



**TAS / CAS**

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

**CAS 2023/A/9953 FC A. v. FC B.**  
**CAS 2023/A/9954 FC B. v. C. & FC A.**  
**CAS 2023/A/9978 C. v. FC B.**

**ARBITRAL AWARD**

**delivered by**

**COURT OF ARBITRATION FOR SPORT**

**sitting in the following composition:**

**President:** Mr Lars Hilliger, Attorney-at-Law in Copenhagen, Denmark  
**Arbitrators:** Mr Reto Annen, Attorney-at-Law in Chur, Switzerland  
Mr Manfred Peter Nan, Attorney-at-Law in Amsterdam, the Netherlands

**in the arbitration between**

**FC A., Serbia**

Represented by Mr Zoran Damjanovic and Ms Ksenija Z. Damjanovic, Attorneys-at-Law in Belgrade, Serbia

- Appellant in CAS 2023/A/9953 -  
- Respondent in CAS 2023/A/9954 -

**and**

**FC B., Moldova**

Represented by Mr Mikhail Prokopets, Mr Ilya Chicherov, Mr Yury Zaytsev and Ms Daria Luienko, Attorneys-at-Law in Moscow, Russia

- Appellant in CAS 2023/A/9954 -  
- Respondent in CAS 2023/A/9953 and CAS 2023/A/9978 -

**and**

**C., [...]**

Represented by Mr Marco Del Fabro, Attorney-at-Law in Zurich, Switzerland

- Appellant in CAS 2023/A/9978 -  
- Respondent in CAS 2023/A/9954 -

## I. THE PARTIES

1. FC A. (“FC A.”) is a professional Serbian football club affiliated with the Serbian Football Federation (the “SFF”), which in turn is affiliated with the *Fédération Internationale de Football Association* (“FIFA”).
2. FC B. (“FC B.”) is a professional Moldovan football club affiliated with the Football Association of Moldova (the “FMF”), which in turn is affiliated with FIFA.
3. C. (the “Player”) is a professional football player born on [...] of [...] nationality. The Player is currently registered with the Serbian football club FK [...] on loan from FC D.
4. FC A., FC B. and the Player shall be jointly referred to as the “Parties”, where applicable.

## II. FACTUAL BACKGROUND

5. The facts set out below are a summary of the main relevant facts as established by the Panel on the basis of the decision rendered by the Dispute Resolution Chamber of the FIFA Football Tribunal (the “FIFA DRC”) on 7 July 2023 (the “Appealed Decision”) and based on the Parties’ written submissions, pleadings and evidence adduced at the hearing on 28 May 2024. Additional facts and allegations found in the Parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.
6. On 9 July 2021, the Player and FC B. concluded Employment Contract No 1821-F (the “Contract”), valid “*within the period from 09 July 2021 to 30 June 2024 (inclusive)*”.
7. Pursuant to Article 9 of the Contract, the Player was entitled to the following remuneration:

### “9. SALARY

*9.1.1. In the period from 09.07.2021 to 30.06.2022 – [...] net per month.*

*9.1.2. In the period from 01.07.2022 to 30.06.2023 – [...] net per month, provided that in the period from 09.07.2021 to 30.06.2022 the Sportsman participates in not less than 70% of the official matches (championship matches, Europa League and Champions League matches) in the Club’s main team.*

*In case the Sportsman participates in less than 70% of the official matches (championship matches, Europa League and Champions League matches) in the Club’s main team, then the Sportsman’s salary in the second year of the contract validity (period from 01.07.2022 to 30.06.2023) will be paid in the amount of [...] net per month;*

*9.1.3. In the period from 01.07.2023 to 30.06.2024 – [...] net per month, provided that in the*

*period from 01.07.2022 to 30.06.2023 the Sportsman participates in not less than 70% of the official matches (championship matches, Europa League and Champions League matches) in the Club's main team.*

*In case the Sportsman participates in less than 70% of the official matches (championship matches, Europa league and Champions League matches) in the Club's main team, then the Sportsman's salary in the third year of the contract validity (period from 01.07.2023 to 30.06.2024) will be paid in the amount of [...] net per month.*

*NB: Under the term 'participated' it is understood by the Parties that the Player was fielded and took active part in the game (match), including additional time, no less than 30 (thirty) minutes in every game (match).*

*9.2. Salary is paid according and depending on hours actually worked.*

*9.3. Salary is paid monthly up to 25th day of the month following the month for which salary is accrued."*

8. On 31 January 2022, FC B. received an offer from the Serbian football club FC D. ("FC D."), which offered a fixed transfer fee of [...] for the permanent transfer of the Player to FC D. (the "First FC D. Offer").
9. On 17 May 2022, FC B. issued an authorisation, valid until 31 August 2022, to Mr E., who is a registered football agent, to act on its behalf in negotiations with FC D. regarding a possible transfer of the Player to the latter club.
10. In June 2022, the Player left FC B. to participate in [...]’s national team matches, in which connection he sustained an injury to his right thigh, which was diagnosed on 17 June 2022. The Player did not return to FC B. following the national team matches and apparently stayed in [...].
11. By letter of 23 June 2022 (the "First Warning"), FC B. informed the Player, *inter alia*, as follows:

*"As you know, there is a contractual relationship between you and CJSC SC FC B. (hereinafter FC B.) on the basis of the employment contract No. 1821-F of 09.07.2021.*

*On 13.05.2022 the [...] Football Association has applied to us with a request to release you for participation in the matches of the National Team.*

*FC B. confirmed and organized your departure to the National Team of [...].*

*In accordance with paragraph 8 of article 1ter of Annex 1 of the FIFA Regulations on the status and transfers of players*

*- 'Players complying with a call-up from their association under the terms of this article shall resume duty with their clubs no later than 24 hours after the end of the period for which they had to be released. This period shall be extended to 48 hours if the representative teams' activities concerned took place in a different confederation to the one in which the player's club is registered....'*

*Thus, you should have returned to the location of FC B., [...], Moldova, no later than and/or earlier than June 17, 2022.*

*However, on the day indicated above (or earlier), you did not arrive at the location of FC B.,*

*[...], Moldova and did not start performing your professional duties.*

*The above fact is significant and important, since in this period of time the team is preparing for the matches of the UEFA Champions League of the 2022/2023 season.*

*In this connection, we demand from you as soon as possible, but no later than June 27, 2022, to arrive at the location of the club in order to fulfill your obligations to the club.”*

12. On 29 June 2022, FC B. forwarded another letter to the Player (the “Second Warning”), which stated, *inter alia*, as follows:

*“[...] 2/ On 23.06.2022 a warning was sent to your E-mail:[...]*

*3/ The management, in order to fulfill your obligations to the Club, provided you with a reasonable (additional) time for arrival at the location of FC B., [...], Moldova, no later than June 27, 2022.*

*4/ However, on June 27, 2022 you didn't arrive at the location of FC B., [...], Moldova.*

*5/ We also recorded your absence on the date of this warning.*

*6/ As a result, it was established not only a violation of the requirements of the FIFA Regulations, namely Art 1 (9) of Annex 1 RSTP, but also of the terms of the valid employment contract concluded between you and the Club.*

*7/ Thus, we duly warn you about the consequences of failure to fulfill obligations to the Club or deliberate failure to fulfill your contractual obligations (below).*

*8/ We draw your attention to Article 17 of the FIFA RSTP which governs the consequences when a contract is terminated, either by a professional player or the club, without just cause, namely:*

*A) Two different consequences have been established by FIFA in connection with the termination of contracts without just cause.*

*i) /the Player in breach of the contract will be required to pay compensation/.*

*ii) In addition to the obligation to pay compensation, sporting sanctions can be imposed on a player found to be in breach of contract during the ‘protested period’.*

*The option to apply sporting sanctions further strengthens the relationship between a professional player and their club and serves as an additional deterrent for clubs and players who may be considering terminating a contract unilaterally or deliberately failing to comply with their contractual obligations.*

*The sporting sanction to be imposed on a player in the event of breach of contract during the protected period consists of a four-month ban on playing in official matches, extending to six months.*

*iii) Finally, any decision to impose sporting sanctions against a club found to have induced a professional player to breach their existing contract is always in addition to the new club being jointly and severally liable for any compensation payable by the professional player to their former club for the unjustified early termination of their contract.*

*The club shall be banned from registering any new players, either nationally or internationally, for two entire and consecutive registration periods.*

*9) Taking into account the above, we believe that you are duly informed of the consequences of failure to fulfill obligations to the Club or deliberate failure to fulfill your contractual obligations.*

*10) As a result, we ask you to return as soon as possible to the location of FC B., [...], Moldova, to participate in the preparation of the team for the historically significant club tournament of the UEFA Champions League 2022/2023, as well as for the matches of the Championship of the Republic of Moldova in the football*

*season 2022/2023.*

*11) In case of ignoring this requirement, as well as not arriving at the team's location as soon as possible (we think that the date 03.07.2022 is reasonable and you are able to arrive at the club's location on or before the specified date), will entail a procedure related to submitting of the relevant application of the Club to the competent bodies of FIFA.”*

13. Moreover, on 21 July 2022, FC B. forwarded yet another letter (the “Third Warning”) to the Player, which stated, *inter alia*, as follows:

*“[...]*

*9/ The Club management and the Head Coach of the Club counted / count / on you and planned / plan / your participation in the games of the First qualifying round of the UEFA Champions League (dates of matches: 06.07.2022; 12.07.2022), as well as the Second qualifying round of the UEFA Champions League (match dates: 20.07.2022; 26.07.2022).*

*10/ Also, we inform you that we are waiting for your arrival and plan to involve you in the next matches under the auspices of UEFA, as well as in the matches of the Football Championship of the Republic of Moldova.*

*11/ Thus, and taking into account the above and previous warnings (received by you), we are of the opinion that you are properly informed of the consequences of failure to fulfill obligations to the Club or willful failure to fulfill your contractual obligations.*

*12/ Finally, we ask you to return as soon as possible to the location of FC B., [...], Moldova, to participate in the matches under the auspices of UEFA 2022/2023, as well as in the matches of the Football Championship of the Republic of Moldova in the season 2022/2023.”*

14. On 12 August 2022, and following informal talks between Mr E. and FC D., FC D. forwarded a loan offer regarding the Player to FC B., following which, on 16 August 2022, FC B. forwarded a counter-offer to FC D. for the permanent transfer of the Player, which was turned down by letter of 17 August 2022.
15. Nevertheless, and by letter of 30 August 2022, FC D. informed FC B. about its interest in obtaining the services of the Player on a loan basis with a subsequent mandatory purchase of the Player’s registration rights.
16. On 13 September 2022, the Player contacted FC B. and requested the club to issue flight tickets for the Player to return to Moldova “*From tomorrow 14 September 2022 (or as soon as possible)*”, which the club did with return on 29 September 2022.
17. On 29 September 2022, the Player returned to Moldova, and on 30 September 2022, the Player underwent a full medical examination as requested by FC B.
18. Upon the Player’s return to FC B., the Player and FC B. concluded an additional agreement to the Contract (the “Additional Agreement”) dated 1 October 2022. While FC B. submits that the Additional Agreement was concluded on 1 October 2022, this date is disputed by the Player, who submits that it was signed on 31 October 2022 and then backdated to 1 October 2022. However, apparently and according to evidence on file, the Additional Agreement was forwarded to the FMF for registration on 21 October 2022, even if the Panel notes, that the Player disputes the correctness of the date of registration by the FMF.

19. The Additional Agreement stated, *inter alia*, as follows:  
“[...]

*A) The Sportsman confirms that after participating in the matches of the [...] National Team, he did not arrive at the location of FC B., [...], Moldova, on the due date, namely on 17 June 2022, thereby violating paragraph 9 of article 1 of the Annexe of FIFA RSTP.*

*B) The Sportsman confirms that in the period from June 17, 2022 until September 30, 2022, he was absent from the location of FC B., [...], Moldova, without just cause, thus, he acknowledges that he violated the terms of the employment contract.*

*C) The Sportsman confirms that he has taken into account article 17 of the FIFA RSTP, which governs the consequences of a violation (action / omission) by the Sportsman of the terms of the employment contract, as well as he is also aware that he is guilty of his actions / omissions.*

*D) The Sportsman confirms that he takes into account the fact that the period from 01.10.2022 to 28.02.2023, he cannot be involved in competitive activities by the Club, and therefore he cannot make any claims against the Club.*

*have signed the present Additional Agreement as follows:*

*1. The Parties, acting voluntarily and without any coercion, as well as with the full and unconditional consent of the Sportsman, have made amendments to the employment contract as it pertains to the Sportsman's salary.*

*2. The Parties, with the voluntary consent of the Sportsman, agreed on the condition that the salary of the Sportsman will be paid the amount of [...] net in the period from 01.10.2022 to 15.01 2023 (inclusive).*

*[...]*

*4. By signing this agreement, the Sportsman guarantees the following:*

*a) the Sportsman has no grounds to make any claims against the Club;*

*b) the Club has no unfulfilled obligations to the Sportsman.*

*[...]”*

20. The Player was not timely registered with the FMF in order to participate in (at least) the first half of the 2022/2023 season and in the UEFA competitions.
21. On 10 November 2022, and during a break in the national tournament in accordance with the FIFA international match calendar and the FIFA World Cup Qatar 2022, the Player left Moldova.
22. By letter of 21 November 2022 to FC B. (the “Termination Letter”), the Player terminated the Contract, stating, *inter alia*, as follows:

***“Re: Notice on Termination of the Employment Contract no.1821-F of 09 July 2021 with just cause and with immediate effect***

*Dear Sir(s),*

*Please note that by means of this correspondence I terminate the Employment Contract no. 1821-F concluded with SC FC B. on 09 July 2021 (with amendments pursuant to the Additional Agreement) with immediate effect and with just cause.*

*This termination is grounded on Art.14 of FIFA Regulations on Status and Transfer of Players which states:*

*[...]*

*One of just causes for termination is Additional Agreement to the Employment Contract*

