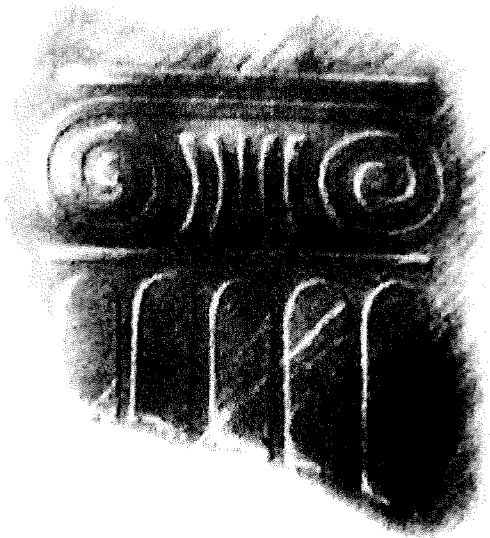
TAS / CAS

Tribunal Arbitral du Sport
Court of Arbitration for Sport
Tribunal Arbitral del Deporte



ARBITRAL AWARD

GNK Dinamo Zagreb, Croatia

v.

Rene Poms, Croatia

&

FIFA, Switzerland

CAS 2021/A/7794- Lausanne, January 2023

CAS 2021/A/7794 GNK Dinamo Zagreb v. Rene Poms & FIFA

ARBITRAL AWARD

rendered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Ms. Yasna Stavreva, Attorney-at-law in Sofia, Bulgaria

Arbitrators: Mr. Wouter Lambrecht, Attorney-at-law in Barcelona, Spain

Mr. Mark Hovell, Solicitor in Manchester, United Kingdom

in the arbitration between

GNK Dinamo Zagreb, Croatia

Represented by Mr. Davor Radic, Attorney-at-law, Radic & Radic Ltd., Zagreb, Croatia and Mr. Marc Cavaliero, Law firm Cavaliero & Associates AG, Geneva, Switzerland

- Appellant -

and

Mr. Rene Poms, Austria

Represented by Mr. Marko Hrabar, Attorney-at-law, Law firm Hrabar & Partners LLC, Zagreb, Croatia

- First Respondent -

and

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

Represented by Mr. Miguel Liétard, Director of Litigation, FIFA, Zurich, Switzerland

- Second Respondent -

I. PARTIES

1. GNK Dinamo Zagreb (the "Appellant", the "Club" or "GNK Dinamo") is a Croatian professional football club with its seat in Zagreb, Croatia. It is affiliated to the Croatian Football Federation (the "CFF"), which in turn is a member of the Fédération Internationale de Football Association.

2. Rene Poms (the "First Respondent" or the "Coach") is a coach of Austrian nationality who was in an employment relationship with the Club.

3. Fédération Internationale de Football Association (the "Second Respondent" or "FIFA") is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the world governing body of international football. It exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials, coaches and players worldwide.

4. The Coach and FIFA are jointly referred to as the "Respondents" and together with the Club as the "Parties" where applicable.

II. FACTUAL BACKGROUND

A. Introduction

5. The appeal is brought by GNK Dinamo Zagreb against the decision of a Single Judge FIFA Players' Status Committee (the "FIFA PSC"), dated 9 February 2021 with regard to the payment of compensation for breach of an employment contract (the "Appealed Decision")

6. Below is a summary of the main relevant facts and allegations based on written submissions of the Parties, their pleadings and evidence adduced during the proceedings. Additional facts may be set out, where relevant, in connection with the legal analysis that follows. While the Panel has considered all the facts, allegations legal arguments and evidence submitted by the Parties in the present proceedings, in this Award, the Panel will only refer to the submissions and evidence it considers necessary to explain its reasoning.

B. Background facts

7. On 16 May 2018, the Coach and the Club entered into a professional coaching contract whereby the Coach was appointed as first assistant coach of the Club's first team. This contract was valid from its date of signature until 31 May 2020. The Coach, together with other members of the technical staff, was hired as part of the technical staff of the appointed head coach Mr Nenad Bjelica.

8. On 1 June 2019, the Coach and the Club signed a new professional coaching contract replacing the previously signed contract and valid as from the date of signature until 31 May 2021 (the "Contract") foreseeing *inter alia* in a higher salary for the Coach.

9. Pursuant to the Contract, the Club undertook to pay to the Coach a monthly gross remuneration in the amount of EUR 19,920, *"payable in HRK at the middle exchange rate of the Croatian National Bank on the day of invoicing"*.

