CAS 2021/A/7694 Tamás Bódog v. Honvéd FC & Fédération Internationale de Football Association (FIFA)

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Hendrik Willem Kesler, Attorney-at-law, Enschede, Netherlands

Clerk: Ms Alexandra Veuthey, CAS Clerk, Lausanne, Switzerland

in the arbitration between

Mr Tamás Bódog, Hungary

Represented by Mr Georgi Gradev and Márton Kiss, SILA International Lawyers, Attorneys-at-law in Sofia, Bulgaria

Appellant

and

Honvéd FC, Budapest, Hungary

Represented by Mr Tamás Bajáki, Attorney-at-law in Budapest, Hungary and Ms Szandra Varga-Szilági, legal executive of Honvéd FC

First Respondent

&

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

Represented by Mr Miguel Liétard Fernández-Palacios, FIFA Director of Litigation and Mr Roberto Nájera Rayes, FIFA senior counsel

Second Respondent

I. THE PARTIES

1. Mr Tamás Bódog (the "Coach" or the "Appellant") is a football coach born in Hungary. He acquired the Hungarian nationality by birth and the German nationality by way of naturalisation in 2005.

2. Honvéd FC (the "Club" or the "First Respondent") is a Hungarian football club affiliated to the Hungarian Football Federation (the "HFF"), which in turn is affiliated with the Fédération Internationale de Football Association.

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

4. Mr Bodog, Honvéd FC and FIFA are commonly referred to as the "Parties".

II. FACTUAL BACKGROUND

5. This matter is related to an appeal filed by the Appellant against the decision rendered by the Single Judge of the FIFA Players' Status Committee (the "FIFA PSC") on 23 March 2021 (the "Appealed Decision"), according to which his claim for compensation following the termination of his employment contract was inadmissible. The grounds of the Appealed Decision were notified to the Appellant on 13 April 2021.

6. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, oral pleadings and evidence adduced in connection with these proceedings. Additional facts and allegations found in the Parties' written submissions, oral pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in this Award only to the submissions and evidence he considers necessary to explain his reasoning.

A. The employment contract

7. On 30 June 2020, the Coach and the Club concluded an employment contract, valid as from 1 July 2020 to 30 June 2022 (the "Contract"). Subsequently, they executed a travel contribution agreement, a rent contribution agreement, an agreement on bonuses and a car usage agreement (the "Additional Agreements").

8. The Contract and the Additional Agreements were drafted originally in Hungarian. The preamble to the Contract and Additional Agreements read as follows:

"Bódog Tamás
Mother's name: [...]
Place and date of birth: Dunaújváros, 27.09.1970
Address: [...]

Tax ID: [...]
Social Security ID: [...]
Bank account number: [...]" (emphasis omitted)

9. According to the Contract, the Coach was hired as head coach of the club's "NB1" team, i.e. the team playing in the Hungarian first division. The Contract and Additional Agreements further establish the following financial terms payable by the Club to the Coach:

   a. HUF 4,153,000 gross as basic monthly salary, payable between 1 July 2020 to 30 June 2021 on the 10th day of each subsequent month;

   b. HUF 4,564,500 gross as basic monthly salary, payable between 1 July 2021 to 30 June 2022 on the 10th day of each subsequent month;

   c. HUF 700,000 per year for air travel costs between Hungary and Germany;

   d. HUF 210,000 per month as housing allowance payable on the 15th day of the subsequent month.

10. Clause 9 of the Contract reads as follows, according to the translation provided by the Appellant, and incorporated in the Appealed Decision:

    "The parties agree that the Employer has the right to terminate the present contract with immediate effect if the Employer's NB1 football team is in the relegation zone for five (5) consecutive matches within one season. The Employer has the right to terminate this contract with immediate effect even in the case that the Employer's NB1 football, at the end of any season under the present contract, following the announcement of the closing of the league, is not within the first 8 placed teams on the official league standings." (emphasis omitted)

11. The translation of the first sentence is, however, contested by the First Respondent, which argues that the word "consecutive" does not appear in the original version of the Contract.

12. Clause 20 of the Contract states as follows:

    "For matters not regulated by this contract, the Labor Code's relevant provisions, other applicable legislation on employment law, and the Employer's regulations and managerial decisions in force shall apply."

13. On 11 November 2020, the Club issued a work certificate "*For the duration of the mandated curfew during the coronavirus pandemic.*" In such document, the Coach is identified as follows:

    "Bódog Tamás (name) C2ZKNZTKO (personal identification card number / passport number / driver license number) 1095 Budapest, Lechner ÖdÖn Fasor 2. (home address / place of residence / accommodation) is an employee of Honvéd Futball Club Limited Liability Company" (emphasis omitted)

14. On 6 December 2020, the Club terminated the Contract and the Additional Agreements with immediate effect via a written notice on the basis of Clause 9 of the contract. Such notice provides, *inter alia*, as follows:

"The NB1 football team (Budapest Honvéd FC), operated by the Employer, is in the 12th (relegation) position after the 13th round of the 2020/2021 football championship. The team has been in the relegation zone for 9 rounds in the season so far -- so the condition for immediate termination set out in Clause 9 of the Employment Contract has already been fulfilled. [...] The payment of your salary and bonuses, as well as the issuance of the certificates specified in the rules and other legal regulations concerning the employment relationship, shall take place no later than the fifth (5th) working day after the termination of the employment relationship."

15. On 11 December 2020, the Club paid HUF 4,168,067 to the Coach, including:

"a.	*Europa League bonus*	*HUF 1,500,000 net*
b.	*November points bonus*	*HUF 150,024 net*
c.	*Bonus for youth players*	*HUF 1,906,000 net*
d.	*Salary 01.12-06.12*	*HUF 612,043 net"*

B. The proceedings before FIFA PSC

16. On 31 December 2020, the Coach filed a claim with the FIFA PSC maintaining that the Club terminated the Contract without just cause and requested to be awarded a total amount of HUF 88,554,457 plus 5% interest p.a, broken down as follows:

a. HUF 3,540,957 as *"basic gross salary from 7 to 31 December 2020"*;
b. HUF 24,918,000 as *"basic gross salary from 1 January to 31 June 2021"*;
c. HUF 54,774,000 as *"basic gross salary from 1 July 2021 to 30 June 2022"*;
d. HUF 3,990,000 as *"housing allowances from 1 December 2020 to 30 June 2022"*;
e. HUF 1,331,500 as *"air travel costs from 1 December 2020 to 30 June 2022"*.

17. In its reply, the Club contested the FIFA PSC jurisdiction and rejected the Player's claim as to the substance.

18. On 23 March 2021, the Single Judge of the FIFA PSC rendered his decision.

19. The operative part of the FIFA PSC decision reads as follows:

"1. The claim of the Claimant, Tamas Bodog, is inadmissible.
2. This decision is rendered without costs."