*no.1821-F. I declare that, contrary to the wording of the Additional Agreement, I have not been entered into it freely and voluntarily. As you are well aware, on 31 October 2022, I was kept in the club's premises and forced to sign it. There was no reasonable alternative but to sign the Additional Agreement on the terms given by SC FC B. The coercion from the club was serious and had a decisive effect on my will, because I would have been in danger if I did not sign the given Additional Agreement.*

*On 09 November 2022, SC FC B. played match against FC X. which was last match of the club in first half of the season 2022/23.*

*After mentioned match, there has been a break in championship due to the World Cup in Qatar. SC FC B. shall play next match on 16 February 2023 against FK Z. within the UEFA Conference League.*

*On 10 November 2022, I left Moldova and only when I left Moldova, I seeked and obtained legal assistance regarding situation in which I found myself which led to this Termination Notice.*

*Besides being antdated (allegedly signed on 01 October 2022) and concluded under duress, the Additional Agreement and its provisions change the terms of the Employment Contract to my detriment and infringe my rights. As such, Additional Agreement additionally manifest abusive conduct of SC FC B. towards me.*

*For example, recital d) stating that I cannot make any claim against your club due to lack of my inclusion in competitive activities of the club in the period from 01.10.2022.-28.02.2022 is unreasonable and seriously contravening my interests.*

*Furthermore, provisions 4) and 5) of the Additional Agreement do not correspond to the truth. SC FC B. failed to pay me salaries for July, August and September 2022. Provision 2) is salary reduction against my will.*

*This Additional Agreement shocks the conscience of a reasonable person and gives excessive advantage to SC FC B.*

*I also remind you that SC FC B. made such Additional Agreement after I raised issue of my exclusion from the team for competitive matches on several occasions.*

*Abovementioned recital d) of the Additional Agreement expressly acknowledges that until 28 February 2023, I 'cannot be involved in competitive activities by the Club', and the only logical explanation of my exclusion is non-registration (de-registration) with the competent authorities.*

*In that regard, forcing me to sign the Additional Agreement was an attempt of SC FC B. to remedy its illegal actions - lack of my inclusion to the players' list and deregistration (non-registration) with the competent authorities.*

*By failing to register me for official competitions in which the SC FC B. participates in season 2022/23 before the Football Association of Moldova and before UEFA, SC FC B. committed a serious breach of its contractual obligations (Art.3, 5, 11 of the Employment Contract) i.e. it violated my player's fundamental right.*

*The club has a duty to allow its players to engage in the activity for which they have been in principle employed and qualified for.*

*The FIFA DRC has repeatedly confirmed that 'among a player's fundamental rights under an employment contract, is not only his right to a timely payment of his remuneration, but also his right to access training and to be given the possibility to compete with his fellow team mates in the team's official matches' and that 'by 'de-registering' a player, even for a limited time period, a club is effectively barring, in an absolute manner, the potential access of a player to competition and, as such, is violating one of his fundamental rights as a football player'.*

*As I have been barred in an absolute manner from potential access to any competition (at least until 28 February 2023) in which SC FC B. takes part, SC FC B. deprived me of one of my fundamental rights.*

*In line with CAS 2015/A/4122 deregistration (non-registration) of the player constitutes the 'factual termination of the contract' by the club i.e. just cause for the player to terminate the contract. Accordingly, there is no requirement to send default notice (written warning) to SC FC B.*

*Taking into account abovementioned, SC FC B.'s conduct was of such a nature that I can no longer be reasonably expected to continue the employment relationship with the club.*

*The serious breach of confidence caused by SC FC B.'s abusive conduct and gross violation of the employment contract, leaves me no room but to, on 21 November 2022, terminate the Employment Agreement no.1821-F with just cause and with immediate effect.*

*Please note that I shall seek protection of my rights before the FIFA Dispute Resolution Chamber."*

23. By letter of 20 December 2022 to the Player, FC B. replied as follows:

*"I refer to the mentioned letter on behalf of Football Club FC B. (the Club) by virtue of the attached Power of Attorney.*

*In this regard, the Club objects all your allegations in the strongest possible terms and underlines that there was no just cause on your side to terminate the employment contract dated 9 July 2021 No. 1821-F (the Contract).*

*First of all, the Club underlines that it was you who breached the Contract in June 2022 not having returned into the Club's premises after your release to the national team.*

*The Club constantly reminded you on your obligation to return and continue providing your services to the Club. However, you complied thereon only in the end of September 2022, i.e., after 3 (!) months' absence.*

*Under these circumstances, the Club was in full authority to terminate the Contract itself due to just cause. However, doing its best to preserve the contractual stability, the Club did not turn to this option at that point.*

*More, the Club did not reduce your basic salary set forth by the Contract arbitrarily.*

*You and the Club concluded an additional agreement, which establishes as follows:*

*1. Non-payment of salary for the period of your absence (which is perfectly understandable, as you did not provide services under the Contract to the Club) and*

*2. Reduction of your salary for a relatively short future period — due to your absence the Club could not register you for participation in the official matches until the end of 2022, which prevents the Club from obtaining your services on the pitch in official matches. However, the Club at no point prevented you from training, which is also a part of your job function and was necessary to reach the appropriate physical condition after the long absence.*

*The Club underlines that the new registration period in Football Association of Moldova commences on 30 January 2023, thus, already in February 2023 you could be able to participate in the matches of the national and international competitions.*

*What is of utmost importance, the Club by all means rejects your allegations on coercion to enter the additional agreement to the Contract. As described above, the underlying reasons are perfectly clear and the consequences established by the additional agreement should be deemed appropriate (let alone absence of any evidence confirming coercion or duress).*

*Finally, the Club as well rejects your stance regards complying with the requirements to file*



*a pretension before terminating the Contract.*

*Absent evidence of coercion or duress, the Club notes that you substantiate your Termination Notice merely on the non-payment of salary for 3 months.*

*Let alone noting that the said issue was effectively resolved by means of the additional agreement to the Contract, termination with just cause due to outstanding remuneration is governed by Art. 14bis of FIFA Regulations on the Status and Transfer of Players.*

*The said article obliges the player to put the club in default and provide a 15-day deadline (quod non).*

*Consequently, you did not have a just cause to terminate the Contract.*

*Therefore, the Club advises you that should the Club receive your claim lodged against the Club before the FIFA Football Tribunal, the Club respectfully advises that it shall file a counterclaim, seeking compensation for breach of Contract committed by you without just cause.*

*Bearing in mind that the Club has previously received some offers for your potential transfer, the Club with all due respect warns you that it will request that you pay compensation for breach of Contract no less than [...] and will request imposition of suspension (i.e., disqualification) in order that you will be deprived of the right to participate in official matches for your new club for 6 months.*

*However, the Club is ready to discuss reinstatement of your employment, should you wish so. Finally, it is obvious for the Club that the described situation has arisen merely from your attempt to leave the Club and join any other club without payment of transfer fee in Club's favor.*

*Having this said, the Club reminds you the content of Art. 17 paras. 2 and 4 FIFA RSTP:*

*"If a professional is required to pay compensation, the professional and his new club shall be jointly and severally liable for its payment."*

*"It shall be presumed, unless established to the contrary, that any club signing a professional who has terminated his contract without just cause has induced that professional to commit a breach.*

*The club shall be banned from registering any new players, either nationally or internationally, for two entire and consecutive registration periods."*

*Therefore, the Club shall request that your new club bears the said adverse consequences."*

24. By letter of 6 January 2023 to FC B., FC A. wrote as follows:

*"We are writing to you with regard to the player C. from [...], born on [...]. Our club would like to engage named player in the 2023 winter registration period. The first contact between player and us took place at the end of December 2022.*

*The player C. informed us and showed us the Notice of Termination of his employment contract with your club from 21 November 2022.*

*We kindly ask you to inform us if there will be any future dispute between your club and the player C.*

*We appreciate your cooperation and without prejudice to your relationship with the player we expect your prompt response."*

25. By letter of 9 January 2023, FC B. answered FC A., *inter alia*, as follows:

*"We are contacting you with the reference to your letter dated 6 January 2023.*

*In this regard please be advised that on 21 November 2022 C. ("Player") sent a notice on*

*termination of his employment contract with us, FC B. ("Club").*

*However, we kindly inform you that the Player terminated the employment contract with the Club without just cause, thus being in breach of the provisions of the FIFA Regulations on the Status and Transfer of Players ("RSTP").*

*Therefore, in case the Player signs an employment contract with a new club, we will be forced to file a claim against the Player and the new club in front of the FIFA Football Tribunal in accordance with the FIFA Regulations. [...]"*

26. On 13 January 2023, FC A. informed FC B., *inter alia*, as follows:

*"First of all, thank you for your letter from 09 January 2023.*

*We regret to hear that your stance differs from the stance of the player C.*

*Without prejudice to the outcome of eventual employment-related dispute between you and the player C., we remind you that the player C. terminated a contract with your club almost two months ago - much before our contact with player C. - and due to your club's breach of contract.*

*Evidente: Termination Notice of player C. of 21 November 2022, enclosed*

*Therefore, there is no justified reason for you to claim joint and several liability and/or sporting sanctions against FC A. Legal department of our club is of the opinion that the termination of the player C. with FC B. is justified, and for this reason we have contacted the player. Otherwise, we would not take the risk and negotiate with the player."*

27. On 16/17 January 2023, the Player and FC A. signed a Professional Player Contract (the "FC A. Contract") *"for the period from 16<sup>th</sup> January 2023 to the 31<sup>st</sup> May 2025"* and an annex to the Professional Player Contract (the "Annex").

28. Pursuant to Article 3 of the FC A. Contract, the two parties agreed on the following remuneration:

*"1) In consideration for the Player's obligations towards the Club, the parties hereto have agreed upon a net monthly salary in the amount of [...] ([...] Serbian dinars) (which may not be lower than the minimum net wage per employee in the Republic of Serbia according to the latest official data published by the relevant authority) payable into the Player's current account, and not subject to changes unless by an annex to this Contract. Payment of the salary for the previous month shall be effected no later than by the last day of the current month.*

*2) The parties hereby also set forth the following special fees:*

*3) The parties hereby also set forth the following special success-based fees for the results achieved at national and international competitions, in accordance with the regulations of Club.*

*4) The amount of special bonuses referred to in Article 3 hereof [are] subject to changes and the parties hereto agree that the amount of such bonuses may be changed in accordance with Club regulations. Any change of the amount of a bonus shall be valid without execution of an annex to this Contract and the amounts of bonus, set forth by Club regulations shall apply. [...]"*

However, pursuant to Article 2 of the Annex, the two parties also agreed, *inter alia*, as follows:

*“Article 3. paragraph 2. of the basic professional player contract, number: 004/23, from 16h January 2023, changes and reads as following:*

*2.1) The Club is obligated to pay to the player net amount of [...] euros in RSD equivalent at the official exchange rate of the National Bank of Serbia on the day such payment made, each month as a monthly transfer installment, from 16th January 2023 until 30th June 2023, deducted for the amount of minimum wage in Republic of Serbia published in the Official Gazzete of the Republic of Serbia.*

*2.2) The Club is obligated to pay to the player net amount of [...] euros in RSD equivalent at the official exchange rate of the National Bank of Serbia on the day such payment made, each month as a monthly transfer installment, from 1st July 2023 until 30th June 2024, deducted for the amount of minimum wage in Republic of Serbia published in the Official Gazzete of the Republic of Serbia.*

*2.3) The Club is obligated to pay to the player net amount of [...] euros in RSD equivalent at the official exchange rate of the National Bank of Serbia on the day such payment made, each month as a monthly transfer installment, from 1st July 2024 until 31st May 2025, deducted for the amount of minimum wage in Republic of Serbia published in the Official Gazzete of the Republic of Serbia.”*

29. By letter of 20 January 2023, FC B. requested the FMF *“to reject a request to issue the International Certificate for the transfer of [the Player], as long as the Player terminated [the Contract] unilaterally without just cause”*.

30. By decision of 30 January 2023, the Players’ Status Chamber of the Football Tribunal decided as follows:

*“1 The request of the Football Association of Serbia to register the player C. for its affiliated club, FC A., is granted with immediate effect.*

*2. The present decision is without prejudice to any possible decision from the FIFA Dispute Resolution Chamber (DRC) and/or the competent decision-making body on the substance of the potential or existing contractual dispute between the player and his former club (as well as his new club).”*

31. Finally, on 21 June 2023, the Player was transferred on a definitive basis from FC A. to FC D. and signed a new employment contract with the said club, valid as from 1 July 2023 until 30 June 2027 (the “FC D. Contract”), and an annex to the Professional Player Contract (the “FC D. Annex”) was also signed.