10. Article 6 of the Contract provides that: *"Value added tax is not included in the stated amount"* and *"the Club undertakes to pay the invoice issued by the Coach no later than 15 (fifteen) days of its issuance"*.

11. Regarding the termination, Article 9 of the Contract (the translation submitted by the Club) reads as follows:

> *"This Contract shall cease to be valid upon the lapse of the time for which it was concluded, by termination, and by annulment or termination by the Court of Arbitration of the CFF.*
>
> *The Coach agrees that this Contract will be terminated by mutual agreement if the Club qualifies for the level of competition for which the regulations of the Croatian Football Federation (hereinafter: CFF) stipulate that the tasks for performance of which this contract is concluded can be performed only by a coach with higher professional education than the one the Coach has. In that case, the Club is obliged to pay the Coach, unless the contracting parties agree otherwise, 25% of the amount that would be paid to the Coach by the end of the period for which this contract was concluded.*
>
> *In the event that the Club drops to the county competition level, this contract will be mutually terminated, and the Club is obliged to the Coach to fulfil only the obligations that became due until the moment of termination.*
>
> *The club has the right to unilaterally terminate the contract, in which case the coach is not entitled to any compensation."*

12. Regarding jurisdiction in case of disputes, Article 11 of the Contract reads as follows:

> *"The contracting parties agree to resolve all possible disputes from this Contract by mutual agreement, and otherwise agree on the jurisdiction of the Court of Arbitration of the CFF."* (the translation submitted by the Club)
>
> *"The contracting parties shall resolve all possible disputes amicably, otherwise they agree on the jurisdiction of the Arbitral Tribunal of HNS."* (the translation submitted by the Coach)

13. As the Club and the Coach submitted different translations of Article 11 of the Contract, the Panel considers it necessary to clarify that it shall apply the translation submitted by the Club as the differences in the translations provided are not decisive for the final conclusions of the Panel.

14. As to the governing law, Article 12 of the Contract (*the translation submitted by the Club*) states as follows:

"The issues not covered by this contract, will be regulated by the Rules on the status of coaches and other regulations of the CFF, general acts of the Club, and secondarily, the provisions of the Sports Act and the Obligations Act."

15. On 12 March 2020, the Club's 1st team stopped training.

16. On 18 March 2020, based on a decision of the National Staff for Civil Protection of the Republic of Croatia, the CFF suspended all football competitions organised under its umbrella and this in light of the COVID-19 pandemic.

17. On an unspecified date, the Club informed its workforce of a decision taken by the Management Board ("the Management Decision"), dated 24 March 2020; a decision taken in order to tackle the COVID-19 crisis and by means of which the following was decided with immediate effect:

"[...] Players and coaches will be paid their incomes as follows:
- *One third of the income will be paid to them on regular basis*
- *One third of the income will be paid within six months from the date of the first official game of GNK Dinamo*
- *One third of the income will not be paid permanently...*

This measure is valid until September 30 2020 and takes effect immediately [...]."

18. On 25 March 2020, the Coach wrote to the Club stating that he did not agree with the Management Decision since it was taken unilaterally and without any prior negotiations with him. The Coach requested the Club to continue fulfilling its obligations arising from the Contract. The letter sent by the Coach to the Club reads as follows:

"Dear Ladies and gentlemen,

1/ I am addressing you regarding the Decision of the Management Board of GNK DINAMO (hereinafter: the Club) of 24 March 2020, which was published on the Club's website, and under which the Club, among other things, unilaterally decided to pay players and coaches, including me, income in lesser amounts from the stated date less, and as follows:

- *One third of the income will be paid to them on regular basis*
- *One third of the income will be paid within six months from the date of the first official game of GNK Dinamo*
- *One third of the income will not be paid permanently*

whereas this measure, according to the decision of the Club, would be valid until 30 September 2020.

2/ I hereby state that the decision in question, with which I do not agree, was made unilaterally, without any agreement with me and as such certainly neither produces nor can produce any legal effects in relation to my contractual relationship with the Club.

3/ Following the above, I hereby, with the reservation of all my rights, call upon the Club to fulfil all its obligations to me in accordance with the contract signed because otherwise I will be forced to take further legal action against the Club to protect my rights and interests…"

19. Identical letters to the one above were sent to the Club by all other members of the Club's coaching staff as well by the Club's 1st team players.

