TAS / CAS
TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

CAS 2021/A/7800 NK Inter Zaprešić v. Borislav Aleksandrov Tsonev & FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Kepa Larumbe, Attorney-at-law in Madrid, Spain

in the arbitration between

NK Inter Zaprešić, Zapresic, Croatia

Represented by Mr Davor Radić, Attorney-at-Law, Split, Croatia

Appellant

and

Borislav Aleksandrov Tsonev, Bulgaria

Represented by Radostin Vassilev and Mr Georgi Gradev, Attorneys-at-Law, Sofia, Bulgaria

First Respondent

Fédération Internationale de Football Association (FIFA), Switzerland

Represented by Mr Miguel Lietard, Director of Litigation and Mr Carlos Schneider, Director of Judicial Bodies, FIFA, Zurich, Switzerland

Second Respondent

I. PARTIES

1. NK Inter Zaprešić (the "Appellant" or the "Club") is a club with its registered office in Zaprešić, Croatia and registered with the Croatian Football Federation (the "CFF").

2. Mr Borislav Aleksandrov Tsonev (the "First Respondent" or the "Player") is a professional football player with Bulgarian nationality.

3. Fédération Internationale de Football Association (the "Second Respondent" or "FIFA") is the governing body of football world-wide.

II. FACTUAL BACKGROUND

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

5. On 14 February 2019, the Appellant and the First Respondent entered into an employment contract (the "Contract") with duration until 30 June 2021.

6. The Contract established a remuneration for the services rendered as per article 9 therein:

   a. *"The monthly remuneration amount for the period from 14.02.2019 till 29.02.2020 in the amount of 7.200,00 EUR net, payable in Croatian Kuna (HRK) according to the middle exchange rate of the Croatian National bank of EUR towards HRK;*

   b. *The monthly remuneration for the period from 01.03.2020 till 15.06.2021 in the amount of 8.000,00 EUR net,* (…).

   c. *One time payment award for player in the amount of 10.000,00 EUR net,* (…).

   d. *In case that Club after the end of season 2018/19, ensures the status in Premier Croatian division for season 2019/20, Club will pay one time payment reward for Player in amount of 4.000,00 EUR net* (…).

   The amount of supplemental wages and incentives, if not determined by a fixed monetary amount in the preceding item, is subject to change, and the parties mutually agree by signing hereof that the salary amount may be changed in accordance with the Club's Regulations on Rewards. Such change of the salary amount is valid even without signing the annex hereto, and the salary amount considered applicable is the amount determined by application of the Regulations on Rewards, which the parties agree to unconditionally. The Regulations on Rewards also determine rights and obligations, as well as deadlines for payment of bonuses and rewards, depending on the success of the

team and the player. The Club is obliged to give the Regulations on Rewards to the player upon the signing hereof. All the gross payments are paid in accordance with the regulations of the law in force on the day of payment.

e. The parties mutually agree that the amounts of both monthly and other payments from the item a) I b) of this article, pay by the Club, don't include VAT, and that the Club is obliged to pay the VAT;

f. The Player is obliged to issue invoices for the mentioned monthly salaries, with the addition of VAT if the Player is in the VAT system. The Club is obliged to effect the payment of the invoice within 15 days from the invoice date".

7. With respect to the termination of the contractual relationship, article 14 read as follows:

"The Player and the Club has the right to terminate the Contract in case that the other Party fails to fulfils its contractual obligations, for which purpose there is a procedure in the CFF's Regulations on the Status and transfer of players and other relevant regulations of FIFA and CFF."

8. On 19 June 2020, the Player put the Club in default of payment of the remuneration and granted the Club a 15 days deadline to fulfil its obligations. The Player made the following requests:

a. A partial payment of the December 2019 salary,

b. And the full salaries of January to May 2020.

9. The given deadline was not met by the Club.

10. On 7 July 2020, the Player sent a notice of termination of contract to the Club based on the outstanding salaries.

11. On 3 September 2020, two months later after the said termination, the Player concluded an employment contract with another club in Bulgaria, PFC Levski Sofia. The contract entered into force from the date of signature until 30 June 2021 and provided for a monthly salary of EUR 1,000 net.

III. PROCEEDINGS BEFORE THE FIFA DISPUTE RESOLUTION CHAMBER

12. On 24 September 2020, the Player filed a claim before the FIFA Dispute Resolution Chamber (the "FIFA DRC") requesting the Club to pay the following amounts:

a. The payment of EUR 54,901.43 (net) as outstanding salaries, plus interest of 5% p.a.

b. The payment of EUR 118,193.44 (net) as compensation for breach of the Contract, plus a 5% p.a. interest accrued since 8 July 2020.

c. Additionally, the imposition of sporting sanctions on the Club in view of article 17 par. 1 of the FIFA Regulations on the Status and Transfer of Players considering the breach fell within the protected period and the course of the season.

13. The FIFA DRC invited the Club to the proceedings and to the reply to the claim, but it remained silent.

14. On 9 December 2020, the FIFA DRC passed its decision (hereinafter, the "Appealed Decision"). The operative part of the Appealed Decision read as follows:

1. The claim of the Claimant, Borislav Aleksandrov Tsonev, is partially accepted.

2. The Respondent, NK Inter Zapresic, has to pay to the Claimant the total amount of EUR 54,901.43 as outstanding remuneration plus 5% annual interest as follows:

-on the amount of EUR 6,695.01 from 1 January 2020 until the date of effective payment;

-on the amount of EUR 7,200 from 1 February 2020 until the date of effective payment;

-on the amount of EUR 7,200 from 1 March 2020 until the date of effective payment;

-on the amount of EUR 8,000 from 1 April 2020 until the date of effective payment;

-on the amount of EUR 8,000 from 1 May 2020 until the date of effective payment;

-on the amount of EUR 8,000 from 1 June 2020 until the date of effective payment;

-on the amount of EUR 8,000 from 1 July 2020 until the date of effective payment;

-on the amount of EUR 1,806.02 from 8 July 2020 until the date of effective payment.

3. The Respondent has to pay to the Claimant an amount of EUR 94,193.44 as compensation for breach of contract plus 5% annual interest from 24 September 2020 until the date of effective payment.

