of the First CAS Award in relation to FIFA jurisdiction

98. The Parties are in disagreement if and to what extent the Sole Arbitrator is bound to the findings on FIFA jurisdiction in the First CAS Award.

1. The applicable yardstick

99. It is also questionable here which principles should be applied to assess a possible binding effect of the First CAS Award on the pending proceedings. Again, the applicable yardstick could either be the principles applicable to *res judicata* or the principles governing intra-procedural binding effect ("*innerprozessuale Bindungswirkung*"), depending on whether CAS 2023/A/ 9477 and CAS 2024/A/10946 constitute a single procedure or two distinct proceedings.

100. Since the intra-procedural binding effect ("*innerprozessuale Bindungswirkung*") – as shown above – extends further than the *res judicata* effect, the Sole Arbitrator will in the following start the examination of the binding effect based on the principles applicable to *res judicata*. If such examination concludes that the Sole Arbitrator is bound to the findings on jurisdiction in the First CAS Award, then an examination applying the principles of intra-procedural binding effect ("*innerprozessuale Bindungswirkung*") becomes obsolete, because the latter will then – in any event – come to the identical result.

2. The scope of no. 3 of the operative part of the First CAS Award

101. The Sole Arbitrator has already referred to the doctrine of *res judicata* above. As highlighted in the Applicable Law Section of this Award (see supra, ¶¶ 77-82), the starting point for determining the scope of the binding effect of a previous decision is its operative part. The operative part of the First CAS Award reads – *inter alia* – as follows:

> *"1. The appeal filed on 7 March 2023 by Joan Carrillo Milan against the decision rendered on 22 November 2022 by the FIFA Players' Status Chamber is upheld.*
>
> *2. The decision issued on 22 November 2022 by the FIFA Players' Status Chamber is annulled.*
>
> *3. The case is referred back to the FIFA Players' Status Chamber to decide on the merits of the dispute. …"*

102. The Appellant argues that the above conclusion in the First CAS Award is not binding in these proceedings. The Respondent, on the contrary, submits that the First CAS Award ruled on the issue of FIFA jurisdiction in a binding manner and that the Appellant failed to challenge such award before the SFT.

103. No. 3 of the operative part states that the case is referred back to the PSC with respect to the merits of the case only. That finding may – at first sight – appear a bit ambiguous,

since the question whether FIFA has jurisdiction to decide the dispute is – from the perspective of a CAS arbitration – a matter of the merits. However, when interpreting the conclusion in the operative part of the award in light of the grounds of the First CAS Award it becomes clear that the sole arbitrator in CAS 2023/A/9477 finally and bindingly disposed of the question whether or not FIFA has jurisdiction to decide the matter. This clearly follows from the grounds in the First CAS Award that read in their pertinent parts as follows:

> *"81. In view of the above, the Sole Arbitrator considers that the FIFA PSC erred in finding that the Appellant's claim filed before FIFA was inadmissible because the Appellant was engaged in "forum shopping".*
>
> *82. In light of the above, the Sole Arbitrator considers that the appeal shall be upheld and, consequently, the Appealed Decision is set aside.*
>
> *83. Furthermore, considering that the Appellant's principal prayer for relief was to send the case back to FIFA and his arguments were focused on the jurisdiction of FIFA to hear this case, the Sole Arbitrator decides to refer the case back to FIFA to allow the latter to decide on the merits of the case."*

104. In summary, the sole arbitrator in case CAS 2023/A/9477 found that the Respondent had not engaged in forum shopping because (i) he had no intent to game the system and (ii) by taking recourse before Hungarian Courts did not act in bad faith, but rather in an attempt to preserve his rights in light of the Termination Letter and its purported forum for challenges (*i.e.* the Debrecen Regional Court). In doing so, the First CAS Award (i) upheld the Respondent's appeal against the First PSC Decision, which declared the Respondent's claim inadmissible on the basis of forum shopping; and (ii) remanded the case back to the PSC to rule on (all other matters related to) the merits of the case. Put simply, the First CAS Award did rule on the issue of jurisdiction with *res judicata* effect, while leaving the merits of the case (*i.e.*, the legality of the termination of the Contract, etc.) to be decided upon by the PSC.

105. It follows from the above that by referring the case back to the PSC "*to decide on the merits of the case*", the sole arbitrator in no. 3 of the operative part of the First CAS Award withdrew the mandate from the PSC to rule on the question of FIFA jurisdiction, because she herself had finally and bindingly ruled on this matter. Thus, no. 3 of the operative part of the First CAS Award establishes that FIFA has jurisdiction in the present matter. This is true irrespective of whether one applies the principles of *res judicata* or of intra-procedural binding effect ("*innerprozessuale Bindungswirkung*").

