



TAS / CAS

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

CAS 2025/A/11428 King Wilki Morskie S.S.A. v. Kacper Borowski & FIBA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition

President: Mr André Brantjes, Attorney-at-Law, Amsterdam, the Netherlands

Arbitrators: Prof. Dr. Eligiusz Krzesniak, Attorney-at-Law, Warsaw, Poland

Mr Nicolas Cottier, Attorney-at-Law, Saint-Prex, Switzerland

in the arbitration between

King Wilki Morskie S.S.A., Szczecin, Poland

Represented by Mr Marcin Skrocki, Attorney-at-Law, Kancelaria Adwokacka Lex Sport,
Gdansk, Poland

- Appellant -

and

Kacper Borowski, Poland

Represented by Mr Radoslaw Niwinski and Mr Piotr Miekus, Attorneys-at-Law, LAS
Legal SKA, Warsaw, Poland

- First Respondent -

and

Fédération Internationale de Basketball Association (FIBA), Mies, Switzerland

Represented by Mr Benjamin Schindler, Mr Jaime Lamboy, and Ms Xènia Campàs Gené,
In-house Counsel, FIBA, Mies, Switzerland

- Second Respondent -

* * *

I. PARTIES

1. King Wilki Morskie S.S.A. (the “Appellant” or the “Club”) is a basketball club with its registered office in Szczecin, Poland. The Club participates in the Polish Basketball League, the highest basketball division in Polish basketball. The Club is regulated by the Polish Basketball League and by the Polish Basketball Association.
2. Mr Kacper Lukasz Borowski (the “First Respondent” or the “Player”) is a basketball player of Polish nationality.
3. The *Fédération Internationale de Basketball Association* (the “Second Respondent” or “FIBA”) is an association under Swiss law, with its registered headquarters in Mies, Switzerland. FIBA is the governing body of basketball worldwide.
4. The Player and FIBA are hereinafter jointly referred to as the “Respondents”. The Club and the Respondents are hereinafter jointly referred to as the “Parties”.

II. INTRODUCTION

5. These proceedings revolve around a transfer dispute in basketball. While the Player maintains that he was free to register with the Bosnian Herzegovinian basketball club HKK Mostar, the Club maintains that the Player was still bound to it by an employment contract.
6. On 21 October 2024, the FIBA Secretary General decided that a letter of clearance (the “Letter of Clearance”) was to be issued for the Player to be registered for HKK Mostar (the “First Instance Decision”).
7. Following an appeal filed by the Club, the FIBA Appeals’ Panel decided to dismiss the appeal by decision dated 24 April 2025 (the “Appealed Decision”), thereby confirming the First Instance Decision and the Letter of Clearance.
8. In the present appeal arbitration proceedings before the Court of Arbitration for Sport (“CAS”), the Club is challenging the Appealed Decision, requesting, in essence, that the issuance of the Letter of Clearance was unjustified.
9. The Respondents challenge the admissibility of the Club’s appeal against the Appealed Decision. Alternatively, the Respondents request the appeal to be dismissed.

III. FACTUAL BACKGROUND

10. Below is a summary of the main relevant facts and allegations based on the Parties’ written and oral submissions. 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 arbitral award only to the submissions and evidence it considers necessary to explain its reasoning.

A. Background Facts

11. On 22 June 2023, the Player and the Club entered into an employment contract (the “Employment Contract”) for a period of two basketball seasons.
12. On 23 August 2023, Mr Tarek Khrais, the Player’s agent (the “Agent”), sent the Club an invoice with respect to services allegedly rendered by him with respect to the Employment Contract.
13. On 24 August 2023, the Club sent Mr Khrais a document (the “August Declaration”) with the following content (translated into English):

“Due to the conclusion of a contract with our club on June 22, 2023 by the [Player] (born May 2, 1994) and the club not being informed about the applicable contract between the above-mentioned player and agent, we would like to inform you that such a contract cannot enter into force. We would like to inform you that due to the lack of agreement on this matter between the above-mentioned player and agent, the club considers the contract of June 22, 2023 invalid.”

14. Notwithstanding the content of the August Declaration, the Player continued playing for the Club for the entirety of the 2023/24 season. During this period, he also received salary in accordance with the terms of the Employment Contract, based on invoices sent to the Club by the Player referencing the Employment Contract.

B. Proceedings before the FIBA Secretary General

15. On 7 August 2024, the Bosnian and Herzegovinian Basketball Federation, on behalf of HKK Mostar, requested FIBA for a letter of clearance for the Player.
16. On 13 August 2024, the Polish Basketball Association objected to the issuance of a letter of clearance for the Player.
17. On 28 August 2024, HKK Mostar informed FIBA that it gave up on pursuing the Player and FIBA closed the proceedings.
18. On 29 August 2024, HKK Mostar retracted its statement, and after further communications from the various parties, FIBA opened new transfer proceedings.
19. On 21 October 2024, the FIBA Secretary General rendered the reasoned First Instance Decision, with the following operative part:

“Based on the elements on file, the Letter of Clearance for Mr. Kacper Lukasz Borowski shall be issued, and he shall be allowed to register with the Club of Destination.”

C. The Player’s subsequent transfer (2024)

20. On 23 October 2024, the Polish Basketball Association requested a letter of clearance for the Player on behalf of the Polish club PGE Spójnia Stargard.
21. On 24 October 2024, FIBA approved the international transfer of the Player to PGE Spójnia Stargard and issued a letter of clearance (the “Second Letter of Clearance”).

D. Proceedings before the FIBA Appeals’ Panel

22. On 29 October 2024, the Club filed an appeal against the First Instance Decision, including a request for interim relief by means of which the Club requested suspending the effect of the Letter of Clearance.
23. On 7 November 2024, FIBA filed its submissions with respect to the Club’s request for interim relief.
24. On 22 November 2024, FIBA requested the joinder of the Player and the Polish basketball club PGE Spójnia Stargard.
25. On 27 November 2024, the Single Judge dismissed the request for interim relief requested by the Club.
26. On 4 December 2024, the Club objected to FIBA’s request for joinder.
27. On 10 December 2024, FIBA filed its answer to the Club’s appeal.
28. On 23 December 2024, the Single Judge granted FIBA’s request for joinder.
29. On 24 April 2025, the Single Judge rendered the Appealed Decision with the following operative part:

“1. *The appeal by KING WILKI MORSKIE S.S.A. against the decision of the Secretary General of FIBA issued on 21 October is dismissed.*

2. *The Appellant is to bear the costs of the proceedings.*”

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

“(f) *The ultimate analysis*

- *Both the Club’s and the Player’s submissions have significant difficulties.*
- *The different means by which the Club contends that the August Declaration could not amount to a termination of the [Employment*

Contract] cannot be accepted. They are contrary to the language of the document itself.

- *The Player's contention that there was an oral agreement is not supported by any documentary evidence and is objectively unlikely, based on the circumstances that existed in August 2023.*
- *The Single Judge does not accept either position.*
- *The content of the August Declaration amounted to a unilateral termination of the [Employment Contract] by the Club. The language was clear.*
- *The Single Judge does not accept the Club's submission that the August Declaration was not validly communicated to the Player because it was sent to Mr Khrais. The WhatsApp messages provided with the Player's submissions show that the August Declaration was provided by Mr Khrais to the Player immediately after it was received. It is also apparent from the message dated 28 August 2023 that the Club understood Mr Khrais to be acting on behalf of the Player, because it referred to Mr Khrais 'finding a club' for the Player. The fact that the August Declaration was not sent via the contractually mandated method does not affect the conclusion that it was effective to terminate the [Employment Contract].*
- *The August Declaration would have justified the Player either walking away from the [Employment Contract] or taking proceedings or other action to confirm that the Club was not entitled to terminate the [Employment Contract]. But that is not what the Player did. Rather, despite the terms of the August Declaration, the Player continued to play for the Club. As observed in paragraphs 101-103, there is no documentary evidence of communications about a different or amended contract. Rather, it appears that the Player and the Club were each content to continue as if the terms contained in the [Employment Contract] were those which governed the Player playing for the Club during the 2023/2024 season. There was no amended agreement and for the reasons given in paragraphs 101-103, the evidence is not sufficient to establish that the Player (via Mr Khrais) and the Club came to an oral agreement in respect of the 2023/2024 season.*
- *Thus, the Single Judge is left in the unsatisfactory position that the Club has not proved that the [Employment Contract] remains on foot and the Player has not proved the oral agreement which it said demonstrated the basis on which the Player played the 2023/2024 season.*