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 45 days, as from the notification by the Claimant of

the relevant bank details to the Respondent, the following consequences shall arise:

1. *The Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid and for the maximum duration of three entire and consecutive registration periods. The aforementioned ban mentioned will be lifted immediately and prior to its complete serving, once the due amount is paid. (cf. art. 24bis of the Regulations on the Status and Transfer of Players).*

2. *In the event that the payable amount as per in this decision is still not paid by the end of the ban of three entire and consecutive registration periods, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee.*

15. On 5 March 2021, the FIFA DRC notified the grounds of the Appealed Decision, determining, *inter alia*, the following:

1. *First of all, the Dispute Resolution Chamber (DRC) Judge (hereinafter also referred to as "the DRC Judge") analysed whether he was competent to deal with the case at hand. In this respect, he took note that the player's claim was lodged on 24 September 2020. Taking into account the wording of art. 21 of the June 2020 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: "the Procedural Rules"), the aforementioned edition of the Procedural Rules is applicable to the matter at hand.*

2. *Subsequently, the DRC judge referred to art.3 par. 2 and par. 3 of the Procedural Rules and confirmed that in accordance with art. 24 par. 1 and par. 2 in conjunction with art.22 lit. b of the Regulations on the Status and Transfer of Players (edition October 2020) he is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a Bulgarian player and a Croatian club.*

3. *Furthermore, the DRC judge analyzed which regulations should be applicable as to the substance of the matter. In this respect, he confirmed that in accordance with art. 26 par. 1 and par. 2 of the Regulations on the Status and Transfer of Players (edition October 2020), and considering that the present claim was lodged on 24 September 2020, the August 2020 edition of said regulations (hereinafter: "the Regulations") is applicable to the matter at hand as to the substance.*

4. *The competence of the DRC judge and the applicable regulations having been established, the DRC judge entered into the substance of the matter. Subsequently, the DRC judge continued by acknowledging the above-mentioned facts as well as the documentation contained in the file in relation to the substance of the matter. However, the DRC judge emphasized that in the following considerations he will refer only to the facts, arguments and documentary evidence, which he considered pertinent for the assessment of the matter at hand.*

5. *To start with, the DRC judge acknowledged that the parties to the dispute had signed the contract valid from 14 February 2019 until 30 June 2021 pursuant to which the Respondent undertook to pay the Claimant a monthly salary of EUR 7,200 from 14 February 2019 to 29 February 2020, EUR 8000 from 1 March 2020 to 15 June 2021, EUR 10,000 as a single payment for signing the present Contract and EUR 4,000 for 2018/2019 if the Club retains its status as a member of the First Croatian Football League.*

6. *Moreover, the DRC Judge took note that on 07 July 2020, the Claimant put the Respondent in default of payment and granted it 15 days to remedy the default, to no avail.*

7. *Having recalled the above, the DRC Judge observed that, the Claimant lodged the present claim alleging having terminated the contract with just cause requesting EUR 54,901.43 as outstanding remuneration and EUR 94,193.44 as compensation.*

8. *In continuation, the DRC judge took note that despite having been invited to do so, the Respondent, for its part, failed to present its response to the claim of the Claimant. By not presenting its position to the claim, the DRC judge was of the opinion that the Respondent renounced its right of defence and, thus, accepted the allegations of the Claimant.*

9. *Furthermore, as a consequence of the aforementioned consideration, the DRC judge concurred that in accordance with art. 9 par. 3 of the Procedural Rules, he shall take a decision upon the basis of the documentation already on file, in other words, upon the statements and documents presented by the Claimant.*

10. *The DRC Judge further considered the documentation on file and decided that, since the Claimant terminated the contract when more than 2 salaries where outstanding, and given that the Claimant had put the Respondent in default of payment, granting the latter a 15 days' deadline to remedy the default, and the Respondent failed to remedy the default, the Claimant terminated the contract with just cause on 7 July 2020.*

11. *In continuation, prior to entering into the issue of the consequences of the early termination of the contract with just cause by the Claimant, the DRC Judge firstly proceeded to determine the amount of outstanding remuneration, if any, still due to the Claimant by the Respondent to this day.*

12. *In this respect, the DRC Judge took note that in accordance with art. 9 of the contract, the Claimant was entitled to a monthly salary of EUR 7,200 from 14 February 2019 to 29 February 2020 and EUR 8,000 from 1 March 2020 to 15 June 2021.*

13. *In this regard, the DRC Judge recalled that, as per the Claimant, the following remuneration was outstanding:*

-EUR 6,695.01 as partial monthly salary for December 2019, payable until 31 December 2019;

-EUR 7,200 monthly salary for January 2020, payable until 31 January 2020;

-EUR 7,200 monthly salary for February 2020, payable until 29 February 2020;

-EUR 8,000 monthly salary for March 2020, payable until 31 March 2020;

-EUR 8,000 monthly salary for April 2020, payable until 30 April 2020;

-EUR 8,000 monthly salary for May 2020, payable until 31 May 2020;

-EUR 8,000 monthly salary for June 2020, payable until 30 June 2020;

-EUR 1,806.02 monthly salary from 1 July 2020 until and including 7 July 2020, payable immediately upon the termination of the Contract, i.e. 7 July 2020 plus 5% interest p.a from 8 July 2020 until the date of effective payment

14. *In this context, the DRC Judge reiterated that the Respondent did not provide any evidence of payment of the amounts requested by the player. Thus, the DRC Judge concluded that the aforementioned remuneration was still outstanding.*

15. *On account of the aforementioned considerations, the DRC Judge decided that, in accordance with the general legal principle of pacta sunt servanda, the Respondent is liable to pay to the Claimant outstanding remuneration in the total amount of EUR 54,901.43 corresponding to eight monthly salaries in the amount of EUR 6,695.01 as partial salary for December 2019; EUR 14,400 for January and February 2020, EUR 32,000 for March 2020 to June 2020 and EUR 1,806.02 as partial salary for July 2020.*

16. *In addition, taking into consideration the request of the Claimant and the standard practice of the DRC, the DRC Judge decided to award the Claimant interest at the rate of 5% p.a. on the aforementioned amounts as from the relevant due dates (i.e. day after the last working day of the relevant month) until the date of effective payment.*

17. *In continuation, and taking into consideration art. 17 par. 1 of the Regulations, the DRC Judge decided that the player is entitled to receive compensation for breach of contract from the club.*

18. *In continuation, the DRC Judge focused its attention on the calculation of the amount of compensation for breach of contract payable by the club to the player in the case at stake. In doing so, the DRC Judge first recapitulated that, in accordance with art. 17 par. 1 of the Regulations, the amount of compensation shall be calculated, in particular and unless otherwise provided for in the contract at the basis of the dispute, with due consideration for the law of the country concerned, the specificity of sport and further objective criteria, including, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing*

contract up to a maximum of five years, and depending on whether the contractual breach falls within the protected period.

19. *In application of the relevant provision, the DRC Judge held that it first of all had to clarify as to whether the contract contained a 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. In this regard, the DRC Judge established that no such compensation clause was included in the contract at the basis of the matter at stake.*

20. *As a consequence, the DRC Judge determined that the amount of compensation payable by the club to the player had to be assessed in application of the other parameters set out in art. 17 par. 1 of the Regulations. The DRC Judge recalled that said provision provides for a non-exhaustive enumeration of criteria to be taken into consideration when calculating the amount of compensation payable.*

    Therefore, other objective criteria may be taken into account at the discretion of the deciding body. In this regard, the DRC Judge emphasized beforehand that each request for compensation for contractual breach has to be assessed on a case-by-case basis taking into account all specific circumstances of the respective matter.

