CAS 2020/A/7605 Mol Fehervar FC v. Joan Carrillo Milan & FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr Rui Botica Santos, Attorney-at-Law, Lisbon, Portugal

Arbitrators: Prof. Dr. Ulrich Haas, Professor in Zurich, Switzerland

Prof. Dr. Gustavo Albano Abreu, Professor in Buenos Aires, Argentina

in the arbitration between

Mol Fehervar FC, Székesfehérvár, Hungary

Represented by Mr Iñigo de Lacalle Baigorri and Mr Álvaro Martínez San Segundo, Attorneys-at-Law, Senn, Ferrero, Asociados Sports & Entertainment SLP in Madrid, Spain

Appellant

and

Joan Carrillo Milan, Blanes Girona, Spain

Represented by Dr Kristóf Wenczel, Attorney-at-Law, Wenczel Law Office, Budapest, Hungary

First Respondent

Fédération Internationale de Football Association, Zurich, Switzerland

Represented by Mr Emilio Garcia Silvero, Mr Miguel Liétard Fernández-Palacios and Mr Alexander Jacobs, Zurich, Switzerland.

Second Respondent

I. PARTIES

1. Mol Fehervar FC (the "Appellant", the "Club" or "Mol Fehervar") is a Hungarian football club affiliated to the Hungarian Football Federation ("HFF") and participating in the NB I League.

2. Mr Joan Carrillo Milan (the "First Respondent", "Mr Joan Carrillo" or the "Coach") is a Spanish coach born on 8 September 1968, with an extensive international career. Between 26 November 2019 and 6 July 2020 Mr. Joan Carrillo has coached Mol Fehervar.

3. The Fédération Internationale de Football Association ("FIFA" or the "Second Respondent") is the international governing body for football. FIFA exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials, and players belonging to its affiliates. FIFA is an association under Articles 60 et seq. of the Swiss Civil Code with headquarters in Zurich, Switzerland.

4. The Coach and FIFA shall be jointly referred to as the "Respondents", and the Appellant and the Respondents shall be jointly referred to as the "Parties".

II. FACTUAL BACKGROUND

5. Below is a summary of the main relevant facts and allegations based on the Parties' written submissions. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. This factual background information is given for the sole purpose of providing a synopsis of the matter in dispute. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this award (the "Award") only to the submissions and evidence it considers necessary to explain its reasoning.

(A) The Appealed Decision

6. This appeal case (the "Appeal") is related to the challenging of the decision adopted by the Players' Status Committee of FIFA (the "FIFA PSC") on 3 November 2020, in which the Club was ordered to pay to the Coach the amount of HUF 99,000,000 as compensation for breach of contract without just cause (the "Appealed Decision "or the "FIFA Decision").

(B) The contractual relationship between the Club and the Coach

7. On 26 November 2019, the Club and the Coach entered into an employment contract valid until 30 June 2021 (the "Employment Contract").

8. The most relevant clauses of the Employment Contract – related to this dispute – are the following:

Clause 1 (1): *"The Employer and the Employee agree that the Employer employs the Employee for a definite period of time from November 26, 2019 until the end of the Hungarian official football season of 2020/21 (that is – according to the present knowledge – June 30, 2021) under the terms and conditions of this employment contract (...)".*

Clause 2. 1 (2): *"The employer employs Employee as head coach (FEOR code: 2717). Parties agree that Employee shall be regarded as executive employee in line with the section 208 para 2 of Act I of 2012 on the Labour Code of Hungary. (hereinafter referred to as: Labour Code)"*

Clause 2. 2 (5): *"Personal gross monthly basic salary of the Employee shall be 9,738,312 HUF (...). The Parties – taking into consideration that the basic salary was calculated on the basis of the net amount of 25,000 EUR (...)".*

Clause 3 (16): *"The Employee undertakes that during the term of this Contract his time and energy must be devoted entirely and exclusively to the interests of the Employer, and he shall serve the interests of the Employer to the best of his knowledge, and perform his activities to the best of his ability with due care".*

Clause 3 (18): *"The Parties are obliged to behave in a loyal and ethical way towards each other".*

Clause 3 (20): *"Furthermore Employee is obliged at all times:*

a. To follow the instructions of the Employer's managing, director and the Employee's supervisors;

(...)

f. To handle confidentially all data, facts, information (including but not limited to the contracts of the players, the termination of their contacts, the trade secrets of the negotiations of selling the players, their salaries, relevant data and information) become known to him during or in relation with the employment, Employee cannot disclose them to any third party or to the public, and shall return them to Employer following the termination of his employment relationship, with the exception of his copies of the contracts concluded by him;

(...)"

Clause 5 (25): *"The Employer can terminate the present Contract with immediate effect and with unilaterally notice – in addition to the legal titles defined in the Labour Code-, as follows:*

a. In case the Employee materially violates any of his obligations stipulated in sections I. a-d., f; III.2 or IV. 1-3. of Annex No. 1 attached hereto, and by this behaviour Employee causes damages to the Employer or serious harm to Employer's good reputation. In case of termination pursuant to this section Employee shall not be entitled to severance payment only to his pro-rata salary until the date of termination;

b. (…)".

Clause 5 (26): *"The employer can terminate the present contract with immediate effect and with unilaterally notice and without reasons under Paragraph b) of Subsection (1) of Section 79 of Act I of 2012 on the Hungarian Labour Code".*

Clause 5 (27): *"Parties declare that should the Employee terminate the Contract unlawfully the Employee shall indemnify the Employer under section 84 of the Labour Code".*

Clause 6 (28): *"The Employee shall handle confidentially all data, facts, information on Employer and its activities or any other information (including but not limited to the content of the Contract) that became known to Employee during or in relation with the employment under this Contract, Employee cannot disclose them to any third party or to the public. Nothing can be copied or reproduced, unless with the prior written consent of the Employer".*

Clause 6 (29): *"The Employee states that he will use any information received from the Employer during the performance of his obligations only to fulfil the tasks within his scope of duties".*

Clause 6 (30): *"The obligation of confidentiality of the Employee regarding every data, information and fact became known to him in connection with his employment is entire and shall not be limited in time. The breach of the obligation of confidentiality, as intentionally caused damage is qualified as material breach of contract of the Employee and gives reason for termination with immediate effect pursuant to Labour Code and rise to liability for damages. (...)".*

Clause 7 (38): *"If any provision of the Contract is held invalid, void or illegal for any reason, it will not, in any way, affect, impair or invalidate any other*

provision of this Contract, and such other provisions will remain in full force and effect. In this case – if it is not contrary to the Parties' original intent – the Parties will replace the invalid, void or illegal provision with a valid and legal provision that is as close as possible to their original intent and the fulfilment of their legal and economic aims".

Clause 7 (39): *"Any controversy or claim arising out of or relating to this agreement shall be settled by negotiations and dispute resolutions between the parties".*

Clause 7 (40): *"Any matters not stipulated in the present contract, shall be governed by the Hungarian Labour Code (Act I of 2012), the Act I of 2004 on sport, the Employer's policies, the regulations of the Hungarian Football Federation and other national and international football organizations, associations and the relevant provisions of the laws of Hungary".*

(C) The termination of the Employment Contract

9. On 6 July 2020, the Club notified the Coach of the unilateral termination of the Employment Contract (the "Termination"), by letter (the "Termination Notice"), invoking the breach of Clause 25 of the Employment Contract and Article 78 (1) of the Act I of 2012 of the Hungarian Labour Code (the "Hungarian LC").

10. The Termination was motivated by the fact that the Coach was – in the Appellant's opinion – exchanging confidential information with Mr Mátyás Czuczi, who was not an employee of the Club at the time.

11. The Termination Notice stated that:

"(...)

Your employment relationship was terminated with immediate effect as a result of:

Employer and Employee have entered into an employment contract (...) under which Employer employs Employee as head coach (...). Employee shall be regarded as executive employee in line with the Section 208 para 2 of Labor Code, and section 2.1.1. [Clause 2.1 (2)] *of the Employment Contract.*

The Sports Director and person entitled to exercise Employer's rights become aware that the Employee – despite the employer's express proibithion – shares confidential information in his possession in connection with his employment relationship with a former employee, Mátyás Czuczi, who is currently not in an employment relationship with the Employer.

(...) "During the life of the employment relationship, employees shall not engage in any conduct by which jeopardize the legitimate economic interests of the employer, unless so authorized by the relevant legislation."
Respect for the legitimate economic interests of the Employer entails an obligation of confidentiality on the part of the Employee, which essentially covers two things:

- *business secrets learned in the course of work;*
- *any information which has come to Your notice in connection with the performance of Your duties.*

Under Art. 8 para (4) of the Labor Code declares that "Employees shall maintain confidentiality in relation to business secrects obtained in the course of their work. Moreover, employees shall not disclose to unauthorized persons any data learned in connection with their activities that, if revealed, would result in detrimental consequences for the employer or other persons."

According to point 3.6.a) [Clause 3 (20.a)] *of the Employment Contract "Employee is obliged at all times: To follow the instructions of the Employer's managing director and the Employee's supervisors".*

According to point 3.6.f) [Clause 3 (20.f)] *of the Employment Contract "Employee is obliged at all times: To handle confidentially all data, facts, information (including but not limited to the contracts of the players, the termination of their contracts, the trade secretes of the negotiations of selling the player, their salaries, relevant data and information) became known to him during or in relation with the employment. Employee cannot disclose them to any third party or to the public [...]"*

(...)

According to point 6.3 [Clause 6 (30)] *of the Employment Contract "The obligation of confidentiality of the Employee regarding every data, information and fact became known to him in connection with his employment is entire and shall not be limited in time.*

The breach of the obligation of confidentiality, as intentionally caused damage is qualified as material breach of contract of the Employee and gives reason for termination with immediate effect pursuant to Labor Code and rise to liability to be bound by.

(...)

Under Art 78 para (1) point a) of the Labor Code and point 38 of the Employment Contract declares that "The Employer or the Employee may terminate the employment relationship with immediate effect, if the other party breaches its obligations in connecition with the employment contract intentionally, or with gross negligence and seriously [...]"

With his above mentioned behaviour Employee breached the points 3.6.a) 3.6.f) and 6.3 [Clause 3 (20.a; 20.f) and Clause 6 (30)] *of the Employmemt Contract, therefore, he breached its material obligations arising from the employment contract intentionally and seriously, so – under point a) of 78 (1) of Act I of 2012 on the Labour Code and Section 6.3* [Clause 6 (30)] *of the Employment Contract – Employer shall terminate the*

Employee's employment relationship for the position of head coach with immediate effect as from today.

(...)"

12. The Coach did not sign the Termination Notice and, for this reason, it was certified by the signature of two witnesses present at the time that the Club served the Coach with the Termination.

(D) The Coach's new employment relationship

13. On 20 September 2020, the Coach signed an employment contract with the Cypriot club AEK Larnaka FC ("AEK Larnaka") until 30 June 2021.

14. The total agreed remuneration received by the Coach under the employment agreement with AEK Larnaka was EUR 32,000, which is approximately HUF 10,560,000 considering the exchange rate of the contract EUR 1 x HUF 330.

(E) The Coach's claim before FIFA

15. On 17 July 2020, the Coach lodged a claim against the Club before the FIFA PSC alleging that the Employment Contract was terminated without just cause.

16. On 3 November 2020, the FIFA PSC passed the Appealed Decision deciding that (i) the Club had no just cause to terminate the Employment Contract; and (ii) the Club must pay to the Coach the compensation amount of HUF 99,000,000 as compensation for the breach of the Employment Contract without just cause.

