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

CAS 2022/A/8905 Elnur Chodarov v. Sumgayit Football LLC & Association of Football Federations of Azerbaijan

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition

Sole Arbitrator: Mr Espen Auberg, Attorney-at-Law, Oslo, Norway

in the arbitration between

Mr Elnur Chodarov, Azerbaijan

Represented by Mr John Mehrzad KC and Mr Martin Palmer, Barristers, London, United Kingdom

- Appellant -

and

Sumgayit Football LLC, Sumgayit, Azerbaijan

Represented by Mr Eljan Hasanli and Mr Ramil Jahangirov, Attorneys-at-Law, Sumgayit, Azerbaijan

- First Respondent -

and

Association of Football Federations of Azerbaijan, Baku, Azerbaijan

Represented by Ms Gulnar Gurbanova, Mr Naib Asadov and Mr Mahammad Safarli, Attorneys-at-Law, Baku, Azerbaijan

- Second Respondent -

I. THE PARTIES

1. Mr Elnur Chodarov (the "Appellant" or the "Coach") is a football coach of Azerbaijani nationality.

2. Sumgayit Football LLC (the "First Respondent" or the "Club") is a football club with its registered office in Sumgayit, Azerbaijan. The Club is affiliated with the Association of Football Federations of Azerbaijan ("AFFA")

3. The AFFA (the "Second Respondent") is the national football association of Azerbaijan, with its registered office in Baku, Azerbaijan. The AFFA is affiliated with the Union des Associations Européennes de Football ("UEFA") and the Fédération Internationale de Football Association ("FIFA").

4. The AFFA and the Club are hereinafter jointly referred to as the "Respondents" and, together with the Coach, as the "Parties".

II. FACTUAL BACKGROUND

A. Facts

5. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the Parties, as well as the hearing and the evidence examined in the course of the proceedings.[1] This background information is given for the sole purpose of providing a summary of the dispute. Additional facts may be set out, where relevant, in connection with the legal analysis. While the Sole Arbitrator has considered carefully all the facts and evidence submitted by the Parties in the present proceedings, this Award refers only to the facts and evidence considered necessary for its reasoning.

6. On 9 June 2021, the Coach signed an employment agreement (the "Employment Agreement") with the Club as assistant head coach for the period of 1 July 2021 until 30 June 2022. The total remuneration to be paid in accordance with the Employment Agreement was AZN 40,000 net. AZN 5,000 net was to be paid in June 2021, while the remaining AZN 35,000 was to be paid on a monthly basis as AZN 3,500. The Employment Agreement states, inter alia, as follows:

> *"2. The subject of the agreement*
>
> *2.1. The "Coach" shall be considered assistant head coach of the main team of the "Sumgait Football Club" since the signing date of the Agreement and he has represented the "Sumgait Football Club" in Football competitions and matches as an assistant head coach.*
>
> *2.2. The "Club" shall create the necessary conditions for holding the trainings for the "Coach" and make payments intended by this Agreement*

[1] Several of the documents submitted by the Parties and referred to in this Award contain various misspellings: for sake of efficiency, they are not all identified with a "[sic]".

in return of the services provided by the "Coach" in accordance with this agreement. (…)

4. The obligations of the "Coach" (…)

4.1.14. To follow the internal discipline regulations to be signed by the "Coach" on this Agreement and approved by the "Club" and to pay the determined penalty in case of violating these rules (…)

5. Payment

5.1. The payment of the service fee to be paid by the "Club" to the "Coach" for the implementation of the serviced determined by the present Agreement shall be done in the following manner:

The total service fee to be paid by the "Club" to the "Coach" for 2021/2022 season until June 30, 2022 shall consists of net 40000 AZN (forty thousand manats) free from all tax and insurance amounts.

The net 5000 AZN (five thousand manats) of the mentioned amount free from all taxes and other payments shall be paid to the "Coach" in June of 2021.

The remaining amount shall be paid to the "Coach" by being divided into 10 months from July 01, 2021 until June 30, 2022 in the net amount of 3500 AZN (three thousand five hundred manats) free from all taxes and insurance amounts not later than 10 business days from the last day of the relevant month. (…)

6. The discipline of the Coach and complaint (...)

6.3. If the "Coach" does not participate in training, any matches, events organized by the "Club" without the relevant written permission of the "Club", the "Club" shall notify the "Coach". If such case repeated the second time (more), the "Club" shall have the right to prematurely terminate the agreement within 30 (thirty) days after discovering such case. (…)

8. The termination of the Agreement

8.1. This agreement is terminated upon the expiration.

8.2. The "Parties" may cancel this agreement at any time by the mutual agreement.

8.3. The agreement may be cancelled unilaterally by the "Club" under the following conditions:

-In case the "Coach" grossly violates the obligations determined by this agreement and has faulty actions;

- By giving official notification prior to 10 (ten) days to the "Coach" after the end of the season;

- In case the "Coach" grossly violates the Internal Discipline Regulations and does not pay the penalty assigned to him;

8.4. The agreement may be cancelled unilaterally by the "Coach" under the following conditions:

- In case of loss of professional status of the "Club";

- In case of official declaration of the "Club" as bankrupt;

8.5. The agreement may be terminated upon the bases intended in the legislation of the Republic of Azerbaijan and the corresponding normative documents of FIFA, UEFA, AFFA in the cases not intended by this Agreement."

7. On 16 December 2021, the Club and its Head Coach at the time, Mr Aykhan Abbasov, terminated Mr Abbasov's employment contract by mutual agreement.

8. The same day, 16 December 2021, the Coach sent a voice message in a Whatsapp group which was used by the Club and its players, coaches and administration. The voice message states as follows:

"*Hello. Yes, brothers, I also agree with every word said by Mr Aykhan. Really, we spent literally good seasons, thanks to Allah, we lived good days, we had difficult days. But the important thing, is that we were together, we knew, each other, used to be good friends for each other. It was pleasure to work with you. Thank you very much. Forgive your rights. Hopefully, Allah will let us to meet in a football world*".

9. After sending the voice message, the Coach left the Whatsapp group.

10. On 1 January 2022, the Club concluded new employment contracts with a new head coach and a new assistant coach.

11. On 13 January 2022, the Coach sent a letter to the Club. The letter states, inter alia, as follows:

"*I have not been informed of my situation after the dismissal of Aykhan Abbasov from the position of head coach. I thought that I would be informed later as the main team of the club was in holiday at that time. However, I was not informed of my future in the club in any way until now. Even I asked to take me to the training gathering to be conducted in Antalya city of Turkey too if I was not dismissed from the job when I talked to the club official on phone few days ago. But although the team was sent to the training gathering, I was not sent to the gathering. Even while other employees got the monthly salary, but the money was not transferred to my account. I would like to know whether I was dismissed from my job or I could continue to my work. As I concluded the contract with "Sumgait" Football Club during the period when*

Aykhan Abbasov was head coach, my present situation is indefinite for me. I ask you for official information on this matter."

12. On 21 January 2022, the Club responded to the letter from the Coach. The letter from the Club states, inter alia, as follows:

"1. On December 16, 2021, the agreement with Aykhan Abbasov, Head Coach of the Club was terminated on the mutual agreement.

2. The team has been sent for resting since December 16, 2021 and they began to training process by regathering on January 6, 2022.

3. However, you sent audio message on internal WhatsApp group of the Team after the termination of the agreement with head coach and said goodbye to them, explicitly expressed that you don't want to stay at the club.

4. On January 2, 2022, it was given official information on the winter preparation of the team on the official Instagram and Facebook pages of the Club.

5. You did not participate in the trainings began on January 6, 2022 despite of being informed and therefore, you could not go to Antalya with team.

6. On January 11, 2022, you were invited to the meeting the president of the club, you refused to meet by saying that you went to the region. Upon the information available for us that you were not in the region and you met with other members of the club that day.

7. After termination of the agreement with head coach, you were not given any information about the termination of the agreement with you. It meant that the agreement concluded with you was in effect and you should implement your obligations before the Club.

8. Thus, you have not participated in trainings with the team for 9 days without giving information or permission and continue not to participate.

9. The Professional coach agreement to be in effect since July 02, 2021 and to be valid until June 30, 2022 was concluded between you and Sumgait FC on June 09, 2021.

10. Upon item 2.1 of the Agreement between the parties, "Coach" shall be considered assistant head coach of the main team of "Sumgait Football Club" since the signing of this agreement and represent "Sumgait Football Club" in football competitions and matches as an assistant head coach.

11. Article 4 of the said agreement is titled as the obligations of Coach. Upon item 4.1.3 of the said article, the Coach shall have the obligation to jointly organize, hold the training gatherings, to conduct the training-theoretical trainings with the analysis of the played matches and preparation for matches, to determine tactical and technical indications.

12. Upon article 4.1.14 of the said Agreement, the "Coach" shall have the obligation to follow the internal discipline regulations to be signed by the "Coach" on this Agreement and approved by the "Club" and to pay the determined penalty in case of violating these rules.

13. Upon item 6.3 of the said Agreement, if the "Coach" does not participate in trainings, any matches without the relevant written permission of the "Club", the "Club" shall notify the Coach. The Club shall have the right to prematurely terminate the agreement within 30 (thirty) days after discovering such case.