20. On 13 April 2021, the FIFA PSC decision with grounds was notified to the Parties (the "Appealed Decision").

21. The Appealed Decision, states, *inter alia*, as follows:

- The FIFA PSC is only competent to deal with employment-related disputes between a club or an association and a coach of an international dimension, pursuant to Article 22 lit.c and 23 para 1 and 3 of the FIFA Regulations on the Status and Transfer of Players ("RSTP"). In other words, FIFA is solely competent to hear an employment-related dispute between an association and a coach when the parties have different nationalities.
- The jurisprudence of the FIFA PSC denotes that in cases where a claimant has dual citizenship, the case lacks international dimension, and that the determining factor to establish the international dimension is the nationality of the coach as put down in the relevant contract.
- As a consequence, when the parties share a common nationality, the dispute has to be considered a purely national matter to be decided by the competent authorities in the respective country. The FIFA PSC has adopted this position in similar cases, save in cases where the party relying on the international dimension submitting conclusive and substantial evidence to prove the contrary.
- A party claiming a right on the basis of an alleged fact shall carry the respective burden of proof. Likewise, the FIFA PSC may consider evidence not filed by the parties.
- Based on the submissions of the Parties and the evidence on file, it is clear that the Coach holds dual citizenship, i.e. Hungarian and German, a fact which is moreover not disputed by the Parties. The underlying dispute is whether the Coach was hired as a German citizen or not.
- The Coach acquired the German nationality in 2005, that is, before the Contract was executed. However, neither the Contract nor the Additional Agreements named the Coach as a German citizen, nor a Hungarian citizen for that matter.
- The Coach's work certificate, which was issued by the Club and referred to the Coach's German passport number, is not sufficient to demonstrate that he was hired as a German citizen.
- The fact that the Coach only held unexpired German documentation does not demonstrate that the he was hired as a German citizen. It demonstrates solely that he was not up to date with his Hungarian documentation, not that he had lost or foregone the Hungarian nationality.
- The information provided to FIFA by the HFF confirmed that the Coach was registered as Hungarian citizen within its registration system.
- Unlike the Coach's previous contracts with Hungarian clubs – which named him as a German citizen – the Contract with the Club makes no such distinction.
- Consequently, it could not be established that the Coach was hired as a German citizen.

III. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

22. On 19 April 2021, the Appellant filed his Statement of Appeal against the Appealed Decision with the Court of Arbitration for Sport (the "CAS") pursuant to Articles R47 *et seq.* of the Code of Sports-related Arbitration (the "CAS Code"). It requested, *inter alia*, that the case be submitted to a Sole Arbitrator. It also asked the Second Respondent to produce several documents.

23. On 21 April 2021, the CAS Court Office acknowledged the receipt of the Statement of Appeal and initiated the present arbitral procedure.

24. On 22 April 2021, the Second Respondent confirmed that it did not object to the case being submitted to a Sole Arbitrator, as long as he or she is selected from the football list. It also produced the requested documents.

25. On 26 April 2021, the First Respondent objected to the admissibility of the appeal and the Second Respondent's standing to be sued. It contested the relevance of the request for production of documents. It confirmed its consent to submit the case to a Sole Arbitrator.

26. On the same day, the Appellant highlighted that the Fist Respondent's objection related to the merits rather than the admissibility of the appeal. In any case, such objection was inadmissible and unfounded.

27. On 18 June 2021, the Appellant filed his Appeal Brief within the prescribed deadline, previously temporarily suspended.

28. On 1 July 2021, upon request of the Second Respondent, the CAS Court Office confirmed that the latter's time limit to file its Answer would be fixed upon the Appellant's payment of his share of the advance of costs.

29. On 9 July 2021, the First Respondent filed its Answer with the CAS Court Office. It requested the Appellant's prayers for relief to be dismissed.

30. On 23 September 2021, the CAS Court Office informed the Parties, on behalf of the President of the CAS Appeals Arbitration Division, that Mr Hendrik Willem Kesler, Attorney-at-law in Enschede, the Netherlands, had been appointed as a Sole Arbitrator.

31. On 27 September 2021, the Second Respondent filed its Answer with the CAS Court Office. It contested the Appellant's claims and submitted, subsidiarily, that it did not have standing to be sued in the procedure.

32. On the same day, the CAS Court Office invited, *inter alia*, the Parties to indicate whether they preferred a hearing to be held in this matter of for the Sole Arbitrator to issue an award based solely on the Parties' written submissions.

33. Still on the same day, the Appellant informed the CAS Court Office that he would prefer a hearing to be held in this matter. He requested such hearing to be organised by video-conference.

34. On 29 September 2021, the First Respondent stated that a hearing was unnecessary and requested the Sole Arbitrator to issue an award based solely on the Parties' written submissions.

35. On 5 October 2021, the Second Respondent indicated that it did oppose holding a hearing.

36. On 11 October 2021, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to hold a hearing, and consulted them about possible hearing dates. It also informed the Parties that Ms Alexandra Veuthey, clerk with the CAS, would assist the Sole Arbitrator in this matter.

37. On 13 October 2021, the CAS Court Office apprised the Parties that, in view of their respective availabilities, a hearing would take place on 29 November 2021, and invited them to provide a list of their hearing attendees.

38. On 27 October 2021, the First Respondent provided the CAS Court Office with a list of its hearing attendees. It also requested that the hearing be held by video-conference.

39. On 1 November 2021, the Appellant provided the CAS Court Office with a list of his hearing attendees.

40. On 2 November 2021, the CAS Court Office informed the Parties, *inter alia*, that the hearing scheduled on 29 November 2021 would take place by video-conference.

41. On the same day, the Second Respondent sent the list of its hearing attendees.

42. On 3 November 2021, the CAS Court Office issued an Order of Procedure, which was duly signed by the Parties.

43. On 19 November 2021, the Appellant informed the CAS Court Office that he had decided to withdraw his appeal against FIFA after examining further the jurisprudence of the CAS on the standing to be sued.

44. On 22 November 2021, the CAS Court Office indicated that FIFA was no longer a Respondent in the proceedings.

45. On the same day, FIFA objected to its exclusion from the proceedings.

46. On 23 November 2021, the CAS Court Office advised the Parties that the Sole Arbitrator had decided to reinstate FIFA as Respondent in the proceedings, and that the reasons for his decision would be included in the final award.

47. On 25 November 2021, the Appellant asked the Sole Arbitrator to order the First Respondent to provide an English translation of Exhibit 4, namely his "address card". Such translation was made available one day later.

48. On 29 November 2021, the hearing was held by video-conference. In addition to the Sole Arbitrator, Ms Alexandra Veuthey, CAS Clerk, and Ms Delphine Deschenaux-Rochat, CAS Counsel, the following persons attended the hearing:

For the Appellant

- Mr Tamás Bódog, Coach
- Mr Georgi Gradev, Counsel for the Coach
- Mr Marton Kiss, Counsel for the Coach
- Mr Krasimir Todorov, Administrative assistant
- Mr Jens Nimmerrichter, interpreter

For the First Respondent

- Mr Gábor Kun, Managing Director of the Club
- Mr Tamás Bajáky, Legal Attorney of the Club
- Ms Szandra Varga-Szilágyi, Head of Legal of the Club

For the Second Respondent

- Mr Miguel Liétard Fernández-Palacios, FIFA Director of Litigation
- Mr Roberto Nájera Reyes, FIFA Senior Legal Counsel

49. At the outset of the hearing the Parties declared that they had no objections as to the constitution of the Panel.

50. The Parties thereafter were given a full opportunity to present their case, submit their arguments and submissions and answer the questions posed by the Sole Arbitrator.

51. At the end of the hearing, the Parties confirmed that they were satisfied with the hearing and that their right to be heard had been fully respected.

IV. THE PARTIES' RESPECTIVE POSITIONS

52. Below is a summary of the facts and allegations raised by the Parties. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in this award only to the submissions and evidence he considers necessary to explain his reasoning.

A. The Appellant's submissions

53. In his Appeal Brief, the Appellant requests as follows:

"1. Set aside point 1 of the operative part of the decision issued on March 23, 2021, by Single Judge of the Players' Status Committee in case No. 21-00065.