- *The Single Judge’s conclusions are similar to those of FIBA (at [40] of the [First Instance Decision]), other than that the Single Judge is not satisfied that there was an oral agreement between the Player and the Club. The evidence from the parties does not allow the Single Judge to come to a conclusion about the basis on which the Player continued to play the 2023/2024 season.*
- *For its appeal to succeed, the Club was required to prove that a valid contract was on foot such that it should be concluded that ‘the player is under contract to play’. For the reasons set out in this section, the Single Judge concludes that the Club has not succeeded in demonstrating that the [Employment Contract] remained on foot after the August Declaration. That is sufficient to resolve the appeal.*
- *However, there are some other matters which arose in the parties’ submissions which will be addressed briefly.*

(g) Effect of the second transfer

- *These proceedings are directed to whether a letter of clearance should have been issued in respect of a transfer from the Club to HKK Mostar (a club which is part of the Bosnian and Herzegovnian Basketball Federation).*
- *Since that letter of clearance was issued by FIBA, the Player has transferred from HKK Mostar to PGE Spojnia Stargard (a club which is part of the Polish Basketball Federation).*
- *PGE Spojnia Stargard (the Player’s current club) submits that because the Player has now transferred to PGE Spojnia Stargard, the current appeal is ‘devoid of purpose’ because it concerns a previous letter of clearance.*
- *The Single Judge does not accept that submission.*
- *The result of the present proceedings is that the decision of FIBA to grant the letter of clearance from the Club to HKK Mostar is upheld. Had the letter of clearance been set aside, it is possible that Articles 3-94 and 3-96 of the FIBA International Regulations [the “FIBA IR”] apply, such that the first international transfer (Poland to Bosnia-Herzegovina) took place ‘without’ a letter of clearance such that both that transfer and the second international transfer (Bosnia-Herzegovina to Poland) was null and void. If the result of the present proceedings had been different, the possible application of, at least, Articles 3-94 and 3-96 would have meant that the appeal was not ‘devoid of purpose’.*

(h) Outstanding financial disputes

- *The Club and the [Player] both spent a significant portion of their submissions directed to the question of whether Mr Khrais was the Player's agent in the period around June 2023. In light of the Single Judge's conclusions in respect of the August Declaration, it is not necessary to determine whether Mr Khrais was the Player's agent in June 2023 such that the Club should not have signed the [Employment Contract] with the Player without the involvement of Mr Khrais.*
- *If Mr Khrais (who is not a party to this appeal) considers that he has a claim against the Club in respect of it not recognising him as the Player's agent or not paying him commission, he can take it up elsewhere. Likewise, if the Club considers that the provisions of Polish law mean that it has a claim against the Player for not honouring the [Employment Contract], such a claim can also be taken up elsewhere.*
- *In both instances, it is not the role of either FIBA or this Appeal Panel to adjudicate financial disputes. These reasons do not affect the ability of Mr Khrais or the Club to make such claims if so advised, whether in Polish courts or elsewhere.*

(j) Conclusion

- *The Club has not succeeded in demonstrating that Article 3.61(a) of the FIBA Internal Regulations was satisfied.*
- *Accordingly, the Club's appeal is dismissed."*

E. The Player's subsequent transfer (2025)

31. In August 2025, i.e., during the proceedings before CAS, the Player was transferred to the Polish basketball club Anwil Włocławek.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

32. On 13 May 2025, the Club filed a Statement of Appeal with CAS in accordance with Articles R47 and R48 of the 2023 edition of the CAS Code of Sports-related Arbitration (the "CAS Code"), challenging the Appealed Decision. In its Statement of Appeal, the Club requested for the appointment of a sole arbitrator, nominating Prof. Dr. Eligiusz Krzesniak, Attorney-at-Law in Warsaw, Poland.
33. On 20 May 2025, the Player did not object to the appointment of a sole arbitrator but objected to the nomination of Prof. Dr. Krzesniak.
34. On 21 May 2025, FIBA objected to the Club's request for the appointment of a sole arbitrator, requesting the appointment of a panel of three arbitrators and indicating that it intended to pay its share of the advance of costs.

35. On 22 May 2025, the Club filed its Appeal Brief in accordance with Article R51 CAS Code.
36. On 23 May 2025, the CAS Court Office informed the Parties that the Deputy President of the CAS Appeals Arbitration Division had decided to submit the matter to a panel composed of three arbitrators.
37. On 27 May 2025, the Club nominated Prof. Dr. Krzesniak as arbitrator.
38. On 3 June 2025, the Player nominated Mr Nicolas Cottier, Attorney-at-Law in Saint-Prex, Switzerland, as arbitrator.
39. On 5 June 2025, FIBA informed the CAS Court Office that it agreed with the Player's nomination of Mr Cottier as arbitrator and that such nomination had been agreed upon between the Respondents.
40. On 14 July 2025, the CAS Court Office informed the Parties that the President of the CAS Appeals Arbitration Division, pursuant to Article R54 CAS Code, had decided that the Panel appointed to decide the case was constituted as follows:

President: Mr André Brantjes, Attorney-at-Law, Amsterdam, the Netherlands;
Arbitrators: Prof. Dr. Eligiusz Krzesniak, Attorney-at-Law, Warsaw, Poland; and Mr Nicolas Cottier, Attorney-at-Law, Saint-Prex, Switzerland.
41. On 28 July and 8 August 2025, FIBA and the Player filed their respective Answers in accordance with Article R55 CAS Code, *inter alia*, objecting to the admissibility of the appeal.
42. On 12 August 2025, upon being invited to express its view in this respect, FIBA informed the CAS Court Office that it was not in favour of holding a hearing or a case management conference.
43. On 15 August 2025, the CAS Court Office invited the Club to file its observations, if any, on the Respondents' objections to the admissibility of the appeal and informed the Parties that such issue would be determined in the final Award.
44. On 18 August 2025, upon being invited to express their views in this respect, the Player informed the CAS Court Office that he did not consider it necessary to hold a hearing or a case management conference, whereas the Club requested to hold a hearing as well as a case management conference by videoconference.
45. On 29 August 2025, the Club filed its observations on the Respondents' objections to the admissibility of the appeal, requesting that such objections be dismissed.
46. On 11 September 2025, following consultation of the Parties, the CAS Court Office summoned the Parties to a hearing via videoconference.

47. On 16 and 19 September 2025 respectively, FIBA, the Club, and the Player returned duly signed copies of the Order of Procedure provided to them by the CAS Court Office on 11 September 2025.
48. On 31 October 2025, a hearing was held by videoconference. At the outset of the hearing, the Parties confirmed that they had no objection to the constitution and composition of the Panel.
49. In addition to the members of the Panel and CAS Counsel, Ms Shanaize Yahiaoui, the following persons attended the hearing:
 - a) For the Appellant:
 - 1) Mr Marcin Skrocki, Counsel.
 - b) For the First Respondent:
 - 1) Mr Kacper Borowski, the Player;
 - 2) Mr Radoslaw Niwiński, Counsel;
 - 3) Mr Piotr Miękus, Counsel.
 - c) For the Second Respondent:
 - 1) Mr Jaime Lamboy, In-house Counsel;
 - 2) Ms Xènia Campàs Gené, In-house Counsel.
50. The First Respondent was assisted during the hearing by an interpreter, Mr. Maciej Zielepucha.
51. The Panel heard evidence from Mr Tarek Khrais, the Agent, witness called by the Player, and from the Player himself. The Parties had full opportunity to examine and cross-examine Mr Khrais as well as the Player.
52. The Parties were given full opportunity to present their cases, submit their arguments and answer the questions posed by the members of the Panel.
53. Before the hearing was concluded, all Parties expressly stated that they had no objection to the procedure adopted by the Panel and that their right to be heard had been respected.

V. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF

54. The Panel confirms that it carefully heard and considered in its decision all the submissions, evidence and arguments presented by the Parties, even if they have not been specifically summarized or referred to in the present arbitral award.

A. The Appellant

55. The Club summarises the substantive part of its Appeal Brief as follows:

- *“The [Employment Contract] was never terminated by either the Club or the Player. There was also no agreement between the parties regarding the termination of the [Employment Contract]. The Parties concluded a valid [Employment Contract] for a period of two seasons, which they were obliged to fulfil, while the Player decided after the first season to consider the [Employment Contract] terminated a year earlier and change club affiliation, guided solely by his own interests and violating the lex sportiva principle of contractual stability.*
- *The so-called ‘August Declaration’ was addressed exclusively to Mr. Khrais and concerned the invalidity of his agent-related claims. It did not constitute, either in content or form, a termination of the [Employment Contract]. The language referred to ‘validity’ not ‘termination’, and was never notified to the Player in accordance with the agreed contract procedure. For this reason, the [August Declaration] was sent only to Mr. Khrais (not to the Player), who was not a party of the [Employment Contract] and with whom the Club has had negative experiences in terms of cooperation in the past.*
- *The Polish words used in the August Declaration concerned ‘validity’ rather than ‘termination’. That, the Club says, is a further reason that indicates the dispute was only in relation to Mr Khrais’ claim for payment.*
- *Mr Khrais was not authorised to receive communications under the [Employment Contract] on behalf of the Player. That was a further reason that the August Declaration did not amount to a termination of the [Employment Contract]. Any communication directed to Mr. Khrais could not have had the legal effect of terminating the [Employment Contract]. Nemo plus iuris ad alium transferre potest quam ipse habet – Mr. Khrais could not legally receive declarations or terminate agreements for the Player if he did not hold such power in the first place. Consequently, the assertion that the [Employment Contract] was unilaterally terminated via communication to Mr. Khrais is unfounded.*
- *There was not any direct contact between the Club and the Player regarding any termination, invalidity or modification of the [Employment Contract].*
- *Regardless of the lack of will to terminate the [Employment Contract] with the Player, The Club was not permitted, according to the regulations pertaining to the Polish Basketball League and to the exact wording of the [Employment Contract], to terminate its [Employment Contract] with the Player, other than by reference to particular circumstances set out in the regulations or [Employment Contract], none of which was present in this case. Under both Article*

12.2 of the [Employment Contract] and Polish basketball regulations (e.g., §17 of PLK Resolution 6/2020), unilateral termination was only permitted under specific conditions. None of these conditions were fulfilled. Consequently, any suggestion that the [Employment Contract] was terminated is legally unfounded.

- [...]
- *The [Employment Contract] explicitly required any amendments to be made in writing (Art. 15.2). No such amendment was ever executed. The alleged ‘oral agreement lacks evidence, was never documented, and contradicts both the [Employment Contract] and applicable regulations. Also in line with the undisputed findings of FIBA Appeals’ Panel (p. 110-112) there is no evidence to substantiate the claim that there was a different oral agreement between the Player and the Club and that such a course was not permitted by Article 15.2 of the [Employment Contract] and the Player performed his duty based on the [Employment Contract] during season 2023/2024.*
- *Even if the conditions for a unilateral termination of the [Employment Contract] had existed (which they did not), had it been the Club’s intention to terminate the [Employment Contract] would have complied with the formal requirements set out therein and communicated such termination in a clear and unequivocal written notice addressed directly to the Player – in the same manner in which the [Employment Contract] had been concluded with the Player two months earlier – and would have subsequently either entered into a new agreement in written form or executed an annex amending the terms of the existing [Employment Contract], likewise in written form. None of these steps were taken, and the Player participated in official competitions in the 2023/24 season on behalf of the Club on the basis of the valid and binding [Employment Contract]. As FIBA Appeals’ Panel stated in the [Appealed Decision] (p. 110): ‘(...) despite the terms of the August Declaration, the Player continued to play for the Club. As observed in paragraphs 101-103, there is no documentary evidence of communications about a different or amended contract. Rather, it appears that the Player and the Club were each content to continue as if the terms in the [Employment Contract] were those which governed the Player playing for the Club during the 2023/2024 season...’.*
- *The Player’s reliance on the [August Declaration] is ‘merely a procedural tactic’, which has been implemented by the Player’s camp after playing throughout the whole 2023/2024 season based on the written [Employment Contract] as there is no evidence of other agreements between parties. It is worth reminding that the [August*

Declaration] was submitted in August 2023 and yet the Player remained playing until the end of the 2023/2024 season.

- *The Player acted in bad faith. His real motivation was to change clubs without incurring financial costs, at the expense of his obligations under a valid contract. As a result, the Club was left without a sufficient number of national players before the season, forcing extraordinary roster adjustments. This situation had a direct and measurable negative impact on the Club's sporting performance. It should also be emphasized that, based on the principle of *nemo auditur propriam turpitudinem allegans*, a Player who, acting solely in his own interest, guided only by the desire to change club affiliation despite having a valid contract, committed gross violations of the regulations, legal provisions and principles of professional ethics, in particular the principle of contractual stability, cannot effectively claim legal protection in the form of a letter of clearance issued by FIBA.*
- *The Club continued to perform its obligations under the [Employment Contract] in full during the 2023/2024 season. The Player participated in official games and training activities and received his salary and performance bonuses regularly as it was stated in the [Employment Contract]. At no time did the Club take any action aimed at formally terminating or modifying the [Employment Contract]. The Club acted in good faith at all times and honored its financial obligations to the Player, making all salary and bonus payments under the [Employment Contract] in accordance with its terms. The conduct of both Parties throughout the 2023/2024 season indicates a mutual understanding that the [Employment Contract] remained in force. The foregoing is further corroborated by the invoices issued by the Player, the contents of which explicitly indicate that the remuneration amounts stipulated therein are payable pursuant to the [Employment Contract].*
- *By appealing, the Club seeks to find respect for the letter of the law and the autonomy of sports law, which clearly indicate that the [Employment Contract] could not be terminated by submitting a Declaration and therefore issuance of letter of clearance unlawfully deprived the Club of one of the Players who should have performed his contractual obligations in the 2024/2025 season. The relationship between the Club and the Player is governed primarily by the specific provisions of the [Employment Contract] and the intra-organizational basketball regulations (ex. Polish Basketball League Resolution), which as *lex specialis* take precedence over general interpretations. *Lex specialis derogat legi generali*, special provisions override general legal rules in specific contractual frameworks. CAS jurisprudence strongly values the principle of contractual good faith, especially where both parties continue to act*

in accordance with the terms of the agreement. Such behavior evidences the mutual intent to uphold the contract, even in the presence of alleged documentary ambiguities” (emphasis omitted).

56. The Club submitted the following prayers for relief in its Statement of Appeal:

- “1. the present appeal against FIBA Appeal’s Panel Decision of the Single Judge dated as of April 24, 2025 is upheld;*
- 2. to set aside the challenged decision;*
- 3. to rule that the Player has signed a binding sport services contract dated June 22, 2023 (hereinafter: ‘Contract’) and the Contract was not unilaterally terminated by the Appellant or by mutual agreement, therefore has been still binding in 2024/2025 season and issuance of a letter of clearance for the Player is unjustified.*
- 4. to order the Respondent to reimburse the Appellant for the legal expenses incurred including costs incurred by proceedings in both instances before FIBA and FIBA Appeals’ Pannel [sic] regarding the appealed Decision;*
- 5. to establish that the costs of the arbitration procedure shall be borne by the Respondent;*
- 6. such further or consequential orders or relief as the Court sees fit.*

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

- 1. the present appeal against FIBA Appeal’s Panel Decision of the Single Judge dated as of April 24, 2025 is upheld;*
- 2. the decision by FIBA Appeal’s Panel Decision of the Single Judge dated as of April 24, 2025 shall be annulled and a new decision is issued in which, having considered all the pertinent factors and attendant circumstances;*
- 3. to condemn the Respondent to the payment in the favour of the Appellant of the legal expenses incurred including costs incurred by proceedings in both instances before FIBA and FIBA Appeals’ Pannel [sic] regarding the appealed Decision;*
- 4. such further or consequential orders or relief as the Court sees fit”.*