32. Pursuant to the FC D. Contract, the Player was/is entitled to receive the following remuneration: *“a net monthly salary in the amount of [...] (which may not be lower than the minimum net wage per employee in the Republic of Serbia according to the latest official data published by the relevant authority) payable into the Player’s current account, and not subject to changes unless by an annex to this Contract. Payment of the salary for the previous month shall be effected no later than by the last day of the current month.*

*2) The parties hereby also set forth the following special fees: ... [...]”*

33. In this regard, Article 3 of the FC D. Annex states, *inter alia*, as follows:

*“CONTRACTUAL PAYMENTS*

*In addition to the amounts stipulated in the Professional player contract, the Club shall make*

*the following payments to the Player:*

*3.1. Fixed payments:*

*1) Sign-on fee:*

*The player is entitled to receive sign on fee in the amount of [...] NET, in RSD counter value according to the middle exchange rate of the NBS on the day of payment, payable as follows:*

*- [...] net in one installment, no later than 5 working days after the entry into force of the Professional Player Contract number P113 from 1 July 2023;*

*- [...] net in 2 equal installments:*

*1) [...] net until 31 July 2023*

*2) [...] net until 31 August 2023.*

*In order to avoid any doubt, the Player is entitled to a sign-on fee for each month in which the Player is registered and contractually bound to the Club.*

*[...]*

*2) Loyalty fee:*

*• The Player is entitled to a loyalty fee in the net amount of [...] per month, starting from 1 July 2023 until 30 June 2027.*

*[...]*

*3.4. Additional bonus*

*In case that a dispute arises between the Player, FC A. and FC B., and that FC A. and the Player are obliged to jointly pay FC B.'s fine according to the final decision of FIFA or CAS, the Player has the right to compensation for termination of the professional contract with FC B., which is equal to the positive difference calculated according to the following:*

*- The amount of [...] is reduced by the total gross amount of compensation with all other fees that the Club is obliged to pay to FC A. and additionally by a fixed amount of [...]*

*- In case the received amount is positive, it must be paid to the Player in the gross amount, in dinar equivalent at the official mid-rate of the NBS on the day of payment, within 90 working days from the date of the final decision of FIFA or CAS.*

*3.5. Penalty*

*In case that the total above-mentioned penalty according to the final decision of FIFA or CAS amounts to more than [...], the Player agrees that the Club will refund any amount over [...] from the Player's earnings. [...]"*

**III. Proceedings before the Dispute Resolution Chamber of the FIFA Football Tribunal**

34. On 12 January 2023, the Player lodged a claim before FIFA against FC B. with the following requests for relief:

*“1. To decide that the [Player] terminated Contract with [FC B.] with just cause.*

*2. [FC B.] shall be ordered to pay [the Player] the total amount of [...] net plus corresponding interest out of which:*

*a) [...] net plus 5% interest p.a. as from 22 November 2022 until the date of effective payment as outstanding remuneration;*

*b) [...] net plus 5% interest p.a. as from 22 November 2022 until the date of effective payment as compensation for breach of contract;*

*c) [...] net plus 5% interest p.a. as from 22 November 2022 until the date of effective payment as additional compensation on the account of specificity of sport.*

3. *[FC B.] shall be banned from registering any new players, either nationally or internationally, for two entire and consecutive registration periods.*

4. *[FC B.] shall be ordered to bear final costs of this procedure if there are any.”*

35. In support of his claim, the Player argued, *inter alia*, that it was agreed with FC B. that he could stay in [...] in order to treat his injury with traditional [...] medicine. He was reassured that FC B. understood his situation and approved his absence. Upon his return to FC B. on 29 September 2022, he was called into a meeting and forced to sign the Additional Agreement without being given the opportunity to read it beforehand. Only after signing the Additional Agreement, the Player called his agent and complained about the abusive conduct of the club. The Player further argued that the Additional Agreement is unlawful since it contains abusive clauses only in favour of FC B.
36. The Player further argued that FC B.’s undisputed non-registration of him entitled him to terminate the Contract with just cause and immediate effect, as the non-registration of a player is a serious breach of a club’s contractual obligations.
37. Finally, and with regard to his absence from the club, the Player sustained that he was authorised to do so, that the wording of the default notices was different and that FC B. had not initiated any disciplinary proceedings against him. If FC B. would not accept any further absence, it would have had to react immediately or without delay and to terminate the Contract with immediate effect or at least to sanction him, which it never did.
38. In its reply and counterclaim to the Player’s claim, FC B. requested the following relief:  
“1. *The claim [the Player] is rejected.*  
2. *The counterclaim [FC B.] is accepted.*  
3. *[The Player] is ordered to pay [FC B.] compensation for breach of contract in the amount of [...] net plus 5% p.a. as from 22 November 2022 until the date of effective payment.*  
4. *[The Player] is restricted on playing in official matches for 6 (six) months in accordance with Article 17 para. 3 FIFA RSTP.*  
5. *[FC A.] is jointly and severally liable for the payment of compensation in accordance with Article 17 para. 2 FIFA RSTP.*  
6. *[FC A.] is banned from registering any new players, either nationally or internationally, for two entire and consecutive registration periods in accordance with Article 17 para. 4 FIFA RSTP.”*
39. In its reply and counterclaim, FC B. sustained that since the Player terminated the Contract, the burden of proof to establish that such premature termination was justified lies with the Player. The non-registration of the Player for a part of the season was due to the Player’s failure to return to FC B. timely, and as “*medical and sports control is mandatory for the registration of players*” pursuant to the FMF regulations, the Player could not be registered for competitions without a valid medical certificate. As the Player only appeared in the club at the end of September 2022, the club had no chance to register him in a timely manner. Moreover, the Player never documented that the representatives of FC B. ever allowed him to be absent from the club in order to have his injury treated in [...]. In any case, the Player kept on training with the club and did not provide any notices to FC B. regarding the lack of registration.

40. With regard to the Additional Agreement, FC B. sustained that this was a valid agreement between the two parties and that the Player never proved that he was under duress when signing it. All in all, FC B. concluded that no just cause for the Player's termination of the Contract existed, thus making FC B. entitled to compensation for the Player's unjust termination of the Contract, which must include i) the remuneration element (i.e. the residual value of the Contract, ii) loss of transfer fee, iii) unamortised expenses of FC B., and iv) the specificity of sport.
41. In his reply to FC B.'s counterclaim, the Player argued, *inter alia*, that he underwent the medical examination on 30 September 2022 and that FC B. became aware of its failure to duly register the Player only in October 2022. Moreover, in case of non-registration, it is not necessary to issue a notice to the club, since the registration period was already closed.
42. In any case, and if the termination was to be considered being without just cause, the Player argued that FC B. should not be entitled to any compensation, or at least a very reduced amount. The possible compensation could not in any way be more than [...] in non-amortized transfer compensation and [...] as compensation based on remuneration.

43. Finally, the Player amended/supplemented his requests for relief as follows:

*“The Player terminated the Contract with [FC B.] with just cause without notice with immediate effect. Therefore, [FC B.] has to pay compensation for breach of contract (An. 17 para. J RSTP) and sanction has to be imposed on it (Art. 17 para. 4 RSTP). Accordingly, the Claim of the Player dated 12 January 2023 shall be accepted and the counterclaim of 13 February 2023 shall be dismissed.  
in the unlikely event the Dispute Resolution Chamber comes to the conclusion that the Employment Contract was terminated by the Player without just cause, no compensation is payable to [FC B.] pursuant co Arr. 337 para. 2 SCO based on [FC B.'s]conduct, the circumstances and [FC B.'s] contributory negligence. In any case, the compensation would have to be reduced by at least 50 %, and no sanctions should be imposed on the Player and [FC A.] (and no joint liability of [FC A.] is applicable).”*

44. In its reply, FC A. filed the following requests:

*“1. To accept the claim of [the Player];  
2. To dismiss the counterclaim of [FC B.];  
In case the counterclaim of [FC B.] is upheld, [FC A.] asks Dispute Resolution Chamber:  
1. To adopt one of three alternative conclusions:  
a) To order that no compensation is to be paid [FC B.].  
b) To significantly reduce (for 50%) calculated amount of compensation due to [FC B.] and to order that the amount of [...] is to be paid to [FC B.] as compensation (for breach of contract).  
c) To order that the compensation for breach of contract in the amount of [...] is to be paid to [FC B.].  
2. To order that [FC A.] is not jointly and severally liable for payment of compensation due to [FC B.].  
3. To order that no sporting sanctions are to be imposed on [the Player].  
4. To order that no sporting sanctions are to be imposed on [FC A.]*

5. To order [FC B.] to pay [the Player] amount of [...] net as outstanding remuneration.”

45. In support thereof, FC A. argued, *inter alia*, that the Player’s “*allegations are not unlikely*” and that the content of the Additional Agreement is abusive and only detrimental to the Player. Moreover, the grounds relied on by the Player do constitute just cause for the premature termination of the Contract.
46. In any case, the first contact between the Player and FC A. was “*at the end of December 2022*”, and before his termination of the Contract, it was never the Player’s intention to join FC A., and the Player was therefore the only party responsible for the said termination. As such, FC A. argued that it had successfully rebutted the presumption of its inducement to terminate the Contract and that the FIFA DRC should decide that no sanction was to be imposed on FC A.
47. In its final comments, FC B. stated that the Player had failed to prove with tangible evidence that the Additional Agreement was in any way backdated or that he was pressured by the club to sign it. In any case, as the Additional Agreement was registered with the FMF on 21 October 2022, it could not have been signed on 31 October 2022, as alleged by the Player. Moreover, the Player never complained about the content of the Additional Agreement before his termination of the Contract on 21 November.
48. The FIFA DRC initially analysed whether it was competent to deal with the case and found that the March 2023 edition of the Procedural Rules Governing the Football Tribunal (the “Procedural Rules”) was applicable.
49. The FIFA DRC further observed that, in accordance with Article 23 (1), as read with Article 22 (1)(b), of the FIFA Regulations on the Status and Transfer of Players (“FIFA RSTP”; May 2023 edition), it was in principle competent to deal with the matter at stake, which concerned an employment-related dispute of an international dimension, and further found that the October 2022 edition of the FIFA RSTP is applicable to the substance of the matter.
50. Moreover, and with reference to the Procedural Rules, the FIFA DRC recalled the basic principle of burden of proof, according to which any party claiming a right on the basis of an alleged fact carries the respective burden of proof.
51. The FIFA DRC then recalled the facts of the case and took note that the Parties dispute the justice of the Player’s termination of the Contract and acknowledged that its task was to determine whether the Player had just cause to terminate the Contract on 21 November 2022.
52. In this regard, it was recalled that the Player in his termination notice adduced two justifications for the immediate termination: i) the non-/de-registration for the 2022/2023 season and ii) the alleged abusive conduct of FC B.
53. With regard to i), the FIFA DRC noted that it was undisputed that the Player was absent from FC B. for several months and only returned on 29 September 2022 after several notices were exchanged between the two parties. The Parties, however, are in dispute over the consent of the club to such absence and that they are not in agreement as to what are the requirements to

participate in competition under the auspices of the FMF and whether the Player had to undergo a medical examination to do so.

54. Based on the evidence on file, the FIFA DRC found itself comforted by the fact that the Additional Agreement was concluded on 1 October 2022, just a few days after the Player's return to the club, and that at this point in time, the two parties acknowledged that the Player was not in a position to participate in matches. Moreover, it was found that the Additional Agreement was to be deemed valid.
55. The FIFA DRC then underscored that whilst it was, in principle, the duty of FC B. to register the Player, the Player, with his own actions, had contributed extensively to the situation since he failed to return to Moldova for a period of several months.
56. Thus, it was decided that the Player did not have just cause to terminate the Contract with immediate effect on 21 November 2022 based on this argumentation.
57. With regard to ii), the FIFA DRC noted that the Player sustained that he was not allowed to read the Additional Agreement before signing it and that it was signed under duress. However, it was found that the Player had not discharged his burden of proof in this regard, and it was further found that the Player ought to have requested the club to remedy the situation and amend/set aside the Additional Agreement if he was not in agreement, which he never did.
58. In this regard, the FIFA DRC also recalled its long-standing jurisprudence, according to which only a breach or misconduct of a certain severity justifies the termination of a contract without prior warning. In other words, only where objective criteria exist that 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 for the fulfilment of his contractual duties, such measures must be taken before terminating an employment contract. A premature termination of an employment contract can only be an *ultima ratio*.
59. Thus, the FIFA DRC concluded that by directly terminating the employment relationship without first requesting to remedy the alleged situation, the Player terminated the Contract without just cause and must consequently bear the consequences that come with it.
60. With regard to the alleged outstanding amount of remuneration to the Player, the FIFA DRC observed that the Additional Agreement does not refer to the salaries for the months of June to September 2022 claimed by the Player as outstanding in the amount of [...].
61. As a consequence, and in accordance with the general legal principle of *pacta sunt servanda*, the FIFA DRC decided that FC B. is liable to pay to the Player the amounts claimed as outstanding under the Contract, in total [...], broken down as follows:
  - Salaries for July, August and September 2022 amount to [...] net (3 x [...] net).
  - Part of June 2022 salary amounts to [...] net ([...] less [...]).
  - Salary for October 2022, the difference of [...] net between the salary set out in the Contract and the salary set out in the Additional Agreement ([...] less [...]).
  - 21 days of November 2022, i.e. [...] net.



62. With regard to the consequences of the Player's termination of the Contract without just cause, the FIFA DRC took into consideration Article 17 (1) of the FIFA RSTP since the Player was liable to pay compensation to FC B. for breach of contract, and with regard to the calculation of the amount of compensation for breach of contract, the FIFA DRC summed up that, in accordance with the said article, the amount of compensation must be calculated, in particular and unless otherwise provided for in the contract at issue, with due consideration for the law of the country concerned, the specificity of sport and any other objective criteria, including, in particular, the remuneration and other benefits due to the player under the existing and/or 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 depending on whether the contractual breach falls within a protected period.
63. As the Contract did not contain any compensation clause, the FIFA DRC then proceeded to determine the proportionate amount of compensation payable to FC B. in accordance with Article 17 (1) of the FIFA RSTP.
64. Bearing in mind the foregoing as well as the claim of FC B., the FIFA DRC proceeded with the calculation of the monies payable to the Player under the terms of the Contract until its termination and consequently concluded that the amount of [...] (i.e. i) 9 days of November 2022 (22 – 30 November 2022) amounting to [...] net, plus ii) 7 monthly salaries from December 2022 until June 2023 (7 x [...] net) amounting to [...] net, plus iii) 12 monthly salaries for July 2023 – June 2024 (12 x [...] net) amounting to [...]) should serve as the basis for determining the amount of compensation for breach of contract.
65. Furthermore, the FIFA DRC verified whether the Player had signed an employment contract with another club during the relevant period of time. According to its constant practice as well as Article 17 (1) of the FIFA RSTP, such remuneration under a new employment contract must be taken into account in the calculation of the amount of compensation for breach of contract due by a player to his former club. In particular, it was explained that its standard practice is to calculate the average between the player's remuneration with his former club and his remuneration with the new club for the exact same period of time comprised between the early termination of the employment contract with the old club and the original expiry date of such a contract. In case substantial evidence thereof is provided, the FIFA DRC might additionally grant the injured club the non-amortised transfer fee paid for the player in breach and/or the actual costs incurred by the injured club in order to replace the leaving player.
66. In this respect, it was noted that the Player found new employment with two different clubs for the overlapping period, FC A. and FC D. For the time the FC A. Contract remained in place, the Player was entitled to the total amount of [...]. According to the FC D. Contract up to the date of termination of the Contract (i.e. 30 June 2024), in particular Article 6 and Article 3 of the annex to the FC D. Contract, the Player is entitled to the remuneration of [...].
67. Thus, the FIFA DRC concluded that between the date of early termination of the Player's contract with his former club and its original expiry date, the average between his remuneration with the former club and his subsequent remunerations is [...]  $\left( \left[ \dots \right] + \left[ \dots \right] + \left[ \dots \right] \right) / 2$ .
68. Furthermore, it was noted that, according to the copy of the transfer agreement concluded for

the Player provided by FC B., the latter paid a transfer fee of [...] and subsequently concluded with him an employment contract valid as from 9 July 2021 to 30 June 2024. As the Contract was prematurely terminated without just cause by the Player on 21 November 2022, the FIFA DRC concluded that the amount of [...]  $[(\dots) / 1,089 \text{ days}) * 587 \text{ days}]$  corresponds to the non-amortised part of the transfer fee. This amount must therefore be added to the average remuneration of the Player in order to establish the total amount of compensation due by the Player to FC B.