14. It was mention in item 8.3 of the Agreement that the agreement may be cancelled unilaterally by the "Club" under the following conditions:

"In case the "Coach" grossly violates the obligations determined by this agreement and has faulty actions";

So, upon the above-mentioned, the agreement dated June 09, 2021 concluded with you was cancelled from the date of 18.01.2022 in accordance with articles 2.1, 2, 4.1.3, 6.3 and 8.3 of the agreement since you grossly violate your obligation determined by the agreement dated June 09, 2021 concluded between the parties."

B. Proceedings before the decision-making bodies of AFFA

13. On 27 January 2022, the Coach submitted a claim to the AFFA Committee on the Status and Transfer of the Players (the "AFFA CSTP"). In the claim, the Coach requested that the Club should be ordered to pay the residual value of the Employment Agreement, due to the Club's unlawful termination of the contract.

14. On 17 March 2022, the AFFA CSTP issued a decision (the "AFFA CSTP Decision"), with the following operative part:

"*1. The claim of the Claimant shall be secured partially.*

2. The Claimant shall be compensated in the amount of net 14000 (fourteen thousand) manats by the Respondent within 30 (thirty) calendar days from the date of submission of this decision to the Respondent (The financial and penalty sanctions may be applied by the Committee for not implementing the decision in time)."

15. On 30 March 2022, the Club appealed the AFFA CSTP Decision to the AFFA Appeal Arbitration Tribunal.

16. On 8 April 2022, a hearing was conducted by the AFFA Appeal Arbitration Tribunal, with the participation of the Coach and representatives of the Club.

17. On 4 May 2022, the decision of the AFFA Appeal Arbitration Tribunal (the "Appealed Decision") was submitted to the Coach and the Club. The Appealed Decision states, inter alia, as follows:

"*The Court considers that the procedural rules were violated by the Committee. So, upon article 14.4 of the Committee, the claimant shall send letter in the pretention*

manner to the respondent before applying to the Committee. This pretention shall be replied within 30 days.

However, in the decision of the Committee, the Committee mentioned the application addressed to the club by the claimant as a basis of accepting the application of the claimant for proceedings, the Court states that as it is clear from the content of the said application, the application of the claimant is not of nature of pretention, it was sent to the Club for the purpose of determining the issue of terminating the contract concluded between the claimant and the Club.

Thus, the Court unanimously decided that the appeal shall be secured and the decision dated 17.03.2022 of the Committee shall be cancelled as it was adopted by violating the relevant procedural rules.

After hearing the parties, the members of the Court discussed the matter and guided by part 2.2 of article 2 of the Regulation of AFFA Arbitration Court of Appeal and articles 16, 19, 20 of the said Regulation, as well as article 68 of the Charter of AFFA"

18. The operative part of the Appealed Decision reads as follows:

"*1. The appeal shall be secured.*

2. The decision dated March 17, 2022 of the Players' Status and Transfer Committee shall be cancelled.

3. The whole text of the Court decision shall be sent to the parties being prepared within 30 (thirty) days."

19. On 9 June 2022 – i.e. after the present CAS appeal had been initiated, as will be discussed below – AFFA issued a letter, signed by the Chairperson of the AFFA Appeal Arbitration Tribunal, which stated, inter alia, as follows:

"*I deem it necessary to clarify final part Tribunal's decision #56 dd. April 8 2022 on "Revocation of decision dd. March l7 2022 of Players' Status and Transfer Committee (hereinafter Committee)" and determine that:*

When revoking the Tribunal Committee's decision, it was predicated on violation of the procedure provided for in Article 14.4 of the Committee's "Rules of Procedure" (before applying to the Committee, the claimant sends a letter of claim to the defendant. This claim must be responded within 30 days). This case was considered by the Committee to be a violation of the rules of procedure established by the Regulations which ended up taking proceedings over claimant's appeal, and the Tribunal concluded that the decision of the Committee should be revoked.

I state that although such conclusion is reasonable, the technical error was made in the final part of the decision and only indicated the revocation of the Committee's decision, but no clarification provided regarding necessity as to reconsider the decision by the Committee. Although the tribunal in fact intended to send the

Committee's decision for reconsideration, stating in the final part of the decision that the Committee's decision had been revoked, however, this was not stated in the decision.

At the same time, this issue was discussed at Tribunal's meeting and it was decided to address the case to the Committee for reconsideration' Therefore, given the fact that Elnur Chodarov's claim has not yet been considered by the Tribunal on the merits, I think that the final part of the decision should be clarified, the dispute should be reconsidered by the committee in accordance with the rules of procedure for settlement of disputes.

So, considering afore mentioned statements and the Article 19'6 of the Tribunal's Regulation, I hereby

Resolve:

1. To clarify final part of Tribunal's resolution #56 dd' April 8th 2022

2. To accept final of the decision as "To revoke decision of Players' Status and Transfer Committee dd. March 17th 2022 for reconsideration".

III. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

20. On 25 May 2022, the Coach filed a Statement of Appeal with CAS, challenging the Appealed Decision, in accordance with Articles R47 and R48 of the 2021 edition of the CAS Code of Sports-related Arbitration (the "CAS Code"). In his Statement of Appeal, the Coach requested that the dispute be referred to a sole arbitrator, and suggested in this regard the appointment of Mr Emin Ozkurt, Attorney-at-law in Istanbul, Turkey.

21. On 3 June 2022, the Coach filed his Appeal Brief in accordance with Article R51 of the CAS Code.

22. On 7 June 2022, the CAS Court Office informed the Parties that the Respondents were given a deadline of 20 days to submit its Answer pursuant to Article R55 of the CAS Code.

23. On 16 June 2022, the Club submitted a letter, where it requested the Sole Arbitrator to decide on jurisdiction and admissibility on a preliminary basis, and also requested that the deadline for the Club to file its Answer be suspended pending such decision. In the same letter, the Club agreed that the case should be referred to a sole arbitrator, but disagreed with the arbitrator proposed by the Appellant.

24. On 17 June 2022, the Club inter alia invoked Article R55 of the CAS Code (i.e. requesting that its deadline to file its Answer only be set after the Appellant's payment of the advance of costs).

25. On 21 June 2022, AFFA filed its Answer, in accordance with Article R55 of the CAS Code.

26. On 23 June 2022, the CAS Court Office informed the Parties that the deadline for the Club to file its Answer would be reset after the payment of the advance of costs by the Appellant or if he was granted legal aid, which he had requested, as applicable.

27. On 14 September 2022, the CAS Court Office informed the Parties that the Appellant's request for legal aid had been granted and accordingly reset the Club's deadline of 20 days to file its Answer pursuant to Article R55 of the CAS Code.

28. On 13 October 2022, the Club filed its Answer, in accordance with Article R55 of the CAS Code.

29. On the same day, 13 October 2022, the CAS Court Office invited the Coach to file his Reply to the Club's objections to the admissibility of the appeal and AFFA's objections to its standing to be sued, further to Article R55 of the CAS Code.

30. On 1 November 2022, the Coach filed his Reply in accordance with the letter from the CAS Court Office sent on 13 October 2022.

31. On 2 November 2022, the CAS Court Office, pursuant to Article R54 of the CAS Code and on behalf of the Deputy President of the CAS Appeal Arbitration Division, informed the Parties that the Arbitral Tribunal appointed to decide the present case was constituted as follows:

    Sole Arbitrator: Mr Espen Auberg, Attorney-at-Law in Oslo, Norway

32. On 17 November 2022, the CAS Court Office invited the Coach and the Club to comment by 24 November 2022 on the AFFA's request contained in its Answer that this proceeding be suspended. The Coach and the Club filed its replies in this regard on 23 and 24 November 2022, respectively.

33. On 25 November 2022, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to deny the AFFA's request that the above-referenced proceeding be suspended, and that the reasons for such decision would be provided in the final Award.

34. On 13 December 2022, following consultation with the Parties, on behalf of the Sole Arbitrator, the CAS Court Office confirmed that a hearing would be held on 9 February 2023 by video-conference, pursuant to Articles R44.2 and R57 of the CAS Code.

35. On 26 January 2023, the CAS Court Office issued an Order of Procedure, which was duly signed and returned by the Coach on 30 January 2023, the Club on 1 February 2023 and the AFFA on 7 February 2023.

36. On 9 February 2023, a hearing was held by video-conference. At the outset of the hearing, the Parties confirmed that they had no objection to the constitution and composition of the arbitral tribunal.

37. In addition to the Sole Arbitrator, and Ms Kendra Magraw, CAS Counsel, the following persons attended the hearing:

a) For the Appellant:

1) Mr Elnur Chodarov, the Appellant;
2) Mr John Mehrzad, Counsel;
3) Mr Martin Palmer, Counsel;
4) Miss Gulnar Hasanova, Interpreter.

b) For the First Respondent:

1) Mr Riad Rafiyev, President of the First Respondent;
2) Mr Eljan Hasanli, Counsel;
3) Mr Ramil Jahangirov, Counsel.

c) For the Second Respondent:

1) Mr Mahammad Safarli, Counsel;
2) Mr Naib Asadov, Counsel.