B. The First Respondent

57. The substantive part of the Player’s Answer, in essence, may be summarised as follows:

Authorisation of the Agent to receive declarations of will addressed to the Player

- Contrary to the Club's position, it should be noted that, in light of all evidence gathered in the case file, it is undisputable that the Club was fully aware that:
 - The Agent (and thus the representative of the Player's basketball-related interests) is (and was) Mr Khrais;
 - The Agent is (and was) authorised to receive declarations of will addressed to the Player.
- The Club's allegations concerning the Agent, including the lack of direct contact between the Club and the Player and the alleged ineffectiveness of the August Declaration, are fundamentally unfounded.
- With full awareness that Mr Khrais was the Player's Agent and what effect that August Declaration would have, on 24 August 2023, the Club decided to terminate the Employment Contract with the Player, a decision which was not contested by either the Player or the Agent.
- Subsequently, despite mutual animosities, the Player and the Club reached an oral agreement regarding the completion of the basketball season 2023/2024, under the financial terms set forth in the terminated Employment Contract. In light of this oral arrangement with the Club's President – the Player was to become a free agent at the conclusion of the basketball season 2023/2024. However, for reasons entirely unknown to the Player, the Club is currently failing to respect these arrangements.
- Under Polish law, a declaration of intent made to another person is deemed to have been submitted when it reaches that person in such a manner that they are able to become acquainted with its content. It is irrelevant who actually received the declaration directly from the sender.
- Any subsequent conduct pertained solely to follow-up oral arrangements between the Agent and the Club concerning the Player's continued participation with the Club until the end of the 2023/2024 season.
- It should be noted in this context that, in the absence of a new written contract, the invoices continued to include the original basis for payment, as specified in the initial Employment Contract. The Player was not aware that this legally irregular situation required any amendment to the description on the invoices, which continued to be issued on his behalf by his accountant in accordance with the original instructions given during the term of the Employment Contract.
- It is also important to highlight that the Player ceased issuing any further invoices as of the end of the season 2023/2024 – despite the ongoing delay

in the issuance of the Letter of Clearance. Had the Player and the Club reached a different agreement following the termination of the Employment Contract, the Player would have continued to issue invoices to the Club for the season 2024/2025.

Validity of the August Declaration and lack of validity of the Employment Contract

- It is impermissible to agree with the Club's attempt to interpret isolated words used in the August Declaration. Furthermore, such reasoning is manifestly contradictory. It must be underscored that the August Declaration was sent only after a significant lapse of time from the Employment Contract's commencement; accordingly, the termination cannot operate – in theory – with *ex tunc* effect. Therefore, the Club had termination in mind. The contention that the Employment Contract was intended to be terminated (with *ex tunc* effect) by virtue of the August Declaration is fully justified and represents the sole legally sound interpretation.
- Out of an abundance of procedural caution, it must be stressed that the assessment of the legal effect of the termination notice cannot be based solely on a literal interpretation of individual words or expressions contained therein. Instead, it is the true intention of the declaring party, assessed in light of the circumstances and context in which the August Declaration was made, that should prevail.
- It should be also emphasised that contrary to the Club's position, the August Declaration substantively pertained directly (and exclusively) to the Employment Contract, and not to the Agent's commission or any other relationship between the Club and the Agent. The August Declaration explicitly (literally) referred to the legal relationship between the Club and the Player.
- Contrary to the Club's assertions, according to Polish law, a civil law agreement may be terminated at any time, even if it is for a fixed term, although this may entail an obligation to pay damages.
- The effectiveness of a termination statement does not depend on specifying the reason for the termination in its content, nor even on whether such a reason objectively existed. Termination is a legal action that shapes rights, and the statement of termination, made in its execution, takes effect *ex nunc*, i.e., from the moment it is made. Therefore, the termination immediately causes the legal relationship to cease.
- Regarding other arguments raised by the Club:
 - The Employment Contract was terminated in writing, making discussions about the requirement of written amendments to the Employment Contract irrelevant. As FIBA rightly noted in both

decisions, the Player's participation with the Club for the remaining part of the basketball season 2023/2024 was based only on verbal agreement made between the Player, the Agent and the Club, not on the terminated Employment Contract.

- The signed rulebook was not dedicated to the season 2024/2025, which corresponds with the argument presented by the Player (and fully supported by FIBA in both decisions) regarding the verbal agreements between the Player, the Agent and the Club concerning the Player's affiliation to the Club solely until the end of the basketball season 2023/2024.
- For the reasons mentioned above, the request for the issuance of the Letter of Clearance is fully lawful and justified.

The Club's intent to terminate the Employment Contract

- Regarding the other assertions of the Club, it should be emphasised that the Club, as the party making the August Declaration, should have ensured the correctness of its formulation and is responsible (in terms of bearing the legal consequences) for any negligence that led to the imprecise drafting of the declaration.
- Therefore, out of caution, it should be noted that in the case of any ambiguity or imprecision in the August Declaration, doubts should be resolved in favour of the party that did not draft its content (i.e., in favour of the Player).
- The meaning attributed to the August Declaration should be determined based on the circumstances at the time the declaration was made. It should be noted that the new interpretation of the August Declaration was presented by the Club only after it was made, and in fact, during the proceedings for the issuance of the Letter of Clearance.
- In accordance with the established principle in Polish law of protecting the trust of the recipient of the declaration in its content, priority must be given to the content of the August Declaration as it was communicated to him. In the case of the wording of the August Declaration, it should have been obvious to the recipient that the Club's intention was to terminate the Employment Contract.
- Even if it were to be determined that the unilateral termination of the Employment Contract by the Club was ineffective (*quod non*), the fact that it was accepted by the Player would result in mutual declarations of intent to terminate the Employment Contract (i.e., effectively leading to the termination of the Employment Contract by mutual agreement of the Parties, which, according to the Employment Contract, could occur in any form).

- Both the Player and the Agent recognised the August Declaration as a fully valid and effective termination.
- The Club, while not questioning the effectiveness of the submitted termination nor revoking or challenging it in any way, asked in a phone conversation between the Agent and the President of the Club's Management Board, as well as in direct contact with the Player, that the Player should be allowed to finish the remaining part of the season 2023/2024 as a player of the Club for an agreed salary equal to the one stipulated in the Employment Contract. It was clearly indicated that this arrangement applied solely and exclusively to the remaining part of the season 2023/2024, and as of the end of the basketball season 2023/2024, the Player would become automatically a free agent.
- It should be underlined that the Player and the Club did not sign any agreement to revoke the declaration of intent regarding the termination of the Employment Contract (in particular they did not sign any agreement to revoke the August Declaration), which they would have been obligated to do if that had been their intention to continue the cooperation under the Employment Contract.

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

“On a preliminary basis,

1. *to recognize the inadmissibility of the Club's Appeal and **to reject or dismiss the appeal in totum***

(i.e. to declare the Club's Appeal inadmissible especially on two grounds: (i) the absence of a 'live object' under Article R47 of the CAS Code, as the season 2024/2025 has ended, the Player is no longer under contract with the Club, and the request for relief is moot; and/or (ii) he [sic] Appeal Brief is procedurally deficient, as it lacks the necessary clarity and fails to specify the requests for relief with the required precision);

Alternatively, if the above request and the resulting formal objections are not taken into account:

2. *That the Appeal is **rejected in totum**;*
3. *That the Appealed Decision is **confirmed in totum**;*

In any event:

4. *That the Appellant is ordered to bear the costs of the arbitration;*
5. *That the Appellant is ordered to pay a contribution towards the First Respondent's legal fees and other expenses in the present*

arbitration, in an amount deemed proportionate by the CAS Panel” (emphasis in original).