69. Consequently, on account of all of the above-mentioned considerations and the specificities of the case at hand, the FIFA DRC decided that the Player must pay the amount of [...] to FC B. (i.e. [...] + [...]), which was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter.
70. Furthermore, the FIFA DRC decided that, in accordance with Article 17 (2) of the FIFA RSTP, FC A. is jointly and severally liable for the payment of the aforementioned amount of compensation.
71. Also, and taking into consideration FC B.'s request as well as its constant practice, the FIFA DRC decided to award FC B. interest at the rate of 5% *p.a.* on the said compensation as of 21 November 2022 until the date of effective payment.
72. The FIFA DRC then proceeded to determine the possible consequences deriving from the failure of the concerned party to pay the relevant amounts of outstanding remuneration and/or compensation in due time.
73. On 7 July 2023, and based on the above, the FIFA DRC rendered the Appealed Decision and decided, *inter alia*, that:

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

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

*- [...] as outstanding remuneration plus 5% interest p.a. as from 22 November 2022 until the date of effective payment.*

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

*[...]*

*5. Pursuant to art. 24 of the Regulations on the Status and Transfer of Players, if full payment (including all applicable interest) is not made within 45 days of notification of this decision, the following consequences shall apply:*

*1. The debtor 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 of 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.*

*6. The consequences shall only be enforced at the request of the creditor in accordance with art. 24 par. 7 and 8 and art. 25 of the Regulations on the Status and Transfer of Players.*

*7. The counterclaim of [FC B.] is partially accepted.*

*8. The [Player] must pay to [FC B.] the following amount(s):*

*- [...] as compensation for breach of contract without just cause plus 5% interest p.a.*

*as from 21 November 2022 until the date of effective payment.*

*9. [FC A.] is jointly and severally liable for the payment of the compensation mentioned under point 8 above.*

*10. Any further claims of [FC B.] are rejected.*

*[...]*

*.. 12. Pursuant to art. 24 of the Regulations on the Status and Transfer of Players, if full payment (including all applicable interest) is not made within 45 days of notification of this decision, the following consequences shall apply:*

*1. [The Player] shall be restricted on any football-related activity up until the due amounts are paid. The overall maximum duration of the restriction shall be of up to six months.*

*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 six months.*

*13. The consequences shall only be enforced at the request of the creditor in accordance with art. 24 par. 7 and 8 and art. 25 of the Regulations on the Status and Transfer of Players.*

*14. This decision is rendered without costs.”*

74. On 14 August 2023, the grounds of the Appealed Decision were notified to the Parties.

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

75. On 4 September 2023, the Parties all filed their respective Statements of Appeal with the Court of Arbitration for Sport (“CAS”) against the Appealed Decision in accordance with Articles R47 and R48 of the CAS Code of Sports-related Arbitration (the “CAS Code”).

76. On 21 September 2023, the CAS Court Office informed the Parties, based on the Parties’ agreement, about the consolidation of the present proceedings.

77. On 4 October 2023, the CAS Court Office informed the Parties that the Deputy President of the CAS Appeals Arbitration Division had decided to submit these proceedings to a three-member panel in accordance with Article R50 par. 1 of the CAS Code.

78. On 14 October 2023, FC A. filed its Appeal Brief in accordance with Article R51 of the CAS Code.

79. On 16 October 2023, FC B. and the Player filed their respective Appeal Briefs in accordance with Article R51 of the CAS Code

80. On 5 February 2024, the Parties filed their respective Answers in accordance with Article R55 of the CAS Code.

81. On 8 February 2024, and in accordance with Article R54 of the CAS Code, the Parties were informed by the CAS Court Office that the Panel had been constituted as follows: Mr Lars Hilliger, Attorney-at-Law in Copenhagen, Denmark (President of the Panel); Mr Reto Annen, Attorney-at-Law in Chur, Switzerland (nominated jointly by FC A. and the Player), and Mr Manfred Peter Nan, Attorney-at-Law in Amsterdam, the Netherlands (nominated by FC B.).

82. On 20 February 2024, the CAS Court Office informed the Parties that the Panel had decided to hold an in-person hearing in these proceedings, which was in line with the Parties' requests. Furthermore, the Parties were informed that the Panel had requested a copy of the FIFA file in the current matter, which was subsequently forwarded to the Parties.
83. Moreover, the Parties were informed as follows:
- “As regards the missing exhibits, the Panel has decided to grant FC A. and C. a deadline of three (3) days to provide the CAS Court Office with the missing exhibits. Upon receipt of the missing exhibits, the CAS Court Office will grant the same time limit to FC B. to file its comments.*
- Finally, the Panel takes note of C.'s request to summon FC B. to have Mr E. available at the hearing for cross-examination. The Parties are kindly informed that the Panel considers it important that Mr E. be heard as a witness in this matter and that the Parties shall do their utmost to ensure that Mr E. will be available at the hearing.”*
84. On 28 February 2024, the CAS Court Office informed the Parties that an in-person hearing was scheduled to be held in Lausanne, Switzerland on 28 May 2024. Moreover, FC B. was granted a three-day deadline to comment on the exhibits now provided by FC A. and the Player. Finally, the Parties were given a link to download the entire FIFA file.
85. On 3 March 2024, FC B. submitted its comments on the exhibits not provided, stating, *inter alia*, that the Player had failed to provide the full FC D. Contract, which deprived FC B. of the opportunity to confirm the veracity of the Player's calculation of the compensation.
86. On 20 March 2024, the Parties informed the CAS Court Office of the persons who were to attend the scheduled hearing in Lausanne, and by letter of 27 March 2024, FC B. filed an objection with regard to the information provided by the Player that Mr K. was to be called as a witness.
87. In short, the Player argued that Mr K. was neither summoned by the Player via the Appeal Brief nor via the Answer and that no witness statement was ever provided. As no exceptional circumstances were present, FC B. requested that the Player's alleged “supplement of evidence” could not be admitted as per Article R56 of the CAS Code.
88. On 3 April 2023, the Player first of all explicitly requested the Panel to order FC B. to invite Mr E. to attend the hearing as a witness and to provide a translator if so needed. Furthermore, and with regard to the objection regarding Mr K. being called as a witness, the Player submitted, *inter alia*, that it was the conduct of FC B. which caused Mr K. to be only called as a witness at a late stage and that in accordance with CAS jurisprudence, it is not a formal requirement that a witness statement is filed as long as the subject-matters on which the witness will be questioned are indicated, which was the case with Mr K.
89. On 8 April 2024, the CAS Court Office informed the Parties, *inter alia*, as follows:
- “a) As regards C.'s request to order FC B. to invite Mr E. to attend the hearing, C. is kindly advised that it is each party's responsibility to ensure that the witnesses he/it has called are available at the hearing. The same is true for the attendance of the interpreter.*

*However, the Panel also refers to the CAS Court Office letter of 20 February 2024 in which the Panel encouraged the Parties to do their utmost to ensure that Mr E. will be available at the hearing; and*

*b) In the absence of exceptional circumstances, C. 's request to hear Mr K. as a witness at the hearing is rejected pursuant to Article R56 para. 1 of the CAS Code of Sports-related Arbitration."*

90. On 10 April 2024, FC B. stated, *inter alia*, as follows:

*"[...]*

*FC B. respectfully informs that it managed to reach Mr E. and received, in principle, his agreement to participate in the hearing on a remote basis.*

*[...]*

*[...] FC B. respectfully requests the Panel to order that:*

- Mr E. is summoned at the hearing as the witness for FC B., and*
- He is allowed to provide his written testimony for the Panel and other parties, as prescribed under Arts. 51 and 55 of the CAS Code. [...]"*

91. On 18 April 2024, the Player confirmed that he had no objections to Mr E. providing a written witness statement, *"on the condition that he attends the hearing (at least) on a remote basis"* and that *"the other parties must have the right to cross-examination."*
92. On 24 April 2024, the Parties were informed that the Panel had decided to allow Mr E. to be heard as a witness at the hearing and that his written witness statement should be provided within five days.
93. On 29 April 2024, FC B. provided the requested witness statement, which was accompanied by several transcripts of WhatsApp correspondence, which the Panel invited the other Parties to comment on.
94. On 13 May 2024, the Player and FC A. commented on the witness statement and submitted several new exhibits in relation to the witness statement, which again caused the Panel to invite the other Parties to forward any comments.
95. On 20 and 24 May 2024, respectively, FC B. and the Player forwarded their comments to the CAS Court Office. FC B. submitted, *inter alia*, that the comments and exhibits submitted by FC A. on 13 May 2024 should not be admitted to the case file *"to the extent that [FC A.] went beyond the scope of Mr. E. ' witness statement."*
96. On 27 May 2024, the Parties were informed that the Panel would address the outstanding issues in this matter at the outset of the hearing.
97. All Parties signed and returned the Order of Procedure, although the Player made the following reservation: *"with the reservation that the Player C. does not accept the refusal to admit ... K. as a witness."*
98. On 28 May 2024, a hearing was held at the CAS Headquarters in Lausanne, Switzerland.
99. In addition to the Panel and to Mr Björn Hessert, Counsel to the CAS, the following people

attended the hearing:

For FC A.:

Mr Zoran Damjanovic – Counsel  
Ms Ksenija Z. Damjanovic – Counsel  
Ms Tatjana Otkovic – Interpreter

For FC B.:

Mr Mikhail Prokopets – Counsel  
Mr Yury Yakhno – Counsel  
Ms Daria Lukienko – Counsel  
Mr G. – Witness – via video  
Mr E. – Witness – via video  
Ms Daria Skvortsova – Interpreter – via video

For the Player:

C.  
Mr Marco Del Fabro – Counsel  
Mr H. – Witness – via video  
Mr J. – Witness – via video

100. At the outset of the hearing, the Parties confirmed that they did not have any objections to the constitution of the Panel. Moreover, the Panel informed the Parties that it had decided to allow the comments and additional evidence submitted by FC A. on 13 May 2024, since the Panel considered, *inter alia*, that it was within the scope of the witness statement provided by FC B. on 29 April 2024, which also included new evidence.
101. The Panel heard the evidence of C., Mr E., Mr G., Mr H. and Mr J. The witnesses were invited by the President of the Panel to tell the truth subject to the sanctions of perjury under Swiss law. The Parties and the Panel had the opportunity to examine and cross-examine the witnesses and C.
102. The Parties were afforded the opportunity to present their case, submit their arguments and answer the questions posed by the Panel. Following a question from the Panel, FC B. informed the Panel and the other Parties that it withdrew its request for relief regarding the imposition of sporting sanctions on the other Parties. Thus, the Panel will not be dealing with this issue in its Award.
103. After the Parties' final submissions, the Panel closed the hearing and reserved its final Award. Upon closure of the hearing, the Parties expressly stated that they had no objections in respect of their right to be heard and to have been treated equally in these arbitration proceedings.

## **V. THE PARTIES' SUBMISSIONS AND REQUESTS FOR RELIEF**

104. The following outline of the Parties' requests for relief and positions is illustrative only and does not necessarily comprise every contention put forward by the Parties. The Panel has, however, carefully considered all the submissions and evidence filed by the Parties with the

CAS, even if there is no specific reference to those submissions or evidence in the following summary.

**A. FC A.**

105. In its Appeal Brief of 14 October 2023, FC A. requested the CAS:

- “1. To annul [the Appealed Decision];*
- 2. To accept the claim of [the Player] and to find that [the Player] terminated contract with [FC B.] with just cause;*
- 3. To dismiss the counterclaim of [FC B.];*

*In case CAS Panel dismisses abovementioned requests of [FC A.] and upholds the finding in [the Appealed Decision], that [the Player] terminated the contract with [FC B.] without just cause, the [FC A.] asks CAS Panel:*

- 1. To set aside paras. 8 and 9 of the operative part of [the Appealed Decision] and*
- 2. To order [the Player] to pay [FC B.]:*
  - 1) No compensation for breach of contract*
  - 2) In the alternative, for 50% or more reduced calculated compensation for breach of contract in the amount of maximum:*
    - [...] or*
    - [...]*
  - 3) In the further alternative, amount of [...] as compensation for breach of contract*
  - 4) In even further alternative, max amount of [...] as compensation for breach of contract.*

*and*

- 3. To order that [FC A.] is not jointly and severally liable for payment of compensation due to [FC B.] or alternatively, to limit [FC A. 's] liability up to 50% in payment of compensation due to [FC B.].*

*In any event, [FC A.] respectfully asks CAS Panel:*

- 4. To order [FC B.] to bear all costs of the present procedure;*
- 5. To order [FC B.] to contribute to the legal fees and expenses of [FC A.] in relation to the present procedure in the amount which shall be determined later.”*

106. Furthermore, in its Answer dated 5 February 2024, FC A. requested the CAS to decide as follows:

- “To dismiss [FC B. 's] appeal against [the Appealed Decision];*
- To uphold the appeals of [FC A.] and of [the Player] against [the Appealed Decision];*
- To order [FC B.] to pay all costs and expenses related to these proceedings;*
- To order [FC B.] to pay contribution towards the legal fees and other expenses [FC A.] incurred in connection with these arbitration proceedings, the amount of which shall be specified at later stage but at least in the amount of [...].”*

107. In support of its requests for relief, FC A. submitted, *inter alia*, the following:

Standard of proof

- The Panel should apply the “balance of probabilities” as the applicable standard of proof on important issues, including when assessing FC B.’s abusive conduct towards the Player.

