CAS 2019/A/6569 FC Würzburger Kickers AG v. Elia Soriano, Korona Spolka Kielce & Fédération Internationale de Football Association

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Lars Hilliger, Attorney-at-Law in Copenhagen, Denmark

in the arbitration between

FC Würzburger Kickers AG, Germany

Represented by Mr Joachim Rain, Attorney-at-Law in Ludwigsburg, Germany

Appellant

and

Elia Soriano, Italy

Represented by Mr Horst Kletke, Attorney-at-Law in Frankfurt am Main, Germany

First Respondent

&

Korona Spolka Kielce, Poland

Second Respondent

&

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

Represented by Mr Jaime Cambreleng, Head of Litigation, and Mr Roberto Nájera Reyes, Senior Legal Counsel of FIFA Litigation Department

Third Respondent

I. THE PARTIES

1. FC Würzburger Kickers AG (the "Appellant") is a professional football club based in Germany and affiliated with the Deutscher Fußball-Bund (the "DFB"), which in turn is affiliated with the Fédération Internationale de Football Association.

2. Mr Elia Soriano (the "First Respondent" or the "Player") is a professional football player of Italian nationality, currently registered with the Israeli football club Hapoel Raanana.

3. Korona Spolka Kielce (the "Second Respondent" or "Korona") is a professional football club based in Poland and affiliated with the Polish Football Association, which in turn is affiliated with the Fédération Internationale de Football Association.

4. The Fédération Internationale de Football Association ("FIFA" or the "Third Respondent") is the world governing body of football, whose headquarters are located in Zürich, Switzerland.

II. FACTUAL BACKGROUND

5. Below is a summary of the relevant facts and allegations as established by the Sole Arbitrator on the basis of the decision rendered by the FIFA Dispute Resolution Chamber (the "FIFA DRC" or the "Chamber") on 25 October 2018 (the "Appealed Decision"), the written and oral submissions of the Parties and evidence adduced. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, the Sole Arbitrator refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.

6. In January 2016, and at a time when the Appellant was competing in the Third League in Germany, the Player and the Appellant entered into an employment contract (the "First Contract"), valid as from 20 January 2016 until 30 June 2018.

7. According to the First Contract, the Player was entitled, *inter alia*, to a monthly basic salary of EUR 8,000, which would be raised to EUR 12,000 per month in case of promotion to the Second League, and the two parties had also agreed on a promotion bonus and an increase of the bonus amounts in case the Appellant was to compete in the Second League.

8. The First Contract stated, *inter alia*, as follows (translated from German):

"§ 10.1 This contract is valid for a term from January 20, 2016 until June 30, 2018 (end of the seasons 2017/2018). It applies if the club is participating in the third league and the second league. [...]

§14 [...] German law applies."

9. At the end of the 2015/2016 season, the Appellant was promoted to the Second League.

10. On 30 July 2016, and following the promotion to the Second League, the Appellant and the Player entered into a new employment contract (the "Second Contract"), valid as from 1 July 2016 until 30 June 2018. This Second Contract was apparently entered into by the Appellant and the Player in order to meet the formal requirements of the Deutsche Fußball-Liga (the "DFL"), which organises the Bundesliga and the Second League.

11. According to the Second Contract, the Player was entitled, *inter alia*, to a monthly basic salary of EUR 12,000, and the provisions regarding bonuses in the Second League were identical to the provisions in the First Contract for the Second League.

12. The Second Contract stated, *inter alia*, as follows (translated from German):

> "*A.2. Acceptance of Statutes, Annexes*
> *By executing this [Player Contract], the Parties want to establish the basis for a successful and trusting collaboration. The Parties agree and recognize that a fair and well-functioning competition in sport is only possible if based upon rules jointly complied with by all parties involved. Consequently, they shall submit themselves, also to the benefit of the respective associations, to the following statutes, rules and regulations, including their respective Annexes, of the mentioned associations, if and insofar they are related to the employment and to the activity as professional football player, and explicitly agree to be bound by them in their versions valid at the time being:*
> *[...]*
> *3. the FIFA Statutes, the FIFA Regulations on Working with Intermediaries, the FIFA Disciplinary Code, the FIFA Code of Ethics, the FIFA Rules and Regulations on the Status and Transfer of Players (hereinafter called "FIFA Transfer Rules"), as well as the further rules and regulations of the FIFA, if and insofar they are related to the employment and to the activity as professional football player,*
> *[...]*
>
> *B.2.[...] Due to the expressed wish of the player this contract is only valid during the club's participation in the second league. If the club is promoted to the Bundesliga or gets relegated to the third league, this contract shall be considered terminated by 30 June of the respective year." [...]*
>
> *Part H – Termination*
> *[...]*
> *H.3. No Termination without cause*
> *The Parties explicitly recognize to the definitely bound by and expressly submit to the principles of the maintenance of contractual stability, as it is already provided for in the FIFA Transfer Rules. If, as a consequence, none of the Parties has a reason for extraordinary termination pursuant to Chapter H.2, a termination, at unilateral contract cancellation and/or rescission shall be ineffective and constitute a breach of contract which shall obligate the defaulting Party – irrespective of the rights of the other Party to demand continued performance of all duties arising from the employment relationship – to pay at least a compensation according to Section 17 no. 1 of the FIFA*

Transfer Rules. Further claims for damages and further claims the other Party might be entitled to shall remain unaffected.

Part I – Settlement of disputes and choice of law
[...]
I.3 Exclusive Jurisdiction of the German Labour Courts
The competent courts for any and all disputes arising between the Parties from this Player Contract shall exclusively be the German Labour courts.

I.4 Exclusive Place of Jurisdiction in Specific Cases
In the event that (i) the Player does not have a general place of jurisdiction in the domestic territory or (ii) transfers his place of residence or usual whereabouts to a foreign country after execution of the Contract, or (iii) his place of residence or usual whereabouts is unknown at the time when an action is brought, the place of the registered office of the Club shall be the exclusive place of performance for any and all claims related to the Player Contract.

I.5 FIFA and International Court of Arbitration for Sport
For cases where proceedings before FIFA or [the CAS] are instituted in connection with a dispute between the Parties, the Parties agree upon as follows:

1. *The applicable law for disputes between the Player and the Club shall exclusively be the law of the Federal Republic of Germany. If required by relevant procedural rules, the Parties shall file corresponding applications and take other measures required to avoid a deviation from this choice of law.*
2. *The language of proceedings held before the FIFA and the CAS shall be the German language. The Parties shall lodge applications to this effect and take all other measures required to implement this intention. If, however, this cannot be achieved the English shall be the language for proceedings. [...].*
3. *In the event of proceedings before the CAS, the Parties shall only appoint persons as arbitrators who hold the general qualifications for a position of a judge in the Federal Republic of Germany. As a consequence, they shall exclusively select arbitrators from the schedule of CAS Arbitrators valid at the time being who fulfil said requirements.*

I.6 German Law
The applicable law for this Player Contract shall exclusively be the law of the Federal Republic of Germany.
[...]