38. No parties, witnesses or experts were heard.

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

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

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

IV. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF

A. The Coach's submissions

Jurisdiction

42. The Coach's submissions regarding jurisdiction may be summarised as follows:

- According to Article 68.7 of the Charter of the AFFA:

  "*Decisions of the Appeal Arbitration Tribunal are appealed to the Court of Arbitration for Sport (CAS) in Lausanne (Switzerland*)."

- Moreover, the same provision is stipulated in the AFFA Regulation of The Appeal Arbitration Tribunal. According to Article 20 thereof, decisions of the AFFA Appeal Arbitration Tribunal may be appealed to CAS.

- The Appealed Decision annulled the AFFA CSTP Decision on grounds of a procedural violation of its own rules. This outcome did not constitute relief sought by the Club and was not a permissible form of relief.

- The effect of the annulment and subsequent remission for reconsideration was, hence, *ultra vires* of the AFFA Appeal Arbitration Tribunal in considering any appeal from the Club.

- Further, a measure which seeks to re-open previously concluded proceedings, i.e. the AFFA CSTP Decision, constitutes an extraordinary remedial step and, as such, does not constitute a standard appeal method. The re-opening of concluded proceedings by way of a re-hearing is ordinarily limited to circumstances where new evidence pertinent to the questions in issue have been raised.

- Even on the Club's own submitted case, therefore, the AFFA Appeal Arbitration Tribunal's subsequent determination revoking the decision appealed and remitting the Coach's claim to the AFFA CSTP for reconsideration, does not result in grounds to assert that there is non-exhaustion of the legal remedies available to the Coach within his home jurisdiction. This is because what has been advanced by the AFFA Appeal Arbitration Tribunal is a re-opening of proceedings without the necessary pre-cursors of changed circumstances or new evidence to justify such a measure. Further, it is only ordinary remedies, not extraordinary remedies such as in the present matter, that should be considered as internal remedies for the purposes of Article R47 of the CAS Code.

- Despite the AFFA Appeal Arbitration Tribunal's remission of the matter to the AFFA CSTP, there has been no activity on the part of the AFFA CSTP to take appropriate steps to communicate with the parties and/or to list a hearing to determine matters afresh since 9 June 2022. The Appellant has consequently been denied any recourse to a legal remedy within the rules of the AFFA by "*dint*" of this marked failure.

- The Club's argument that the Coach "*has available legal remedy to defend its position within a definite procedure at the [PST] Committee*" is therefore illusory and the Coach is denied both recourse to and access to a form under which his original complaint may be determined.

- The correct position in relation to the CAS's prevailing jurisprudence and the correct meaning of Article R47 of the CAS Code is that the Coach only had to exhaust all legal remedies available to him prior to lodging his CAS appeal. This includes his ordinary remedies which he had partaken of but not any extraordinary remedies, i.e. for the purposes of this discussion, any extraordinary remedies comprising of the steps taken by the AFFA Appeal Arbitration Tribunal in annulling the relief previously granted to him and remitting his complaint back to the AFFA CSTP.

- CAS is thus invited to conclude that there is nothing to prevent it from setting the arbitration in motion in accordance with Article R52 of the CAS Code.

Merits

43. The Coach's submissions on the merits, in essence, may be summarised as follows:

i. The AFFA's lack of standing to be sued

- The point is not developed in AFFA's Answer with any particularity. It can be answered shortly.

- Although the dispute primarily concerns a financial dispute between the Coach and the Club, it also concerns procedural violations by bodies of the AFFA.

- AFFA and its AFFA Appeal Arbitration Tribunal committed procedural irregularities. The Club's position as set out in its Answer supports the conclusion that procedural irregularities were committed.

- The Coach has submitted a legitimate appeal which encompasses not merely the infraction of the Club but the failure of the AFFA Appeal Arbitration Tribunal operating under AFFA's auspices to adopt due process and fairly address the Coach's initial complaint by denying him a fair hearing.

- The AFFA Appeal Arbitration Tribunal did not do so. CAS is equipped to consider the complaint *de novo* under Article R57 of the CAS Code and consequently AFFA remains subject to its assessment and determination in terms of the grounds of the Appeal Brief submitted.

- There are no grounds to remove AFFA from the appeal, as the Coach appeals against the lack of due process and natural justice by the AFFA Appeal Arbitration Tribunal, which are matters to be considered *de novo* by the CAS in this appeal arbitration under Article R57 of the CAS Code.

ii. Procedural violations by the AFFA Appeal Arbitration Tribunal

- The AFFA Appeal Arbitration Tribunal violated the Regulation of the Tribunal as it did not provide the Coach with the opportunity to provide his written response after the Club submitted its appeal. The Coach was only notified that the appeal against him was received and that he was invited to the hearing. This is an obvious violation of Article 11 of the Regulation of the Tribunal and also a clear violation of the requirements of equal treatment, the right to fair trial, and the right to an independent and impartial tribunal as set in Article 1.2 of the Regulation of the Tribunal.

- Further, the AFFA Appeal Arbitration Tribunal violated the principle of "*non ultra petita*". In its appeal, the Club requested the amendment of the Decision only. However, the AFFA Appeal Arbitration Tribunal annulled the Decision in whole, thus, awarding more than the Club had requested.

- The AFFA Appeal Arbitration Tribunal should have addressed the merits of the case. Instead, the AFFA Appeal Arbitration Tribunal remained silent on the merits of the case and did not address the issue related to the unlawful termination of the Employment Agreement by the Club.

- Against this background, the Appealed Decision should be declared void due to the procedural violations by the AFFA Appeal Arbitration Tribunal.

- The only basis of the AFFA Appeal Arbitration Tribunal for the conclusion in the Appealed Decision to annul the Decision by the Tribunal was that the AFFA CSTP violated its regulations by wrongfully treating the letter of the Coach as the pretention letter which is a prerequisite of the appeal to the Tribunal. The Club and the AFFA Appeal Arbitration Tribunal argue that the pretention letter addressed by the Coach to the Club should not have been treated as the pretention letter by the AFFA CSTP since it did not address the matter at dispute and was only sent to clarify the status of the Employment Agreement.

- The Procedural Rules of the Committee on the Status and Transfer of the Players (the "Procedural Rules AFFA CSTP") do not contain any provisions with regard to the form and the content of the pretention letter. The only requirement in the respective regulation is that the written pretention letter should be sent to the respondent and that the respondent has 30 days to respond.

- In the pretention letter addressed by the Coach to the Club, it is clear that the Coach inquired about his unpaid salaries, requested clarification of the status of his job and the fate of his Employment Agreement. The Coach does not see how this letter could not be treated as the pretention letter. Since the Club responded to the pretention letter saying that the Agreement had been terminated by the Club, the Coach had no choice but to appeal to the AFFA CSTP. As such, the AFFA CSTP in fact had acted duly in accordance with the respective provisions by treating the letter of the Coach to the Club as the pretention letter. Thus, the AFFA CSTP did not violate the procedural norms, which was wrongfully concluded by the Club and the AFFA Appeal Arbitration Tribunal.

- The Club claims that the AFFA CSTP violated Article 16.2 of Procedural Rules AFFA CSTP. According to Article 16.2 of the Procedural Rules AFFA CSTP, unless decided otherwise by the AFFA CSTP, the respondent has 15 days to respond to the claim. The Club claims that AFFA CSTP violated this provision by only giving it 3 days to respond. However, the Club fails to acknowledge that it is clear from the wording that the 15 days is granted only if the AFFA CSTP does not decide otherwise. In the present matter, the AFFA CSTP decided that 3 days would be sufficient to respond; thus, the AFFA CSTP did not violate the respective provision and acted lawfully.

- Another alleged claim of the Club is that the AFFA CSTP did not hold a hearing despite the request from the Club. It should be noted that according

to Article 12.1 of Procedural Rules AFFA CSTP, the process is conducted in writing. Based on Article 12.2 thereof, the chair of AFFA CSTP may hold hearing if he deems it necessary at his own discretion. In the present case, the chair of the AFFA CSTP did not deem it necessary to conduct hearing. This was clearly expressed and reasoned under point 14 of the AFFA CSTP Decision. This proves that this alleged violation claim of the Club is groundless as well.

- Taking into account the above, it is clear that the AFFA CSTP did not violate any procedural provisions and that the AFFA CSTP Decision was fully in compliance with the requirements. The AFFA Appeal Arbitration Tribunal wrongfully and unlawfully annulled the AFFA CSTP Decision by violating the right to fair trial of the Coach and failed to remain impartial.

- The Club also claims that the AFFA CSTP issued the decision in 48 days, instead of 45, thus violating its regulation. It should be noted that the Chair of the AFFA CSTP may extend such period if required. As there was constant ongoing communication between the AFFA CSTP and the parties which made it impossible to deliver the Decision within 45 days, it is clear that this period has been extended by the Chair. Therefore, the AFFA CSTP had acted again in accordance with the respective regulation.

iii. <u>The termination of the Employment Agreement</u>

- The Club claims that the Coach violated Clauses 2.1, 4, 4.1.3, 6.3 and 8.3 of the Employment Agreement grossly and that the Employment Agreement was lawfully unilaterally terminated prematurely.

- The referred Clauses of the Employment Agreement, apart from Clauses 6.3 and 8.3, are irrelevant and therefore cannot be referred to as the basis of the premature termination.