2. Issue a new decision with the following terms:

(a) The Appellant's claim against the First Respondent is admissible;

(b) The First Respondent terminated the Contract and the Supplementary Agreements without a just cause on December 6, 2020;

*(c) The First Respondent has to pay the Appellant compensation of **HUF 88,554,457**, plus interest of 5% p.a. as of December, 7, 2020, until the effective payment date.*

3. Order the Respondents to bear all costs incurred with the present procedure.

4. Order the Respondents to pay the Appellant a contribution towards his legal and other costs in an amount to be determined at the Sole Arbitrator's discretion." (emphasis in original)

54. The Appellant's written and oral submissions can in essence be summarised as follows:

(i) As to FIFA's standing to be sued (original submissions)

- The Club's objection to FIFA's standing to be sued relates to the merits rather than the admissibility of the appeal.
- The Club has not been authorised by FIFA to raise such an objection on its behalf, making it inadmissible pursuant to Article 30 of the CAS Code.
- As FIFA denied jurisdiction in the Appealed Decision, the present proceedings mainly involve a vertical dispute between FIFA and the Coach. The Club has standing to be sued only regarding the unjustified termination of the Contract and the resulting legal consequences.
- This is also the position under current CAS jurisprudence (CAS 2016/A/4836; CAS 2016/A/4837; CAS 2016/A/4838).

(ibis) As to FIFA's standing to be sued (subsequent submissions)

- FIFA does not have standing to be sued in a horizontal dispute, even if its jurisdiction is disputed (see, *inter alia,* CAS 2020/A/7144).

(ii) As to the FIFA PSC jurisdiction

- The FIFA PSC was competent to hear the dispute based on Article 22 lit. c RSTP, since the case has an international dimension within the meaning of Article 22 lit. c RSTP. The Coach is solely a German citizen, and relocated from Germany, where he lived with his family and paid taxes.
- Article 10 of Act LV of 1993 on Hungarian Citizenship ("Hungarian Law on Citizenship") provides that identification cards, passports, citizenship certificates and naturalization documents must be valid to prove citizenship.

The evidentiary value of an expired passport is only one year after its expiry date.

- The Coach has not possessed Hungarian documents for years. His last identity card expired in 2009 and his last Hungarian passport expired in 2012.
- Therefore, the Coach did not hold a valid Hungarian identity card or passport, a valid citizenship certificate or naturalization document when he entered the Contract on 30 June 2020. This shows that he had lost his Hungarian citizenship.
- At the very least, FIFA failed to produce proof of the contrary, or to request any other relevant documents, if any. Yet, the party who bears the burden of proof for a certain fact has to allege it in a substantiated way, i.e. in a way that a procedure of taking evidence can be executed (CAS 2013/A/3444, para 69).
- Subsidiarily, even assuming that the Coach still holds a dual citizenship, he made it clear that he wanted to be hired as a German citizen, which is sufficient, in light of FIFA's jurisprudence (see PSC 20-00939, 940 & 941). He entered into the Contract using his German identity card, and submitted his German identity card and passport to the Club upon the start of his employment relationship. Likewise, the Club provided FIFA with a Datasheet, indicating the Coach's German identification number.
- These documents are indirectly part of the Contract that, interpreted in light of Article 18 of the Swiss Code of Obligations (CO), clearly shows the will of the Parties to enter into an international relationship (CAS 2016/A/4790, para 66 and CAS 2018/A/5953, para 122). In case of doubt, interpretation must be done *contra preferentem*.
- The work certificate issued by the Club on 11 November 2020 refers to the Coach's German passport number and to exceptions under the rules of the curfew established during the COVID-19 outbreak (which can only be granted in case of a valid passport, identity card or driving licence).
- FIFA erroneously relied on HFF's registration of the Coach. HFF registered the Coach as a Hungarian citizen in 2011 when he completed his professional coaching licence and still had a valid Hungarian passport.
- HFF also issued the Appellant's coaching licence while the Club employed him. The coaching licence does not provide information as to the citizenship.
- FIFA, in its jurisprudence, has constantly ignored the nationality mentioned in federative licences or registrations (see PSC 20-00939, 940 & 941). Unlike the situation of football players, coaches are not subject to quotas and the so-called "sporting nationality". This is why coaches' citizenships are determined per applicable law rather than federative licences or registrations.

(iii) As to the termination of the employment relationship

- The termination of the Coach's employment relationship should be examined in light of Article 337 para 2 CO, which governs the "termination just cause". In light of the Swiss Federal Tribunal's and CAS' jurisprudence, this provision should apply as an exceptional measure only (CAS 2017/A/5402, paras 113 to 115, and the references mentioned).

- Notice periods cannot be circumvented by making the right to terminate or the automatic termination of the employment conditional on a condition whose entry depends unilaterally on the employer (SFT 96 II 62, para 2a). Similarly, relegation clauses that give one party the opportunity to terminate a contract without compensation for the other party bear the risk to lead to unbalanced results and must be analysed according to the circumstances of each case. They may be contrary to the prohibition of excessive restrictions under Article 27 para 2 of the Swiss Civil Code (CC) and the parity of termination rights under Article 335a CO (CAS 2016/A/4549, paras 54 to 55 and 57 to 59).

- In the present case, the Coach complied with all his contractual obligations. In any event, Clause 9 of the Contract is null and void, and cannot serve as a valid justification for the termination of the Contract. It was imposed unilaterally by the Club, at its sole benefit and discretion and without compensation.

- Clause 9 is contrary to the principles of contractual stability and parity of termination rights, as well as the prohibitions against the employee's advanced waiver of future claims arising from mandatory provisions and against excessive restrictions/self-commitment under Swiss law.

- Clause 9 also contravenes FIFA and CAS jurisprudence that prohibit sporting results to be retained as a reason to terminate an employment contract (as per the numerous references mentioned).

- The condition precedent set out in Clause 9 was not fulfilled. While the Appellant's team was in the relegation zone eight times overall to and until 6 December 2020, it never spent five consecutive championship matches there.

- In any event, the Club, by its previous actions, forfeited its right to terminate the Contract. It waited for one month to terminate the Contract, whereas the termination for just cause must be notified within two or three working days, pursuant to Swiss law and jurisprudence (CAS 2018/O/5859, paras 77 to 79, and the references mentioned).

- The Club even demonstrated, on various occasions, its willingness to continue the employment relationship with the Coach. It set goals for him to achieve as from 15 November 2020 (four wins in the next seven matches), and let him direct three more matches between 21 November and 6 December 2020.

- However, the Club terminated the Contract (and Additional Agreements) immediately after the third match, preventing the "four wins in the next seven matches" condition's fulfilment by acting in bad faith. Therefore, the said condition should be deemed fulfilled, pursuant to Article 156 CO.

- The Club's termination of the employment relationship was without just cause, which gives rise to a claim for compensation for damages.

