CAS 2020/A/6767 Zobahan Cultural & Sport Club v. Reza Shekari & Football Club Rubin Kazan & FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr Mark A. **Hovell**, Solicitor, Manchester, United Kingdom

Arbitrators: Mr Massimo **Coccia**, Attorney-at-Law, Rome, Italy

Mr Efraim **Barak**, Attorney-at-Law, Tel Aviv, Israel

between

Zobahan Cultural & Sport Club, Isfahan, Iran

Represented by Mr Salvatore **Civale**, Attorney-at-Law, Civale Associati, Milan, Italy, and Mr Luca **Tettamanti**, Attorney-at-Law, Elite Law SA, Lugano, Switzerland

-as Appellant-

and

Reza Shekari, Tehran, Iran

Represented by Mr Georgi **Gradev**, Mr Mikhail **Prokopets**, Mr Yury **Zaytsev** and Ms Maria **Tokmakova**, Attorneys-at-Law, SILA International Lawyers, Moscow, Russia

-as First Respondent-

Football Club Rubin Kazan, Kazan, Russia

Represented by Mr Georgi **Gradev**, Mr Mikhail **Prokopets**, Mr Yury **Zaytsev** and Ms Maria **Tokmakova**, Attorneys-at-Law, SILA International Lawyers, Moscow, Russia

-as Second Respondent-

Fédération Internationale de Football Association (FIFA), Zurich, Switzerland

Represented by Mr Miguel **Liétard** Fernández-Palacios, Director of Litigation and Mr Alexander **Jacobs**, Senior Legal Counsel, Zurich, Switzerland

-as Third Respondent-

* * * * *

I. PARTIES

1. Zobahan Cultural & Sport Club ("Zobahan" or the "Appellant") is a football club with its registered office in Isfahan, Iran. Zobahan is currently competing in the Persian Gulf Pro League, which is the highest division in Iran. It is a member of the Football Federation Islamic Republic of Iran (the "FFIRI"), which in turn is affiliated to Fédération Internationale de Football Association ("FIFA").

2. Mr Reza Shekari (the "Player" or the "First Respondent"), is an Iranian citizen and professional football player born on 31 May 1998 in Tehran, Iran. He currently plays for Tractor Sports Club in Iran.

3. Football Club Rubin Kazan ("Rubin Kazan" or the "Second Respondent") is a football club with its registered office in Kazan, Russia. Rubin Kazan is currently competing in the Russian Premier League, which is the highest division in Russia. It is a member of the Russian Football Union (the "RFU"), which in turn is affiliated to FIFA.

4. FIFA (or the "Third Respondent") is the world governing body of football, with its registered office in Zurich, Switzerland.

II. FACTUAL BACKGROUND

5. Below is a summary of the main relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning.

A. First employment contract

6. On 22 June 2015, the Player signed a three-year employment contract with Zobahan, valid from 1 July 2015 until 30 June 2018 ("First Employment Contract"). The First Employment Contract was signed by the Player, Mr Saeid Azari (the Managing Director of Zobahan at the time) and Mr Amir Houshang Saadati (the Player's agent at the time – the "First Agent"). The First Employment Contract provided for an annual basic remuneration of IRR 700 million.

7. During the 2015/16 sporting season, at the age of 17, the Player played in 13 matches for the Zobahan First Team, scoring one goal.

8. During the first year of the First Employment Contract, the Player was registered to play for the club in the AFC Champions League (2016 edition), and was selected on the bench in three matches for the club in that tournament in that season.

9. The Player's performances attracted the interest of foreign clubs, including *inter alia*, Leicester City FC, FC Basel, GNK Dinamo Zagreb, FC Zenit JSC.

B. Second employment contract

10. On 21 September 2016, the Player and Zobahan signed a new employment contract, valid from the 2016/17 season until the end of the 2017/18 sporting season, i.e. 30 June 2018 ("Second Employment Contract"). The contract was signed by the same parties, i.e. the Player, Mr Azari on behalf of Zobahan and the First Agent. The Second Employment Contract raised the Player's basic annual remuneration from IRR 700 million to IRR 1.2 billion for the 2016/17 sporting season, with a further increase to IRR 1.56 billion for the 2017/18 season.

11. The Second Employment Contract contained the following material clauses (translation provided by the Appellant, emphasis added):

"A – Sum of contract

[…]

Note 2: in case of recommendation from a foreign club by the agent, 100.000 USD will be paid to the club to issue release letter and ITC for the player:

Note 3: should the overseas offer is provided by Zobahan club, the total transfer fee shall be Zobahan's right

***Note 4: if the recommendation by a foreign club based on notification of the agent to the club was beyond 100.000 USD, the additional sum will be divided between agent and Zobahan club**:*

Note 5: for sport season 2017-2018, the transfer fee of the player (to attend international team) will be agreed by the parties (managing director of the club and player's agent).

[…]

Article 9: Disputes Settlement

If there is a dispute between the parties in executing the article of the contract, the player is obliged to keep the relationship with club by the time federation Disciplinary Committee or dispute settlement council of league organization investigate the problem and issue the judgment if there is a protest to the issued judgment, the final judiciary authorities will be Football Federation Appeal Committee."

12. In November 2016, during a meeting held at the FFIRI headquarters in Tehran, a different agent – Mehdi Hagitali (the "Second Agent") – introduced himself to the club's Managing Director as the alleged official agent of the Player.

13. On 1 January 2017, the First Agent wrote to Zobahan stating, *inter alia*, that the Second Agent had been continuously contacting the Player and his family "*and by deceiving them and giving them false promises, he has conducted illegal and unethical manner* [sic]."

C. Events in early 2017

14. On 27 January 2017, one day before Zobahan's match against Gostaresh Foolad FC in the Iranian Pro League, the Player claimed he had a foot injury and refused to participate in a training session and also refused to travel with the team to the match.

15. Zobahan stated that it was "*truly concerned*" about the alleged injury and immediately arranged medical tests to be conducted by a specialist physician in order to determine its seriousness and set up a treatment plan. However, the medical test concluded that the Player had suffered no injury whatsoever.

16. At some point thereafter, Zobahan was informed by the General Secretary of the FFIRI that the Player had attempted to apply for a visa in order to leave Iran. The club discovered that the reason the Player had claimed he had an injury and couldn't travel with the team was because he went to the Russian Embassy in Tehran to make the visa application.

17. During the month of January 2017, the Player refused to sign the forms required in order for Zobahan to register him for the AFC Champions League 2017 edition.

D. The Player's attempt to trigger the release clause in the Second Employment Contract

18. On 26 January 2017, the Player wrote to Zobahan stating his intent to exercise Note 2 of Article 4 of the Second Employment Contract (the "Release Clause"). The letter stated as follows:

> "*Appreciating your and club agents' attempts in my development, according to Note 2 of Article 4 of* [the Second Employment Contract], *this is to inform you that I have received a formal offer from FC Rostov of Russia certified by the attached copy by official football broker.*
>
> *Considering the agreement inserted in the mentioned note, please announce account No. of the club to deposit the amount of agreed 100,000 Dollars in order to pay this amount for* [Zobahan].
>
> *I appreciate your and* [Zobahan's] *attempts and hope you success*."

19. This letter from the Player enclosed a letter from FC Rostov, which stated as follows:

"*Football Club Rostov hereby confirms its interest in the transfer of the football player of* [Zobahan] [the Player] *and is ready to activate clause in Note 2 of Article 4 of the contract between* [Zobahan] *and* [the Player] *and pay compensation in the agreed amount of 100,000 Dollars.*

In view of the above, we kindly request you to provide us with bank details for payment."

Zobahan did not reply to the Player's letter.

20. On the same day, the Second Agent visited Zobahan's Managing Director (Mr Azari) to discuss the offer from FC Rostov. However, Mr Azari refused to release the Player.

E. The unilateral request for termination by the Player

21. On 29 January 2017, the Player applied and signed a form for "unilateral request of termination" of the Second Employment Contract before the Isfahan Football Association (the "Isfahan FA"), a regional subdivision of the FFIRI, with effect from 29 January 2017.

22. On 30 January 2017, the Isfahan FA confirmed receipt of this unilateral request on 30 January 2017.

23. On 31 January 2017, Zobahan wrote to the Player requesting him to resume his duties and informed the Isfahan FA accordingly.

24. On 4 February 2017, Zobahan notified the Head of the FFIRI Disciplinary Committee that the Player had not been attending training since 27 January 2017, requesting their intervention and to "*take the necessary actions*".

F. The Player's negotiations with FC Rostov

25. In February 2017, the Player travelled to Russia in an attempt to join the Russian club FC Rostov. Rumours of the Player's negotiations with FC Rostov were reported in the press.

26. On 25 February 2017, Zobahan wrote to FC Rostov (copying in the RFU and FIFA) stating that the Player was still under contract with Zobahan and that any negotiations with the Player were prohibited under FIFA regulations, and in any event, not authorised. Zobahan requested FC Rostov to stop all negotiations with the Player until a possible mutual agreement regarding the Player's transfer was reached by the two clubs. Zobahan informed FC Rostov that it would only consider the possibility of transferring the Player for a transfer fee of USD 1 million.

27. On 26 February 2017, due to the Player's continued absence from the club, Zobahan lodged a complaint against the Player before the FFIRI Disciplinary Committee. Pursuant to Article 30 of the FFIRI Disciplinary Regulations, the FFIRI Disciplinary Committee was competent in "[h]*andling all disciplinary violations and material and spiritual damages due to violations subjected to the Regulations at hand.*"

28. On 11 April 2017, the Isfahan FA clarified to the Iran Football League Organization that the request form submitted by the Player simply acknowledged the Player's unilateral request for termination, and the Player's exit from Isfahan province without it rendering any decision on the merits of the issue between the parties.

29. On 14 April 2017, the Player gave an interview to the press in which he admitted to improper conduct. The article in the press stated, *inter alia*:

"*I had an offer from FC Rostov. Unfortunately, I made a wrong and unprofessional move by abandoning the training sessions without notification to* [Zobahan] *and went to Russia and participated in FC Rostov's training,* [the Player] *stated*."

30. On 20 April 2017, FC Rostov wrote to Zobahan stating that there were allegedly no negotiations or signed contracts with the Player, but that they would "*consider the transfer of the player*" to their club.

G. First proceedings before the FFIRI Disciplinary Committee

31. On 30 April 2017, the FFIRI Disciplinary Committee held a hearing, which was attended by the Player's representative. However, Zobahan was not in attendance due to an administrative error by the FFIRI Disciplinary Committee, which resulted in Zobahan not being informed about the hearing.

32. On 8 May 2017, the FFIRI Disciplinary Committee issued a decision ("First FFIRI Decision") which rejected Zobahan's complaint due to the lack of evidence provided by the club at the hearing. The First FFIRI Decision stated as follows:

"[Zobahan] *in the complaint submitted against* [the Player] *to the Disciplinary Committee claims that the said player from the date January/ 27/ 2017 without any justifiable reason has not participated in the training sessions of the football team of the club and signed a contract with the Rostov Club. The Disciplinary Committee invited both of the parties to participate in the hearing held on April/ 30/ 2017, but a representative of* [Zobahan] *was not present in the hearing and a note explaining the absence was not sent. Mr Abdolsamad Ebrahimi was present in the hearing as the representative of the player. According to the proceedings, because documents proving the claims of* [Zobahan] *were not provided, the Disciplinary Committee announces the submitted complaint to be rejected and the issued decision is final.*"

33. On 22 May 2017, Zobahan appealed the First FFIRI Decision before the competent FFIRI appeal body.

34. On 27 May 2017, the FFIRI Disciplinary Committee confirmed its error in failing to send notification to Zobahan regarding the hearing date.

H. Rubin Kazan's first approach for the Player

35. On 9 June 2017, the manager of FC Rostov, Mr Berdyev, left FC Rostov and returned to his former club, Rubin Kazan. Another Iranian player, Sardar Azmoun – who was

represented by the Second Agent – followed Mr Berdyev from FC Rostov to Rubin Kazan.

36. On 30 July 2017, the Second Agent visited the Zobahan headquarters and allegedly verbally informed Mr Azari that Rubin Kazan was ready to offer Zobahan USD 500,000 as a transfer fee for the permanent transfer of the Player.

37. Zobahan refused to negotiate with the Second Agent because it considered that (i) the Player's agent was the First Agent, not the Second Agent; and (ii) the Second Agent deceived the Player and forced first Rostov, then Rubin Kazan, to induce the Player to breach the Second Employment Contract.

38. On 7 August 2017, Zobahan sent a letter to the General Secretary of the FFIRI stating *inter alia* that the Player continued to be in breach of contract by failing to attend training with the club.

39. On 8 August 2017, Zobahan wrote to the Player stating as follows:

"*Kindly, we would like hereby to announce that given your 8-month unexcused absence, for every day of absence, time will be added to your contract with Zobahan club. Therefore, considering the mentioned matter, please attend Zobahan senior football team trainings as soon as possible. This letter is considered as your last warning and any consequences due to your failure to attend team's training will be your responsibility.*"

40. On 13 August and 22 August 2017, further letters were sent by Zobahan to the Head of the FFIRI Disciplinary Committee and Chairman of the FFIRI Players' Status Committee (respectively).

I. Second proceedings before the FFIRI Disciplinary Committee

41. On 2 July 2017, the FFIRI Disciplinary Committee held a second hearing regarding Zobahan's complaint, and both parties were represented at this hearing.

42. On 15 August 2017, the FFIRI Disciplinary Committee issued a second decision stating as follows ("Second FFIRI Decision"):

"*As related to the hearing requested by* [Zobahan] *and considering the* [First FFIRI Decision]*, this committee during the rehearing held on July/ 02/ 2017 reconsidered the contents of the complaint submitted by this club against* [the Player]*, took into consideration the contents of the records of the case and the claims of the Zobahan representatives that the* [Player] *is still in contract with* [Zobahan]*, and if he wishes to leave the club and to join another team, he must act according to the contract provisions signed between the parties. Also taking into consideration the explicit claims of the player's representative (Mr. Ebrahimi), who claimed that if* [the Player] *while being a player of the club did not participate in the training sessions of the club, he must be acted upon according to the internal regulations of the club. On the other hand, the player has not yet joined any other team, including Rostov club in Russia, so that*

compensations be requested from him to pay. Also given that the parties were discussing the possibility of compromise after the negotiations and finally [Zobahan] *announced that no compromise has taken place yet, the Disciplinary Committee in accordance with the Article 30 of the Disciplinary Regulations and the contents of the contract signed between the parties, announces that the aforementioned player still belongs to* [Zobahan] *and the aforementioned is obliged to observe the contents of the contract signed between the parties. And also as considering the financial losses caused by the player's behaviour and his disciplinary punishment due to the possibility of the termination without just cause, since* [the Player's] *parting from* [Zobahan] *and his joining to his new club has not been exercised, therefore the Disciplinary Committee is not deemed in charge of any position. This is the final decision*."