21. *In order to estimate the amount of compensation due to the player in the present case, the DRC Judge first turned its attention to the remuneration and other benefits due to him under the existing contract and/or the new contract(s), which criterion was considered to be essential. The DRC Judge deemed it important to emphasise that the wording of art. 17 par. 1 of the Regulations allows it to take into account both the existing contract and the new contract, if any, in the calculation of the amount of compensation.*

22. *Bearing in mind the foregoing, the DRC Judge proceeded with the calculation of the monies payable to the player under the terms of the contract as from its date of termination with just cause by the player, i.e. 7 July 2020, until 30 June 2021, and concluded that the player would have received EUR 94,193.44 in total as remuneration had the contract been executed until its expiry date. Consequently, the DRC Judge concluded that the amount of EUR 94,193.44 serves as the basis for the final determination of the amount of compensation for breach of contract in the case at hand.*

23. *In continuation, the DRC Judge verified as to whether the player had signed an employment contract with another club during the relevant period of time, by means of which he would have been able to reduce his loss of income. According to the constant practice of the DRC, such remuneration under a new employment contract shall be taken into account in the calculation of the amount of compensation for termination of contract with just cause in connection with the player's general obligation to mitigate his damages.*

24. *In respect of the above, the DRC Judge noted, that the player informed having signed a new employment contract with the Bulgarian club, PFC Levski Sofia*

valid from 03 September 2020 until 30 June 2021 and determined that the player was able to mitigate his damages in the amount of EUR 10,000.

25. *In view of the above, the DRC Judge noted that the player would in principle be entitled to a mitigated compensation amounting to EUR 84'193'44 (i.e. the residual value of the contract mitigated by the total value of the new contract of EUR 10'000).*

26. *Additionally, and taking into account art. 17.1 lit ii of the Regulations and the fact that the player terminated the contract due to overdue payables, the DRC Judge noted that the Claimant is in principle entitled to be awarded an additional compensation equal to 3 monthly salaries of EUR 8'000 each.*

27. *In this context, the DRC Judge recalled the content of art. 17.1 lit ii of the Regulations which states that "(...) the overall compensation may never exceed the rest value of the prematurely terminated contract".*

28. *In this regard, the DRC Judge noted that the mitigated compensation of EUR 84,193.44 plus the additional compensation of 3 salaries, i.e. EUR 24,000 would amount to EUR 108,193.44 and that this amount would exceed the residual value of the contract.*

29. *In view of the above, the DRC Judge decided that the Claimant should be awarded a compensation for breach of contract in the total amount of EUR 94,193.44, as residual value of the contract –in accordance with art. 17.1 lit ii, last sentence of the Regulations including an additional compensation of EUR 10,000.*

30. *Additionally, the DRC Judge decided that taking into account the Claimant´s request and the well-established jurisprudence of the DRC, the Respondent should also pay 5% interest p.a. on the compensation amount as from the date on which the claim was lodged, i.e. 24 September 2020, until the date of effective payment.*

31. *Furthermore, taking into account the consideration under number II./3. above, the DRC Judge referred to par. 1 and 2 of art. 24bis of the Regulations, which stipulate that, with its decision, the pertinent FIFA deciding body shall also rule on the consequences deriving from the failure of the concerned party to pay the relevant amounts of outstanding remuneration and/or compensation in due time.*

32. *In this regard, the DRC Judge pointed out that, against clubs, the consequence of the failure to pay the relevant amounts in due time shall consist of a ban from registering any new players, either nationally or internationally, up until the due amounts are paid and for the maximum duration of three entire and consecutive registration periods.*

33. *Therefore, bearing in mind the above, the DRC Judge decided that, in the event that the club does not pay the amounts due to the player within 45 days as from the moment in which the player, following the notification of the present decision, communicates the relevant bank details to the club, a ban from registering any new players, either nationally or internationally, for the maximum duration of*

three entire and consecutive registration periods shall become effective on the club in accordance with art. 24bis par. 2 and 4 of the Regulations.

34. *Finally, the DRC Judge recalled that the above-mentioned ban will be lifted immediately and prior to its complete serving upon payment of the due amounts, in accordance with art. 24bis par. 3 of the Regulations.*

35. *The DRC Judge concluded his deliberations in the present matter by establishing that the claim of the Claimant is partially accepted.*

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

16. On 23 March 2021, in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration ("CAS Code"), the Appellant filed its Statement of Appeal with the CAS against the Respondents, with respect to the Appealed Decision. The Appellant initially nominated an arbitrator from the list of CAS but then asked the Division President o submit this matter to a Sole Arbitrator. Whereas the First Respondent agreed to such request, the Second Respondent remained silent on the issue of the number of arbitrators. Thereafter and considering all the circumstances of the case, the Deputy Division President decided to submit this matter to a Sole Arbitrator, pursuant to Article R50 of the Code.

17. On 19 April 2021, the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code.

18. On 19 April 2021, the CAS Court Office, on behalf of the Deputy Division President, informed the parties that the Panel appointed to decide the present dispute was constituted as follows:

Sole Arbitrator: Mr. Kepa Larumbe, Attorney-at-Law in Madrid, Spain.

19. On 18 May 2021, the First Respondent filed its Answer in accordance with Article R55 of the CAS Code.

20. On 7 June 2021, the Second Respondent, filed its Answer in accordance with Article R55 of the CAS Code.

21. On 22 June 2021, the CAS Court Office informed the parties that the Sole Arbitrator, after having consulted them, had decided to hold a hearing by videoconference, pursuant to Articles R57 and R44.2 of the Code.

22. On 11 August 2021, the CAS Court Office transmitted to the parties the Order of Procedure, which was duly signed by the parties.

23. On 28 October 2021, the hearing of the present case was held by videoconference. In addition to the Sole Arbitrator and Mr. Antonio de Quesada, CAS Head of Arbitration, the following persons attended the hearing: the following persons attended the hearing:

For the Appellant: Mr Davor Radić (Legal Counsel).

Mr Branko Laljak (Witness).

For the First Respondent: Mr Radostin Vasilev (Legal Counsel).
Mr Georgi Gradev (Legal Counsel)
Mr Borislav Aleksandrov Tsonev (Player)

For the Second Respondent: Mr Miguel Liétard (Director of Litigation).
Mr Carlos Schneider (Director of Judicial Bodies).

24. At the outset of the hearing, counsel for the Appellant asked the Sole Arbitrator to disclose whether or not in the period from the Statement of Appeal until the day of the Hearing, the Second Respondent had nominated him in any other case before CAS or whether or not the Sole Arbitrator had participated in any case in which FIFA was a party in the same period.

25. During the hearing, the Sole Arbitrator answered the Appellant´s query and counsel for the Appellant thanked the Sole Arbitrator for the explanation and expressly said:

"*We fully think you are independent and impartial to make the award in this case*".

26. During the hearing, the parties had the opportunity to present their case, to submit their arguments, answer the questions posed by the Sole Arbitrator and submit their final pleadings. At the end of the hearing the parties expressly declared that they did not have any objections with respect to the procedure and that their right to be heard had been fully respected.

27. On 1 November 2021, counsel for the Appellant sent a letter to the CAS Court Office requesting the Sole Arbitrator to disclose the same information requested at the hearing.

28. On 2 November 2021, the CAS Court Office informed the Appellant that the query was already answered by the Sole Arbitrator during the hearing and quoted the information disclosed by the Sole Arbitrator and the Appellant's conformity with such disclosure.

29. On 2 November 2021, counsel for the Appellant confirmed the CAS that he was satisfied with the disclosure made by the Sole Arbitrator.

