**CAS 2024/A/10602 PAS Lamia 1964 FC v. Stefan Ashkovski**

# ARBITRAL AWARD

**delivered by the**

# COURT OF ARBITRATION FOR SPORT

**sitting in the following composition:**

Sole Arbitrator: Mr Hendrik Willem Kesler, Attorney-at-Law, Enschede, The Netherlands

*Ad hoc* Clerk: Mr Dennis Koolaard, Attorney-at-Law, Amsterdam, The Netherlands

**in the arbitration between**

**PAS Lamia 1964 FC**, Lamia, Greece

Represented by Mr Konstantinos Zemberis, Zemberis, Markezinis, Lambrou & Associates Law Firm, Athens, Greece

**Appellant**

**and**

**Stefan Ashkovsi**, Bulgaria

Represented by Mr Georgi Gradev and Mr Marton Kiss, SILA International Lawyers, Sofia, Bulgaria

**Respondent**

*** * * * ***

## I. PARTIES

1. PAS Lamia 1964 FC (the "Appellant" or the "Club") is a Greek football club with its registered office in Lamia, Greece. The Club is registered with the Hellenic Football Federation (the "HFF"), which in turn is affiliated to the *Fédération Internationale de Football Association*.

2. Mr Stefan Ashkovski (the "Respondent" or the "Player") is a professional football player of Bulgarian nationality.

3. The Club and the Player are hereinafter jointly referred to as the "Parties".

## II. INTRODUCTION

4. This procedure revolves around an employment-related dispute between the Club and the Player.

5. Following a claim lodged by the Player against the Club and a counterclaim lodged by the Club against the Player, the Dispute Resolution Chamber of the FIFA Football Tribunal (the "FIFA DRC") issued a decision on 7 March 2024 (the "Appealed Decision"), ordering the Club to pay the Player EUR 800 as outstanding remuneration and EUR 121,800 as compensation for breach of contract, both plus interest.

6. In the present appeal arbitration proceedings before the Court of Arbitration for Sport ("CAS"), the Club is challenging the Appealed Decision, requesting that the Appealed Decision be set aside and that it is awarded compensation for breach of contract in the amount of EUR 40,000. The Player seeks a confirmation of the Appealed Decision, although acknowledging that the Club paid him an amount of EUR 800 as outstanding remuneration in the meantime.

## III. FACTUAL BACKGROUND

7. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the Parties and the evidence examined in the course of the proceedings and at the hearing. This background information is given for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.

### A. Background Facts

8. On 31 August 2022, the Player and the Club concluded an employment contract (the "Employment Contract") for a period of two football seasons, valid as from 1 September 2022 until 30 June 2024.

9. After the end of the 2022/23 football season, Mr Leonidas Vokolos, Head Coach of the Club (the "Coach") informed the Player that he would not be his first or second choice for his position in the upcoming 2023/24 football season.

10. On 24 June 2023, the Player and Mr Francisco Medina Luna, the Club's Director, engaged in a conversation on Viber (a voice and text messaging application). The Club's Director, *inter alia*, indicated as follows:

> "*It's the best for you* [to find a team that trusts you]*, it's not a good solution to go back to Lamia and be in a bad situation training only a player like you, squeeze your agent, listen to me. Pame Malaka*".

11. On 1 July 2023, the Player responded, *inter alia*, as follows to the Club's Director:

> "*bro i have contract i must come back*
>
> *but it is not good to train alone so i try to find solution*".

12. To which the Club's Director responded as follows:

> "*Yes stefan push your manager also not is good for you!!*".

13. On 10 July 2023, when the preparations for the 2023/24 football season started, the Club informed the Player that he would be part of a separate small training group until 16 July 2023 to bring them "*to the appropriate and necessary level of fitness and readiness to re-join the first team of the club and its normal trainings*".

14. On 14 July 2023, counsel for the Player put the Club in default and requested payment of EUR 36,283 corresponding to outstanding remuneration and bonuses, within 15 days. The Player also requested to be reinstated in the first team as follows:

> "[…] [A]*t the end of the 2022/2023 season, the Club has verbally informed* [the Player] *that his services are no longer needed. On July 10, 2023, the Club has dropped* [the Player] *from the first team and has assigned him to an individual training plan for an undetermined period with the sole reason to get rid of him. That is clearly abusive conduct from the Club's side and a material breach of the essential terms of the* [Employment Contract] *and* [the Player's] *personality rights, including the right to effective occupation. Therefore, you must reinstate* [the Player] *with the first team immediately, failing which he reserves the right to terminate the* [Employment Contract] *based on Article 14.2 RSTP*".

15. On 15 July 2023, the Club paid the Player an amount of EUR 800.

16. On 16 July 2023, the Club extended the Player's training with a separate group of players until 23 July 2023, while the first team players left for a pre-season training camp in Alkmaar, the Netherlands, on 17 July 2023, which was expected to last two weeks.

17. On 19 July 2023, the Club indicated that the outstanding remuneration would be paid by 31 July 2023 and further indicated as follows with respect to the Player's default notice of 14 July 2023:

> "*As far as the training situation of the player is concerned,* [the Club] *would like to point out that the* [Player] *does not train individually as*

*wrongly mentioned in your email and that there is no abusive conduct from the club's side towards the player.*

*Your client is training in a group of first-team players under the instructions of the fitness coach and with all the facilities of the club available to them and all the required personnel (doctor, physiotherapist, etc.) present.*

[The Player] *will undergo, like all the players of the said group, ergometric tests on Monday, so that the club's coaching and technical team of the club receive all necessary information for the physical shape and fitness of the player.*

*As soon as the said information becomes available to the coaching and technical staff of the club, the coach will decide on the possible full reintegration of your client into the trainings of the first team*".

18. On the same date, counsel for the Player responded, *inter alia*, as follows:

"*I understand that the club has dropped* [the Player] *from the first team for undisclosed reasons as of July 10, 2023. In light of that, kindly answer the following questions:*

- *Why did the club drop* [the Player] *from the first team as of July 10, 2023, and assign him to train with a small group of players and a fitness coach?*
- *Is it a permanent or temporary measure? In the latter case, how long will it last?*
- *What milestones should* [the Player] *achieve to be reintegrated into the first team?*
- *Why has the club not paid* [the Player] *a substantive amount yet?*
- *Does the club want to get rid of the other players assigned to train with* [the Player]*?*

*In anticipation of your answers, I still see the club's behavior as abusive and a material breach of the contract's essential terms and* [the Player's] *personality rights, including the right to effective occupation. Therefore, I insist that you reinstate* [the Player] *with the first team immediately, failing which he reserves the right to terminate the* [Employment Contract] *based on Article 14.2 RSTP*".

19. On 23 July 2023, the Club paid the Player an amount of EUR 10,000.

20. On the same date, the Club informed the Player that he had to undergo ergonomic tests on 24 July 2023 and that he would be informed about the training schedule for the following days after 26 July 2023.

21. On 24 July 2023, in response to the Player's letter dated 19 July 2023, the Club informed the Player as follows:

> "*First of all, it is not true that our club has dropped* [the Player] *from the first team for undisclosed reasons and it is not true that our club's conduct towards the player is abusive, as you mention in your letter of 19 July 2023.*
>
> *In any case though, as already explained,* [the Player] *will undergo ergometric tests today (please note that he has already been informed about the time and place) and if he is proved to be in the right shape and as fit as necessary, as we believe he will be after the training program of last week, he will be reintegrated of course to the first team's regular trainings.*
>
> *Moreover, we would like to inform you hereby that we have already paid an amount of 10,000 euros (the relevant swift is attached) to your client* [the Player] *against the total outstanding amount and of course, all remaining outstanding amounts will be paid in the next days and in any case by 31st July 2023, as per your request.*
>
> *We would also like to point out once more that* [the Club] *is a serious club and as such, it does never behave abusively towards any of its players and fully respects its obligations. Indeed, while due to some unexpected cash flow problems we have faced some delays in some payments, as already explained, you can rest assure that all outstanding payments will have been settled by the end of the current month.*
>
> *It is thus clear that since your client will receive all the outstanding amounts by the requested date and since he will be reintegrated immediately to the first team, provided that his ergometric tests will prove that he is ready to do so (as the people of the club that followed last week trainings believe it will be the case), both of your requests will be fully satisfied.*
>
> *We thank you for taking note of the above and we will keep you posted regarding the next payments to your client, as well as regarding to his anticipated and expected immediate reintegration to the first team trainings*".

22. On the same date, counsel for the Player indicated that he still considered the Club's behaviour "*abusive and a material breach of the* [Employment Contract's] *essential terms*", reiterated the Player's request to be reinstated immediately, failing which he reserved the right to terminate the Employment Contract.

23. On 26 July 2023, the Club extended the Player's training with a separate group of players until 31 July 2023.

24. On the same date, counsel for the Player informed the Club as follows:

> "*In your latter letter to me, you claimed that* [the Player] *was not dropped from the first team. However, while the first team is in the Netherlands this*

*week, you have again assigned my client to individual training despite my warnings.*

*This is to inform you that we will no longer tolerate such unlawful behavior and bullying. If you do not pay the full outstanding amount and reinstate my client with the first team by Monday, July 31, he will terminate the* [Employment Contract] *and sue* [the Club] *in FIFA. I stress the importance of this final notice*".