J. The Player's transfer to Rubin Kazan

43. On 31 August 2017, the Player concluded an employment contract with Rubin Kazan with a term ending on 30 August 2022 ("First Rubin Kazan Employment Contract"). According to Clauses 9.1 and 9.2 of the contract, the Player was entitled to a monthly wage of USD 5,000 (net) plus a further basic monthly salary of approx. USD 680.

44. On the same day, Rubin Kazan requested the Player's International Transfer Certificate ("ITC") via TMS addressing an email to Zobahan requesting to sign the "Non-TPO Declaration" and a letter.

45. On 4 September 2017, Zobahan replied to Rubin Kazan stating *inter alia* that it did not recognise the Player's alleged unilateral termination of the Second Employment Contract, and stated as follows:

> "*2) The alleged contract termination submitted to you by player fails to meet the legal legitimacy and validity, as the competent body to issue the termination of contracts is NOT the affiliated provincial football association ("Isfahan Football Association"). Yet, enclosed you can find the self-explanatory correspondence made by "Isfahan Football Association" to "Iran Pro-League Organization" stating that their earlier correspondence should not be deemed as unilateral termination of contract.*
>
> *[…]*
>
> *4) Please kindly be informed that the* [FFIRI Disciplinary Committee] *has issued a final decision which recognizes* [the Player] *as* [Zobahan's] *player (Enclosed hereto together with its certified English translation) for you to re-consider the case before attempting to apply for any permit from* [Zobahan] *either/or* [FFIRI] *to avoid any undesirable consequences.*
>
> *[…]*
>
> *Therefore you are hereby advised to have the* [Player] *returned to* [Zobahan] *within the next 24 hours from the date of this correspondence. Alternatively you*

> *can consider the amount of 5 million US Dollars as the fee for transfer of the player. Otherwise* [Zobahan] *reserves its right to lodge a complaint before competent international authorities to fulfil its rights.*"

Rubin Kazan did not reply to this letter.

46. On 5 September 2017, Zobahan instructed the FFIRI not to deliver the ITC to Rubin Kazan.

47. On 6 September 2017, the FFIRI refused the request to deliver the ITC.

48. On 8 September 2017, Rubin Kazan wrote to the FIFA Players' Status Committee (the "FIFA PSC"), via the RFU, requesting the urgent intervention of the FIFA PSC in order to obtain the relevant ITC.

49. On 22 September 2017, the FIFA PSC issued its decision providing the authorisation for Rubin Kazan to provisionally register the Player.

K. Subsequent events

50. On 8 November 2017, Zobahan wrote to the Player and Rubin Kazan requesting both parties to remedy their alleged violations by paying Zobahan compensation in the amount of USD 5 million. The Player and Rubin Kazan did not reply to this correspondence.

51. On 3 December 2017, Zobahan wrote to the Second Agent requesting an explanation for his actions and stated that if the Player and Rubin Kazan failed to pay the requested amount of compensation, the club would look to pursue the Second Agent "*before the competent authorities pursuant to Article 17.5 of FIFA RSTP asking for the imposition of severe disciplinary sanctions and the payment of damages* […]."

52. On 1 March 2018, the Player entered into a second employment contract with Rubin Kazan, also with a term ending on 30 August 2022 ("Second Rubin Kazan Employment Contract"). According to Clauses 9.1 and 9.2 of the contract, the Player was entitled to a monthly wage of USD 5,000 (net) plus a further basic monthly salary of approx. USD 680.

L. Proceedings before FIFA

53. On 26 June 2018, Zobahan filed a claim at the FIFA Dispute Resolution Chamber (the "FIFA DRC") against the Player and Rubin Kazan, requesting, *inter alia*, that the Player and Rubin Kazan be held liable for damages and be subject to sporting sanctions.

54. On 30 October 2019, the FIFA DRC rendered its decision as follows (the "Appealed Decision"):

> *"1. The claim of* [Zobahan] *is inadmissible.*

2. The counterclaim of [the Player]*, is inadmissible.*

3. The counterclaim of [Rubin Kazan]*, is rejected."*

55. The grounds of the Appealed Decision were notified to the parties on 24 January 2020.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT ("CAS")

56. On 13 February 2020, in accordance with Article R47 of the Code of Sports-related Arbitration (the "CAS Code"), Zobahan filed a Statement of Appeal with the CAS challenging the Appealed Decision. In its Statement of Appeal, Zobahan requested the appointment of Mr Massimo Coccia, Professor and Attorney-at-law, Rome, Italy as arbitrator. Further, Zobahan also made the following disclosure requests:

"*a) Order* [the Player] *to disclose his employment contracts, as well as any possible annexes, with (i)* [Rubin Kazan] *and (ii) the Iranian club Tractor Sazi FC, where he is currently registered.*

b) In case of player's failure, order [FIFA] *to disclose the employment contracts of the Player above, considering they were received by FIFA during the first instance procedure after its request by letter to the parties on 24 September 2019.*

c) Order the Respondents to disclose any possible agreements, private or uploaded in the FIFA TMS, between [Rubin Kazan] *and the Iranian club Tractor Sazi FC for the transfer of the Player to the latter, including any possible agreement or payment of the Player's training compensation*."

57. On 2 March 2020, the Respondents jointly nominated Mr Efraim Barak, Attorney-at-Law, Tel Aviv, Israel, as arbitrator.

58. On 3 March 2020, on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office wrote to the parties stating that "[Zobahan's] *request for a suspension of its time limit to file its Appeal Brief until there is a decision on its request for production of documents is rejected. Such request of production of documents will be dealt with by the Panel once constituted.*"

59. On 1 April 2020, in accordance with Article R51 of the CAS Code, Zobahan filed its Appeal Brief with the CAS.

60. On 2 April 2020, in accordance with Article R54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the Panel appointed to this case was constituted as follows:

President:	Mr Mark A. Hovell, Solicitor, Manchester, United Kingdom
Arbitrators:	Mr Massimo Coccia, Professor and Attorney-at-law, Rome, Italy
	Mr Efraim Barak, Attorney-at-Law, Tel Aviv, Israel

61. On 14 May 2020, in accordance with Article R55 of the CAS Code, the Player and Rubin Kazan filed their joint-Answer with the CAS Court Office.

62. On 5 June 2020, in accordance with Article R55 of the CAS Code, FIFA filed its Answer with the CAS Court Office.

63. On the same day, the CAS Court Office wrote to the parties inviting them to state their preference regarding a hearing.

64. On 11 June 2020, the Player and Rubin Kazan wrote to the CAS Court Office requesting the Panel to bifurcate the present proceedings, and render a preliminary decision on the issue of *res judicata* without holding a hearing. As for the rest of the merits of the dispute, the Player and Rubin Kazan requested that a hearing be held.

65. On 16 June 2020, Zobahan wrote to the CAS Court Office rejecting the Player's and Rubin Kazan's request to bifurcate these proceedings. Zobahan also reiterated the disclosure request contained in its Statement of Appeal, and requested that a hearing be held in this matter.

66. On 17 June 2020, on behalf of the CAS Panel the CAS Court Office wrote to the parties requesting the Respondents to confirm which of the requested documents, if any, they were willing to disclose to Zobahan.

67. On 24 June 2020, FIFA submitted a copy of the entire FIFA file to the CAS Court Office.

68. On 25 June 2020, the Player and Rubin Kazan wrote to the CAS Court Office and stated that they did not wish to disclose any of the requested documents as they were not relevant to the present dispute, and requested that the disclosure request by Zobahan be dismissed in its entirety.

69. On the same date, the CAS Court Office wrote to the parties on behalf of the Panel confirming that the Panel had determined that a hearing was required in this matter.

70. On 14 July 2020, the CAS Court Office wrote to the parties on behalf of the Panel, stating as follows:

> "1. [Zobahan's][1] *request for a bifurcation of this procedure is rejected. The reasons of this decision will be communicated by the Panel in the final award.*
>
> *2. The Respondents are invited to disclose <u>for the attention of the Panel only</u> the following documents by **<u>24 July 2020</u>**:*

[1] The Panel notes that this was a typographical error in the CAS Court Office letter, as it was the Player and Rubin Kazan which requested the bifurcation of proceedings, and not Zobahan. The typo in the letter was immaterial to the Panel's decision.

- [Rubin Kazan's] *Circular on bonuses*
- *The transfer agreement between Rubin Kazan and Tractor Sazi FC*
- [The Player's] *employment agreement with Tractor Sazi FC*

Upon receipt of these documents, the Panel will decide whether such documents are relevant and whether to disclose them in full or redacted for the attention of the other parties."

71. On 24 July 2020, the Player and Rubin Kazan submitted copies of the requested documents to the CAS Court Office.

72. On 29 July 2020, on behalf of the Panel the CAS Court Office disclosed the documents submitted by the Player and Rubin Kazan to all the parties.

73. On 3 August 2020, Zobahan wrote to the CAS Court Office requesting the Panel to assist in summoning Mr Kurban Berdyev (former Head Coach of Rubin Kazan) as a witness in the hearing to be held in this matter. Zobahan noted that it had requested Rubin Kazan (as Mr Berdyev's last employer) to forward a request on its behalf, but that Rubin Kazan had failed to do so.

74. On 5 August 2020, the CAS Court Office wrote to the parties stating that, as Mr Berdyev was no longer an employee of Rubin Kazan, the Panel was unable to order Rubin Kazan to summon him to the hearing and thus rejected the Appellant's request, all the while inviting the Appellant to refer to Article 184.2 of the Federal Act on Private International Law ("PILA") if it wished to pursue the matter.

75. On 3 September 2020, FIFA submitted a signed copy of the Order of Procedure.

76. On 10 September 2020, Zobahan submitted a signed copy of the Order of Procedure.

77. On 11 September 2020, the Player and Rubin Kazan submitted signed copies of the Order of Procedure.

IV. HEARING

78. On 30 June 2020, the CAS Court Office wrote to the parties confirming that a hearing would be held on 14 October 2020. On 2 October 2020, the Appellant informed that its lead counsel was unfortunately unable to attend the planned hearing due to some specified health issues and requested a 30-day postponement of the hearing. The Respondents did not object to such request and, on 12 October 2020, having consulted the parties, the Panel informed that the rescheduled hearing would take place by video-conference on 17 November 2020.

79. The hearing was duly held on 17 November 2020 by video conference. The parties did not raise any objection as to the composition of the Panel. The Panel members were all

present and were assisted by Mr Antonio de Quesada, Head of Arbitration at the CAS. Furthermore, the following persons attended the hearing:

i. Zobahan: Messrs. Salvatore Civale, Luca Tettamanti, Alberto Roigé Godia and Ms Elena Raccagni, all external counsel; Mr Pirouz Mirheidari, in house counsel; Messrs. Saeid Azari, Amir Saadati, Erdem Aksimsek and Ahmad Reza Faghihi, all witnesses, along with Messrs Ashkan Vakili Motlagh and Saleh Ameri, interpreters.

ii. The Player: Messrs. Georgi Gradev, Mikhail Prokopets and Ilya Chicherov, all counsel.

iii. Rubin Kazan: Messrs. Georgi Gradev, Mikhail Prokopets and Ilya Chicherov, all external counsel.

iv. FIFA: Mr Miguel Liétard Fernández-Palacios, Director of Litigation; and Mr Alexander Jacobs, Senior Legal Counsel.

80. The parties were given the opportunity to present their cases, to make their submissions and arguments and to answer questions posed by the Panel. The witnesses and the interpreters were invited to tell the truth and the witnesses were examined by the parties and the Panel. The hearing was then closed and the Panel reserved its detailed decision to this written Award.

81. Upon closing the hearing, the parties expressly stated that they had no objections in relation to their respective rights to be heard and to be treated equally in these arbitration proceedings. The Panel has carefully taken into account in its subsequent deliberation all the evidence and the arguments presented by the parties, both in their written submissions and at the hearing, even if they have not been summarised in the present Award.

V. THE PARTIES' SUBMISSIONS

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

A. Zobahan's submissions

83. In its Statement of Appeal, Zobahan requested the following prayers for relief:

"*On a procedural basis*

a) Stay the time-limit for the submission of the Appeal Brief until [Zobahan] *receives the documents requested above under Chapter VIII. and then grant 30 (thirty) days from their duly receipt to file its Appeal Brief;*

b) On a subsidiary basis, grant [Zobahan] *with an extension of 30 days to file its Appeal Brief, in consideration that Zobahan has changed president during the present proceedings and* [Zobahan's] *counsel's difficulties to interface with Zobahan's representative which are currently trying to obtain a VISA permit to come to Europe and participate in a meeting to fix the strategy of this appeal. Furthermore, the request is also linked to the need to translate further documents from original language ("Farsi") into English;*

c) Confirm the admissibility of the appeal and the CAS' jurisdiction over the present dispute;

On the merits of the case

d) Accept the Appeal of [Zobahan] *against the* [Appealed Decision] *and set aside said decision in full;*

e) CAS shall declare the Player having terminated without just cause the [Second Employment Contract]*;*

f) As a consequence of the above point, hold [the Player] *and* [Rubin Kazan] *jointly liable to the payment of a compensation for the breach of contract equal to the amount of USD 5,000,000 (FIVE MILLION US DOLLARS), plus interests at 5% p.a. since 31 August 2017 or in the different amount to be calculated by the Panel in light of the provision of article 17 of the FIFA RSTP and/or the will of the Parties, as expressed in the Employment Contract;*

g) As a consequence of the above point, order FIFA to apply sporting sanctions on the [Player] *and* [Rubin Kazan] *in accordance with the applicable provisions of the FIFA Regulations or, on a subsidiary basis, refer/remit the present dispute back to FIFA Dispute Resolution Chamber for the imposition of the sporting sanctions linked to the breach of the* [Second Employment Contract] *by the Player and the inducement by* [Rubin Kazan]*;*

h) In any case, order the Respondents to bear in full the costs of this arbitration proceeding and pay a contribution of the legal costs and expenses borne by [Zobahan]*, in relation to this appeal and to the first instance degree, in an amount to be determined at the discretion of the Panel;*

i) Grant any other relief or orders it deems reasonable and fit to the case at stake."