(iv) As to the compensation

- The substantive rules of the RSTP do not apply to coaches, according to FIFA and CAS jurisprudence (see, *inter alia*, CAS 2008/A/1464, 1467; CAS 2009/A/1758; CAS 2011/A/2321; CAS 2011/A/2462; CAS 2011/A/2597; CAS 2012/A/2906; CAS 2015/A/4161). Consequently, the compensation for breach of the employment relationship should be determined based on the terms of the Contract and Additional Agreements, Swiss law and CAS jurisprudence.
- The consequences of either party's unilateral termination are not stipulated in the Contract and Additional Agreements.
- Article 337c para 1 CO provides that if the employer dismissed the employee without a valid reason, the employee has a claim for compensation in the amount that he would have earned until the expiration of the fixed agreement period.
- The Coach is therefore entitled to receive the residual value of the Contract as compensation, including any types of benefits, such as housing allowance, transportation costs and tax reduction (see, *inter alia*, CAS 2015/A/4055, paras 148 to 150, and the references mentioned).
- In this case, the Coach was entitled to the following monthly salary and remuneration in kind pursuant to Clause 5 of the Contract and Clauses 2 of the Travel Contribution Agreement and the Rent Contribution Agreement:
  - HUF 4,153,000 gross as basic monthly salary from 1 July 2020 to 30 June 2021, due on the 10th of the next month;
  - HUF 4,564,000 gross as basic monthly salary from 1 July 2021 to 30 June 2022, due on the 10th of the next month;
  - HUF 700,000 per year for air travel costs between Germany and Hungary;
  - HUF 210,000 per month for housing allowance due by the 15th of the next month.
- The Club already paid the Appellant the following amounts:
  - HUF 612,043 *pro rata* as salary from 1 December to 6 December 2020;
  - HUF 68,500 for air tickets.
- The Coach's claims against the Club amount to HUF 88,554,457, consisting of indemnities for:
  - Gross salary from 7 December to 31 December 2020: HUF 3,540,957
  - Gross salaries from 1 January to 30 June 2021: HUF 24,918,000
  - Gross salaries from 1 July 2021 to 30 June 2022: HUF 54,774,000

- Housing allowances from 1 December to 30 June 2022: HUF 3,990,000
- Air travel costs from 1 December 2020 to 30 June 2022: HUF 1,331,500.

➢ The Club must pay penalty interest at 5% p. a. as of the day of the termination of the Contract, namely 7 December 2020, according to Articles 104 and 339 para 1 CO and related jurisprudence (CAS 2017/A/5162, para 164).

B. The First Respondent's submissions

55. In its Answer, the First Respondent requests:

"that the statement of claim of the Appellant be dismissed, judgment No 21-00065 of FIFA dated 23 March 2021 be upheld, and the Appellant be ordered to pay costs incurred."

56. The First Respondent's written and oral submissions can in essence be summarised as follows:

(i) As to FIFA's standing to be sued

➢ The Coach's appeal is not admissible as FIFA has no standing to be sued.

➢ FIFA did not take part in the first instance proceedings, and its decision is being appealed in the present proceedings.

➢ There is no procedural possibility for an organisation which has taken a decision at first instance to become a party to the proceedings at second instance.

➢ On the same basis, an appeal against a decision of a civil court of first instance cannot appoint such court as a party to the proceedings of the second instance.

(ii) As to FIFA PSC jurisdiction

➢ The case lacks international dimension according of Article 22 lit. c RSTP. On the contrary, all relevant elements relate to Hungary, including:

- Seat and place of registration of the employer;
- Place of work;
- Place of residence of the Appellant at the time of signing the Contract;
- Language of the Contract;
- Governing law;
- Mother tongue spoken by the Parties;
- Citizenship of the Appellant, who is a Hungarian citizen by birth; and absence of proof of relinquishment of Hungarian citizenship;
- Seat of the First Respondent (business association registered in Hungary);
- Hungarian document that was made available by the Appellant to the First Respondent ("address card");
- Declarations of the Appellant provided and written by the Appellant and his agent on his Hungarian citizenship;
- Inclusion of the Appellant in the Hungarian National Team multiple times;

- Registration in the HFF system.

- The dual nationality of a player is clearly inadequate to justify endowing the dispute with a foreign element or an international dimension, based on CAS jurisprudence (CAS 2010/A/1996).
- The party intending to prevail in a dispute must carry the burden of proof, i.e. it should be able to substantiate its allegations with convincing evidence (CAS 2016/A/4441). Therefore, the Appellant must not only prove that he is a German citizen; he must also prove that he is not a Hungarian national.
- The Appellant acquired Hungarian citizenship by birth, as a child of parents of Hungarian citizenship. He falls therefore within the scope of the Hungarian Law on Citizenship.
- Article 2 para 2 of the Hungarian Law on Citizenship recognises dual nationality. Thus, the Appellant's Hungarian citizenship did not cease after he acquired the German nationality by way of naturalization in 2005.
- The Appellant, as a bi-national, remains subject to Hungarian laws. If he had intended to act as a German national when concluding the Contract, he should have ensured to set this out expressly.
- The Appellant could only have lost his Hungarian citizenship by way of relinquishment or revocation pursuant to Article 8 et seq. of the Hungarian Law on Citizenship. Yet, the Appellant did not provide such evidence, but only claimed that his Hungarian passport and identity card had expired.
- The assessment of the Appellant' nationality should be made at the time of the event giving rise to the dispute, and not the time of signing the Contract (CAS 2016/A/4441). At the time of the termination of the Contract, the Appellant still held valid Hungarian social security tax and identification numbers.
- When the parties share a common nationality, the dispute must be considered a purely national matter, in accordance with FIFA PSC and CAS jurisprudence (CAS 2016/A/4441). Consequently, FIFA PSC lacked jurisdiction over the present dispute and the Appealed Decision is well-founded.

(iii) As to the termination of the employment relationship

- The legality of the termination of the Employment relationship must be assessed based on Hungarian law, in particular the Hungarian Civil Code and the Labour Code.
- Clause 9 of the Contract was already part of the job offer made to the Appellant, and was then incorporated into the Contract. The Appellant had several opportunities to object to the provision, but he failed to do so.
- The Appellant has no authority to determine the nullity of any contractual provision. This falls within the authority of a court.

- The resolutive condition was limited, accepted by the Appellant and exercised lawfully by the First Respondent.
- The obligation to produce results is a common practice in football.
- The Appellant was employed during five months, and received an "excess compensation" of net HUF 21,182,190. He failed to perform his contractual obligations as agreed by the Parties despite all opportunities provided to him.
- The Hungarian Labour Code allows the immediate termination of employment contracts when the conduct of the other party renders the continuation of the employment relationship impossible. It does not preclude the termination of a fixed-term employment contract.
- In the present case, the continuation of the employment relationship had become impossible, since the hypothetical situation provided for in Clause 9, as anticipated by the Parties, unfortunately occurred.
- Clause 9, in its original version, does not include the term "consecutive matches." Such an adjective would be devoid of purpose, as the relegation of a team is not determined by the number of consecutive matches it spends in the relegation zone. It depends on the total duration it spends in the relegation zone during the season.
- The database of the HFF shows that the Appellant's team spent at least five rounds in the relegation zone until 6 December 2020. This is also evidenced by the FIFA proceedings and the current proceedings.
- The Hungarian Labour Code states that the right to terminate a contract with immediate effect may be exercised within fifteen days from the knowledge of the cause of termination, but no later than one year after the occurrence of the cause.
- The First Respondent did not exercise his right of termination after five rounds, because it intended to stand by the Appellant despite his unsuccessful work. However, it gave him oral warnings, and complied with the legal timeline, since it ended the Contract within one year after the occurrence of the cause of termination.
- The Contract was terminated lawfully by the First Respondent, in compliance with all relevant provisions of the Hungarian Labour Code.

(iv) As to the compensation

- The Appellant's financial claims are unfounded.

C. The Second Respondent's submissions

57. In its Answer, the Second Respondent requests as follows:

"(a) rejecting the reliefs sought by the Appellant;

(b) confirming the Appealed Decision;

(c) ordering the Appellant to bear the full costs of these arbitration proceedings; and [sic]."