J.5 Entire Contract and Written Form Requirement
[...]
This Player Contract and its Annexes shall include any and all covenants and agreements made between the Parties. [...] "

13. Furthermore, on 1 August 2016, the Player and the Appellant signed a document titled "Zusatzvereinbarung zum Lizenzvertrag von Elia Soriano für die 3. Liga / Supplementary Agreement to the Contract of Elia Soriano for the Third League." (the "Supplementary Agreement"), which stated, *inter alia*, as follows (translation from German):

"[*The Appellant] concludes a "Lizenzspielervertrag" with [the Player]. The contract is valid for a term from 21.01.2016 until 30.06.2018 (end of the season 2017/2018). It applies in case the club participates in the second league.*

In case of participation of the club in the third league, the player receives a monthly salary of EUR 8.000,- gross.

In case of participation of the club in the third league, the player receives an individual point bonus of EUR 500,- gross per point won in the championship match the player has an appearance in as follows: [...]

Apart from that, the existing contractual regulations between the parties remain in force."

14. The Supplementary Agreement was apparently never registered with the competent German regional federation.

15. At the end of the 2016/2017 season, the Appellant was relegated to the Third League.

16. The Appellant started its preparation for the new season on 19 June 2017, however with the Player absent without any notification to the club.

17. By email of 20 June 2017 to the Player, the Appellant informed the Player, *inter alia*, that "*the employment agreement between yourself and [the Appellant] dated 30.07.2016 in connection with the Supplementary Agreement dated 1.08.2016 have a term until 30.06.2018 for the second Bundesliga and the third league*", and requested the Player to return to the club, noting that the absence was to be considered "*a serious breach of contract.*"

18. On 26 June 2017, the Player informed the Appellant that he was absent due to sickness.

19. By email of 8 July 2017, the Appellant informed the Player as follows:
"*The Employment contract between yourself and [the Appellant] dated 20.01.2016, but also the one dated 30.07.2016 in connection with the Supplementary Agreement dated 01.08.2016 have a term until 30.06.2018 for the second Bundesliga and the third league. All these contracts are known both to the DFL as well as the BFV.*

We explicitly draw your attention to the fact that rules of federations have no impact on the employment relationship between yourself and us.

Consequently since 03.07.2017 you have been absent from training without an excuse."

20. By email of 31 July 2017, Korona wrote to the Appellant as follows: "*According to free transfer of [the Player] from your club to [Korona] please sign attached last contract end date confirmation and TPO declaration*".

21. Based on the interest from Korona to sign the Player, the Appellant informed DFL and the DFB that the Appellant would object to having the ITC issued, since there was still a contractual relationship between the Player and the Appellant.

22. On 4 August 2017, the Appellant replied to Korona, *inter alia*, as follows: "*Please note that we cannot issue such confirmation. We have a valid employment contract with the player with a term until June 30, 2018. Therefore, the player is not a freelancer, signing and registering him would be considered a breach of contract under Art. 17 FIFA RSTP, and we reserve all rights for compensation and sanctions provided in that rule. If you would like to talk about possible terms of an unanimous transfer, please feel free to contact me any time. Until then, we insist on the immediate return of the player to join our team.*"

23. According to information contained in the TMS, on 31 July 2017, the Player signed a contract with Korona, valid as from 1 August 2017 until June 2018. Furthermore, on 3 August 2017, the DFB issued the ITC and the Player was subsequently registered with Korona.

24. By email of 11 August 2017 to Korona, the Appellant notified the club, *inter alia*, that the Player breached his contract with the Appellant and that the Appellant was entitled to compensation from the Player and Korona. However, the Appellant offered an amicable settlement, which was never accepted.

III. PROCEEDINGS BEFORE THE FIFA DISPUTE RESOLUTION CHAMBER

25. On 21 August 2017, the Appellant lodged a claim against the Player and the Second Respondent in front of FIFA, requesting compensation for breach of contract in the amount of EUR 700,000 plus interest as of 17 August 2017. Furthermore, the Appellant requested that sporting sanctions be imposed on the Player and Korona and that Korona (as the Player's new club) be declared jointly and severally liable for the payment of compensation.

26. In support of its claim, the Appellant submitted that the Player was contractually bound to the Appellant until 30 June 2018, based on the provisions of the First Contract as well as in accordance with the Supplementary Agreement, even if the latter was not uploaded to the national registration system of the DFL.

27. Furthermore, the Appellant stated that it explicitly objected to the issuance of the ITC, which was eventually issued anyway.

28. Thus, the Appellant maintained that the Player breached his contractual obligation to the Appellant and that the Appellant was entitled to compensation for such breach.

29. In his reply, the Player argued that FIFA was not competent to deal with the matter at hand on the basis of Article 22 a) or b) of the FIFA Regulations on the Status and Transfers of Players (the "RSTP"), and the parties had agreed on the exclusive competence of the German Labour Courts.

30. Furthermore, no contractual relationship existed between the Player and the Appellant after 30 June 2017 due to the relegation of the Appellant.

31. In its reply, Korona stated that the Player signed with the club as a "free agent", which was confirmed by the DFB.

32. In its replica, the Appellant insisted that the uncontested international dimension in combination with the possible breach of contract is sufficient to declare FIFA competent, coupled with the fact that the Second Contract contains references to FIFA and the CAS, indicates that a dispute can be submitted to FIFA as well.

33. The Player reiterated his position and specifically insisted that FIFA is not competent to deal with the matter, while Korona did not submit any duplica.

34. The FIFA DRC initially noted that in accordance with article 22 b) of the RSTP, the Chamber would, in principle, be competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a German club, an Italian player and a Polish club. However, the Chamber acknowledged that the Player contested the competence of the FIFA DRC to deal with the present case, alleging the exclusive competence of the German labour courts, based on clause I.3. of the Second Contract.

35. Before addressing the question of its own competence, the FIFA DRC deemed it necessary to determine first on which of the contracts the Appellant based its claim and noticed that the Appellant alleged that the First Contract remained valid for the club's participation in the Third League, while the Second Contract was valid during its participation in the Second League.

36. However, examining the context of the two contracts, and specifically the clause in the Second Contract, which establishes that the Second Contract contains all agreements between the parties on 1 July 2016, the Chamber concluded that the Second Contract superseded the First Contract.

37. Furthermore, and taking the content of the Supplementary Agreement into consideration, the FIFA DRC considered that the parties intended to guarantee the continuation of their contractual relationship in the event of the Appellant's future participation in the Third League. As such, this said document was qualified as an amendment to the already existing contractual relationship, which was fully covered by the Second Contract only.

38. Based on that, the Chamber rejected the Appellant's argument that the First Contract remained valid concurrently with the Second Contract.

39. In order to decide on its own competence, the FIFA DRC then made reference to the relevant clause of the Second Contract, which states:
"The competent courts for any and all disputes arising between the Parties from this Player Contract shall exclusively be the German Labour courts.(clause I.3)

[...]

For cases where proceedings before FIFA or [the CAS] are instituted in connection with a dispute between the Parties, the Parties agree upon as follows:

1. The applicable law for disputes between the Player and the Club shall exclusively be the law of the Federal Republic of Germany. If required by relevant procedural rules, the Parties shall file corresponding applications and take other measures required to avoid a deviation from this choice of law.
2. The language of proceedings held before the FIFA and the CAS shall be the German language. The Parties shall lodge applications to this effect and take all other measures required to implement this intention. If, however, this cannot be achieved the English shall be the language for proceedings. [...].(clause I.5)"

40. Based on that, the FIFA DRC found that clause I.3. unequivocally establishes very specific, clear and literal exclusive competence of German labour courts in relation to *any and all disputes arising between the Parties from this Player Contract*, while clause I.5. must be considered to be limited to procedures which do not refer to the employment relationship between the parties and, as such, does not address the employment-related disputes already governed by clause I.3.