84. In its Appeal Brief, Zobahan requested the following prayers for relief:

"*(a) CAS has jurisdiction over the present dispute;*

(b) The appeal of [Zobahan] *against the* [Appealed Decision] *is upheld;*

(c) CAS shall declare the Player having terminated without just cause the [Second Employment Contract] *with* [Zobahan];

(d) As a consequence, the [Player] *and* [Rubin Kazan] *are jointly liable to pay* [Zobahan] *a compensation equal to USD 5,000,000 (FIVE MILLION US DOLLARS), plus interests at 5% p.a. since 31 August 2017 or equal to the different amount considered fair and just by the Panel in light of all the arguments raised in this submission;*

(e) As a consequence, the CAS shall apply or shall order FIFA to apply sporting sanctions on the [Player] *and* [Rubin Kazan] *in accordance with article 17 of the FIFA RSTP or, on a subsidiarity basis, to refer the matter of sporting sanctions back to FIFA Dispute Resolution Chamber for their imposition linked to the breach of the* [Second Employment Contract] *by the Player and the inducement by* [Rubin Kazan];

(f) In any case, order the three Respondents to bear in full the costs of this arbitration proceeding and pay a contribution of the legal costs and expenses borne by [Zobahan], *in relation to this appeal and to the first instance procedure before FIFA, in an amount to be determined at the discretion of the Panel;*

(g) Grant any other relief or orders it deems reasonable and fit to the case at stake to achieve the ultimate scope sought by [Zobahan]."

85. In summary, Zobahan submitted the following arguments in support of its Appeal:

i.* FIFA erred in considering the matter *res judicata

86. Zobahan stated that FIFA wrongly interpreted that the complaint filed by the club before the FFIRI regarding the absence of the Player (which culminated in the Second FFIRI Decision) and the claim filed before the FIFA DRC linked to the Player's definitive breach of contract dealt with the same matter.

87. Zobahan noted that the Appealed Decision stated:

"*A. The decision appears to address the issue of the possible payable compensation by the player to Zobahan for breach of contract without just cause, although it ultimately rejected the payment of compensation since "the player has not yet joined any other team".*

B. the decision appears to be final and binding."

88. Zobahan stated that the FIFA DRC erroneously interpreted that:

"*In view of the above, the members of the Chamber understood that it can be clearly established that Zobahan initiated a procedure at the national level concerning an alleged breach of contract by the player, where it requested the payment of compensation*."

89. Zobahan claimed that the FIFA DRC were wrong, and the claim before FIFA was admissible because it was of a different object and scope to the complaint before the

FFIRI. Zobahan stated that the complaint before the FFIRI related to a disciplinary matter – i.e. the Player's absence from work – in accordance with Article 30 of the FFIRI Disciplinary Code. However, Zobahan expected the return of the Player at the club, and only wanted disciplinary sanctions imposed on the Player. It was not asking for compensation relating to breach of contract – as FIFA incorrectly determined.

90. In any event, the FFIRI only determined that the Player "*still belonged*" to Zobahan, and regarding any possible disciplinary punishment due to an alleged termination the FFIRI held that it "*is not deemed in charge of any position.*"

91. Zobahan stated that the doctrine related to the principle of *res judicata* clarified that "*there is identity of claims if the claim is the same to the one that was the subject of a final judgment. This is the case when the same parties submitted the same claim based on the same facts.*" Zobahan reiterated that the FFIRI only considered the absence of the Player, and Zobahan did not request it to consider compensation due to the Player's breach of contract. The Player ultimately only left Iran to join Rubin Kazan after the FFIRI Second Decision.

92. Zobahan also noted that despite the Player's request to unilaterally terminate his contract, which he submitted to the Isfahan FA, did not mean that the contract was indeed terminated. Indeed, by returning to the club and meeting with the club's representatives in April 2017 the Player demonstrated that he indeed still "belonged" to Zobahan.

93. Zobahan also noted that the identities of the parties involved in the dispute before the FFIRI (i.e. the Player and Zobahan) and FIFA (i.e. the Player, Zobahan and Rubin Kazan) were different. Zobahan also submitted that if the Player had signed an employment contract with Rubin Kazan (or any foreign club for that matter) at the time of the First FFIRI Decision or Second FFIRI Decision, then the FFIRI Disciplinary Committee would have lacked jurisdiction to investigate Zobahan's complaint as Article 66(3) of the Statutes of the FFIRI state that the federation can only judge "*domestic and national disputes*" and international disputes had to be heard before FIFA. Accordingly, Zobahan stated that the so called "triple identity" test to determine whether *res judicata* applied, was not met.

94. Moreover, Zobahan argued that even if the Panel were to determine that the "triple identity" test was satisfied, it would need to ensure that any decision would be enforceable in Switzerland. Zobahan noted that the Swiss Federal Tribunal ("SFT") had determined that "*the principle of res judicata* [is] *only applicable if the foreign judgment could be recognized in Switzerland*" (ATF 127 III 279, at 285).

95. Zobahan noted that pursuant to Article 194 of the PILA, the recognition and enforcement of foreign arbitral awards are governed by the New York Convention, and in order to recognize a foreign award under the New York Convention, the first element to check is whether the decision under scrutiny is a true "arbitral award". In the case at stake, Zobahan argued that there was no doubt that the proceedings before the FFIRI Disciplinary Committee were not true arbitral proceedings but rather "intra-

association" proceedings. On this matter, Zobahan cited *CAS 2010/A/2091*. Zobahan concluded that the Second FFIRI Decision could therefore not be enforceable in Switzerland pursuant to the New York Convention.

96. In light of the above, Zobahan claimed that it was "*not trying to have its legal case heard by several decision-making bodies with the aim to get the most favourable judgment, as FIFA wrongly and surprisingly contended, but to submit the correct matter to the correct decision-making body, a procedure which was illegitimately prevented by FIFA*" in the Appealed Decision.

ii. The Player infringed the Second Employment Contract and then unilaterally terminated it without just cause

97. Zobahan submitted that the Player committed several violations and, finally, unilaterally terminated the Second Employment Contract without just cause.

98. Zobahan noted that prior to the Second FFIRI Decision, the Player refused to play for Zobahan's first team citing an injury, did not participate in training sessions, refused to sign the AFC form to be eligible to play for the club in the AFC Champions League 2017 edition and left the country without authorisation to train with another club (FC Rostov). Throughout that period, Zobahan did not stop showing interest in having the Player back at the club. The club sent numerous letters to the Player requesting him to return, and repeatedly notified the FFIRI of the Player's absence – but not the termination of their relationship. The club even held discussions with the Player and his father in April 2017 with a view to the Player resuming training with the club.

99. However, the Player did not return to training and unilaterally terminated the Second Employment Contract, and then signed a contract with Rubin Kazan on 31 August 2017, without Zobahan's authorisation. Zobahan noted that the Player was still under contract with the club when he signed with Rubin Kazan. This was confirmed in the Second FFIRI Decision, which was not appealed by the Player.

100. Zobahan underlined the distinction between the temporary absence of the Player whilst he was attempting to join FC Rostov, and the definitive termination of the employment relationship with Zobahan when the Player actually signed for Rubin Kazan. Zobahan submitted that the Player and Rubin Kazan were aware of this difference, which is why they sought to argue before FIFA that the Player had terminated the Second Employment Contract by allegedly exercising the buy-out clause at Article 4 – Note 4, which states:

"[…] *In case of recommendation from a foreign club by the agent, 100,000 USD will be paid to the club to issue release letter and ITC for the player.*"

101. Zobahan argued that the intention of this clause was only to allow the First Agent – who signed the Second Employment Contract – to broker such a payment from a foreign club. Zobahan submitted that the above was due to the "*cordial and fruitful*

relationship" between the club and the First Agent. In all other cases, Note 5 of Article 4 applied, which stated:

"[…] *for sport season 2017-2018, the transfer fee of the player (to attend international team) will be agreed by the parties (managing director of the club and player's agent)*"

102. Zobahan also noted that even if the First Agent was the one involved (which was denied), in order for a third club to duly exercise the buy-out clause, "*a proper payment and not a simple offer had to be made.*"

103. The Player filed a letter before FIFA dated 26 January 2017 whereby he had forwarded a letter from FC Rostov whereby the latter was ready to activate the buy-out clause and "*pay compensation*" of USD 100,000. Zobahan submitted that this alleged offer "*was not representing the real will*" of FC Rostov and instead "*was part of a scheme to force* [Zobahan] *to accept the Player's departure.*" Zobahan argued that if any club was truly willing to pay the USD 100,000 to Zobahan, it could have – but this never occurred. In any event, on 20 April 2017 FC Rostov confirmed to Zobahan that it was not even aware of any buy-out clause in the Player's Second Employment Contract and, in any event, it was not interested in the Player.

104. The Player and Rubin Kazan confirmed before FIFA that the Second Agent tried to "*negotiate*" the transfer of the Player with Zobahan. Zobahan noted that if the buyout clause was triggered and FC Rostov really wanted to trigger it, why were any negotiations necessary? Zobahan submitted that the only answer to this question was that the Player and the Second Agent were well aware that they had not triggered the buyout clause and no foreign club (i.e. FC Rostov) was actually interested in the Player's services. This is what the FFIRI Second Decision concluded on 15 August 2017.

105. Moreover, Zobahan noted that the Player himself released a press interview in which he regretted his own conduct, held meetings with Zobahan to discuss returning to training, and finally accepted the salaries paid by the club after January 2017. According, even if the Player purported to terminate the Second Employment Contract in January 2017 (which was strongly denied), Zobahan stated that the Player's own behaviour "*annulled in practice any possible previous termination.*" Consequently, the only definitive termination in the present case is the one perpetuated by the Player on 31 August 2017 when he signed with Rubin Kazan "*within the protected period*."

106. In summary, Zobahan submitted that the Player breached the Second Employment Contract without just cause on 31 August 2017 when he signed with Rubin Kazan, and should therefore be liable for sporting and economic sanctions according to Article 17 of the FIFA Regulations on the Status and Transfer of Players ("RSTP"). Moreover, Rubin Kazan induced the Player to breach his contract.

iii. Compensation to be awarded to Zobahan

107. Zobahan noted that Article 7.5 of the Second Employment Contract states:

"*If the player includes the contract with the other clubs during the contract term, the club can cancel the contract in unilaterally and after determination of the loss the club can return the damages and the player is obliged to accept it.*"

108. Zobahan stated that the above clause meant that the Player accepted he had to pay Zobahan an amount of damages that the club determines for his termination without just cause. The club based its request on such a clause in combination with Article 17 of the RSTP, and FIFA/CAS jurisprudence. Zobahan cited *CAS 2014/A/3684-3693* in this regard.

a. Loss of transfer fee

109. Zobahan argued that the Player and Rubin Kazan were incorrect in arguing before FIFA that the loss of a transfer fee is not a criteria to take into account under Article 17 of the RSTP. Zobahan cited *TAS 2005/A/902-903* and *CAS 2009/A/1880-1881* in this regard. Zobahan argued that there "*was no doubt*" that as a consequence of the Player's actions the club lost the opportunity to receive a substantial transfer fee – particularly given that he is one of the Iran's most talented young players.

110. Zobahan noted that it had rejected an offer of EUR 300,000 from a Russian club as "*it was very far from the correct value of the Player*." Zobahan rejected an offer of EUR 500,000 from Rubin Kazan, until the latter decided to proceed with signing the Player without Zobahan's authorisation. Moreover, Zobahan claims it was made aware that AC Milan and Atlético Madrid were interested in the Player, but because he was refusing to train with Zobahan those two clubs were unable to evaluate him, causing them to lose interest.

111. Zobahan replied to Rubin Kazan's offer for a transfer of the Player by requesting USD 5 million for the Player. Zobahan noted that Rubin Kazan could have chosen to organise a proper transfer for the Player, but instead chose to proceed with signing the Player without Zobahan's involvement – despite knowing the transfer price of the Player. Consequently, Rubin Kazan not only directly participated in the breach of the Second Employment Contract by the Player, but it also denied Zobahan a clear opportunity to get a valuable transfer fee for the Player. By doing so, it assumed the risk of being condemned to pay compensation for the same amount of money.

112. Zobahan also noted that in the First Rubin Kazan Employment Contract, Rubin Kazan had inserted a penalty clause of EUR 5 million in Annex 4.

b. Other elements to take into consideration when defining compensation

113. Zobahan submitted there were various other elements that the Panel could take into account which confirm that USD 5 million "*is a realistic and plausible amount of compensation in this case*."

i. Remuneration under the new contract

114. Zobahan submitted that remuneration under a new contract is an indicator of the player's real market value, citing *CAS 2008/A/1568* and *CAS 2008/A/1519-1520*. This is why CAS jurisprudence usually takes into consideration the new salary multiplied by the months remaining on the terminated contract (*CAS 2009/A/1880-1881*, *CAS 2007/A/1358*).

115. In the case at hand, Zobahan was paying the Player the equivalent of USD 51,480 at the time of his unjustified breach of contract, whereas Rubin Kazan offered the Player a salary of at least USD 300,000 plus bonuses.

116. Zobahan stated that it was "*suspicious*" that Rubin Kazan renewed the Player's contract in 2018, with a higher remuneration, at the end of the term of the Second Employment Contract. Zobahan submitted that this was a disguised way to avoid the Player having to pay more compensation to Zobahan according to his "*real*" new remuneration at Rubin Kazan. Accordingly, Zobahan requested that the Panel took into account an average of the First Rubin Kazan Employment Contract and Second Rubin Kazan Employment Contract, so as to enable an accurate calculation of the amounts earned by the Player.

117. Zobahan submitted that the difference in values of the remuneration given to the Player by Zobahan compared to Rubin Kazan was the reason that the Player decided to unilaterally terminate the Second Employment Contract without just cause. Further, "*to be sure of being able to act in such a way,* [Rubin Kazan] *simply had to convince the Player by offering him a higher salary than Zobahan, even if not a salary truly reflecting the potential of the young Player.*"

ii. Market value of the Player

118. However, Zobahan claimed that the new remuneration was not the most important criteria in the overall context of the dispute. Zobahan claimed that the "*fundamental part*" of the context was Zobahan not being able to bind the Player to their club for a long time, "*in the case of a probable 'explosion' of the young Player*" as it meant that it could not transfer the Player on to a bigger club for a large transfer fee.

iii. Violation during the Protected Period

119. Zobahan also noted that the breach of contract by the Player occurred during the Protected Period (under the RSTP), and this was "*another clear element allowing the imposition of an amount of USD 5,000,000 as value of compensation in this case.*"

iv. Specificity of sport

120. Zobahan claimed that the 'specificity of sport' should also be taken into consideration when determining the amount of compensation for breach of contract under Article 17 of the RSTP.