20. On 26 March 2020, the Club unilaterally terminated the Contract pursuant to its Article 9 par.4, providing *inter alia* as follows ("the Termination Letter"):

"*[…]*

DECISION

1. *Pursuant to Article 9, paragraph 4 of the Professional Coaching Contract of 1 June 2019, that Professional Coaching Contract of 1 June 2019 is unilaterally terminated on 26 March 2020, which was concluded and signed between coach Rene Poms from Zagreb, Lascinska cesta 8a. PIN: 16397952672 and GNK Dinamo Zagreb from Zagreb, Maksimirska 128, PIN: 93376857458.*

2. *Coach Rene Poms is not entitled and is not owed any compensation from GNK Dinamo Zagreb due to the declaration of this unilateral termination of the professional coaching contract, all in accordance with Article 9, paragraph 4 of the Professional Coaching Contract of 1 June 2019.*

3. *This Decision shall enter into force on the day of its adoption*.

[…]

Pursuant to Article 9, paragraph 4 of the Professional Coaching Contract of 1 June 2019. it is clearly defined, and that was agreed between the parties when concluding and signing the contract, that the Club has the right to unilaterally terminate this contract, and which provision was agreed in accordance with Article 7, paragraph 3, item c) of Rules on the status of coaches of the CFF.

GNK Dinamo Zagreb and Coach Rene Poms with the above-cited provision of the Professional Coaching Contract of 1 June 2019 clearly and explicitly agreed that the Club has the right to unilaterally terminate the contract and that in that case the Coach is not entitled to any compensation.

GNK Dinamo Zagreb, in accordance with the Professional Coaching Contract of 1 June 2019 and counting to the day of announcing this unilateral termination of the contract, timely and upon maturity, all monetary amounts owed under that the Professional Coaching Contract of 1 June 2019 toward Coach Rene Poms."

21. On the same day, and save for the head coach, the Club sent identical terminations letters to the other members of the technical staff of the Club.

22. On 6 April 2020, the Coach objected the Club's decision to terminate the Contract and sent a default letter stating that the Club had terminated the Contract without just cause. In the same letter, the Coach requested to be paid the outstanding remuneration for March 2020, pursuant to Article 6 of the Contract, as well as compensation for the unilateral termination, corresponding to the value of all remaining remunerations until the end of the Contract.

23. On 16 April 2020, the Club and its (then) head coach Mr Nenad Bjelica had a meeting during which they negotiated a mutual termination. On the same day, the Club and Mr Nenad Bjelica signed a mutual termination agreement foreseeing in a payment to the Coach. The Club, in its appeal brief, alleges that the payment agreed with the head-coach included the severance pay for the other members of the technical staff, including that of the Coach, and that Mr Nenad Bjelica would pay them, including the Coach, directly.

24. On 21 April 2020, the Club sent a reply to the Coach's letter dated 6 April 2020, stating inter alia that according to Article 9, par. 4 of the Contract, the Club had the right to unilaterally terminate the Contract for any reason without any obligation to reimburse the Coach for an early termination. In addition, the Club argued that the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP") did not apply to coaches and that the applicable Croatian regulations allow for this type of termination clause. Finally, the Club acknowledged that it would pay only a proportional part of the Coach's remuneration for March 2020 (for 26 days), stating it "[...] is the only amount that the Club is obliged to pay to you". (NB: This letter contains no reference to the mutual agreement signed with the then head-coach Mr Nenad Bjelica nor that the latter would pay the Coach directly from the severance pay agreed upon with the Club (cfr. supra para. 177).

25. On 29 April 2020, the Club paid the Coach part of his remuneration for March 2020 in the gross amount of HRK 127,141.03 (equivalent of EUR 16,708).

26. On 5 September 2020, the Coach signed a new employment contract with the Croatian club NK Osijek, valid as from 5 September 2020 until 30 June 2023 foreseeing in a monthly remuneration of EUR 10.000 for the period from September 2020 until 31 May 2021.

III. PROCEEDINGS BEFORE THE PLAYERS STATUS COMMITTEE OF FIFA (FIFA PSC)

27. On 29 May 2020, the Coach lodged a claim against the Club in front of the FIFA PSC requesting the following:

"In view of the foregoing, the honourable committee is respectfully requested:

- *To ascertain that the Respondent unilaterally terminated the Contract signed with the First Respondent without just cause; and*
- *To condemn the Respondent to pay in favour of the Claimant compensation for breach of contract of gross EUR 356 792.50 which matured on 27/3/2020; and*

- *To condemn the Respondent to pay in favour of the Claimant default interest of 5% per year on the aforementioned amounts starting from the respective date of maturity until the effective date of the payment; and*

- *To condemn the Respondent to pay in favour of the Claimant the legal expenses incurred and procedural costs before the Players Status Committee."*

28. The Club, in its reply dated 22 July 2020, rejected the competence of the FIFA PSC to hear the claim and this based on Article 11 of the Contract, which provided for the exclusive jurisdiction of the Court of Arbitration of the CFF, an independent arbitration tribunal established at a national level. Furthermore, the Club submitted that the Court of Arbitration of the CFF, as per its Rules of procedure, fully met the minimum procedural standards.