17. The grounds of the Appealed decision were notified to the Club on 4 December 2020 and the main arguments are the following:

(a) The FIFA PSC had competence to decide the dispute at stake based on Article 3 of the FIFA Procedural Rules and Article 23 (1) and (3) in combination with Article 22, c), of the October 2020 edition of the Regulations on the Status and Transfer of Players (the "RSTP"), because it concerns an employment-related dispute of an international dimension between a Spanish coach and an Hungarian club.

(b) Clause 7 (39) of the Employment Contract, which refers to dispute resolution in a general manner, does not establish jurisdiction in favour of the Hungarian Courts.

(c) The Club has not provided any evidence *"pertaining to the allegations, that it had instructed the coach to cease sharing information with Mr. Matyas Czuczi, and moreover that the coach supposedly refused to comply with such instructions"*.

(d) The Club failed to meet its burden of proof under Article 12 (3) of the FIFA Procedural Rules and the Club has not established the Coach's misbehaviours in relation to the alleged breach of confidential information.

(e) FIFA PSC underlined that *"(...) only a breach or misconduct which is of a certain severity justifies the termination of a contract. In order words, only when there are objective criteria, which do not reasonably permit to expect a continuation of the employment relationship between the parties, a contract may be terminated prematurely. (...)". A premature termination of an employment contract can only ever be an ultima ration measure".*

(f) The Termination was operated without just cause and the Club shall bear the consequence of such unlawful act.

(g) As far as the legal consequences, the FIFA PSC started by concluding that the Employemnt Contrat does not contain any specific provision *"(...) by means of which the parties had beforehand agreed upon an amount of compensation payable by the contractual parties in the event of breach of contract".* The reference to Article 84 of the Hungarian Labour Code to calculate the amount of compensation due should be disregarded since *"(...) the contract bears no clear, proportionate and reciprocal clause (...) according to which such calculation could take place". Therefore, (...) it is not appropriate for this case to apply specific aspects of a particular national law, but rather the Regulations, the general principles of law and, where it exists, the well-established jurisprudence of the Players' Status Committee".*

(h) The compensation due to the Coach should be calculated in accordance with the parameters set out in the FIFA jurisprudence, i.e the *"(...) remuneration and other benefits due to the coach under the existing contract and/or the new contract, which criterion was considered to be essential".*

(i) On account of the principle of *non ultra petita,* FIFA PSC concluded that the Coach was entitled to receive HUF 99,000,000 as compensation for breach of contract. In fact, the Coach has limited his claim to this amount. Otherwise, the Coach's compensation could have been of HUF 115,350,490 (as remuneration had the contact ben executed until its expiry date) minus HUF 10,560,000 (as remuneration received from the new club AEK Lanarka).

18. The Appealed Decision's operative part read as follows:

"1. The claim of the Claimant, JOAN CARRILLO MILÁN, is admissible.

2. The claim of the Claimant is partially accepted.

3. The Respondent, MOL FEHÉRVÁR FC, has to pay to the Claimant HUF 99,000,000 as compensation for breach of contract without just cause.

4. *Any further claims of the Claimant are rejected.*

5. *The Claimant is directed to immediately and directly inform the Respondent of the relevant bank account to which the Respondent must pay the due amount.*

6. *The Respondent shall provide evidence of payment of the due amount in accordance with this decision to psdfifa@fifa.org, duly translated, if applicable, into one of the official FIFA languages (English, French, German, Spanish).*

7. *In the event that the amount due, plus interest as established above is not paid by the Respondent within 30 days, as from the notification by the Claimant of the relevant bank details to the Respondent, the following consequences shall arise:*

   1. *In the event that the payable amount as per in this decision is not paid within the granted deadline, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee.*

8. *The decision is rendered free of costs."*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

19. On 23 December 2020, in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration edition 2020 (the "CAS Code"), the Appellant filed its statement of appeal (the "Statement of Appeal") with the CAS challenging the Appealed Decision. In its submission, the Appellant appointed Prof. Dr. Ulrich Hass, Professor of Law in Zurich, Switzerland, as arbitrator.

20. On 11 January 2021, the Respondents jointly nominated Prof. Dr. Gustavo Abreu, Professor of Law in Buenos Aires, Argentina, as arbitrator.

21. On 29 January 2021, in accordance with Article R51 of the CAS Code, the Appellant filed its appeal brief (the "Appeal Brief"). In the Appeal Brief, the Appellant requested (i) the bifurcation of the proceedings and the issue of a preliminary award on jurisdiction; and (ii) the production of the employment agreement signed betweeen the Coach and AEK Larnaka, reserving its right to make further alegations on this requested evidence.

22. On 17 February 2020, in accordance with Article R32 (2) of the CAS Code, FIFA requested a 10-day extension of its deadline to submit its answer (the "FIFA's Answer").

23. On 19 February 2021, the Coach filed his answer (the "Coach's Answer"), in accordance with Article R55 of the CAS Code.

24. On 4 March 2021, in accordance with Article R55 of the CAS Code, FIFA filed its answer (the "FIFA's Answer").

25. On 8 March 2021, the CAS Court Office informed the Parties that pursuant to Article R54 of the CAS Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the Panel had been constituted as follows:

President:	Mr Rui Botica Santos, Attorney-at-Law, Lisbon, Portugal
Arbitrators:	Prof. Dr. Ulrich Haas, Professor in Zurich, Switzerland
	Prof. Gustavo Albano Abreu, Attorney-at-law in Buenos Aires, Argentina

26. On 9 March 2021, the Appellant objected to FIFA's Answer arguing that the respective deadline (see para. 24 above) had elapsed on 3 March 2021 and not on 4 March 2021 when FIFA's Answer was filed. The Appellant argued that the 10-day extension should be counted as of the initial expiry date on Sunday 21 February 2021 and not from Monday 22 February 2021. The Appellant considered that the "extra-day" (i.e Monday) cannot be applied when the deadline is extended. On the same date and submission, the Appellant insisted with the issue of a preliminary award on jurisdiction and the production of the Coach's employment agreement with AEK Larnaka.

27. On 18 March 2021, the Panel informed the Parties that the Appellant's request for the bifurcation of these proceedings was denied, since the jurisdiction issue of the FIFA Players' Status Committee is related to the merits of the case and that this issue should be analysed and decided in the final arbitral award. On the same day, the CAS Court Office (i) invited the Coach to comment on the Appellant's request for production of his employment contract with AEK Larnaka; and (ii) invited FIFA to comment on the Appellant's objection to the timely filling of its answer.

28. On 24 March 2021, FIFA provided the following comments on the Appellant's objection to the timely filling its Answer:

- The Appellant's position has no grounds, neither on a substantive nor on a practical level;
- Article R32 (1) of the CAS Code states that: "[i]*f the last day of the time limit is [...] a non-business day [...] the time limit shall expire at the end of the first subsequent business day";*
- The time limit expires at the end of the first subsequent business day (i.e Monday 22 February 2021);
- Under the CAS Code, "*time limits*" do not expire on a Sunday;
- FIFA requested the extention on 17 February 2021, but could have requested the 10-day extension on Monday 22 February 2021 and such request would have been filed on time.

29. On 25 March 2021, the Panel decided:

"(..)

1. Request for production of documents:

The Panel considers that, in accordance with IBA Guidelines on the Taking of Evidence in International Arbitration, the Appellant has successfully demonstrated that (i) the document requested is likely to exist and (ii) to be relevant to the case, as well as (iii) the fact that this document is in custody or possession of the First Respondent. For this reason, the Coach was invited to produce the relevant document.

2. *Timely filling of FIFA's Answer*

The Panel is of the opinion that the 10-day extension should be counted from the time limit's expiry on Monday, 22 February 2021. Therefore, the deadline expired on 4 March 2021 and FIFA's Answer is admissible. (...)". The 10-day extension should be counted as from the effective expiry date and not from the initial expiry date if it falls on a non-business day. The Panel remarks that it has not identified any legal doctrine or CAS Jurisprudence on this matter.

30. On 26 March 2021, the Coach produced a copy of his employment contract with AEK Larnaka.

31. On 30 March 2021, after consultation of the Parties, the Panel decided to hold a hearing by videoconference.

32. On 31 March 2021, the CAS Court Office issued the Order of Procedure, which was duly signed by the Parties.

33. On 7 May 2021, a hearing was held by videoconference via Cisco Webex. In addition to the Panel and Mr Fabien Cagneux, Counsel to the CAS, the following persons attended the hearing:

1. For the Appellant
   - Mr Attila Balogh – General Manager of Mol Fehervar
   - Mr Iñigo de Lacalle Baigorri – Legal Counsel
   - Mr Álvaro Martínez San Segundo – Legal Counsel

2. For the First Respondent
   - Mr Joan Carrillo Milan – the Coach
   - Dr Kristóf Wenczel – Legal Counsel
   - Mr Gerard Stutje – Interpreter

3. For the Second Respondent
   - Mr. Miguel Liétard Fernández-Palacios – Director of Litigation
   - Mr. Alexander Jacobs – Senior Legal Counsel

34. As a preliminary remark, the Parties confirmed that they did not have any objection to the constitution and composition of the Panel.

35. As a preliminary procedural issue, the Appellant asked the First Respondent to clarify his request for relief, namely to be granted an (i) additional amount HUF 5,790,490 (the "Additional Payment"); and (ii) 5% interest on the compensation amount since 6 July 2020 until the date of its effective payment (the "Payment of Interest"). Following a brief discussion on this issue, the First Respondent clarified that his request for the Additional Payment should be disregarded (since it is considered a counterclaim) and the Payment of Interest shoud be restricted to the period after the issuance of the Award, since interest has not been awarded by FIFA PSC in the Appealed Decision.

36. The following persons were heard, in order of appearance:

- Mr Joan Carrillo Milan - the Coach
- Mr Attila Balogh – General Manager of Mol Fehervar

37. The witnesses were invited by the President of the Panel to tell the truth subject to the sanctions of perjury under Swiss law. Both Parties and the Panel had full opportunity to examine and cross-examine the witnesses.

38. All Parties confirmed that they were given full opportunity to present their cases and submit their arguments. Before the hearing was concluded, all Parties expressly stated that they had no objection to the procedure adopted by the Panel and that the equal treatment of the Parties and their right to be heard had been respected.

IV. THE PARTIES' SUBMISSIONS

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

A. The Appellant

40. The Appellant prayed the below reliefs in its Appeal Brief:

"(...)