121. Zobahan noted the bad faith behaviour and prolonged absence of the Player from the club. Zobahan cited FIFA DRC Decision no. 75368_971 on 23 March 2016, which

concluded that a prolonged absence can justify the suspension of the payments of a player's salary and even a serious violation of the player's obligations. In the present case, the breach not only occurred during the protected period, but was also a final result of several previous persistent violations by the Player.

122. In the FIFA DRC Decision dated 23 March 2006, no. 36460_739, the FIFA DRC concluded that a player who was absent from his club for three months resulted in not only a financial damage to his club, but also affected the sporting side of their relationship since the club could not rely upon his services during all the period of unjustified absence. This was considered as an aggravating factor in the amount of compensation awarded to the club.

123. The Player and Rubin Kazan argued at FIFA that Zobahan's results were not negatively impacted in his absence and on the contrary, it actually improved. However, Zobahan claimed that a young talent like the Player is "*not a short-term valuable asset on the sports results of a first team club.*" Moreover, the Player leaving in the manner he did set a negative example for all young players at the club, and "*destabilized* [Zobahan's] *policies and image towards the public opinion and the fans. This is a clear indirect damage that the Player provoked to Zobahan.*"

124. Zobahan claimed it owns a "*very strong well-founded academy and has a great reputation for professionalism in this regard*" and noted that if the Player had transferred to another club "*via regular customary approach as a role model*", then in turn the club could have also transferred other players who had "*long been nurtured and developed*" to wealthier European clubs. Instead, Zobahan argued that its "*reliability and credit have been ill-treated and hurt*" as a result of the Player's actions, "*not only towards foreign clubs but also amongst the players in its academy, who will see an opportunity to follow the Player's path and breach their employment contracts.*" The Player's actions should therefore be considered as an aggravating circumstance.

125. Zobahan submitted that it also suffered financial damage in paying for the Player's accommodation whilst he was absent from the club, amounting to USD 5,448.25.

126. Zobahan also noted that the Player refused to sign the form allowing the club to register him for the AFC Champions League 2017 edition. The timing of it was such that the club could not recruit a replacement for the competition.

127. Zobahan also stated that the Player was recognised by The Guardian (British newspaper) in October 2015 as one of the 50 best young and promising players in the world. Given that the newspaper had previously recognised talents such as Wayne Rooney, Robin Van Persie, Robinho and the like, "*this media can be trusted as a reliable source at the time to expect a good career of the players it displays therein.*"

128. The Player also participated in the FIFA U20 World Cup held in Korea in May/June 2017, performing "*exceptionally*" and launching his career worldwide. Zobahan noted that Rubin Kazan's interest in the Player arose immediately after the end of this tournament.

129. In anticipation of any argument to the contrary by the Player or Rubin Kazan, Zobahan argued that the "value" of the Player must be considered at the time of the breach on 31 August 2017 – and what happened after that is "*irrelevant*." Zobahan claimed that the fact the Player ultimately played less than expected at Rubin Kazan was outside Zobahan's control and could be a consequence of several combined factors (adaptation to Russian football, other players in the same position, injuries etc.) that may not have occurred at a different club.

130. Moreover, Zobahan argued that the football market has "*suffered an exponential growth in economic terms in the last five-ten years*" and there have been big transfer fees paid for talented young players like the Player. Zobahan submitted a report of various young players and their reported market value (such as *inter alia* Youcef Atal, Hichem Boudaoui, Dusan Vlahovic and Sasa Lukic) and noted their market values were all in the millions of Euros. There were also players from countries ranked below Iran that were transferred for millions of Euros. Zobahan argued that this demonstrates that it was not only rising superstars that were being transferred for millions of Euros, "*but also average prominent players of modest countries like Iran.*"

131. Zobahan also argued that Rubin Kazan's conduct should also be taken into account in the compensation amount. Zobahan noted that Rubin Kazan not only registered the Player despite knowing his contractual situation with Zobahan, but "*even cheated to FIFA to obtain his provisional registration.*" Zobahan stated that before FIFA Rubin Kazan submitted the Second FFIRI Decision in Farsi, but submitted the English translation of the First FFIRI Decision. Rubin Kazan therefore misled FIFA by misrepresenting that the Player was free from any obligations to Zobahan. Zobahan claimed that Rubin Kazan purposely used the wrong translation to "*ease and speed up the illegitimate authorization of the provisional registration of the Player*" with Rubin Kazan. By doing so, Rubin Kazan not only induced the Player to breach his contract but also contravened the spirit of contractual stability by using artificial evidence in the registration procedure.

132. The Player also alleged to have terminated the Second Employment Contract in compliance with FFIRI regulations, when he had simply submitted his case to a local provincial football association – which was not the relevant body. This showed the "*bad faith attitude*" of the Player and Rubin Kazan which "*must be strongly stopped by CAS by imposing the compensation asked by Zobahan*" in the amount of USD 5 million.

133. Alternatively, Zobahan argued that the aggravating factors listed above should be considered by the Panel as the basis for any calculation of damages the Panel considered appropriate.

iv. Sporting sanctions

134. Zobahan cited Articles 17.3 and 17.4 of the RSTP and argued that sporting sanctions should be imposed on the Player and Rubin Kazan.

135. Zobahan claimed that it was the Second Agent, in conjunction with the coach Mr Berdyev (who was ultimately the coach of Rubin Kazan when it signed the Player), who influenced the Player to act in the manner he did. Zobahan claimed that Rubin Kazan acted with "*serious negligence*" when it relied solely on the warranties of a new player on his status before signing him (*FIFA DRC Decision dated 23 March 2006, no. 36460_739*). Indeed, the present situation was even worse because Rubin Kazan was informed by Zobahan of the Player's status, and even knew that Zobahan was looking for USD 5m for the transfer of the Player.

136. Before FIFA Rubin Kazan had argued that a club cannot be deemed to have induced a player if "*some employees of such club*" influenced a player's decision to terminate a contract. However, Zobahan claimed that Mr Berdyev was not just "*some employee*" but in fact was very influential at Rubin Kazan (Zobahan noted that Rubin Kazan signed 8 players from the coach's former club FC Rostov for the 2017/18 season).

137. Zobahan argued that if the Panel was to simply condemn the Player to the payment of a small compensation amount, "*the excellent and valuable job made by clubs like* [Zobahan] *and the pivotal principle of "contractual stability" would be irredeemably endangered.*"

138. Therefore, Zobahan requested the imposition of sporting sanctions on the Player and Rubin Kazan. Alternatively, Zobahan requested the Panel to order FIFA to impose sporting sanctions or subsidiarily, to refer the matter back to FIFA in order for it to impose sporting sanctions. Accordingly, Zobahan has included FIFA as a party to this appeal, and with respect to this procedural step it cited *inter alia CAS 2007/A/1369*, *CAS 2015/A/4310* and *CAS 2017/A/5359*.

B. The Player's and Rubin Kazan's submissions

139. As the Player and Rubin Kazan made joint submissions throughout this matter, their submissions have been summarised collectively below.

140. In their Answer, the Player and Rubin Kazan requested the following prayers for relief:

*"**Primary***

1. Dismiss the appeal filed by [Zobahan] *and confirm the* [Appealed Decision].

Alternatively, only if item 1 above is rejected

2. Order the [Player] *to pay* [Zobahan] *EUR 3,900 plus interest of 5% p.a. as of 31 August 2017.*

3. Reject [Zobahan's] *request that* [Rubin Kazan] *shall be held jointly and severally liable with* [the Player] *for the payment of any compensation due to* [Zobahan].

4. Reject [Zobahan's] *request that sporting sanctions shall be imposed on the* [Player] *and/or* [Rubin Kazan].

In any event

5. Order [Zobahan] *to bear any costs incurred with the present procedure.*

6. Order [Zobahan] *to pay the* [Player] *and* [Rubin Kazan] *contributions toward their legal and other costs in amounts to be determined at the discretion of the Panel.*"

141. In summary, the Player and Rubin Kazan submitted the following arguments in support of their Answer to Zobahan's Appeal:

i. Res judicata

142. The definition of *res judicata* is not codified in the RSTP, but is recognised by the Swiss Federal Tribunal ("SFT") and in CAS jurisprudence as "*a fundamental principle of Swiss procedural public policy whose violation would yield the nullity of the award*" (*CAS 2010/A/2091*; Cf. 4A_490/2009).

143. The Player and Rubin Kazan stated that *res judicata* refers to the general doctrine that an earlier and final adjudication by a court or arbitration tribunal is conclusive in subsequent proceedings involving the same subject matter or relief, the same legal grounds, and the same parties – the so called 'triple identity' criteria (*CAS 2010/A/2091*). If these criteria are met, then an arbitral tribunal cannot issue a new award on the merits in the same matter. With respect to the principle of *res judicata*, the Player and Rubin Kazan cited *inter alia* SFT 4A_6/2014, *CAS 2015/A/4195* and *CAS 2015/A/4350*.

144. The Player and Rubin Kazan claimed that Zobahan filed a claim against the Player before the FFIRI Disciplinary Committee on 26 February 2017. Article 30 of the FFIRI Disciplinary Regulations states that the FFIRI Disciplinary Committee is competent to "*handling all disciplinary violations and material and moral damages due to violations subjected to the Regulations at hand.*"

145. The FFIRI Disciplinary Committee issued the Second FFIRI Decision on 15 August 2017, and the Player and Rubin Kazan claimed that FIFA was correct in determining in the Appealed Decision that this matter was therefore *res judicata*.

ii. Termination of the Second Employment Contract

146. In the event the Panel determines that the *res judicata* effects of the Second FFIRI Decision does not extend to the parties, the Player and Rubin Kazan noted that the FIFA Commentary to the RSTP states the following:

"The principle of respect of contract is, however, not an absolute one. In fact, both a player and a club may terminate a contract with just cause, i.e. for a valid reason. [Article 13]

[…]

The parties may, however, stipulate in the contract the amount that the player shall pay to the club as compensation in order to unilaterally terminate the contract (a so-called buyout clause). The advantage of this clause is that the parties mutually agree on the amount at the very beginning and fix this in the contract. By paying this amount to the club, the player is entitled to unilaterally terminate the employment contract. With this buyout clause, the parties agree to give the player the opportunity to cancel the contract at any moment and without a valid reason, i.e. also during the protected period, and as such, no sporting sanctions may be imposed on the player as a result of the premature termination. [Article 17]*"*

147. Further, CAS Panels (*CAS 2013/A/3411* and *CAS 2016/A/4550*) have held:

"*As made clear by such definition* [cf. FIFA Commentary Article 17 RSTP], *which corresponds to standard practice in international football, the parties, while entering into a contract, may agree that at a certain (or at any) moment one of the parties (normally, the player) may terminate the contract, by simple notice and by paying a stipulated amount. In other words, one of the parties (ordinarily, the club) accepts in advance that the contract may be terminated: as a result, when the contract is effectively terminated, such termination can be deemed to be based on the parties' (prior) consent. Therefore, no breach occurs, and the party terminating the contract is not liable for any sporting sanction. It is only bound to pay the stipulated amount – which represents the "consideration" (or "price") for the termination.*"

148. The Panel in *CAS 2014/A/3686* stated:

"[T]he FIFA regulations do not expressly prohibit unilateral options to terminate a player contract. While Article 13 FIFA RSTP states that a player contract may be terminated only upon expiry of its term or by mutual agreement, the FIFA RSTP itself provide for exceptions from that principle in Articles 14 and 15. Moreover, Article 13 of the FIFA RSTP does not prevent the parties from agreeing on a buy-out clause (see paragraph 1.3 of the official Commentary on Article 17 RSTP). A buy-out clause is an exception from Article 13 FIFA RSTP. This exception is well-recognized even though the FIFA RSTP do not expressly provide for it. Hence, the principle in Article 13 FIFA RSTP is not absolute and, as can be seen with buy-out clauses, to a limited degree it is even open towards contractual agreements that introduce alternative ways for terminating the contract without breaching it."

149. In the present case, the Player and Rubin Kazan noted that Note 2 of Article 4 of the Second Employment Contract provided:

"*in case of recommendation from a foreign club by the agent, 100.000 USD will be paid to the club to issue release letter and ITC for the player.*"

150. Despite the above Release Clause, when the Player sent Zobahan a transfer offer from Rostov FC for the amount of USD 100,000, Zobahan refused to release the Player. Zobahan insisted on receiving a higher offer. The Player therefore filed a request for the unilateral termination of the contract with the Isfahan FA. The Player later joined Rubin Kazan – who paid Zobahan the amount of EUR 106,436 (approx. USD 115,000) for the Player.

151. The Player and Rubin Kazan claimed that Zobahan never contested the validity of the Release Clause in Note 2 of Article 4 of the Second Employment Contract. Zobahan only challenged the valid triggering of the clause. The Player and Rubin Kazan argued that it was a valid Release Clause, particularly given the Player's monthly salary at the time (approx. USD 2,380).

152. The Player and Rubin Kazan also claimed that Zobahan did not contest receiving the Player's letter of 26 January 2017 which contained an offer from Rostov FC. Instead, Zobahan were alleging that the offer by Rostov FC "*was not representing the actual will*" of the club, and that Rostov FC was not actually interested in the Player.

153. Thirdly, contrary to Zobahan's claims, the Release Clause does not refer to any specific agent. The clause is silent as to the identity of the agent who would procure a transfer offer from a foreign club for the Player. In any case, the identity of the broker is not "*an essentialia negotii of a buyout or release clause*", such as the names of the parties (the player and the club), the performance (i.e. termination of the contract by one the parties – usually the player), and the consideration (i.e. the fee to be paid depending on the clause). Therefore, Zobahan's "*desperate argument regarding the identity of the agent should fail.*" The Player and Rubin Kazan claimed it was noteworthy that Zobahan "*did not put much of an effort*" in its Appeal Brief to prove the parties' real intent regarding the Release Clause.