C. The termination of the Contract

106. The Sole Arbitrator now turns to the validity of the termination of the Contract by the Appellant.

1. The Parties' positions

107. The Appellant contends that the termination of the Contract, by way of the Termination Letter, was compliant with the Hungarian Labour Code and the terms of the Contract. The Appellant submits that the Parties freely agreed to the terms under Article 17 of the Contract, namely:

> *"17. With regard to the status of the [Coach] as a senior employee, the [Club] may terminate this contract with a unilateral legal declaration (termination), without any obligation to state reasons, in spite of the specified period of time, as follows:*
>
> > *- before the 30th of June 2022, by paying to the [Coach] the amount of the basic salary until the 30th of June 2022 and the end-of-season bonus corresponding to the placement at the time of termination"* (emphasis added).

108. Conversely, the Respondent challenges the validity of Article 17 of the Contract. He is of the view that it is a potestative clause, abusive in nature, which contravenes the principles enshrined in the RSTP. Additionally, the Respondent argues that, in the event that Article 17 of the Contract is considered valid, the Appellant nonetheless failed to meet the requirements, namely full payment by 30 June 2022, to execute the unilateral termination.

2. The findings of the Appealed Decision

109. The Appealed Decision found that Article 17 of the Contract is null and void:

> *"The Single Judge then deemed it appropriate to remind the parties that only a breach or misconduct which is of a certain severity justifies the termination of a contract. In other words, only when there are objective criteria which do not reasonably permit to expect the continuation of the employment relationship between the parties, a contract may be terminated prematurely. Hence, if there are more lenient measures which can be taken in order to ensure the fulfilment of the contractual duties by the counterparty, such measures must be taken before terminating an employment contract. A premature termination of an employment contract can only ever be an ultima ratio measure.*
>
> *Bearing in the foregoing the Single Judge observed that the Respondent argued that it terminated the contract on the basis of [Article 17] of the Contract. However, the Single Judge observed that according to such clause, the Coach was at the mercy of the Cub, as the clause can only be triggered by the Club (i.e., a potestative clause). Moreover, the Single Judge acknowledged the usual imbalance in the bargaining power of the employer and of the employee and, therefore, decided that such clause has a clearly abusive nature and shall not be applicable.*
>
> *Therefore, and considering that no reason was provided as to the termination, the Single Judge concluded that the Club terminated the contract without just cause"* (Appealed Decision, ¶¶ 51-53; emphasis added).

3. The Findings of the Sole Arbitrator

110. A potestative condition is *"a condition whose fulfillment is completely within the power of the obligated party"*. A potestative clause is often used in reference to a contractual term that allows one party to unilaterally terminate a contract without providing a justification and often at a reduced amount of compensation, if any (see, CAS 2021/A/8471, ¶ 126).

111. CAS jurisprudence on the validity of such clauses is not unanimous. Some panels take a very formalistic approach according to which unilateral clauses are invalid by the mere fact that they are unilateral. In CAS 2021/A/7794, e.g., the panel ruled that a clause allowing a club to unilaterally terminate an employment contract early without providing reasons or compensation was null and void. The panel found as follows:

> *"Article 9 paragraph 4 of the Contract, which was invoked by the Appellant as the main reason to terminate the Contract, provides as follows:*
>
> *'The club has the right to unilaterally terminate the contract, in which case the coach is not entitled to any compensation.'*
>
> *After examining the content of the aforementioned clause, the Panel considers that this clause is clearly of a potestative nature, it is not bilateral whilst it limits the rights of the First Respondent in an excessive manner and leads to an unjustified disadvantage towards the Appellant. This finding is in line with the established CAS jurisprudence (for example, awards CAS 2016/A/4852, CAS 2014/A/3675 and CAS 2008/A/1517).*
>
> *In CAS 2016/A/4852 the Panel concludes:*
>
> *'A contractual clause contained in a footballer's employment contract under which only the club, but not the player may unilaterally terminate the employment contract is unilateral and potestative and therefore contrary to the regulations of FIFA. Consequently it is null and void…'*
>
> *The same considerations are expressed in CAS award CAS 2014/A/3675:*
>
> *'A clause in an employment contract which — contrary to the FIFA regulations — is of unilateral and potestative nature and to the benefit to the employer (club) only in that it grants the employer the unilateral right to terminate the employment contract while at the same time excluding the player 's right to compensation for the otherwise remaining period of the contract cannot be validly invoked as a legal basis for unilateral termination of an employment contract...'*
>
> *In the present case, the Appellant was the only party that could decide to unilaterally terminate the Contract, without any explanation while the First Respondent was not at liberty to do the same and further, it left the Coach in a position that he could not seek compensation for this unilateral act of the Club. Therefore, the Panel fully shares the conclusion of the Single Judge of the FIFA PSC in that Article 9 paragraph 4 of the Contract must be considered null and void. Consequently, this clause cannot be validly invoked as a legal basis for the unilateral termination of the Contract"* (CAS 2021/A/7794, ¶¶ 160-164, citing CAS 2016/A/4582, ¶ 4 of the introductory summary; CAS 2014/A/3675, ¶ 1 of the introductory summary. See also, CAS 2021/A/8471, ¶ 126).