V. SUBMISSIONS OF THE PARTIES

30. The following outline of the parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the parties. The Sole Arbitrator, however, has carefully considered all the submissions made by the parties, even if no explicit reference has been made in what immediately follows. The parties' written submissions, their verbal submissions at the hearing and the contents of the Appealed Decision were all taken into consideration.

31. The parties' requests for relief are as follows:

a) Appellant's Appeal Brief:

1) *«The Appeal filed by NK Inter Zaprešić against Mr Borislav Aleksandrov Tsonev and Fédération Internationale de Football Association regarding the decision pronounced by the FIFA DRC Judge on 9 December 2020 is upheld.*

2) *The FIFA DRC Judge was not competent and had no jurisdiction to decide on the contractual dispute raised in front of him by Mr Borislav Aleksandrov Tsonev.*

3) *The decision rendered by the FIFA DRC Judge on 9 December 2020 is set aside.*

4) *To charge all costs of this proceeding to both Respondents and to grant a contribution to the legal fees of Appellant of CHF 5,000».*

b) First Respondent´s Answer:

1) *«Rejects the present appeal against the decision of the FIFA DRC Judge dated 9 December 2020 and to confirm the relevant decision in its entirety.*

2) *That the CAS orders the Appellant to cover all legal expenses in the amount of CHF 5000 of Borislav Tsonev related to the proceeding at hand».*

c) Second Respondent´s Answer:

1) *«Rejects the present appeal against the decision of the FIFA DRC Judge dated 9 December 2020 and to confirm the relevant decision in its entirety.*

2) *That the CAS orders the Appellant to cover all legal expenses in the amount of CHF 5000 of Borislav Tsonev related to the proceeding at hand».*

32. The parties' submissions may be summarised as follows:

a) The Appellant

- The FIFA DRC lacked jurisdiction for resolving the dispute between the Appellant and the First Respondent. FIFA misinterpreted the will of the parties that negotiated the arbitration clause in the Contract under the principle of bona fide. The Appealed Decision violates the jurisprudence of CAS and the Swiss Federal Tribunal in terms of interpreting the exclusivity of arbitration clauses in contracts between parties involved in football.

- According to both Swiss and Croatian Law the choice of forum is deemed exclusive, unless provided otherwise.

- The forum chosen by the Player and the Club was the Court of Arbitration of the CFF and during the negotiations of the Contract, neither party mentioned or expressed the desire for their possible disputes to be resolved before FIFA or directly before CAS.

- The Court of Arbitration of the CFF fulfils all the requirements to be considered a National Dispute Resolution Chamber ("NDRC") established by FIFA:

- Pursuant the CFF Statutes, The Court of Arbitration is an independent and permanent court.

- The members of the Court of Arbitration are appointed by the Executive Committee of the CFF (Article 5 of the Rules of Procedure of the Court of Arbitration of the CFF), as follows:

  "*2) The President and the vice president of the Court of Arbitration shall be appointed by the Executive Committee of the CFF among arbitrators that have been proposed by the clubs and players' representatives.*

  3) The arbitrators shall be appointed by the Executive Committee of the CFF.

  a) three to five arbitrators at the proposal of the FIFPro recognized players' association or, if no such association exists, at the proposal of senior teams' captains of the First CFL,

  b) three to five arbitrators at the proposal of the clubs of the First CFL,

  c) common list of five arbitrators at the proposal of the player's representatives under a) of this Article and the clubs of the First CFL

  4) Members of the Court of Arbitration shall have master of laws degree."

- Article 34 (1) of the FIFA NDRC Standard Regulations regulate the appeal against the decisions of the NDRCs as a possibility and not as a mandatory provision.

- The decisions of the Court of Arbitration of the CFF are appealable before CAS although the Rules of Procedure of the Court of Arbitration of the CFF do not specifically state that an appeal against the decisions of the Court of Arbitration of the CFF is permissible, CAS jurisdiction is recognized in the CFF Statutes and it refers to the cases CAS 2019/A/6666 and CAS 2017/A/5372 in which CAS reviewed decisions rendered by the Court of Arbitration of the CFF.

- According to the conclusions of the meeting held on 8 April 2018 in Zagreb attended by representatives of ECA, European leagues, FIFPro division Europe and UEFA, the Court of Arbitration of the CFF fully complies with all the requirements set out in FIFA Circular No. 1010.

- Finally, the Appellant invoked the FIFA DRC decision of 18 February 2021 (case Ref. No. 20-01209) in which the FIFA DRC denied its competence in favor of the Court of Arbitration of the Croatian Football Federation

b) <u>The First Respondent</u>

- The Appellant voluntarily remained silent during the proceedings before the FIFA DRC and waited for a decision, accepting the arguments and evidence submitted by the First Respondent, waiving its right to submit its position. FIFA verified its jurisdiction ex officio. If the Appellant considers that CFF NDRC is competent to adjudicate on the matter at hand, then the Appellant could initiate such procedure before the CFF NDRC,

but he did not. Which speaks eloquently enough that his intentions are only to slow down the procedure.

- According to the jurisprudence of the Swiss Federal Tribunal (SFT), the legal position is different when the Respondent fails to appear. In this case, the Arbitral Tribunal must verify its jurisdiction ex officio (ATF 120 II 155 at 3b/bb p. 162) in the light of the information available, yet without having to go beyond or to conduct its own investigations.

- The competence of the FIFA DRC arises from the request of the International Transfer Certificate (ITC) of the Player by the Bulgarian Football Federation and the denial to deliver the ITC of the CFF, pursuant Article 22.a) of the FIFA RSTP and Article 8.2.7 of the Annexe 3 of the FIFA RSTP:

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

  a) disputes between clubs and players in relation to the maintenance of contractual stability (articles 13-18) where there has been an ITC request and a claim from an interested party in relation to said ITC request, in particular regarding the issue of the ITC, sporting sanctions or compensation for breach of contract."

- The Court of Arbitration of the CFF does not fulfil the requirements to be considered a National Dispute Resolution Chamber ("NDRC"), for the following reasons:

  - The President and Vice-president are not independent and are not elected by consensus among the interest groups, as the FIFA Circular letter No. 1010 and the FIFA NDRC Standard Regulations dictate.

  - The Managing Board of the Court of Arbitration of the CFF is composed of a President, a Vice-president and arbitrators appointed by the Executive Committee of the CFF "among arbitrators that have been proposed by the club and player representatives".

  - The proceedings before the Court of Arbitration of the CFF are not free of charge what is against Article 32 of FIFA NDRC Regulations.

  - The system for electing the President of the arbitration panel prevents him or her from being independent and there is no parity between players and clubs.

  - The decisions of the Court of Arbitration of the CFF are not appealable. According to Article 48 of its own procedural regulations, "*the award of the Court of Arbitration is final and may not be appealed against*". The proceeding before FIFA is fairer because if the case was submitted to the Court of Arbitration of the CFF, the Appellant would not have the possibility to appeal the CFF decision before CAS.

- Although the Appellant challenges the jurisdiction of FIFA, he did not initiate a procedure before the Court of Arbitration of the CFF.

- The negotiating position of the Player in relation to the Contract is weaker that the Club´s position. To have concluded a contract with the Appellant, the First Respondent had to comply with the mandatory contractual standards and requirements adopted by the CFF, i.e. the mandatory Standard Contract form.