154. In response to Zobahan's claim that no club had actually made a payment of USD 100,000 as required by the Release Clause, the Player and Rubin Kazan noted that the Player informed Zobahan of FC Rostov's transfer offer of USD 100,000 and in its letter, FC Rostov requested the relevant bank details for payment. However, Zobahan never provided this. The Player and Rubin Kazan noted that pursuant to Article 156 of the Swiss CO ("SCO"), a "*condition is deemed fulfilled where one of the parties has prevented its fulfilment by acting in bad faith.*" Therefore, the non-payment of this fee cannot be held to the detriment of the Player or Rubin Kazan, as Zobahan "*was clearly a creditor in default and acted in bad faith.*"

155. Instead of providing the bank account details as requested to FC Rostov and releasing the Player, Zobahan instead filed a complaint before the FFIRI Disciplinary Committee to retain the Player against his will, thereby breaching its express and implied duties and promises under the Release Clause.

156. The Player and Rubin Kazan submitted that the CAS has previously held that when a player and club agree on a buyout or release clause in favour of the player, "*the club accepts in advance that the contract may be terminated: as a result, when the contract is effectively terminated, such termination can be deemed to be based on the parties' (prior) consent*" (*CAS 2013/A/3411*). In the present case, pursuant to the Release Clause Zobahan gave its consent in advance to the Player's transfer to a foreign club at any time, subject to the provision of an offer of USD 100,000.

157. In light of the above, once FC Rostov made the offer of USD 100,000 and the Player provided his explicit consent to move to FC Rostov, "*the parties intended to conclude a definitive transfer agreement for the move of the Player to FC Rostov on 26 January 2017.*" The Player and Rubin Kazan argued that this agreement did not require the conclusion of a further contract which meant that the original agreement was not binding on the parties. The subsequent letter from FC Rostov on 20 April 2017 "*has no legal impact on the validity of the transfer agreement*", and FC Rostov could not withdraw from the transfer agreement without facing the consequences of its actions.

158. Similarly, the fact that the transfer of the Player took place "*outside the usual scheme of a 'sale' contract does not take away from the validity of the agreement*" (*CAS 2016/A/4462*). The Player and Zobahan submitted that it was common practice in football for a transfer to take place by triggering a buyout, without the conclusion of a separate transfer agreement. Similar to *CAS 2016/A/4462*, the *essentialia negotii* of a transfer agreement were present. Consequently, Zobahan had the right to claim the payment of the release fee of USD 100,000 from FC Rostov.

159. If it failed to claim this amount, that should be attributed to Zobahan's negligence and cannot be to the detriment of the Player and Rubin Kazan. Zobahan cannot invoke its default and/or negligence as a defensive strategy (*nemo auditur propriam turpitudinem allegans*). Such behaviour did not merit protection from the Panel.

160. In any event, Zobahan had received more than USD 100,000 as training compensation for the Player, and training compensation is regarded as being included in transfer compensation unless expressly agreed otherwise (*CAS 2011/A/2559*). The Player and Rubin Kazan argued that the amount paid by Rubin Kazan to Zobahan "*should be deemed a final and complete discharge of the obligation to pay Zobahan USD 100,000 per the Release Clause.*"

161. In response to Zobahan's claims that the Player already knew the club's bank details, the Player and Rubin Kazan noted that Zobahan bore the burden of proof to establish this (Article 8 of the SCO) and it did not produce any evidence of to prove this allegation. The Player's salary was paid to him in local currency, whereas the Release Clause needed to be paid in US dollars. The Player did not know Zobahan's bank details and was not aware of whether Zobahan's bank account would accept US dollars at all – particularly given the restrictions on international money transfers imposed by the USD and EU on Iran. The only payment evidence furnished by Zobahan in these proceedings did not indicate the former's bank account details at all. Therefore, Zobahan failed to discharge its burden of proof.

162. The Player and Rubin Kazan also submitted that whether the Player addressed his unilateral termination form to the correct body within the FFIRI can be left moot because the Player was not obliged to give reasons in writing in the absence of such a request from Zobahan (Article 337.1 of the SCO).

163. Further, the Player and Rubin Kazan argued that Zobahan's insistence that the Player continue to play for the Zobahan after the Second FFIRI Decision "*is in contradiction with a long and consistent line of CAS jurisprudence, as well as the jurisprudence of many municipal systems of law, that will not require a person to perform a contract for personal services against his or her will, and the remedy for any breach of a valid contract lies in damages*" (*CAS 2004/A/678*, *CAS 2006/A/1157* and *CAS 2006/A/1100*). This is also the position under Swiss law (Article 337(d) of the SCO).

164. Accordingly, the Player and Rubin Kazan submitted that no breach occurred when the Player triggered the Release Clause in January 2017.

165. The Player and Rubin Kazan also argued that even if the Panel were to consider that the Player had not triggered the Release Clause, the Player's conduct as of 26 January 2017 should be interpreted as a termination of the Second Employment Contract, with effect from the latter date or at least from 29 January 2017. In this respect, the CAS has held many times that even an unlawful, premature termination does terminate the contractual relationship *ex nunc* (*CAS 2008/A/1519, 1520; CAS 2012/A/2874; CAS 2013/A/3309*; *CAS 2014/A/3463 & 3464*).

166. Moreover, the Player strongly denied having agreed to re-join Zobahan after his departure in January 2017. Even if that was the case, *quad non*, the parties had to enter into a new employment contract after the termination of the Second Employment Contract, which never happened. Zobahan's arguments to the contrary should be rejected due to the lack of a legal basis and supporting evidence.

iii. Alternatively, Zobahan's contributory fault or negligence

167. In the event the above arguments were rejected by the Panel, in the alterative the Player and Rubin Kazan submitted that the Panel should consider Zobahan's contributory fault or negligence to completely deny or at least significantly reduce any liability by the Player for damages towards Zobahan.

168. The Player and Rubin Kazan cited the following provisions of the SCO:

> *"43.1 The judge shall determine the nature and amount of compensation for the damage sustained, taking into account the circumstances as well as the degree of fault. […]*
>
> *44.1 The judge may reduce or completely deny any ability for damages if the damaged party consented to the act causing the damage, or if circumstances for which he is responsible have caused or aggravated the damage, or have otherwise adversely affected the position of the person liable. […]*

99.3 The provisions concerning the extent of liability in case of tort also apply by analogy to acts in breach of contract."

169. The Player and Rubin Kazan argued that according to Article 43.1 of the SCO, the court can determine compensation due according to the circumstances as well as degree of fault. Legal reduction factors should be considered – the slightness of the fault (Article 43.1 of the SCO), the contributory fault of the creditor (Article 44.1 of the SCO), or other circumstances (*CAS 2005/A/902 & 903*).

170. The Player and Rubin Kazan also submitted that pursuant to Article 44 of the SCO, compensation could be reduced if the claiming party has contributed to causing or aggravating the damage. Similarly, all monies earned by the claiming party which would not have been received if the breach had not occurred must be deducted from the compensation. In addition, in accordance with Article 43 of the SCO, all circumstances of the case and in particular, the seriousness of the fault, may be taken into account in assessing the amount of damages (*CAS 2007/A/1342*). Similarly, a CAS panel has held that according to Article 44.1 of the SCO, compensation might be reduced if there are circumstances attributable to the injured party that helped to give rise to or increase the damage. The inactivity of the employee shall be taken into account in awarding compensation (*CAS 2017/A/5312*).

171. The Player and Rubin Kazan also cited the FIFA case DRC No. 18-00467, and argued that Zobahan's behaviour upon receipt of the Player's letter dated 26 January 2017 (enclosing the offer from FC Rostov) was "*far from impeccable and contributed to the situation.*" In particular, Zobahan:

- Did not proceed to terminate the Second Employment Contract, as agreed;
- Did not issue a release letter to the Player, as required by the Release Clause;
- Did not provide its bank account details to receive the release fee of USD 100,000 from FC Rostov, as requested by the Player and FC Rostov;
- Insisted on receiving an increased offer and complained to the FFIRI Disciplinary Committee with the intent to retain the Player against his will;
- Did not claim the release fee of USD 100,000 from FC Rostov to the FIFA Players' Status Committee, despite the existence of a valid transfer agreement for the Player.

172. The Player and Rubin Kazan argued that such conduct constituted a "*lack of correctness on its part, tainting the justifications it advanced as excuses to do what it wished, disregarding its contractual commitments.*" All that it proves is that Zobahan had no real or genuine intent to retain the Player, which is corroborated by its later proposal to Rubin Kazan requesting a transfer fee of USD 5 million. Zobahan should bear responsibility for "*its remarkable bad faith.*"

173. Consequently, by its behaviour from 26 January 2017 onwards, Zobahan's actions adversely affected the position of the Player. Zobahan acted in bad faith by not agreeing to the Player's transfer to FC Rostov on the terms specified in the Release Clause and by actually preventing the payment of USD 100,000. The Panel should consider Zobahan's contributory fault or negligence to completely deny the Player's liability for damages like the DRC did in similar circumstances in case No. 18-00467.

174. Alternatively, if the above is rejected by the Panel, the Player and Rubin Kazan submitted that in line with longstanding CAS jurisprudence, pursuant to the principle of 'positive interest' an injured party is entitled to compensation aimed at reinstating them to the position it would have been in if the contract had been performed until its expiry (*CAS 2018/A/5607 & 5608*). Along with this, the injured party has a duty to mitigate its losses (*CAS 2008/A/1519*).

iv. Other factors to take into account when determining compensation

i. Loss of transfer fee

175. The Player and Rubin Kazan noted that whilst transfer fees can be included in a calculation for compensation, "*a logical nexus is required*" (*CAS 2017/A/4935*).

176. The Player and Rubin Kazan also cited *CAS 2007/A/1314*, which stated (free translation):

> *"41. Furthermore, the Panel emphasizes that it is important to clearly distinguish the notion of "loss of chance" from the traditional notion of "loss of profits" (compensation for the so-called "positive" damage) that is classically applied in Swiss law, as in most legal systems, with respect to the establishment of compensable damages.*
>
> *42. As regards Swiss law, the Federal Court in principle rejected the application of the concept of loss of opportunity in a judgment of 13 June 2007 (4A_61/2007) and held that "the right of the judge to retain the existence of injury on an equitable basis presupposes that the harm is practically certain.*"

177. In *CAS 2008/A/1519 & 1520*, the CAS panel stated:

> *"117. […] Indeed, whether losing a mere chance to achieve a transfer can be considered as being itself damage, is debatable, but the correct handling of the issue is straightforward: the loss of a possible transfer fee can be considered a compensable damage head if the usual conditions are met, i.e. in particular if between the breach or the unjustified termination of the agreement and the lost opportunity to realize a certain profit there is the necessary logical nexus.*
>
> *118. One may take into consideration for instance whether an offer made by a third party was accepted or not by the original club and/or by the player, but the transfer finally failed because of the unjustified departure of the player to another club.*

> *119. On the other side, to avoid any over-compensation, if a club will claim – and receive – compensation for a lost transfer fee, it will hardly be in a position to claim additionally also the value of the services lost for the remaining duration of the agreement: would have the club transferred the player, it would have had the transfer fee, but not the services of the player any longer.*
>
> *120. Therefore, […] a loss of a transfer fee may or may not be a compensable damage head, depending on whether the club is in a position to prove that the conditions to claim compensation of such a loss of profits are met, including in particular the logical nexus between the termination and the claimed damage."*

178. The Player and Rubin Kazan argued that the 'loss of chance to receive a transfer fee' is materially different to the traditional notion of 'loss of profits' and finds no legal basis in Swiss law or the RSTP. Only a claim for loss of profits may have merits, so long as there is a logical nexus between the termination of the Second Employment Contract and the claimed damage.

179. The Player and Rubin Kazan claimed that Zobahan could have claimed "loss of profits" from FC Rostov as the Player joined FC Rostov training without signing any contract despite the transfer offer of FC Rostov of USD 100,000. There would have been a logical nexus between the termination of the Second Employment Contract and the claimed damage. However, Zobahan "*acted negligently*" and did not file a claim against FC Rostov at FIFA. Therefore, Zobahan is estopped from claiming the release fee of USD 100,000 from the Player and Rubin Kazan now. Moreover, Rubin Kazan already paid Zobahan more than this sum in training compensation, which would not have been due had Zobahan accepted to transfer the Player for USD 100,000 per the Release Clause. Consequently, Zobahan is estopped from claiming loss of profits from the offer from FC Rostov.

180. The Player and Rubin Kazan also rejected Zobahan's arguments that there would be loss of profits from the latter rejecting offers from clubs other than FC Rostov (e.g. the alleged offer from FC Zenit for EUR 300,000), as the Player was not aware of any such offers nor did he consent to any such transfers. Therefore, there was no logical nexus between the termination of the Second Employment Contract and the damage claimed by Zobahan based on the alleged transfer offers. Rubin Kazan also denied ever making an offer to Zobahan of EUR 500,000 for the Player.

181. The Player and Rubin Kazan also rejected Zobahan's arguments regarding the actions of Mr Aksimsek as irrelevant to the case at hand.

182. Lastly, the Player and Rubin Kazan rejected Zobahan's assertions that the Panel should consider the EUR 5 million transfer offer Zobahan made to Rubin Kazan on 4 September 2017. The Player and Rubin Kazan noted that the CAS panel in *CAS 2018/A/5607 & 5608* noted "*in almost identical circumstances*":

> *"116. While the Panel concurs with this approach, it notes that in the present case there is no evidence that RSCA suffered such a lost opportunity. In the present*

case, RSCA never received an offer from a third club to acquire the Player for EUR 4 million. There is no question that CA Belgrano and RSCA discussed the possibility of transferring the Player from the Belgian club to the Argentinian club. However, CA Belgrano never made any financial offer to RSCA. It only inquired about possibility obtaining the player on a free loan and then, once RSCA made a EUR 4 million request, sent no response at all, thereby implicitly manifesting its lack of interest in acquiring the Player at that price. Therefore, it cannot be said that RSCA lost out on a transfer fee of EUR 4 million, as such hypothetical price was set out by RSCA itself with no evidence on the record that in the market there could be any club interested in spending that amount for the Player.

117. Moreover, the Panel does not consider the EUR 4 million proposal to be relevant in determining the value of the Player, i.e., more precisely, what RSCA would have had to spend on the market to contract the services of an analogous player. In the Panel's view, only a third party offer made in good faith may be a relevant indicator of the Player's value, because only that type of offer confirms the amount that a club would actually be willing and ready to pay for acquiring the Player's services. As Matuzalem held, a third party offer "can provide information on the value of the services of the player, and a panel shall take into consideration a third party good faith offer made to the club as an additional element to access the value of the services of the player…" (CAS 2008/A/1519 & 1520, at para. 104). Conversely, the Panel considers that an offer made by the damaged club, even if made in tempore non suspecto, does not necessarily reflect the true player's value. The Panel sees it as very plausible for a selling club to begin negotiations putting forward a much higher price than the concerned player's actual market value, to then lower the amount throughout the negotiations. Moreover, it is not uncommon for a club to set as a price tag an unreasonable amount far above the market value in the situation where it does not truly wish to part with the player. An offer from the damaged club is therefore too subject and unreliable to be considered in assessing the value of the Player's services."