41. Furthermore, it was stressed that article 22 of the RSTP is clearly without prejudice to the parties' *right to seek redress before a civil court for employment related disputes.*

42. Hence, the FIFA DRC came to the conclusion that, in the present case, the parties had voluntarily and beforehand agreed upon the content and applicability of clause I.3. of the Second Contract and, therefore, accepted the exclusive jurisdiction of the German labour courts to decide upon any employment-related dispute arisen between them.

43. On 25 October 2018, the FIFA DRC rendered the Appealed Decision and decided that:

"*The claim of the Claimant, FC Wûrzburger Kickers, is inadmissible.*"

44. On 16 October 2019, the grounds of the Appealed Decision were communicated to the Parties.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

45. On 6 November 2019, the Appellant filed its Statement of Appeal in accordance with Articles R47 and R48 of the CAS Code of Sports-related Arbitration (the "CAS Code") against the Respondents with respect to the Appealed Decision.

46. On 25 November 2019, the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code.

47. On 17 December 2019, the First and Second Respondents filed their Answers in accordance with Article R55 of the CAS Code and on 23 January 2020, the Third Respondent filed its Answer accordingly.

48. On 9 January 2020, and in accordance with Article R54 of the CAS Code, the Parties were informed by the CAS Court Office that the Panel had been constituted as follows:

Sole Arbitrator: Mr Lars Hilliger, Attorney-at-Law in Copenhagen, Denmark.

49. By letter of 5 February 2020 from the CAS Court Office, the Parties were informed that the Sole Arbitrator had decided to hold a hearing on the issue of FIFA jurisdiction and, if FIFA jurisdiction was found to be applicable, on whether or not the case should be referred back to FIFA for a new decision.

50. On 10 February 2020, and upon request from the Sole Arbitrator in accordance with R57 of the CAS Code, the Third Respondent provided a copy of the full FIFA file.

51. On 2 April 2020, the CAS Court Office sent the parties the Order of Procedure.

52. On 18 May 2020, a virtual hearing was held via Webex.

53. In addition to the Sole Arbitrator and Ms Delphine Deschenaux, Counsel to the CAS, the following persons attended the hearing:

For the Appellant:
- Mr Joachim Rain, legal counsel

For the First Respondent:
- Mr Horst Kletke, legal counsel

For the Third Respondent:
- Mr Jaime Cambreleng, Head of Litigation,
- Mr Roberto Nájera Reyes, Senior Legal Counsel of FIFA Litigation Department

In accordance with the information in its email of 10 February 2020 to the CAS Court Office, the Second Respondent was not represented at the hearing, however, and with reference to R57(4) of the CAS Code, the Sole Arbitrator decided to proceed with the hearing.

54. At the outset of the hearing, the Parties confirmed that they had no objections to the constitution of the Panel and the appointment of the Sole Arbitrator.

55. The Parties were afforded ample opportunity to present their case, submit their arguments and answer the questions posed by the Sole Arbitrator.

56. After the Parties' final submissions, the Sole Arbitrator closed the hearing and reserved his final award. The Sole Arbitrator took into account in his subsequent deliberations all the evidence and arguments presented by the Parties although they may not have been expressly summarised in the present Award.

57. Upon the closure of the hearing, the Parties expressly stated that they had no objections in respect of their right to be heard and to have been treated equally and fairly in these arbitration proceedings.

V. PARTIES' REQUESTS FOR RELIEF AND SUBMISSIONS ON FIFA JURISDICTION

A. The Appellant

58. In its Statement of Appeal, the Appellant requested the following relief from the CAS:

> "*1. The [Appealed Decision] is set aside. The Respondents No. 1 and No. 2 are ordered to jointly pay a compensation for breach of contract of 250.000 [EUR] plus 5% interest p.a. from August 17, 2017 to the Appellant until the date of effective payment*
>
> *Subsidiary:*
> *The [Appealed Decision] is set aside. The Respondent No. 3 is declared to have jurisdiction over the merits of the case. The case is referred back to FIFA for consideration and decision*
>
> *2. The Respondents shall bear the costs before FIFA and the CAS as well as the fees of the Appellant's counsel in the CAS procedure at an amount of at least 15.000 CHF.*"

59. The Appellant's submissions on jurisdiction, *in essence*, may be summarised as follows:

- Initially, it must be noted that the FIFA DRC basically acknowledged that "*the parties intended to guarantee the continuation of their contractual relationship in the event of the Appellant's further participation in the third league.*"
- As such, the FIFA DRC – insofar correctly – had no doubt that there was still an agreement in place between the Player and the Appellant that was valid until 30 June 2018, and also for the Third League.
- However, the FIFA DRC was not correct in its view that any exclusive competence of the German labour courts had been agreed between the Appellant and the Player for all disputes regarding the Player's contract and that the FIFA DRC had consequently no jurisdiction.
- It follows already from the Second Contract that the Appellant and the Player explicitly acknowledge and submit themselves to, *inter alia*, *the FIFA Rules and Regulations on the Transfer of Player* if and insofar they are related to the employment and activity as a professional football player.
- As such, *inter alia*, article 22 of the FIFA Regulations on the Status and Transfer of Players (the "RSTP") is applicable to this matter, and as it is also obvious that there is an "employment-related dispute between a club and a player of an international dimension", for which reason there can be no doubt about the applicability of article 22 b) of the RSTP.
- Moreover, there is no arbitral tribunal within the meaning of the said article that might exclude FIFA's jurisdiction, nor is the FIFA DRC's denial of its jurisdiction based on the competence of such an arbitral tribunal.

- The German labour court which the FIFA DRC considers to be exclusively competent is obviously no such arbitral court.
- Article 22 of the RSTP stipulates only a right to seek redress before a civil court for employment-related disputes, but very clearly does not stipulate that in case a labour court might be competent to hear a case, the jurisdiction of FIFA is excluded.
- There is no obligation to submit a labour-related claim to such a competent labour court.
- On the contrary, there is an obligation to bring an employment-related dispute before FIFA.
- Furthermore, and as acknowledged by the CAS, an employment-related dispute of an international dimension can only be decided by an authority other than the FIFA DRC if (i) there is an independent arbitral tribunal established at the national level, (ii) the jurisdiction of this independent arbitral tribunal derives from a clear reference in the employment contract, and (iii) this independent arbitral tribunal guarantees fair proceedings and respects the principle of equal representation of players and clubs.
- As such, a labour court cannot exclude FIFA's jurisdiction, but only serve as an alternative place of jurisdiction.
- Moreover, the contracts between the Appellant and the Player does not even provide for the competence of a specific labour court, but only generally for the competence of the *German labour courts*.
- Thus, there are no valid exclusion of FIFA's jurisdiction.
- Furthermore, the Second Contract regulates in a very detailed manner single aspects of disputes between the contractual parties under the headline "*FIFA and International Court of Arbitration for Sport*".
- If the jurisdiction of FIFA was to be excluded under the contract, the provisions regarding FIFA and the CAS would make no sense.
- The Appealed Decision was incorrect in stating that the scope of the said provisions is "*limited to only those procedures which do not refer to the employment relationship between the parties.*"
- The intention to submit in particular disputes that are based on the RSTP to FIFA is also supported by the fact that the Second Contract explicitly refers to article 17 of the RSTP.
- The legal consequences of article 17 of the RSTP are absolutely unfamiliar to German law and German labour courts, which clearly indicated that disputes between the parties can be submitted to FIFA.
- In any case, according to the First Contract, there can be no doubt that FIFA would have had jurisdiction over the case in the absence of any provisions regarding the competence of the German labour courts in the Second Contract.
- Since the First Contract governs the relationship between the Player and the Appellant for the Third League, the Second Contract only governs the relationship between the said parties for the Second and the First Leagues.