25. On 30 July 2023, Mr N. Drakogiannopoulos of Sport Science Life Ergo issued a "*Report on Ergometric test*", providing as follows:

"*From the ergometric test of the athlete, which was held on 24/07/2023 at our facilities, the examinee displayed normal ability in body composition analysis as well as in flexibility ability, where the values of the athlete are at normal levels.*

*In jumping ability, the examinee appears below the average of his category.*

*In the isokinetic test, the examinee shows significant strength deficits in the rectus femoris and hamstring in general strength as it shows a significant deficit in the bilateral evaluation of 28% in right hamstring. A 30% - 35% increase in right hamstring strength to avoid muscle injuries and a recheck in 3 -4 weeks is recommended.*

*Finally, the examinee should avoid competitive sports and running sports load with intensity above 70% until reevaluation at our facilities in 4-6 weeks.*

*In the aerobic capacity the examinee showed moderate capacity, where the value of the athlete appears below the average rates of his category. An improve of aerobic fitness ability by 2km at Vvo2max and 1km at anaerobic threshold is recommended*".

26. On 31 July 2023, the Club paid the Player an amount of EUR 20,500 and an amount of EUR 3,400, thereby partially settling the amount of EUR 36,283 mentioned in the Player's default notice of 14 July 2023. The Club also informed the Player as follows:

"*We would like to inform you that you have rejoined the team.*

*The* [Coach] *today Monday 31/7 and tomorrow Tuesday 1/8 has given the players of the team a day off.*

*Tomorrow afternoon you will be informed with a new email about the exact times of the week's training*".

27. On the same date, the Club explained why it only paid a total amount of EUR 34,700 (comprised of EUR 800 paid on 15 July 2023, EUR 10,000 paid on 23 July 2023, and the amounts of EUR 20,500 and EUR 3,400 paid on 31 July 2023) and not EUR 36,283 (which explanation is not contested by the Player in the present appeal arbitration proceedings) and further informed the Player as follows:

> "*Finally, we would like to inform you and confirm that, following a common decision of the coach and the club, your client has been fully reintegrated to the first team and its trainings and he shall thus attend the next training of the first team which is scheduled for Wednesday 2nd of August 2023 (the exact time to be confirmed and notified to the player and the rest of the team tomorrow) since today and tomorrow the coach has granted a day-off to all players of the team.*
>
> *Given all the above, it is thus clear that our club has fully satisfied your requests for payment and full reintegrated of the* [Player]".

28. On 1 August 2023, counsel for the Player informed the Club as follows:

> "*Thank you for the positive attitude and good news.*
>
> *I acknowledge receipt of the full payment on behalf of my client today.*
>
> *I hope that my client will be fully reinstated with the first team on Wednesday and that there will be no sidelining of any kind anymore. Otherwise, I reserve the right to terminate the* [Employment Contract] *without further warning, given that the* [Coach] *has already told my client that he does not want him on the team. I hope the* [Coach] *has changed his mind and has decided to adhere to the* [Employment Contract]".

29. On 2 August 2023, the Player attended the first team training. Whereas the Player submits that he was excluded from the training by the Coach without having had the chance to warm up, the Club submits that the Player participated in the first part of the training, but that he was asked to perform different tasks during the second part of the training due to his lack of fitness, to which the Player did not object.

30. On the same date, counsel for the Player informed the Club that the Player terminated the Employment Contract (the "Termination Notice"), invoking Article 14(2) FIFA RSTP, as follows:

> "*As you know, I act for the* [Player]. [The Player] *and* [the Club] *have a valid* [Employment Contract].
>
> *At the end of the 2022/2023 season, the Club has verbally informed* [the Player] *that his services are no longer needed.*
>
> *On July 10, 2023, the Club dropped* [the Player] *from the first team and assigned him to an individual training plan with four other players that the Club wanted to get rid of for an undetermined period. Besides, the Club had overdue payables to* [the Player] *for the last season.*
>
> *I put the Club in default by means of letters dated July 14, 19, and 24 and an email dated July 26, 2023, whereby I asked the Club to pay* [the Player] *the outstanding amounts and reinstate him with the first team immediately. I also asked the Club specific questions, which went unanswered.*
>
> [The Player] *informed me that there was no coach and a doctor during most training sessions.*

*Besides, from July 17 to 30, the Club's first team was in Alkmaar, the Netherlands, for pre-season training, but* [the Player] *was not summoned to participate.*

*Finally, on July 31, I received a letter from the Club informing me that it had paid the overdue payable and that* [the Player] *would be reinstated with the first team as of August 2.*

*However, earlier today, the* [Coach] *explicitly informed* [the Player] *in front of several witnesses that he did not want him on the team anymore and sent* [the Player], *with three other unwanted players, to run around the pitch while the first team was training on it.*

*As I stated in the July 26 email,* [the Player] *will 'no longer tolerate such unlawful behavior and bullying' if he is not fully reintegrated into the first team.*

*In light of the circumstances, I believe setting a new time limit for subsequent performances by the Club would be in vain. Clearly, the Club adopted an abusive strategy to force* [the Player] *to terminate the* [Employment Contract].

*The Club's unlawful behavior has lasted for more than three weeks and constitutes a material breach of an essential term of the* [Employment Contract], *namely, Clause 2.1, which provides that* [the Player] *was employed as a 'Professional.' The Swiss Federal Tribunal* [the "SFT"] *stated with regard to a professional football player that 'it is obvious that a professional football player playing in the premier division must, in order to retain his value on the market, not only train regularly with players of his level but also compete in matches with teams of the highest possible level.' See judgment 4A_53/2001 of March 2011 quoted in CAS 2013/A/3091, 3092, 3093 at para. 226. Besides, the Club's unlawful behavior also constitutes a breach of* [the Player's] *personality rights, encompassing the right to effective occupation.*

***For these reasons,* [the Player] *hereby terminates the* [Employment Contract] *with just cause, with immediate effect, based on Article 14.2 of the FIFA Regulations on the Status and Transfer of Players* [the "FIFA RSTP"].**

*Consequently, the Club now owes* [the Player] *(i) salary for July 2023 per Clause 4.1 (EUR 800 net), plus interest of 5% p.a. as of August 1, 2023, until full payment, and (ii) compensation for breach of Contract per Article 17.1 RSTP (i.e., EUR 144,200), plus interest of 5% p.a. as of today until full payment. Please pay these amounts to* [the Player's] *bank account, which the Club has been paying him on until now.*

*This termination notice is notified by email only.*

[The Player] *will file a claim against the Club to the FIFA Football Tribunal per Clause 10, the second sentence of the* [Employment Contract]" (emphasis in original).

31. On the same date, the Club replied as follows to the Player's Termination Notice:

> "*We refer to the 'Termination Notice from the* [Player]*' that you sent to our club earlier today, whereby* [the Player] *terminated prematurely and unilaterally his* [Employment Contract] *with our club with immediate effect, allegedly with just cause on the basis of article 14.2 of the* [FIFA RSTP].
>
> *While you are trying in the above termination notice to justify the premature termination of the* [Employment Contract] *by your client, by accusing once more our club for abusive conduct towards your client and by lying and making false and inaccurate statements, the mere truth is that your client had no just cause to terminate the* [Employment Contract] *since he had been fully paid and he had been reintegrated to the first team as you have requested, even if he was not yet totally ready (as your client knows, his ergometrics and his fitness level, although improved, were nonetheless below the average level of the team).*
>
> *Indeed, as far as his reintegration is concerned, as you and your client are very well aware, the player had today his first training with the first team after his reintegration (since on Monday and Tuesday there was a day-off for all players), which was also his first training with the team after a while and thus, there was nothing peculiar in him not following, pursuant of course to the instructions of the ergophysiologist of the club, the 100% of the training program of the team.*
>
> *It is thus at least unreasonable for you to consider the above as 'an unlawful behavior and bullying' of our club towards your client!*
>
> *Since you know very well that the truth that lay behind the ostensible complaints of your client, is that your client, knowing that he was not the first or second option of the coach for his position, wanted to find another club where he would be regularly fielded to continue his career and was just trying to create wrong impressions and to provoke our club and the members of the team (as he also did today in the dressing rooms) and to present our club as a party that had an abusive conduct when this is clearly and definitely not the case.*
>
> *Likewise, it is also not true that our club violated any personality rights of your client.*
>
> *Without elaborating any further on the matter since it is obvious from your correspondence of today that the* [Employment Contract] *of the* [Player] *with our club has anyway been terminated prematurely against our will and this cannot change and it is therefore for the FIFA competent body to decide on the matter following a relevant claim, we hereby inform you that we fully deny the content of your 'Termination Notice' and, reserving all our rights, we strongly protest for the unacceptable, unlawful and abusive behavior of your client and the unjustified termination of his* [Employment Contract] *with our club, which was evidently made without just cause and*

*we inform you that we will proceed with any and all necessary actions to protect the rights and interests of our club.*

*We thank you for taking note of all the above*".