➢ *the Appeal is upheld;*

➢ *the Decision issued by the FIFA PSC on November 3rd, 2020, and whose grounds were notified on December 4th, 2020, with case reference Nr. 20-01017 is set aside; and*

➢ *in so doing, hold that the FIFA PSC did not have jurisdiction to entertain the claim lodged by the Coach against the Club;*

Alternatively, in the event that this Hon. Panel decides not to bifurcate the proceedings for a preliminary award to be issued only in respect of FIFA PSC's lack of jurisdiction, the Appellant hereby respectfully requests the COURT OF ARBITRATION FOR SPORT (APPEALS ARBITRATION DIVISION) to deem this APPEAL BRIEF to be filed on behalf of MOL FEHERVAR FC together with the documents and copies attached and, following the appropriate established procedures, to issue in due course an AWARD whereby:

➢ *the Appeal is upheld;*

➢ *the Decision issued by the FIFA PSC on November 3rd, 2020, and whose grounds were notified on December 4th, 2020, with case reference Nr. 20-01017 is set aside; and*

➢ *in so doing, hold that the FIFA PSC did not have jurisdiction to entertain the claim lodged by the Coach against the Club;*

In the alternative:

➢ *should this Hon. Panel deem that the FIFA PSC did have jurisdiction to entertain the claim lodged by the Coach against the Club, hold that the Appellant rightfully terminated the Employment Agreement on July 6th, 2020 and, therefore, the Coach not being entitled to receive any compensation for breach of contract.*

In the further alternative:

➢ *should this Hon. Panel deem that the Club terminated the Employment Agreement without just cause, to dispense any compensation potentially due to the Coach because of his failure to mitigate his damages, or to, at least, reduce the amount of compensation granted to the Coach by the FIFA PSC to the amount this Hon. Panel considers to be the reasonable value of the subsequent employment contract of the Coach, according to market parameters and in accordance with Article 44 para. 1 of the Swiss Code of Obligations.*

In all events:

➢ *the Coach is ordered to bear all procedural costs and other arbitration expenses of this procedure; and*
➢ *the Coach is also ordered to pay the legal fees and other expenses incurred by the Club in an amount to be determined at the discretion of this Hon. Panel.*

(...)"

41. The Appellant advanced the following grounds in support of his appeal:

(A.1) The FIFA PSC lacks jurisdiction to hear the present case

42. The FIFA PSC must also be considered as incompetent to hear the present employment-related dispute.

43. In accordance with the provisions of Article 22 of the RSTP, FIFA has no exclusive jurisdiction to hear an employment-related dispute with an international dimension, since players, coaches and clubs are allowed to refer the case to ordinary State Courts under the contractual autonomy of the parties.

44. The case CAS 2015/A/3896 is relevant to the present matter, since in that proceeding it was decided that a reference to Spanish legislation as the law governing the agreement between the parties could function as valid choice of law:

"(...)

101. In consideration of all the foregoing, the Panel believes that, in accordance with the right reserved for the Parties under article 22 of the applicable FIFA Regulations to seek redress before a civil court in employment-related disputes, the Employment Contract, by reference to the Spanish Royal Decree 1006/1985, contains the Parties' choice of forum in favour of the Spanish labour courts. In this respect, the Panel believes that by signing the Employment Contract and the Annex, both containing reference to the above mentioned Royal Decree 1006/1985, the Player has accepted the jurisdiction of Spanish courts as an exception to FIFA's jurisdiction, over any dispute possibly arising from his relationship with the Club.

102. With regard to the Appellant's argument that such a choice of forum would not be valid since the conditions of the clear reference to the competent deciding body and the minimum standards of independency, fair proceedings and equal representations required under article 22, lit. b) of the FIFA Regulations in the Employment Contract are not met in the case at stake, the Panel remarks that the relevant requirements expressly refers to "national arbitration tribunal", and not to ordinary courts, as an alternative to the jurisdiction of the FIFA DRC.

103. Therefore the Panel believes that the choice of forum made by the Parties in the Employment Contract by reference to the Royal Decree 1006/1985 is valid and binding and that therefore, the Player had agreed beforehand to the competence of the Spanish labour courts to rule over the present dispute.

(...)"

45. The present dispute should be decided in line with the above case law, since the parties' reference to the Hungarian LC is to be considered as a choice of forum which grants the Hungarian ordinary courts the competence to decide this matter. As per Clause 7 (40) of the Employment Contract, the contractual parties gave preference to the

application of the Hungarian LC to any matters not stipulated in the contract, in spite of a subsidiary reference to the Law on Sports and to "*the regulations of the Hungarian Football Federation and other national and international football organizations*" that is made in broad and generic terms.

46. To reinforce such conclusion, it is clear that Article 285 (1) of the Hungarian LC provides that claims arising from a labour relationship in Hungary have to be solved by "*judicial process*".

47. Furthermore, Article 508 of the Act CXXX of 2016 in the Hungarian Code of Civil Procedure (hereinafter, the "Hungarian CCP") describes what is a "labour law action", including, in its letter a), claims that arise from legal relationships established on the basis of Act I of 2012 on the Labour Code (which corresponds to the Hungarian LC).

48. Article 513 of the Hungarian CCP refers to the administrative and labour courts, which are contemplated in Article 20 (2) of said code which reads as follows:

"*From among the actions falling within the scope of this Act, administrative and labour courts shall have material jurisdiction over labour law actions*"

49. Due to recent changes, the competent Hungarian Court to solve labour disputes as of today is the Labour Law College of the Regional Court.

50. Furthermore, pursuant to Article 508 of the Hungarian CCP, no arbitral proceedings are allowed in Hungary in relation to labour disputes. This limitation is also stated in Article 1 (3) of the Act LX of 2017 on Arbitration Act, since no arbitral proceedings shall take place in disputes of labour nature in Hungary.

51. In light of the above, the Panel should set aside the Appealed Decision on the basis that the FIFA PSC was not competent to hear the claim brought by the Coach against the Appellant.

(A.2) <u>FIFA PSC lacks jurisdiction "ratione temporis"</u>

52. The Employment Contract does not contain any *"(...) clear and express reference to the body which the Parties intended their disputes to be solved by*".

53. However, this does not mean that the Employment Agreement is totally moot in relation to legal remedies in case of conflict, as its Clause 7 (39) states that "*any controversy or claim arising out of or relating to this agreement shall be settled by negotiations and dispute resolutions between the parties*".

54. Therefore, there was a negotiation requirement with which the Coach did not comply, since there was (i) no attempt to try and settle the dispute by negotiations before the

FIFA PSC proceedings and (ii) the CAS mediation proposed by the Appellant was rejected.

55. The Coach failed to exhaust the legal remedies prior to lodging his claims and, therefore, FIFA lacked jurisidiction *ratione temporis* in the present case.

(A.3) The Law applicable to the merits

56. Contrary to what the FIFA PSC ruled in the Appealed Decision, Clause 7 (40) of the Employment Contract clearly states that "*any matters not stipulated in the present contract, shall be governed by the Hungarian Labour Code (Act I of 2012), the Act I of 2004 on sport, the Employer's policies, the regulations of the Hungarian Football Federation and other national and international football organizations, associations and the relevant provisions of the laws of Hungary*".

57. In spite of the generic reference in said clause to the regulations of the HFF and other national and international football organizations, the parties have agreed that their employment relationship would be governed by the provisions of the Hungarian LC, "*while specifying that all the formal requirements set out in the regulations of both the Hungarian football federation and any other national or international organizations were observed when concluding the Employment Agreement.*"

58. This conclusion is reinforced by the fact that the Coach was to be regarded as an executive employee pursuant to Article 208 (2) of the Hungarian LC. Additionally, the Coach himself attached to his claim before the FIFA PSC a copy of the Hungarian LC and made reference to its provisions.

59. According to Article 187 (1) of the Swiss Private International Law Act ("PILA"), if the Parties have made a choice of law, then the arbitral tribunal is bound by the agreement between the parties. Any restriction on the freedom of the parties to choose the applicable law would have to be deemed abusive and disproportionate.

60. In accordance with this, the Panel should primarily apply Hungarian Law to the present dispute.

(A.4) The relationship between the Coach and Mr Mátyás Czuczi

61. The Coach and Mr Mátyás Czuczi knew each other since the 2014/2015 season and they have been in contact with each other ever since.

62. As per the Coach's statements in his claim before the FIFA PSC:

"The referred person by the termination note Matyas Czuczi is a video analyst employed by the Hungarian Football Federation. Previously he worked with Claimant's staff at

the Respondent Club, Fehérvár F.C. (2014-2015), Hajduk Split (2016-2017) and Wisla Krakow (2018). Claimant and Mr Czuczi have a friendly relationship widely known. As they were working together for more years they are in contact with each other, practically weekly chats and calls. As Mr Czuczi is an educated video-analyst the focus of their communication was on the tactics and players of the upcoming opponents of the Club. Logically the tactical information of another Club cannot be regarded as confidential information of the Respondent. The communication between them disregarding private life and family issues was restricted to tactical and football players characteristics, profiles, - any kind of business information, insider tactical information or any information which may be regarded as confidential information were never shared". (para. 31 of the Appeal Brief)

63. On 26 November 2019, the Coach was ordered not to work with Mr Mátyás Czuczi, after suggesting his recruitment by the Club as a part of the coaching staff.

64. The Club's lack of trust and relationship with Mr Mátyás Czuczi was due to the fact that he left the Club without prior notice taking with him valuable information and erasing everything on the Club's computers and servers, which contained important information.

65. On the Coach's first match, on 30 November 2019, he was in contact with Mr Mátyás Czuczi during the entire match. Consequently, they discussed the events of the match.

66. After the Coach's second match, both him and his assistant coach discussed the events of the match with Mr. Mátyás Czuczi.

67. This routine of discussing the events of the match continued and the Coach even received on his telephone and a "WeTransfer Link" and a "Video File", to which the Appellant did not have access and which was never disclosed to the Club.

68. The Coach even borrowed an external pen drive of the assistant coach at some point, on which a match played against Budapest Honvéd was analysed with a software that only the HFF, where Mr. Mátyás Czuczi was working at the time, possessed and used.

69. It is clear that Mr Joan Carrillo and Mr Mátyás Czuczi, shared a routine of exchanging impressions after each match of the Club.

70. The Appellant warned the Coach orally on multiple occasions to stop contacts with Mr Mátyás Czuczi. The Coach was also summoned by the Appellant on 4 July 2020, in an attempt to redirect the situation and try to put an end to his breaches, but the Coach argued against it claiming that he was paying a salary to Mr Mátyás Czuczi for his services "*from his own pocket*" and there was nothing to prevent him from doing so. Therefore, the Club had no choice but to unilaterally, and with just cause, terminate the Employment Contract days later.

(A.5) The legal grounds for the termination of the Employment Contract

71. The Panel should determine that the Termination was with just cause as the Employment Contract clearly stated the circumstances that entitled the Club to unilaterally terminate the contract with immediate effect.

72. The Coach has clearly failed to devote his time and energy entirely and exclusively to the interests of the Club, which therefore entitled the Club to unilaterally terminate the Employment Contract with immediate effect.

73. Clause 2.4 (13) of the Employment Contract obligated the Coach to "*(...) perform work in accordance with the interest of the Team*".

74. Clause 3 (20.a and 20.f) of the Employment Contract provided for the Coach's obligations, among others, "*(...) to follow the instructions of the* [Club's] *managing director (...)*" and "*to handle confidentially all data, facts, information (...)*".

75. Since the beginning of the employment relationship, the Coach was in continuous communication with Mr Mátyás Czuczi regarding tactics and other football-related matters which, allegedly, affected the Appellant.

76. The Coach has disregarded the Club's instructions. Both the breach of the obligation to follow the instructions of the Club's management and of the obligation to handle all data, facts, and information confidentially, are serious breaches which entitled the Club to terminate the Employment Contract unilaterally and lawfully.

77. Moreover, there is the issue of the former "employment relationship" between the Club and Mr Matyás Czuczi. Mr Mátyás Czuczi worked for the Club in the 2014/2015 season, until he unilaterally decided to leave the Club and take up another work opportunity with a rival first division club, taking with him, in bad faith, all the analyses made during his employment relationship with the Club.

78. As a result, the Club decided not to engage Mr Mátyás Czuczi in any further professional capacity. This is the main reason why the Club's management expressly ordered the Coach not to work with Mr Mátyás Czuczi in order to protect the interests of the Club.