- As such, the provisions of the Second Contract are no longer applicable after the relegation of the Appellant to the Third League, and, as a result, FIFA jurisdiction follows from article 22b of the RSTP.
- For the sake of good order, it is disputed that the Second Contract superseded the First Contract, as wrongly concluded in the Appealed Decision.
- Pursuant to article 22 a) of the RSTP, FIFA is competent to hear disputes between clubs and players in relation to the maintenance of contractual stability where there has been an ITC request and a claim from an interested party in relation to the said request.
- According to the wording of this provision, it is sufficient that the dispute arose in connection with an ITC request, which is the case in this dispute, which is another reason why FIFA had sufficient jurisdiction to deal with the matter at hand.
- In any case, if FIFA has no jurisdiction over the case, how could the Second Respondent possibly be involved in the case between the Appellant and the Player since a German labour court does not have jurisdiction over a Polish football club.
- Furthermore, a German labour court, due to the lack of disciplinary power, could not impose a suspension on the Player in accordance with article 17.3 of the RSTP and on the Second Respondent in accordance with article 17.4 of the same regulations.
- This would be against the overriding goal of FIFA to lay down global and binding rules concerning the status of players, their eligibility to participate in organised football and their transfers between clubs belonging to different associations.
- Finally, FIFA should also have adopted its jurisdiction since, if the DFB had treated the ITC request correctly and refused to issue the ICT, FIFA's jurisdiction would clearly had followed from article 8.2.7 of Annexe 3 of the RSTP.
- Pursuant to the said provision, the former association is not allowed to deliver an ITC, which was indisputably was the case here, where the Appellant raised its objections to the requested issuing.
- If the DFB had acted in accordance with the applicable rules, the FIFA jurisdiction would be established clearly based on article 8.2.7 of Annexe 3 of the RSTP.

B. The First Respondent

60. In its answer, the First Respondent requested the CAS

"*1. to dismiss the appeal*

alternatively,

to refer the case back to FIFA for further consideration and decision.

2. *to order the appellant to pay the costs of the proceedings, as well as the legal fees of the Respondent No. 1 in an amount of € 7.000.*"

61. The First Respondent's submissions on jurisdiction, *in ess*ence, may be summarised as follows:

- The employment relationship between the Appellant and the Player took place exclusively in Germany, and German law must therefore apply exclusively to the contract of employment.
- Moreover, the Appellant and the Player unambiguously stipulated in their contract that the law of the Federal Republic of Germany applies to the employment relationship.
- In accordance with the German Employment Tribunal Act (the "ArbGG"), employment tribunals are solely authorised and called upon to decide legal employment disputes.
- Furthermore, according to German law, this exclusive jurisdiction of employment tribunals cannot be waived by contractual agreement either, in particular not by way of an arbitration agreement since any possible contractual provisions on arbitration proceedings do not apply to employment matters.
- As such, according to German law, there is a legal prohibition against withdrawing legal disputes under employment contracts from the exclusively responsible employment tribunals and to permit a different institution to render judgments on legal disputes originating from employment contracts.
- The fact that the exclusive jurisdiction of German employment tribunals does not apply to determining the exclusive responsibility in the relationship between the Appellant and the Second Respondent does not alter this.
- Moreover, and in line with these rules, the Appellant and the Player signed a contract with the following provision: "*For all disputes between the parties regarding the player's contract the German labour courts are exclusively competent.*"
- As such, the determination made by the FIFA DRC regarding the binding, effective agreements reached by the parties is irrefutably correct and is in accordance with the mandatory statutory provisions.
- For the sake of good order, it must be stressed that the FIFA DRC dismissed the claim brought by the Appellant as inadmissible, and therefore no decision was reached for the matter itself and, in particular, as to whether a claim for damages exists at all and, if so, in what amount.
- It follows that a ruling by the CAS on the claim for damages is inadmissible in the present proceedings and cannot be made instead by the FIFA DRC since the parties have in particular not reached an agreement on jurisdiction of the CAS as Ordinary Division under the exclusion of the correct and proper jurisdiction.
- The subject of the appeal under dispute may therefore exclusively be the question of the admissibility of the complaint to the FIFA DRC.

- If necessary, the Appellant will need to turn to the Germen employment tribunal with sole jurisdiction in this case in accordance with the agreement and the mandatory statutory regulations.

C. The Second Respondent

62. In its answer, the Second Respondent simply submitted as follows:

> "*[The Second Respondent]is on the position that all procedures related to the recruitment of [the Player] were in accordance with applicable law.*
>
> *[The Second Respondent] has concluded a contract for professional football players with [the Player], after obtaining confirmation from the German Football Association that the contract between [the Player] and [the Appellant] has expired on 30 June 2017.*
>
> *On this basis, [the Player] was registered by the Polish Football Association in [the Second Respondent].*"

D. The Third Respondent

63. In its answer, the Third Respondent requested the Panel to issue an award:

> "*(a) rejecting the relief sought by the Appellant and dismissing the appeal in full;*
>
> *(b) confirming the Appealed Decision;*
>
> *Alternatively,*
>
> *(c) referring the case back to the Dispute Resolution Chamber for its analysis and decision regarding the employment dispute between the Appellant and the Player.*
>
> *In any case,*
>
> *(d) ordering the Appellant to bear the full costs of these arbitration proceedings.*" (emphasis in original)

64. The Third Respondent's submissions on jurisdiction, *in essence*, may be summarised as follows:

- It follows from article 59 par. 2 of the FIFA Statutes that stakeholders are prohibited from resorting to ordinary courts of law, unless specifically provided for in the FIFA regulations.
- In this regard, article 22 of the RSTP provides that FIFA will be competent to hear employment-related disputes between a club and a player of an international dimension "*without prejudice to the right of any player or club to seek redress before a civil court for employment-related disputed.*"