- According to Clause 2.1 of the Employment Agreement, the Coach shall be considered assistant head coach of the main team of the Club. This clause cannot be basis for premature termination as it is irrelevant.

- Clause 4 of the Employment Agreement regulates the Coach's obligations and Clause 4.1.3 stipulates that it is the obligation of the Coach "*to jointly organize, hold the training gatherings, to conduct the training-theoretical trainings with the analysis of the played matches and preparation for matches, to determine tactical and technical indications*". This Clause is also irrelevant for the present matter since the Coach did not violate this clause and the Club does not clearly mention what exactly the Coach had violated.

- As per Clauses 6.3 and 8.3 of the Employment Agreement, the following should be noted. According to Clause 6.3, "*if the coach fails to attend trainings, matches, events organized by the Club, the Club reprimands the coach. If such case happens two (or more) times, then the Club is entitled to*

terminate the agreement prematurely within 30 (thirty) days after the reveal of such violation".

- The Club itself clearly violated Clause 6.3 of the Employment Agreement since it did not issue any reprimand to the Coach, nor did it wait 30 days to terminate the Employment Agreement.

- According to Clause 8.3 of the Employment Agreement, the Agreement may be terminated prematurely by the Club, in the following cases: "*The coach grossly violates its obligations under the agreement or conducts faulty actions*."

- It is clear from the analysis of this provision that the termination of the Employment Agreement by the Club is permitted only if the Coach violates his obligations grossly and due to his fault. As such, since it was the decision of the Club preventing the Coach from attending training camps held in Antalya, Turkey, the fault of the Coach is excluded in this regard.

- Based on Clause 4.1.14 of the Employment Agreement, the Coach had to comply with the internal disciplinary rules of the Club which are signed by the Coach in accordance with the Employment Agreement.

- The Club also claims that the Coach missed 11 training sessions and thus, in accordance with internal disciplinary rules, the Club was entitled to terminate the Employment Agreement unilaterally before the expiry of its term.

- However, the Coach had not signed any internal disciplinary rules of the Club. Besides, the Coach believes that the respective rules had been approved by the Club after the submission of the claim to the AFFA CSTP.

- Nevertheless, even if the Coach had signed the respective internal disciplinary rules, such could not have contradicted the Employment Agreement. In fact, Clause i) of the respective disciplinary rules contradicts Clause 6.3 of the Employment Agreement. According to Clause i) of the respective disciplinary rules: "*The club can unilaterally terminate the contract if you miss 10 trainings without permission*".

- However, Clause 6.3 of the Employment Agreement stipulates the following: "*if the coach fails to attend trainings, matches, events organized by the Club, the Club reprimands the coach. If such case happens two (or more) times, then the Club is entitled to terminate the agreement prematurely within 30 (thirty) days after the reveal of such violation*".

- So, while the Employment Agreement provides a procedure to terminate the agreement due to failure to attend the trainings, according to the internal disciplinary rules, missing 10 training sessions would have been sufficient to terminate the Employment Agreement unilaterally.

- The Club also claims that the Coach missed trainings from 6 January 2022 till 12 January 2022, and therefore could not fly to Antalya, Turkey. It should be noted that the Club did not issue any reprimand to the Coach in this matter. Even if the Coach had indeed missed the trainings for one week, it should not be considered as gross violation of the Employment Agreement to justify the premature termination. This view is also confirmed by CAS jurisprudence. Besides, the Coach inquired numerous times of the Club whether he would be taken to the camp in Antalya since, according to Clause 3.1.2 of the Employment Agreement, it was the obligation of the Club to purchase tickets for the Coach and to provide accommodation to him in a foreign country. Thus, it was in fact the decision of the Club not to take the Coach to the training camp in Turkey.

- The Club also argues that the Coach was invited to meet with the President of the Club but that the Coach said he could not attend the meeting. This argument is irrelevant and baseless, and the Club cannot unilaterally terminate the Employment Agreement simply just taking into account that the Coach could not attend the meeting. Nevertheless, the next course of events also shows that the Club was not interested in the subsequent meetings with the Coach.

- As an indirect member of the FIFA, the Club also had to obey the FIFA regulations. In accordance with FIFA's Regulations on the Status and Transfer of Players ("FIFA RSTP"), a contract may only be terminated upon expiry of its term or by mutual agreement. However, the Employment Agreement was terminated unilaterally before the expiry of its term by the Club during the middle of the season and the Club violated the established principle *pacta sunt servanda*.

- In accordance with the FIFA RSTP, the party in breach for terminating a contract without just cause shall pay compensation. This is also confirmed by CAS jurisprudence. According to the FIFA RSTP, compensation shall be calculated on the basis of the damages and expenses incurred by the club or the association in connection with the termination of the contract, giving due consideration, in particular, to the remaining remuneration and other benefits due to the coach under the prematurely terminated contract and/or due to the coach under any new contract, the fees and expenses incurred by the former club, amortized over the term of the contract, and the principle of the specificity of sport.

- The remaining value of the Agreement was AZN 14,000 net. As such, this amount owed to the Coach should be paid by the Club.

- Besides, the Agreement was terminated in the middle of the season and the Coach was labelled as "undisciplined" in media. This caused reputational damage to the Coach and he became jobless during the peak of the football season. It should be noted that there are only 8 professional clubs in Azerbaijan, competing in the Premier League, and thus it was impossible for the Coach to find a job in the middle of the season where all teams had their

coaching staff in place. Even if the Coach had found a job, this would not justify unlawful termination of the Employment Agreement by the Club.

- Since the Coach is a person of limited financial means, having dependents consisting of 5 persons, it was extra difficult in terms of the financial situation for the Coach after he became jobless.

- Thus, considering the above-mentioned points, it is justified that the Coach is entitled to additional compensation apart from outstanding value of the Employment Agreement. The Coach believes that additional compensation in the amount of AZN 14,000 net would be sufficient compensation, including moral damage, and loss of benefits such as bonus payments, for the unlawful termination.

44. On this basis, the Coach submitted the following requests for relief in his Appeal Brief:

"*1. To annul the decision of the Appeal Arbitration Tribunal dated 8 April 2022 #56;*

2. To order the First Respondent (Sumgayit Football Club) to pay the Appellant his unpaid salaries (residual value of the contract) in the amount of net AZN 14000 plus 5 % per annum until the effective payment date;

3. To order the First Respondent (Sumgayit Football Club) to pay the Appellant compensation for unlawful termination of the contract in the amount of AZN 14000 plus 5 % per annum until the effective payment date;

4. To order the First Respondent to cover the costs of the Appellant related to the translation of the documents for this appeal in the amount of AZN 500 and to reimburse CAS Court Office Fee paid by the Appellant in the amount of 1000 Swiss francs;

5. To order the First and the Second Respondents to bear all costs of this CAS proceeding."

B. The Club's submissions

Jurisdiction

45. The Club's submissions regarding jurisdiction, in essence, may be summarised as follows:

- The appeal shall be considered inadmissible as the Coach has not exhausted all legal remedies.

- The Appealed Decision ruled that the AFFA CSTP Decision shall be annulled.

- As it is stated in the Appealed Decision, the ground for annulling the AFFA CSTP Decision is a violation of the Procedural Rules AFFA CSTP. The Appealed Decision clearly prescribes that the AFFA Appeal Arbitration Tribunal did not evaluate the facts of the case, but decided to annul the AFFA CSTP Decision merely due to the fact of procedural violation, i.e. Article 14.4 of the Procedural Rules AFFA CSTP.

- On 9 June 2022, the AFFA Appeal Arbitration Tribunal issued an additional decision in order to clarify the wording of the Appealed Decision. In accordance with the additional decision, the Appealed Decision shall be read as follows:

  "*To revoke decision of Players' Status and Transfer Committee dd. March 17th 2022 for reconsideration*".

- The dispute between the Coach and the Club is still under the review of the AFFA CSTP even though no notification has been sent to the parties by the AFFA CSTP so far.

- The fact that the decision was revoked for reconsideration demonstrates that the Coach has not exhausted the legal remedies available to him with respect to the present dispute.

- Pursuant to Article R47 of the CAS Code, an appeal may only be filed with CAS if the appellant has exhausted the legal remedies available to it prior to the appeal.

- As the CAS panel stated in the case CAS 2007/A/1365, a decision must be "*final*" to be appealable, otherwise the appeal is inadmissible.

- As the Appealed Decision stated that the AFFA CSTP Decision was revoked for reconsideration, the Coach has an available legal remedy to defend his position within a definite procedure at the AFFA CSTP, which once adopted a decision in favor of the Coach. The same dispute is under review of both the AFFA CSTP and CAS. Any further decision by the AFFA CSTP might lead to the new appeal before the AFFA Appeal Arbitration Tribunal and then the CAS again.

- These facts confirm that the Appealed Decision cannot be considered as a "final" decision, which means that the present CAS appeal cannot be considered admissible in terms of the CAS Code and CAS jurisprudence.

- The fact that the AFFA CSTP has not yet initiated the procedure after the Appealed Decision means that the Coach has not exhausted all of its internal legal remedies.

- Pursuant to the Article 25 of the Swiss Federal Act on Private International Law ("PILA"), a foreign decision is recognized in

Switzerland, if the decision is no longer subject to any ordinary appeal or if it is a final decision.