112. It appears that FIFA in its Commentary to the RSTP follows this formalistic approach:

> *"In other words, there are limits to the validity of such clauses. These limits are reached when the stipulation becomes authoritative – that is, the conditions under which a contract is terminated are unilaterally influenced by the party that wishes to put an end to the contract. If the definition of 'just cause' agreed by the parties to the contract is deemed to be either void or unjustified, then the general principles for determining just cause will be applied. In this respect, CAS recently found that a contractual clause under which only the club can terminate the agreement is potestative even if agreed upon mutually, and is therefore null and void"* (Commentary on the RSTP (FIFA, 2023 edition), p. 131, Chapter IV: Article 14 – Terminating a contract with just cause, citing CAS 2021/A/7794).

113. Other CAS panels have taken a more liberal approach when evaluating so-called "potestative clauses" and advocate a case-by-case assessment whether the boundaries of contractual freedom have been trespassed. In CAS 2019/A/6368 – 6372, e.g., the panel was of the view "*that there is nothing in FIFA regulations or jurisprudence (or in CAS jurisprudence) which invalidates* [one-sided termination clauses]". Instead the panel in that case gave weight to (i) an in-depth analysis of the proportionality of the contractual relationship as a whole and (ii) the parties' freedom *"to decide whether or not they want*

to enter into the contract with whatever balance of rights and obligations they have been able to negotiate" (CAS 2019/A/6368 – 6372, ¶¶ 196-198, citing *inter alia* CAS 2018/A/6029, ¶ 104).

114. A similar approach was taken by the panel in CAS 2013/A/3375 & 3376 when assessing the validity of a unilateral extension clause in favour of a club. The panel found as follows:

> *"The Panel observes that notwithstanding the well-established jurisprudence of the FIFA DRC that: 'Unilateral options are, in general, problematic, since they limit the freedom of the party that cannot make use of the option in an excessive manner. Furthermore such options are not based on reciprocity, since the right to extend a contract is left exclusively at the discretion of one party' (DRC, 22/07/2004) and the CAS that: '(…) a system that allows, for the benefit of the club alone, the contract of a player to be extended with limited salary adjustments, (…) is not, in principle, compatible with the time frame that the FIFA Regulations provide. (…)' (CAS 2005/A/983 & 984) unilateral options to extend contracts of employment in favour of football clubs are not per se invalid and incompatible with the RSTP and the principle of global labour law. The jurisprudence does not absolutely preclude the valid operation of such a clause and that each specific clause and the circumstances of its purported exercise must be examined on a case by case basis"* (CAS 2013/A/3375 & 3376, ¶ 86(4)i.-xi; emphasis added).

115. In the above case, the panel upheld the unilateral extension clause, finding that *"the particular factual circumstances herein indicate that the option to extend the Employment Contract was valid and exercised with the full knowledge and agreement of the Player"*.

116. In CAS 2015/A/4042 the sole arbitrator held as follows:

> *"Furthermore, the Sole Arbitrator considers this provision to be a deviation from the general principles enshrined in the FIFA Regulations. The Sole Arbitrator finds that, in principle, nothing prevents parties from defining when and under which circumstances a party may terminate the Employment Contract with just cause. For if the parties are free to arrange in the employment contract the method of compensation for breach of contract, then, in principle, the same must apply to specifying when there is 'just cause' (CAS 2006/A/1180). Such deviation may in principle not be potestative, i.e. the conditions for termination may not be unilaterally influenced by the party wishing to terminate the contract (an example of a potestative clause would be the situation where a contract provides that it can be unilaterally terminated by the club if the player does not play in a certain percentage of matches, for the decision to field the player may be influenced by the club). As maintained by a legal scholar, '[i]n relation to the substance of the unilateral option clause, parity of termination rights is no longer to be taken as a benchmark for public policy, since (as shown) a disparity of termination rights has to be accepted as such; instead the question to be answered here is how great the disparity may be. The limit of contractual freedom in this respect is formed by the prohibition of excessive self-commitment, as laid down in Swiss law, for example, at Art. 27(2) of the Swiss Civil Code", adding in a footnote that "[n]o person can alienate his personal liberty nor impose any restrictions on his own enjoyment thereof which are contrary to law and morality' (PORTMANN, Unilateral option clauses in Footballer's contracts of employment: An assessment from the perspective of International Sports Arbitration, ISLR 2007, p. 6-16)"* (CAS 2015/A/4042, ¶¶ 68-70; emphasis added. See also, CAS 2017/A/5056 & 5069, ¶¶ 68-71).