32. On 11 August 2023, the Club paid the Player an amount of EUR 800, corresponding to the Player's July 2023 salary.

33. On 25 September 2023, the Player signed an employment contract with the Serbian football club FK Radnicki (the "FK Radnicki Employment Contract"), valid as from 25 September 2023 until 31 May 2024, entitling him to monthly salary of EUR 1,500.

## B. Proceedings before the FIFA DRC

34. On 13 October 2023, the Player filed a claim against the Club before the FIFA DRC, arguing that he had just cause to terminate the Employment Contract. The Player claimed outstanding salaries in the amount of EUR 800 concerning the month of July 2023 and compensation for breach of contract corresponding to the residual value of the Employment Contract in the amount of EUR 134,700, both plus interest.

35. The Club filed a counterclaim against the Player, arguing that the Player did not have just cause to terminate the Employment Contract. The Club claimed compensation for breach of contract in the amount of EUR 40,000, plus interest.

36. The Player filed a reply to the counterclaim, reiterating his position as set out in his claim and rejecting the counterclaim.

37. Although duly invited to submit its position, FK Radnicki did not provide any comments.

38. On 7 March 2024, the FIFA DRC passed the operative part of the Appealed Decision, providing as follows:

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

*2. The* [Club] *must pay to the* [Player] *the following amount(s):*

- *EUR 800 as outstanding remuneration plus 5% interest p.a. as from 1 August 2023 until the date of effective payment;*

- *EUR 121,800 as compensation for breach of contract without just cause plus 5% interest p.a. as from 2 August 2023 until the date of effective payment.*

*3. Any further claims of the* [Player] *are rejected.*

*4. The claim of the* [Club] *is rejected.*

*5. Full payment (including all applicable interest) shall be made to the bank account indicated in the enclosed Bank Account Registration Form.*

6. *Pursuant to art. 24 of the* [FIFA RSTP]*, if full payment is not made within 45 days of notification of this decision, the following consequences shall apply:*

    1. *The* [Club] *shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration of the ban shall be up to three entire and consecutive registration periods.*

    2. *The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not made by the end of the three entire and consecutive registration periods.*

7. *The consequences shall only be enforced at the request of the* [Player] *in accordance with art. 24 par. 7 and 8 and art. 25 of the* [FIFA RSTP].

8. *This decision is rendered without costs*" (emphasis omitted).

39. The grounds of the Appealed Decision, *inter alia*, provide as follows:

- As to the termination of the Employment Contract, "[t]*he Chamber analysed the different elements and established that the club acted if not in bad faith, at least recklessly, when it banned the player from the first team without revealing the exact reason for it. In fact, when assessing the exchange of correspondence between the player and club, the Chamber took note that while the player various times requested specific clarifications around the separate training regime, in particular the reasons for – and the duration of – said regime, the club repeatedly replied in generic terms without providing the desired clarifications. Looking at the documentation on file, the Chamber was not convinced that the separate training regime was indeed needed for rehabilitation purposes, as claimed by the club. The club failed to meet its burden of proof in this regard. The DRC wished to emphasise that, in specific circumstances, it may be legitimate for a club to assign alternative training to a player if there are sound and valid reasons to do so, for instance a player returning from a long-lasting injury. However, in casu, the club simply alluded to general 'fitness issues' without specifying them and how the alternative training was supposed to assist the player with returning to full fitness. In addition, the Chamber did not understand why the club continuously gave the player 'weekly schedules' when it should have been able to inform him clearly and unambiguously until when the alternative training was going to last. The Chamber considered that clubs need to be particularly diligent in this respect in order for the player to be fully aware of (i) the reasons for which the alternative training is needed; and (ii) the expected duration.*

- *The above taken together with the fact that during July 2023 there was a substantial debt towards the player resulted, in the Chamber's view, in a situation by means of which the player could indeed genuinely doubt the intentions of the club to honour their future obligations under the*

*contract. As to the training session that took place on 2 August 2023, while the DRC is unable to conclude with certainty what happened during said training, it is undisputed between the parties that the player was not fully incorporated in said training session and that again there had been little to no clear communication from the club in that regard. Against the background of the preceding weeks, the Chamber concluded that by that time, the player could indeed rightly have lost confidence in the club's intentions with him.*

- *Thus, the separation from the first team without a sound reason and defined duration in combination with the outstanding amounts at the time, from which a considerable part was paid only after the deadline given in the default notices made the Chamber decide that the player had a just cause to terminate the contract on 2 August 2023.*

- *On account of the above, the members of the Chamber partially accepted the player's claim and rejected the club's counterclaim*".

- As to the alleged outstanding remuneration, "[t]*he Chamber observed that the outstanding remuneration at the time of termination, coupled with the specific requests for relief of the player, is equivalent to the salary of July 2023.*

- *As a consequence, and in accordance with the general legal principle of pacta sunt servanda, the Chamber decided that the club is liable to pay to the player the amount which was outstanding under the contract at the moment of the termination, i.e. EUR 800*.

- *In addition, taking into consideration the player's request as well as the constant practice of the Chamber in this regard, the latter decided to award the player interest at the rate of 5% p.a. on the outstanding amount as from 1 August 2023 until the date of effective payment*".

- As to the compensation for breach of contract, noting that no compensation clause was included in the Employment Contract and therefore applying Article 17(1) FIFA RSTP, "[t]*he Chamber proceeded with the calculation of the monies payable to the player under the terms of the contract from the date of its unilateral termination until its end date. Consequently, the Chamber concluded that the amount of EUR 133,800 serves as the basis for the determination of the amount of compensation for breach of contract.*

- *In continuation, the Chamber verified as to whether the player had signed an employment contract with another club during the relevant period of time, by means of which he would have been enabled to reduce his loss of income. According to the constant practice of the DRC as well as art. 17 par. 1 lit. ii) of the Regulations, such remuneration under a new employment contract shall be taken into account in the calculation of the amount of compensation for breach of contract in connection with the player's general obligation to mitigate his damages.*

- *Indeed, the player found employment with the Serbian club, FK Radnicki. In accordance with the* [FK Radnicki Employment Contract], *the player was entitled to approximately EUR 1,500 per month. Therefore, the Chamber concluded that the player mitigated his damages in the total amount of EUR 12,000, that is, 8 times EUR 1,500.*

- *Consequently, on account of all of the above-mentioned considerations and the specificities of the case at hand, the Chamber decided that the club must pay the amount of EUR 121,800 to the player (i.e. EUR 133,800 minus EUR 12,000), which was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter.*

- *Lastly, taking into consideration the player's request as well as the constant practice of the Chamber in this regard, the latter decided to award the player interest on said compensation at the rate of 5% p.a. as of 2 August 2023 until the date of effective payment.*

- […]"

## IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

40. On 14 May 2024, the Club filed a Statement of Appeal with CAS in accordance with Articles R47 and R48 of the 2023 edition of the Code of Sports-related Arbitration (the "CAS Code"), challenging the Appealed Decision. In this submission, the Club nominated an arbitrator.

41. On 23 May 2024, the Player nominated an arbitrator.

42. On 3 June 2024, FIFA renounced the right to request its possible intervention in the proceedings.

43. On 11 July 2024, the Club filed its Appeal Brief in accordance with Article R51 CAS Code.

44. On 28 August 2024, upon having been informed of the advanced of costs to be paid, the Club requested the matter to be referred to a sole arbitrator.

45. On 29 August 2024, the Player objected to the Club's request for the appointment of a sole arbitrator, arguing, *inter alia*, as follows:

> "*I wish to remind you that the* [Club] *made us an offer to appoint a three-member panel, which the* [Player] *accepted. This formed a valid and binding agreement between the Parties regarding the number of arbitrators. If CAS appoints a Sole Arbitrator despite the Parties' agreement, this will be a breach of the agreement. In such a case, the* [Player] *reserves the right to appeal the final award to the SFT on this ground*".

46. On 9 September 2024, the CAS Court Office informed the Parties that the President of the CAS Appeals Arbitration Division, pursuant to Article R50 CAS Code and in

light of the circumstances of this proceeding, had decided to submit the present case to a sole arbitrator.

47. On 7 November 2024, the Player filed his Answer in accordance with Article R55 CAS Code.

48. On 7 and 11 November 2024 respectively, upon being invited by the CAS Court Office to express their views in this respect, the Player indicated that he did not require a hearing or a case management conference to be held, whereas the Club indicated that it considered a hearing to be necessary, but not a case management conference.

49. On 25 November 2024, the CAS Court Office informed the Parties that, pursuant to Article R54 CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the arbitral tribunal appointed to hear the appeal was constituted as follows:

Sole Arbitrator: Mr Hendrik Willem Kesler, Attorney-at-Law in Enschede, The Netherlands

50. On 28 November 2024, the CAS Court Office informed the Parties that Mr Dennis Koolaard, Attorney-at-Law in Amsterdam, The Netherlands, had been appointed as *Ad hoc* Clerk.