- In the present case, the Appealed Decision is not the final decision over the dispute. The Appealed Decision ordered the revocation of the AFFA CSTP Decision for reconsideration due to violation of procedural rules. Consequently, the AFFA CSTP is yet to decide on the matter and the parties will be entitled to lodge an appeal against a new decision before the AFFA Appeal Arbitration Tribunal over the same dispute.

Merits

46. The Club's submissions on the merits, in essence, may be summarised as follows:

- As it can be seen from the content of both the AFFA CSTP Decision and the Appealed Decision, procedural violations took place during proceedings before the AFFA CSTP.

- First of all, the Club did not get any notification from the Coach prior to the first procedure. Additionally, the AFFA CSTP did not send the copy of the claim to the Club and the Club was deprived of its right to be introduced with the claim before the hearing and to provide its statement of defence. The Club received an e-mail on 14 February 2022 without any attachment and was given only two days to provide any information or proof to the AFFA CSTP. In fact, the Club had opportunity to submit its position only during the hearing.

- As a result of the above-mentioned circumstances, Articles 10, 14.4 and 16 of the Procedural Rules AFFA CSTP were strictly violated.

- Pursuant to Article R57 of the CAS Code and CAS jurisprudence, a CAS panel has full power to review the facts and the law and may issue a new decision. Procedural defects in the lower instances can be cured through the *de novo* hearing before CAS.

- In case if the Sole Arbitrator considers the appeal admissible, the Club requests the Sole Arbitrator to examine *de novo* the facts of the case.

- The Club and the Coach signed the Employment Agreement which would be valid for the period from 1 July 2021 until 30 June 2022. The Coach was part of the coaching staff of the then-head coach of the Club, Mr Aykhan Abbasov.

- On 16 December 2021, the contract between the Club and the head coach of the Club, Mr Abbasov, was terminated through mutual consent.

- Following the termination of the contract with Mr Abbasov, the Coach sent a voice message to the chat group of the team in the Whatsapp messenger application, where he bade farewell to the whole team and openly stated that he did not want to stay at the Club.

- In the above-mentioned voice message, the Coach said the following:

  "*Hello. Yes, brothers, I also agree with every word said by Mr Aykhan- Really, we spent literally good seasons, thanks to Allah, we lived good days, we had difficult days. But the important thing, is that we were together, we knew, each other, used to be good friends for each other. It was a pleasure to work with you. Thank you very much. Forgive your rights. Hopefully, Allah will let us to meet in a football world*".

- This message clearly indicates that the Coach did not intend to stay at the Club anymore and that he did not intend to provide any more services to the Club as a coach. He recalled good memories, thanked everyone and expressed his hope to meet again. In particular, the idiom "*haqqrruzr halal edin*" means "*forgive your rights towards me*". This idiom is usually used by people who owe something, but not been owed. This phrase is a sign of respect and tribute paid by the Coach to the Club.

- On 16 December 2021, the Coach left the above-mentioned Whatsapp group which was used by the Club and its members for communication on trainings, camps and other club activities.

- Following this message and the Coach's exit from the WhatsApp group, the Coach did not participate in the training process of the Club, which started on 6 January 2022. Thus, the Coach did not participate in 11 training sessions with the team without providing any information or receiving permission. This fact one more time proves that the Coach did not have any intention to remain in contractual relationship with the Club.

- In accordance with the Internal Disciplinary Code of the Club, duly accepted by the Coach, if any team member misses more than 10 training sessions during a season, the Club is entitled to terminate the relevant contract unilaterally, with cause.

- On 11 January 2022, the Club's management invited the Coach to meet with the Club's President because he did not participate in the trainings while the contractual situation remained unsettled, but he refused to meet, saying that he was out of the city.

- Even though the Coach mentioned in his letter dated 13 January 2022 that he had not been given any information about trainings, the news about the restart of training was posted on the official social media accounts of the Club and was available for everyone.

- The Coach did not act with goodwill and did not intend to continue his contractual relationship with the Club since the day when Mr Abbasov left the Club. However, with his actions, the Coach tried to artificially create circumstances which would entitle him to demand compensation from the Club.

- The total amount of the remuneration by the Club to the Coach throughout the whole period of validity of the Employment Agreement since July 2021 until December 2021 was AZN 29,275, which was in excess of the total amount due to the payment for the same period. The reason is that the Club considered the financial needs of the Coach and remunerated advance payments to his account.

- The above-mentioned facts lead to the following conclusions:

  a) The Coach openly expressed his will to leave the club after termination of the contract between the Club and Mr Abbasov;

  b) The Coach received excessive remuneration to his account as advance payments; and

  c) The Coach received additional remuneration of outstanding payments to his account after the termination of the Employment Agreement.

- Thus, the Coach's claims towards the Club does not have legal and factual support, because the Club has always demonstrated goodwill and executed its financial obligations in full and with excess. The Club even made advance payments to the Coach upon his request, in order to avoid him suffering from any financial situation.

- The Coach clearly demonstrated that he did not want to continue contractual obligations with the Club and instead he wanted to continue to work with Mr Abbasov, the former head coach of the Club.

- The Coach willingly expressed to the Club that he will no longer provide his services to the Club and he has given his farewells to the Club, its players, its administration and its coaching staff. Following this farewell, the Coach willingly exited the WhatsApp group since he was no longer interested in receiving future training and camp schedules of the Club as he had already expressed his intention not to continue his services.

- The Coach did not attend, or even requested to be included at, Club trainings and camps despite the fact that the Club tried to contact the Coach to resolve this situation.

- The Coach refused to meet and settle the contractual termination with the Club decided to initiate dispute resolution in order to use the ambiguous situation in his favour.

47. On this basis, the Club submitted the following requests for relief:

"*1. To consider the Appeal inadmissible due to the arguments set out in the first chapter of the present Statement of Defence.*

2. Only in case, if the Panel considers the Appeal admissible, to reject the claims of the Appellant.

3. To condemn the Appellant to the payment of CHF 5,000 in the favour of the First Respondent of the legal expenses incurred.

4. To establish that the costs of the present arbitration procedure shall be borne by the Appellant."

C. AFFA's submissions

48. The AFFA's submissions, in essence, may be summarised as follows:

- After the CAS Court Office sent a letter about the commencement of arbitration proceedings along with supplementing documents, the AFFA Appeal Arbitration Tribunal reviewed the Appealed Decision and adopted an Amendment to that decision on 9 June 2022. The operative part of the Amendment is as follows:

  "*1. The operative part of the decision No. 56 of the Tribunal dated April 08, 2022 shall be clarified.*

  2. The operative part of the decision shall be adopted as "the decision of the Committee on the Status and Transfer of Players shall be annulled and referred back for reconsideration".

- Since the case has been sent for reconsideration, it is still on progress and domestic remedies have not been exhausted by the Coach.

- According to Article R32 of the CAS Code, the panel or, if it has not yet been constituted, the President of the relevant Division may, upon application on justified grounds, suspend an ongoing arbitration for a limited period of time. Non-exhaustion of domestic remedies is a justified ground in this case for suspension. Therefore, the AFFA requested the CAS to suspend all proceedings until the outcome of the case becomes clear.

- Alternatively, if the CAS proceeds the case further, the AFFA requested CAS to strike the AFFA out of the list of respondents since the case is about financial problems between the Coach and the Club.

49. On this basis, AFFA submitted the following request for relief in its Answer:

"*1. To suspend all proceedings until the outcome of the case is final;*

2. Alternatively, to strike AFFA out of the list of respondents."

V. JURISDICTION

50. The Sole Arbitrator notes that the Respondents object to CAS' jurisdiction on the basis of the Coach not having properly exhausted all legal remedies available to him before pursuing an appeal before CAS.

51. The jurisdiction of CAS derives from Article R47 of the CAS Code, which reads:

> "*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*."

52. In accordance with the Article R47 of the CAS Code, there are two cumulative requirements for CAS to have jurisdiction over decisions issued by a federation, association or sports-related body. Firstly, either the statutes or regulations of the body that issued the appealed decision must provide that the decision may be appealed to CAS, or the parties must have concluded a specific arbitration agreement. In this regard, the Sole Arbitrator notes that according to Article 68.7 of the AFFA Statutes and Article 20 of the AFFA Regulation of Appeal Arbitration Tribunal, decisions of the AFFA Appeal Arbitration Tribunal may be appealed to CAS. As such, the first requirement for CAS to have jurisdiction in the case at hand is met.

53. The second requirement for CAS jurisdiction is that the appellant must have exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of the relevant federation, association or sports-related body.

54. The operative part of the Appealed Decision stated that the AFFA CSTP Decision "*shall be cancelled*". However, after the appeal was filed, the chairperson of the AFFA Appeal Arbitration Tribunal issued a letter where it was stated that the operative part of the Appealed Decision should be clarified, and that it should revoke the AFFA CSTP Decision for reconsideration. In principle, it must be assumed that the AFFA Appeal Arbitration Tribunal has the mandate to issue a decision that refers the matter back to AFFA CSTP for a new decision, as shown in the letter from the chairperson of the AFFA Appeal Arbitration Tribunal issued after the CAS appeal was filed.