C. The Second Respondent

59. The substantive part of FIBA’s Answer, in essence, may be summarised as follows:

- In the event the Panel decides to review this appeal on the merits, and for reasons of procedural economy, FIBA refers to the arguments of the Appealed Decision made in support of the findings of the First Instance Decision.
- To begin with, Article 3-62 FIBA IR provides that FIBA may refuse to grant the request for a letter of clearance if, *inter alia*, “*the player is under contract to play for the player’s club beyond the scheduled transfer date*”.
- The explanations and arguments advanced by the Club in its Appeal Brief continue to make little, if any at all, sense. The Club tries to argue that the intended effect of the August Declaration was to counter the Agent’s claim for his fees allegedly resulting from the conclusion of the Employment Contract. However, this does not explain why the Club would need to refer to the “*validity*” of the Employment Contract in the August Declaration. More importantly, FIBA fails to understand how the Club would, by declaring the Employment Contract as invalid, make any difference in its dispute with the Agent, considering that the Agent was not even a party to the Employment Contract.
- With respect to the scope of FIBA’s review, it needs to be clarified that, in line with its role in transfer dispute proceedings, FIBA limits its assessment to whether a contract has expired or been terminated. In principle and unless exceptional circumstances apply, FIBA shall not consider the potential unlawful nature of a termination (e.g. it being in breach of contractual conditions or the national federation regulations) as determinant when deciding if a contract has been terminated or not to issue or refuse a Letter of Clearance. In fact, an unlawful termination shall equally have the effect necessary to trigger the condition required as per the FIBA rules (that a player is no longer under contract with a club), while the granting or refusal of a Letter of Clearance shall be without prejudice to the right of the aggravated party to seek compensation for a breach of contract, as precisely expressed in the First Instance Decision.
- In the case at hand, it is an undisputed fact that the Player and the Club concluded the Employment Contract, which was valid for two basketball seasons, namely until the end of the 2024/2025 season. It is also undisputed that the Club sent the August Declaration to the Agent with the content set out in the Appealed Decision (“*we would like to inform you that such a contract cannot enter into force (...) the club considers the contract of June*

22, 2023 *invalid*”). It is also undisputed that the August Declaration only references the Employment Contract.

- With respect to whether the Club intended to terminate the Employment Contract through the August Declaration, and whether the Agent was authorised to receive communications on behalf of the Player, the language used in the August Declaration is unambiguous. The Club expressly stated that the “*contract cannot enter into force*” and that “*the club considers the contract (...) invalid*”, leaving no doubt that its intention was to terminate the Employment Contract. Therefore, by sending the August Declaration, the Club signalled its intention to terminate the Employment Contract to the Player’s representative, a message which was duly transmitted to the Player. The Club intends to argue that the August Declaration was issued only in the context of the club-agent dispute. However, there is nothing in the text of the August Declaration to support this argument. If the Club simply wanted to challenge the Agent’s request for the payment of the Agent’s fees (as argued by the Club), then there was no need for the Club to catalogue the Employment Contract as “*invalid*”.
- It must also be reiterated that the August Declaration was signed by the same representative who executed the original Employment Contract, demonstrating his clear authority to act on behalf of the Club in both initiating and terminating the Employment Contract.
- The Club argues that the translation of the August Declaration does not accurately represent the meaning of it in Polish. The submission of the August Declaration to FIBA in English implies an acknowledgement of the translation’s adequacy for purposes of interpretation in these proceedings. The term “invalidation”, as commonly understood, conveys that the Employment Contract lacked legal effect from the outset. This is sufficient to establish that the Employment Contract never entered into force, obviating the need for further linguistic dissections. Thus, the invalidity of the Employment Contract supports FIBA’s authority to issue the Letter of Clearance without reliance on speculative translation issues.
- As to whether the Agent was authorised to receive communications on behalf of the Player, the Club does not dispute, let alone disprove, that the Agent was indeed representing the Player.
- Regarding the question of whether the Club was entitled to terminate the Employment Contract, the Club essentially argues that the applicable basketball rules in Poland do not allow for an early termination of the Employment Contract in view of the circumstances of the matter at hand. However, as stated clearly in the previous paragraphs of this section, when it comes to transfer disputes, FIBA limits its assessment to whether a contract has expired or has been terminated. FIBA’s regulations governing the issuance of Letters of Clearance are not intended to assess whether a party was substantively justified in terminating an agreement, nor to

determine the appropriateness of such termination. Instead, they are limited to establishing whether a termination has in fact occurred.

- The fact that the Employment Contract stipulated that any changes had to be made by the parties in writing is irrelevant, considering that the Employment Contract was terminated by the Club in writing and sent to the Player's representative.
- Also, the fact that the Player signed the "player rulebook" for the 2023/2024 season is irrelevant. Indeed, it is undisputed that the Player did play for the Club during the 2023/2024 season. As such, it is common practice for all players to sign such an internal document, regardless of whether they have a written contract or a verbal agreement with their club. As such, the signature of the rulebook does not prove anything about the type of agreement that governed the parties' relationship.

60. On this basis, FIBA submits the following prayers for relief in its Answer:

- I. Dismiss all prayers for relief submitted by the Appellant; and*
- II. Order the Appellant to pay all the costs of the present arbitration and a contribution to FIBA's legal costs".*

VI. JURISDICTION

61. Article R47 CAS Code provides the following:

"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."

62. The jurisdiction of CAS is not disputed and derives from Article 1-264 FIBA IR (December 2024 edition), which provides as follows:

"A further appeal against the decision by the Appeals' Panel can only be lodged with the Court of Arbitration for Sport in Lausanne, Switzerland [...]."

63. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by the Parties.

64. It follows that CAS has jurisdiction to adjudicate and decide on the Club's appeal.

VII. ADMISSIBILITY

65. Below is a summary of the relevant facts and allegations specifically related to the Parties' submission on the admissibility of the appeal. This section is based on the Parties' written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows.

66. The Respondents contest the admissibility of the Club's appeal.

A. The position of the Player

67. Article R47 CAS Code requires the existence of a live object, i.e., a formal decision which is still in force and capable of being annulled. In the present dispute, the subject matter of the Club's appeal relates to the issuance of a Letter of Clearance concerning the Player's eligibility to participate in the expired basketball season 2024/2025. The object of proceedings concerning the issuance of a basketball player's letter of clearance is to resolve the player's current club affiliation status by issuing an appropriate decision. This entails the necessity of rendering a decision – and doing so during the basketball season to which the proceedings pertain.

68. The last official match of the Club in the 2024/2025 season was played on 21 May 2025. The 2024/2025 season has already concluded, rendering the purpose of the requested relief obsolete. The Letter of Clearance, even if now retrospectively annulled, would no longer produce any practical legal effect, nor could it alter any sporting outcome or enable the registration of the Player for the season already completed. The Player also made two subsequent transfers to Spójnia Stargard and Anwil Włocławek.

69. It should also be noted that, pursuant to the original term of the Employment Contract, the employment relationship was intended to be in force solely for the basketball seasons 2023/2024 and 2024/2025 and not for the ongoing basketball season 2025/2026.

70. As such, the Club's appeal no longer presents a current legal dispute or enforceable claim. The First Instance Decision and the Appealed Decision have ceased to have any operative significance, and no further consequences arise from their existence or annulment. Therefore, the appeal must be considered inadmissible due to lack of a live case or controversy (mootness). It is not enough that there may have been a live case when the case was decided by the FIBA Appeals' Panel.

B. The position of FIBA

71. As a preliminary remark, FIBA notes that according to a general and well-established principle of procedural law, a party has standing to sue if it has an interest worthy of protection.