58. The Second Respondent's written and oral submissions can in essence be summarised as follows:

(i) As to FIFA's standing to be sued

- The standing to be sued relates to the merits rather than the admissibility of the appeal.
- Therefore, it should only be examined in the unlikely event that the Sole Arbitrator were to find that the FIFA PSC had jurisdiction over the dispute.
- FIFA has standing to be sued in the framework of the vertical dispute related to its jurisdiction (as per the numerous references mentioned).
- FIFA does not have standing in the framework of the horizontal dispute between the Coach and his former Club.

(ii) As to FIFA PSC jurisdiction

- Article 22 lit. c RSTP clearly establishes that, in order for FIFA PSC to be competent to deal with an employment-related dispute between a club and a coach, such an international dispute must have an international dimension.
- The Appellant was still a Hungarian citizen at the time of his employment with the Club, a s well as when the dispute arose (which is the relevant point in time to determine its national or international dimension). This primarily stems from the Hungarian Law on Citizenship:
  - Article 10, invoked by the Appellant, only states that citizenship can be proven through specific documents. However, contrary to the Appellant's contention, the expiry of such documents does not cause the loss of citizenship. Any other interpretation would make many Hungarian citizens (without additional nationalities) stateless if their identification documents expired.
  - Article 2 states that Hungarian citizens with an additional nationality shall, unless an Act provides otherwise, be considered as Hungarians for the purposes of Hungarian law.
  - Articles 8 and 9 establish that Hungarian citizenship can only be terminated by voluntary resignation or withdrawal (subject to formal ratification by the relevant authority).
- The Datasheet for the preparation of the Contract shows that the Appellant is "Hungarian-German." It demonstrates that the Appellant still held a dual citizenship at that time. It also distinguishes his case from the FIFA jurisprudence invoked in his Appeal Brief.

- It is undisputed that the Appellant's licence was issued by the HFF, and that he was registered as a Hungarian in that association. This further supports that the Appellant is considered a Hungarian citizen by its own national association (whom he even represented internationally during his playing career).
- The totality of the relevant evidence on file clearly confirms that the Appellant was a Hungarian citizen at the time his dispute with the Club arose (and still holds this nationality). The Contract concluded between the Parties does not contain any information regarding the Appellant's citizenship and does not need to be interpreted.
- The Appellant expressly admitted that he still held the Hungarian citizenship during the first instance proceedings. He cannot, suddenly, try to shift his burden of proof to FIFA, and absolve himself of his duty to cooperate in the establishment of the facts.
- The Appellant's Hungarian citizenship confers a national dimension to the dispute. The fact that he is also a German citizen or that the German identification documents are referenced in the work certificate are irrelevant because:
  - The national or international dimension of the dispute is determined based on the nationality of the parties at the moment the dispute arose (CAS 2016/A/4441, para 8.8; CAS 2020/A/6791, para 60);
  - The Appellant's work certificate only proves that he used his German passport to identify himself when requesting such certificate. It does not prove that he was employed under his German passport or citizenship, nor that he was not a Hungarian during his employment with the Club.
  - Even if the Appellant had been employed as a German citizen, he is considered as a Hungarian citizen under Hungarian law and has not provided any evidence that would suggest otherwise.
- The importance of identification documents must be put in perspective (CAS 2020/A/6933).
- Consequently, the PSC did not have jurisdiction to deal with the Appellant's claim.

(iii) As to the termination of the employment relationship and compensation

- As FIFA does not have standing in the framework of the horizontal dispute between the Coach and the Club, it refrains from commenting on the issue of the lawfulness of the termination of the Contract.

V. JURISDICTION

59. Article R47 of the CAS Code provides that:

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

60. Article 58 para 1 of the FIFA Statutes (September 2020 version) states that:

"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."

61. Article 23 para 4 RSTP (October 2020 edition) reads in its pertinent parts as follows:

"Decisions reached by the single judge or the Players' Status Committee may be appealed before the Court of Arbitration for Sport (CAS)."

62. The Single Judge of the PSC issued the Appealed Decision, which makes it appealable to the CAS.

63. The Appealed Decision refers to the jurisdiction of the CAS, which is further confirmed by the Order of Procedure duly signed by the Parties.

64. As a result, the CAS has jurisdiction to decide on this appeal.

VI. ADMISSIBILITY

65. Article R49 of the CAS Code reads as follows:

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

66. In addition, Article 58 para 1 of the FIFA Statutes refers to a time limit of 21 days to file an appeal.

67. The grounds of the Appealed Decision were communicated to the Appellant on 13 April 2021.

68. On 19 April 2021, the Appellant filed his Statement of Appeal against the Appealed Decision with the CAS Court Office.

69. Consequently, the Appellant complied with the time limits prescribed by the CAS Code. The Appeal was therefore filed in time. In addition, the Statement of Appeal complied with the other conditions set out at Article R48 of the CAS Code.

70. The Sole Arbitrator notes that the First Respondent contests the "admissibility" of the appeal. He considers that the Second Respondent does not have standing to be sued, because it issued the Appealed Decision. Notwithstanding this, in accordance with the Swiss Federal Tribunal's and CAS' jurisprudence, the standing to be sued shall not be qualified as a matter of admissibility of the appeal, but a matter of the merits of the appeal (see e.g. SFT 126 III 59, para 1A; CAS 2018/A/5888, para 169). As a result, the potential lack of standing to be sued would not lead to the consideration of the appeal as inadmissible, but rather to the dismissal of the appeal on the merits.

71. Accordingly, the appeal is declared admissible.

VII. APPLICABLE LAW

72. Article R58 of the Code provides the following:

"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 the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision."

73. Article 57 para 2 of the FIFA Statutes states that:

"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."

74. The Contract is drafted in Hungarian, and repeatedly refers to the "Labour Code". It provides in Clause 20 that:

"For matters not regulated by this contract, the Labor Code's relevant provisions, other applicable legislation on employment law, and the Employer's regulations and managerial decisions in force shall apply."

75. The Appellant and Second Respondent state that the Sole Arbitrator shall primarily apply the various regulations of FIFA and, additionally, Swiss law. The Appellant notes, however, that the RSTP are not applicable to the merits of a contractual dispute between a coach and a football club. The First Respondent invokes the Hungarian Labour Code and the Hungarian Civil Code. All Parties quote the Hungarian Law on Citizenship with regard to the Appellant's nationality.

76. The Sole Arbitrator observes that most CAS panels consider that Article R58 of the CAS Code serves to restrict the autonomy of the parties. Even where a choice of law has been made, the "applicable regulations" (in casu: FIFA regulations) are primarily applied, irrespective of the will of the parties. Hence, any choice of law made by the parties does not prevail over Article R58 of the CAS Code, but is to be considered only

within the framework of Article R58 of the CAS Code and consequently affects only the subsidiarily applicable law (see e.g. CAS 2017/A/5402, para 89; ULRICH HAAS, "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", CAS Bulletin 2015/2, p. 7 et seq, in particular p. 11 et seq, and the references mentioned).

77. Conversely, the FIFA regulations do not explicitly address the Second Respondent's standing. Likewise, the RSTP deal with employment contracts, but were, until recently, not applicable to the merits of a contractual dispute between a coach and a football club, according to CAS' prevailing jurisprudence (CAS 2008/A/1464, 1467; CAS 2009/A/1758; CAS 2011/A/2321; CAS 11/A/2462; CAS 2011/A/2597; CAS 2012/A/2906; CAS 2015/A/4161; CAS 2017/A/5402, para 98). The new RSTP (January 2021 version), which aim to address this lacuna, are not applicable to the case at stake, since they were adopted after the Appellant filed his claim with the FIFA PSC (see article 26 para 1 and 2 RSTP, February 2021 edition).