- Article 14 of the Contract provides that in case that one of the parties fails to fulfil its contractual obligations, the suffering party has the possibility to terminate the Contract pursuant to FIFA Regulations, thus it is more than obvious that the parties will was to have the possibility to bring the matter before FIFA if a dispute arises. Article 14 reads as follows:

  "14. The Player and the Club has the right to terminate the Contract in case that the other Party fails to fulfils its contractual obligations, for which purpose there is a procedure in the CFF's Regulations on the Status and transfer of players and other relevant regulations of FIFA and CFF."

- Article 16 g) of the Contract is not an exclusive arbitration clause in favour of the Court of Arbitration of the CFF. The clause explicitly excludes the ordinary courts, but not FIFA.

c) <u>The Second Respondent</u>

- The jurisdiction of the FIFA DRC is based on Article 22. b) of the FIFA RSTP since the case at hand is an employment-related dispute of an international dimension between a Croatian club and a Bulgarian player.

- The Appellant voluntarily and acting in bad faith remained silent during the procedure before the FIFA DRC. As a consequence, the arbitration clause inserted in the Contract was not triggered.

- The lack of jurisdiction of the seized tribunal has to be raised by a party, as the FIFA DRC will limit its ex officio examination to the question as to whether it is competent to hear the claim on the basis of Article 22 RSTP. If it is competent and the parties do not raise any issue related to a contractual arbitration clause, the FIFA DRC will conclude that the parties have accepted to seize it regardless of what they might have stipulated contractually at a previous stage. It follows that the Club tacitly waived the arbitration clause and accepted the jurisdiction of the FIFA DRC.

- FIFA based its line of reasoning in (i) Article 186(2) of the Private International Law of Arbitration (PILA), (ii) the jurisprudence of the SFT(ATF 120 II 155, p. 165), and (iii) CAS jurisprudence (CAS 2012/A/2899 and CAS 2012/A/2899).

- The decision of the FIFA DRC with Ref 20-0120918 is only one single stance given by the FIFA DRC on this contractual clause providing for the competence of the Court of Arbitration of the CFF. As a matter of fact, another case is still pending before CAS, i.e. CAS 2021/A/7794, in which the competence of FIFA had been confirmed and the exclusive competence of the Court of Arbitration of the CFF denied.

- The arbitration clause contained in the Contract is too generic to be considered valid. . In this respect, it has been pointed out that wordings like "in case of dispute" are not permissible for an arbitration clause. CAS panels have already determined that:

  "*[…] for an arbitration clause or arbitration agreement to be valid, it has to make clear the parties' consent to arbitration, to define the scope and limit of that consent. Further, the clause has to cover precisely the subject matter the parties' intend to submit to arbitration and to provide for the designated dispute resolution method, as well as for exclusivity*".

- The Court of Arbitration of the CFF is not independent for the following reasons:

  - The lack of consensus between players and clubs to elect the chairman and vice chairman of the Court of Arbitration of the CFF.

  - The structural inequality between clubs and players in the composition of the Executive Committee of the CFF.

  - The lack of any clear challenge mechanism of arbitrators, let alone a replacement system of the latter.

  - The legal uncertainty created by a highly confusing appeal mechanism to decisions of the national arbitration tribunal contemplated in Article 16(g) of the Contract contrary to the Croatian regulations acts against the notion of the existence of fair proceedings.

- The following aspects should be considered when assessing whether an NDRC respects the criteria contained in FIFA Circular no. 1010:

  - parties must have equal influence over the appointment of arbitrators.

  - Every interest group must be able to exercise equal influence over the compilation of the arbitrator list.

  - Arbitrators may be rejected in case of legitimate doubt.

  - The rejection and replacement procedure must be regulated.

- The Court of Arbitration of the CFF contravenes the content of FIFA Circular no. 1010 insofar as 1) parties do not enjoy equal influence in the appointment of arbitrators, 2) the interest groups are not equally represented while electing the arbitrators, and 3) the process for the rejection and replacement of arbitrators is completely unknown.

- With regard to the merits of the dispute, since the liabilities for contractual termination and the compensation for breach of contract falls within the so-called 'horizontal' dispute between the Appellant and the Player, FIFA refrains – without constituting an acceptance of the other parties' arguments – from making submissions on this particular issue, especially with respect to the Player´s entitlement to compensation or to the calculation of the compensation due.

VI. JURISDICTION

33. Article R47 of the Code provides as follows:

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

34. In addition, Article 56.1 of the FIFA Statutes states:

"FIFA recognizes the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, Members, Confederations, Leagues, Clubs, Players, Officials and licensed match agents and Players' agents."

35. Article 57.1 of the FIFA Statutes provides that:

"1. 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".

36. The jurisdiction of CAS, which is not disputed by the parties, is based on the abovementioned provisions. In addition, the parties confirmed the jurisdiction of CAS by signing the Order of Procedure.

37. The Sole Arbitrator considers that the CAS has jurisdiction over this dispute.

38. According to Article R57 of the Code, the Sole Arbitrator has full power to review the facts and the law of the case and can decide the dispute de novo. The Sole Arbitrator may issue a new decision which replaces the decision challenged, may annul the decision, or refer the case back to the previous instance

VII. ADMISSIBILITY

39. 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".

40. It is undisputed that the appeal was filed within the 21 days set by Article 58(1) of the FIFA Statutes. The appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fee.

41. It follows that the appeal is admissible.

VIII. APPLICABLE LAW

42. Article R58 of the Code provides as follows:

"The Panel shall decide the dispute according to the applicable regulations and 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 application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

43. Article 56.2 of the FIFA Statutes provides that:

"*2. 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".*

44. CAS Panels have interpreted Article R58 of the Code as follows (CAS 2017/A/5465, 2017/A/5374, CAS 2018/A/5624, etc.):

"*Pursuant to Article R58 of the Code, in an appeal arbitration procedure before the CAS, the "Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision". It follows from this provision that the "applicable regulations", i.e. the statutes and regulations of the sports organisation that issued the decision (here FIFA) are applicable to the dispute irrespective of what law the parties have agreed upon. In the Sole Arbitrator's view, the Parties cannot derogate from this provision if CAS retains jurisdiction which is the case here. To conclude, therefore, the Sole Arbitrator finds that Article R58 of the Code takes precedent over the direct choice-of-law clause contained in the Parties' agreements and that, thus, the FIFA rules and regulations apply primarily*." (para. 57, CAS 2017/A/5374; para. 57, CAS 2018/A/5624).

45. In the case at hand, the Appellant has not challenged the merits of the Appealed Decision but has directed the entire dispute on the jurisdiction of the FIFA DRC. The jurisdiction of the FIFA DRC can only be analyzed in view of the FIFA regulations.

46. The Sole Arbitrator therefore finds that the relevant FIFA rules and regulations, and more specifically the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP"), the FIFA National Dispute Resolution Chamber Standard Regulations (the FIFA NDRC Standard Regulations) as in force at the relevant time of the dispute, as well as the FIFA Circular Letter 1010 of 20 December 2005, shall be applied primarily, and Swiss law shall be applied subsidiarily.