79. If the Club considers that an individual is not the right person to be part of the coaching staff, the Coach as an employee of the Club, should have followed the instructions given to him.

80. Moreover, in the same logic, Article 78 (1) of the Hungarian LC establishes that "[a]*n employer or employee may terminate an employment relationship without notice if the other party wilfully or by gross negligence commits a grave violation of any substantive obligations arising from the employment relationship; or otherwise engages in conduct that would render the employment relationship impossible*".

81. To conclude, the Employment Agreement was lawfully terminated by the Club and no monies are due to the Coach for the period in which he effectively provided his services for the Club. The Coach was only entitled to receive "*his pro-rata salary until the date of termination*" (Clause 5 (25) of the Employment Contract and Article 84 of the Hungarian LC).

(A.6) *Failure to comply with his duty to mitigate damages*

82. In the alternative, if the Panel considers that the Club terminated the Employment Agreement without just cause, the Coach should have complied with his duty to mitigate the damages that supposedly resulted from the Club's unjustified termination of the Employment Agreement, so the amount of compensation to be paid by the Club must be reduced accordingly.

83. This is in line with CAS Jurisprudence, such as CAS 2016/A/4678:

"*102. ... according to article 337c para. 2 CO, the duty of mitigation is related to the rule that the employee must permit a set-off against the amount of compensation for what he saved because of the termination of the employment relationship, what he earned from other work, or what he has intentionally failed to earn.*

103. In the opinion of the Panel, such a rule implies that, in accordance with the general principle of fairness, the injured player must act in good faith after the breach by the club and seek other employment, showing diligence and seriousness. The Panel considers that this principle is aimed at limiting the damages deriving from the breach and at avoiding that a possible breach committed by the club could turn into an unjust enrichment for the injured party".

84. The Coach is deliberately contributing to the damage he is allegedly suffering. In fact, Mr. Joan Carrillo could have found a new employment with the same conditions easily.

85. It is very unlikely that the Coach considered the possibility of moving to Cyprus and earning 10 times less than the amount he earned while working for the Appellant.

86. In fact, "(...) *such behaviour and lack of cooperative stance should also be taken into account by this Hon. Panel in accordance with Article 2 of the Swiss Code of Obligations, which essentially provides that "the manifest abuse of a right is not protected by law".*

87. The Appellant requests the Panel to dispense any compensation potentially due to the Coach or, at least, to reduce the compensation to be paid by the Club by the market price of the Coach or the reasonable salary that he was entitled to receive under these circumstances.

B. The First Respondent | The Coach

88. The First Respondent filed its Answer to the Appeal Brief and made the following prayers for relief:

"(...)

Please dismiss the Appellant's Request for Arbitration and Appeal Brief entirely and uphold the Decision Nr. 20-01017 of the FIFA Players Status Committee in respect of ***HUF 99.000.000***

Please order Appellant to pay additional HUF 5'790'490,- (the total claim of the First Respondent is HUF 115.350.490,-. The First Respondent has mitigated the damage with the contract with AEK Larnaca concluded on the 20th September 2020 with EUR 32.000,-. The amount is equivalent to HUF 10.560.000,- according to the contract and the resolution)

Please order the Appellant to pay an interest of 5% p.a. pursuant on all above amounts as of the date these amounts were due (6th July 2020) until the date of their effective payment.

Please order the Appellant to pay arbitration costs including the Respondent's legal representative's costs and expenses.

"(...)

89. The submissions of Mr. Joan Carrillo, in essence, may be summarised as follows:

(B.1) Jurisidiction of FIFA's PSC

90. The Appellant did not question that the Parties are bound by FIFA regulations, since the First Respondent worked as a professional coach for the Club.

91. Clause 7 (40) of the Employment Contract refers clearly to "(...) *international football organizations"*. FIFA Chambers cannot be considered as "*arbitral tribunals*", but only as internal decision-making bodies, whose decisions are a mere embodiment of the will of the federation concerned (4A_412/2016 judgement of January 7, 2017 FC A. v. B & FIFA Football contract of employment and jurisdiction of the FIFA DRC & the CAS by Swiss Federal Tribunal).

92. As such, FIFA dispute resolution processes cannot be regarded as a competing forum of jurisdiction to any State Court as it is not an arbitral tribunal; as such, the Panel must focus on determining if the FIFA PSC has jurisdiction and ignore the potential alternative jurisidiction of the Hungarian courts.

93. This dispute is of international dimension, since the Club is Hungarian and the Coach is Spanish, and it is related to an employment dispute; this means that Article 22, c), RSTP is applicable.

94. There is no independent arbitral tribunal in Hungary able to solve this type of employment disputes. The Permanent Sport Arbitral Tribunal – operating under the umbrella of the Hungarian Olympic Committee, is excluded by law from deciding employment related disputes; and does not meet the criteria set forward in the FIFA Circular no. 1010 and the FIFA National Dispute Resolution Chamber Standard Regulations (NDRC) to be considered as an independent arbitral tribunal.

95. In addition to the above, the case CAS 2006/A/1126 provides important guidance:

"The FIFA Regulation for the Status and Transfer of Players (RSTP) 2001 established a system for the resolution of the employment related disputes between clubs and players, but acknowledged said system to be "without prejudice to the right of any player or club to seek redress before a civil court"(Article 42 para 1, introductory period) 1: on one hand RSTP 2001 defined a "sporting system" for the settlement of disputes; on the other hand, it conceded that state adjudication in employment related disputes could not be entirely excluded".

96. The FIFA dispute resolution process allows state adjudication only as a complementary option and upon choice of the player or club seeking redress.

(B.2) Applicable Law and the implicit choice of forum

97. Clause 7 (39) of the Employment Contract does not make any reference to Hungarian Courts or any arbitral tribunal.

98. The references made in the Employment Contract to Hungarian Labour law were made only because the parties were obliged to observe its provisions pursuant to Article 3 (2) of the Hungarian LC.

99. All clauses refering to Hungarian law are merely *"to be regarded as the acknowledgement of the obligatory regulations of the law by the parties. Appellant's arguments referring to the choice of law by the coach or mutual consent are based on a false interpretation of the Employment Contract. The parties did not have any other option to choose as governing law"*.

100. No choice of the dispute resolution forum can be derived from the acceptance of the legally binding national labour law, since the contractual parties never gave preference to the application of the Hungarian LC but only acknowledged its obligatory regulations.

101. In light of the above, it is clear that the case CAS 2015/A/3896 is not to be followed here, as no explicit regulation of Hungarian law defines and appoints the forum.

102. Finally, Article 285 (1) of the Hungarian LC does not establish that workers and employers have to seek the settlement of their employment-related disputes by judicial process, instead it is stated that they "may" do so.

103. All in all, "[c]*onsidering the long-standing jurisdiction of FIFA and CAS there are no concerns about the established jurisdiction of FIFA for the present case. Regarding the above listed considerations, cases and above all the FIFA regulations and the Hungarian Labour Code the Coach has rightfully seeked redress at FIFA Player 'Status Committee".*

(B.3) The Coach's duty to comply with the instruction of the Club.

104. The Coach acted in good faith and at the best of his abilities to fulfil the duties established in the Employment Contract.

105. The Coach has followed all the instructions given by the Club in accordance with his contractual duties and has never shared any confidential information with Mr Mátyás Czuczi, or with anyone. The Coach stated that he was in possession of very few confidential information, if any at all.

106. It is not true that the Appellant warned the Coach "multiple times" and on "various occasions" that he was passing or to stop passing confidential information to any person outside the Club. On the contrary, the Club has never provided an e-mail, a WhatsApp message, or any other written proof of these instructions being given to him.

107. Mr Mátyás Czuczi was employed as chief analyst by the HFF and worked for the staff of the Hungarian National Senior and Junior Team, both of which continuously counted on 3-5 players from Mol Fehervar.

108. The Termination Notice is motivated as follows: "*The Sport Director and the person entitled to exercise Employer's rights became aware that the Employee - despite the employer express prohibition - shares confidential information in his possession in connection with his employment relationship with a former employee, Mátyás Czuczi, who is currently not in an employment relationship with the Employer".*

109. The Club has the burden of proof to justify the just cause of the Termination, which should be clear and legally grounded.

110. The Panel should only analyze the motivation provided by the Appellant in the Termination Notice. The Termination Notice only refers to the sharing of confidential information with Mr Mátyás Czuczi, therefore, the evidence and argumentation by the Appellant should exclusively target this topic only. The Appellant has never provided material proof of any kind of information, when, where or how this confidential information was allegedly disclosed by the Coach.

111. Moreover, the definition of confidential information is described in the Employment Contract and it relates to financial and contractual information of the players at the Club. Tactical considerations, potential tactical line-ups, statistics, and video-analytics done by an external third person do not fall under the definition of confidential information, as they especially relate to opponent teams. Neither a single statement, nor an evidence was provided by the Appellant referencing what information was allegedly shared. Furthermore, the Appellant should provide evidence and reasons as to why it would have been beneficiary to the Coach to share confidential information with Mr Mátyás Czuczi.

112. The Club did not comply with the time stipulated by the law to terminate the Employment Contract. Article 78 (2) of the Hungarian LC gives 15 days to the party to terminate unilaterally the Employment Contract after he became aware of the alleged breach of contract.

113. The Termination Notice is dated of 6 July 2020 and the Appellant should have proved that it had become aware of the alleged breach (sharing confidential information) in the period between 21 June and 6 July 2020. Instead, neither a single statement nor any evidence was provided by the Appellant as to when the alleged disclosure happened or as to when it had become aware of such fact.

114. The Club had no just cause to terminate the Employment Contract. The Club has never provided any evidence to support its allegations.

(B.4) Mitigation of the damages

115. The Appellant disregarded its contractual obligations and decided to unilaterally terminate the Employment Contract without just cause.

116. The Club has not taken any action to settle the dispute in an amicable way and the Coach has never been called for any negotiations regarding the termination of the Employment Contract – formally or informally – by the Club.

117. Due to the Termination of the Employment Contract, the Coach has suffered significant damages, on a financial and reputation levels. It is important to point out that the Coach has received an offer from the Cyprian club AEK Larnaca and the club was in an exceedingly difficult financial position when the Coach accepted the offer which finally ended with a premature unilateral termination after two months. The Coach has suffered additional damages because of his efforts to mitigate the damages caused by the Club.

118. The Coach has undertaken all efforts to mitigate his damages, acting in good faith even after the Termination. The Coach has not made a single public statement that could damage the Club's reputation. The Appellant has not provided a single evidence that the Coach refused to mitigate his damages.

C. The Second Respondent | FIFA

119. FIFA filed its Answer to the Appeal Brief and made the following prayers for relief:

> *"(...)*
>
> *(a) Reject the Appellant's appeal in its entirety*
>
> *(b) Confirm the Appealed Decision and, in particular, that the PSC was competent to deal with the dispute between the Appellant and the Coach;*
>
> *(c) Order the Appellant to bear all costs incurred with the present procedure; and*
>
> *(d) Order the Appellant to make a contribution to FIFA's legal costs*
>
> *"(...)*

120. FIFA's submissions relate only to the vertical dispute and the matters of jurisdiction of the PSC and applicable law, since the horizontal dispute between the Coach and the Club will not be addressed and is of no relevance to FIFA in this Answer.