72. FIBA quotes CAS 2016/A/4602, paras. 48-49 where the Panel stated that “*a claim shall be deemed inadmissible if it clearly does not serve the purpose of the Appellant*”.
73. In the matter at hand, the Club’s legal interest in setting aside the Appealed Decision and the Letter of Clearance issued by FIBA is limited to the revival of its contractual relationship with the Player, which, however, has expired by now, as the Employment Contract was valid only until the end of the 2024/2025 season, at the latest. The goal pursued by the Club is obviously to ensure that the Player performs his contractual obligations under the Employment Contract, namely, to continue playing for the Club in the 2024/2025 season. This, however, is no longer possible, as the 2024/2025 season has already come to an end. As a result, a successful outcome of this appeal shall not help in achieving the Club’s goal.
74. In summary, the appeal should be dismissed as moot. Granting the Club’s requests would create a legally artificial situation, whereby the Player would be deemed to return to the Club even though, in any event, his Employment Contract would have expired at the end of the 2024/2025 season. As a result, the Player would anyway be free to sign with any club of his choosing.
75. The only credible explanation for initiating the present appeal before the CAS appears to lie in the Club’s intention to rely on a potentially favourable award from the CAS as a means to seek compensation for damages against the Player before the competent jurisdiction identified in the Employment Contract. In this regard, FIBA submits that transfer dispute proceedings are not meant to settle financial differences between the parties and this is the reason why FIBA decisions do not contain any findings on the validity of the termination of an employment contract between a player and a club. The player and the club, in order to seek settlement of any financial disputes (including damages) and irrespective of the outcome of the present appeal, should bring such disputes before the competent bodies for the settlement of contractual disputes as they are defined in the Employment Contract and the applicable regulations.
76. Further than that, FIBA also notes that CAS’ well-established case law recognises the importance of joining a third party that stands to be affected by an appeal, the outcome of which would challenge that party’s rights or legal interests.
77. Since PGE Spójnia Stargard has not been brought into these proceedings by the Club as a co-respondent and that the time limit to do so with the Statement of Appeal has already come and gone, FIBA submits that the appeal should also be dismissed for this reason.
78. More specifically, FIBA notes that Article 3-97 FIBA IR provides that “[a]ny international transfer carried out in accordance with the procedures set out in these regulations, but having taken place after an illegal transfer, is null and void, other than in exceptional cases upon the decision of the Secretary General”. Therefore, should the Player’s transfer from the Club to HKK Mostar (which was authorised by the First Instance Decision and, consequently, by the Appealed

Decision) be invalidated as a result of a successful outcome of the appeal at hand, this would have as a result that the Club's subsequent international transfer from HKK Mostar to his current club, PGE Spójnia Stargard, would be declared null and void in accordance with the clear provision of Article 3-97 FIBA IR.

79. In this sense, it is obvious that PGE Spójnia Stargard has an actual legal interest in the outcome of this appeal. If the Club were successful, the Player's transfer to PGE Spójnia Stargard would be declared null and void.

C. The position of the Appellant

80. The Club wishes to point out that if the Panel finds that it is unable to rule on the annulment of the Appealed Decision, as referred to in points 1 and 2 of the *petitum*, it is justified to rule on the request referred to in point 3 of the *petitum*. The subject matter of this appeal is not solely the physical return of the Player. The Club seeks a declaratory judgment that the Letter of Clearance was issued unlawfully due to the existence of a valid contract. Such a judgment is not theoretical in nature. It is an essential element for the Club's subsequent action for damages against the Player. CAS panels have held that a request for a declaratory ruling constitutes a legitimate legal interest if it forms the basis for future claims.
81. If the Panel finds errors in this case, stating that the Appealed Decision was issued in violation of the law, then despite the fact that the Player will not return to the Club (the Player's return is not and has never been the Club's intention in these proceedings), the ruling will establish the factual circumstances allowing the Club to seek compensation for its losses and will prevent similar actions in the future.
82. FIBA cannot hide behind a self-proclaimed "administrative" role to avoid a proper legal assessment. The question of whether a player is "under contract" is a legal determination, not a simple fact check. By ignoring the governing law of the Employment Contract (Polish law) and the full context of the situation, FIBA failed to correctly determine the Player's contractual status. FIBA conducted a superficial analysis, focusing solely on a single document taken out of context.
83. An appeal to CAS constitutes the sole and necessary means of challenging decisions of FIBA bodies (an exclusive, mandatory appeal to CAS). The Club strictly complied with the instructions contained in the Appealed Decision and filed an appeal within the time limits prescribed by the regulations immediately, without delay. The appeal was filed with CAS on 13 May 2025, i.e., before the end of the season. At the time, the controversy was truly alive.
84. The time limits of the sporting season cannot deprive the parties of their right to appeal. The mere end of the sporting season or the end of the competition should not render the appeal moot, precisely because the underlying legal findings had lasting consequences for the parties. The Club's interest does not end with the conclusion of the current season. It will define the rights and obligations of the parties at that point in time, providing the necessary basis for future contractual or disciplinary claims.

85. The refusal of CAS to consider the case on formal grounds nullifies the purpose of the remedy provided by FIBA and leads to depriving the party of effective legal protection. As emphasised by the Grand Chamber of the European Court of Human Rights (“ECtHR”) in the case of *Semenya v. Switzerland*, the autonomy of sport and the structure of sports arbitration cannot result in a limitation of the right to a court and an effective remedy, especially when arbitral jurisdiction is *de facto* imposed by regulations. In this respect, reference is also made to decision in the case of *RFC Seraing* before the Court of Justice of the European Union (“CJEU”).
86. FIBA itself indicates that its transfer decisions do not resolve financial issues between the club and the player. This further justifies the need for a substantive review of the legality of the issuance of the Letter of Clearance, as the Club relies on such a decision to protect its rights.
87. The Club filed a motion with FIBA for an injunction (suspension of the effects of the Letter of Clearance), which was rejected, even though it was a measure that could have mitigated the damage and sporting risks. The consequences of failing to provide such an injunction cannot burden the Club by rendering the appeal “irrelevant”.
88. Ultimately, by lodging this appeal, the Club also acts in consideration of *ordre public*, aiming not only to safeguard its own right but also to contribute to the establishment of a framework that may guide other clubs in analogous situations of unfairness.
89. As to FIBA’s arguments that the Club should have called PGE Spółnia Stargard as a respondent, at the stage of the proceedings before FIBA, the Club stated multiple times that adding HKK Mostar and PGE Spółnia Stargard was irrelevant. Even according to the opinion of PGE Spółnia Stargard, its presence was pointless at the time. Subsequent transfers are a consequence of FIBA’s initial error, not the subject of this appeal. PGE Spółnia Stargard assumed a business risk by signing a player whom they knew to be in an ongoing contractual dispute. It was FIBA’s duty to properly adjudicate the initial request, not burden the Club to join every party subsequently affected by FIBA’s own mistake. None of the subsequent clubs are addressees of the Appealed Decision, and the relief sought by the Club can be formulated in a manner that does not interfere with the rights of third parties. The relief sought can be formulated in a declaratory manner, without infringing upon the legal interests of third parties.
90. However, *ex abundanti cautela*, should the Panel consider their participation necessary, the Club respectfully requests that HKK Mostar, PGE Spółnia Stargard and Anwil Włocławek be admitted as parties.
91. Finally, pursuant to Article R41.2 CAS Code, if a respondent intends to cause a third party to participate in the arbitration, it shall so state in its Answer. The question should therefore be asked why FIBA, despite its position, did not state that it would be correct to use Article R41.2 CAS Code. This position of FIBA is

internally contradictory and shows that the Respondents only want to end this case on formal terms, without the merits being considered.

D. The findings of the Panel

92. Article R49 of the CAS Code provides as follows:

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

93. Article 1-264 FIBA IR provides as follows:

“A further appeal against the decision by the Appeals’ Panel can only be lodged with the Court of Arbitration for Sport in Lausanne, Switzerland, within twenty-one (21) days following notice of the reasons of the decision (see Article 1-224). The Court of Arbitration for Sport shall act as an arbitration tribunal and there shall be no right of appeal to any other jurisdictional body. If so requested by FIBA, the CAS shall establish an expedited procedural calendar in order to ensure the smooth running of any directly or indirectly affected competition(s).”

94. The Appealed Decision was notified with grounds on 24 April 2025. The appeal was filed within the applicable 21-day deadline, given that it was filed on 13 May 2025.

95. Furthermore, the Statement of Appeal and the Appeal Brief complied with all the requirements set out in Articles R48 and R51 of the CAS Code.

96. The Panel then refers to the argument raised by FIBA namely the *“inadmissibility of the appeal due to lack of legal interest”* (art. 41 et seq. of FIBA’s Answer).

97. The headnote of CAS 2016/A/4602 reads as follows:

“In principle, a request is inadmissible, if it lacks legal interest. Thus, a reasonable legal interest is a condition for access to justice. The condition of sufficient legal interest serves first and foremost public interests, i.e. to restrict the case load for the courts by striking “purposeless” claims from the court’s registry. This public interest is clearly evidenced by the fact that the courts examine this (procedural) condition sua sponte. Therefore, a claim shall be deemed inadmissible if it clearly does not serve the purpose of the appellant.”