51. On 5 December 2024, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to hold a hearing by video-conference.

52. On 17 December 2024 and 13 January 2025 respectively, the Player and the Club returned duly signed copies of the Order of Procedure provided to them by the CAS Court Office.

53. On 16 January 2025, a hearing was held by video-conference. At the outset of the hearing, the Parties confirmed that they had no objection to the constitution and composition of the arbitral tribunal.

54. In addition to the Sole Arbitrator, Mr Dennis Koolaard, *Ad hoc* Clerk, and Ms Amelia Moore, CAS Counsel, the following persons attended the hearing:

a) For the Club:

1) Mr Konstantinos Zemberis, Counsel;
2) Ms Chrissa Sevastopoulou, Co-Counsel;
3) Ms Athina Stavropoulou, Junior lawyer;
4) Ms Sainte Aliai, Junior lawyer;
5) Ms Panagiota Raftopoulou, Interpreter.

b) For the Player:

1) Mr Stefan Ashkovski, the Player
2) Mr Georgi Gradev, Counsel;
3) Mr Márton Kiss, Co-Counsel;
4) Mr Yavor Petkov, Co-Counsel.

55. The following persons were heard, in order of appearance:

1) Mr Vassilios Keramidas, Physiotherapist of the Club, witness called by the Club;
2) Mr Ioannis Syrogiannis, General Manager of the Club, witness called by the Club;
3) Mr Leonidas Vokolos, Head Coach of the Club, witness called by the Club;
4) The Player;
5) Mr Daniel Adejo, Teammate of the Player at the Club, witness called by the Player.

56. All witnesses were invited by the Sole Arbitrator to tell the truth subject to the sanctions of perjury under Swiss law. The Parties had full opportunity to examine and cross-examine the witnesses.

57. The Parties were given full opportunity to present their cases, submit their arguments and answer the questions posed by the Sole Arbitrator.

58. Before the hearing was concluded, both Parties expressly stated that they had no objection to the procedure adopted by the Sole Arbitrator and that their right to be heard had been respected.

## V. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF

59. The Sole Arbitrator confirms that he carefully heard and took into account in his decision all of the submissions, evidence, and arguments presented by the Parties, even if they have not been specifically summarised or referred to in the present arbitral award.

### A. The Appellant

60. The Club's submissions, in essence, may be summarised as follows:

***The Player did not have just cause to terminate the Employment Contract***

- The Player did not have just cause to terminate the Employment Contract because he had already been fully paid and he had been reintegrated to the first team, even though he was not yet totally ready and fit.

- It is true that the Coach preferred players with different characteristics in the position where the Player was playing. As soon as the Coach took over in February 2023, the Player started playing less. The Coach also explained the Player at the end of the 2022/23 season that he was not his first option for the specific position, but he did not try to force the Player to leave or to terminate his Employment Contract.

- It is also true that the Player was not happy about the fact that he would not be regularly fielded if he stayed with the Club and preferred to sign with another club. While the Club was not negative to the possibility of the Player being transferred, it would nonetheless expect to receive a decent transfer fee.

- Given the above, and since the Player was exploring possible options and potential clubs to which he could be transferred, and as he had a small injury still in July 2023 for which he was following physiotherapy sessions and his fitness level was not the appropriate one, the Club and its coaching staff decided that it would be better for the Player to temporarily train in a group together with some other players of the first team that were either about to be transferred or were for different reasons not in the appropriate fitness level.

- According to the jurisprudence of FIFA and CAS, although a professional player needs to be training with the first team, it might nonetheless be acceptable under specific circumstances for a club to have a player training temporarily separately from the first team.

- It is not true that the Club marginalized and/or excluded the Player from the trainings in order to force him to leave the team. Thus, no abusive conduct existed and no personality rights were infringed.

- The Appealed Decision erred in accepting that the Club acted "*at least recklessly, when it banned the player from the first team, without revealing the exact reason for it*", since the Player was aware of the whole situation. It is also not true that the Club never explained to the Player how long the "alternative training" would last, since the Player knew that on 24 July 2023 he would undergo ergometric tests, which would fully determine his physical situation.

- On 14 July 2023, the Player sent a specific default notice to the Club, requesting outstanding remuneration in the amount of EUR 33,283, an outstanding bonus in the amount of EUR 3,000 and to be reintegrated into the first team by 31 July 2023.

- The Club never denied its obligations towards the Player, it confirmed that his salaries would be paid and that he would, most probably, be reinstated in the first team after the ergometric tests that he would undergo on 24 July 2023.

- The conditions set by the Player in his default notices were met in time and, hence, the Player was not entitled to terminate the Employment Contract with just cause. On 31 July 2023, the Club informed the Player that he had been fully paid off and confirmed that he had been reintegrated to the first team and its trainings, although the truth was that the ergometric tests showed that he was not absolutely ready. The next training of the first team was scheduled for 2 August 2023, as there were no trainings on 31 July 2023 and on 1 August 2023.

- On 2 August 2023, the Player arrived for training with the rest of the first team players, as scheduled. The Player's mood was not the best, as confirmed by the Club's General Manager, who says that the Player tried to create some tension and disturbance in the locker rooms.

- The Player went out in the field with the other players and did warm-up and followed the entire first part of the training session, which included running, various tactical and ball exercises and other kind of exercises, as all the Club's

witnesses testify. The Player was absolutely reintegrated with the rest of the first team. However, due to the fact that the Player was absent from the team's trainings for a considerable period of time, that the ergometric tests which the Player underwent showed indeed a certain lag in physical condition compared to the rest of the players, and that there was also a second training in the afternoon, which the Player would attend as he had been informed, it was deemed appropriate by the Coach, following advice from the Club's medical staff, not to follow the second and more intense part of the morning training.

- Obviously, the Player did not want to attend the afternoon training of 2 August 2023 and immediately after the morning training sent the Termination Notice to the Club.

- The Club, by means of the statements of its witnesses, the results of the ergometric tests, of which the Player was aware and the emails sent to the Player regarding the training schedule of the first team of 2 August 2023, proved that it was the true intention and decision of the Club to reintegrate the Player into the first team from 2 August 2023 onwards.

- It is indicative and of utter importance that the Player did not complain to the Coach or coaching staff regarding the fact that he did not fully participate with the team in the second part of the morning training on 2 August 2023, which was in line with the Physiotherapist's advice.

- The conclusion of the FIFA DRC in the Appealed Decision that the Player had rightly lost confidence in the Club and, as such, had just cause to terminate the Employment Contract, is arbitrary and insufficiently justified, given that it mentions that it is unable to conclude with certainty what happened at the first training session on 2 August 2023, but subsequently accepts that the Player was not fully reintegrated. The truth is that nobody sidelined or marginalized the Player, but that he was simply asked to avoid the more intense part of the training.

- The videos provided by the Player cannot constitute reliable evidence, since it cannot be established when exactly those videos were taken, i.e., whether they were taken at the beginning, in the middle or before the end of the training.

- It is clear that the Player did not really want to be reintegrated in the first team, but that he was looking for an excuse to terminate the Employment Contract and receive compensation as well.

- In any case, the termination should be a last resort after all other means and possibilities are exhausted.

- Since, on 2 August 2023, all alleged breaches of the Employment Contract by the Club were remedied, the Player had to send a warning and/or a new default notice to the Club, if he believed that there was a new violation of the Employment Contract, before being entitled to terminate the Employment Contract.

- It would be reasonable for the Player to have attended the afternoon training of the first team in order to see what the instructions of the coaching staff would be and if he were to fully participate in the training program.

- It is obvious from all the above that the Player did not have just cause to terminate the Employment Contract.

***The Club's counterclaim***

- The consequence of an unlawful and unjust termination of an employment contract by a player is, pursuant to Article 17(1) FIFA RSTP, the payment of compensation to the club.

- In view of the various elements set forth in Article 17(1) FIFA RSTP, an appropriate compensation to be paid by the Player for breach of contract (i.e., termination without just cause) amounts to EUR 40,000.

61. On this basis, the Club submits the following prayers for relief in its Appeal Brief:

"*1. to set aside the decision of the DRC of the FIFA Football Tribunal (case FPSD-12199) of 7 March 2024 (the challenged decision);*

*2. to rule that there is no outstanding remuneration payable to the Respondent;*

*3. to rule that the premature termination of the employment contract of 31 August 2022 by the Respondent on 2 August 2023 was made without just cause and thus, that the DRC of the FIFA Football Tribunal erred in accepting the claim of the player Stefan Ashkovski and in rejecting the counterclaim of PAS Lamia 1964 FC;*

*4. to rule that the Respondent is liable to pay the Appellant compensation for breach of contract;*

*5. to order the Respondent to pay 40,000 euros as compensation for breach of contract;*

*6. to condemn the Respondent to the payment in favour of the Appellant of the legal expenses incurred;*

*7. to establish that the costs of the arbitration procedure shall be borne by the Respondent.*

*Subsidiarily, and only in the unexpected event that the above is rejected:*

*1. to set aside the decision of the DRC of the FIFA Football Tribunal (case FPSD-12199) of 7 March 2024 (the challenged decision);*

*2. to rule that there is no outstanding remuneration payable to the Respondent;*

3. *to reject the claim of the player Stefan Ashkovski for compensation for breach of contract by ruling that it is abusive or to diminish the compensation payable for the alleged breach of contract to the appropriate level, by taking into consideration the overall circumstances of the case;*

4. *to condemn the Respondent to the payment in favour of the Appellant of the legal expenses incurred;*

5. *to establish that the costs of the arbitration procedure shall be borne by the Respondent*".