121. The submissions of FIFA, in essence, may be summarised as follows:

(C.1) Applicable law to the merits

122. Article 57 (2) of the FIFA Statutes establishes that the provisions of the CAS Code shall apply to the present proceedings and that CAS shall apply primarily the various regulations of FIFA and, additionally, Swiss law.

123. Article R58 of the CAS Code establishes in turn that:

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

124. Since the Appealed Decision was rendered by the FIFA PSC, the FIFA Statutes and Regulations – namely the RSTP and the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (the "Procedural Rules") – constitute the

applicable law and Swiss law should apply subsidiarily should the need arise to fill a gap in the FIFA regulations.

125. Clause 7 (40) of the Employment Contract does not establish a hierarchy for applicable rules and, as such, Hungarian Law is not exclusively applicable and instead should be regarded to be as "*subsidiary and generic*" as the FIFA regulations in the present case.

126. Given the wording of Clause 7 (40) of the Employment Contract, the findings of CAS 2019/A/6490, para. 101-104 are totally applicable to this case:

"[b]esides the fact that the said clause thus not only mentions the Coach's obligation to observe all laws and regulations of the People's Republic of China, but also mentions the obligation to observe all regulations, rules and statutes of both FIFA and the CFA, the Sole Arbitrator finds that Clause 8.1 of the Contract does not constitute a valid choice of law clause, which in this way would justify the application of Chinese law, not even subsidiarily [...] based on the above, the Sole Arbitrator is satisfied to accept the application of the various rules and regulations of FIFA and, subsidiarily, Swiss law"

127. In any case, in appeal proceedings, any possible choice of law made by the parties in the relevant contract only applies to circumstances which are not covered by FIFA regulations. This much was confirmed in CAS 2017/A/5111, para. 83-84:

"The overwhelming view in the Swiss legal literature holds that an explicit choice of law always takes precedence over an implicit choice of law [...] *CAS jurisprudence for the most part does not concur with this view* [...] *The underlying rationale of this jurisprudence is that the CAS Code* [...] *aims at restricting the autonomy of parties. According thereto, the parties' autonomy only exists within the limits set by the CAS Code. Article R58 of the CAS Code is according to this jurisprudence mandatory* [...] *The purpose of concentrating appeals against decisions of an international sports organisation with the CAS is not least the desire to ensure that the rules and regulations by which all the (indirect) members* ***are equally bound are also applied to them in equal measure****. This can only be ensured, however, if a uniform standard is applied in relation to central issues. This is precisely what Article R58 of the CAS Code is endeavouring to ensure, by stating that the rules and regulations of the sports organisation having issued the decision (that is the subject of the dispute) are primarily applicable. Only subsidiarily, and this for good reason, Article R58 of the CAS Code grants the parties scope for determining the applicable law* [...]"

128. Similar conclusions were reached in CAS 2008/A/1517, which provides that:

"*Furthermore, the parties in the present case are bound by the FIFA Statutes for two reasons: first, they made a tacit choice of law when they submitted themselves to arbitration rules that contained provisions relating to the designation of the applicable law; and second,* ***all parties are – at least indirectly – affiliated to FIFA****. Therefore, this dispute is subject, in particular, to article 60(2) of the FIFA Statutes, which provides that CAS 'shall primarily apply the various regulations of FIFA and, additionally, Swiss law' (CAS 2006/A/1180, para. 7.9). Hence, due to the* ***indispensable need for the uniform and coherent application worldwide of the rules regulating international football*** *(TAS 2005/A/983-984, para. 24), the Panel rules that Swiss law will be applied for all the questions that are not directly regulated by the FIFA Regulations (cf. CAS 2005/A/871, para. 4.15)"*

129. It follows that Hungarian Law would only be applicable to issues not covered by the FIFA regulations; however, the merits of the present matter are covered by FIFA regulations, namely the competence of the FIFA PSC, the lawfulness or not of the early termination of the Coach's contract in accordance with Articles 13 and 14 RSTP and the consequences of such termination pursuant to Article 17 RSTP.

130. In the matter at hand, there is also a lack of a direct and valid choice-of-law clause which does not allow the Panel to reach the same conclusions as CAS 2015/A/3896, like the Appellant so wishes. However, even if the parties had agreed to a direct and valid choice-of-law clause, FIFA regulations would have still been applicable in accordance with Article R58 CAS Code.

131. The case CAS 2016/A/4471, where a valid choice-of-law was made by the parties and which followed the article published by Dr. Ulrich Haas in CAS bulletin 2015/2 regarding this matter, explained that in the case of the "Real Decreto":

"[...] *the applicable FIFA regulations apply primarily and Swiss Law shall apply solely for the purpose of interpreting the said FIFA Regulations. The Real Decreto applies to all the aspects not specifically governed by the FIFA Regulations*"

132. Given all of the above, only the FIFA regulations should be applied and Swiss law subsidiarily for interpretation purposes.

(C.2) FIFA's jurisdiction

(C.2.1) *Clause 7 (39 and 40) of the Employment Contract and the general competence rules of the FIFA PSC*

133. The Appellant holds that (i) there is no specific jurisdiction clause in the Employment Contract, or no clear and express reference to the body which the Parties intended their dispute to be resolved by; (ii) FIFA lacked jurisdiction *ratione temporis* since the Coach did not comply with the alleged pre-arbitration requirement to negotiate; and (iii) the Hungarian ordinary courts are competent based on the application of the Hungarian LC.

134. FIFA rejects all the above arguments. As a general rule, FIFA PSC is competent to deal with employment-related disputes between a club and a coach of an international dimension and there are only two exceptions to this rule which is when the parties explicitly opt to refer their dispute to (1) a civil court for employment-related disputes or (2) an independent arbitration tribunal guaranteeing fair proceedings at national level.

135. This dispute has an international dimension – since it involves a Spanish coach and a Hungarian football club – and could be referred to a State court or to an independent arbitration tribunal, provided that the parties have explicitly chosen to submit such dispute to it by means of a clear, specific, and exclusive clause. However, such contractual provison does not exist.

136. In respect to this matter, the FIFA Decision states that:

"5. In relation to the above, the Single Judge deemed it vital to outline that one of the basic conditions that needs to be met in order to establish that another organ than the Players' Status Committee or its Single Judge is competent to settle an employment-related dispute between a club and a coach of an international dimension, is that the jurisdiction of the relevant national court derives from a clear reference in the employment contract."

137. For a jurisdiction or arbitration clause to be considered as a valid choice of forum it has to ensure that the parties to the contract have a clear and unequivocal understanding of which specific body or court they should revert to in case of a dispute. This requirement is even more relevant in the world of football, where disputes with an international dimension arise frequently between coaches and clubs, and where it should be clear for a coach, working in a foreign country, where to lodge his/her claim in case of any possible controversy.

138. FIFA gives the example of a clear jurisdiction clause that can also be found in CAS jurisprudence, e.g. CAS 2018/A/5624 Dominique Cuperly v. Club Al Jazira, where the settlement agreement contained the following clause:

"Any dispute arising from or related to the settlement agreement will be submitted to the courts of the Emirate of Abu Dhabi"

139. On the basis of the aforementioned clause, CAS has considered that:

"The wording of Article 8 para. 2 of the Settlement Agreement is clear and leaves no room for any interpretation. It clearly refers to the court of the Emirates of Abu Dhabi

as being competent to decide any dispute in relation to the Settlement Agreement. Therefore, the Sole Arbitrator confirms the Club's allegations, and therefore the findings of the Single Judge of the PSC in this respect, that based on the Parties will, the FIFA authorities were not competent to decide the dispute in this employment matter, only the courts of the Emirate of Abu Dhabi are competent".

140. In the matter at stake, there is no clear jurisdiction clause. To summarise, Clause 7 (39) of the Employment Contract simply establishes that the parties will attempt to settle *"any controversy or claim"* by negotiations and dispute resolution, without explicitly designating a particular institution (neither a national civil court nor a national or international arbitration tribunal, therefore it is not direct nor makes clear reference to the Hungarian civil courts). The same vague description applies to Clause 7 (40) of the Employment Contract, which established the choice of law rather than the jurisdiction of a specific body. No conclusions should be drawn as to which body or judicial instance has competence, let alone exclusive competence. It cannot be deduced from the choice of law in Clause 7 (40) of the Employment Contract, that Hungarian National Courts would retain exclusive jurisdiction, since no preference or hierarchy has been set by the parties of the contract.

141. The Appellant even admitted as much, since he stated in his Appeal Brief that "*In the first place, a brief glance at the Employment Agreement leads to the conclusion that there is no specific jurisdiction clause in the same (or, at least, a clear and express reference to the body which the Parties intended their disputes to be solved by)".*

(C.2.2) *CAS 2015/A/3896 cannot be applied by analogy*

142. The Appellant also wrongly concludes that the jurisprudence of CAS 2015/A/3896 is applicable to the present case.

143. The reference to national law made in the Employment Contract cannot be qualified as a jurisdiction clause. This is even more so, considering that the reference to national law is generic and does not relate to any provision that clearly provides for the jurisdiction of courts in disputes between coaches and clubs. There is also no reference in the Employment Contract regarding the exclusive jurisdiction of Hungarian National Courts and no provision in such domestic code establishes such situation.

144. In fact, the Appellant's creativity in trying to determine the competent courts by reference to the Termination Notice and the Hungarian CCP demonstrates that it would be impossible for the Coach to know where to lodge his claim in Hungary; this is precisely the reason why such clauses must be clear, especially in the field of international football.

145. To conclude, the Appellant's arguments are flawed, since the jurisprudence of CAS 2015/A/3896 can only apply when there is "*a contract that has multiple and specific references to a national law that clearly establishes the jurisdiction of national courts*

for disputes arising from an employment contract between a "professional athlete" and a club" and not when the contract at stake "*contains general references to national law, a national law that does not establish exclusive jurisdiction of national courts for disputes arising from an employment contract between a coach and a club".*

(C.3) *In dubio contra stipulatorem*

146. Clause 7 (39) of the Employment Contract does not establish a specific or exclusive jurisdiction in favor of Hungarian National Courts and refers to dispute resolution only in the broadest terms. No institution is ever mentioned, neither national courts or international arbitration tribunals.

147. Clause 7 (40) of the Employment Contract refers to both Hungarian law and the regulations of international football organizations in equal terms. No preference or hierarchy was established.

148. If the Appellant insists that the above referenced clause establishes a clear hierarchy and the exclusive competence of the Hungarian National Courts, it is FIFA's position that said clauses are ambiguous and in view of such ambiguity, they must be interpreted pursuant to the principle of "*in dubio contra stipulatorem*", i.e. against the author, who was the one which had the power to make the meaning of the clause plain.

(C.4) Lack of jurisdiction "*ratione temporis*"

149. The Appellant terminated the Employment Agreement without any attempt to reach an amicable settlement before the Termination. If however the Appellant failed to comply with the "*pre-arbitration requirement*" (Clause 7 (39) of the Employment Contract), it cannot expect the Respondent to comply with such requirement.