55. In this regard, the Sole Arbitrator notes that when considering whether CAS has jurisdiction, it must be assessed if the legal remedy in question was available to the Coach at the time the appeal was filed, in accordance with the "*perpetuatio iurisdictionis*" principle, as held by the panel in CAS 2014/A/3477, paragraph 77. As such, as the letter written by the chairperson of the AFFA Appeal Arbitration Tribunal was submitted after the Appellant has filed this appeal before CAS, the letter is irrelevant for the consideration of whether CAS has jurisdiction, and the issue of CAS jurisdiction must be resolved on the basis of the original wording of the Appealed Decision, which stated that the AFFA CSTP Decision "*shall be cancelled*".

56. With regards to the duty to exhaust internal remedies, MAVROMATI/REEB, The Code of the Court of Arbitration for Sport: Commentary, Cases and Materials, 2015; state as follows (p. 393):

"*As accepted by the SFT, the lack of clarity of the applicable regulations should be a hint to admit the case in case of doubts as to the exhaustion (or the obligation to exhaust) the internal remedies. As a rule, the party contesting that the internal remedies were not exhausted should file evidence in this respect, in which case the other party has to show that either the remedy was exhausted, or that it was incomplete/there were other circumstances preventing such party from exhausting internal remedies*".

57. The Sole Arbitrator concurs with these considerations, and as such, it is the Respondents, as the Parties that contest that the Coach has exhausted legal remedies, that will have to show that the Coach has not exhausted the legal remedies available to him prior to submitting the appeal.

58. In the consideration of whether the requirement of exhaustion of legal remedies has been met, CAS case law shows that "*the internal remedy must be readily and effectively available to the aggrieved party and it must grant access to a definite procedure*" (CAS 2007/A/1373 paragraph 24).

59. Further, in CAS 2013/A/3052, the panel stated as follows (paragraph 140):

"*Indeed, the relevant statutes may require a party, before filing an appeal before the CAS, to exhaust other internal remedies provided in the statutes themselves. If an appellant fails to pursue such remedies, the appeal may be inadmissible. However, such internal remedies, in order to act as condition precedent to the appeal, must give the appellant the possibility of effectively challenging the decision under appeal, giving access to a legal procedure where the appellant can defend his case*."

60. The wording of the operative part in the Appealed Decision, which states that the AFFA CSTP Decision "*shall be cancelled*", does not indicate that the matter was referred back to the AFFA CSTP. Such interpretation of the Appealed Decision is supported by the fact that the subsequent letter issued by the chairperson of the AFFA Appeal Arbitration Tribunal where it was stated that it was necessary to clarify the operative part of the Appealed Decision.

61. In this regard, the Sole Arbitrator notes that, even if the letter was relevant, *quod non*, it still did not provide the Appellant with any information concerning the procedure of how to reinitiate his case before the AFFA CSTP or contain indication that such was being automatically resumed by such body. In this regard, no evidence has been submitted to the Sole Arbitrator that indicates that the AFFA CSTP has taken any steps to reconsider the previous decision since such letter was transmitted in June 2022.

62. Having taken into consideration the facts of the case and the Parties' position on the matter, the Sole Arbitrator finds that at the time the appeal was submitted, there were no indications that any more internal remedies were readily and effectively available to the Coach. Consequently, the Sole Arbitrator finds that also the second requirement for CAS jurisdiction, i.e. that the Appellant must have exhausted the

legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the relevant federation, association or sports-related body, is met.

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

VI. ADMISSIBILITY

64. Article 68.7 of the AFFA Statutes states as follows:

> "*Decisions of the Appeal Arbitration Tribunal are appealed to the Court of Arbitration for Sport (CAS) in Lausanne (Switzerland).*"

65. The AFFA statutes do not provide for a time limit to appeal a decision from the AFFA Appeal Arbitration Tribunal. However, Article R49 of the CAS Code provides 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.*"

66. Accordingly, the time limit to appeal a decision from the AFFA Appeal Arbitration Tribunal to CAS is 21 days from the receipt of the decision.

67. The Appealed Decision was notified to the Parties on 4 May 2022. The Coach filed his Statement of Appeal on 25 May 2022. Accordingly, the appeal was filed within the time limit for appeal of 21 days. The appeal complied with all other requirements of Article R48 of the CAS Code.

68. Consequently, the Sole Arbitrator finds that the Coach's appeal is admissible.

VII. APPLICABLE LAW

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

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

70. With regards to applicable law, the Employment Agreement states as follows:

> "*8. The termination of the Agreement (...)*

8.5. The agreement may be terminated upon the bases intended in the legislation of the Republic of Azerbaijan and the corresponding normative documents of FIFA, UEFA, AFFA in the cases not intended by this Agreement.

9. Other terms and conditions of the Agreement (...)

9.2. Other terms and conditions not intended by this Agreement shall be adopted in the framework of the relevant norms of the Civil Code of the Republic of Azerbaijan."

71. The Sole Arbitrator finds that, pursuant to Article R58 of the CAS Code, the present dispute is to be decided in accordance with the applicable regulations referred to in the Employment Agreement, i.e. the legislation of Azerbaijan and the corresponding normative documents of FIFA, UEFA and the AFFA.

VIII. PRELIMINARY ISSUES

A. AFFA's request to suspend the proceedings

72. In its Answer, the AFFA requested CAS to suspend the proceedings until the outcome of the case before the AFFA tribunals had become clear.

73. Article R55 of the CAS Code states as follows:

"*The Panel shall rule on its own jurisdiction. It shall rule on its jurisdiction irrespective of any legal action already pending before a State court or another arbitral tribunal relating to the same object between the same parties, unless substantive grounds require a suspension of the proceedings*."

74. Substantive grounds as conditions for the suspension of the proceedings is described as follows in MAVROMATI/REEB, The Code of the Court of Arbitration for Sport: Commentary, Cases and Materials, 2015; p. 491:

"*The 'substantive' (or 'serious' grounds) are one of the conditions enumerated in Article 186 paragraph 1 PILA. Substantive grounds exist if the appellant can prove that the suspension is necessary in order to protect its rights and that the continuation of the arbitration proceedings would cause any serious harm. However, the simple possibility of a state court issuing a decision different from the CAS is not considered to be a substantive ground. Indeed, the possibility to have contradictory decisions exists in all parallel proceedings involving a civil and an arbitral institution. Otherwise, the arbitral procedure would always end up being suspended, which is clearly not the aim of Article 186 paragraph 1 of PILA*."

75. In its request for suspension of the proceeding, the AFFA argues that the dispute is still in progress as it has been referred back to the AFFA CSTP. The Sole Arbitrator notes that the risk of contradictory decisions, following the potential non-exhaustion of internal remedies, will not constitute "*substantive grounds*" for the suspension of the proceedings. As held by the panel in CAS 2019/A/6626 (paragraph 94), if one were to accept such an argument, one could risk that the arbitral tribunal would always end up being suspended.

76. As determined by the same CAS panel (paragraph 96), "serious reasons" "*can exist and might justify a stay of proceedings if the proceedings before the court had already reached an advanced stage*". In the case at hand, however, no evidence has been presented to the Sole Arbitrator that would indicate that the proceedings before the AFFA CSTP, following the letter from the chairperson of the AFFA Appeal Arbitration Tribunal to refer the case back to AFFA CSTP in June 2022, have yet been initiated. Consequently, it is evident that the proceedings before the AFFA CSTP body is far from having reached an advanced stage at the moment. As such, the proceedings before the AFFA CSTP cannot be considered as "serious reasons" or "substantive grounds" as stipulated in Article 186 paragraph 1 of the PILA and the Article R55 of the CAS Code respectively.

77. Taking the abovementioned into account, the Sole Arbitrator finds that no "serious reasons" nor "substantive grounds" further to Article R55 of the CAS Code are present in this case.

78. Consequently, and in view of the reasons as set out above, the Sole Arbitrator concluded that the present arbitral proceedings were not to be suspended.

B. AFFA's comments to the Coach's reply

79. On 7 November 2022, the AFFA submitted a letter where it commented on the reply submitted by the Coach on 1 November 2022 regarding the Club's objections to the admissibility of the appeal and the AFFA's objections to its standing to be sued.

80. In accordance with Article R56 of the CAS Code, after the submission of the Appeal Brief and of the Answer(s), the Parties may only be authorized to specify further evidence on which they intend to rely, if the Parties agree or the Sole Arbitrator orders on the basis of exceptional circumstances.

81. On 7 November 2022, the Coach submitted a letter where he requested that the Sole Arbitrator deem inadmissible the letter submitted by the AFFA on 7 November 2022.

82. Consequently, AFFA's request could only be granted on the basis of exceptional circumstances.

83. Having taken into consideration the Parties' positions on the matter, the Sole Arbitrator finds that AFFA has failed to establish exceptional circumstances based on which its late request to produce new documents would have to be granted.

84. Against this background, AFFA's letter submitted on 1 November 2022 is deemed inadmissible.

IX. THE MERITS

A. The Main Issues

85. The main issue to be resolved by the Sole Arbitrator are the following:

i. Does AFFA have standing to be sued?
ii. Was the termination of the Employment Agreement justified?
iii. If the termination of the Employment Agreement was not justified, what are the consequences thereof?

i. Does AFFA have standing to be sued?