The Player’s absence from FC B.

- During his stay in [...] in the summer of 2022, the Player received three written warnings from FC B., none of which mentioned anything about the Player having to return in order to pass the medical examination.
- However, the Player’s absence from FC B. was in fact approved by the club, which gave its consent thereto.
- The Player was given the understanding that FC B. had already registered him in order to be able to play him in official matches.
- Moreover, FC B. never initiated any disciplinary proceedings nor imposed any sanctions on the Player, which it should have done if the absence was considered unauthorised.
- Also, FC B. never terminated the Contract based on the alleged breach of contract.
- Thus, FC B. and the Player were in (in)direct contact, and the club approved the Player’s stay in [...] in order to be treated with traditional herbal medicine.
- In any case, by failing to take any concrete measures against the Player in connection with his absence from the club, FC B. must be considered to have given its tacit consent to the Player staying in [...] in the summer of 2022.
- Moreover, until the end of September 2022, FC B. failed to provide the Player with his new residence permit, which the Player needed to be able to return to Moldova, which is undisputedly one of the club’s contractual obligations.
- This means in fact that FC B.’s own conduct made it impossible for the Player to return to the club from 8 July 2022 (when his former residence permit expired) until he received the residence permit upon his request forwarded to the club in mid-September 2022, which only shows that FC B. was not genuinely interested in the services of the Player.
- Based on that, it is clear that the Player’s absence from FC B. was never unjustified.
- In any case, the Player never travelled to Serbia during his absence from FC B.

Registration of the Player

- The fact that FC B. failed to duly register the Player with the FMF in order for him to be able to play official matches for the said club in the 2022/2023 season is undisputed, and the Player



was consequently deprived of the possibility to perform his professional services.

- The due and timely registration of the Player in order for him to be able to play official matches for FC B. is another of the club's contractual obligations.
- By not fulfilling its obligation to duly register the Player, FC B. breached the Player's personality rights, by barring him, in an absolute matter, from his potential entitlement to participate in competitions for the club. Thus, FC B. breached the Contract, and the Player, as a result, had just cause to terminate the Contract.
- FC B. should and could have registered the Player with the FMF.
- First of all, it is not correct that a valid medical certificate is necessary for such registration in accordance with the national applicable rules.
- Moreover, the Player's "former" medical certificate only expired on 26 July 2022, until which date, in any case, FC B. could have registered the Player using this certificate, which the club failed to do.
- The expiry of a medical certificate triggers only a suspension of a player's right to play official matches until a new medical certificate is provided to the FMF.
- Moreover, FC B. never mentioned the alleged requirement for a medical certificate in any of the three warning letters it forwarded to the Player during his absence.
- By the content of the warning letters, the Player gained the understanding that FC B. had already made all the necessary arrangements in order for the Player to be able to play for the club upon his return.
- The Player intended to provide his services to FC B. but was prevented from doing so due to the club's failure to register him in a timely manner.

Additional Agreement – the conduct of FC B.

- The FIFA RSTP (Article 14) explicitly prohibits any abusive conduct of a party towards another party, including forcing the party into accepting amendments to existing contracts.
- Principles of contractual freedom and *pacta sunt servanda* are not absolute, especially in labour relations in football where equal bargaining power rarely exists between the parties.
- Both the content of the Additional Agreement and the circumstances under which it was signed constitute abusive conduct of FC B., which entitled the Player to terminate the Contract with just cause.
- The Panel must take into account the relevant context and factual background of the signing of the Additional Agreement, which must also be construed in compliance with the *contra proferentem* principle, i.e. *dubio contra stipulatorem*, noting that FC B. drafted the said agreement.
- In short, the Additional Agreement was drafted and signed in order to conceal the serious breaches of FC B., and its content and provisions do not correspond to the truth and do not align with the factual circumstances.
- Moreover, and based on the evidence of the case, it is evident that the Player did not voluntarily sign the Additional Agreement.
- The abusive conduct of FC B. with regard to forcing the Player to sign the Additional Agreement constitutes in itself sufficient just cause for the Player's termination of the

Contract.

- The conduct of FC B. was of such a nature that the Player could no longer be reasonably expected to continue his employment relationship with the club. Not only was FC B. in serious breach of its contractual obligations, it also engaged in abusive conduct towards the Player.
- In this regard, it must be stressed that there was never any need or requirement from the Player to forward a default notice to FC B. before terminating the Contract since such a default notice would, in any case, not have been of any use or enabled the club to amend the situation of the Player or the abusive conduct already displayed by the club.

Termination of the Contract

- The Player had just cause to terminate the Contract based on both the non-registration and on the circumstances surrounding and the content of the Additional Agreement.
- The Player had lost its trust in FC B. to such an extent that he could no longer continue the employment relationship in good faith.

Financial consequences

- It is not disputed that FC B. failed to pay the Player his contractual remuneration for July, August, September and a part of June 2022.
- Such outstanding amounts should be paid as set out in the Appealed Decision.
- Having demonstrated that the Player had just cause to terminate the Contract, it is clear that FC B. must bear the consequences foreseen in Article 17 of the FIFA RSTP.
- In the unlikely situation that the Panel should find that the Player terminated the Contract without just cause, it must be stressed that the amount of compensation awarded to FC B. as set out in the Appealed Decision was wrong, in regard to both the basis of the claim and the subsequent calculation thereof.
- As the Player and FC B. did not beforehand agree on the amount of compensation payable in case of breach of contract, any compensation payable to FC B. must be assessed in application of the other parameters set out in Article 17 of the FIFA RSTP. However, the FIFA DRC went further than described in this provision when calculating the amount of compensation due to FC B.
- In particular, the FIFA DRC was wrong in taking into account both the FC A. and the FC D. Contracts when calculating the amount of compensation since, pursuant to the said provision, only the “*remuneration and other benefits due to the player under the existing contract and/or the new contract*” must be taken into consideration and not any subsequent contract, not even when such a contract is valid during the time of the original contract.
- The FIFA RSTP does not in any way refer to any additional new club, thus only the remuneration and other benefits due to the Player under the Contract and the FC A. Contract have to be taken into account when calculating any remuneration due to FC B., which is in line with the interpretation of the provision in accordance with Swiss law.
- The residual value of the Contract amounts to [...], and the value of the FC A. Contract would, if it had been allowed to expire at the end of its original term, i.e. on 30 June 2024, have amounted to [...], which means that the average value of the two contracts for the period of termination until the Contract would have expired amounts to [...].

- In addition, FC B. would in principle be entitled to receive the amount of [...] by way of a non-amortised transfer fee as correctly set out in the Appealed Decision.
- Therefore, in case the Panel finds that FC B. is entitled to any compensation as a result of the Player's termination of the Contract, such an amount should be fixed at [...].
- Alternatively, and should the Panel find that also the FC D. Contract should be taken into consideration, the calculation performed by the FIFA DRC was wrong and must be corrected.
- As set out in the Appealed Decision, the relevant amount concerning the FC A. Contract is [...], but the amount to be taken into account concerning the FC D. Contract is [...] rather than [...] as wrongly decided by the FIFA DRC.
- Thus, the average between the Player's remuneration with FC B. and his new clubs for the relevant period of time amounts to [...]  $([...] + [...] + [...] / 2)$ , to which amount the non-amortised transfer fee should be added.
- Thus, the maximum amount of compensation due to FC B. can be [...].
- However, such an amount should be reduced due to the contribution or contributory negligence of FC B. in accordance with Article 337b par. 2 and Article 44 of the Swiss Code of Obligations (the "SCO") and should be further reduced based on the principle of the specificity of sport.
- Any compensation payable to FC B. should never be based on an alleged "loss of transfer fee" as FC B. never accepted any transfer offer from any third club, and FC B. has also failed to prove the necessary nexus between such an alleged offer and the alleged loss. Thus, any alleged "loss of transfer fee" is mere speculation.
- Finally, it must be stressed that "loss of chance" is not protected under Swiss law.

#### Joint and several liability

- It is not disputed that FC A. is the Player's "new club" within the meaning of Article 17 of the FIFA RSTP, but the Panel is requested to find FC A. not jointly and several liable for any compensation due to FC B. caused by the Player's termination of the Contract due to the truly exceptional circumstances of this particular case.
- In the case at hand, it must be stressed that i) FC A. did not induce the Player to terminate the Contract, ii) FC A. had reasons to believe that the termination of the Contract was with just cause, and iii) FC A. acted diligently and in good faith when contacting FC B. prior to the conclusion of the FC A. Contract.
- Even when FC A. contacted FC B. and asked for clarification regarding the contractual status of the Player, FC B., even when stating that the termination was without just cause, did not inform FC A. about the factual circumstances, which demonstrates FC B.'s bad faith towards FC A.
- Moreover, it must be noted that the Player did not leave FC B. in order to join FC A., and there is neither any inducement nor causation between the termination of the Contract and the Player joining FC A.
- In addition, it must be taken into consideration that FC B. was no longer interested in the services of the Player and itself endangered contractual stability by not registering him in accordance with the applicable rules.
- If FC A. is found to be jointly and severally liable for any compensation due, it will have

detrimental consequences for the entire transfer system and would make clubs refrain from engaging players who previously terminated their contracts.

- Furthermore, the joint and several liability for a player's new club are most likely in conflict with EU law in most cases as set out by the Advocate General in the *Diarra* case, as the rule can limit a club's ability to buy players and can hinder competition in the transfer market.
- The truly exceptional circumstances of this particular case justify exception to automatic application of Article 17 (2) of the FIFA RSTP, and FC A. should not be considered jointly and severally liable for any compensation payable to FC B.
- In any case, such liability should be reduced to 50%.

## **B. FC B.**

108. In his Appeal Brief of 16 October 2023, FC B. requested the CAS to rule as follows:

- “1. The appeal filed by [FC B.] is upheld.*
- 2. Points 1, 2 and 5 of the operative part of [the Appealed Decision] are annulled and set aside, to the effect that [FC B.] has no outstanding remuneration due to [the Player].*
- 3. Points 7 and 8 of the operative part of [the Appealed Decision] are amended to the effect that:*
- [the Player] is ordered to pay [FC B.] the amount of [...] net as compensation for termination of contract without just cause plus 5% interest p.a. as from 21 November 2022 until the date of the effective payment.*
  - [FC A.] is jointly and severally liable for the payment of compensation for termination of contract by [the Player] without just cause.*
- 4. [The Player] and [FC A.] shall bear all costs incurred with the present procedure.*
- 5. [The Player] and [FC A.] shall pay [FC B.] a contribution towards its legal fees and other expenses incurred in connection with the present proceedings, in an amount to be determined at the Panel's discretion.”*

109. Furthermore, in its Joint Answer of 5 February 2024, FC B. requested the CAS to rule as follows:

- “1. The appeals filed by [the Player] and [FC A.] are dismissed.*
- 2. [The Player] and [FC A.] shall bear all costs incurred with the present procedure.*
- 3. [The Player] and [FC A.] shall [FC B.] a contribution towards its legal fees and other expenses incurred in connection with the present proceedings, in an amount to be determined at the Panel's discretion.”*

110. In support of its requests for relief, FC B. submitted, *inter alia*, as follows:

### Standard of proof

- In line with long-standing CAS jurisprudence, the Panel should apply the “*comfortable satisfaction principle*” as the applicable standard of proof when assessing the evidence in this dispute and taking into consideration that, in accordance with the applicable rules and as confirmed by the CAS, “*a party that asserts a fact has the burden of proving it*”.

- Thus, and as it was the Player who terminated the Contract, the burden of proof to establish that such premature termination was justified lies with the Player.
- Moreover, FC A. has the burden of proving that the concept of strict liability of a new club is not applicable in the present case.

The Player's absence from FC B.

- The Player's absence from FC B. in the summer of 2022 was never authorised by the club, and the Player never consulted with the club's medical staff regarding the alleged "*traditional*" treatment in [...], which the Player is contractually obligated to do before initiating any treatment outside the club.
- The Player was always treated in an adequate way by the club's medical team.
- It is not disputed that the Player received three written warnings from FC B. due to his unauthorised absence.
- Moreover, it is not necessary for FC B., and should not be, to initiate disciplinary proceedings against the Player in order to be entitled to request the presence of the Player in accordance with his contractual obligations.
- Moreover, the Player's renewed residence permit and the flight ticket were provided to the Player at the earliest possible moment following the Player's request, which is not disputed.
- Thus, the Player's unauthorised absence was not caused by FC B. in any manner, and the Player failed to provide any evidence in this regard.
- In fact, it was the Player who was planning on leaving FC B. as soon as possible, apparently working together with FC D. in a scheme to facilitate the final transfer to the said club, with FC A. only participating as a "bridge club".
- Furthermore, and based on the circumstances of the case, it is clear that FC B. acted in good faith and was sincerely interested in the services of the Player.

Registration of the Player

- The non-registration of the Player with the FMF for the first part of the 2022/2023 season was only caused by the Player's own failure to return to FC B. before the closure of the relevant registration period since the Player needed to pass a medical test before FC B. was able to register him.
- Pursuant to the applicable national rules on the registration of players, it is not possible to register a player without a corresponding medical certificate, which is only valid for a maximum of six months. Article 6 (6) of the FMF RSTP explicitly states that "*A player who does not have a corresponding medical certificate will not be registered.*"
- Such a requirement is fully in line with FIFA rules on registration of players, and there is no "legal gap" in FMF RSTP in this regard.

- The Player's previous medical certificate expired on 26 July 2022, which is why the Player would have to pass a new medical test to obtain the new medical certificate necessary for his registration.
- As the Player failed to return to the Club and pass the medical test before the closure of the relevant registration period in early September 2022, he did in fact deprive FC B. of the opportunity to register him in accordance with the applicable rules.
- The fact that the Player eventually passed the said test upon his arrival by the end of September 2022 is of no relevance in this regard.
- In any case, CAS jurisprudence confirms that any non-registration of a player does not, in itself, constitute just cause for the termination of the employment contract as the player needs to participate in negotiations with the club in order to find a solution.
- Moreover, it must be stressed that FC B. did in fact provide the Player with appropriate training and medical facilities, even if the Player was not registered due to his own fault, and the Player was actually going to be registered during the upcoming registration period and would thus be able to participate in official matches in the second half of the 2022/2023 season.
- Thus, the non-registration of the Player did not constitute just cause for the termination of the Contract.