150. In addition to this, the "*Appellant cannot cherry pick in the matter at stake and continuously contradict itself. On the one hand it is arguing that the Hungarian labor courts are exclusively competent following several references in the Contract to Hungarian labor law and on the other hand it is arguing that the coach did not comply with a "pre-arbitration requirement" by not attempting to settle the matter through good faith negotiations. The Appellant needs to make up its mind: either the Hungarian labor courts are competent by virtue of Hungarian law and there is no room for arbitration (and mandatory good faith negotiations), or the Hungarian courts are not competent and the alleged "pre-arbitration requirement" was not complied with although there is no arbitration stricto sensu since no independent arbitration tribunal was designated by the parties. The Appellant cannot stake its arguments on Hungarian law and then rely on requirements related to arbitration".*

151. The Employment Contract also excels in ambiguity and does not establishes clearly any duty for the parties to resort to mediation. As such, the Appellant's argument

regarding the refusal to proceed with the CAS mediation procedure as proof of violation of Clause 7 (39) of the Employment Contract is unsubstantiated, since no clear obligation to do so has been established.

152. Finally, the FIFA PSC adjudicated the present matter within two years of the relevant events, thus complying with the time limits provisioned for in Article 25 (5) of the RSTP.

(C.5) In relation to the termination of the Employment Agreement

153. No reliefs are sough by the Appellant against FIFA with respect to the contractual dispute between the Appellant and the Coach. Therefore, in line with CAS jurisprudence which confirms that FIFA does not have standing in so-called 'horizontal' disputes, it becomes unnecessary for FIFA to comment on a dispute which exclusively concerns the other parties to this arbitration.

154. FIFA has no standing to be sued in the horizontal dispute. According to Swiss law and CAS jurisprudence, a respondent in arbitration proceedings has standing to be sued only if it has some stake in the dispute because something is sought against it and is personally obliged by the disputed right.

155. FIFA *"(...) thus respectfully declines to comment on the merits of the contractual dispute (save for the already addressed PSC jurisdiction) and simply refers to the PSC's findings in what we find is a sound and well-grounded decision"* (para. 80, Second Respondent's Answer).

V. JURISDICTION OF THE CAS

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

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

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

157. The jurisdiction of CAS is based on Article 58 (1) of the FIFA Statutes (2020 Edition) and is not disputed by the Parties. The jurisdiction of the CAS was further confirmed by the Order of Procedure duly signed by the Parties.

158. Although the Parties do not dispute specifically the jurisdiction of the CAS to decide appeals against decisions passed by FIFA's legal bodies, the Appellant disputes that the FIFA PSC had jurisdiction to decide the dispute, because the Employment Contract establishes the exclusive competence of the Hungarian National Courts. The issue regarding the FIFA jurisdiction to hear the present matter will be addressed in the merits section below, since it does not concern the CAS jurisdiction to hear the present Appeal.

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

VI. ADMISSIBILITY

160. Article R49 of the 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 of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late."

161. Article 58 (1) of the FIFA Statutes reads as follows:

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

162. The Panel notes that the admissibility of the Appeal is not contested by the Parties. The grounds of the FIFA Decision were notified to the Appellant on 4 December 2020 and the Statement of Appeal was filed on 23 December 2020, *i.e.* within the 21-day deadline fixed under Article 58 of the FIFA Statutes.

163. The Appeal Brief was filed on 29 January 2021, in compliance with Article R51 of the CAS Code due to the time extension granted to the Appellant by the CAS Court Office.

164. It follows that the Appeal is admissible.

VII. APPLICABLE LAW

165. A distinction between the *lex arbitri* (the arbitration law at the seat of arbitration) and the *lex causae* (the law applicable to the merits) has to be made first: "[w]*hereas procedural issues are governed by the law of the seat of the arbitration, i.e. Switzerland, the law applicable to the merits of the dispute depends on the applicable conflict of law rules."* (CAS 2017/A/5465, para. 69).

166. CAS has its seat in Lausanne, Switzerland and, as such, the PILA is applicable to the present case as *lex arbitri*. In addition to this, according to Article 176 (1) of the PILA,

the provisions of Chapter 12 apply since this is an international arbitration and only FIFA is based in Switzerland.

167. The *lex arbitri's* conflict of laws provisions are then used to determine the law applicable to the merits. As such, according to Article 187 (1) of the PILA, "[t]*he arbitral tribunal shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to the rules of law with which the case has the closest connection".*

168. There is no doubt that by submitting themselves to the CAS, not contesting directly its jurisdiction and by signing the Order of Procedure, the Parties have made an implicit agreement as to the applicable procedural rules, accepting the CAS Code. However, by doing this, the Parties also accept the conflict of laws rules cointained in the CAS Code, in particular Article R58 which establishes that:

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

169. In regards to the interpretation of the above mentioned provisions, the Panel fully subscribes to the standing jurisprudence of the CAS as evidenced in CAS 2017/A/5374; CAS 2018/A/5624; CAS 2017/A/5465 and others:

"Like Art. 187 (1) of the PILA, Art. R58 of the CAS Code also distinguishes between whether or not the parties have made a choice of law. In the absence of a choice of law, Art. R58 of the CAS Code stipulates that the Panel shall apply "the law of the country in which the federation, association or sport-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate". This approach is basically no different from the closest connection test provided for in the second alternative of Art. 187 (1) of the PILA. To this extent the two provisions are almost identical.

1. *In the event that the parties have made a choice of law, however, the question of law is different, since in this regard Art. R58 of the CAS Code stipulates that this choice of law is relevant only "subsidiarily". Consequently Art. R58 of the CAS Code serves to restrict the autonomy of the parties, since even where a choice of law has been made, the "applicable regulations" are primarily applied, irrespective of the will of the parties. These are the (autonomous) rules of the association that made the first-instance decision that is being contested in the appeals arbitration procedure. Since in football-related disputes this is the FIFA, under Art. R58 of the CAS Code – regardless of the parties' choice of law – the rules and regulations of FIFA apply accordingly."* (HAAS, Ulrich, *Applicable law in football-related disputes: The relationship between the CAS Code, the FIFA Statutes and the agreement of the parties on the application of national law, in* CAS Bulletin 2015/2, p. 11).

170. The Parties are in dispute as to which rules and provisions should be applied, taking into account the wording of Clause 7 (40) of the Employment Contract:

"Any matters not stipulated in the present contract, shall be governed by the Hungarian Labour Code (Act I of 2012), the Act I of 2004 on sport, the Employer's policies, the regulations of the Hungarian Football Federation and other national and international football organizations, associations and the relevant provisions of the laws of Hungary"

171. The above clause, however, is ambiguous and does not clearly state which of the mentioned regulations should take precedence (due to the expression "and"). The clause in analysis does not establish any hierarchy of applicable "laws" and only refers a wide range of applicable "laws" / "regulations"; it is difficult to extract any clear choice of law from it, as it points simultaneously to "*Hungarian Labour Code*", the unknown "*Employer's policies*", the "*Regulations of the HFF*", "*other national and international football organizations, associations*" and the "*relevant provisions of the laws of Hungary*".

172. It is also worth noting that the Employment Contract also mentions the Hungarian LC in Clause 2.1 (2), Clause 2.4 (12), Clause 3 (15), Clause 5 (25), Clause 5 (26), Clause 7 (34), regarding various subjects. These mentions seem to be directed at effectively making sure that the Employment Contract complies with certain aspects of the Hungarian LC.

173. The mere reference to some provisions of the Hungarian LC would not suffice to establish that the Coach and the Club entered into a valid choice-of-law regarding Hungarian law; in fact, all employment agreements between players and clubs have to comply with national laws worldwide and, as such, a reference to certain provisions of national legislation does not entail an implicit or explicit choice of law.

174. Nonetheless, it seems that the Club and the Coach behave as if Hungarian Law, and specifically the Hungarian LC, is applicable in the present matter. This understanding is also corroborated by the Club and the Coach since their arguments are not exclusively based in the application of any Hungarian Law. As an example, it is noted that the Club grounded its request regarding the mitigation of the Coach's damages on Swiss Law.

175. From the references to the Hungarian LC, mixed with many other provisions, including rules from "international football associations", it seems as if the parties wanted to make sure that the Employment Contract was subject not only to Hungarian law, but also to other relevant legal systems.

176. This leads the Panel to believe that the parties wanted to stipulate certain level of flexibility for the application of the most appropriate rule to the issue at stake and not a rigid choice of a single set of applicable rules.

177. Considering that Article R58 of the CAS Code clearly intends to curtail the parties' autonomy with regard to the choice of law in appeal arbitration proceedings, the Panel believes that "[t]*he correct view is that the CAS case law is to be followed, whereby the implicit reference to Art. R58 of the CAS Code takes precedence over an explicit choice*

of law by the parties." (HAAS, Ulrich, *Applicable law in football-related disputes: The relationship between the CAS Code, the FIFA Statutes and the agreement of the parties on the application of national law, in* CAS Bulletin 2015/2, page 12). As a result, it is clear that *"(...) any choice of law made by the parties does not prevail over Art. R58 of the CAS Code, but is to be considered only within the framework of Art. R58 of the CAS Code and consequently affects only the subsidiarily applicable law."* (*Ibidem, page 13.*)

178. This means that the choice of the Hungarian LC, and other relevant provisions when the matters at hand pointed to their applicability, made by the Club and the Coach can only be considered to be a subsidiarily applicable law under Article R58 of the CAS Code.

179. However, since the "applicable regulations" are comprised in the FIFA regulations, an additional problem emerges when we consider what is stated in Article 66 (2) of the FIFA Statutes:

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

180. However, since the Parties have not contested the jurisdiction of the CAS, which is thus undisputed, the Panel concludes that they have submitted themselves to the conflict-of-law rules contained in the CAS Code, in particular to Article R58, which clearly points to the FIFA regulations (since this was the international federation which issued the Appealed Decision), which in turn establish that CAS may apply, additionally, Swiss Law.

181. Nonetheless, the Panel cannot ignore the Parties' choice made in Clause 7 (40) of the Employment Contract and, as a result, must limit the applicability of Swiss Law prescribed by the FIFA Statutes to the interpretation of the relevant provisions of relevant FIFA regulations (such as the RSTP). This conclusion is in line with the aforementioned jurisprudence of CAS Panels (see, among other, CAS 2018/A/5624 par. 58, 59, CAS 2017/A/5465 par. 73-81):

"(...) the reference to the "additionally" applicable Swiss law is merely intended to clarify that the RSTP are based on a normatively shaped preconception, which derives from having a look at Swiss law. Consequently, the purpose of the reference to Swiss law in Art. 66 (2) of the FIFA Statutes is to ensure the uniform interpretation of the standards of the industry. Under Art. 66 (2) of the FIFA Statutes, however, issues that are not governed by the RSTP should not be subject to Swiss law. Swiss law does govern, for example, the question of methodology as to FIFA rules and regulations (including the RSTP) should be interpreted or how, in event of a conflict, one should proceed when faced with a choice between a subordinate set of an association's rules and regulations (e.g. the RSTP) and a superordinate one (e.g. the FIFA Statutes)." (HAAS, Ulrich, *Applicable law in football-related disputes: The relationship between the CAS Code, the FIFA Statutes and the agreement of the parties on the application of national law, in* CAS Bulletin 2015/2, p. 15).

182. In summary, the Panel shall primarily apply all the relevant FIFA regulations, combined with Swiss Law wherever interpretation of such provisions is needed; subsidiarily, the Panel has to apply the relevant provisions envisaged by the Parties in Clause 7 (40) of the Employment Contract considering the matter at stake.

183. As to the question of which version/edition of the RSTP is applicable, the Panel notes that the facts at the heart of the dispute occurred on 6 July 2020 (the termination date) and, as such, the June 2020 RSTP edition is the one applicable.