86. The question of who has standing to be sued is a question of the merits, implying that if the AFFA's standing to be sued is denied, then the appeal, albeit admissible, must be dismissed insofar it concerns the AFFA (CAS 2020/A/7144, paragraph 87 with further references to SFT 128 III 50 of 16 October 2001, at 55; SFT 4A_424/2008 of 22 January 2009, para. 3.3; CAS 2008/A/1639, para. 3).

87. The AFFA claims that there is no legal provision that entitles the Coach to sue the AFFA, since the case is a financial dispute between the Coach and the Club, and the AFFA cannot be held liable for the decisions of its judicial bodies.

88. The Sole Arbitrator notes that the AFFA was not a party in the proceedings before the AFFA CSTP or the AFFA Appeal Arbitration Tribunal.

89. According to CAS doctrine, "*a party has standing to be sued only if it has some stake in the dispute because something is sought against it, and is personally obliged by the dispute at stake*" (MAVROMATI/REEB, The Code of the Court of Arbitration for Sport: Commentary, Cases and Materials, 2015, p. 411, nr. 65).

90. The Sole Arbitrator concurs with what has been stated in legal doctrine about the different approaches between vertical and horizontal disputes, as set out by the panel in CAS 2020/A/7144 (paragraph 91 et seq.):

"*'Recent jurisprudence points towards a more nuanced approach, according to which there is room to differentiate in respect of the standing to be sued pursuant to article 75 SCC depending on what kind of decision is being appealed. Various reasons speak in favour of this (flexible) approach' (HAAS U., Standing to Appeal and Standing to be sued, in International Sport Arbitration, Bern 2018, p. 53-88, para. 49).*

This flexible approach consists in differentiating between decisions entailing a vertical element ("vertical disputes") and decisions entailing a horizontal element ("horizontal disputes") whilst acknowledging that some decisions may entail both vertical and horizontal elements.

According to Prof. Haas:

'43. […] Vertical disputes, are characterized by the fact that the association issuing the decision thereby shapes, alters or terminates the membership relation between itself and the member concerned. Vertical disputes typically arise in disciplinary, eligibility or registration contexts'".

91. As established by CAS jurisprudence, in horizontal disputes the party with standing to be sued is normally the contractual counterpart of the claimant/appellant, whereas

in vertical disputes the party with standing to be sued is, in principle, only the federation that issued the challenged decision. In CAS 2017/A/5359 (paragraph 65) with further reference to CAS 2015/A/3910, the panel stated as follows:

"*The criteria for awarding legal standing to be sued should not differ in vertical or horizontal disputes. In vertical disputes the association has (sole) standing to be sued because it is the party primarily concerned and the best representative of the interests of all other stakeholders affected by the dispute. The other stakeholders – in principle – only have a general and abstract interest that the associations' rules and regulations be applied to their respective co-member in an equal, consistent and correct way. This general interest – in principle – will be represented and taken care of by the association. Thus, there is no need – in vertical disputes – to direct the appeal against any other party than the association. Applying the same principles to horizontal disputes leads inevitably to the conclusion that the (sole) party having standing to be sued is the Respondent.*"

92. In other words, in a horizontal dispute, only the parties that have rights and obligations that arise out of the contract have standings to be sued, excluding a party whose only role has been to issue the appealed decision. The same approach was taken by the sole arbitrator in CAS 2020/A/7144 paragraph 98, which stated as follows:

"*[T]he Sole Arbitrator holds that the FIFA DRC acted as an (quasi-) adjudicative first instance body ruling upon its jurisdiction under the rules contained in the FIFA Statutes and FIFA RSTP and that such a situation does not differ from the situation in which a civil court, under the national laws and potentially international laws and directives such as the Lugano Convention and Brussels I Regulation, assesses its own jurisdiction. In the latter case, when a party does not agree with the ruling of a first instance civil court considering itself competent, and the party appeals such a ruling, it must not direct its appeal against nor include the first instance court as a respondent in its appeal. The same logic should apply to appeals before the CAS for what concerns purely jurisdictional issues*."

93. The Sole Arbitrator concurs with the considerations in the abovementioned cases, and notes that the Appealed Decision solely concerns the consequences of the Coach's and the Club's contractual positions, and that it does not contain disciplinary elements, or concern issues of eligibility or registration. Further, the Coach's submissions in his requests for relief before CAS relate exclusively to the contractual dispute between the Coach and the Club, for which the AFFA played no part, and further that AFFA's only role in the dispute is that it acted as an adjudicative body. Regardless of the fact that procedural violations were indeed made by bodies of AFFA, the dispute must clearly be categorised as "horizontal".

94. In light of all the above, in particular taking into consideration that the case at hand is a horizontal dispute where the AFFA did not have rights or obligations that arises out of the Employment Agreement, the Sole Arbitrator concludes AFFA does not have standing to be sued.

ii. Was the termination of the Employment Agreement justified?

95. The Sole Arbitrator notes that the Employment Agreement was unilaterally terminated by the Club on 21 January 2022, when it sent a letter to the Coach. The letter concludes that the Employment Agreement "*was cancelled from the date of 18.01.2022 in accordance with articles 2.1.2, 4.1.3, 6.3 and 8.3 of the agreement since you grossly violate your obligation determined by the agreement dated June 09, 2021 concluded between the parties*."

96. Whilst Clauses 2.1.2 and 4.1.3 of the Employment Agreement describe the Coach's responsibilities as an assistant coach, Clauses 6.3 and 8.3 regulate the Club's possibility to unilaterally terminate the Employment Agreement.

97. In accordance with Clause 6.3 of the Employment Agreement, the Club may unilaterally terminate the Employment Agreement if the Coach repeatedly fails to participate in inter alia trainings and matches. The Club's unilateral termination on these grounds requires that the Club first notify the Coach of such absence, that the Coach's absence is repeated a second time, and that the Club unilaterally terminate the Employment Agreement within 30 days after discovering his repeated absence. In this regard, the Sole Arbitrator notes that the Club did not send a notification to the Coach for his absence, and as such, the Club's unilateral termination of the Employment Agreement may not be based solely on this contractual provision.

98. In accordance with Clause 8.3 third bullet point of the Employment Agreement, the Club is entitled to unilaterally terminate the Employment Agreement if the Coach "*grossly violates the Internal Discipline Regulations and does not pay the penalty assigned to him*". The Sole Arbitrator notes that the Club has not issued a penalty to the Coach based on a gross violation of the Internal Discipline Regulations, and as such, the Club's unilateral termination of the Employment Agreement may neither be based on this contractual provision alone.

99. Clause 8.3 first bullet point of the Employment Agreement states that the Club may unilaterally terminate the Employment Agreement if the Coach "*grossly violates the obligations determined by this agreement and has faulty actions*". The Sole Arbitrator finds that the Club's unilateral termination of the Employment Agreement, as expressed in the Club's letter dated 21 January 2022, is based on an assumption that the Coach grossly violated his contractual obligations as he left the Club and as such failed to comply with his contractual obligation to be an assistant coach, and to comply with the tasks stipulated in the Employment Agreement, i.e. to represent the Club in football matches and organize training sessions.

100. The Sole Arbitrator notes that the Coach's responsibilities, as set out in the Employment Agreement, were not, in principle, affected by the fact that the Club and its Head Coach at the time, Mr Abbasov, terminated Mr Abbasov's employment contract by mutual agreement on 16 December 2021.

101. It is further undisputed that on 16 December 2021, following the termination of Mr Abbasov's contract, the Coach sent a voice message to a Whatsapp group used by the Club's players and coaches, a message where he implied that he would leave the

Club. After he sent the message, the Coach left the Whatsapp group. This conduct indicates that the Coach did not intend to fulfil his contractual obligations for the remaining contractual period.

102. After the Coach left the Whatsapp group on 16 December 2021, the Coach did not perform any duties as stipulated in the Employment Agreement, even after the team was gathered on 6 January 2022, after the holidays. Further, there was no communication between the Club and the Coach until 13 January 2022, when the Coach sent a letter to the Club, requesting the Club to clarify his situation.

103. The Sole Arbitrator finds that the Coach's decision not to perform any duties as stipulated in the Employment Agreement, seen in connection with the decisions to send a voice message to the Whatsapp group implying that he would leave the Club, and subsequently leaving the Whatsapp group, was made by the Coach alone, and there is no evidence that the Club in any way indicated that it would terminate the Employment Agreement. The Sole Arbitrator further finds that the Coach's conduct in this respect constitutes a breach of the Employment Agreement.

104. However, any breach of the Coach's contractual obligations does not give the Club the right to unilaterally terminate the Employment Agreement, as only gross violation of the Coach's obligations may justify the Club's unilateral termination, further to Clause 8.3 of the Employment Agreement.

105. In the consideration of whether the Coach grossly violated his obligations under the Employment Agreement, the Sole Arbitrator notes that on 5 February 2021, FIFA included provisions regulating clubs' possibilities to unilaterally terminate employment contracts with coaches in the FIFA RSTP. In accordance with Clause 8.5 of the Employment Agreement, the Employment Agreement may be terminated, inter alia, in accordance with the normative documents of FIFA. As provisions regarding termination of coaches' contracts were implemented in the FIFA RSTP at the time the Employment Agreement was concluded, these provisions may, in principle, be relevant for the consideration of whether the Club's unilateral termination of the Employment Agreement was justified.