98. The Swiss Federal Tribunal (the “SFT”) stressed the following in this respect (free translation into English):

“The Federal Court shall not hear the appeal and shall declare it inadmissible if there is no interest in the appeal at the time it is filed;

however, if this interest disappears during the proceedings, the dispute shall be declared moot and the case shall be removed from the docket.”
(ATF 5A_752/2016, c. 2.1.2)

99. The Panel also notes that a sole arbitrator ruled as follows in CAS 2017/A/5054:

“In order for the claim to be admissible, the Appellant must have a legal interest (“Rechtsschutzinteresse”, “intérêt d’agir”). Since the requirement of a legal interest determines if in a given case whether a claimant has access to justice, the bar must be set with prudence and – in any respect – not too high [...]. In doing so, the Sole Arbitrator does not take recourse to the Swiss law of civil procedure. In principle, the Sole Arbitrator finds that the threshold for a legal interest must be set low before an arbitral tribunal. The prerequisite of a legal interest is designed to protect the courts from being deadlocked with needless disputes. The prerequisite, thus, helps to manage the workload of the courts and to protect scarce public resources. The answer to the question, however, what disputes shall be considered ‘needless’ is very different in cases in which the state provides and pays for courts that adjudicate a dispute compared to cases where the parties mandate and pay (in full) a private institution to adjudicate the matter. In the latter case, a legal interest should only be denied if there is no benefit for the party whatsoever in obtaining a judgement in this matter in his or her favour” (CAS 2017/A/5054, paras. 75-78).

100. In the sections below, the Panel will address the various arguments on the basis of which the Club invokes that it has a legal interest in challenging the Appealed Decision.

a. The Player’s potential return to the Club

101. A potential legal interest of the Club could have been to seek the return of the Player to the Club. Indeed, should it be established that the Letter of Clearance had been issued erroneously, this may have been a possibility. While it is disputed whether the Player’s Employment Contract with the Club was valid until the end of the 2023/2024 season or the end of the 2024/2025 season, it is undisputed that the Employment Contract was in any event not valid after the end of the 2024/2025 season. Accordingly, even if the Appealed Decision is overturned and the Letter of Clearance is invalidated, there is no contractual basis anymore for the Player to return to the Club at least since the end of the 2024/2025 season.

102. The Player, *inter alia*, thus rightly submitted that “[t]he letter of clearance, even if now retrospectively annulled, would no longer produce any practical legal effect” and that the Appealed Decision “has ceased to have any operative significance, and not further consequences arise from its existence or annulment”.

103. Equally rightly, FIBA indicated that “any decision by this Court concerning the [Letter of Clearance] would have no practical effect” and that “considering the

lack of any tangible legal interest of sporting nature at stake (as the controversy regarding the transfer dispute has become moot), the appeal should be dismissed as inadmissible due to the lack of legal interest on the part of the Appellant”.

104. The Panel concludes that the Club might have had a legal interest to seek the return of the Player until the end of the Employment Contract at the outset of the proceedings before CAS, namely on 13 May 2025, assuming that the Player’s Employment Contract would have ended at the end of the 2024/2025 season, which, once again, is disputed between the Parties, but this potential interest ceased to exist a couple of weeks after and is no longer present.

105. This conclusion is confirmed by the Club’s own submission dated 29 August 2025:

“The purpose of this appeal is not the Player’s physical return, but to obtain a declarative ruling that the Letter of Clearance was issued unlawfully because a valid Contract between the Player and the Club was in force at that time. Such a ruling is a critical prerequisite for Club’s subsequent claim for damages against the Player for breach of contract. A declaration from CAS will establish the legal facts of the case, which is a tangible and actual interest”.

106. It is true that the Club occasionally argued differently, such as for example that the purpose of filing its appeal was not *“solely the physical return of the Player”*, but the Panel finds that such references are trumped by the explicit confirmation that the Club did not file the Appeal with the hope to obtain the physical return of the Player, admitting therefore that this was not its legal interest to appeal.

107. Consequently, the Panel finds that the Player’s potential return to the Club was never a legal interest of the Club in the present appeal arbitration proceedings.

b. The Club’s interest in a declaratory ruling on the alleged unlawful issuance of the Letter of Clearance

108. The Club also argues that overturning the Appealed Decision *“is a critical prerequisite for Club’s subsequent claim for damages against the Player for breach of contract. A declaration from CAS will establish the legal facts of the case, which is a tangible and actual interest”*.

109. The Panel considers the Club’s possibility of claiming compensation from the Player for breach of contract to be a legitimate legal interest that is worthy of protection.

110. However, the Respondents maintain that overturning the Appealed Decision is not a *“critical prerequisite”* for the Club to potentially file a claim for damages against the Player. If true, this would deprive the Club of a legal interest with its appeal in the matter at hand.

111. The Panel notes that CAS is not the forum to adjudicate on any such potential claim for damages, at least not in appeal arbitration proceedings originating from the Appealed Decision.
112. Any contractual dispute between the Player and the Club would in principle be a domestic employment-related dispute under Polish law and, pursuant to Clause 14 of the Employment Contract, any such dispute is in principle to be resolved by the Court of Arbitration for Sport at the Polish Basketball Association. There is in any event no arbitration clause in favour of CAS to adjudicate and decide on any such employment-related claim.
113. As mentioned above, FIBA indicated that “*any decision by this Court concerning the [Letter of Clearance] would have no practical effect*” and that “*considering the lack of any tangible legal interest of sporting nature at stake (as the controversy regarding the transfer dispute has become moot), the appeal should be dismissed as inadmissible due to the lack of legal interest on the part of the Appellant*”.
114. Likewise, the Player argued that “[t]he letter of clearance, even if now retrospectively annulled, would no longer produce any practical legal effect” and that the Appealed Decision “*has ceased to have any operative significance, and not further consequences arise from its existence or annulment*”.
115. These statements do not only deal with the issue of the Player’s potential return to the Club but also with the Club’s interest in a declaratory ruling on the alleged unlawful issuance of the Letter of Clearance.
116. FIBA further mentions under para. 45 of its Answer that “*the only credible explanation for initiating the present appeal before the CAS appears to lie in the Appellant’s intention to rely on a potentially favourable award from the CAS as a means to seek compensation for damages against the Player before the competent jurisdiction identified in the Agreement. In this regard, FIBA submits (for the sake of completeness only, as the Appellant does not make any such argument in its appeal) that transfer dispute proceedings are not meant to settle financial differences between the parties (clubs and players) and this is the reason why FIBA decisions do not contain any findings on the validity of the termination of an employment agreement between a player and a club. In addition, the lack of relevance of any monetary disputes to the FIBA transfer proceedings is clearly explained in paragraphs 120-122 of the Appealed Decision.*”
117. Paragraphs 120 to 122 of the Appealed Decision read as follows:

“The Club and the Appellant both spent a significant portion of their submissions directed to the question of whether Mr Khrais was the Player’s agent in the period around June 2023. In light of the Single Judge’s conclusions in respect of the August Declaration, it is not necessary to determine whether Mr Khrais was the Player’s agent in June 2023 such that the Club should not have signed the June Contract with the Player without the involvement of Mr Khrais.”

If Mr Khrais (who is not a party to this appeal) considers that he has a claim against the Club in respect of it not recognising him as the Player's agent or not paying him commission, he can take it up elsewhere. Likewise, if the Club considers that the provisions of Polish law mean that it has a claim against the Player for not honouring the June Contract, such a claim can also be taken up elsewhere.

In both instances, it is not the role of either FIBA or this Appeal Panel to adjudicate financial disputes. These reasons do not affect the ability of Mr Khrais or the Club to make such claims if so advised, whether in Polish courts or elsewhere.”