#### Additional Agreement – the conduct of FC B.

- The Player was never forced or pressured to sign the Additional Agreement, and it was never presented to him as an ultimatum. Moreover, the Additional Agreement was signed on 1 October 2022 and was not backdated as submitted by the Player.
- The Player never discharged his burden of proof in any of these regards.
- On the contrary, as the Additional Agreement was duly registered by the FMF on 21 October 2022, it is impossible that it could only have been signed on 31 October 2022 as the Player submitted.
- The content of the Additional Agreement is in line with the course of events.
- Finally, the Player never put FC B. in default, neither with regard to the alleged "irregularities" nor with regard to any possible "outstanding payments", not even after leaving the club again on 10 November 2022. On the contrary, the Player chose to continue his contractual relationship with FC B. and was training with the club's team until he left the country on 10 November 2022, thus having waived any possible right to terminate the Contract based on the Additional Agreement.

#### Termination of the Contract

- The FIFA DRC was correct in finding that the Player terminated the Contract without just cause.

Financial consequences

- The Player is not entitled to receive any remuneration for the time he was absent from the FC B.'s premises without valid reason, which principle is confirmed by CAS jurisprudence.
- As the Player was acting contrary to the nature of the bilateral Contract and did not fulfil his obligations thereunder, he is not entitled to request the performance of FC B.'s corresponding obligations.
- This also follows from Article 82 of the SCO, which deprives a party to a bilateral contract of the right to request performance until he has discharged or offered to discharge his own contractual obligations.
- Moreover, the Player and FC B. actually agreed that "*the Club has no unfulfilled obligations*" to the Player when signing the Additional Agreement.
- Thus, there is no outstanding remuneration due to the Player.
- With regard to the amount of compensation payable to FC B. due to the Player's termination of the Contract without just cause in accordance with Article 17 of the FIFA RSTP, such compensation should be based on the loss of the Player's value according to the received transfer offers.
- The method used in the Appealed Decision for the calculation of the compensation payable is in theory not incorrect, but the FIFA DRC failed to take into consideration other elements, including the Player's value as set out in the offers received by FC B.
- As confirmed by CAS jurisprudence, the element of, *inter alia*, "missed transfer fees" can be taken into consideration as lost earnings when calculating the amount of compensation for a player's breach of contract in accordance with Article 17 of the FIFA RSTP and in accordance with the principle of "*positive interest*".
- Consequently, when deciding on the amount of compensation due to FC B. as a consequence of the Player's termination of the Contract without just cause, the Panel must take into account the following elements: i) remuneration (i.e. residual value of the Contract), ii) loss of transfer fee, iii) unamortised expenses of FC B. and iv) the specificity of sport.
- The residual value of the Contract until the end of June 2024 amounts to [...], but this amount is to be deducted from the final amount of compensation as FC B. saved this amount due to the Player's termination of the Contract.
- With regard to the loss of transfer fee, FC B. received several offers during 2022 for the transfer of the Player, most offers assessing the value of the Player's transfer at the amount of [...], which amount should therefore serve as compensation for the loss of transfer value of the Player.
- The unamortised part of the transfer fee originally paid by FC B. for the acquirement of the Player amounts to [...] as correctly set out in the Appealed Decision.
- Finally, as the Contract was terminated within the "protected period" and outside the registration periods, the Panel should refer to the principle of the specificity of sport and award an additional compensation to FC B. in the amount of [...], equal to six months' salary.
- Consequently, the amount of compensation payable to FC B. should amount to [...] ([...] + [...] + [...] - [...]).
- Finally, should the Panel decide not to follow FC B.'s submission regarding the calculation

of compensation, the amount of compensation set out in the Appealed Decision should in any case not be recalculated.

Joint and several liability

- Article 17 (2) of the FIFA RSTP does not provide any option as to the joint and several liability of the new club.
- It is not disputed that FC A. is the Player's new club in this regard and is thus jointly and severally liable for any compensation payable to FC B. regardless of whether any sanction is imposed on the new club or not.
- This case has no extraordinary circumstances that could possibly exempt FC A. from such liability.
- Moreover, and for the sake of good order, FC A. was informed by FC B. that the Player had terminated the Contract without just cause.

**C. The Player**

111. In his Appeal Brief of 16 October 2023, the Player requested the CAS:

*“1. To set aside paras. 1.-3. of [the Appealed Decision] and to accept the claim of [the Player].  
2. [FC B.] shall be ordered to pay to [the Player] the amount of [...] net plus 5% interest p.a. as from 22 November 2022 until the date of effective payment.  
3. To set aside paras. 7.-13. of [the Appealed Decision] and to dismiss the counterclaim of [FC B.].  
4. In any event, to order that [FC B.] shall bear the costs of the arbitration and that [FC B.] shall contribute to the legal fees incurred by [the Player] in the overall amount of CHF 20'000.”*

112. Furthermore, in his Answer of 5 February 2024, the Player requested the CAS:

*“1. To dismiss [FC B.'s] appeal.  
reject the reliefs sought by the Player and [Olympique] in their Appeal briefs.  
2. In any event, to order that [FC B.] shall bear the costs of the arbitration and that the Club shall contribute to the legal fees incurred by the [the Player] in the overall amount of [...].”*

113. In support of his requests for relief, the Player submitted, *inter alia*, as follows:

Player's absence from FC B.

- The Player's absence was approved and accepted by FC B. Thus, the absence of the Player was never unauthorised as submitted by FC B.
- During his stay in [...], the Player was several times in contact with Mr E. and Mr “F.”, who approved the absence on behalf of FC B.



- It is not disputed that the Player received three warnings from FC B.
- However, the content of the said warnings was not very “*strict*”, and the club never initiated any disciplinary proceedings against the Player based on the alleged unauthorised absence.
- Instead, FC B. opted for the continuation of the employment relationship.
- The Player never went to Serbia during his absence from FC B. in the summer of 2022.
- FC B. failed to forward the Player’s residence permit until late September 2022, which made it impossible for the Player to return to Moldova. In fact, it was only forwarded to him upon his specific request.
- Similarly, when the Player requested FC B. to send him the necessary flight ticket to return to Moldova by 14 September 2022, FC B. only forwarded a ticket for a flight scheduled for 29 September 2022, thus not making it possible for the Player to return earlier than that.

#### Registration of the Player

- A player’s fundamental rights under an employment contract include the opportunity to compete with his fellow teammates in the official matches of the player’s club.
- By failing to register the Player with the FMF, FC B. was effectively barring the Player from this right, thus violating, *inter alia*, his personality rights.
- Pursuant to Swiss law, any infringement of personality rights is presumed to be illegal unless there is a justified reason that overturns this presumption, which is not the case here.
- Moreover, a warning in case of non-registration is not necessary since it would be of no use.
- It was not necessary for FC B. to forward the Player’s medical certificate in order to register the Player with the FMF, and the club simply misinterpreted the FMF RSTP in this regard.
- In case the Player could not provide a valid medical certificate, or if such a certificate would expire, this would only lead to the suspension of the Player’s eligibility for official matches of the club.
- As such, the alleged requirement for a medical certificate was never mentioned in any of the warnings forwarded to the Player during his stay in [...].
- In any case, and since there is a legal gap between the FIFA RSTP and the FMF RSTP, the FIFA RSTP are applicable to the present dispute also with regard to the registration of the Player.
- Furthermore, and since the “previous” medical certificate only expired on 26 July 2022, FC B. could have used this certificate to register the Player before its expiry.
- In any case, and regardless of the circumstances, FC B. had sole responsibility for registering the Player and failed to do so in a timely manner, thus breaching its contractual obligations towards the Player.

#### Additional Agreement – the conduct of FC B.

- The Additional Agreement was signed on 31 October 2022 and not on 1 October 2022. Thus, FC B. backdated the Additional Agreement.

- Moreover, the Additional Agreement was beneficial only to FC B. as the Player waived his elementary rights and acknowledged his alleged guilt for violating the Contract.
- However, the Player never validly agreed to, let alone validly consented to, a wage deduction or a waiver of his participation in the official matches of FC B. On the contrary, the Player was forced and pressured to sign the Additional Agreement and was not even allowed to read it or discuss it with any advisors before signing it.
- Moreover, in accordance with Swiss law, for a period of the employment relationship and for one month after its end, the employee may not waive claims arising from mandatory provisions of law or mandatory provisions of a collective employment contract, thus preventing the Player from waving his outstanding salaries.
- Furthermore, the employee should be given sufficient time to consider any suggested amendments to the employment contract. This was not the case here as the Player was not even given the opportunity to read the Additional Agreement before being pressured to sign it.
- As such, the Additional Agreement does not meet the requirements for a valid contract amendment, and the alleged “*amendments*” therefore remain ineffective.

#### Termination of the Contract

- The purpose of the provisions of the FIFA RSTP is to reinforce contractual stability and to strengthen the principle of *pacta sunt servanda*.
- By failing to duly register the Player in order to make it possible for him to participate in the official matches of the club, FC B. breached its contractual obligations towards the Player, thus giving just cause for the Player’s termination of the Contract as the non-registration was not justified.
- Moreover, it follows directly from Article 14(2) of the FIFA RSTP that it constitutes a just cause for the termination of an employment contract when the conduct of a party is “*aiming at forcing the counterparty to terminate or change the terms of the contract.*”
- The content of the Additional Agreement and FC B.’s abusive conduct aiming to obtain the Player’s signature constituted a just cause for the Player to terminate the Contract.
- Such conduct seriously damaged the trust between the Player and FC B., thus eliminating the basis for continuing the employment relationship.

#### Financial consequences

- As set out in the Appealed Decision, the Player is entitled to receive his unpaid salaries for July, August and September 2022 and for a part of June 2022 in a total amount of [...].
- Moreover, the residual value of the Contract from 22 November 2022 until 15 January 2023

amounts to [...].

- As the Contract does not contain any provision by means of which the contractual parties have agreed upon an amount of compensation payable in case of breach of contract, the substantive regulations of Article 17 of the FIFA RSTP are applicable. However, as the Player's earnings at his new club are higher than his earnings pursuant to the Contract, the Player is not entitled to damages due to lost earnings.
- However, the Player deems it appropriate to be awarded an additional indemnity amount equal to 4½ months' salary on the grounds of the specificity of sport, equal to [...], specifically since the non-registration of the Player prevented him from being a part of the national team of [...] at the FIFA World Cup 2022 in Qatar.
- In case the Panel should find that the Player had no just cause for the termination of the Contract, neither the Player nor FC B. should be liable for any compensation, since the majority of fault which led to the termination lies with FC B.
- Should the Panel not follow this, any compensation to FC B. should not exceed [...], including [...] as non-amortised transfer fee ( $[...] + [...] / 2 + [...]$ ). In this regard, it must be stressed that the Player can only have one new club, which is why only the amount of [...] regarding the FC A. Contract should be taken into consideration.
- Finally, and in case the Panel should find that the FC D. Contract should be taken into consideration, the Player agrees with FC A.'s submission, according to which the maximum amount of compensation could then amount to [...] ( $[...] + [...] + [...] / 2$ ), to which amount the non-amortised transfer fee should be added. Thus, the maximum amount of compensation due to FC B. can amount to [...].
- In that case, however, and based on the specificity of sport and FC B.'s conduct and breach of contract, such an amount should be reduced by at least 50%.
- Finally, and for the sake of good order, the value of the Player cannot be based on conditional offers received by FC B. in 2022, since none of such offers had ever materialised into a transfer agreement. On the contrary, when the Player was transferred from FC A. to FC D. in the summer transfer window 2023, the transfer compensation was set at [...].

#### Joint and several liability

- Any liability of the Player's new club must be omitted for the mere reason that the Player had in fact cause for his termination of the Contract.

## **VI. JURISDICTION**

114. Article R47 par. 1 of the CAS Code states 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.”*

115. With respect to the Appealed Decision, the jurisdiction of the CAS derives from Article 57 par. 1 of the FIFA Statutes (May 2022 edition), which reads as follows:

*“Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question.”*

116. None of the Parties objected to the jurisdiction of the CAS, which was confirmed by all Parties signing the Order of Procedure.
117. It follows that CAS has jurisdiction to decide on the appeals brought against the Appealed Decision.

## **VII. ADMISSIBILITY**

118. Article R49 of the CAS Code provides, in its relevant parts, as follows:

*“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against.”*

119. The grounds of the Appealed Decision were notified to the Parties on 14 August 2023.
120. On 4 September 2023, all three Parties filed their respective Statements of Appeal, i.e. within the statutory time limit set forth by the FIFA Statutes, which is not disputed.
121. Furthermore, the three Statements of Appeal complied with all the requirements of Article R48 of the CAS Code.
122. It follows that the Appeals are admissible.

## **VIII. APPLICABLE LAW**

123. Article 187 par. 1 of the Swiss Private International Law Act (“PILA”) provides, *inter alia*, that *“the arbitral tribunal shall rule according to the law chosen by the parties or, in the absence of such choice, according to the law with which the action is most closely connected”*.
124. Such a choice of law made by the Parties can be tacit and/or indirect by reference to the rule of an arbitral institution. As a matter of principle, in agreeing to arbitrate a dispute according to the CAS Code, the Parties submit to the conflict-of-law rules contained therein, in particular to Article R58 of the CAS Code (see CAS 2018/A/5624).
125. Article R58 of the CAS Code states 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.”*

126. The Panel further notes that Article 56 par. 2 of the FIFA Statutes reads 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”.*

127. In their submissions, the Parties essentially agree that based on Article 58 of the CAS Code and Article 56 par. 2 of the FIFA Statutes, appeal proceedings against decisions rendered by FIFA are adjudicated primarily on the basis of FIFA regulations (and in particular the October 2022 edition of the FIFA RSTP), with Swiss law applying on a subsidiary basis in order to interpret and complement the FIFA regulations, where applicable. In addition, FC B. argued that the FMF RSTP are applicable regarding the national registration of players.