## B. The Respondent

62. The Player's submissions, in essence, may be summarised as follows:

***The Player had just cause to terminate the Employment Contract***

- According to the SFT, "*it is obvious that a professional football player playing in the premier division must, in order to retain his value on the market, not only train regularly with players of his level but also compete in matches with teams of the highest possible level*". An employer is bound to protect the employee's personality rights and offer the work the employee was hired to do against remuneration. Professional football players rely on being able to train and play on a professional level to keep up their level of play.

- The Player bears the burden of proving that he terminated the Employment Contract with just cause. However, the Club bears the burden of proving the facts it relies upon and from which it seeks to derive rights.

- As of 24 June 2023, the Club's Director, Mr Francisco Medina Luna, started pressing the Player to find a new club ("*I think you should find a new team that trusts you*"; "*It's the best for you, it's not a good solution to go back to* [the Club] *and be in a bad situation training only a player like you, squeeze your agent, listen to me*").

- The Coach had no interest in the Player's services for the 2023/24 season ("*I had a discussion with the* [Player] *who was a member of the team, in which I informed him that he would not be my first or second choice for his position for the following season*").

- It is obvious that the Club had taken its final decision on the Player's fate even before the start of the pre-season preparations. The Club's subsequent conduct was entirely motivated by the fact that the Coach did not like the Player as a player.

- In the counterclaim before the FIFA DRC and in the Appeal Brief, the Club claimed that the Player wanted to leave the Club in the summer of 2023 after having spoken to the Coach, that he was late for the pre-season preparations in July 2023, that he could not train fully due to an injury, that he was assigned to a properly monitored individual training regime, and that he underwent an

ergometric test showing that he was not in the best possible physical shape. However, there is no record of this having ever been properly raised with the Player during the relevant time, and the evidence submitted in support of these claims is somewhat unconvincing or evidently false or inadmissible. All these claims were raised *ex post facto* in a poor attempt to justify the Club's unlawful conduct. All these unfounded claims are addressed in the response to the counterclaim filed with the FIFA DRC, the content of which is not repeated for the sake of procedural economy, but are to be deemed fully incorporated in the Answer.

- It is common ground that the Club sidelined the Player from 10 July to 31 July 2023. The Club refused to answer the questions posed by means of several letters sent to the Club in July 2023. The Club did not reinstate the Player "immediately", as requested by letters dated 14 and 19 July 2023. The deadline of 31 July 2023 was only set by letter dated 24 July 2023.

- It is clear from the evidence on file that the Club had no good reason to assign the Player to individual training as of 10 July 2023. In particular, the Player was not late for the first training and was not in bad physical shape. In fact, the Club did so just to get rid of the Player because the Coach did not like the Player as a player.

- It is also clear that the measure was permanent. The foregoing is corroborated by the fact that the Club failed to set milestones that the Player had to achieve to be reintegrated into the first team. Besides, the Player's training regime was not properly monitored or supervised by a doctor and a physiotherapist, contrary to what the Club claims without evidence. In fact, the training sessions of the Player were monitored by the U-19 coaches, who are not qualified to train professionals.

- Moreover, the Club intentionally withheld EUR 34,700 from the Player's receivables due by 30 June 2023, apparently hoping to make a deal with him to leave the Club without paying him the outstanding amounts. However, the Player's 14 July 2023 default notice left the Club no choice but to pay.

- It is common ground between the Parties that, on 2 August 2023, "*the technical staff […] told the* [Player] *that it would be better for him not to participate*" in the team training "*and instructed* [the Player] *to [do] the […] training with the ball separately, under the guidance of the assistant coach*". Accordingly, contrary to the Club's position, the FIFA DRC correctly considered that "*it is undisputed between the parties that the player was not fully incorporated in said training session*". In particular, the Club explicitly admitted that the Player was separated from the first team.

- The Player hereby disputes having participated in "*the first part of the training (i.e., warm up, some exercises with and without the ball, etc.)*" and the reasons for his separation from the team alleged by the Club (i.e., "*he was in a different level of readiness and he had a slight discomfort in his knee*" and "*the ergometric tests which the* [Player] *underwent, showed indeed a certain lag in physical condition compared to the rest of his team-players, and that there was also a second training in the afternoon of the same day*"). There is no

evidence in support of such claims. The Player's teammate, Mr Daniel Adejo, also testified to the contrary.

- Had it indeed been the true intention and decision of the Club to reintegrate the Player into the team as from 2 August 2023, it should have acted with more caution. For example, the Club should have sent an email to the Player to inform him in advance that he was not going to train with the team but separately due to the reasons alleged by the Club for the first time before the FIFA DRC, but not at the appropriate time. In particular, the Club's 31 July 2023 letter claimed that the Player "*has been fully reintegrated to the first team and its trainings and he shall thus attend the next training of the first team which is scheduled for Wednesday the 2nd August 2023*". There was no mention of a previous injury, ongoing physiotherapy, a failed ergometric test, a bad physical shape, or anything else suggesting that the Player would not be allowed to train side by side with his teammates due to his physical condition. If the Club deemed that the Player was not fit enough to be fully reintegrated into the first team on 2 August 2023 and required special training, it had to explicitly state so in its 31 July 2023 letter. The Club's claim is invoked *ex post facto* to justify its illegal conduct.

- The written statement of the Physiotherapist alone does not have probative value since he is employed by the Club and does not fulfil the requirement of objectivity and impartiality. Besides, his witness statement is not corroborated by any official records. In any event, the Physiotherapist is not qualified to diagnose the Player without the proper medical education and official records at his disposal.

- The Club failed to explain why the Player's integration was not made earlier, but only when the Player set an ultimate deadline for performance by the Club.

- In any case, there is no evidence on file to demonstrate the Player's actual fitness state on 2 August 2023. For the sake of good order, the Player vehemently denies that he had an injury, was undergoing physiotherapy in August 2023, or was in a bad physical condition. The Club failed to discharge its burden of proof in this respect.

- As to the Club's objection to the authenticity of the videos submitted into evidence by the Player, the metadata of the videos shows that they were made on 2 August 2023 at 9:19 and 9:20 a.m. EET. Since the Club did not ask CAS to submit the videos for forensic expertise, the Sole Arbitrator should reject the Club's objection.

- The Club violated the Player's personality rights, encompassing the right to an effective occupation. Due to the Club's conclusive and unlawful behaviour between 10 July and 2 August 2023, the Player could not, in good faith, be expected to rely on the performance of the Club's contractual obligations and, therefore, to continue the employment relationship. The Player's termination of the Employment Contract was indeed an *ultima ratio* measure.

***Outstanding salary***

- The Club adduced evidence of payment of EUR 800 to the Player on 11 August 2023, which evidence is accepted, although the Player did not have access to his Greek bank account since the termination.

- Accordingly, the Appealed Decision is to be revised accordingly, as the Club's prayer for relief no. 2 is to be upheld.

***Compensation for breach of contract***

- The Club did not contest the FIFA DRC's calculation of the compensation due to the Player. The Club did not submit a single argument in favor of reducing the compensation due or dispensing with it entirely. As such, the Player has no idea on which grounds the Club claims that. The Player cannot exercise his right to defense against such an unspecified claim. Therefore, the Club's request should be summarily dismissed.

- As a result, the Sole Arbitrator should confirm the Appealed Decision in the relevant part (i.e., EUR 121,800 as compensation for breach of contract without just cause, plus interest).

***The Club's claim for compensation***

- The Club claims EUR 40,000 as compensation for breach of contract. However, it failed to prove any material breach on the part of the Player. The Club also completely failed to explain which of the criteria mentioned in Article 17(1) FIFA RSTP are related to the Player's conduct and how it came up with the amount claimed.

- In any event, given the Coach's admission that the Player would not have been his first or second choice for the 2023/24 season, it is clear that the Club did not attach any market value to the Player's services. Thus, it is incomprehensible on which grounds the Club asks to be compensated for a player it did not want on the team.

- On these grounds, the Club's claim must be summarily dismissed.

63. On this basis, the Player submits the following prayers for relief in his Answer:

"*1. Dismiss the appeal, except for the request related to the payment of EUR 800 plus interest as an outstanding basic salary for July 2023 to the Respondent.*

*2. Confirm the Appealed Decision, except for the part awarding EUR 800 plus interest as an outstanding basic salary for July 2023 to the Respondent.*

*3. Order the Appellant to pay the Respondent a contribution towards his legal and other costs in an amount to be determined at the Sole Arbitrator's discretion*".