VIII. OTHER PROCEDURAL ISSUES

184. The First Respondent in his Answer originally requested an additional amount of HUF 5,790,490. This request was withdrawn by the First Respondent at the hearing. The Appellant did not object to such withdrawal. Consequently, the prayer is no longer part of the matter in dispute,

185. The First Respondent in his Answer also requested 5% interest on the compensation amount due to him since 6 July 2020 until the date of its effective payment. During the hearing the First Respondent amended his prayers for interests and restricted his request to be solely awarded interest for the period following the issuance of the Award. Since the First Respondent's request is directed at altering the operative part of the Appealed Decision, it qualifies as a counterclaim / cross-appeal.

186. Counterclaims / cross-appeals are not admissible in appeal arbitration proceedings before CAS since the 2010 revision of the CAS Code,: "[i]*t must be noted that, since 2010, counterclaims are no longer possible in appeal procedures. This means that, if a potential respondent wants to challenge part or all of a decision, it must file an independent appeal with the CAS within the applicable time limit for appeal*" (MAVROMATI/REEB, The Code of the Court of Arbitration for Sport, 2015, pp. 249 and 488, with references to CAS 2010/A/2252, para. 40, CAS 2010/A/2098, paras. 51-54, CAS 2010/A/2108, paras. 181-183; see also CAS 2013/A/3432 paras. 54-57 with reference to a decision of the Swiss Federal Tribunal).

187. The Panel shares the view expressed by the authors cited above (see para. 186) and finds that the Coach's request in relation to interests go beyond a mere statement of defence and that, in case of being upheld, have the effect of prejudicing the position of the Club. Accordingly, such claim is declared inadmissible by the Panel in such part. In other words, in order for the Coach to have validly raised this issue, he should have filed his own independent appeal against the Appealed Decision (cf. CAS 2017/A/5481 paras. 42-46 and CAS 2017/A/5336 para. 116).

188. Consequently, the Panel finds that the First Respondent's counterclaim / cross-appeal must be rejected.

IX. MERITS OF THE APPEAL

(A) What is this case about?

189. Prior to assessing the legal issues at stake, the Panel deems it useful to clarify the scope of the appeal. What is this case about?

190. This appeal is based on the challenging by the Appellant of the FIFA Decision which partially accepted the claim of the Coach and considered that the Employment Contract was unlawfully terminated by the Appellant, thus granting the First Respondent a compensation of HUF 99,000.00.

191. In addition to the FIFA's jurisdiction, the Panel is called to decided if the Termination was with just cause and, if not, what is the correct compensation for the breach of the Employment Contract.

(B) The legal issues to be decided

192. The Appellant claims that:

(a) FIFA lacks jurisdiction to decide the dispute, since there is not a specific jurisdiction clause in the Employment Contract and the choice of the Hungarian State Courts – as the competent forum – was made by reference to the Hungarian LC. No arbitration proceedings are allowed in disputes of labour nature;

(b) FIFA lacks jurisdiction *ratione temporis,* since the Coach failed to comply with the pre-requisite of "negotiations" estipulated in Clause 7 (39) of the Employment Contract;

and, even if FIFA was competent,

(c) The Employment Contract was terminated with just cause;

and, alternatively,

(d) The Appellant considers that the Coach failed to mitigate his damages and that this should be taken into account when calculating the compensation for unlawful termination.

193. As such, the main issues to be determined by the Panel are the following:

1) Was the FIFA PSC competent to hear the dispute and issue the Appealed Decision?

2) If so, did the Club terminate the Employment Agreement with just cause?

3) If not, should the compensation awarded by FIFA PSC for breach of the Employement Contract be reduced?

194. The Panel will address the above issues below, starting by a brief introduction in relation to this appeal.

(C) <u>The Jurisdiction of the FIFA Player' Status Committee</u>

(C.1) Does the Employment Contract establish any valid choice-of-forum?

195. Preliminarily, the Panel notes that Clause 7 (39) of the Employment Contract states that: *"[a]ny controversy or claim arising out of or relating to this agreement shall be settled by negotiations and dispute resolutions between the parties."*

196. Since the above contractual provision may in general be regarded as inexact, imprecise and unclear, the Panel must interpret the provision. In doing so, the Panel notes that the reference to "*dispute resolutions*" is a strong indicator that the will of the parties was to establish a mechanism for resolving their disputes outside of national courts, *i.e.* the Hungarian State Courts; the lack of the word "alternative" before the expression "dispute resolutions", in a contract which is inserted in the context of the football business and with an international dimension, does not disqualify the view held here that the Parties wanted to refer to a two-tier system, wherby disputes are first resolved by the association tribunals of FIFA and subsequently by the CAS. The view of the Panel is also backed by the fact that the Parties did not contest the jurisdiction of the CAS, thus they clearly accepted the 2nd instance of the normal dispute resolution mechanism that applies in the football industry.

197. Given that the intention of the parties prevails over any inexact provisions of a contract, the Panel is comfortable in assuming that the lack of the word "alternative" before "dispute resolutions" constitutes a minor or irrelevant omission which does not change the true will of the parties of submitting any future dispute to the above alternative dispute resolution procedure.

198. Having reached this conclusion, the Panel must now determine which alternative dispute resolution mechanism is the most appropriate and adequate in light of the will of the parties. In this matter, the Panel is comfortable to adhere to the position of FIFA and the Coach that the mechanism provisioned for in Article 22, c), RSTP is the most suitable and appropriate to solve the dispute between a Spanish Coach and a Hungarian Club. This conclusion derives from the following arguments: (i) the indirect affiliation of the Appellant to FIFA; (ii) the international dimension of the contract and the dispute; (iii) the specialization, independence and credibility of the FIFA dispute resolution system which assures that any decisions may be appealable to the CAS; in addition to this, Article 22, c), RSTP clearly grants FIFA PSC jurisidiction to solve any labour conflicts with international dimension.

199. Based on Article 22 RSTP it is possible to "opt out" of the FIFA jurisdiction and bring employment-related matters before national courts. In order to do so, the parties must establish a valid contractual choice-of-forum to elect the competent forum or exclude the FIFA jurisdiction. In this regard, the Appellant himself admits that Clause 7 (39) of the Employment Contract does not entail a clear and valid choice-of-forum and, in the Panel's

views, the same provision does not entail a true exclusion of the FIFA PSC's competence to hear the present case.

200. The Appellant also claims that it is possible to conclude that the parties made a choice-of-forum by reference to the Hungarian LC in Clause 7 (40) of the Employment Contract and throughout this contract. The Appellant relies on the case CAS 2015/A/3896, in which it was established that the reference to the Real Decreto 1006/1985 in the employment agreement at stake, entailed a specific choice-of-forum due to the fact that such legislation contained an article (Article 19) which stated that:

"Los conflictos que surjan entre un deportista profesional y su club o entidad deportiva, como consecuencia de su contrato laboral, serán competencia de la jurisdicción laboral"

Free English transalation:

"The conflicts that may arise between a professional sportsman and its club or sports entity, as a consequence of his employment contract, shall fall under the jurisdiction of Labour Courts"

201. In the present case, the Panel shall starts by noting that Clause 7 (40) of the Employment Contract makes reference to Hungarian laws. It is, thus, a choice-of-law provision. One cannot, however imply that by opting for a certain law on the merits the parties also wanted to agree on a specific forum. There is no parallelism between applicable law and jurisdiction. Thus, no choice-of-forum agreement can be inferred from the parties' choice of law. This is even more so because also this arbitral tribunal could apply Hungarian law. On a side note the Panel notes that even if (quod non) the choice-of-law clause would contain a choice-of-forum this would not preclude association tribunals to deal with the matter at stake, since decisions of association tribunals can always be appealed either to state courts or arbitral tribunals.

202. According to the Article 285 (1) of the Hungarian LC:

"Workers and employer may pursue their claims arising from the employment relationship or out of this Act, and trade unions and works councils may pursue their claims arising out of this Act or a collective agreement or a works agreement by judicial process." (Emphasis added by the Panel – English translation provided by the Appellant and not contested by the Respondents)

203. The above provision alone is not clear in defining that Hungarian courts have the exclusive jurisdiction to decide any "labour dispute". The Panel comes to this conclusion in result of the expression "may", and the fact that it refers in general to a judicial process and not to a specific type of judicial court or specific type of judicial action.

204. The Appellant's argument concerning the applicability of many provisions of the Hungarian CCP is also flawed, since such a reference would be clearly out of the scope of the agreement between the parties' and, naturally, out of the scope of their intent.

205. Moreover, and contrary to the contractual clause analysed in CAS 2015/A/3896, Clause 7 (40) of the Employment Contract is confusing and does not clearly determine an exclusively applicable law (see para. 169-172). Instead, the referred provison also makes reference to the *"(...) regulations of the Hungarian Football Federation and other national* ***and international football organizations, associations*** *and relevant provisions of the laws of Hungary."* (Emphasis added by the Panel).

206. It cannot be upheld that such an ambiguous and unclear contractual clause, which is not even directly concerned with matters of jurisdiction, would be capable of expressing the parties' will of submitting any dispute to Hungarian national courts.

207. As such, the Panel considers that the parties had the intention to choose a conflict resolution mechanism that did not involve the intervention of the State Courts, such as the FIFA judicial system. Otherwise, the parties would have expressly contemplated their preference for national courts since (i) they were extremely careful to indicate the reference to the Hungarian law in many contractual provision and, for any reason, did not inserted such reference in Clause 7 (39) of the Employment Contract and (ii) by indicating "dispute resolutions" in said clause, the Club and the Coach clearly though about the issue of jurisdiction but decided not to establish the competence of any state courts.

208. On the contraty, even if the Panel concluded that Clause 7 (39) of the Employment Agreement was truly ambiguous and could not extract an ordinary sense from it, the use of an interpretation pursuant to the principle of *in dubio contra stipulatorem* would, in any case, lead to the same conclusion: no choice-of-forum was made and, as such, the FIFA PSC's competence was not excluded.

209. The claim of the Appellant regarding the lack of jurisdiction is thus rejected by the Panel.

(C.2) Lack of jurisdiction "*ratione temporis*"

210. The Appellant's claim that the FIFA PSC did not have jurisdiction *ratione temporis* is flawed and, for this reason, is rejected by the Panel.

211. Firstly, the pre-requisite of negotiations – provided for in Clause 7 (39) of the Employment Contract – is not applicable after the Termination. In the Panel's view this requirement seems to be directed at obliging the parties to amicably settle their differences – by "*negotiations*" or, at least, through a constructive dialogue – to avoid any unilateral termination of the Employement Contract. The purposes of this requeriment was to solve disputes between the parties prior to any unilateral termination and not prior to the filing of any subsequent claim upon its termination. In relation to this particular argument, the Panel noticed the Club's inconsistence. On one hand, the Club states that the Coach failed to comply with the pre-requisite of negotiations but, on the other hand, the Club has also failed to promote or handle any kind of negotiations before exercising the Termination.

212. Secondly, the argument regarding the Coach's rejection of CAS mediation is not decisive and is not contrary to what was established in Clause 7 (39) of the Employment Contract. The Employment Contract does not contain any explicit reference to CAS mediation and,

by the time the Appeal was lodged, no "negotiations" were reasonably possible to solve the dispute. As such, the Coach cannot be deemed to be contravening the Employment Contract due to this fact.

213. In light of the above, the Panel does not consider that the FIFA PSC lacked jurisdiction *ratione temporis*, since the pre-requirement of "negotiations" between the parties is not applicable beyond the unilateral termination of the Employment Contract and CAS mediation was not mandatory.