78. The Sole Arbitrator renounces, however, to examine these legal issues more in-depth, for reasons that will be explained subsequently.

79. Finally, the Sole Arbitrator concurs with the Parties with regard to the Hungarian Law on Citizenship, which provides helpful guidance regarding the Appellant's citizenship. He will develop his reasoning further in the appropriate context.

VIII. PRELIMINARY ISSUES

A. The Second Respondent's standing to be sued

80. The Sole Arbitrator recalls that FIFA's standing to be sued has been extensively discussed by the Parties in their written and oral submissions.

81. The Coach first contended that FIFA had standing to be sued. He then took the opposite view and informed the CAS Court Office that he did not want to sue FIFA anymore, which led to its temporary withdrawal from the present proceedings.

82. The Club argued that the appeal was inadmissible due to FIFA's lack of standing to be sued.

83. FIFA constantly maintained that it had standing to be sued in the framework of the vertical dispute related to its jurisdiction. It opposed to its (temporary) withdrawal from the proceedings, which led to its reinstatement.

84. In this context, the Sole Arbitrator wishes to clarify that he decided to reinstate FIFA in the proceedings as soon as he was consulted, knowing that a party cannot be withdrawn from the proceedings without its consent if it has filed its full submissions with the arbitral tribunal (see e.g. CAS 2020/A/7252, para 86). He decided thereby to allow the Parties to defend their positions during the oral pleadings.

85. In any event, the Appellant did not object to FIFA's reinstatement and participation during the hearing.

86. The Sole Arbitrator further notes that the standing to be sued is an issue of substantive law, according to CAS well-established jurisprudence (see, *inter alia*, CAS 2020/A/7356; CAS 2020/A/6694; CAS 2016/A/4602; CAS 2013/A/3047; CAS 2008/A/1639).

87. More specifically, the question of FIFA's standing to be sued in a dispute questioning its own jurisdiction to deal with a contractual dispute has been, as noted by the Parties, the object of a nuanced and sometimes case-by-case treatment (see e.g. CAS 2020/A/7144, paras 91 et seq, which departs from CAS 2016/A/4836). In the present case, this issue is of little substantive significance regarding FIFA's jurisdiction, as both Respondents invoked, in essence, similar arguments. They also provided the same kind of legal Exhibits, except from the English translation of the Hungarian Law on Citizenship, which is in any case freely available on the internet.

88. The Sole arbitrator concludes that this question can be left unanswered for the remainder, for reasons that will be explained further.

B. Translation of Clause 9 of the Contract

89. The First Respondent contested the translation of Clause 9 of the Contract, provided by the Appellant, and incorporated in the Appealed Decision.

90. It argued that the word "consecutive" does not appear in the original version of the Contract, allowing a dismissal of the Coach if his team spent five consecutive matches in total within one season in the relegation zone.

91. This issue can, again, remain unanswered, for reasons that will be explained further.

C. Evidence

92. Pursuant to Article 56 para 1 of the CAS Code, the parties shall not be authorised to produce new exhibits and raise new legal arguments after the exchange of the written submissions, except by mutual agreement, or if the Panel so permits, on the basis of exceptional circumstances.

93. The First Respondent provided, upon the Appellant's request, a translation of its Exhibit 4, namely the Appellant's "address card" two months after the end of the exchange of written submissions.

94. All Parties confirmed, at the hearing, that they agreed to have this document tendered into evidence. In addition, its original version was already on file. It is, therefore, admissible.

95. Finally, the Parties did not object to the new legal arguments, in particular the new CAS awards, invoked on either side during the hearing. In any case, these arguments were

mainly intended to deepen or supplement their written submissions, and are widely available on the internet. They are, therefore, admissible in light of the principle "iura novit curia" (or "iura novit arbiter") (see e.g., CAS 2020/A/7008 & 7009, para 37).

IX. MERITS OF THE APPEAL

A. The scope of the appeal

96. This appeal is two-folded. It first revolves around the jurisdiction of the FIFA PSC to deal with the present dispute, depending on the national or international dimension of the case. It then involves an employment-related dispute between the Coach and his former Club following the termination of his Contract with immediate effect for an alleged "just cause".

97. The Appellant is undeniably a German citizen. However, he claims that he no longer holds the Hungarian citizenship (i.e. the same nationality of the Club which employed him). He argues that he is no longer Hungarian because his Hungarian identity card and passport have expired for many years and that, at the very least, FIFA failed to produce or request proof of the contrary. As a result, he should only be considered German, and his dispute with a Hungarian club would have an international dimension. In any event, he was specifically hired as a German, as evidenced by his Contract (as interpreted in light of various documents submitted during the pre-contractual negotiations) and working certificate. Consequently, the FIFA PSC wrongly declined its jurisdiction.

98. The Appellant considers that his Contract was terminated without just cause. Clause 9 of the Contract, invoked by the Club in support of his dismissal, is null and void. It contravenes various principles of Swiss law, as well as FIFA and CAS jurisprudence. In any event, the condition precedent included in this clause was not fulfilled, in light of the circumstances of the case and Swiss law. This justifies a compensation claim for damages.

99. Conversely, the Club maintains that all the elements of the case point to a domestic dispute and that the expiry of the Appellant's identification documents did not cause the loss of his citizenship pursuant to Hungarian law.

100. It highlights that the loss of Hungarian nationality can only occur by way of relinquishment or revocation, which the Appellant failed to prove. It states that the termination of the Contract complied with Hungarian law and should not give rise to compensation.

101. FIFA shares the Club's view regarding the Appellant's nationality and burden of proof. It submits that he was a Hungarian citizen at the time of his employment with the Club, as well as when the dispute arose (which is the relevant point in time to determine its national or international dimension). In fact, he continues to be a Hungarian citizen, whose identity card and passport are not up-to-date.

102. FIFA contends that this conclusion is corroborated by all relevant documents on file, including the Datasheet for the preparation of the Contract, which clearly states that the Appellant is "Hungarian-German". The Appellant being a Hungarian national, his dispute with the Club was exclusively of a national dimension. The fact that he is also a German citizen or that his German nationality is referenced in his work certificate and other documents are irrelevant, and no exemption whatsoever shall be granted. Consequently, FIFA PSC correctly declined its jurisdiction. This is sufficient for the present appeal to be dismissed in full.

B. FIFA PSC jurisdiction

103. Initially, the Sole Arbitrator notes that is undisputed between the Parties that in accordance with Article 22 lit. c RSTP, in conjunction with Article 23 para 1 and 3 RSTP, the FIFA PSC is competent to deal with employment-related disputes with an international dimension between a coach and a club.

104. Article 22 RSTP states as follows:

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

c) employment-related disputes between a club or an association and a coach of an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings exists at national level; [...]"

105. Based on that, it is furthermore undisputed by the Parties that the FIFA DRC is only competent to deal with the matter at hand if the case is found to be a case of an international dimension. The Parties also agree that such international dimension is, in principle, not given when the people concerned have the same nationality, or when one of the parties holds a dual citizenship.

106. The Parties disagree about whether the Appellant was only German, or German-Hungarian at the relevant time of this dispute, and whether he could, in case of dual citizenship, avail himself of special circumstances, such as his hiring as a German citizen.

107. Thus, the Sole Arbitrator must resolve the following issues:

(a) Which party bears the burden of proof;

(b) Whether the Appellant still holds the Hungarian citizenship;

(c) If so, whether the Appellant was hired as a German citizen;

(d) What are the consequences of the above?