128. Based on the above, the Panel is satisfied to accept the application of the regulations of FIFA and, additionally, Swiss law. However, the Panel will also take into consideration the FMF RSTP regarding national registration of players, where prudent.

## **IX. MERITS**

129. Initially, the Panel notes that it is undisputed that in June 2022, the Player, as approved by the club, left FC B. in order to participate in the matches of [...] national team. During the preparation for these matches, the Player apparently sustained an injury or an old injury reoccurred, which was diagnosed on 17 June 2022 while the Player was in [...].

130. Instead of returning to FC B. for treatment, the Player apparently decided to stay in [...] in order to have the injury treated with “traditional herbal” treatment.

131. While the Player submits that his absence was authorised, or at least tacitly approved, by FC B., the latter submits that the absence was never authorised or in any other way approved, further submitting that the Player was never authorised to initiate the said treatment of his injury without the participation of the club’s medical team.

132. It is undisputed, however, that FC B. did not register the Player with the FMF within the given deadlines in the beginning of September 2022 in order to make the Player eligible for the club’s national and international matches, at least in the first half of the 2022/2023 national season.

133. While FC B. submits, *inter alia*, that it was not possible to duly register the Player during his absence since the Player needed to pass a medical test in order to obtain a medical certificate necessary for the registration, the Player and FC A., *inter alia*, submit that such a medical certificate was not necessary for the registration.

134. The Player returned to FC B. on 29 September 2022, following which he passed the medical test as requested by the club. In October 2022, the Player and FC B. signed the

Additional Agreement, which the Player argues was signed under duress and pressure and, furthermore, is a proof of the club's abusive conduct towards him.

135. The Player stayed and trained with FC B. as a part of the team, without playing official matches, until 10 November 2022, when he left the club during a break in the match calendar.
136. By letter of 21 November 2022, the Player terminated the Contract making reference to Article 14 of the FIFA RSTP and submitting that FC B. breached the Contract and violated the Player's fundamental rights by a) failing to duly register him with the FMF, and b) pressuring him to sign the Additional Agreement having the content it had, thus providing the Player with just cause and without notice for the termination of the Contract.
137. FC B., on the other hand, submits that it was the conduct of the Player which resulted in him not being duly registered with the FMF and that, based on the circumstances of the case, the Additional Agreement is a legal and valid agreement between the two parties, based on which the Player did not have just cause to terminate the Contract.
138. As such, the Parties are in dispute over whether the Contract was terminated with or without just cause, and they are also in dispute over the possible financial consequences thereof, including whether FC A., as the "new club" of the Player, is to be considered jointly and severally liable for any compensation payable to FC B.
139. Thus, the main issues to be resolved by the Panel are:
- a) Did the Player have just cause for terminating the Contract on 21 November 2022?
  - b) Depending on the answer to a), what are the financial consequences for the Parties as a result of the Player's termination of the Contract?

**a. Did the Player have just cause for terminating the Contract on 21 November 2022.**

140. The Panel initially notes that the Player unilaterally terminated the Contract by letter of 21 November 2022.
141. In this regard, the Panel initially notes that Article 13 of the FIFA RSTP defends the principle of contractual stability, stating as follows:

*"A contract between a professional and a club may only be terminated upon expiry of the term of the contract or by mutual agreement."*

142. However, Article 14 of the same regulations sets out that:

*"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."*

143. Under Swiss law, such good cause exists whenever the terminating party cannot be expected in good faith to continue the employment relationship (Article 337 par. 2 of the SCO). In accordance with CAS jurisprudence, only material breaches of a contract can possibly be considered just cause for the termination of an employment contract (CAS 2013/A/3091). Furthermore, termination of a contract should always be an action of last resort, an “*ultima ratio*” action.
144. Moreover, and in general, the breaching party must generally have been warned by the other party that the conduct is not in accordance with the contractual obligations agreed and informed about the possible consequences of any continuous breach thereof.
145. Based on the facts of the case and the Parties’ submissions, including the fact that it is not disputed that the Contract was actually terminated by the Player, the Panel finds that it is up to the Player to discharge the burden of proof to establish that the Contract was in fact terminated with just cause based on the circumstances of the case.
146. In doing so, the Panel adheres to the principle enshrined in Article 8 of the Swiss Civil Code (“SCC”) providing that unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact, which principle is also established by CAS jurisprudence that “*in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them (...). The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some fact and persuade the deciding body, it must actively substantiate its allegations with convincing evidence*” (e.g. CAS 2003/A/506, para. 54; CAS 2009/A/1810&1811, para. 46; and CAS 2009/A/1975, paras. 71ff).
147. However, the Panel finds that the Player has failed to adequately discharge the burden of proof to show that his termination of the Contract was with just cause for the following reasons:

The non-registration of the Player

148. The Player and FC A. submit, *inter alia*, that by failing to duly register the Player with the FMF, FC B. was effectively barring the Player from his right to be given the opportunity to compete with his fellow teammates in the official matches of the club, thus violating, *inter alia*, his personality rights.
149. The Panel initially notes that it agrees that the registration of a professional player in order to make him eligible for participating in a club’s official matches is an obligation of the player’s club, and that a failure to fulfil such an obligation is, in general, presumed to constitute a breach of a player’s fundamental contractual and personality rights, thus giving the player just cause to terminate the employment relationship (see CAS 2013/A/3091, 3092 & 3093, para 228 as published on the CAS website).
150. However, the Panel also notes that, in line with Article 28 of the SCC, such a presumption

can be overturned if the failure to register the player was justified by the specific circumstances of the case.

151. Accordingly, and as FC B. in this particular dispute submits that its failure to duly register the Player was justified by the Player's alleged unauthorised absence from the club, the Panel finds that the burden of proof shifts to FC B. in order to prove that this was in fact the case if the club wishes to rebut the above-mentioned presumption.
152. In this regard, the Panel initially notes that FC B. submits that it was not possible to register the Player with the FMF within the relevant registration period, which ran from 15 June 2022 until 5 September 2022, since the Player's medical certificate had expired on 26 July 2022 and the Player only returned to the club on 29 September 2022.
153. Article 6 of the FMF RSTP states, *inter alia*, as follows:

*“Article 6. Medical and sports control*

*1. Medical and sports control is mandatory for the registration of players and is carried out in medical institutions licensed for this purpose: [...].*

*2. A medical certificate issued by medical institutions will be valid for a maximum of six months. At the expiration of the validity period of the medical certificate, the player must re-pass the medical and sports control and obtain a new medical certificate valid for the sports season.*

*3. Failure to pass medical and sports control after the expiration of the medical certificate entails the suspension of the player's right to play until this requirement is met. Clubs must ensure the scheduling of the players for medical and sports control, and players are obliged to report to a medical and sports institution for a medical examination according to the club faculty schedule.*

*[...]*

*6. A player who does not have a corresponding medical certificate will not be registered.”*

154. Based on these provisions, the Panel finds itself convinced that a valid medical certificate issued to the Player was a requirement for his registration and that it was not possible for FC B. to register the Player, at least after the expiry of the Player's previous medical certificate, without having the Player passing a new medical test, which would require the Player to be present in Moldova before the expiry of the registration period, which never happened.
155. The Panel notes in this regard that it finds that FC B. was not obligated to register the Player even before the expiry of the Player's previous medical certificate since, in the period from 15 June until 26 July 2022, it was not even clear if the Player was going to return to the club.
156. However, as set out in Article 6 (3) of the FMF RSTP, it was the obligation of FC B. to *“ensure the scheduling of the players for medical and sports control, and players are obliged to report to a medical and sports institution for a medical examination according to the club faculty schedule*, which the club indisputably failed to do.
157. On the other hand, the Panel also finds that if such failure was caused by the Player's unjustified conduct or omission, this might justify the club's failure to fulfil its obligations.



158. While the Player on his side submits that his absence from FC B. from 17 June until 29 September 2022 was authorised, or at least tacitly approved, by FC B., the latter club, on its side, submits that this was not the case, and that the Player's absence was a clear breach of his contractual obligations.
159. Based on the circumstances of the case, the Panel finds that the Player has failed to discharge the burden of proof to establish that his absence from FC B. was in fact authorised or even tacitly accepted by the club.
160. The Panel notes in this regard that the Player undisputedly received three written warnings from FC B., in which the club requested him to return to the club.
161. And even if the wording of such warnings was not very "strict" in a legal manner, and even if FC B. did not initiate disciplinary or termination procedures against the Player when he failed to return accordingly, the Panel finds that the warnings nevertheless were sufficient to serve their purpose of making it entirely clear to the Player that his absence constituted a breach of his contractual obligations and that he should return to his club immediately in order to avoid the consequences of his unauthorised absence.
162. The Panel further notes that even if FC B. could have mentioned the need for a new medical certificate in order to be able to register the Player for the upcoming season in its written warnings to the Player, the latter cannot rely on that as an excuse for not returning to the club before the expiry of the registration period. The Player had already passed at least one medical test in order to be issued with a medical certificate and therefore was, or should have been, aware of the need for such a certificate to be issued.
163. In the same manner, the Panel finds that the fact that FC B. only forwarded the Player's residence permit to him upon the Player's request does not justify his absence from the club for more than three months. The residence permit was in fact already with the club and was forwarded to the Player, which was also the case with the flight ticket, immediately upon the Player's request. If the Player would have wanted to return to FC B. earlier, the Panel finds that he should himself have requested the said documents at an earlier stage.
164. The Panel notes that the Player submits that during his stay in [...], he was several times in contact with the agent, Mr E., and his assistant, Mr F., who, according to the Player, confirmed multiple times that the Player was authorised to stay in [...]. However, based on the WhatsApp correspondence between the Player and Mr E. included in the file and based on the testimony of the latter during the hearing, the Panel is not convinced that this was in fact the case. On the contrary, the Panel finds itself convinced that the Player was in fact told by Mr E. to return to FC B. as soon as possible. As such, the Panel notes that in his witness statement Mr E. specifically stated that *"On multiple occasions I was telling the Player that his return to the Club was crucial for both his relationship with the current employer and for the success of the transfer negotiations."*
165. Such statement was substantiated by the WhatsApp correspondence between the Player and Mr E. included in the file, according to which Mr E. in the beginning of July 2023 informed the Player e.g. *"But I can't do something in front of the club if you don't respect them"*, *"Even if you are injured, you have to come back from national team"* and *"So, first what you have*

*to do is to come back and show respect to FC B.”.*

166. As such, the Panel finds no need to discuss whether Mr E. and his assistant would in any case have been authorised to approve of such absence on behalf of FC B.
167. Based on these facts and circumstances, the Panel finds that even if FC B. was supposed to register the Player with the FMF in order to make him eligible for the club’s official matches, and even if such failure would in most cases constitute a severe breach of a club’s contractual obligations and a violation of a player’s personality rights, in this particular case, and due to the Player’s extensive unauthorised absence and the need for a valid medical certificate to duly register the Player with the FMF, the non-registration of the Player does not constitute a just cause for the Player to terminate the Contract, since it was his own failure to return to FC B. before the closing of the relevant registration period which caused FC B.’s failure to fulfil its registration obligation.

#### The Additional Agreement

168. In the Termination Letter, the Player also relied on the content of the Additional Agreement and the conduct of FC B. in connection with the signing of it as just cause for his termination of the Contract. According to the Player, the Additional Agreement was beneficial only to FC B. as the Player, pursuant to the wording of the agreement, waived his elementary rights and acknowledged his alleged guilt for the breach of the Contract.
169. Moreover, the Player submitted that he was in fact pressured and forced to sign the document without even being allowed to discuss it with his advisors or even read it himself. Furthermore, he submitted that under Swiss law he cannot legally waive his outstanding salary.
170. Thus, according to the Player, the Additional Agreement is to be considered invalid, and the alleged amendments therefore remain ineffective.
171. Based on these alleged circumstances, including the alleged abusive conduct of FC B., and with reference to Article 14 (2) of the FIFA RSTP, it is submitted that the Player had just cause for the termination of the Contract.
172. However, the Panel does not agree with the Player and FC A. in that regard.
173. First of all, and based on the evidence before it, including the oral testimonies presented to it during the hearing, the Panel does not find that the Player discharged his burden of proof with regard to him allegedly being forced or pressured to sign the Additional Agreement. Moreover, the Panel is not convinced that the Player was never granted the opportunity to read the agreement before signing it. In fact, two of the witnesses testified during the hearing that he received the draft on the day before the signing.
174. The mere fact that the Player might have second thoughts about him accepting the provisions included in the Additional Agreement is not sufficient for not being bound by its content at this point. In this regard, it must also be noted that the Player apparently never complained about the content of the agreement or about the circumstances surrounding its signing until

several weeks later when terminating the Contract. In fact, the Termination Letter was only forwarded to FC B. 11 days after the Player left the club.

175. Moreover, and based on the circumstances of the dispute, the Panel finds that the content of the Additional Agreement was not of such a nature that it constituted abusive conduct by FC B. when requesting the Player to sign it.
176. First of all, it was the Player who was absent from FC B. without authorisation for more than three months, during which period the Player did not provide his contractual services to the club. The fact that the club apparently was only able to provide the Player with a flight ticket to make it possible for him to return two weeks after his request does not change that in the view of the Panel.
177. Moreover, and as discussed above, the Panel finds that it was the conduct of the Player which resulted in the non-registration of the Player. And, as a consequence, the Player was not able to participate in the official matches of FC B. during the first part of the 2022/2023 season, based on which a relatively modest salary reduction does not appear abusive to the Panel because of exceptional circumstances, in particular the Player's own behaviour. In this regard, the Panel also finds that the Player was in fact not waiving any fundamental right since his right to be duly registered was already "lost" due to his own behaviour. Moreover, and for the sake of good order, the Panel stresses that the Player would have been eligible for the second part of the season if he had been duly registered in the upcoming registration period.
178. Finally, and with regard to the submissions regarding Swiss law, the Panel finds that the content of the Additional Agreement was not in conflict with Swiss law. First of all, and as already discussed above, the Panel finds that the Player did not waive any fundamental rights when signing the Additional Agreement. Moreover, the salary waiver or salary reduction – especially for the future – does not fall under the waiver prohibition of Art. 341 of the SCO. Thus, the Panel finds that the Player's acceptance of a relatively modest reduction of his salary for a limited period of time is, under the exceptional circumstances of this matter, not in conflict with Swiss law as submitted by the Player and FC A.
179. Based on these facts and circumstances, the Panel finds that the content of the Additional Agreement or the circumstances in connection with the signing of it do not constitute a valid reason for the Player to terminate the Contract, not least since the Player never complained to FC B. in this regard before terminating the Contract and since the termination of an employment contract should be the last resort.
180. Based on the above, the Panel agrees with the FIFA DRC that the Player terminated the Contract without just cause.