- This implies that recourse to ordinary courts on labour disputes is permitted by the RSTP and constitutes an exception to the prohibition set out in article 59 par. 2 of the FIFA Statutes.
- FIFA jurisprudence has already confirmed that a claim is inadmissible when the parties have decided by contract to submit their labour dispute to a competent ordinary court.
- In order words, all direct and indirect members of FIFA are free to exercise their fundamental right of choosing the jurisdiction venue of their preference when it comes to employment-related disputes.
- In this matter, the Appellant and the Player agreed in their Second Contract that any and all disputes relating to their employment relationship would be "*exclusively*" resolved by the German labour courts.
- As such, the two parties clearly agreed that they would be obliged to submit themselves to the "*exclusive jurisdiction of the German Labour Courts*" for "*any and all disputes arising between the Parties from this Player Contract.*"
- This intention of the Appellant and the Player was also clearly reflected in other parts of the Second Contract.
- The FIFA DRC was correct in concluding that the Second Contract superseded or replaced the First Contract and was in fact applicable to this case for the mere reason that the Appellant and the Player confirmed this in the Supplementary Agreement.
- In light of the above, it can be concluded (i) that the Second Contract did supersede the First Contract, (ii) that the Supplementary Agreement only provided the potential modification of the salary and bonus (without causing any other amendment to the terms of the Second Contract) and (iii) that the Second Contract, including the dispute resolution formula agreed by the Appellant and the Player, was in force at the time of the alleged breach of contract by the Player.
- For this reason, and given the Player's objection to the competence of the FIFA DRC, the deciding bodies of FIFA were prevented from analysing and deciding on the Player's alleged breach of contract since, according to the Second Contract, these analysing and decision-making powers are exclusively reserved for the German courts.
- Thus, the Appealed Decision was correct in declaring the claim of the Appellant as "inadmissible".
- With regard to the provisions of the Second Contract covering "*in the event*" that a case was "*instituted*" before FIFA or the CAS, it must be stressed that these provisions do not contain any obligation on the two parties to submit their contractual or labour disputes to FIFA or the CAS.
- Furthermore, there can be no doubt that these provisions neither have the intention to bind the parties to submit their dispute for decision-making by an arbitral tribunal, nor to waive the usual jurisdiction of the state courts in favour of the jurisdiction of a private arbitral tribunal.
- Therefore, it should be concluded that the provisions do not constitute a valid and binding arbitration clause in favour of FIFA and the CAS.

- In any case, such an alleged arbitration clause should be interpreted according to the general rules of interpretation, which confirm that the said provisions are not related to employment disputes.
- Based on that, the Sole Arbitrator must confirm that there is no agreement between the Appellant and the Player to submit their employment disputes to a sports arbitral tribunal or to the private bodies of FIFA, but on the contrary both were obliged to submit their employment claims to the exclusive jurisdiction of the German labour tribunals.
- With regard to the Appellant's submission that FIFA has jurisdiction over the matter at hand, since the Appellant and the Player in the Second Contract make reference to the FIFA Statutes and the different FIFA regulations, it must be remembered that choice of law is not the same as choice of jurisdiction.
- Therefore, the relevant provision regarding any choice of law does not confer any jurisdiction on FIFA, and the Appellant's arguments in this regard should be dismissed.
- Finally, with regard to the submission of the Appellant that pursuant to article 22 a) of the RSTP, FIFA has jurisdiction to decide the matter, that article is not applicable to the present case.
- In any case, it is irrelevant since the Appellant and the Player decided to exercise their rights to submit their employment-related dispute to the German labour courts.
- With regard to the Appellant's argument that it did in fact object to the issuance of the Player's ITV and, therefore, there is an ITC issue that would grant FIFA jurisdiction, it must be stressed that the issue at stake is limited to the employment relationship with the Player and is not related to the issuance or request of the Player's ITC, which would have concerned a different decision passed by the Players' Status Committee.
- It is therefore irrelevant – and unsubstantiated – if there was an ITC issue with the Second Respondent or between the respective national federations.
- Therefore, the Appellant's arguments related to FIFA's jurisdiction due to the application of article 22 a) of the RSTP or an apparent ITC issue must also be dismissed.

VI. JURISDICTION

65. 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 the 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 him prior to the appeal, in accordance with the statutes or regulations of that body. [...]"

66. With respect to the Appealed Decision, the jurisdiction of the CAS derives from article 58 par. 1 of the FIFA Statutes as it determines that "[a]*ppeals 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" and Article R47 of the CAS Code.

67. The Sole Arbitrator notes that even if the jurisdiction of the CAS as an appeal body to decide on the Appellant's claim depends on the existence of the FIFA DRC's jurisdiction to decide on such a claim, the Sole Arbitrator finds that the CAS is competent to deal with the question on whether the FIFA DRC was wrong in rejection competence.

68. It follows that the CAS has jurisdiction to decide on the appeal of the Appealed Decision with regard to the jurisdiction of the FIFA DRC, which the Sole Arbitrator will address in the merits section below.

VII. ADMISSIBILITY

69. The grounds of the Appealed Decision were notified to the Appellant on 16 October 2019, and the Statement of Appeal was lodged on 6 November 2019, i.e. within the statutory time limit of 21 days set out in article 58 par. 1 of the FIFA Statutes, which is not disputed. Furthermore, the Statement of Appeal and the Appeal Brief complied with all the requirements of Articles R48 and R51 of the CAS Code.

70. It follows that the appeal is admissible, which is furthermore not disputed by the Respondents.

VIII. MERITS

71. Initially, the Sole Arbitrator notes that the factual circumstances of this case are in essence undisputed by the Parties, including the fact that the Appellant and the Player entered into the following:

- the First Contract, in January 2016, valid from 20 January 2016 until 30 June 2018;
- the Second Contract, on 30 July 2018 and following the promotion to the Second League, valid from 1 July 2016 until 30 June 2018; and
- The Supplementary Agreement, on 1 August 2016, valid as from 21 January 2016 until 30 June 2018.

The Supplementary Agreement was apparently never registered with the competent German regional federation.

72. Furthermore, it is undisputed that, following the relegation of the Appellant's football team by the end of the 2016/2017 season, on 31 July 2017, the Player signed a contract with the Second Respondent valid as from 1 August 2017, in which connection, on 3 August 2017, and despite the Appellant's objections, the DFB issued the ITC and the Player was duly registered with the Second Respondent.

73. Consequently, on 21 August 2017, the Appellant filed a claim in front of FIFA against the Player and the Second Respondent requesting compensation for breach of contract, and the Appellant requested that sporting sanctions be imposed on the Player and the Second Respondent and that the Second Respondent be declared jointly and severally liable for the payment of compensation for breach of contract.

74. On 25 October 208, the FIFA DRC rendered the Appealed Decision and found the claim of the Appellant inadmissible since it was found that the Appellant and the Player had voluntarily and beforehand accepted the exclusive jurisdiction of the German Labour Courts to decide any employment-related dispute arisen between them.

75. Following the Appellant's appeal to the CAS of the Appealed Decision and in accordance with letter of 5 February 2020 from the CAS Court Office, the Sole Arbitrator is now to decide on the issue of FIFA jurisdiction and, if FIFA jurisdiction is found to be applicable, on whether or not the case should be referred back to FIFA for a new decision.

76. The Sole Arbitrator initially notes that it in undisputed between the Parties that any possible jurisdiction of the FIFA to decide on the claim of the Appellant must originate from the regulations of FIFA.

77. Article 3 par. 1 of the FIFA Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (edition 2017) (the "FIFA DRC Procedural rules") provides, *inter alia*, as follows:

"*The Players' Status Committee and the DRC shall examine their jurisdiction, in particular in the light of arts 22 to 24 of the Regulations on the Status and Transfer of Players. [...]*".