IX. MERITS

47. Prior to entering into the main issue to be solved in this case, which is whether or not the FIFA DRC or the Court of Arbitration of the CFF is competent to deal with the claim of the Player against the Club, the Sole Arbitrator will address the allegation of the Respondents regarding the fact that the Appellant voluntarily remained silent during the proceedings before the FIFA DRC and waited for a decision. As a consequence, the Appellant would, in view of the Respondents, waived the arbitration clause of the Contract and accepted the jurisdiction of the FIFA DRC.

48. Article R57 of the CAS Code establishes that the "*Panel has full power to review the facts and the law*". This provision has a dual meaning: first, CAS admits new prayers for relief and new evidence and hears new legal arguments, with some limitations. Second, the full power of review means that procedural flaws, which occurred during the proceedings of the previous instance, can be cured by the CAS Panel (Mavromati and Reeb in "The Code of the Court of Arbitration for Sport. Commentary, Cases and Materials").

49. It follows that the Appellant is entitled to raise the argument of the lack of jurisdiction of the FIFA DRC, that will be addressed in the following paragraphs.

50. The jurisdiction of the FIFA DRC is defined and limited in Articles 22 and 24 of the FIFA RSTP.

- Article 24.1 of the FIFA RSTP:

  "*The Dispute Resolution Chamber (DRC) shall adjudicate on any of the cases described under article 22 a), b), d) and e) with the exception of disputes concerning the issue of an ITC*".

- Lit. a), b), d) and e) of of Article 22 of the FIFA RSTP:

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

  a) disputes between clubs and players in relation to the maintenance of contractual stability (articles 13-18) where there has been an ITC request and a claim from an interested party in relation to said ITC request, in particular regarding the issue of the ITC, sporting sanctions or compensation for breach of contract;

  b) employment-related disputes between a club and a player of an international dimension; the aforementioned parties may, however, explicitly opt in writing for such disputes to be decided by an independent arbitration tribunal that has been established at national level within the framework of the association and/or a collective bargaining agreement. Any such arbitration clause must be included either directly in the contract or in a collective bargaining agreement applicable on the parties. The independent national arbitration tribunal must guarantee fair proceedings and respect the principle of equal representation of players and clubs;"

c) (…)

d) disputes relating to training compensation (article 20) and the solidarity mechanism (article 21) between clubs belonging to different associations;

e) disputes relating to training compensation (article 20) and the solidarity mechanism (article 21) between clubs belonging to the same association provided that the transfer of a player at the basis of the dispute occurs between clubs belonging to different associations;"

51. The first parameter given by Article 22 of the FIFA RSTP is the possibility of the parties to submit the dispute to a civil court for employment related disputes. The Sole Arbitrator notes that the Contract expressly excluded the competence of State Courts in Article 16 g). It follows that the competence must be decided in light of Article 22 of the FIFA RSTP.

52. The competence described in lit. d) and e) of Article 22 of the FIFA RSTP must be disregarded since the dispute at hand is not related to training compensation or solidarity mechanism.

53. The Appellant and the Second Respondent invoke the application of Article 22.b) of the FIFA RSTP. On the contrary, the First Respondent relies in Article 22.a) of the same regulations. Thus, the first question the Sole Arbitrator has to issue is which section of Article 22 ("a" o "b") is applicable to the case at hand. The main difference between sections "a" and "b" is that the first one ("a") provides for the exclusive competence of the FIFA DRC (an issue related to an ITC, as a vertical dispute, can only be solved by FIFA bodies) and the second one ("b") includes the possibility for an NDRC to solve horizontal disputes.

54. The Sole Arbitrator notes that the competence of Article 22.a) is limited to those cases in which the dispute is related to the request of an ITC and there has been a claim from an interested party in relation to said ITC.

55. In the case at hand there is not such dispute in relation to the ITC. The ITC of the Player was subject to another proceeding before FIFA as it is acknowledged by the First Respondent in paragraph 10 of its Answer to the Appeal:

"On the same date, 3 September 2020, the First Respondent's new club, PFC Levski Sofia, through the Bulgarian Football Union (BFU) requested the First Respondent's International Transfer Certificate (ITC) in the FIFA Transfer Matching System (TMS). However, the Croatian Football Federation (the former association) did not deliver the ITC within the established time frame of seven days (Annexe 3, Art. 8.2.4. of RSTP), and therefore on 11 September 2020, with the FIFA collaboration, the First Respondent was provisionally registered with his new club, PFC Levski Sofia"

56. The dispute brought by the Player to the FIFA DRC concerns to the (allegedly) unjustified breach of the Contract by the Club for outstanding salaries towards the Player and the consequences thereof, such as a claim of the said remuneration, a compensation

in favour of the Player and the imposition of sporting sanctions to the Club. In any case this dispute can be related to the Player´s ITC.

57. Therefore, the Sole Arbitrator is satisfied that the competence of the FIFA DRC must be examined in accordance with Article 22.b) of the FIFA RSTP as this is an employment related dispute of international dimension and not related to an ITC.

58. Article 22.b) sets out a dispute resolution system according to which, as a general rule, the FIFA DRC is competent in any case of an employment related dispute of an international dimension. As an exception, if the parties have clearly elected a national forum and the latter is an independent arbitration tribunal guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs, only then the national body may become competent. The burden of proof with respect to the existence of such a body lies with the party contesting the competence of FIFA (CAS 2014/A/3483).

59. In CAS 2018/A/5659, the Panel highlighted the following:

"*48. A specific employment-related dispute of an international dimension can thus only be settled by an authority other than the FIFA DRC if the following requirements are met: (i) there is an independent arbitral tribunal established at the national level; (ii) the jurisdiction of this independent arbitral tribunal derives from a clear reference in the employment contract; and (iii) this independent arbitral tribunal guarantees fair proceedings and respects the principle of equal representation of players and clubs (see also Arbitration CAS 2014/A/3684 & CAS 2014/A/3693).*

49. Pursuant to the Circular no. 1010 the terms "independent" and "duly constituted" require that an arbitral tribunal meets the minimum procedural standards which comprise the principle of parity in the constitution of the arbitral tribunal, the right to an independent and impartial tribunal, the principle of a fair hearing, the right to contentious proceedings and the principle of equal treatment. The NDRC Standard Regulations which came into effect on 1 January 2008 refer to these fundamental procedural rights in detail dealing with the requirements for the composition of the NDRC, the form and conduct of the proceedings, the production and examination of evidence, the deliberations by the member of the NDRC and the form and content of its decisions".

60. Firstly, the Sole Arbitrator will examine if the Court of Arbitration of the CFF is an independent arbitral tribunal established at the national level and if it guarantees fair proceedings and respects the principle of equal representation of players and clubs as required in the FIFA regulations.

61. In affirmative case, the Sole Arbitrator will examine if the jurisdiction of this independent arbitral tribunal derives from a clear reference in the Contract.

A. Is the Court of Arbitration of the CFF an independent arbitral tribunal that guarantees fair proceedings and respects the principle of equal representation of players and clubs as required in the FIFA regulations?