118. The Panel notes further paragraph 47 of the Appealed Decision where the Single Judge of the FIBA Appeals Panel stresses that by its appeal, the Club seeks to “*overrule and change the appealed decision by issuing a decision stating a refusal of issuing a letter of clearance for the Player Kacper Borowski*” (quotation from the Appellant’s appeal brief before the FIBA AP).
119. The Panel observes that the scope of the procedures between the Parties before the FIBA’s General Secretary and the Single Judge of the FIBA Appeals Panel was limited to the issuance or not of the Letter of Clearance requested by HKK Mostar. There is indeed no request for relief from the Club before the FIBA’s General Secretary or even before the Single Judge of the FIBA Appeals Panel that – in the unlikely event that an extension of the scope of the dispute would be admissible – through which the Club sought damages from the Player for breach of contract or any declaratory ruling.
120. In other words, the first and second instance procedures within FIBA did not deal with an employment dispute but only with a transfer dispute. The fact that the FIBA’s internal jurisdictions had to analyse whether, in their view, the Player’s Employment Contract was validly terminated or not at the end of the season 2023/2024 does not change anything to the fact that those bodies were not asked to decide on this issue, even less with *res judicata* effect.
121. In the First Instance Decision it was held that “*these proceedings are not intended to adjudicate employment-related or financial disputes between the Player and the Club of Origin*”. FIBA’s General Secretary clearly indicated “*that FIBA has created the Basketball Arbitral Tribunal (“BAT”) to handle financial disputes and parties are generally free to agree to submit their case to it.*” In conjunction with the first quotation of the present paragraph, this second quotation confirms not only that the proceedings before the FIBA’s General Secretary did not deal with the employment-related dispute but that the FIBA regulations exclude that the FIBA’s General Secretary had any competence to deal with an employment-related dispute which, within FIBA, is the competence of the BAT.
122. On top of that, the Panel notes that the Player and FIBA unequivocally accept that the issue of the Club’s alleged termination of the Employment Contract by means of the August Declaration is moot as this issue remains open to debate in any

potential subsequent proceedings initiated by the Club to obtain compensation for breach of contract and that the *res judicata* effect of the Appealed Decision does not bar the competent forum from adjudicating and deciding on such discussion.

123. Accordingly, contrary to the Club's contention that a ruling from CAS setting aside the Appealed Decision "*is a critical prerequisite for the Club's subsequent claim for damages against the Player for breach of contract*", it is acknowledged by both Respondents that this is not a critical prerequisite, and the Panel agrees with this.
124. Notwithstanding the fact that the Panel found that the scope of the present proceedings is limited to the scope of the Appealed Decision which does not cover an employment-related dispute and a claim for damages for breach of contract, which excludes that a declaratory decision be issued by the Panel on that matter, the Panel also draws inspiration from case law of the SFT (SFT 4A_688/2016, consid. 3.1) holding that a declaratory judgment is only to be issued in exceptional circumstances and cannot be sought when a condemnatory judgment can be obtained:

“Selon l'art. 88 CPC, le demandeur intente une action en constatation de droit pour faire constater par un tribunal l'existence ou l'inexistence d'un droit ou d'un rapport de droit et, en vertu de l'art. 59 al. 2 let. a CPC, une telle action n'est recevable que si le demandeur y a un intérêt digne de protection. L'action en constatation de droit de l'art. 88 CPC est ouverte si le demandeur a un intérêt - de fait ou de droit - digne de protection à la constatation immédiate de la situation de droit. Il découle de la jurisprudence antérieure, toujours applicable sur ces points, qu'il faut (1) qu'il y ait une incertitude concernant les droits du demandeur, (2) que la suppression de cette incertitude soit justifiée, en ce sens que l'on ne peut exiger du demandeur qu'il tolère plus longtemps la persistance de cette incertitude parce qu'elle l'entrave dans sa liberté de décision, (3) que cette incertitude puisse être levée par la constatation judiciaire et (4) qu'une action condamnatoire (ou en exécution; Leistungsklage) ou une action formatrice (ou en modification de droit; Gestaltungs-klage), qui lui permettrait d'obtenir directement le respect de son droit ou l'exécution de son obligation, ne soit pas ouverte (ATF 135 III 378 consid. 2.2 p. 38 et les arrêts cités). Conformément à cette quatrième condition, l'action en constatation de droit est subsidiaire par rapport à l'action condamnatoire ou à l'action formatrice; sont réservées les dispositions spéciales prévoyant une action en constatation de droit particulière (Message du 28 juin 2006 relatif au Code de procédure civile suisse [CPC], FF 2006 6841 ch. 5.6 ad art. 86 p. 6901, avec références à la jurisprudence antérieure au CPC). Seules des circonstances exceptionnelles pourraient conduire à admettre l'existence d'un intérêt digne de protection à la constatation de droit bien qu'une action en exécution soit ouverte. Un litige doit en principe être soumis au juge dans son ensemble par la voie de droit prévue à cet effet; le créancier qui dispose d'une action condamnatoire ne peut en tout cas pas choisir d'isoler des questions juridiques pour les

soumettre séparément au juge par la voie d'une action en constatation de droit (ATF 135 précité loc. cit.).”

Free translation into English:

“According to Art. 88 CPC, the plaintiff brings an action for a declaratory judgment to have a court determine the existence or non-existence of a right or legal relationship, and pursuant to Art. 59(2)(a) CPC, such an action is only admissible if the plaintiff has an interest worthy of protection. An action for a declaratory judgment under Article 88 CPC is available if the plaintiff has an interest—de facto or de jure—worthy of protection in the immediate determination of the legal situation. It follows from previous case law, which is still applicable on these points, that (1) there must be uncertainty regarding the plaintiff's rights, (2) the removal of this uncertainty is justified, in the sense that the plaintiff cannot be expected to tolerate the continuation of this uncertainty any longer because it hinders their freedom of decision, (3) this uncertainty can be removed by a judicial declaration, and (4) a condemnatory action (or enforcement action; Leistungsklage) or a formative action (or action for modification of rights; Gestaltungsklage), which would enable them to obtain direct enforcement of their right or performance of their obligation, is not available (ATF 135 III 378 consid. 2.2 p. 38 and the judgments cited). In accordance with this fourth condition, the action for a declaratory judgment is subsidiary to the action for specific performance or the action for modification of rights; this is without prejudice to special provisions providing for a specific action for a declaratory judgment (Message of June 28, 2006 on the Swiss Code of Civil Procedure [CPC], FF 2006 6841 ch. 5.6 ad art. 86 p. 6901, with references to case law prior to the CPC). Only exceptional circumstances could lead to the recognition of a legitimate interest in a declaratory judgment even though an action for enforcement is available. In principle, a dispute must be submitted to the court in its entirety by the legal means provided for that purpose; a creditor who has a condemnatory action may not, in any event, choose to isolate legal issues and submit them separately to the court by means of an action for a declaratory judgment (ATF 135, cited above, loc. cit.).”

125. Since the Club can commence a condemnatory action against the Player to claim compensation for breach of contract before another forum (no arguments have been submitted before the Panel that such action would not be possible), the Panel thus finds that the Club's request for a declaratory judgment is to be dismissed.
126. Consequently, the Panel finds that the Club has no legal interest in a declaratory ruling on the alleged unlawful issuance of the Letter of Clearance.

c. General interest for sports law

127. Finally, the Club argues that a ruling on the merits “*is crucial to protecting the fundamental principle of pacta sunt servanda in sport. Accepting the Player’s argument would undermine legal certainty in the sports law area*” and that it would ensure “*regulatory certainty within FIBA’s system*”.
128. The Panel finds that such alleged interests are clearly not personal, as the arguments are based on the premise that a favourable ruling would not have a tangible impact on the Player’s contractual situation with the Club, but that such ruling would be beneficial for the transfer system as a whole.
129. Consequently, the Panel finds that these alleged interests invoked by the Club are not legal interests.

d. Conclusion on the admissibility of the Club’s appeal

130. Consequently, for the reasons set out above, the Panel finds that the Club lacks legal interest to challenge the Appealed Decision and that its appeal is therefore inadmissible.

VIII. COSTS

(...)

* * *

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 13 May 2025 by King Wilki Morskie S.S.A. against the decision issued on 24 April 2025 by the Appeals' Panel of the *Fédération Internationale de Basketball Association* is inadmissible.
2. (...).
3. (...).
4. (...).
5. All other motions or prayers are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 15 April 2026

THE COURT OF ARBITRATION FOR SPORT

André Brantjes
President of the Panel

Eligiusz Krzesniak
Arbitrator

Nicolas Cottier
Arbitrator