## VI. JURISDICTION

64. The jurisdiction of CAS derives from Article 57(1) FIFA Statutes (May 2022 edition), as it determines that "[a]*ppeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question*", and Article R47 CAS Code. The jurisdiction of CAS is not contested by the Respondent and is further confirmed by the Order of Procedure duly signed by the Parties.

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

66. This notwithstanding, the jurisdiction of the Sole Arbitrator in the matter at hand is confined to the scope of jurisdiction of the FIFA DRC in the first instance proceedings. Since the Club objects to the jurisdiction of the FIFA DRC, this may be relevant for the scope of jurisdiction of the Sole Arbitrator as well. Whether the FIFA DRC was competent to adjudicate and decide in the first instance proceedings is addressed separately with the merits of the case below.

## VII. ADMISSIBILITY

67. The appeal was filed within the deadline of 21 days set by Article 57(1) FIFA Statutes. The appeal complied with all other requirements of Article R48 CAS Code, including the payment of the CAS Court Office fee.

68. It follows that the appeal is admissible.

## VIII. APPLICABLE LAW

69. The Parties agree that the present dispute is to be decided according to the various regulations of FIFA and, additionally, Swiss law.

70. Article R58 CAS Code provides as follows:

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

71. Article 57(2) FIFA Statutes provides as follows:

> "*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*".

72. On this basis, the Sole Arbitrator finds that the various regulations of FIFA are to be applied primarily, in particular the FIFA RSTP (May 2023 edition) and, additionally, should the need arise to fill a possible gap in the various regulations of FIFA, Swiss law.

## IX. MERITS

### A. The Main Issues

73. The main issues to be resolved by the Sole Arbitrator are the following:

i. Did the Player have just cause to terminate the Employment Contract prematurely on 2 August 2023?
ii. What are the consequences thereof?

#### *i. Did the Player have just cause to terminate the Employment Contract prematurely on 2 August 2023?*

74. Whereas the Player maintains that he had just cause to terminate the Employment Contract, the Club submits that the Employment Contract was terminated by the Player without just cause.

75. Article 12(3) FIFA Procedural Rules provides as follows:

> "*Any party claiming a right on the basis of an alleged fact shall carry the burden of proof*".

76. Since the Player terminated the Employment Contract on 2 August 2023 invoking just cause, the Player carries the burden of proof to establish that he indeed had just cause to do so.

##### a) The Regulatory Framework Applicable to Assessing the Termination of the Employment Contract

77. Besides the general ground for termination of an employment contract on the basis of Article 14(1) FIFA RSTP, the FIFA RSTP also provides for more specific reasons to terminate an employment contract, namely Article 14(2) (terminating a contract for abusive conduct aimed at forcing the counterparty to terminate or change the terms of the contract), Article 14bis (terminating a contract for outstanding salaries) and Article 15 (sporting just cause).

78. Article 14 of the FIFA RSTP provides as follows:

> "*1. A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause.*
>
> *2. Any abusive conduct of a party aiming at forcing the counterparty to terminate or change the terms of the contract shall entitle the counterparty (a player or a club) to terminate the contract with just cause*".

79. As to the general provision of Article 14(1) FIFA RSTP, it is longstanding and consistent CAS jurisprudence that:

> "*The RSTP 2001 do not define when there is 'just cause' to terminate a contract. In its established legal practice, CAS has therefore referred to*

> *Swiss law in order to determine the purport of the term 'just cause'. Pursuant to this, an employment contract which has been concluded for a fixed term, can only be terminated prior to expiry of the term of the contract if there are 'valid reasons' or if the parties reach mutual agreement on the end of the contract (see also ATF 110 I 167; WYLER R., Droit du travail, Berne 2002, p. 323 and STAEHELIN/VISCHER, Kommentar zum Schweizerischen Zivilgesetzbuch, Obligationenrecht, Teilband V 2c, Der Arbeitsvertrag, Art. 319-362 OR, Zurich 1996, marg. no. 17 ad Art. 334, p. 479). In this regard Art. 337 para. 2 of the Code of Obligations (CO) states – according to the translation into English by the Swiss-American Chamber of Commerce: 'A valid reason is considered to be, in particular, any circumstances under which, if existing, the terminating party can in good faith not be expected to continue the employment relationship'. According to Swiss case law, whether there is 'good cause' for termination of a contract depends on the overall circumstances of the case (ATF 108 II 444, 446; ATF 2 February 2001, 4C.240/2000 no. 3 b aa). Particular importance is thereby attached to the nature of the breach of obligation. The Swiss Federal Supreme Court has ruled that the existence of a valid reason has to be admitted when the essential conditions, whether of an objective or personal nature, under which the contract was concluded are no longer present (ATF 101 Ia 545). In other words, it may be deemed to be a case for applying the clausula rebus sic stantibus (ATF 5 May 2003, 4C.67/2003 no. 2). According to Swiss law, only a breach which is of a certain severity justifies termination of a contract without prior warning (ATF 127 III 153; ATF 121 III 467; ATF 117 II 560; ATF 116 II 145 and ATF 108 II 444, 446). In principle, the breach is considered to be of a certain severity when there are objective criteria which do not reasonably permit an expectation that the employment relationship between the parties be continued, such as a serious breach of confidence (ATF 2 February 2001, 4C.240/2000 no. 3 b aa; ATF 5 May 2003, 4C.67/2003 no. 2; WYLER R., op. cit., p. 364 and TERCIER P., Les contrats spéciaux, Zurich et al. 2003, no. 3402, p. 496). Pursuant to the established case law of the Swiss Federal Supreme Court, early termination for valid reasons must, however, be restrictively admitted (ATF 2 February 2001, 4C.240/2000 no. 3 b aa; ATF 127 III 351; WYLER R., op. cit., p. 364 and TERCIER P., op. cit., no. 3394, p. 495)*" (CAS 2006/A/1180, para. 25 of the abstract published on the CAS website).

80. The Sole Arbitrator fully adheres to such jurisprudence, which was also followed in recent CAS cases (cf. CAS 2022/A/8963, para. 72; CAS 2021/A/7714, para. 95). The Sole Arbitrator will therefore examine whether the Club's conduct was of such a nature that the Player had just cause to terminate the Employment Contract, i.e. whether it could not be reasonably expected from the Player in the circumstances to continue his employment relationship with the Club.

81. Specifically for the application of Article 14(2) FIFA RSTP, the Sole Arbitrator finds that FIFA's Commentary on the Regulations on the Status and Transfer of Players (2023 edition - the "FIFA Commentary") provides useful guidance, in particular the examples of potentially abusive conduct by a club on p. 131 *et seq.*:

"*Classic examples of abusive conduct include: a club deciding to separate a player from the rest of the team and/or making the player train alone for a prolonged period of time, potentially during unconventional hours and without supervision by coaching staff;* […]

*In accordance with existing jurisprudence, the key questions to consider when assessing whether separating a player from the first team constitutes abusive conduct include:*

- *Why was the player sent to the reserve team/youth team?*
- *Why was the player asked to train alone?*
- *When was the measure implemented? Was it imposed while (official) matches were being played?*
- *Was the player still being paid their full salary and receiving their non-financial contractual benefits?*
- *Was it a permanent or temporary measure?*
- *Were there adequate training facilities for the player to use when training?*
- *Did the contract between the club and the player expressly grant the club the right to drop the player to the reserve team?*
- *Did the contract between the club and the player expressly guarantee the player the right to only play and train for the first team?*
- *Was the player training alone or with a team?*".

**b) The grounds for termination invoked by the Player**

82. At the outset, the Sole Arbitrator considers it useful to repeat the grounds for termination set forth by the Player in his Termination Notice dated 2 August 2023, because the justification for the termination is to be assessed as at such moment:

"*As you know, I act for the* [Player]. [The Player] *and* [the Club] *have a valid* [Employment Contract].

*At the end of the 2022/2023 season, the Club has verbally informed* [the Player] *that his services are no longer needed.*

*On July 10, 2023, the Club dropped* [the Player] *from the first team and assigned him to an individual training plan with four other players that the Club wanted to get rid of for an undetermined period. Besides, the Club had overdue payables to* [the Player] *for the last season.*

*I put the Club in default by means of letters dated July 14, 19, and 24 and an email dated July 26, 2023, whereby I asked the Club to pay* [the Player] *the*

*outstanding amounts and reinstate him with the first team immediately. I also asked the Club specific questions, which went unanswered.*

[The Player] *informed me that there was no coach and a doctor during most training sessions.*

*Besides, from July 17 to 30, the Club's first team was in Alkmaar, the Netherlands, for pre-season training, but* [the Player] *was not summoned to participate.*

*Finally, on July 31, I received a letter from the Club informing me that it had paid the overdue payable and that* [the Player] *would be reinstated with the first team as of August 2.*

*However, earlier today, the* [Coach] *explicitly informed* [the Player] *in front of several witnesses that he did not want him on the team anymore and sent* [the Player], *with three other unwanted players, to run around the pitch while the first team was training on it.*

*As I stated in the July 26 email,* [the Player] *will 'no longer tolerate such unlawful behavior and bullying' if he is not fully reintegrated into the first team.*

*In light of the circumstances, I believe setting a new time limit for subsequent performances by the Club would be in vain. Clearly, the Club adopted an abusive strategy to force* [the Player] *to terminate the* [Employment Contract].