108. The Sole Arbitrator will discuss these issues one by one, starting with the burden of proof.

(a) Which party bears the burden of proof

109. The Sole Arbitrator refers to the general legal principle of burden of proof, according to which any party claiming a right on the basis of an alleged fact must discharge the burden of proof, proving that the alleged fact is as claimed.

110. The Sole Arbitrator further notes that Swiss substantive law subsidiarily applies to this issue, in the absence of relevant and applicable provisions in FIFA regulations. In particular, Article 12 para 3 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber ("FIFA Rules of Procedure"), which provides that "*Any party claiming a right on the basis of an alleged fact shall carry the burden of proof*", only applies before FIFA bodies.

111. Article 8 of the Swiss Civil Code provides as follows: "*Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact.*"

112. As a result, the Sole Arbitrator reaffirms the principle established by CAS jurisprudence, according to which:

> *"in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them ... The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some facts and persuade the deciding body, it must actively substantiate its allegations with convincing evidence"* (cf. CAS 2016/A/4441, para 8.18, and the references mentioned).

113. In that connection, the Sole Arbitrator notes that disputes between parties that share a common nationality can, *prima facie*, be considered as purely national matters lacking the international dimension required to establish FIFA's jurisdiction (CAS 2016/A/4441, para 8.27). In the present case, the Appellant generally seeks to overturn FIFA PSC's inadmissibility decision. In addition, he did not provide evidence, in first instance proceedings, showing that he had lost or renounced his Hungarian nationality, but simply pointed out that he no longer held Hungarian identification documents. Consequently, it is now up to him to prove that he does not hold this nationality anymore under the Hungarian Law on Citizenship and/or that he was hired as a German citizen.

(b) Whether the Appellant still holds the Hungarian citizenship

114. As an initial matter, the Sole Arbitrator notes that it is not disputed that, in the past, the Appellant held dual citizenship, i.e. Hungarian and German. He acquired the Hungarian nationality by birth. The only dispute between the Parties is whether he was still Hungarian at the time when the dispute arose or whether he lost the Hungarian citizenship in the meantime.

115. The Sole Arbitrator notes that both the Appellant and the Respondents refer to the Hungarian Law on Citizenship to determine whether or not the Appellant is still Hungarian.

116. The Sole Arbitrator agrees that this issue, in light of its specificity, can only be solved in light of Hungarian law. Only the Hungarian Law on Citizenship can in particular apprise us about the conditions that the Appellant has to fulfil to be able to successfully invoke a loss of citizenship.

117. The Hungarian Law on Citizenship reads, in its relevant parts, as follows:

"Hungarian citizens
Article 2

(1) A person shall qualify as a Hungarian citizen if he or she is a Hungarian citizen at the date of entry into force of this Act, or if he or she becomes a Hungarian citizen by virtue of this Act, or if he or she acquires Hungarian citizenship pursuant to this Act, as long as his or her citizenship ceases.

(2) Unless an Act provides otherwise, a Hungarian citizen who is simultaneously also a citizen of another state shall be considered a Hungarian citizen for the purposes of Hungarian law.

[...]

Termination of Hungarian citizenship

Renunciation
Article 8

(1) A Hungarian citizen residing abroad may renounce his or her Hungarian citizenship in a declaration addressed to the President of the Republic if

a) he or she has a foreign citizenship as well, or is able to demonstrate the plausibility of acquiring one.
b) Repealed.
c) Repealed.

(2) If the conditions established in paragraph (1) are met, the Minister shall submit a proposal to the President of the Republic on the acceptance of the renunciation. The President of the Republic shall issue a certificate attesting the termination of Hungarian citizenship through renunciation. The Hungarian citizenship shall cease on the date of issuance of the certificate.

(3) The Minister shall establish in a decision the lack of meeting the conditions necessary for the acceptance of the renunciation. The Metropolitan Court can be requested to review that decision.

(4) Within one year of the date of acceptance of the renunciation the person concerned may seek from the President of the Republic the restitution of his or her Hungarian citizenship if he or she has not acquired a foreign citizenship.

Withdrawal of Hungarian citizenship
Article 9

(1) Hungarian citizenship may be withdrawn from a person who acquired his or her Hungarian citizenship by breaching the law, in particular, by communicating false data, or concealing data or facts, and thereby misleading the authorities. There shall be no withdrawal more than ten years after the date of acquisition of the Hungarian citizenship.

(2) The Minister shall establish in a decision the existence of any facts justifying the withdrawal of citizenship. The Metropolitan Court can be requested to review that decision.

(3) The President of the Republic shall – on a proposal submitted by the Minister – decide on the termination of Hungarian citizenship by withdrawal.

(4) The decision on the withdrawal of Hungarian citizenship shall be published in the Hungarian Gazette/Official Journal (Magyar Közlöny). Hungarian citizenship shall cease on the date of publication of the decision.

Attestation of Hungarian citizenship
Article 10

Hungarian citizenship may be attested by means of a valid personal identity card, a valid Hungarian passport or a citizenship certificate."

118. The Sole Arbitrator concurs with the Respondents that Hungarian citizenship may only be terminated by:

(i) voluntary resignation in writing subjected to the approval of the President of the Hungarian Republic, or;

(ii) withdrawal subjected to the final approval of the President of the Republic.

119. The Sole Arbitrator cannot accept the Appellant's position, according to which the expiration of his identity card in 2009, and of his passport in 2012, automatically led to a loss of citizenship. As FIFA rightly points out, Article 10 simply addresses the proof of citizenship, regardless of its retention. Any other interpretation would render many citizens stateless if they failed to renew their identification documents in time.

120. The Appellant himself also seems to have gradually distanced himself from this argument in the course of the proceedings, to invoke it only half-heartedly during the hearing.

121. In addition, the Appellant did not provide any document showing that he had voluntarily renounced his Hungarian citizenship or that the latter would have been withdrawn, which he could have done easily. Contrary to his allegations, it was not for FIFA to demand them in first instance proceedings. Indeed, in view of Article 12 para 3 of the FIFA Procedural Rules, the burden of proof lay on him. Likewise, it is difficult to see why FIFA should have requested the production of such documents before the CAS,

when the Appellant, in his written submissions, focused on the expiration of his passport and identity card.

122. The Sole Arbitrator observes that, according to the jurisprudence quoted by the Respondents, the analysis of the Appellant's nationality should be made at the time of the event giving rise to the dispute, and not the time of the signing of the Contract (CAS 2016/A/4441, para 8.8).

123. The Sole Arbitrator is of the opinion that this clarification is not of a crucial importance. In any case, the Appellant was a Hungarian citizen before and when signing the Contract. He continued to be a Hungarian citizen when his dispute with the Club arose and is still a Hungarian citizen to this day.

(c) Whether the Appellant was hired as a German citizen

124. The Sole Arbitrator understands that there may be special circumstances when the necessary international dimension exists in disputes where the parties share a common nationality due to the dual citizenship of the Appellant.

125. FIFA itself has acknowledged it in its jurisprudence. Thus, in a decision dated 8 December 2020 (Ref 20-00939), quoted by the Appellant, the FIFA PSC retained that a Bulgarian-German coach had been hired as a German citizen, despite the licence issued the Bulgarian Football Association:

> *"4. As a general remark, the Single Judge emphasised that when both parties have the same nationality, the dispute shall, in principle, be considered as national or internal, with the consequence that the rules and regulations of the association concerned shall be applied to the matter and the deciding bodies in accordance with the relevant provisions are to decide on the issue. If FIFA's deciding body dealt with such matter, the internal competence of FIFA members would be violated.*
>
> *5. Having said this, the Single Judge turned his attention to circumstances surrounding the double citizenship of a coach. In doing so, the Single Judge observed that the employment contract, which is the document at the basis of this dispute, clearly refers to the coach's German citizenship, without a reference to his Bulgarian citizenship.*
>
> *6. On account of all the above considerations, the Single Judge deemed that the dispute at hand had sufficient international dimension to fall within the competence of FIFA."*

126. Two other decisions quoted by the Appellant, rendered on the same day, postulate towards the same direction (Ref 20-00940 & 941).