29. As to the substance, the Club *inter alia* submitted it had the right to unilaterally terminate the Contract with the Coach and this based on Article 9 of the Contract and Article 7 paragraph 3 item c) of the Rules on the Status of Coaches of the CFF and that considering the pandemic COVID-19 situation, it had no other option than to do so as the Coach refused to accept a salary reduction as contained in the Management Decision. Besides, the Club alleged that any compensation for the Coach was included in the severance pay agreed upon with Mr Nenad Bjelica.

30. On 9 February 2021, the Single Judge of the FIFA PSC rendered a decision (the "Appealed Decision"), in which the claim of the First Respondent was partially accepted.

31. The operative part of the Appealed Decision states as follows:

"1. The claim of the Claimant, Rene Poms, is admissible.

2. The claim of the Claimant is partially accepted.

3. The Respondent, GNK Dinamo Zagreb, has to pay to the Claimant, the amount of EUR 188,880 as compensation for breach of contract without just cause plus 5% interest p.a. as from 29 May 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. (....)"

32. On 4 March 2021, the grounds of the Appealed Decision were notified to the Club and the Player.

33. Regarding FIFA's competence, the Single Judge of the FIFA PSC held as follows:

"Par. II.2 of the Appealed Decision: (...) the Single Judge of the PSC referred to art.3 par. 1 of the Procedural Rules and emphasized that, in accordance with art. 24 par. 1 in combination with art. 22 lit. c) of the Regulations on the Status and Transfer of Players, the Single Judge of the PSC is competent to deal with 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. As a result, the Single Judge understood that he would be competent to deal with the present matter, which concerns a coach with the Austrian nationality and a Croatian club. In this respect, the Single Judge emphasized that the international dimension of the dispute arises from the nationality of the parties, and not their country of residence.

(...)

Par. II.5 of the Appealed Decision: (...) while analysing whether it was competent to hear the present matter, the Single Judge considered that he should, first and foremost, analyze whether the employment contract at the basis of the present dispute contained a clear and exclusive jurisdiction clause.

Par. II.6 of the Appealed Decision: In this regard the Single Judge noted that art.11 of the contract stipulated the following:

"The contracting parties shall resolve all possible disputes amicably, otherwise they agree on the jurisdiction of the Arbitral tribunal of HNS.".

Par. II.7 of the Appealed Decision: (...) After analyzing the contents of the aforementioned clause, the Single Judge agreed that the clause at stake indeed refers to the Arbitral Tribunal of HNS, but does not refer to said decision-making body as having the exclusive jurisdiction to deal with the matter. Thus, given the non-exclusive nature of the aforementioned clause, the Single Judge understood that the parties mutually admitted that any dispute arising from the contract at stake could be referred to other competent bodies, such as the Player's Status Committee.

Par. II.8 of the Appealed Decision: On account of all above, the Single Judge established (...) that it is competent, on the basis of art. 22 lit. c) of the Regulations on the Status and Transfer of Players, to consider the present matter as to the substance."

34. As to the substance, the Single Judge of the FIFA PSC held as follows:

"Par. II.14 of the Appealed Decision: (...) The Single Judge understood that the main legal issue at stake is to determine whether the Respondent had any just cause to unilaterally terminate the contract...

(...)

Par. II.18 of the Appealed Decision: (...) After examining the contents of the aforementioned clause [Clause 9 of the contract], the Single judge wish to highlight that the aforementioned clause appears to grant an excessive capacity to unilaterally terminate the contract without further explanation. Hence, the Single Judge considered that the referred clause is of a potestative nature.

(...)

Par. II.20 of the Appealed Decision: (...) Thus, the Single Judge understood that clause 9 of the contract shall be deemed as null and void.

Par. II.21 of the Appealed Decision: In view of all the previous considerations, the Single Judge established that the Respondent [the Club] terminated the contract without just cause on 26 March 2020 and, as a result, the Claimant [the Coach] is entitled to compensation.

(...)

Par. II.24 of the Appealed Decision: (...) The Single Judge considered that the amount of payable compensation shall be calculated in accordance with the jurisprudence of the Players' Status Committee.

(...)