*The Club's unlawful behavior has lasted for more than three weeks and constitutes a material breach of an essential term of the* [Employment Contract], *namely, Clause 2.1, which provides that* [the Player] *was employed as a 'Professional.' The Swiss Federal Tribunal* [the "SFT"] *stated with regard to a professional football player that 'it is obvious that a professional football player playing in the premier division must, in order to retain his value on the market, not only train regularly with players of his level but also compete in matches with teams of the highest possible level.' See judgment 4A_53/2001 of March 2011 quoted in CAS 2013/A/3091, 3092, 3093 at para. 226. Besides, the Club's unlawful behavior also constitutes a breach of* [the Player's] *personality rights, encompassing the right to effective occupation.*

***For these reasons,* [the Player] *hereby terminates the* [Employment Contract] *with just cause, with immediate effect, based on Article 14.2 of the* [FIFA RSTP].**

*Consequently, the Club now owes* [the Player] *(i) salary for July 2023 per Clause 4.1 (EUR 800 net), plus interest of 5% p.a. as of August 1, 2023, until full payment, and (ii) compensation for breach of Contract per Article 17.1 RSTP (i.e., EUR 144,200), plus interest of 5% p.a. as of today until full payment. Please pay these amounts to* [the Player's] *bank account, which the Club has been paying him on until now.*

> *This termination notice is notified by email only.*
>
> [The Player] *will file a claim against the Club to the FIFA Football Tribunal per Clause 10, the second sentence of the* [Employment Contract]" (emphasis in original).

**c) The Player's exclusion from first team training**

83. The Sole Arbitrator notes that the Club informed the Player on 10 July 2023 that he had to train separate from the first team until 16 July 2023 to bring them "*to the appropriate and necessary level of fitness and readiness to re-join the first team of the club and its normal trainings*".

84. The Player did not accept to train separately from the first team and, on 14 July 2023, requested to be reinstated in the first team and argued, *inter alia*, as follows:

> "[…] [A]*t the end of the 2022/2023 season, the Club has verbally informed* [the Player] *that his services are no longer needed. On July 10, 2023, the Club has dropped* [the Player] *from the first team and has assigned him to an individual training plan for an undetermined period with the sole reason to get rid of him. That is clearly abusive conduct from the Club's side and a material breach of the essential terms of the* [Employment Contract] *and* [the Player's] *personality rights, including the right to effective occupation. Therefore, you must reinstate* [the Player] *with the first team immediately, failing which he reserves the right to terminate the* [Employment Contract] *based on Article 14.2 RSTP*".

85. Despite the Player's objection, on 16 July 2023, the Club extended the Player's training with a separate group of players until 23 July 2023, while the first team players left for a pre-season training camp in Alkmaar, the Netherlands, on 17 July 2023, which was expected to last two weeks. Besides vaguely referring to a general lack of fitness and a minor injury (without however providing any evidence for such contentions), the Club did not justify its decision to exclude the Player from first team training.

86. With respect to the alleged minor injury, the Club relies on a witness statement of Mr Vasileios Keramidas, Physiotherapist of the Club, according to whom the Player was suffering from a "*sprained external mid-knee injury with pain and tenderness in the head in the outer midarthrium*" and "*restriction of movement especially in turns due to disorganization in the upper Tibio-peroneal joint*". During the hearing, the Player denied having suffered from a minor injury for which he required physiotherapy.

87. The Sole Arbitrator finds that the value of Mr Keramidas' witness statement is limited, because Mr Keramidas is not a doctor qualified to make a diagnosis of an injury. The mere fact that the Player underwent multiple physiotherapy sessions in July 2023 does not prove the severity of the Player's injury or justify the decision to exclude the Player from the first team training.

88. The Club also did not communicate any milestones for the reintegration of the Player. The Club made reference to an ergometric test, but it did not indicate the criteria the Player would have to satisfy to be reintegrated.

89. On 19 July 2023, the Club responded to the Player's default notice of 14 July 2023, by indicating, *inter alia*, as follows:

> "[The Player] *will undergo, like all the players of the said group, ergometric tests on Monday, so that the club's coaching and technical team of the club receive all necessary information for the physical shape and fitness of the player.*
>
> *As soon as the said information becomes available to the coaching and technical staff of the club, the coach will decide on the possible full reintegration of your client into the trainings of the first team*".

90. The Sole Arbitrator finds that the Club still did not provide any evidence or justification for excluding the Player from the first team training.

91. The Sole Arbitrator also finds that the Player's exclusion from the first team training cannot be detached from the Viber messages of the Club's Director at the end of the 2022/23 season. The Sole Arbitrator finds that it is clear from such messages that there was basically no future anymore for the Player with the Club.

92. What is more, and more importantly, the Club's Director, in such Viber messages on 24 June 2023, already painted a scenario whereby the Player would be excluded from the first team if he did not find employment with another club:

> "*It's the best for you* [to find a team that trusts you]*, it's not a good solution to go back to Lamia and be in a bad situation training only a player like you, squeeze your agent, listen to me. Pame Malaka*".

93. The Sole Arbitrator finds that, in a situation where a club representative pressures a player into finding alternative employment at the risk of being excluded from the squad and being required to play alone, and where this indeed materialises without any concrete justification in terms of an objective lack of fitness, an injury, a justified punishment, or otherwise, it is to be presumed that such club is acting abusively.

94. It is true that the Club relies on a "*Report on Ergometric test*" of Mr Drakogiannopoulos. However, such report was only issued on 30 July 2023, whereas the Player was already excluded from first team training since 10 July 2023 without justification.

95. For ease of reference, the "*Report on Ergometric test*" is reproduced here:

> "*From the ergometric test of the athlete, which was held on 24/07/2023 at our facilities, the examinee displayed normal ability in body composition analysis as well as in flexibility ability, where the values of the athlete are at normal levels.*
>
> *In jumping ability, the examinee appears below the average of his category.*
>
> *In the isokinetic test, the examinee shows significant strength deficits in the rectus femoris and hamstring in general strength as it shows a significant deficit in the bilateral evaluation of 28% in right hamstring. A 30% - 35%*

> *increase in right hamstring strength to avoid muscle injuries and a recheck in 3 -4 weeks is recommended.*
>
> *Finally, the examinee should avoid competitive sports and running sports load with intensity above 70% until reevaluation at our facilities in 4-6 weeks.*
>
> *In the aerobic capacity the examinee showed moderate capacity, where the value of the athlete appears below the average rates of his category. An improve of aerobic fitness ability by 2km at Vvo2max and 1km at anaerobic threshold is recommended*".

96. The Sole Arbitrator finds that the evidentiary value of the "*Report on Ergometric test*" is limited. The report does not refer to the performances of other players in the squad, as a consequence of which it cannot be derived from the report that the Player was a negative outlier.

97. In any event, the Club apparently relied on the conclusions in the "*Report on Ergometric test*" to fully reintegrate the Player in the first team. As addressed in more detail below, the Sole Arbitrator finds that, by confirming to the Player on 31 July 2023 that he was "*fully reintegrated*" in the first team, the Club and the Coach were apparently sufficiently satisfied with the Player's level of fitness. Accordingly, to the extent the "*Report on Ergometric test*" provided a justified reason for the Player's exclusion from the first team training before 31 July 2023, it no longer constituted a justified reason after 31 July 2023.

98. Considering all of the above, the Sole Arbitrator finds that the Club acted abusively by excluding the Player from the first team training without any evidence corroborating its argument that the Player was suffering from a general lack of fitness or a minor injury and that this is an important element in determining whether the overall circumstances warranted a premature termination of the Employment Contract by the Player on 2 August 2023.

#### d) The outstanding salaries

99. Given that the outstanding salaries were paid within the deadline granted by the Player, the late payment of salaries does not qualify as just cause independently. However, the Sole Arbitrator finds that the Club's delay in paying the Player's salary on a timely basis is to be seen in the context of the abusive conduct of the Club to try and pressure the Player to look for alternative employment.

100. Although not ignoring the above, the Sole Arbitrator notes that when the default notice imposed by the Player to the Club expired on 31 July 2023, the outstanding salaries had indeed been paid in full and the Player was informed that he was fully reintegrated with the first team.

#### e) The Player's warning of 1 August 2023

101. The Player accepted the Club's assurances of 31 July 2023 and rightly did not terminate the Employment Contract on 1 August 2023. However, the Player clearly informed the Club on such date that "*there will be no sidelining of any kind anymore*"

and that he otherwise reserved the right "*to terminate the* [Employment Contract] *without further warning*".