183. In the present case, Zobahan did not even make its offer of EUR 5 million *in tempore non suspecto* and in any even Rubin Kazan did not reply at all, thereby implicitly confirming its lack of interest at acquiring the Player at that price. The Panel should not consider that Zobahan lost out on a transfer fee of EUR 5 million, as "*such an argument is far too opportunistic to be upheld.*" By signing the Player Rubin Kazan may have assumed the risk of having to pay some compensation under Article 17.2 of the RSTP (which was disputed), but not necessarily the EUR 5 million demanded by Zobahan.

184. The Player and Rubin Kazan argued that Zobahan did not expect to transfer the Player to any other club other than FC Rostov and to obtain a profit above USD 100,000, a sum which was already paid by Rubin Kazan to Zobahan. Hence, the Player and Rubin Kazan could not be ordered to pay this amount again, because that would amount to unjust enrichment.

ii. The remuneration element

185. The Player and Rubin Kazan submitted that the CAS has confirmed the average residual value of the old and new contracts as an appropriate method of calculation of the compensation for breach of contract on numerous occasions (*inter alia*, *CAS 2017/A/4935* and *CAS 2014/A/3489 & 3490*).

186. The Player and Rubin Kazan submitted that the residual value of the Second Employment Contract at the date of termination at the end of January 2017 was IRR 2.06m (approx. USD 49,000). The remuneration paid by Rubin Kazan to the Player under the First and Second Rubin Kazan Employment Contracts was USD 56,800. Therefore, the average residual value of the old and new contracts is USD 52,900. The Player and Rubin Kazan stated this proved that the Player did not leave Zobahan for economic reasons as he was unable to raise his remuneration significantly after leaving Zobahan in January 2017.

187. The Player and Rubin Kazan also rejected Zobahan's allegations of missing Annexes in the Second Rubin Kazan Employment Contract, and the alleged suspicious nature of the Player's contract been renewed in 2018. The Player and Rubin Kazan stated that all the annexes to this employment contract were submitted before the CAS. Moreover, the reason for signing a second employment contract with the Player in 2018 was that Rubin Kazan was represented by a different legal entity in 2018 (the reasons for which were dealt with in the CAS case *CAS 2018/A/5977*). The terms of the two contracts were the same, save for the reference to Rubin Kazan's updated legal name. All of Zobahan's unfounded allegations should be rejected.

188. The Player and Rubin Kazan noted that according to CAS jurisprudence (*inter alia*, *CAS 2015/A/5607 & 5608*), the Panel needs to take into account the costs saved by Zobahan due to the Player's departure. In the present case, the Panel should deduct the salaries that Zobahan was no longer obliged to pay the Player for the remaining duration of the Second Employment Contract (i.e. USD 49,000). Accordingly, the final net amount equates to USD 3,900 (i.e. 52,900 less USD 49,000).

189. The Player and Rubin Kazan argued that Zobahan cannot attribute a value of EUR 5 million to the Player, when they were just paying him USD 2,380 a month. As the panel in *CAS 2014/A/3658* noted:

> "70. […] *Clubs cannot seek to profit from a situation whereby they attribute to a player's services a greater value than they are willing to pay the player in return for those services*."

190. No club in the market was willing to pay EUR 5 million for the Player, regardless of his potential. Moreover, when the Player signed with Rubin Kazan he had not played a competitive match in more than 7 months, resulting in a substantial decrease in the value of his services. It is hardly conceivable that any club would have paid a transfer fee for such a player, especially given that any club could have signed the Player as a free agent as of 1 January 2018.

191. The Player and Rubin Kazan also rejected Zobahan's argument that the indemnity amount of EUR 5 million set out in the First and Second Rubin Kazan Employment contracts was relevant to the present calculation. The Player and Rubin Kazan argued that this fee was set at this price as a deterrent for the Player, not as his market value. The CAS has never considered a liquidated damages clause agreed between a player and a new club as an objective criterion under Article 17.1 of the RSTP.

iii. Market value

192. Although Zobahan mentioned this factor as a criterion to calculate compensation in its Appeal Brief, the Player and Rubin Kazan argued that it failed to substantiate it. In particular, Zobahan did not explain how the Panel should assess the Player's market value, which objective criteria should be used in the calculation (such as comparisons to other players in the same position, age etc.), nor did Zobahan provide any expert evidence or report. Consequently, all of Zobahan's arguments in this regard should be rejected.

iv. The breach falls within the Protected Period

193. The Player and Rubin Kazan did not dispute that the alleged breach fell within the Protected Period as defined in the RSTP, however they claimed that this did not assist Zobahan in increasing the compensation due.

194. The criterion of "Protected Period" has only ever been applied by CAS panels in the context of issuing sporting sanctions, and has never been considered to increase the compensation for damages. Even if it was to be relevant to the issue of compensation, the Player and Rubin Kazan stated that Zobahan failed to explain how it could result in the imposition of an amount of USD 5m as the value of compensation.

v. Specificity of sport

195. The Player and Rubin Kazan argued that the 'specificity of sport' is a reference to the goal of finding particular solutions for the football world which enable those applying the provision to strike a reasonable balance between the needs of contractual stability, on the one hand, and the needs of free movement of players, on the other hand. The "specificity of sport" is not an additional head of compensation, nor a criterion allowing deciding in equity, but a correcting factor, which allows the Panel to take into consideration other objective elements, which are not envisaged under the other criteria enumerated under Article 17.1 of the RSTP. It is not meant to award additional amounts where facts and circumstances of the case have already been taken into account sufficiently under other heads of damage.

196. According to CAS jurisprudence (*e.g. CAS 2017/A/4935*, *CAS 2018/A/5607 & 5608*), one of the factors to consider when deciding whether the specificity of sport requires a correction in the amount of compensation awarded is the behaviour of the parties. In the present case, Zobahan has failed to provide any evidence of suffering any sporting damages as a result of the termination of the Second Employment Contract that was

otherwise not compensable. Therefore, the specificity of sport criterion is of no assistance to Zobahan, who was already rewarded for the investment and training in the Player through the training compensation mechanism outlined in the RSTP.

197. The Player claimed he expected FC Rostov would pay the release fee of USD 100,000 to Zobahan (*res inter alios acta*). In addition to spending seven months without a job at the age of 18, waiting for a club to sign him and for that club to obtain an ITC, he may now be ordered to pay compensation to Zobahan. Rubin Kazan claimed it acted in good faith when it signed the Player, who was unemployed for more than 7 months. Rubin Kazan claimed that the Second FFIRI Decision could not be attributed to it as it was not a party to those proceedings. Rubin Kazan made its own assessment of the situation, and concluded that the Release Clause had been correctly invoked and that Zobahan had a right to payment of USD 100,000 from FC Rostov. As noted previously, Zobahan's behaviour was "*far from impeccable*" and it could therefore not expect an increase in the requested compensation for breach of contract based on the specificity of sport criterion.

198. The Player and Rubin Kazan submitted that Zobahan had in fact ceased to pay the Player's wage as of the end of January 2017. The payment made on 26 February 2017 of IRR 180m was for arrears of salaries, not for the February 2017 salary.

199. With respect to Zobahan's claim that it continued to pay the Player's lease in Iran during his absence, the Player and Rubin Kazan claimed that Zobahan failed to submit any evidence of these payments. Moreover, the Player had already informed the club that he had triggered the Release Clause, so Zobahan "*could not have reasonably expected the Player to go back.*" If Zobahan chose to aggravate its own losses, this could not be to the detriment of the Player and Rubin Kazan.

200. The Player and Rubin Kazan also rejected Zobahan's argument that it suffered sporting damage, because he was not a regular starter and was used as a substitute for merely up to four minutes in eight minutes in the 2016/17 season. Therefore, Zobahan could not have expected "*to rely upon his services during all the period of unjustified absence.*" Zobahan failed to provide any evidence of sporting damage suffered and, in any event, it was hard to believe that Zobahan was granting only up to four minutes of playing time to "*one of its most talented players.*"

201. The Player and Rubin Kazan also rejected Zobahan's claim that the Player was setting a bad example, noting that Zobahan did not provide copies of other young players' contracts (to prove they too had release clauses).

202. Further, Zobahan could not have reasonably expected the Player to sign the registration form for AFC tournaments when he had already declared his wish to move to FC Rostov. In any event, there was no proof on file that his absence was vital for Zobahan.

203. With respect to Zobahan's argument that it could not find a replacement for the Player, the Player and Rubin Kazan argued that Zobahan failed to submit any evidence of any genuine effort to do so. Zobahan had five days of the 2017 winter registration period,

and the entire 2017 summer and 2018 winter transfer windows to sign a replacement but failed to act with the expected diligence, and did not comply with its duty to mitigate its damages by finding a replacement.

204. The Player and Rubin Kazan also stated that they were "*not impressed*" by Zobahan's comparison of the Player to the likes of *inter alia* Wayne Rooney, Diego, and Robinho, as no details of their respective contractual or other sporting circumstances were made available, and no expert was called by Zobahan to explain the objective valuation of the services of those players compared to the Player – let alone the relevance of that valuation to the case at hand.

205. With respect to Zobahan's argument that the Player performed exceptionally at the FIFA U20 World Cup in Korea in 2017, the Player and Rubin Kazan noted that it still did not result in clubs making offers for the Player – only expressions of interest. Moreover, despite his alleged exceptional performances, Zobahan continued to keep the Player on the bench and only play him for up to four minutes per match – *res ipsa loquitur*.

206. Notwithstanding all the above, the Player and Rubin Kazan argued that Zobahan's request to increase the compensation for breach of contract "*was not expressly quantified*" and the Panel is exposed to award more or something else than what Zobahan sought, in violation of the principle of *ne eat iudex ultra petita partium*. Therefore, the Panel has to dismiss the request for an increase of the compensation based on the specificity of sport criteria. The Player and Rubin Kazan also cited *CAS 2017/A/5339* and *CAS 2018/A/5553* in this regard.

207. Further, "*given the very narrow prayer for relief filed by Zobahan in para. 303(d) of the Appeal Brief, if the Panel does not agree to award EUR 5 million in damages to Zobahan, the Panel cannot grant Zobahan less than what it requested in the absence of a specific request for relief*" (*CAS 2018/A/5553* & *CAS 2016/A/4384*).

vi. Mitigation of damages

208. The Player and Rubin Kazan cited *CAS 2008/A/1519 & 1520* which confirmed, *inter alia*, that pursuant to Article 44 para. 1 of the SCO a judge may reduce or completely deny any liability for damages in circumstances where injured parties have aggravated the damage.

209. In the present case, there is no evidence on the file that Zobahan made a true and genuine effort to look for a replacement at any time. Consequently, the Panel should consider this when determining the amount of compensation due to Zobahan. The Player and Rubin Kazan argued that the Panel should use their "*wide discretionary power*" to determine that either Zobahan is not entitled to any compensation, or it would be entitled to EUR 3,900 at the maximum – plus interest at the rate of 5% as of 31 August 2017, as requested by Zobahan in its Appeal Brief.

vii. Disapplication of Article 17.2 of the RSTP

210. Rubin Kazan also submitted that it should not be held jointly and severally liable for the payment of any compensation awarded to Zobahan, because it did not induce the Player to prematurely terminate the Second Employment Contract and did not profit from this alleged breach.

211. Rubin Kazan argued that it was "*in the shoes of*" Smouha SC in *CAS 2017/A/4977*, where the Panel stated:

> *"78. From FIFA's Answer it appears that the purpose of Article 17(2) FIFA RSTP is i) that the party suffering from the breach obtains an additional guarantee that it will be paid the relevant compensation; and ii) to relieve the financial and sportive burden placed on the player so as to not hinder his football career.*
>
> *79. During the hearing, when asked by one member of the Panel to comment on the thesis that there are only three areas where joint liability could be applied (based on a contract (Article 1-40 SCO); based on tort (Article 41-61 SCO); and based on unjust enrichment (Article 62-67 SCO); FIFA answered that the provision may be based on unjust enrichment. Therefore, iii) unjust enrichment will also be taken into account as a possible justification for Article 17(2) FIFA RSTP.*
>
> *80. In CAS jurisprudence and legal doctrine other reasons have been advanced: iv) ensuring contractual stability in combination with unjust enrichment (…); and v) avoiding evidentiary difficulties in establishing the joint liability (…).*
>
> *81. (…) the Panel finds that, in order to validly apply Article 17(2) FIFA RSTP in a specific case, at least one of the justifications for the application of the concept of automatic joint liability in general should indeed be present.*"

212. Rubin Kazan argued that no such justification was invoked by Zobahan in this case. Rubin Kazan argued that this case should be distinguished from the large majority of breach of contract cases in football, where the automatic joint liability principle is appropriate.

213. Rubin Kazan paid Zobahan USD 115,000 for the Player, which reflects the Release Clause in the Second Employment Contract. It shows that Rubin Kazan did not "profit" from the alleged contractual violation of the Player – i.e. this was not a case of a club avoiding paying a transfer fee due to a player breaching his contract with his previous club. The money paid to Zobahan was also within the latter's expectation, given the Release Clause.

214. Regarding any possible involvement by Rubin Kazan in the Player's alleged breach of contract, when signing him Rubin Kazan was aware of the Player's letter to Zobahan dated 26 January 2017, the offer from FC Rostov, the Player's unilateral termination form which was submitted to the Isfahan FA, and the fact that the Player trained with FC Rostov for almost half a year after the termination occurred. This exonerates Rubin Kazan from any wrongdoing.

viii. Sporting sanctions

215. The Player and Rubin Kazan argued that Zobahan did not have 'standing' to request that sporting sanctions should be imposed on them (they cited *inter alia*, *CAS 2015/A/4162, CAS 2014/A/3707* and *CAS 2015/A/4220*). The Player and Rubin Kazan claimed that Zobahan's request for the imposition of sanctions should be dismissed due to a lack of sufficient legal interest, and hence a lack of standing to sue.