78. It follows from article 59 par. 2 of the FIFA Statutes that:

"*Recourse to ordinary courts of law is prohibited unless specifically provided for in the FIFA regulations.* [...]"

79. Furthermore, article 22 of the RSTP states, *inter alia*, as follows:

"*Competence of FIFA*

Without prejudice to the right of any player or club to seek redress before a civil court for employment-related disputes, FIFA is competent to hear:

a) disputes between clubs and players in relation to the maintenance of contractual stability (articles 13-18) where there has been an ITC request and a claim from an interested party in relation to said ITC request, in particular regarding the issue of the ITC, sporting sanctions or compensation for breach of contract;
b) employment-related disputes between a club and a player of an international dimension; the aforementioned parties may, however, explicitly opt in writing for such disputes to be decided by an independent arbitration tribunal that has been established at national level within the framework of the association and/or a collective bargaining agreement. Any such arbitration clause must be included either

directly in the contract or in a collective bargaining agreement applicable on the parties. The independent national arbitration tribunal must guarantee fair proceedings and respect the principle of equal representation of players and clubs; [...]"

80. As such, the Sole Arbitrator agrees that recourse to ordinary courts on labour disputes is permitted by the RSTP, which constitutes as exception to the prohibition set out in article 59 par. 2 of the FIFA Statutes.

81. Furthermore, the Sole Arbitrator notes that it is already confirmed by CAS jurisprudence that a claim is to be considered inadmissible due to lack of jurisdiction when the parties to an employment-related dispute have decided by contract to submit any such dispute to a competent national ordinary court (CAS 2018/A/5624).

82. With regard to the present dispute, the Sole Arbitrator notes that it is undisputed that the dispute between the Appellant and the Player is an employment-related dispute between a club and a player of an international dimension, the Appellant being a German football club and the Player being a professional football player of Italian nationality. Furthermore, the Second Respondent is a Polish football club.

83. However, while the Respondents submits that the Appellant and the Player contractually agreed that any and all disputes relating to their contractual relationship would be "*exclusively*" resolved by the German labour court, thus making FIFA incompetent to hear any such dispute, the Appellant submits that this is not the case, which is why FIFA should have considered itself to have sufficient jurisdiction to decide the matter.

84. As such, the Sole Arbitrator first has to decide what was the contractual basis of the employment relationship between the Appellant and the Player at the time of the Player's alleged breach of contract and, secondly, whether such contract or contracts contain any valid and binding agreement regarding the alleged exclusivity of the German labour courts.

85. It is undisputed between the Parties that any valid and binding agreement regarding the alleged exclusivity of the German labour courts was not agreed upon in the First Contract signed by the Appellant and the Player in January 2016, when the Appellant's team was competing in the Third League in German.

86. However, the Second Contract, which apparently was entered into in order to meet the formal requirements of the DFL, following the promotion of the Appellant's team to the Second League, states, *inter alia*, as follows:

"*B.2.[...] Due to the expressed wish of the player this contract is only valid during the club's participation in the second league. If the club is promoted to the Bundesliga or gets relegated to the third league, this contract shall be considered terminated by 30 June of the respective year.*" *[...]*

J.5 Entire Contract and Written Form Requirement

[...]

This Player Contract and its Annexes shall include any and all covenants and agreements made between the Parties. [...] "

87. Furthermore, the Supplementary Agreement, which the Appellant and the Player signed on 1 August 2016, states, *inter alia*, as follows:

"*[The Appellant] concludes a "Lizenzspielervertrag" with [the Player]. The contract is valid for a term from 21.01.2016 until 30.06.2018 (end of the season 2017/2018). It applies in case the club participates in the second league.*

In case of participation of the club in the third league, the player receives a monthly salary of EUR 8.000,- gross.

In case of participation of the club in the third league, the player receives an individual point bonus of EUR 500,- gross per point won in the championship match the player has an appearance in as follows: [...]

Apart from that, the existing contractual regulations between the parties remain in force."

88. While the Appellant submits that the First Contract governs the relationship between the Appellant and the Player since the Appellant's team was relegated to the Third League, the Respondents are of the opinion that the employment relationship is in fact governed by the Second Contract and the Supplementary Agreement.

89. The Sole Arbitrator initially notes that the fact that the Supplementary Agreement apparently was never registered with the competent German regional federation does not induce him consider that this agreement is without legal force *inter partes* between the Appellant and the Player. Reference is also made to article 8 of the RSTP.

90. In order to decide on the question of which contract is to be considered to be in force at the time of the Player's alleged breach of contract, the Sole Arbitrator finds it important to try to determine the true intention and will of the Appellant and the Player, and accordingly, interpret the relevant provisions of the contracts.

91. Article 18 par. 1 of the Swiss Code of Obligations (the "COO") provides as follows regarding the interpretation of contracts:

"*When assessing the form and terms of a contract, the true and common intention of the parties must be ascertained without dwelling on any inexact expressions or designations they may have used either in error or by way of disguising the true nature of the agreement*".

92. Furthermore, according to CAS jurisprudence, under article 18 of the Swiss COO:

"*the parties' common intention must prevail on the wording of their contract. If this common intention cannot be determined with certainty based on the wording, the judge must examine and interpret the formal agreement between the parties in order to define their subjective common intention (WINIGER B., Commentaire Romand – CO I, Basel 2003, n. 18-20 ad Art. 18 CO). This interpretation will first take into*

account the ordinary sense one can give to the expressions used by the parties and how they could reasonably understand them (WINIGER B., op. cit., n. 26 ad art. 18 CO; WIEGAND W., Obligationenrecht I, Basel 2003, n. 19 ad art. 18 CO). The behaviour of the parties, their respective interest in the contract and its goal can also be taken into account as complementary means of interpretation (WINIGER B., op. cit., n. 33, 37 and 134 ad art. 18 CO; WIEGAND W., op. cit., n. 29 and 30 ad art. 18 CO)" (CAS 2005/A/871, pg. 19, para. 4.29).

"By seeking the ordinary sense given to the expressions used by the parties, the real intention of the parties must – according to the jurisprudence of the Swiss Federal Court – be interpreted based on the principle of confidence. This principle implies that a party's declaration must be given the sense its counterparty can give to it in good faith ('Treu und Glauben': WIEGAND B., op. cit., n. 35 ad art. 18 CO), based on its wording, the context and the concrete circumstances in which it was expressed (ATF 124 III 165, 168, consid. 3a; 119 II 449, 451, consid. 3a). Unclear declarations or wordings in a contract will be interpreted against the party that drafted the contract (ATF 124III 155, 158, consid. 1b): It is of the responsibility of the author of the contract to choose its formulation with adequate precision (In dubio contra stipulatorem – WINIGER B., op. cit., n. 50 ad 18 CO). Moreover, the interpretation must – as far as possible – stick to the legal solutions under Swiss law (ATF 126 III 388, 391, consid. 9d), under which the accrued protection of the weakest party" (CAS 2005/A/871, pg. 19, para. 4.30)."(CAS 2008/A/1468 and more)

93. In his interpretation of the true intention of the Appellant and the Player, the Sole Arbitrator attaches particular importance to the contents of the provision of clause J.5 of the Second Contract, according to which the said parties under the heading "Entire Contract and Written Form Requirement", *inter alia*, have agreed "*This Player Contract and its Annexes shall include any and all covenants and agreements made between the Parties*".