102. The Sole Arbitrator finds that it derives from the Player's letter dated 1 August 2023 that, despite the assurances provided by the Club, he was hesitant in trusting that he would indeed be fully reinstated in the first team.

103. The Sole Arbitrator finds that this hesitation was justified. Considering the past conduct of the Club of excluding the Player from first team training and withholding his salary and only complying with the Player's default notice at the very last moment, the Sole Arbitrator finds it justified that the Player imposed such warning on the Club.

**f) The first team training session on 2 August 2023**

104. While the exact circumstances are disputed, it is clear that despite the Player's warning of 1 August 2023, at some point during the first team's training session on 2 August 2023, the Player was again sent to train separately from the first team.

105. The Club does not dispute that the Player did not complete the training with the first team. There is also no indication on file that the Player sustained an injury during this training session or that there was any other incident during the training that could potentially have justified the decision to exclude the Player from the first team training. Rather, the Club argues that the Player was sent to train separately during the second part of the training, because of his general lack of fitness.

106. Mr Ioannis Syrogiannis, General Manager of the Club, indicated in his witness statement that he observed that prior to the training session on 2 August 2023, the Player together with another play, "*were playing loud music, dancing and creating a disturbance for the rest of the team*". However, the Sole Arbitrator finds that, even if this were true, it does not justify excluding the Player from the training session. Indeed, the Club does not argue that the Player was excluded from the training session because of his alleged conduct prior to the training session.

107. If, upon receipt of the "*Report on Ergometric test*", the Club believed that the Player was still lacking fitness, it should not have given the assurance to the Player on 31 July 2023 that "*following a common decision of the coach and the club, your client has been fully reintegrated to the first team and its trainings*". Given that the Club allegedly instructed the Player to train separately because of a lack of fitness before, his reintegration shall be taken to mean that the Club was satisfied with the Player's level of fitness.

108. The Sole Arbitrator notes that the decision to reinstate the Player was not a decision by the Coach alone or by the Club's administration alone, but that they informed the Player that they had jointly decided that the Player was fully reintegrated in the first team and its trainings.

109. Against this background, especially the voluntary assurance given to the Player by the Club and the Coach that he was fully reintegrated and the warning given to the Club by the Player on 1 August 2023, the Sole Arbitrator finds that the Player

justifiably did not tolerate being excluded from the first team training once again just two days after such assurance had been given.

110. The Sole Arbitrator does not question the Club's authority to temporarily exclude the Player from first team training, but not if it has just provided assurances that he was fully reintegrated.

#### g) Conclusion

111. The Sole Arbitrator finds that, while the various elements addressed above considered individually may not have been sufficient to comprise just cause for the termination of the Employment Contract, all elements considered together clearly establish that the Club wanted to get rid of the Player, pressuring him into terminating the Employment Contract and/or forcing him to transfer to another club, resulting in a serious breach of confidence of the Player in the Club, based on which it could no longer reasonably be expected from the Player to continue the employment relationship.

112. Especially the situation that, after having been assured that he was "*fully reintegrated to the first team and its trainings*" on 31 July 2023, the Player legitimately lost confidence in the Club after he was once again ordered to train separately from the first team halfway during the training two days later.

113. Consequently, the Sole Arbitrator finds that the Player had just cause to terminate the Employment Contract prematurely on 2 August 2023.

### *ii. What are the consequences thereof?*

#### a) Outstanding remuneration

114. In the Appealed Decision, the FIFA DRC awarded an amount of EUR 800 to the Player as outstanding remuneration for the month of July 2023.

115. However, as argued by the Club and as confirmed by the Player, on 11 August 2023, the Club paid the Player an amount of EUR 800, corresponding to his July 2023 salary.

116. Accordingly, the Sole Arbitrator finds that the Club's appeal in this respect is to be upheld.

117. Consequently, the Club is not required to pay an amount of EUR 800 to the Player as outstanding remuneration.

#### b) Compensation for breach of contract

118. Having established that the Player had just cause to terminate the Employment Contract on 2 August 2023, the Sole Arbitrator will now deal with the issue of compensation for breach of contract.

119. Given that the Club's argument that the Player terminated the Employment Contract without just cause is dismissed, the Club's claim to be awarded EUR 40,000 as compensation for breach of contract is dismissed. Rather, the Club shall pay compensation for breach of contract to the Player.

120. In this respect, the Sole Arbitrator observes that, in the Appealed Decision, the FIFA DRC awarded an amount of compensation of EUR 121,800 to the Player, plus interest.

121. The Employment Contract does not contain a clause determining the consequences of a premature termination. Accordingly, Article 17(1) FIFA RSTP is applicable, which provides as follows:

> "*In all cases, the party in breach shall pay compensation. Subject to the provisions of article 20 and Annexe 4 in relation to training compensation, and unless otherwise provided for in the contract, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period.*
>
> *Bearing in mind the aforementioned principles, compensation due to a player shall be calculated as follows:*
>
> *i. In case the player did not sign any new contract following the termination of his previous contract, as a general rule, the compensation shall be equal to the residual value of the contract that was prematurely terminated.*
>
> *ii. In case the player signed a new contract by the time of the decision, the value of the new contract for the period corresponding to the time remaining on the prematurely terminated contract shall be deducted from the residual value of the contract that was terminated early (the "Mitigated Compensation"). Furthermore, and subject to the early termination of the contract being due to overdue payables, in addition to the Mitigated Compensation, the player shall be entitled to an amount corresponding to three monthly salaries (the "Additional Compensation"). In case of egregious circumstances, the Additional Compensation may be increased up to a maximum of six monthly salaries. The overall compensation may never exceed the rest value of the prematurely terminated contract.*
>
> […]".

122. It is not in dispute between the Parties that the remaining value of the Employment Contract at the moment of termination was EUR 133,800.

123. The Player found alternative employment with FK Radnicki. Pursuant to the FK Radnicki Employment Contract, valid as from 25 September 2023 until 31 May 2024, the Player was entitled to a monthly salary of EUR 1,500, thus totalling EUR 12,000 (8 x EUR 1,500).

124. Deducting this mitigated compensation from the remaining value of the Employment Contract results in an amount of EUR 121,800 (EUR 133,800 – EUR 12,000).

125. The Club does not contest this calculation. Indeed, the Club did not put forward a subsidiary argument based on which it disputed the amount of compensation awarded by the FIFA DRC should its primary argument that the Player shall pay compensation for breach of contract to the Club in the amount of EUR 40,000 be dismissed.

126. The Sole Arbitrator finds that there is no reason based on which the compensation for breach of contract to be paid to the Player by the Club should be reduced and it is considered reasonable and fair.

127. In the proceedings before the FIFA DRC, the Player claimed interest at a rate of 5% *per annum* over the amount of compensation for breach of contract as from 2 August 2023 until the date of effective payment. The Sole Arbitrator notes that the FIFA DRC granted this claim in the Appealed Decision and that this aspect remained uncontested by the Club in the present appeal arbitration proceedings.

128. Consequently, the Sole Arbitrator finds that the Club shall pay to the Player an amount of EUR 121,800 as compensation for breach of contract, plus interest at a rate of 5% *per annum* as from 2 August 2023 until the date of effective payment.

### B. Conclusion

129. Based on the foregoing, the Sole Arbitrator holds that:

i) The Player had just cause to terminate the Employment Contract prematurely on 2 August 2023.
ii) The Club is not required to pay an amount of EUR 800 to the Player as outstanding remuneration.
iii) The Club shall pay to the Player an amount of EUR 121,800 as compensation for breach of contract, plus interest at a rate of 5% *per annum* as from 2 August 2023 until the date of effective payment.

130. Although the Club's appeal is almost entirely dismissed, its claim with respect to the amount of EUR 800 as outstanding remuneration is upheld, as a consequence of which the appeal is partially upheld.

131. All other and further motions or prayers for relief are dismissed.

## X. COSTS

(…)

* * * * * * * * *

# ON THESE GROUNDS

**The Court of Arbitration for Sport rules that:**

1. The appeal filed on 14 May 2024 by PAS Lamia 1964 FC against the decision issued on 7 March 2024 by the Dispute Resolution Chamber of the Football Tribunal of the *Fédération Internationale de Football Association* is partially upheld.

2. The decision issued on 7 March 2024 by the Dispute Resolution Chamber of the Football Tribunal of the *Fédération Internationale de Football Association* is confirmed, save for paragraph 2 of the operative part, which shall read as follows:

   *"PAS Lamia 1964 FC must pay Mr Stefan Ashkovski the following amount(s):*

   - *EUR 121,800 (one hundred twenty-one thousand eight hundred Euros) as compensation for breach of contract without just cause plus 5% interest p.a. as from 2 August 2023 until the date of effective payment".*

3. (…).

4. (…).

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

Seat of arbitration: Lausanne, Switzerland
Date: 12 May 2025

# THE COURT OF ARBITRATION FOR SPORT

Hendrik Willem Kesler
Sole Arbitrator

Dennis Koolaard
*Ad hoc* Clerk