117. In the above case, the sole arbitrator found that based on the circumstances of the case the limits to the contractual freedom of the parties have not been exceeded and upheld the termination clause. The sole arbitrator found that the clause did not create an unreasonable obligation that led to an unjustified disparity between the parties nor that it

was the result of unequal bargaining power between the parties (see, CAS 2015/A/4042, ¶ 69).

118. Considering the foregoing, the Sole Arbitrator is not convinced that Article 17 of the Contract is null and void in light of the RSTP. Firstly, while some of the awards referenced above refer to general principles of the RSTP restricting the parties' contractual freedom, the Sole Arbitrator concurs with the panel in CAS 2019/A/6368 – 6372 in finding that FIFA regulations are silent on the limits of contractual autonomy and the need for reciprocal clauses. The Sole Arbitrator finds that, therefore, the validity of such clauses – in the absence of specific provisions in the RSTP – must be assessed first and foremost in light of the subsidiarily applicable law.

119. In the case at hand, the subsidiarily applicable law is not Swiss law, since the latter only applies to interpret the rules of the industry, i.e. the RSTP. In view of the regulatory silence of the RSTP, the limits of contractual autonomy must, therefore, be determined applying the law chosen by the Parties, i.e. Hungarian law.

120. *In casu*, the Sole Arbitrator is not persuaded that Article 17 of the Contract violates Hungarian law. Be it as it may, the Sole Arbitrator can leave this question unanswered, since even if Article 17 of the Contract was valid, the Sole Arbitrator is sufficiently satisfied that the Appellant failed to meet the preconditions to properly terminate the Contract pursuant to this article. Thus, further analysis on the Hungarian law would become superfluous.

121. Article 17 of the Contract is drafted in such a way to condition the Appellant's termination rights. The Sole Arbitrator finds that the conditions agreed to reflect the *"common intention of the parties"* from a plain reading of the clause, as well as in the absence of any evidence external to the Contract that would indicate the contrary (see, Article 18 of Swiss Code of Obligations, as well as Decision of the SFT, 4A_155/2017, 12 October 2017, ¶ 2.3; ATF 132 III 268, ¶ 2.3.2; ATF 132 III 626, ¶ 3.1; ATF 131 III 606, ¶ 4.1). These conditions, as understood by the Sole Arbitrator, are the following:

    i. The termination option must have been exercised *"before the 30th of June 2022"*; and

    ii. The termination option shall be exercised *"by paying to the [Respondent] the amount of the basic salary until the 30th of June 2022 and the end-of-season bonus corresponding to the placement at the time of the termination"* (emphasis added).

122. Hence, the termination hinged on both a temporal condition (*i.e.*, must be executed before 30 June 2022) and two conditions precedent to the termination (*i.e.*, paying salaries until 30 June 2022 and the end-of-season bonus). It is uncontested that the Appellant made only partial payment of the Respondent's remaining wages, six days after the deadline, as well as the end-of season bonus. Indeed, by not making full payment of the Respondent's wage and making payment after the deadline to trigger the termination, the Appellant effectively failed to properly exercise the termination option within the prescribed period, despite furnishing the termination letter of 27 June 2022, since the triggers for termination were only partially fulfilled and only after 30 June 2022.

123. Consequently, the Appellant's appeal is dismissed since the unilateral termination of the Contract, while potentially valid under the framework of the Contract and the law applicable on this issue, was improperly executed.

IX. COSTS

(…)

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ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by DVSC Futball Szervezo ZRT against the Decision of the FIFA Players Status Chamber passed on 29 August 2024 is dismissed.

2. The Decision of the FIFA Players Status Chamber passed on 29 August 2024 is confirmed.

3. (…).

4. (…).

5. All other and further motions or request for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 12 June 2025

THE COURT OF ARBITRATION FOR SPORT

Ulrich Hass
Sole Arbitrator

Adrián Hernández
Clerk