94. The Sole Arbitrator finds no grounds for concluding that this provision, which was indisputably agreed after the conclusion of the First Contract, should be given a meaning different from the agreement between the two parties that the terms of the Second Contract were to supersede the terms of the First Agreement. The Sole Arbitrator notes in this connection that the First Contract, according to the information provided, was the only contractual basis between the two parties at this point in time.

95. Moreover, the Sole Arbitrator finds that the provision of clause B.2 of the Second Contract, according to which "*Due to the expressed wish of the player this contract is only valid during the club's participation in the second league. If the club is promoted to the Bundesliga or gets relegated to the third league, this contract shall be considered terminated by 30 June of the respective year.*" cannot justify a different interpretation of the provision of clause J.5.

96. Based on that, the Sole Arbitrator finds himself in agreement with the FIFA DRC that the Second Contract must be considered to have superseded the First Contract, at least while the Appellant's team was participating in the Second League.

97. Furthermore, however, and since the Supplementary Agreement only provides for the potential modification of the salary and bonus under the Second Contract in case of

the relegation of the Appellant's team to the Third League, and based on the express wording of this agreement, which states, *inter alia,* that "*Apart from that, the existing contractual regulations between the parties remain in force*", the Sole Arbitrator has no reservations about confirming that the Second Contract, together the with amendments stipulated in the Supplementary Agreement, was in force at the time of the Player's alleged breach of contract.

98. The Sole Arbitrator emphasises in this regard that the provisions of the Supplementary Agreement, which was indisputably entered into after the conclusion of the Second Contract, when it comes to the modification of the Player's salary and bonus in case of relegation to the Third League, would not make sense in terms of content if the conclusion of the Supplementary Agreement was not intended to ensure that the Second Agreement, when and as appropriate, would also be applicable in case of relegation to the Third League, notwithstanding the provision of clause B.2 of the Second Contract.

99. The Sole Arbitrator emphasises, as a matter of form, that the question of the Player's alleged breach of contract has not been decided on in this connection.

100. Having concluded that the Second Contract, together with the amendments stipulated in the Supplementary Agreement, was in force at the time of the Player's alleged breach of contract, the Sole Arbitrator now has to decide whether such contracts include a valid agreement between the Appellant and the Player legally submitting them to the exclusive jurisdiction of the German labour courts, as argued by the Respondents, and in the affirmative, the consequences hereof.

101. In assessing this, the Sole Arbitrator finds the following provisions of the Second Contract, in particular, of relevance:

A.2. Acceptance of Statutes, Annexes

By executing this [Player Contract], the parties want to establish the basis for a successful and trusting collaboration. The Parties agree and recognize that a fair and well-functioning competition in sport is only possible if based upon rules jointly complied with by all parties involved. Consequently, they shall submit themselves, also to the benefit of the respective associations, to the following statutes, rules and regulations, including their respective Annexes, of the mentioned associations, if and insofar they are related to the employment and to the activity as professional football player, and explicitly agree to be bound by them in their versions valid at the time being: [...]

3. *the FIFA Statutes, the FIFA Regulations on working with Intermediaries, the FIFA Disciplinary Code, the FIFA Code of Ethics, the FIFA Rules and Regulations on the Status and Transfer of Players (hereinafter called "FIFA Transfer Rules"), as well as the further rules and regulations of the FIFA, if and insofar they are related to the employment and to the activity as professional football player, [...]*

B.2 [...] Due to the expressed wish of the player this contract is only valid during the club's participation in the second league. If the club is promoted to the Bundesliga or

gets relegated to the third league, this contract shall be considered terminated by 30 June of the respective year." [...]

Part H – Termination

[...]

H.3. No Termination without cause

The Parties explicitly recognize to the definitely bound by and expressly submit to the principles of the maintenance of contractual stability, as it is already provided for in the FIFA Transfer Rules. If, as a consequence, none of the Parties has a reason for extraordinary termination pursuant to Chapter H.2, a termination, at unilateral contract cancellation and/or rescission shall be ineffective and constitute a breach of contract which shall obligate the defaulting Party – irrespective of the rights of the other Party to demand continued performance of all duties arising from the employment relationship – to pay at least a compensation according to Section 17 no. 1 of the FIFA Transfer Rules. Further claims for damages and further claims the other Party might be entitled to shall remain unaffected.

Part I – Settlement of disputes and choice of law

[...]

I.3 Exclusive Jurisdiction of the German Labour Courts

The competent courts for any and all disputes arising between the Parties from this Player Contract shall exclusively be the German Labour courts.

I.4 Exclusive Place of Jurisdiction in Specific Cases

In the event that (i) the Player does not have a general place of jurisdiction in the domestic territory or (ii) transfers his place of residence or usual whereabouts to a foreign country after execution of the Contract, or (iii) his place of residence or usual whereabouts is unknown at the time when an action is brought, the place of the registered office of the Club shall be the exclusive place of performance for any and all claims related to the Player Contract.

I.5 FIFA and International Court of Arbitration for Sport

For cases where proceedings before FIFA or [the CAS] are instituted in connection with a dispute between the Parties, the Parties agree upon as follows:

1. *The applicable law for disputes between the Player and the Club shall exclusively be the law of the Federal Republic of Germany. If required by relevant procedural rules, the Parties shall file corresponding applications and take other measures required to avoid a deviation from this choice of law.*
2. *The language of proceedings held before the FIFA and the CAS shall be the German language. The Parties shall lodge applications to this effect and take all other*

measures required to implement this intention. If, however, this cannot be achieved the English shall be the language for proceedings. [...].

3. *In the event of proceedings before the CAS, the Parties shall only appoint persons as arbitrators who hold the general qualifications for a position of a judge in the Federal Republic of Germany. As a consequence, they shall exclusively select arbitrators from the schedule of CAS Arbitrators valid at the time being who fulfil said requirements.*

I.6 German Law

The applicable law for this Player Contract shall exclusively be the law of the Federal Republic of Germany. [...]"

102. The Sole Arbitrator notes initially in this regard that the Appellant and the Player have literally agreed under the heading "*Settlement of disputes and choice of law*" that "*The competent courts for any and all disputes arising between the Parties from this Player Contract shall exclusively be the German Labour courts.*"

103. However, the said parties, *inter alia*, also agreed that "*The Parties explicitly recognize to the definitely bound by and expressly submit to the principles of the maintenance of contractual stability, as it is already provided for in the FIFA Transfer Rules,* and besides the parties made reference to "*cases where proceedings before FIFA or [the CAS] are instituted in connection with a dispute between the Parties*".

104. The Sole Arbitrator further notes that the Second Contract between a German football club and a professional football player of Italian nationality is based on the DFL's Model Employment Contract for Licenced Players.

105. Furthermore, the Sole Arbitrator notes that it stated in the Second Contract that "*The applicable law for this Player Contract shall exclusively be the law of the Federal Republic of Germany*", and it is submitted by the First Respondent that pursuant to German law, there is a legal prohibition against withdrawing legal disputes under employment contracts from the exclusively responsible employment tribunals and to permit a different institution to render judgments on legal disputes originating from employment contracts.