*Par. II.26 of the Appealed Decision: (...) The Single Judge noted that, from the date of termination, the contract was about to run until 31 May 2021 (i.e- 14 months), and that during said period, the coach would still be entitled to earn the total amount of EUR 278,880 i.e. EUR 19,920*14. The Single Judge concluded that this amount shall serve as the basis for the final determination of the amount of compensation for breach of contract.*

(...)

*Par. II.28 of the Appealed Decision: (...) The Single Judge noted subsequently, that on 5 September 2020 he [the Coach] concluded an employment contract with the Club, NK Osijek, valid as from the date of signature until 30 June 2023. The Single Judge verified that, accordingly, the coach was entitled to a monthly salary of EUR 10,000. The Single Judge therefore understood that, from September to 31 May 2021, the Claimant [the Coach] would have earned 90,000, i.e. 10,000*9.*

Par. II.29 of the Appealed Decision: As a result of the difference between the aforementioned amounts, the Single Judge determined that the payable compensation amounts to EUR 188,880 (i.e. 278,880 – 90,000).

Par. II.30 of the Appealed Decision: In conclusion, for all the above reasons, the Single Judge decided to partially accept the Claimant's request and held that the Respondent must pay to the Claimant the amount of EUR 188,880 as compensation for breach of contract without just cause."

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

35. On 19 March 2021, the Appellant lodged a Statement of Appeal with the Court of Arbitration for Sport ("CAS") against the Respondents with respect to the Appealed Decision, and this pursuant to Articles R47 and R48 of the CAS Code of Sports-related Arbitration (the "CAS Code"). In its Statement of Appeal, the Appellant requested that

a Panel of three arbitrators be appointed, whilst appointing Mr. Lovro Badzim, Attorney-at-law as arbitrator.

36. On 25, 30 March and 6 April 2021 respectively, the Respondents requested the present matter to be submitted to a sole arbitrator. Second Respondent agreed with the First Respondent's proposal of jointly nominating Mr. Mark Hovell as arbitrator, if CAS were to decide that a Panel of three arbitrators would adjudicate the present case.

37. By letter dated 31 March 2021, the CAS Court Office informed the Parties that the Deputy President of the CAS Appeals Arbitration Division (the "Deputy President") had had decided to submit the present case to a three-member Panel, pursuant to Article R50 of the CAS Code.

38. On 16 April 2021, the Appellant, within the deadline extended by the Deputy President, filed its Appeal Brief in accordance with Article R51 of the CAS Code.

39. On 26 April 2021, pursuant to Article R54 of the CAS Code, and on behalf of the Deputy President, the CAS Court Office informed the Parties that the Panel appointed to settle the present dispute had been constituted as follows: (i) Ms. Yasna Stavreva, Attorney-at-law in Sofia, Bulgaria, as President of the Panel; (ii) Mr. Lovro Badzim, Attorney-at-law in Zagreb, Croatia, as the arbitrator appointed by the Appellant and (iii) Mr. Mark Hovell, Solicitor in Manchester, United Kingdom, as the arbitrator appointed jointly by the Respondents.

40. On 12 and 31 May 2021 respectively, the Respondents, within the deadline extended by the President of the Panel, filed their Answers to the Appeal Brief, in accordance with Article R55 of the CAS Code.

41. Following a request thereto by the CAS Court Office, on 4 June 2021, the Appellant indicated that it preferred a hearing to be held in this matter while on 7 and 8 June 2021, the Respondents expressed their preference for an award to be rendered on the basis of the Parties' written submissions.

42. Following another request thereto by the CAS Court Office, on 16 June 2021, the Second Respondent sent a link from where the relevant file of the FIFA PSC case could be downloaded.

43. On 6 July 2021, a copy of the Order of Procedure was sent to the Parties which was returned and duly signed by the Appellant on the same day, by the First Respondent on 9 July 2021 and by the Second Respondent on 7 July 2021.

44. On 7 September 2021, a hearing by video-conference (via Cisco WebEx) was held. Besides the Panel and Mr. Antonio De Quesada, Head of Arbitration of the CAS, the following persons remotely attended the hearing:

For the Appellant:

- Mr. Davor Radic, Attorney-at-law

- Mr. Kresimir Antolic, Board member of GNK Dinamo Zagreb, witness of the Appellant
- Ms Iva Cigrovskij, Interpretor

For the First Respondent:

- Mr. Rene Poms, the First Respondent
- Mr. Marko Hrabar, Attorney-at-law
- Mr. Nenad Bjelica, witness of the First Respondent

For the Second Respondent:

- Mr. Miguel Liétard Fernandez-Palacios, Director of Litigation at FIFA
- Mr. Roberto Najera Reyes, Senior legal counsel at FIFA

45. At the beginning of the hearing the Parties confirmed that they had no objections regarding to the constitution of the Panel. The witnesses were heard, the Parties made full oral submissions and at the end of the hearing the Parties expressly stated that their rights to be heard had been fully respected.