62. Article 22 lit. b) in conjunction with article 24 (1) of the FIFA RSTP the FIFA DRC is, as a rule, competent to deal with all employment-related disputes between a club and a player that have an international dimension. Art. 22 lit. b) of the Regulations reads 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:*
>
> *a) (...)*
>
> *b) employment-related disputes between a club and a player of an international dimension; the aforementioned parties may, however, explicitly opt in writing for such disputes to be decided by an independent arbitration tribunal that has been established at national level within the framework of the association and/or a collective bargaining agreement. Any such arbitration clause must be included either directly in the contract or in a collective bargaining agreement applicable on the parties. The independent national arbitration tribunal must guarantee fair proceedings and respect the principle of equal representation of players and clubs;*
>
> *c) (...)*
>
> *d) (...)*
>
> *e) (...)*"

63. The FIFA Letter no. 1010 of 20 December 2005 stated, at a request if its members, the minimum procedural standard of the following conditions and principles:

> *"- **Principle of parity when constituting the arbitration tribunal:***
>
> *The parties must have equal influence over the appointment of arbitrators. This means for example that every party shall have the right to appoint an arbitrator and the two appointed arbitrators appoint the chairman of the arbitration tribunal. The parties concerned may also agree to appoint jointly one single arbitrator. Where arbitrators are to be selected from a predetermined list, every interest group that is represented must be able to exercise equal influence over the compilation of the arbitrator list.*
>
> ***- Right to an independent and impartial tribunal:***
>
> *To observe this right, arbitrators (or the arbitration tribunal) must be rejected if there is any legitimate doubt about their independence. The option to reject an*

arbitrator also requires that the ensuing rejection and replacement procedure be regulated by agreement, rules of arbitration or state rules of procedure.

- Principle of a fair hearing:

Each party must be granted the right to speak on all facts essential to the ruling, represent its legal points of view, file relevant motions to take evidence and participate in the proceedings. Every party has the right to be represented by a lawyer or other expert.

- Right to contentious proceedings:

Each party must be entitled to examine and comment on the allegations filed by the other party and attempt to rebut and disprove them with its own allegations and evidence.

- Principle of equal treatment:

The arbitration tribunal must ensure that the parties are treated equally. Equal treatment requires that identical issues are always dealt with in the same way vis-à-vis the parties."

64. Furthermore, by means of FIFA Circular Letter no. 119 of 28 December 2007, FIFA's National Dispute Resolution Chamber (the "NDRC") Standard Regulations were implemented as guidelines for the Member Associations for establishing a national dispute resolution system along the lines of the principles of FIFA DRC.

65. As it was stated by the Panel in CAS 2018/A/5659 and it was anticipated above, the burden of proof lies with the party claiming for the independence and impartiality of the NDRC:

"*the Appellant bears the burden of proving to this Panel that the UAE FA DRC (i) can be considered a qualified independent and duly constituted dispute resolution authority meeting the minimum procedural standards as referred to in FIFA's Circular Letter no. 1010 and the NDRC Standard Regulations, and (ii) respects the principle of parity in the constitution of the arbitral tribunal, the principle of a fair hearing, the right to contentious proceedings and the principle of equal treatment. CAS jurisprudence is consistent in establishing the principle that "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 facts on which it relies with respect to that issue. (…) 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" (CAS 2003/A/506, para 54; CAS 2009/A/1810&1811, para 46; CAS 2009/A/1975, paras 71 et seqq. and CAS 2014/A/3656).*

66. The Sole Arbitrator has conducted the following analysis in order to decide if the Court of Arbitration of the CFF is an independent arbitral tribunal that guarantees fair

proceedings and respects the principle of equal representation of players and clubs as required in the FIFA regulations.

a) Composition of the Court of Arbitration of the CFF.

67. The FIFA NDRC Standard Regulations in article 3 provide for the following:

"1. *The NDRC shall be composed of the following members, who shall serve a four-year renewable mandate:*

a) a chairman and a deputy chairman chosen by consensus by the players and the club representatives from a list of at least five persons drawn up by the association's executive committee;

b) between three and ten player representatives who are elected or appointed either on the proposal of the players' associations affiliated to FIFPro, or, where no such associations exist, on the basis of a selection process agreed by FIFA and FIFPro;

c) between three and ten club representatives who are elected or appointed on the proposal of the clubs or leagues.

2. The chairman *and deputy chairman of the NDRC shall be qualified lawyers.*

3. The NDRC may not have more than one member from the same club.

4. The NDRC shall sit with a minimum of three members, including the chairman or the deputy chairman. In all cases the panel shall be composed of an equal number of club and player representatives".

68. Article 5 of the Regulations of the Court of Arbitration of the CFF reads as follows:

1) The Court of Arbitration shall consist of a president, vice president and arbitrators, who have a four-year term which may be renewed.

2) The President and the vice president of the Court of Arbitration shall be appointed by the Executive Committee of the CFF among arbitrators that have been proposed by the clubs and players' representatives.

3) The arbitrators shall be appointed by the Executive Committee of the CFF.

a) three to five arbitrators at the proposal of the FIFPro recognized players' association or, if no such association exists, at the proposal of senior teams' captains of the First CFL,

b) three to five arbitrators at the proposal of the clubs of the First CFL,

c) common list of five arbitrators at the proposal of the player's representatives under a) of this Article and the clubs of the First CFL.

4) Members of the Court of Arbitration shall have master of laws degree."

69. The Sole Arbitrator notes that the composition of the Court of Arbitration of the CFF does not respect the principle of parity as expressed in the FIFA Circular Letter 1010 that was codified in the FIFA NDRC Standard Regulations, for the following reasons.

70. The President and the Vice-President are appointed by the Executive Committee of the CFF and not by consensus by the players and the club representatives from a list of at least five persons drawn up by the association's executive committee.

71. The Executive Committee is made up of 17 members from a direct member of the CFF (Article 42 of the CFF Statutes), being the direct members (Article 17 of the CFF Statutes):

"*1) Members of the Federation are: 20 football associations in countries, the Zagreb Football Association, football associations of cities and football clubs.*

2) Members of the Federation may be football-related professional workers´ associations and the same sport-related athletes´ associations.

3) Football clubs and football associations of cities are indirect members of the Federation through membership in county football associations and the Zagreb Football Association.

4) County football associations and the Zagreb Football Association are direct members of the Federation.

5) Unless otherwise defined herein, the provisions on membership shall refer to the direct members only".

72. As a result of the membership provisions of the CFF Statutes, the composition of the Executive Committee of the CFF has the following structure (Exhibit 1 of the Second Respondent´s Answer):

- President
- Seven (7) club officials.
- Eight (8) Regional Association representatives
- One (1) Chairman of the CFF Refereeing Committee

73. The Sole Arbitrator notes that the President and Vice-President of the Court of Arbitration are appointed by the Executive Committee, i.e., by representatives of Clubs, Regional Associations, Referees and the CFF President. Consequently, there is no influence of the Players' representatives as they are not members of the Executive Committee.

74. In view of the Sole Arbitrator, the competence of the Executive Committee to appoint the Presidente and the Vice-Presidente would only be acceptable under FIFA

regulations, in the event that such body be composed equally by clubs' and players' representatives, which is not the case.

75. Additionally, the appointment system established by the CFF prevents from a consensus between the Club´s and Player´s representatives as required in Article 3 of the FIFA NDRC Standard Statutes.