**b. What are the financial consequences for the Parties of the termination of the Contract, if any?**

181. Since the Player terminated the Contract without just cause, the Panel has to address i) the Player's claim for outstanding remuneration and (ii) FC B.'s claim for compensation for breach of contract against the Player and FC A.
182. With regard to the Player's claim for payment of the outstanding remuneration, the Panel

initially notes that the FIFA DRC found that the Additional Agreement “*does not refer to the salaries or month of June to September*” and thus, in accordance with the legal principle of *pacta sunt servanda*, decided that FC B. was liable to pay such remuneration to the Player.

183. However, the Panel finds differently.
184. First of all, the Panel notes that even the Player confirms in his Termination Letter that the Additional Agreement, regardless of the fact that he disputes its validity, includes a provision covering his contractual salaries for the period of time when he stayed in [...] for treatment of his injury.
185. Pursuant to the Additional Agreement, the Player confirmed with his signature that “[FC B.] has no unfulfilled obligations to [the Player]”.
186. The Panel further notes in this regard that since it was the Player who decided not to return to FC B. from 17 June 2022 until the end of September 2022, thus failing to offer his contractual services to FC B. during this period, the Panel agrees with FC B. that the Player is not entitled to claim his contractual remuneration for the period in question.
187. And even if one could argue that the Player did in fact request a flight ticket in order to return as early as 14 September 2022, the Panel finds that the Player has put himself in a position where he cannot in fact blame FC B. for his absence, not even from 14 September 2022. By failing to return in a timely manner to his club and by failing to return for more than three months, the Player is found to bear the risk of his subsequent return being possible, and the Player did not prove that FC B. was in fact not interested in him returning as soon as possible upon his request for a prudent flight ticket.
188. Thus, and based on the Additional Agreement, the Panel finds that the Player is not entitled to claim any outstanding remuneration for the period of his absence, i.e. from 17 June 2022 until the end of September 2022.
189. With regard to the Player’s contractual remuneration for October 2022, the Panel finds it undisputed that FC B. did in fact pay the amount of [...] to the Player, thus having fulfilled its contractual obligation in this regard, taking into consideration the content of the Additional Agreement and the temporary reduction of the Player’s monthly salaries.
190. Finally, the Panel notes that it seems undisputed that FC B. did not yet pay to the Player his contractual remuneration for the period from 1 November until 21 November 2022 when the Player terminated the Contract.
191. Thus, the Panel finds that the Player should receive the amount of [...] ([...] / 30 x 21) for the said period.
192. With regard to FC B.’s claim for compensation for breach of contract, and since the Player terminated the Contract without just cause, the Panel finds that FC B. is entitled, subject to Article 17 (1) of the FIFA RSTP, to receive financial compensation for breach of contract.
193. It follows from Article 17 (1) of the FIFA RSTP, *inter alia*, that:

*“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.”*

194. Furthermore, it follows, *inter alia*, from Article 17 (2) of the FIFA RSTP that:

*“[...] If a professional is required to pay compensation, the professional and his new club shall be jointly and severally liable for its payment. The amount may be stipulated in the contract or agreed between the parties.”*

195. With reference to the said provision, the Panel finds that it appears undisputed that no agreement has been concluded between the Player and FC B. on the amount of compensation payable in the event of breach of contract.
196. Based on the above, the Panel initially notes, in consistency with the well-established CAS jurisprudence, that the injured party is entitled to a whole reparation of the damage suffered according to the principle of “*positive interest*”, under which compensation for breach must be aimed at reinstating the injured party to the position it would have been in had the contract been performed until its expiry (CAS 2008/A/1519 & 1520; CAS 2012/A/2698; CAS 2008/A/1447).
197. In view of the above, the Panel is satisfied to note that FC B., as general rule, has the right to have its compensation determined under the provisions of Article 17 (1) of the FIFA RSTP in the light of the principle of “*positive interest*” as specified above and with due consideration to the duty to mitigate damages according to Swiss law, which is consistent with CAS jurisprudence (CAS 2005/A/909-910-911; CAS 2005/A/801; CAS 2004/A/587).
198. In the Appealed Decision, the FIFA DRC based its calculation of compensation payable to FC B. on the following: a) the residual value of the Contract, b) the value of the FC A. Contract and the FC D. Contract up to the original date of expiry of the Contract and c) the non-amortised part of the transfer fee originally paid by FC B. for having the Player transferred.
199. While the Parties appear to be in agreement that FC B. is entitled to receive the non-amortised part of the transfer fee originally paid by FC B. in the amount of [...], they do not agree on the additional amount of compensation as set out in the Appealed Decision.
200. On the one hand, the Player and FC A. appear to agree with the FIFA DRC on its calculation method, however submitting, *inter alia*, that pursuant to Article 17 (1) of the FIFA RSTP, only the remuneration pursuant to the Player’s first new contract subsequent to the Contract can be taken into consideration, thus submitting that the remuneration under the FC D. Contract should not be included in the calculation.
201. FC B., on the other hand, submits that the compensation should be based on the loss of the

Player's value according to the received transfer offers regarding the Player, and, if the Panel does not find this to be the case, that also the value of the FC D. Contract should be included in the calculation of the compensation payable to FC B. as done by the FIFA DRC in the Appealed Decision.

202. The Panel initially notes that it agrees with FC B. that "missed transfer fees" under certain circumstances can be taken into consideration as lost earnings when calculating the amount of compensation for breach of contract in accordance with Article 17 (1) of the FIFA RSTP.
203. Moreover, the Panel notes that during his stay with FC B., the club did in fact receive several offers for the transfer of the Player, some of them in the amount of [...] as submitted by the club.
204. However, and based on the circumstances of this case, the Panel does not find that the necessary logical nexus for applying such an offer as the basis for the calculation of compensation payable to FC B. exists in this case.
205. First of all, the offers mentioned by FC B. were all received several months earlier than the date of termination of the Contract and before the Player suffered his injury. Moreover, none of them ever materialised into a "nearby" transfer, e.g. no draft transfer agreement was apparently ever drafted. Finally, and without dealing with any possible connection between FC A. and FC D., it is noted that when the Player was transferred between these two clubs in the summer of 2023, the transfer compensation for the Player was "only" set at [...].
206. Based, *inter alia*, on these considerations, the Panel finds that the alleged missed transfer fee of the Player in the amount of [...] should not form the basis for the calculation of the compensation due to FC B.
207. Instead, the Panel agrees with the FIFA DRC in the applied method of calculation with a few minor adjustments.
208. First of all, the Panel notes that even if the FIFA DRC confirmed the validity of the Additional Agreement, it appears that it did not take its content duly into consideration when calculating the residual value of the Contract, i.e. it appears that FIFA failed to apply the agreed reduction of the Player's monthly salary from [...] to [...] in the period from 1 October 2022 to 15 January 2023 as set out in paragraph 2 of the said agreement.
209. When applying this reduction, the Panel agrees with FC B. that the residual value of the Contract amounts to [...] ( $[...] \times 9/30$  (22-30 November 2022) + [...] (December 2022) + [...] /2 (until 15 January 2023) + [...] /2 (until the end of January 2023) + [...]  $\times 5$  (February 2023 - June 2023) + [...]  $\times 12$  (July 2023 - June 2024)).
210. With regard to the FC A. Contract, the Parties appear to be in agreement that the amount to take into consideration is [...], which amount the Panel is satisfied to apply.
211. Furthermore, the Panel agrees with the FIFA DRC that also the remuneration pursuant to FC D. for the relevant period must be included in the calculation of the compensation payable to FC B.

212. The Panel notes in this regard that even if Article 17 (1) of the FIFA RSTP apparently refers only to “the new contract”, the Panel finds that this does not exclude that any possible remuneration payable to a player under any subsequent contracts can and must be taken into account as long as such new contract(s) fall(s) within the duration of the original contract.
213. First of all, it follows directly from the wording of the said provision that the mentioned criteria are only meant to be examples, thus making it possible to include additional criteria.
214. Moreover, the purpose of taking a player’s new contract(s) into consideration when assessing the amount of compensation payable due to a player’s breach of contract is to assess the actual value of the player in question during the relevant period of time. In this regard, the Panel finds that any contract covering the relevant period of time, i.e. the term of the original contract, is to be considered highly relevant for such an assessment.
215. The opposite approach he would not be appropriate, since it would not cover the entire original contractual period, thus not offering a fair illustration of the value of the player in the relevant period.
216. The Panel thus agrees with the FIFA DRC that the “*remuneration and other benefits due to the player*” under the FC D. Contract also need to be included in the calculation.
217. In this regard, and also with due consideration to in particular Article 3 of the FC D. Annex, the Panel finds no basis for deviating from the calculation of the FIFA DRC in this regard in the amount of [...].
218. Thus, the Panel finds that between the date of his early termination of the Contract and its original expiry date, the average between his remuneration with FC B. and his subsequent remunerations with FC A. and FC D. amounts to [...]  $([...] + [...] + [...] / 2)$ .
219. And as the non-amortised part of the transfer fee originally paid by FC B. in the amount of [...] must be added to this amount as mentioned above, the final amount of compensation payable to FC B. due to the Player’s termination of the Contract without just cause amounts to [...].
220. The Panel notes that the Player and FC A., on the one hand, submit that any amount of compensation payable to FC B. should be reduced based on the specificity of sport and/or in accordance with Swiss law due to the conduct of FC B., while the latter club, on the other hand, submits that it should be granted an additional amount of compensation also based on the specificity of sport.
221. As confirmed by CAS jurisprudence (i.e. CAS 2018/A/5607), the concept of the specificity of sport only serves the purpose of verifying the solution reached otherwise prior to assessing the final amount of compensation and can lead to both an increase and decrease of compensation otherwise to be awarded to a party.
222. However, based on the circumstances of the case, the Panel finds no reason why FIFA, or possibly subsequently the Panel, should have applied/apply this concept to the amount of

compensation set out in the Appealed Decision.

223. Moreover, the Panel finds that in accordance with Swiss law, the conduct of FC B. should not lead to any reduction of the compensation as set out above.
224. Finally, the Panel finds no basis for amending the findings in the Appealed Decision regarding interest.
225. With regard to the possible joint and several liability of FC A. as the Player's new club, the Panel notes that such joint and several liability is set out in Article 17 (2) of the FIFA RSTP, regardless of any involvement or inducement of the said club (CAS 2020/A/6796).
226. In this regard, the Panel notes that the mechanism of joint and several liability has been endorsed by the SFT (4A\_32/2016), even in cases where the new club is not at fault.
227. It is further not disputed that FC A. is to be considered the Player's new club in this regard.
228. The Panel finds no basis for not applying this mechanism of joint and several liability with regard to FC A., even if FC A. might not have been in direct contact with the Player in advance of his termination of the Contract.
229. In other words, the Panel does not find any exceptional circumstances in this case which could possibly justify an exception from the automatic application of the said joint and several liability.
230. As a matter of fact, the Panel does not even find that it works in favour of FC A. in this regard that the club did actually ask FC B. for clarification regarding the contractual status of the Player before signing him, especially when FC A. signed the Player regardless of the information obtained from FC B., regardless of whether FC B. could perhaps have been more informative in this regard.
231. Finally, and for the sake of good order, the Panel notes that even if one assumes, as submitted by FC A., that the provision regarding the joint and several liability of a new club is most likely in conflict with EU law (*quod non*), this does not change the Panel's view for the mere reason that this dispute concerns a player from [...] and two clubs from Moldova and Serbia, and the submission regarding EU law therefore seems irrelevant.
232. Based on that, the Panel confirms that FC A. is jointly and severally liable for payment of the compensation payable to FC B. as set out above.

## **X. SUMMARY**

233. Based on the foregoing and after taking into consideration all the evidence produced and all arguments made, the Panel finds that the Player terminated the Contract without just cause and that the Player must pay to FC B. the amount of [...] as compensation for breach of contract.
234. Furthermore, the Panel finds that FC A., in its capacity as the Player's new club, is jointly and



severally liable for the payment of the above-mentioned compensation to FC B.

235. Finally, the Panel finds that FC B. must pay to the Player the amount of [...] as outstanding remuneration.

## **XI. COSTS**

(...)

## ON THESE GROUNDS

### The Court of Arbitration for Sport rules:

1. The appeal filed on 4 September 2023 by FC A. against the decision rendered by the Dispute Resolution Chamber of the FIFA Football Tribunal on 7 July 2023 is partially upheld.
2. The appeal filed on 4 September 2023 by FC B. against the decision rendered by the Dispute Resolution Chamber of the FIFA Football Tribunal on 7 July 2023 is partially upheld.
3. The appeal filed on 4 September 2023 by C. against the decision rendered by the Dispute Resolution Chamber of the FIFA Football Tribunal on 7 July 2023 is partially upheld.
4. The decision rendered by the Dispute Resolution Chamber of the FIFA Football Tribunal on 7 July 2023 is confirmed, with the exception of points 2 and 8 of its operative part, which are amended as follows:

*”2. FC B. must pay to C. the following amount(s):*

*- [...] as outstanding remuneration plus 5% interest p.a. as from 22 November 2022 until the date of effective payment.”*

*“8. C. must pay to FC B. the following amount(s):*

*- [...] as compensation for breach of contract without just cause plus 5% interest p.a. as from 21 November 2022 until the date of effective payment.”*

5. (...).
6. (...).
7. All further and other motions or requests for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 3 March 2025

## THE COURT OF ARBITRATION FOR SPORT

Lars Hilliger  
President of the Panel

Reto Annen  
Arbitrator

Manfred Peter Nan  
Arbitrator