46. On 21 September 2021, the CAS Court Office informed the Parties that the co-arbitrator Mr. Lovro Badzim updated his "Arbitrator's acceptance and statement of independence" form, disclosing the following information:

"I serve as one of the twelve arbitrators of the list of Croatian Football Federation Court of Arbitration. I note this to be a public information, that can be seen from my CV on CAS profile."

47. On 22 September 2021, the Second Respondent challenged the appointment of Mr. Lovro Badzim as arbitrator and requested that he be replaced by another arbitrator.

48. On 23 September 2021, the Appellant and the First Respondent were invited to file their comments, if any, on the Second Respondent's petition for challenge of Mr. Lovro Badzim as arbitrator.

49. On 24 September 2021, the Appellant replied to the Second Respondent's petition for challenge requesting the ICAS Challenge Commission to declare it inadmissible as being belated or to dismiss it as groundless and without merit.

50. On 30 September 2021, the CAS Court Office sent to the Parties Mr. Lovro Badzim's Answer to the Second Respondent's petition for challenge and the comments of the other members of the Panel and invited the Second Respondent to inform the CAS Court Office whether it maintained its petition.

51. On 1 October 2021, and since the Second Respondent maintained its petition for challenge, the petition was transferred to the ICAS Challenge Commission.

52. On 15 November 2021, the ICAS Challenge Commission rendered a decision removing Mr. Lovro Badzim from the Panel with immediate effect, stating:

> *"(...) The Challenge Commission considers that the doubts raised by FIFA in its petition for challenge with respect to the lack of independence and impartiality of Mr. Badzim are objectively founded. Accordingly, the petition for challenge filed by FIFA against the nomination of Mr. Badzim is upheld. As a consequence, Mr. Badzim shall be immediately removed from the Panel in charge of the present procedure and shall be replaced by a new arbitrator appointed by the Appellant from the CAS list."*

53. On the same day, pursuant to Article R36 of the CAS Code, the Appellant was invited to nominate a new arbitrator. After receiving the CAS Court Office's letter, the Appellant requested an extension to nominate a new arbitrator, which was granted.

54. By its letters, dated 25 November 2021 and 1 December 2021, the Appellant suggested the present case be adjudicated by a sole arbitrator submitting it to Ms. Stavreva.

55. On 1 December 2021, the CAS Court Office invited the Respondents to express their position on the Appellant's suggestion.

56. On 6 December 2021, the CAS Court Office informed the Parties that since there was no agreement amongst them on the number of arbitrators, it was not possible to set aside the appointment of Ms. Stavreva as President of the Panel and of Mr. Hovell as arbitrator.

57. On 13 December 2021, the Appellant, nominated Mr. Wouter Lambrecht as arbitrator. In its letter, the Appellant reserved its rights in respect of the ICAS Challenge Commission decision removing Mr Lovro Badzim, a decision which it considered was not justified.

58. On 20 December 2021, the CAS Court Office informed the Parties that the new Panel appointed to settle the present dispute had been constituted as follows: (i) Ms. Yasna Stavreva, Attorney-at-law in Sofia, Bulgaria, as President of the Panel; (ii) Mr. Wouter Lambrecht, Attorney-at-law in Barcelona, Spain, as the arbitrator appointed by the Appellant and (iii) Mr. Mark Hovell, Solicitor in Manchester, United Kingdom, as the arbitrator appointed jointly by the Respondents.

59. Following a request by the CAS Court Office, on 14 January 2022 and 21 January 2022 the Parties submitted that they did not consider it necessary a new hearing be held, as the new member of the Panel had already studied the complete case file and had listened to the audio record of the first hearing.

60. On 21 January 2022, the Appellant filed unsolicited comments, documents and case-law referring to Article 22(b) of the RSTP and FIFA Circular letter 1010, which it alleged were relevant and should therefore be admitted to the file. In the same submission, the Appellant requested the Panel to order the production of new documents, based on Article R44.3 of the CAS Code. Namely, the Appellant requested that First Respondent be ordered to submit a copy of the different contracts signed by his fellow members of the technical staff at NK Osijek, and more specifically the one between NK Osijek and

Mr. Martin Male and Mr. Nino Bule, as "these documents will definitively prove it about this legal manipulation of the First Respondent in terms of untruthful presentation of his real monthly salary in NK Osijek" and what is "key evidence" regarding in terms of mitigation.".