(D) Did the Club terminate the Employment Contract with just cause?

214. In order to determine if the Employment Contract was or not terminated with just cause, the Panel will consider the following issues:

a) The grounds presented by the Appellant in the Termination Notice; and

b) Whether such grounds consubstantiate just cause for the Termination.

(D.1) The grounds of the Termination

215. The Employment Contract was terminated on 6 July 2020 and, according to the Termination Notice, the Termination was executed due to the breach of Clause 3 (20.a and 20.f)) and Clause 6 (30) of the Employment Contract.

216. The Coach's breach of confidential information was the main reason to sustain the Termination. The Termination Notice refers as the main motivation:

"The Sport Director and the person entitled to exercise Employer's rights become aware that the Employee – despite the employer express prohibition – shares confidential information in his possession in connection with his employment relationship with a former employee, Mátyás Czuczi, who is currently not in an employment relationship with the Employer."

217. The Appellant considered that the Coach was obliged to not disclose any confidential information, which essentially covered (i) business secrets learned in the course of work and (ii) any information which had come to the Coach's knowledge in connection with the performance of his duties.

218. The Appellant thus considered that it was entitled to unilaterally terminate the Employment Contract pursuant to its Clause 6 (30) and Article 78 of the Hungarian LC, with immediate effect, and paying only to the Coach (i) his pro-rata salary until the Termination and (ii) compensation for any vacation time proportional to the term of his employment relationship that had not been previously enjoyed.

219. In light of the above, the Panel must now focus on determining if the Appellant has managed to prove, on a comfortable satisfaction basis, the just cause for the unilateral termination of the Employment Contract.

220. Primarily, the Panel finds important to refer to the general legal principle of burden of proof which lays entirely on the Appellant, since any party claiming a right on the basis of an alleged fact must carry the burden of proof.

221. It is the Panel's view that the Appellant failed to submit any material evidence to support the invoked grounds on the Termination Notice. The Appellant has not presented any evidence in relation to:

a. **what** was the confidential information disclosed to Mr Mátyás Czuczi. There is no details in relation to the confidential information passed or shared with Mr Mátyás Czuczi. The Appellant's generic description that the Coach disclosed *"(...) confidential information in his possession in connection with his employment relationship with a former employee, Mátyás Czuczi (...)"* [§10 of the Termination Notice] is not sufficient to sustain the allegation that such information falls under the concept of confidential information. The Appellant failed to present evidence in relation to the nature and content of the alleged Coach's breach of its obligation to not share confidential information.

b. **when** the confidential information was disclosed to Mr Mátyás Czuczi. There is no precision or time reference as to when the confidential information was passed or shared to Mr Mátyás Czuczi; and

c. **how** the confidential information was disclosed to Mr Mátyás Czuczi. There is no information or details about the manner and/or circumstances (meetings, emails, etc.) in which the confidential information was passed or shared with Mr Mátyás Czuczi.

222. It is not enough to suggest that the Coach breached the Employment Contract by sharing confidential information with a third party and not make a clear and concise reference to what kind of information, when and how the information was allegedly disclosed by the Coach. "Being told" that the Coach acted in a certain way cannot constitute legal reason to terminate the Employment Contract.

223. Moreover, the Club did not manage to submit any material evidence proving that it had given instructions to the Coach to prohibit him from having contacts with a third person, in this specific case with Mr Mátyás Czuczi. Even if these instructions had been given, they could not limit the Coach from passing or sharing non-confidential information to third parties and to have social relationhips with third parties, since that would go beyond his duties as an employee of the Appellant. The Club does not have legal basis to expressly prohibit the Coach from extending a relationship with a third party, when said relationship does not affect in any way the Club, its members or the Coach's performance in it.

224. Finally, it must be stated that the Coach did in fact have contacts with Mr Mátyás Czuczi; however, there is no proof that during such contact the Coach shared or passed to Mr Mátyás Czuczi any confidential information. Furthermore, the Appellant also failed to prove the existence of any damage as a result of the contacts held between the Coach and Mr Mátyás Czuczi.

225. For the reasons set out above, the Panel finds that the reasons provided by the Appellant in the Termination Notice cannot be considered as just cause for the Termination.

(D.2) Failure to mitigate damages

226. The Appellant claims that the Coach has deliberately contributed to his damage as he could easily have found a new employment contract with at least the same terms as the Employment Contract. The Appellant states that there was a "*lack of cooperative stance*" from the Coach and, for this reason, the Coach's compensation should be reduced. The method of calculation of the compensation was not challenged by the Appellant[1]. The Appellant only disputes the amount of mitigation of the compensation attributed to the Coach, because his remuneration under AEK Larnaka employment agreement (EUR 32,000) was not fitting his qualifications and experience. The Coach real remuneration would be much higher.

227. The Coach claims that he complied with his duty to mitigate his damages by signing a new employment agreement soon after the Termination and accepting an employment offer from AEK Larnaca.

228. The Panel notes some inconsistency in the Club's position with respect to the Coach's failure to mitigate his damages (Article 337c (2) of the Swiss Code of Obligations) or that the Coach has contributed to his own damages (Article 44 (1) of the Swiss Code of Obligations). While the Appellant claims that Hungarian Law applies to the merits of the case, it however invokes the application of certain Swiss law provisions in relation to the Coach's duty to mitigate his damages. Thus, at least for this question the Appellant appears to accept the application of Swiss law to this dispute.

229. It should be noted that the rules regarding compensation in the RSTP are not applicable to coaches, hence the reason why the Appealed Decision did not make any reference to

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[1] As per Article 82 of the Hungarian LC (translation provided by the Appellant and not contested by the Respondents):
(1) The employer shall be liable to provide compensation for damages resulting from the wrongful termination of an employment relationship.
(2) Compensation for loss of income from employment payable to the employee may not exceed twelve months' absentee pay.
(3) In addition to what is contained in Subsection (1) hereof, the employee is entitled to severance pay as well, if:
a) his employment relationship was wrongfully terminated; or
b) he did not receive any severance pay pursuant to Paragraph b) of Subsection (5) of Section 77 at the time his employment relationship was terminated.
(4) In lieu of Subsections (1)–(2), the employee may demand payment equal to the sum of absentee pay due for the notice period when his employment is terminated by the employer.

any provision from the RSTP and instead relied on general principles to define the mitigation that was due by the Club to the Coach. The Panel understands that based on the findings established in section VII of the Award, as well as the fact that both parties rely on Swiss Law and the findings of the Appealed Decision, Swiss Law is applicable to this particular issue.

230. That said, the Panel does not agree with the Appellant's allegations. First, it should be noted that, in this matter the burden lies on the Appellant, which has the responsibility to prove that the Coach had numerous employment opportunities but took no action or even refused them. Second, the Panel has no evidence to conclude that AEK Larnaka and the Coach simulated the remuneration to maximize his compensation.

231. According to the evidence submitted by the Coach, he indeed tried to mitigate his damages and he managed to sign a new employment agreement soon after the Termination, by accepting an employment offer from AEK Larnaca. The Panel had no elements to consider the received annual remuneration of EUR 32,000 lower and disproportionate.

232. Therefore, the Appellant failed to present any evidence to support his arguments that the Coach did not comply with his duty to mitigate damages. The Appellant's request to reduce compensation due to the Coach is groundless and for this reason rejected by the Panel.

(E) Conclusions

233. In light of the above, the Panel is comfortable to draw some conclusions regarding the present case:

a. The Employment Agreement does not establish any kind of exclusive choice-of-forum to national courts.

b. The argument that Clause 7 (40) of the Employment Contract could operate also as a choice-of-forum clause, pursuant to the jurisprudence of CAS 2015/A/3896, is flawed since said clause does not establish any hierarchy or preference of forum and the Hungarian LC does not make a clear and express reference to national courts.

c. The Appellant failed to demonstrate that it had just cause to unilateral terminate the Employment Contract and for this reason the Termination is unlawful.

d. There is no evidence that the Coach failed to comply with his duty to mitigate his damages, since he found a new employment shortly thereafter in Cyprus. The employment contract with the Coach's new club was produced and the Panel was able to confirm the findings of the Appealed Decision regarding its value; in addition to that, the Appellant failed to demonstrate that the Coach failed to accept any new employment with more advantageous conditions and, as such, did not manage to prove that the Coach failed to undertake all the necessary diligence to mitigate his damages.

e. As for the request for payment of interest on the amount of compensation assigned to the Coach (see para. 185), the Panel would like to make the following considerations:

- FIFA Decision is silent on the Club's order to pay interest on the amount of compensation awarded to the Coach.
- To the extent that the Coach did not appeal against the FIFA Decision, his right to receive interest is precluded.
- Under the rules already mentioned in para. 186 and 187, the Panel has no powers to order the Club in an amount greater than that determined by and/or to decide on credits whose nature has not been decided by FIFA.
- The Panel does not deny that the Coach may be entitled to payment of interest on the amount of compensation awarded in the Award. However, such payment cannot be decided by this Panel and included in the Award. Therefore, this Panel is limited to confirming the FIFA Decision.

234. In light of the above, the Panel dismisses the present Appeal and the counterclaim filed by the First Respondent. Accordingly, all other prayers for relief, both procedural and in the merits, are dismissed.

X. COSTS

235. Pursuant to Article R64.4 of the CAS Code, the CAS Court Office shall, upon conclusion of the proceedings, determine the final amount of the costs of this arbitration, which shall include the CAS Court Office fee, the costs and fees of the arbitrators, computed in accordance with the CAS fee scale, the contribution towards the costs and expenses of the CAS, and the costs of witnesses, experts and interpreters, if any.

236. Pursuant to Article R64.5 of the CAS Code, the Panel shall also determine which party shall bear the arbitration costs or in which proportion the parties shall share them.

237. Taking into account the outcome of the arbitration, in particular the fact that the appeal has been dismissed, the Panel finds it reasonable and fair that the Appellant shall bear the entire arbitration costs in an amount that will be determined and notified to the Parties by the CAS Court Office.

238. As general rule, the award shall grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with these arbitration proceedings. Pursuant to Article R64.5 of the CAS Code, and in consideration of the outcome of the proceedings, as well as the conduct and the financial resources of the Parties, the Panel rules that the Appellant shall bear its own costs and pay a contribution to the First Respondent in the amount of CHF 5,000 (five thousand Swiss Francs) toward the legal fees and other expenses incurred in connection with the present arbitration proceeding.

The Second Respondent, not being represented by an external counsel, shall bear its own legal costs and other expenses incurred by these arbitral proceedings.

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ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by MOL Fehérvár FC against the decision rendered by the Single Judge of the FIFA Players' Status Committee on 3 November 2020 is dismissed.

2. The decision passed by the Single Judge of the FIFA Players' Status Committee on 3 November 2020 is confirmed.

3. The costs of these arbitration proceedings, to be determined and served to the Parties by the CAS Court Office, shall be borne entirely by MOL Fehérvár FC.

4. MOL Fehérvár FC shall pay to Mr Joan Carrillo Milan the amount of CHF 5,000 (five thousand Swiss Francs) as contribution for legal fees and other expense incurred in connection with these arbitration proceedings.

5. FIFA shall bear its own legal fees and other expenses incurred in connection with these arbitration proceedings.

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

Seat of arbitration: Lausanne, Switzerland

Date: 28 September 2021

THE COURT OF ARBITRATION FOR SPORT

Rui Botica Santos
President

Ulrich Haas
Arbitrator

Gustavo Albano Abreú
Arbitrator