127. The CAS also acknowledged the room for flexibility, with regard to the dual nationality of a player (CAS 2016/A/4441, para 8.27):

"The Sole Arbitrator does not deny the possibility that there may be special circumstances when the necessary international dimension, see Article 24 par. 1 in combination with Article 22 lit. b of the Regulations, exists in disputes where the player, as is apparently the case here, holds dual nationality notwithstanding that the parties in the dispute concerned also share the same nationality and where the dispute should therefore, prima facie, be considered as a purely national matter lacking the required international dimension."

128. The CAS concluded, however, that the necessary conditions were not fulfilled in that case, since the dispute involved primarily national aspects, such as the lack of payment of salaries (ibid, paras 8.28 et seq).

129. The Sole Arbitrator retains, on this basis, that only very particular circumstances, such as an express reference to a specific nationality in a contract, can justify an exception. The ratio behind such an expressis verbis reference is understandable, if one seeks to avoid local DRCs as decision making tribunals and obviously wants FIFA to intervene as such.

130. The required conditions are clearly not met here. On the contrary, as the First Respondent points out, the Contract and, more generally, the relationship between the parties, evoke Hungary in many respects (language of drafting, choice of law, etc.). The Contract does not contain any provision on the nationality of the Appellant, nor any other foreign element. The Appellant would have had every opportunity to negotiate such a clause, since he confirmed at the hearing that he was assisted by an agent and that he had had numerous contacts with the club's sporting director and his representatives during the pre-contractual talks. Ultimately, he claims compensation for an alleged dismissal without just cause, to be resolved under Hungarian employment laws.

131. Additionally, the fact the Appellant entered into the Contract using his German identity card, and submitted his German identity card and passport to the Club upon the start of his employment relationship, is of no avail. This shows at most that the Appellant was not up to date with his Hungarian documentation, and could therefore not provide any other credentials at that time.

132. The same is true of the Coach's work certificate, issued by the Club prior to the dispute which, again, merely reflects the Appellant's lack of current Hungarian credentials at the time of signing the contract. Even assuming that the exemptions to the curfew, mentioned in the work certificate, could only be granted to persons holding a valid identity document or driver's license (which is not attested by any document), the Appellant would have had every opportunity to update his identity credentials. Moreover, he had a valid driver's license, according to the "car usage agreement" concluded between the parties.

133. These elements can in no way be interpreted, *a posteriori*, as a desire – express or tacit – of the parties to conclude an international contract. It is also difficult to see why the

Hungarian Club would have absolutely wanted to hire a German coach. This observation is all the more true as other documents contradict this version.

134. Principal among these is the Datasheet for the preparation of the Contract, which clearly indicates, under the rubric "citizenship", that the Appellant is "Hungarian-German":

PERSONAL DATA:	
NAME	Tamás Bódog

[...]

CITIZENSHIP	Hungarian-German

135. The information provided by the HFF also points out to the Appellant's Hungarian nationality, since both the initial 2011 registration and the license issued while he was employed by the Club have been processed under this nationality. The Appellant's argument that FIFA "constantly ignored" the coaches' nationality mentioned in federative licenses or registrations cannot be accepted. It is based on three particular cases, examined above, where the contract of the persons concerned expressly referred to a specific nationality. Moreover, FIFA seems to have considered coaches' licenses and/or sports nationality in its recent decisions (see e.g. FIFA PSC's decision of 25 August 2020, REF 20-00361, *Coach Lawrence v Trinidad and Tobago Football Association*, para 23, which expressly highlights that *"the coach was part and played official matches for the national team of Trinidad & Tobago"*).

136. Finally, the Sole Arbitrator struggles to understand what the Appellant intends to get out of the address card that he asked the First Respondent to translate. This card, issued in Budapest, refers to Hungary in relation to the place of birth and residence.

(d) What are the consequences of the above?

137. By way of summary, the Sole Arbitrator considers that the Appellant failed to prove that he had lost his Hungarian nationality or was hired as a German citizen. Consequently, the present dispute lacks international dimension within the meaning of Article 22 lit.c RSTP, and FIFA was right to decline its jurisdiction.

C. Employment-related-issues

138. In view of FIFA PSC's lack of jurisdiction, the Sole Arbitrator considers that it is not necessary to examine if the Contract was terminated with just cause and if a financial compensation is due.

139. The contractual dispute between the Appellant and the First Respondent shall be determined by relevant national authorities.

X. CONCLUSION

140. Based on the foregoing and after taking into consideration all evidence produced and all arguments made, the Sole Arbitrator finds that the FIFA PSC was right in deciding that it lacked jurisdiction over the matter, due to its lack of international dimension. The dispute comes under the jurisdiction of the national Hungarian association or state courts, which will have to decide the arguments of the Appellant in relation to the termination of his contract and its financial consequences.

141. Consequently, the present appeal must be dismissed.

XI. COSTS

142. Article R64.4 of the Code, which governs the arbitration costs, provides as follows:

"At the end of the proceedings, the Court Office shall determine the final amount of the cost of arbitration, which shall include the CAS Court Office fee, the administrative costs of the CAS calculated in accordance with the CAS scale, the costs and fees of the arbitrators, the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale, a contribution towards the expenses of the CAS, and the costs of witnesses, experts and interpreters. The final account of the arbitration costs may either be included in the award or communicated separately to the parties. [...]"

143. In addition to the payment of the arbitration costs, the Sole Arbitrator also has the discretion to award to the prevailing party or parties a contribution towards their legal fees and other expenses incurred in connection with the proceedings. In this respect, Article R64.5 of the Code provides as follows:

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

144. Given the outcome of these proceedings and considering the that this Appeal has been dismissed, the Sole Arbitrator finds that the arbitration costs of these proceedings, in an amount to be notified by the CAS Court Office, shall be borne by the Appellant.

145. Furthermore, the Sole Arbitrator rules that the Appellant must pay a contribution towards the First Respondent's legal costs in the amount of CHF 4,000 (four thousand Swiss Francs). In light of the fact that the hearing was held by video-conference and since the Second Respondent was not represented by an external counsel, the Sole Arbitrator determines that the Second Respondent shall bear its own legal costs and expenses.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr Tamás Bódog against the decision rendered by the FIFA Players' Status Committee on 23 March 2021 is admissible.

2. The appeal filed by Mr Tamás Bódog against the decision rendered by the FIFA Players' Status Committee on 23 March 2021 is dismissed.

3. The decision rendered by the FIFA Players' Status Committee on 23 March 2021 is confirmed.

4. The costs of the arbitration, to be determined and served to the parties by the CAS Court Office, shall be borne entirely by Mr Tamás Bódog.

5. Mr Tamás Bódog has to pay to Honvéd FC an amount of CHF 4,000 (four thousand Swiss Francs) as a contribution towards its legal fees and expenses incurred in connection with these arbitration proceedings. FIFA shall bear its own legal costs and expenses.

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

Seat of arbitration: Lausanne, Switzerland

Date: 26 April 2022

THE COURT OF ARBITRATION FOR SPORT

Hendrik Kesler
Sole Arbitrator

Alexandra Veuthey
CAS clerk