76. In conclusion, it is not established that the President and Vice-President of the Court of Arbitration of the CFF is appointed by consensus between the players and the Clubs in accordance with FIFA Circular Letter no. 1010 and the FIFA NDRC Standard Regulations.

b) Appeal procedure against the decisions of the Court of Arbitration of the CFF.

77. The FIFA NDRC Standard Regulations in article 34 provide for the following:

"1. As a last resort, the NDRC's decisions may be the subject of an appeal before the national arbitration body recognised by the association in accordance with FIFA directives, or, where such a body does not exist and during a transitional period, before any arbitration body recognised by FIFA, subject to agreement with FIFPro.

2. The 21-day time limit for appeals shall begin on the day the decision is received in full".

78. Article 48.1 of the Regulations of the Court of Arbitration of the CFF reads as follows:

"1) The award of the Court of Arbitration is final and may not be appealed against".

79. The Appellant submits that the decisions of the Court of Arbitration of the CFF are appealable before CAS in application of the CFF Statutes that recognise the jurisdiction of CAS. Specifically:

Article 11.2.lit. d):

"d) recognize the jurisdiction of the Court of Arbitration for Sport (CAS) in Lausanne (Switzerland), as specified in the relevant provisions of the FIFA and UEFA Statutes";

Article 63:

1) *" The Federation, its bodies and officials, members of the Federation, leagues, players, coaches, football referees, officials, and other members of football recognize the jurisdiction of the Court of Arbitration for Sports (hereinafter referred to as: CAS) in Lausanne, Switzerland, in accordance with the provisions of the Statutes of FIFA and UEFA, the Federation's Arbitration and the Court of Arbitration, confirming this by joining a football organisation.*

2) *In case of any dispute under the jurisdiction of judicial bodies of FIFA, UEFA, CAS and the Court of Arbitration of the Federation or legal bodies of the Federation, the parties from paragraph 1 of this Article undertake not to take any dispute to ordinary courts.*

3) The Federation and its members agree to fully respect all final decisions of competent bodies of FIFA and UEFA and CAS. The Federation shall ensure that all these obligations are fully met".

80. The articles invoked by the Appellant are general provisions recognising the jurisdiction, in general terms, of CAS, as required in article 13 of the FIFA Statutes to its members, but do not qualify as a specific right to appeal the decisions of the Court of Arbitration of the CFF.

81. Article 86 of the CFF Statutes ("Right to appeal") state that "*Appeals can be lodged against all decisions rendered in connection with the activities and operations referring to football, unless it is expressly specified, in individual cases, that no appeal is permitted*".

82. The specific rule in connection with decisions of the Court of Arbitration of the CFF is contained in Article 48.1 of the Procedural Regulations, which clearly prevent the parties from appealing such decisions.

83. Finally, the Appellant refers to (i) the conclusions met on 8 April 2018 by representatives of ECA, European leagues, FIFPro division Europe and UEFA according to which the Court of Arbitration of the CFF fully complies with all the requirements set out in FIFA Circular No. 1010 and; (ii) to the FIFA DRC decision of 18 February 2021 (case Ref. No. 20-01209) in which the FIFA DRC denied its competence in favour of the Court of Arbitration of the Croatian Football Federation.

84. The conclusions reached by representatives of ECA, European leagues, FIFPro division Europe and UEFA deserve the full respect of the Sole Arbitrator. However, FIFA did not participate in the meeting that led to these conclusions and it is FIFA the competent to conclude whether or not a NDRC fulfils its own requirements. Furthermore, these conclusions have no decisional nature and are not binding for the Sole Arbitrator, who in any case does not agree with the conclusions for the reasons stated above.

85. Finally, with regard to the FIFA DRC decision of 18 February 2021 (case Ref. No. 20-01209), the Sole Arbitrator agrees with the Second Respondent. This is only one single stance given by the FIFA DRC on this contractual clause providing for the competence of the Court of Arbitration of the CFF. There is another case pending before CAS, i.e. CAS 2021/A/7794, in which the competence of FIFA had been confirmed by the FIFA DRC and the exclusive competence of the Court of Arbitration of the CFF denied. Consequently, the jurisprudence of the FIFA DRC in this matter is not unanimous and furthermore, in any case a decision of the FIFA DRC is not binding for CAS Panels. As stated above and, on the basis of the reasons herein, the Sole Arbitrator cannot agree with the FIFA DRC decision of 18 February 2021.

c) Conclusion

86. The Appellant has failed to show that the Court of Arbitration of the CFF meets FIFA's principles and standards codified in the FIFA Circular Letter 1010 and the FIFA NDRC Standard Regulations.

87. Accordingly, the Sole Arbitrator finds that the Court of Arbitration of the CFF cannot be qualified as a national adjudication body that respects the principle of equal representation of players and clubs and the right to appeal the decisions.

88. Based on these considerations, the Sole Arbitrator concludes that the Court of Arbitration of the CFF does not qualify as an independent and impartial national Tribunal, in accordance with FIFA Regulations. Therefore, the FIFA DRC was competent to adjudicate and decide on the proceedings leading to the Appealed Decision.

89. In view of this conclusion, it is not necessary to address the issue of the validity of the Arbitration Agreement contained in the Contract, since even in the event of being valid, the FIFA DRC, in any event, would have been competent to issue the Appealed Decision, as the Court of Arbitration of the CFF does not qualify as an independent and impartial national Tribunal, in accordance with FIFA Regulations.

90. Finally, the Appellant did not challenge the merits of the Appealed Decision and limited only to contest the jurisdiction of the FIFA DRC. It follows that the appeal is dismissed in its entirety and that the Decision rendered by the FIFA DRC on 9 December 2020, is confirmed.

X. COSTS

91. Article R64.4 of the CAS Code provides the following:

"At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of the 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."

92. Article 64.5 of the CAS Code states:

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.

93. As a general rule, the award must grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings. In the present case, in consideration of the outcome of the proceedings, the Sole Arbitrator rules that the costs of arbitration, as calculated by the CAS Court Office, shall be borne by the

Appellant. Moreover, taking into consideration all the relevant circumstances, the Sole Arbitrator holds that the Appellant shall pay to the First Respondent the amount of CHF 5,000 (five thousand Swiss Francs) as contribution for its legal costs and other expenses incurred in relation to these proceedings. Considering that the Second Respondent was not represented by outside counsels, the latter shall bear its legal costs and other expenses incurred in connections with this procedure.

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

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by NK Inter Zaprešić against the decision rendered by the FIFA Dispute Resolution Chamber on 9 December 2020 is dismissed.

2. The decision rendered by the FIFA Dispute Resolution Chamber on 9 December 2020 is confirmed.

3. The costs of the arbitration, to be determined and served to the parties by the CAS Court Office, shall be borne by NK Inter Zaprešić.

4. NK Inter Zaprešić is ordered to pay Borislav Aleksandrov Tsonev a total amount of CHF 5,000 as contribution towards the legal fees and other expenses incurred in connection with these arbitration proceedings.

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

Seat of arbitration: Lausanne, Switzerland
Date: 11 April 2022

THE COURT OF ARBITRATION FOR SPORT

Kepa Larumbe
Sole Arbitrator