106. In the 2021 edition of FIFA RSTP, a coach is, in the "Definition" chapter, defined as "*an individual employed in a football-specific occupation by a professional club or association*" whose "*employment duties consist of one or more of the following: training and coaching players, selecting players for matches and competitions, making tactical choices during matches and competitions; and/or employment requires the holding of a coaching licence in accordance with a domestic or continental licensing regulation*". The Sole Arbitrator finds that the Coach falls under the definition of a coach in the 2021 edition of the FIFA RSTP.

107. Football coaches' contracts with clubs are regulated in Annex 2 of the FIFA RSTP. The Sole Arbitrator notes that in accordance with Annex 2 paragraph 4 of the FIFA RSTP, the provisions in the Annex do not as such regulate the contractual relationship between a coach and the club that the coach is employed by. However, the Annex requires the national associations to include in its domestic regulations "*appropriate means to protect contractual stability between coaches and clubs or*

associations, paying due respect to mandatory national law and collective bargaining agreements". In other words, the provisions regulating the contractual positions of coaches are subject to implementation of regulations and standard contracts by national associations, as well as national legislation, in particular national labour law. The contractual position of a football player, on the contrary, is partly regulated directly by the FIFA RSTP, to the extent the relevant article is listed in FIFA RSTP Article 1-3 litra a, and partly subject to national implementation and legislation, if listed in FIFA RSTP Article 1-3 litra b. Notwithstanding the above, the Sole Arbitrator notes that Clause 8.5 of the Employment Agreement directly refers to the normative documents of FIFA, and as such, Annex 2 of the FIFA RSTP is relevant for the consideration of whether the Club's unilateral termination of the Employment Agreement was justified.

108. As a starting point regarding termination, Annex 2 Article 3 of the FIFA RSTP states that the contract must be respected, a provision that is based on the corresponding provision for players in Article 13 of the FIFA RSTP. According to Annex 8 Article 4 of the FIFA RSTP, a contract can only be terminated if there is just cause, and conditions that correspond with the provisions for terminating a football player's contract, regulated in Article 14 of the FIFA RSTP.

109. As the provisions regulating unilateral termination of coaches' contracts were implemented in the FIFA RSTP quite recently, there is limited jurisprudence that may give guidance with regards to when a club's unilateral termination of a coach's contract may be justified. However, the Commentary Edition of the FIFA RSTP (2021 edition) states as follows:

"*Articles 3 to 8 of Annexe 2 reflect the same principles and rules contained in the provisions governing the maintenance of contractual stability between professional players and clubs, with minor amendments to govern the specificity of the employment relationship between a coach and a professional club and/or member association. (…) With respect to these provisions, the discussion elsewhere in this Commentary regarding the equivalent provisions related to players applies equally to these provisions in Annexe 2, particularly where the wording is identical*."

110. As the rules and principles regarding contractual stability between clubs and players also apply to contractual stability between clubs and coaches, jurisprudence regarding clubs' unilateral termination of football players' contracts may be relevant for the consideration of whether the Club's unilateral termination of the Employment Contract was justified.

111. Extensive CAS jurisprudence, including CAS 2013/A/3091, 3092 & 3093, paragraphs 187 and 191, show that a contractual breach either must be material, persist for a long time or be cumulated with other violations over a certain period of time to justify termination with just cause. Moreover, CAS has repeatedly held that breach must be material in the sense that, in the circumstances of the breach at stake, the other party cannot be expected to continue the contract while the first party is in breach (CAS 2016/A/4588, paragraph 111).

112. Further, CAS 2013/A/3091, 3092 & 3093 (paragraph 192) provides that a party may only terminate an employment contract if it has previously "*warned the other party, in order for the latter to have had the chance, if it deemed that the complaint to be legitimate, to comply with its obligations*."

113. In the present case, the Sole Arbitrator finds that there is no evidence that the Coach was warned of a possible termination of the Employment Agreement because of his alleged incorrect behavior, prior to the termination letter issued by the Club on 21 January 2022.

114. Moreover, based on the facts and evidence presented, the Sole Arbitrator is of the opinion that the Coach's conduct neither constitutes a gross violation nor a material breach of the Employment Agreement. In this regard, the Sole Arbitrator notes that the Club, to some degree, contributed to the situation as it did not contact the Coach to clarify his situation following the termination of Mr Abbasov's contract, and there is no evidence that it directly sent him e.g. the training schedule. Furthermore, the Club had more lenient measures to take in order to sanction the Coach for his breach of his contractual obligations.

115. Consequently, the Sole Arbitrator is of the opinion that the Club did not have sufficient reasons to unilaterally terminate the Employment Agreement with the Coach for just cause.

iii. If the termination of the Employment Agreement was not justified, what are the consequences thereof?

116. Having determined that the Club's unilateral termination of the Employment Agreement was not justified, it is now up to the Sole Arbitrator to determine the consequences thereof.

117. The Sole Arbitrator notes that the Employment Agreement does not regulate the consequences of unjustified unilateral termination. As such, in accordance with Clause 8.5 of the Employment Agreement, the consequences of the unjustified unilateral termination must be assessed on the basis of, inter alia, the corresponding normative documents of FIFA, more specifically the FIFA RSTP.

118. If a contract has been unilaterally terminated by one of the parties without just cause, the party who has breached its obligations will be liable for damages pursuant to Annex 8 Article 6 of the FIFA RSTP, which states as follows:

"*6 Consequences of terminating a contract without just cause*

1. In all cases, the party in breach shall pay compensation.

2. Unless otherwise provided for in the contract, compensation for the breach shall be calculated as follows:

Compensation due to a coach

a) In case the coach did not sign any new contract following the termination of their previous contract, as a general rule, the compensation shall be equal to the residual value of the contract that was prematurely terminated.

b) In case the coach signed a new contract by the time of the decision, the value of the new contract for the period corresponding to the time remaining on the prematurely terminated contract shall be deducted from the residual value of the contract that was terminated early (the "Mitigated Compensation"). Furthermore, and subject to the early termination of the contract being due to overdue payables, in addition to the Mitigated Compensation, the coach shall be entitled to an amount corresponding to three monthly salaries (the "Additional Compensation"). In case of egregious circumstances, the Additional Compensation may be increased up to a maximum of six monthly salaries. The overall compensation may never exceed the residual value of the prematurely terminated contract. (…)"

119. In other words, Annex 8 Article 6 of the FIFA RSTP specifies the method of calculation of compensation following a club's unilateral termination of the employment contract. In short, if a coach is entitled to compensation, the compensation should match the coach's financial loss as a result of the termination. If the coach has not signed a new contract following the termination, the compensation should equal the remaining value of the contract. If the coach has signed a new contract however, the value of the new contract should be deducted, leaving the coach with a mitigated compensation. In addition to the mitigated compensation, the coach will in such a case be entitled to an additional three months' compensation. Further, if egregious circumstances can be established, the coach could be entitled to up to another three months' compensation.

120. In the case at hand, the Coach did not sign a new employment contract before the contracted expiration of the Employment Agreement, and as such, the compensation shall be calculated based on Annex 8 Article 6 litra a of the FIFA RSTP, i.e. the residual value of the Employment Agreement.

121. The Sole Arbitrator notes that the total value of the Employment Agreement was AZN 40,000. The Club has provided bank statements revealing that it has paid a total amount of AZN 29,275 to the Coach. The residual value of the of the Employment Agreement is as such AZN 10,725.

122. With regards to the Coach's claim for additional compensation in the amount of AZN 14,000, the Sole Arbitrator notes that this claim is unsubstantiated, as neither the Employment Agreement nor the applicable regulations entitle the Coach to such additional compensation. Furthermore, as stated above, Annex 8 Article 6 of the FIFA RSTP states that the compensation shall be equal to the residual value of the contract that was prematurely terminated, and that the overall compensation may never exceed the residual value of the prematurely terminated contract. Consequently, the Coach's request for additional compensation is rejected.

123. Against this background, the Sole Arbitrator finds that the Coach is entitled to compensation corresponding to the residual value of the Employment Agreement in the amount of AZN 10,725.

B. Conclusion

124. Based on the foregoing, the Sole Arbitrator finds that:

i. AFFA does not have standing to be sued.
ii. The Club's unilateral termination of the Employment Agreement was unjustified.
iii. The Coach is entitled to compensation in the amount of AZN 10,725.

X. COSTS

(…).

* * * * *

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 25 May 2022 by Elnur Chodarov against the decision issued on 4 May 2022 by the Appeal Arbitrational Tribunal of the Association of Football Federations of Azerbaijan is partially upheld.

2. The decision issued on 4 May 2022 by the Appeal Arbitrational Tribunal of the Association of Football Federations of Azerbaijan is set aside.

3. Sumgayit Football LLC shall pay compensation for breach of contract to Elnur Chodarov in the amount of AZN 10,725 (ten thousand seven hundred and twenty-five Azerbaijani manats).

4. (…).

5. (…).

6. All other and further motions or requests for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 4 September 2023

THE COURT OF ARBITRATION FOR SPORT

Espen Auberg
Sole Arbitrator