C. FIFA's submissions

216. In its Answer, FIFA requested the following prayers for relief:

> "*(a) Reject* [Zobahan's] *appeal in its entirety;*
>
> *(b) Confirm the* [Appealed Decision];
>
> *(c) Alternatively, referring the case back to the FIFA Dispute Resolution Chamber;*
>
> *(d) To order* [Zobahan] *to bear all costs incurred with the present procedure and to order* [Zobahan] *to make a contribution to FIFA's legal costs."*

217. In summary, FIFA submitted the following arguments in support of its Answer to Zobahan's Appeal:

i. General considerations on *res judicata*

218. FIFA noted that the application of the *res judicata* principle seeks to avoid the occurrence of contradictory decisions from different courts or tribunals, which is based on the principle of public interest and intends to safeguard the certainty of rights already adjudicated upon and defined in a judgment. This principle has been the subject of numerous CAS awards (*inter alia*, *CAS 2013/A/3061* and *CAS 2015/A/3959*).

219. The key elements of this principle (the "triple identity check") were neatly summarised by the panel in *CAS 2013/A/3380*:

> *"For a ruling or resolution to have the force of res judicata, two preliminary requirements shall be met: (a) the decision making body shall be competent to pass the relevant ruling or resolution; (b) the relevant ruling or resolution shall be passed after following the appropriate contradictory procedure.*
>
> *Furthermore, for a ruling or resolution to have the force of res judicata, it has to meet the "triple identity check" which consists of the verification of (i) the identity between the parties to the first decision and to the subsequent one, i.e. the parties were the same in both cases; (ii) the identity of objects between the two decisions; and (iii) the identity of the basis (causa petendi) on which the claim is submitted. All three elements of res judicata are of equal fundamental importance and relevance and have to be concurrently present. The plea of res judicata – founded on the principle of public interest – eliminates the possibility of pending disputes prejudicing the rights which*

have already been established by a judgement. The principle of res judicata ensures that whenever a dispute has been defined and decided upon, it becomes irrevocable, confirmed and deemed to be just. The classification of the res judicata principle as part of public policy indicates that it is to be analysed ex officio by the decision making body."

220. The panel in *CAS 2016/A/4408* further established that:

> "*81. There is res judicata when the claim in dispute is identical to that which was already the subject of an enforceable judgment (identity of the subject matter of the dispute). This is the case when in both litigations the same parties submitted the same claim to the court on the basis of the same facts. The identity must be understood from a substantive and not grammatical point of view, so that a new claim, no matter how it is formulated, will have the same object as the claim already adjudicated (ATF 140 III 278 at 3.3; ATF 139 III 126 at 3.2.3).*
>
> *82. The res judicata effect extends to all the facts existing at the time of the first judgment, whether or not they were known to the parties, stated by them, or considered as proof by the first court (ATF 139 III 126 at 3.1, p. 129). However, it does not stand in the way of a claim based on a change in circumstance since the first judgment (ATF 139 II 126 at 3.2.1, p. 130 and the cases quoted). The res judicata effect does not extend to the facts after the time until which the object of the dispute could be modified, namely to those which took place beyond the last time when the parties could supplement their statements of facts and evidentiary submissions. Such circumstances are new facts (real nova) as opposed to the facts already in existence at the decisive time, which could not have been invoked in the previous proceedings (false nova), which opened the way to revision (ATF 140 III 278 at 3.3; judgment 4A_603/2011 of November 22, 2011, at 3.1 and the references).*"

221. Bearing in mind the above principles, FIFA submitted that the FIFA DRC correctly ruled in the Appealed Decision that the matter was *res judicata*.

ii. Reply to Zobahan's arguments

222. Contrary to Zobahan's submissions, FIFA argued that the "triple identity check" was indeed satisfied in this case:

a) <u>Identity between parties</u>

223. FIFA claimed that it is clear the First and Second FFIRI Decisions and the Appealed Decision involved the identical parties – i.e. Zobahan and the Player.

224. The fact that Rubin Kazan was summoned to the proceedings before the FIFA DRC by Zobahan is a consequence of the latter's attempt to secure payment of a compensation for breach of contract without just cause on the basis on Article 17(2) of the RSTP. However, that does not alter the "identity test" since the principal dispute between

Zobahan and the Player (i.e. the unilateral termination by the Player) still remains, as evidenced by the identity of the object and basis. FIFA rejected Zobahan's arguments in this regard as incorrect.

225. Both procedures revolved around the breach of contract by the Player and corresponding compensation, which is not altered by the addition of Rubin Kazan. The "*only element that truly matters*" is that the same parties participate in both proceedings, regardless of whether a certain party no longer participates or a new party is added. Furthermore, Rubin Kazan would only have a secondary role in the proceedings, which would focus instead on the actions of the Player. FIFA claimed that the involvement of Rubin Kazan "*is not linked to the employment dispute in itself but rather a consequence arising from the termination.*"

b) Identity between objects

226. The second relevant element of the triple identity check concerns the "*identity between objects*", being that the relevant decisions have been rendered on the basis of the same object. In other words, "*the matter at issue in both proceedings ought to be identical*" (*CAS 2013/A/3380*).

227. FIFA argued that the identity between the objects becomes clear when considering the wording of the Second FFIRI Decision and the content of the claim by Zobahan before the FIFA DRC:

"[w]*ith regard to the financial damages incurred on the part of Zobahan club because of behavior of the player and/or his disciplinary punishment for contingent cancelation of the contract, whereas* [the Player's] *leaving the club to join other team did not happen, so the disciplinary committee has no responsibility to make any judge over this case.*"

228. FIFA claimed that the above was the FFIRI essentially acknowledging a request for financial compensation from Zobahan resulting from the breach of contract by the Player, but in the absence of an actual transfer/move by the Player, it decided that no financial compensation could be awarded to Zobahan. FIFA submitted that Zobahan's request before the FIFA DRC contains the same request for compensation from the same alleged breach of contract by the Player, with the sole difference that Rubin Kazan was summoned as a respondent to the claim on the alleged basis that the latter should be held jointly and severally liable to pay the USD 5m financial compensation.

229. FIFA also sought to distinguish two elements – the Player's "unilateral request for termination" on one hand, and Zobahan's alleged request for the imposition of disciplinary sanctions. FIFA claimed that "*it is clear that both elements were considered by the* [FFIRI] *Disciplinary Committee as they were inevitably intertwined.*"

230. FIFA noted that the Player filed a "unilateral request for termination" with the "League Organisation" effective as from 29 January 2017 which contained the following key aspects (emphasis added by FIFA):

- "*the contract between* [Zobahan] […] *and* [the Player] […] *is terminated on the date of January/29/2017*";

- "*if it would be proven by the court that I without any just cause have terminated the contract all the consequences should be borne by myself.*"

231. Moreover, FIFA noted that the form also stated that:

"*[r]egistration of this document with the Province Football Association and League Organization was based merely on the request of the applicant and by no means does this institution confirm the claims of the applicant or that the conditions for contract termination exist and inquiries related to the above mentioned should be performed by the judicial authorities of the Football Federation.*"

232. FIFA argued that this meant the Player terminated his contract, but it was up to the judicial authorities of the FFIRI (i.e. the FFIRI Disciplinary Committee which is the only judicial authority within the FFIRI) to adjudicate on the consequences of the termination.

233. On the other hand, Zobahan's letter to the FFIRI was complaint against the Player in which the club requested the FFIRI Disciplinary Committee's intervention. Accordingly, FIFA argued that the Second FFIRI dealt with both elements since both are rooted in the same factual situation.

234. FIFA also rejected Zobahan's assertion that it was merely requesting the imposition of disciplinary sanctions and the Player's return to the club, noting that despite this alleged intention no disciplinary sanctions were imposed by the FFIRI whatsoever for the Player's absence – not even a reprimand or warning. However, the FFIRI Disciplinary Committee did in fact take a stance on the breach of contract and the financial consequences thereof (emphasis added by FIFA):

"*With regard to the financial damages incurred on the part of Zobahan club because of behaviour of the player and/or his disciplinary punishment for contingent cancelation of the contract, whereas [the Player] leaving the club to join other team did not happen, so the disciplinary committee has no responsibility to make any judge over this case.*"

235. In any event, FIFA noted that the effective termination of the Second Employment Contract did not occur when the Player signed with Rubin Kazan. To the contrary, it occurred when the Player filed his "unilateral request of termination". By filing this request, the Player clearly expressed his will to terminate his contract. In view of such reality, "*it is questionable whether any disciplinary sanction would have been effective. Hence, it is not credible to believe that a player who unilaterally terminates a contract would voluntarily return to a club merely based on the basis of potential disciplinary sanctions from a national federation.*" Moreover, the FFIRI Disciplinary Committee did not need to determine whether the contract had been terminated or not – the Player had clearly terminated his contract. The sole outstanding question was the amount of

compensation due, which is exactly what the FFIRI Disciplinary Committee adjudicated over.

236. FIFA also noted that Article 30 of the FFIRI Disciplinary Regulations state that the FFIRI Disciplinary Committee had competence to handle matters relating to financial compensation.

237. In summary, despite Zobahan's assertions to the contrary, the FFIRI Disciplinary Committee did rule on the issues of compensation arising from the Player's termination of his contract. As such, the object of the proceedings before the FFIRI Disciplinary Committee and the FIFA DRC were the same.

c) Identity of the basis

238. With regard to the "facts" or cause giving rise to the claim, FIFA argued that it was clear that the relevant facts in the present matter concern the situation between Zobahan and the Player preceding the latter's decision to terminate the agreement with Zobahan.

d) Enforceability

239. FIFA rejected Zobahan's arguments regarding the Second FFIRI Decision not being recognised in Switzerland as vague and unsubstantiated, and requested that they are disregarded in their entirety.

240. In any event, FIFA argued that Zobahan's arguments were "*unworkable*" because if decisions passed by member associations such as the FFIRI were unable to be recognised, they would have no value whatsoever and the FIFA DRC / Players' Status Committee would always be competent to adjudicate a dispute regardless of whether a prior decision was passed at national level. Secondly, with respect to Zobahan's arguments regarding the New York Convention, it should be noted that such a position would also mean that any decision by the FIFA DRC would also not be enforceable as DRC decisions are also not arbitral awards.

iii. Zobahan's arguments on just cause and compensation

241. In the event that the Panel determined that *res judicata* did not apply, FIFA argued that the matter should be sent back to the FIFA DRC in order to determine the merits of the dispute.

242. Notwithstanding this, FIFA also highlighted that the employment dispute between Zobahan and the Player was of a purely horizontal nature (*inter alia, CAS 2015/A/3910*), and that Zobahan in any case does not have standing to request the imposition of sporting sanctions against the Player and Rubin Kazan (*inter alia, CAS 2014/A/3707*). For this reason too, and without prejudice to the above argument that such dispute would need to be decided by the DRC, FIFA stated that it did not find it necessary to make submissions on a contractual dispute to which FIFA was not a party.

VI. JURISDICTION OF THE CAS

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

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

An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned."

244. Moreover, Zobahan relied on Article 58.1 of the FIFA Statutes, which states:

"*Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question.*"

245. The jurisdiction of CAS was not disputed by the parties. The jurisdiction of the CAS was further confirmed by the Order of Procedure duly signed by the parties.

246. It follows that the CAS has jurisdiction to hear this dispute.

VII. APPLICABLE LAW

247. Pursuant to Article R58 of the CAS Code, in an appeal arbitration procedure before the CAS:

"*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*."

248. Zobahan did not make any specific submissions regarding the applicable law in this dispute. However, the Panel notes that Zobahan referred to the FIFA regulations (namely the RSTP) and Swiss law.

249. The Respondents all noted that Article 57(2) of the FIFA Statutes (2016 edition) stipulates the following:

"*The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law*."

250. As such, the Panel is satisfied to primarily apply the various regulations of FIFA and, subsidiarily, Swiss law should the need arise to fill a possible gap or *lacuna* in the various regulations of FIFA.

VIII. ADMISSIBILITY

251. The grounds of the Appealed Decision were notified to the parties on 24 January 2020. The Statement of Appeal, which was filed on 13 February 2020, complied with the requirements of Articles R47, R48 and R64.1 of the CAS Code, including the payment of the CAS Court Office fee. The admissibility of the Appeal was not contested by any of the Respondents.

252. It follows that the Appeal is admissible.

IX. MERITS OF THE APPEAL

A. The Main Issues

253. The Panel had determined not to bifurcate the matter at hand and issue a separate decision on the issue of *res judicata* as requested by the First and Second Respondents. Instead, it deals with this as the primary issue below.

254. Accordingly, the Panel observes that the issues to be resolved are:

a) Whether the Second FFIRI Decision has *res judicata* effect?

b) If not, who breached the Second Employment Contract and when?

c) Was such breach with or without just cause?

d) If without just cause, what are the financial and other consequences of such breach?

These issues will be considered in turn.

a) *Res judicata*

255. The Panel notes that the FIFA DRC in the Appealed Decision basically determined that the dispute between Zobahan and the Player had already been determined by the FFIRI in the Second FFIRI Decision and, as such, it was unable to consider the claims of Zobahan, pursuant to the legal principle of *res judicata.*

256. The Panel reminds itself of the Second FFIRI Decision (with emphasis added by the Panel):

"As related to the hearing requested by [Zobahan] *and considering the* [First FFIRI Decision], *this committee during the rehearing held on July/ 02/ 2017 reconsidered the*

contents of the complaint submitted by this club against [the Player], *took into consideration the contents of the records of the case and the claims of the Zobahan representatives that the* [Player] *is still in contract with* [Zobahan], *and if he wishes to leave the club and to join another team, he must act according to the contract provisions signed between the parties. Also taking into consideration the explicit claims of the player's representative (Mr. Ebrahimi), who claimed that if* [the Player] *while being a player of the club did not participate in the training sessions of the club, he must be acted upon according to the internal regulations of the club. On the other hand, the player has not yet joined any other team, including Rostov club in Russia, so that compensations be requested from him to pay. Also given that the parties were discussing the possibility of compromise after the negotiations and finally* [Zobahan] *announced that no compromise has taken place yet, the Disciplinary Committee in accordance with the Article 30 of the Disciplinary Regulations and the contents of the contract signed between the parties, announces that the aforementioned player still belongs to* [Zobahan] *and the aforementioned is obliged to observe the contents of the contract signed between the parties. And also as considering the financial losses caused by the player's behaviour and his disciplinary punishment due to the possibility of the termination without just cause, since* [the Player's] *parting from* [Zobahan] *and his joining to his new club has not been exercised, therefore the Disciplinary Committee is not deemed in charge of any position. This is the final decision."*

257. The Panel could see that the Player wanted to leave Zobahan around January and February 2017. He made a request to terminate the Second Employment Contract with the Isfahan FA, he allegedly feigned an injury and missed a match to obtain a visa to travel to Russia and there was correspondence that demonstrated that he looked to potentially trigger his Release Clause. He was absent, apparently without Zobahan's consent and trained with FC Rostov in Russia. The Panel notes the Player's submissions that he had a valid Release Clause, but Zobahan were in breach of the Second Employment Contract by resisting it.