106. With this in mind, and based on the wording of clause I.3 of the Second Contract, the Sole Arbitrator agrees with the FIFA DRC that the said clause agreed upon by the Appellant and the Player unequivocally establishes the exclusive competence of *German Labour Courts* for *any and all disputes arising between the Parties from* the Second Contract.

107. In doing so, the sole Arbitrator finds that the reference made in the Second Contract to the *FIFA Transfer Rules* and to article 17 of the RSTP is not to be regarded as a derogation from the above-mentioned expressly agreed exclusive jurisdiction of the German Labour Courts, but rather as an indication of a supplementary provision governing choice of law, but without the Sole Arbitrator having taken a position on the question of its validity.

108. The same applies to the statement in the Second Contract under the heading "*For cases where proceedings before FIFA or [the CAS] are instituted*", which is therefore not regarded as a derogation from the above-mentioned expressly agreed exclusive jurisdiction of the German Labour Courts in employment-related disputes either.

109. In this respect, the Sole Arbitrator notes in particular that the relevant provision does not specify that it applies to employment-related disputes, which is expressly the case of the provision of clause I.3, from which the exclusive jurisdiction originates.

110. The Sole Arbitrator therefore finds no grounds for concluding that the provision, by extension, should be considered to be in conflict with the provision of clause I.3 and, similarly, the provision cannot be considered, under any circumstances, to impose on the Appellant and the Player an obligation to submit their contractual or labour disputes to FIFA or the CAS.

111. Furthermore, this is not a valid arbitration clause.

112. Nor is it an actual arbitration clause in favour of FIFA and/or the CAS.

113. With regard to the consequences of the Appellant and the Player's agreement to submit themselves to the exclusive competence of *German Labour Courts* for *any and all disputes arising between the Parties*, the Sole Arbitrator agrees with the Appellant that the "*German Labour Courts*", as mentioned in the Second Contract, are not – at least in this case – to be considered an "independent arbitration tribunal" within the meaning of article 22 b) of the RSTP, and the Sole Arbitrator finds that no such arbitration clause is included anywhere else in the Second Contract.

114. However, the Sole Arbitrator disagrees with the Appellant, which submits that the jurisdiction of FIFA is not excluded when the parties to an employment-related dispute, legally and with binding effect, have submitted themselves to the exclusive jurisdiction of a national competent court of law, as the Sole Arbitrator finds to be the case in this matter.

115. On the contrary, as already confirmed by FIFA, the Sole Arbitrator finds that a claim in an employment-related dispute filed with the FIFA is in fact inadmissible due to lack of jurisdiction if the relevant parties to the dispute has submitted themselves to the exclusive jurisdiction of a national competent court of law.

116. Contrary to what would have been the case if it had been an arbitration clause under article 22 b) of the RSTP, it is not necessary – in regard to such a provision to confer exclusive jurisdiction on a national court of law – to explain which specific court is referred to since, for example, a reference to German Labour Courts is considered sufficiently specific.

117. Based on that, and since the Sole Arbitrator therefore finds that the Appellant and the Player in a legally binding manner have submitted themselves to the exclusive jurisdiction of the German Labour Courts, the Sole Arbitrator finds that the FIFA DRC was correct when, in view of the Player's objection, it declared the Appellant's claim inadmissible due to lack of jurisdiction in accordance with article 22 of the RSTP.

118. Accordingly, under both article 22 a) and article 22 b), FIFA's jurisdiction has already been precluded against the background of the agreed exclusive jurisdiction of the German Labour Courts, and the Sole Arbitrator therefore finds no need to deal any further with these provisions in this specific case.

119. The fact that the Second Respondent is not subject to such agreement regarding the exclusive jurisdiction of the German Labour Courts and the fact that such national courts lack the disciplinary power, if prudent, to sanction the Player and the Second Respondent in accordance with articles 17.3 and 17.4 of the RSTP, respectively, do not overrule this exclusive jurisdiction for the employment-related dispute between the Appellant and the Player.

120. When agreeing on the exclusive jurisdiction of the German Labour Courts, the Appellant and the Player at the same time accepted this, which, as a matter of fact, would also have been the case if it was the Player who had filed a claim with FIFA requesting, inter alia, disciplinary sanctions to be imposed on the Appellant.

121. With regard to the submissions of the Appellant pertaining to the ITC issue, combined with the fact that the Appellant did object to the issuance of the ITC, for which reason FIFA, in the Appellant's view, should in all circumstances be competent to consider and decide on the claim, the Sole Arbitrator notes that he agrees with FIFA that the issue at stake is limited to the employment relationship between the Appellant and the Player and is not, in essence, related to the issuance of or request for the Player's ITC.

122. As such, the Sole Arbitrator denies that such an alleged ITC dispute should result in the jurisdiction of FIFA over the Appellant's claim in this case.

123. As a consequence of the foregoing, the Sole Arbitrator finds that the FIFA DRC was right in declaring the claim of the Appellant inadmissible and the Appeal filed by the Appellant must be dismissed.

IX. COSTS

124. Article R64.4 of the CAS Code provides as follows:

> "*At the end of the proceedings, the CAS Court Office shall determine the final amount of the costs of arbitration, which shall include the CAS Court Office fee, the administrative costs of the CAS calculated in accordance with the CAS scale, the costs and fees of the arbitrators, the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale, a contribution towards the expenses of the CAS, and the costs of witnesses, experts and interpreters.*
>
> *The final account of the arbitration costs may either be included in the award or communicated separately to the parties. The advance of costs already paid by the parties are not reimbursed by the CAS with the exception of the portion which exceeds the total amount of the arbitration costs.*"

125. Article R64.5 of the CAS Code provides as follows:

> "*In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties.*"

126. In the present case, in consideration of the outcome of the proceedings, the Sole Arbitrator rules that the costs of arbitration, as calculated by the CAS Court Office, must be borne by the Appellant in their entirety.

127. Furthermore, as a general rule, the award must grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings. Taking into consideration the fact that the Second Respondent was not represented at the hearing and the fact that FIFA was not represented by outside counsel, the Sole Arbitrator rules that the Appellant must pay a contribution towards the First Respondent's legal fees in the amount of CHF 3,000 (three thousand Swiss Francs), while the Second and Third Respondent must bear their own legal fees and expenses.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by FC Würzburger Kickers AG on 6 November 2019 against the decision rendered by the FIFA Dispute Resolution Chamber on 25 October 2018 is dismissed.

2. The decision rendered by the FIFA Dispute Resolution Chamber on 25 October 2018 is confirmed.

3. The costs of the arbitration, to be determined and served to the Parties by the CAS Court Office, shall be entirely borne by FC Würzburger Kickers AG.

4. FC Würzburger Kickers AG is ordered to pay to Mr Elia Soriano an amount of CHF 3,000 (three thousand Swiss Francs) as a contribution towards the expenses incurred in connection with these arbitration proceedings.

5. Korona Spolka Kielce and Fédération Internationale de Football Association shall bear their own legal fees and expenses incurred in connection with these arbitration proceedings.

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

Seat of arbitration: Lausanne, Switzerland
Date: 2 November 2020

THE COURT OF ARBITRATION FOR SPORT

Lars Hilliger
Sole Arbitrator