258. It was these issues that were before the FFIRI. The claim by Zobahan was that the Second Employment Contract was still "live", whereas the Player argued that it was over. The Panel examined the claim made by Zobahan to the FFIRI:

"*Greetings;*

Kindly, we would like to notify you that since [the Player], *a player of* [Zobahan], *has been inexcusably absent from his team trainings at this club, and has attempted to conclude a contract with FC Rostov. Therefore, we kindly ask that you file a complaint from this club in regards to* [the Player] *at the Disciplinary Committee of the* [FFIRI].

We appreciate your cooperation."

259. Zobahan did not appear to be accepting the termination of the Second Employment Contract and seeking compensation, rather it was reporting the actions of the Player and asking him to be disciplined. The Panel notes that the FFIRI, pursuant to Article 30 of the FFIRI Disciplinary Regulations, is competent to handle "*all disciplinary*

violations and material and moral damages due to violations subjected to the Regulations at hand."

260. The determination from the FFIRI (it may have taken some time from when Zobahan first took the dispute to it on 4 February 2017, to the date of the Second FFIRI Decision, namely 15 August 2017) was clear: the Second Employment Contract was still in force for both Zobahan and the Player. The determination was declared as final, and the Panel notes that the Player did not seek to appeal that decision. The Disciplinary Committee of the FFIRI did not therefore need to consider whether there was a breach of contract or whether any compensation from such a breach was due or not, because these issues could arise only in case of termination of the Second Employment Contract.

261. If the Player believed that the FFIRI were wrong and that the Second Employment Contract had come to an end due to behaviour of Zobahan and its alleged breach by ignoring the Release Clause, then he should have appealed the Second FFIRI Decision. He did not and it became final and binding upon him.

262. What followed from that determination, was that the Player and Rubin Kazan signed the First Rubin Kazan Employment Contract a couple of weeks later on 31 August 2017. This gave rise to a new claim for Zobahan, namely that the Player had breached the Second Employment Contract without just cause. It was that new claim that Zobahan brought to FIFA.

263. That new claim could not have been considered by the FFIRI, as it was charged with the matters as at 4 February 2017, namely whether the Release Clause had been respected or whether the Second Employment Contract was still live and the Player should be disciplined for leaving to go to Russia and train with FC Rostov. Further, Zobahan's Statement of Claim issued before the FIFA DRC attached a copy of the Second FFIRI Decision and summarised it as "*it had ordered the Player to comply with the provisions of his contract with Zobahan*" (and rightly so as, indeed, the Second FFIRI Decision clearly stated that the Player "*still belong[ed] to Zobahan*" and was "*obliged to observe the contents of the contract signed between the parties*"). The club went on then to describe the Player and Rubin Kazan entering into a new contract two weeks later. It was this breach that Zobahan was complaining about to the FIFA DRC.

264. The Panel does not need to comment further on the identity of the parties and whether Rubin Kazan's presence before the FIFA DRC makes any difference. Nor is the Panel convinced that the mere reference in the Second FFIRI Decision to "*…considering the financial losses caused by the player's behaviour…*" means that the FFIRI considered the issue of compensation for a breach of contract. Actually, the FFIRI clearly avowed the opposite, as the Second FFIRI Decision stated in that respect that, as the Player and Zobahan had not parted ways and the Player had not joined a new club ("*…Mr. Reza Shakiri's parting from Zobahan Club and his joining to his new club has not been exercised…*"), the FFIRI Disciplinary Committee was not in a position to address any such matter ("*…the Disciplinary committee is not deemed in charge of any position*". As stated above, it is clear that the FFIRI determined that there was no breach of contract and the Second Employment Contract remained live, so the possibility of

compensation never arose. In view of the above, the Panel can also leave such issues as the enforceability of the Second FFIRI Decision in Switzerland as moot. In conclusion, the principle of *res judicata* would not have been offended had the FIFA DRC considered the claims of Zobahan and the DRC should not have determined to reject Zobahan's claims in the Appealed Decision on that basis.

265. The Panel notes FIFA's position is that if that was the Panel's determination, then the matter should be returned to the FIFA DRC. The Panel notes that pursuant to Article R57 of the CAS Code, it could return the matter to the DRC, but it also has the ability to issue a new decision of its own. The Panel determines, for prominent reasons of procedural economy, to issue its own decision as regards the breach of contract matter.

b) Who breached the Second Employment Contract and when?

266. The Panel notes that the Player states that he was unaware of the Second FFIRI Decision on the date he signed the First Rubin Kazan Employment Contract. Unfortunately, neither the Player nor the Second Agent were present at the hearing before the Panel to be examined on such claim, even though they both had the possibility to attend. The Panel notes that the Player was legally represented before the FFIRI hearing and it was suggested by Zobahan that his attorney would have received the Second FFIRI Decision when it was issued.

267. The Panel suspects that the Player was aware of the Second FFIRI Decision before he signed the First Rubin Kazan Employment Contract. But, at the very least, he would have been aware of the risk that the FFIRI may find against him, as it did, so to sign the First Rubin Kazan Employment Contract without checking was extremely negligent and something he must bear the responsibility for.

268. However, the Panel also noted the submissions from Zobahan, that the Player had returned to the club in August and showed some remorse for leaving the club. At the hearing, the Panel heard from Mr Aksimsek, a freelance scout, who had been brought in to work with Zobahan in July 2017. He stated that he met with the Player and his father on 30 July 2017 concerning possible moves to clubs in Europe. He also spoke to the head coach at the club, stressing how it would be important for the Player to feature in matches in the future, so other clubs could see him play. He discussed clubs in Spain and Italy with the Player. Mr Aksimsek made some enquiries with Torino and AC Milan after he left Iran, but at an U19 tournament in Germany, soon after, he learnt that the Player had signed with Rubin Kazan.

269. It appears to the Panel (again taking note that it did not hear from the Player or the Second Agent) that the Player did return to Zobahan and both the club and the Player were looking to work together with a view to seek out opportunities in Europe. However, within a month of his meeting with Mr Aksimsek, the Player had left Iran again and this time he signed the First Rubin Kazan Employment Contract.

270. As is the long-established jurisprudence of both FIFA and the CAS, the signing of a second employment contract with a club whilst under contract is a breach of the first

employment contract. As such, the Second Employment Contract between the Player and Zobahan was breached by the Player on 31 August 2017 when he signed with Rubin Kazan.

c) Was such breach with or without just cause?

271. The Panel considers that all the arguments raised by the Player and Rubin Kazan in the matter at hand (relating to the Release Clause, included in Article 4, Note 2 of the Second Employment Contract, and the like) are matters that should have been brought by the Player in an appeal of the Second FFIRI Decision and are of no relevance in the matter at hand. Indeed, the issue of the potential transfer of the Player to FC Rostov was brought to the attention of the FFIRI Disciplinary Committee and was addressed by the Second FFIRI Decision, which is final and binding now for the Player and Zobahan. Moreover, the Panel notes that the Release Clause attributed to a "*foreign club*" the right to exert the buy-out by paying an amount of USD 100,000; this matter could thus have been raised in front of FIFA by FC Rostov – as it was not a party to the proceedings that yielded the Second FFIRI Decision and was not bound by it – but FC Rostov elected not to do so. Now, the rights that FC Rostov could have had in that respect may not be invoked by Rubin Kazan, as the CAS may adjudicate only on claims pertaining to the parties that participate in the CAS proceedings and not on claims pertaining to a third party which is not before the CAS (see CAS 2005/A/889 at para. 15).

272. In short, as the Second FFIRI Decision defined in a final and binding manner all matters related to the Player's potential transfer to FC Rostov and the continuation in force of the Second Employment Contract, the existence or not of a just cause for termination must be assessed only in relation to the facts occurred after the Second FFIRI Decision. The Panel is of the view that, once the Second FFIRI Decision is taken into account and the whole FC Rostov matter is off the table, nothing occurred that could justify the Player to ignore his contractual relationship with Zobahan and unilaterally decide to join Rubin Kazan; as a consequence, the Panel determines the Player had no just cause to breach the Second Employment Contract.

d) If without just cause, what are the financial and other consequences of such breach?

273. The Panel notes that the consequences, pursuant to Chapter IV of the RSTP are both financial and disciplinary in nature. Article 17.1 is the starting point for the financial consequences:

"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."

274. The Panel notes that there wasn't any provision made in the Second Employment Contract between the parties relating to a pre-agreed level of damages in the event of a breach of contract. However, Zobahan has claimed the sum of EUR 5 million.

275. The Panel notes that there was little evidence to support such a claim and what there was (press articles, prices of other young players etc.) were entirely unrelated or speculative. The primary basis for claiming this amount appeared to be the letter dated 8 November 2017 from Zobahan addressed to Rubin Kazan, in which Zobahan claimed this sum. Clause 7.5 of the Second Employment Contract states that Zobahan could set the level of compensation itself and the Player would accept to pay that. However, the Panel determines that neither a clause purporting to allow a party to arbitrarily set its own level of compensation or a demand of such a sum made to a third party can be seen as a legal basis for that sum being the correct amount to be awarded. This would be self-serving. Rather the Panel were interested in other evidence that help it establish what the level of compensation should be.

276. The Panel notes the established line of CAS jurisprudence that allows it a wide discretion under Art 17.1 of the RSTP in calculating compensation.

277. It is clear to Panel that the Player wanted away and that Zobahan would accept a transfer for the Player if they got an acceptable transfer fee. The Panel notes that the Player was absent for 7 months, yet the club took him back and introduced him to Mr Aksimsek to see if he could find a new club for the Player. The Panel also notes that the Player would have been a free agent on 1 January 2018, in just 4 months after the breach, so Zobahan's economic interest in the Player was waning. Zobahan's primary interest was in securing a transfer fee – a logical nexus therefore existed between the breach and the club's lost opportunity to transfer the Player – but that fact rather makes a comparison of his old and new salary, the protected period, specificity of sport and the like of little or no relevance in the case at hand. Likewise, the failure to take on a replacement is of little relevance. Zobahan's position is that but for the Player leaving, it would have sold him through the efforts of Mr Aksimsek and the fee it would have received is its loss. The Panel determined that this was an unusual set of circumstances, as the club seemed to have little or no interest in playing the Player, as opposed to selling him on.

278. What price could it have expected to receive for the Player? The Panel notes that in the Second Employment Contract, it had agreed a fee had the original agent brought it a transfer opportunity with a fee of EUR 100,000 for the 2016-17 sport season. The Panel also heard that the Second Agent apparently verbally offered EUR 500,000 on behalf of Rubin Kazan, even though neither the latter club nor the Player provided any counter evidence to this. Additionally, there was a written offer from Zenit of EUR 300,000. The Panel considers that the amount of the Zenit offer mirrors the mid-point of the range set by the other evidence (i.e. between EUR 100,000 and EUR 500,000) and appears to be a genuine third party offer. The Panel determines that this amount

represents a fair sum to compensate Zobahan for the breach of the Second Employment Contract by the Player.

279. The Panel notes Rubin Kazan's submissions to avoid any joint liability under Article 17.2 of the RSTP and its reliance upon CAS 2017/A/4977. The Panel notes that the consistent line of CAS jurisprudence is that the next club to register a player that has breached his previous contract without just cause, automatically becomes jointly liable for any compensation awarded. The case CAS 2017/A/4977 was a case that was specific to its own facts, as the new club had paid a fee for the player in question (in fact, the panel in that case warned that "*the circumstances in the present matter are truly exceptional*"). The monies already paid to date by Rubin Kazan related to the training compensation due to Zobahan and had nothing to do with a transfer fee, so the facts of this case are different from CAS 2017/A/4977 and it is of no assistance to Rubin Kazan. The Panel determines that it is to be jointly liable along with the Player for the compensation due to Zobahan.

280. The behaviour of Rubin Kazan is an issue under Article 17.4 of the RSTP and in particular whether it had induced a breach of the Second Employment Contract. Likewise, the Panel notes that Article 17.2 of the RSTP considers whether sporting sanctions would be appropriate with regards to the Player too. Had FIFA considered these issues, then the Panel would have been able to stand in its shoes and review the decision; however, it did not. The Panel regards FIFA as the regulator and in the best position, having now seen the Panel's decision that *res judicata* is not applicable to the case at hand and that the Player breached the Second Employment Contract without just cause, to come to a determination on such sanctions, if any. The Panel therefore follows other CAS panels before it (such as in *CAS 2014/A/3739 & 3749*) and sends this part of the matter in hand back to FIFA to consider.

B. Conclusion

281. Based on the foregoing, and after taking into due consideration all the evidence produced and all submissions made, the Appeal by Zobahan is partially accepted.

282. The Player and Rubin Kazan are jointly liable to pay Zobahan the compensation for breach of the Second Employment Contract in the sum of EUR 300,000.

283. Zobahan's request for sporting sanctions pursuant to Article 17.3 and 17.4 of the RSTP against the Player and Rubin Kazan respectively, are returned to FIFA to consider.

284. Any further or different claims or requests for relief are dismissed.

X. COSTS

(…).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 13 February 2020 by Zobahan Cultural & Sport Club against the decision rendered by the FIFA Dispute Resolution Chamber on 30 October 2019 is partially upheld.

2. The decision rendered by the FIFA Dispute Resolution Chamber on 30 October 2019 is set aside.

3. Reza Shekari and Football Club Rubin Kazan are jointly liable to pay Zobahan Cultural & Sports Club compensation for breach of contract without just cause in the sum of EUR 300,000 (three hundred thousand Euros).

4. The issue of potential sporting sanctions pursuant to Article 17.3 and 17.4 of the RSTP against Reza Shekari and Football Club Rubin Kazan respectively, are returned to the FIFA Dispute Resolution Chamber to consider.

5. (…).

6. (…).

7. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 29 June 2021

THE COURT OF ARBITRATION FOR SPORT

Mark A. Hovell
President

Massimo Coccia
Arbitrator

Efraim Barak
Arbitrator