61. On 26 and 28 January 2022 respectively, the Respondents objected to the admissibility of the Appellant's new comments and its request for production of documents, stating that their untimely submission was against Article R56 of the CAS Code and there were no exceptional circumstances to justify it.

62. On 7 February 2022, the CAS Court Office informed the Parties that the Panel had decided to admit to the CAS case file the documents filed by the Appellant because they were respectively case law and publicly available information. The Parties were also informed that the Panel rejected the Appellant's request for production of other documents pursuant to Article R56 of the CAS Code. Finally, still in the same letter, the Parties were informed that considering the new formation of the Panel, the new arbitrator had some questions for the Parties and recognizing the importance that he be fully informed, the Panel had decided to convene a new hearing, limited to these questions that the Panel wished to pose to the Parties, any follow-up questions and closing submissions.

63. On 14 February 2022, the Second Respondent suggested that the questions to be posed by the members of the Panel be communicated in advance to the Parties whilst requesting a 3-day extension to comment on the new documents filed by the Appellant.

64. On the same date the First Respondent filed its comments on the Appellant's new documents with some additional enclosures attached.

65. On 15 February 2022, the CAS Court Office informed the Parties that a new hearing by video-conference (via Cisco WebEx) had been scheduled for 3 March 2022. In the same letter, the Parties were asked to return a signed copy of a new Order of Procedure, which was thereafter duly signed by the Parties.

66. On 17 February 2022, the Second Respondent filed its written submissions.

67. On 1 March 2022, taking into consideration the correspondence with the Parties as to the new hearing, the Panel communicated the following:

> *"The Panel requests the presence of the party/party representatives that were present at the first hearing in accordance with its letter dated 7 January 2022. After taking into consideration the latest correspondence from the parties and after a Panel discussion, the Panel deems that the witnesses who were heard at the previous hearing will not be required to give testimony again, nor to attend the hearing. The Panel has also taken due note of the Appellant's repeated reservations related to the constitution of the Panel. The Panel does not require to hear the parties further on this issue, to be in correspondence or at the hearing."*

68. On 3 March 2022, a hearing by video-conference (via Cisco WebEx) was held. Besides the Panel and Ms. Lia Yokomizo, CAS Counsel, the following persons remotely attended the hearing:

For the Appellant:

- Mr. Davor Radic, Attorney-at-law
- Mr. Marc Cavaliero, Attorney-at-law

For the First Respondent:

- Mr. Rene Poms, the First Respondent
- Mr. Marko Hrabar, Attorney-at-law

For the Second Respondent:

- Mr. Miguel Liétard Fernandez-Palacios, Director of Litigation at FIFA
- Mr. Roberto Najera Reyes, Senior legal counsel at FIFA

69. At the beginning of the hearing the Parties confirmed that they had no objections with regards to the constitution of the Panel. The Parties answered the questions posed by the Panel and made full oral submissions. At the end of the hearing, they acknowledged that their right to be heard had been fully respected.

V. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF

70. The following outline is a summary of the Parties' arguments and submissions which the Panel considers relevant to decide the present dispute and does not necessarily comprise each and every contention put forward by the Appellant and the Respondents. The Panel has carefully considered all the submissions made by the Parties during the proceedings irrespective of whether or not there is a specific reference to them in the following summary.

A. The Appellant's Position

71. In its Appeal Brief, the Appellant submitted the following requests for relief:

"(...) The Court of Arbitration for Sport to issue an award as follows:

1) *The Appeal filed by GNK Dinamo Zagreb against Mr. René Poms and Fédération Internationale de Football Association regarding the decision pronounced by the Single Judge of the FIFA Players' Status Committee on 9 February 2021 is upheld.*

2) *The Single Judge of the FIFA Players' Status Committee was not competent and had no jurisdiction to decide on the contractual dispute raised in front of him by Mr. René Poms.*

3) *The decision rendered by the Single Judge of the FIFA Players' Status Committee on 9 February 2021 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 5,000.00.*

In addition, in the case the Court of Arbitration for Sport does not accept the abovementioned primary appellate request of the Appeal, the Appellant then petitions for an alternative (additional) request respectfully seeking that the Court of Arbitration for Sport issue an Award as follows:

1) *The Appeal filed by GNK Dinamo Zagreb against Mr. René Poms and Fédération Internationale de Football Association regarding the decision pronounced by the Single Judge of the FIFA Players' Status Committee on 9 February 2021 is upheld.*

2) *The decision of the Single Judge of the FIFA Players' Status Committee dated 9 February 2021 is annulled and the claim of Mr. René is rejected.*

3) *To charge all costs of this proceeding to both Respondents and to grant a contribution to the legal fees of Appellant of CHF 5,000.00."*

72. The Appellant's arguments in support of its requests for relief may, in essence, be summarized as follows:

➢ **Applicable law**

- The Appellant submits that the Rules of the Coaching of the CFF and the Statutes of the CFF shall primarily apply to the present matter as they were chosen by the Appellant and the First Respondent as the governing law in the Contract, and subsidiarily the laws of Croatia. Swiss law shall not prevail over the choice of law, made by the Appellant and the First Respondent.

- The Appellant deems that FIFA Regulations, including the FIFA RSTP shall not apply to the merits of the case because they do not refer to coaches, but only to players and professionals.

➢ **Jurisdiction of FIFA**

- The FIFA PSC's lacked jurisdiction to resolve the dispute between the Appellant and the First Respondent since: (1) there is a binding choice of forum in the Contract; (2) this forum is the Court of Arbitration of the CFF; and (3) the Court of Arbitration of CFF meets all legal requirements for an independent, neutral and highly qualified decision-making body, in line with all criteria established by FIFA.

- When analysing Article 11 of the Contract, regarding the matter of jurisdiction, the Panel shall take into account the translation provided by the Appellant in the first instance, namely: "*The contracting parties undertake to resolve all possible*

disputes from this contract by mutual agreement, and otherwise agree on the jurisdiction of the Court of Arbitration of the CFF." The translation of the same clause, provided by the First Respondent is wrong as it misses the expression *"from this contract"*. It states: "*The contracting parties shall resolve all possible disputes amicably, otherwise they agree on the jurisdiction of the Arbitral Tribunal of HNS."*.

- The Single Judge of the FIFA PSC was wrong to consider himself competent on the basis that Article 11 of the Contract allegedly contained a non-exclusive jurisdiction clause in favor of the Court of Arbitration of CFF because of the following:

  - Such interpretation of *"non-exclusivity"* is inconsistent with the wording of the clause by means of which the Appellant and the First Respondent clearly chose the applicable forum to resolve all their disputes.

  - Article 22 lit (c) of the FIFA RSTP (ed. March 2020) does not refer to the notion exclusivity, FIFA cannot interpret its own regulations whilst according to established jurisprudence a clause, for it to be upheld, merely requires a clear reference to the competent body.

  - According to Swiss law, i.e. article 17 of the Swiss Civil Code of procedures and article 5 of the Swiss Private International Law Act (PILA), once contractual parties agree on a jurisdiction clause it is presumed to be exclusive.

- The interpretation given to Article 11 of the Contract by the Single Judge of the FIFA PSC is contrary to the Croatian law (Article 319 of the Obligations Act of the Republic of Croatia), to the jurisprudence of the bodies of FIFA (cases 01180703-E dated 25 January 2018, 0116679-E, dated 26 January 2016, 12180515-E dated 6 December 2018), the jurisprudence of CAS (awards CAS 2013/A/3137, CAS 2013/A/3278, CAS 2018/A/5624, CAS 2012/A/2983, CAS 2016/A/4838) and of the SFT, which supports its stance as to the exclusive competence of the Court of Arbitration of CFF.

- The forum chosen by the Appellant and the First Respondent is the Court of Arbitration of CFF. During the contractual negotiations neither party mentioned or expressed the desire for their possible disputes to be resolved before FIFA or directly before CAS.

- Additionally, by his registration as a licensed coach with the CFF, the First Respondent accepted all its rules and acts, including the exclusive jurisdiction of the Court of Arbitration of CFF as provided in Article 13 of the Rules on the Status of Coaches of the CFF and in the registration form of the CFF.

- The reference in Article 11 of the Contract to a *"court"* and not to a *"body"* is an additional ground to exclude the competence of the FIFA. The FIFA PSC

Judge does not apply court proceedings but *"intra-association proceedings"* and cannot meet the criteria set under the mentioned provision.

- Furthermore, the Appellant submits that the Court of Arbitration of the CFF meets all the applicable criteria set by the FIFA Regulations for an arbitration court or a National Dispute Resolution Chamber for the FIFA PSC to deny its jurisdiction. Namely, the Court of Arbitration of the CFF was established in accordance with the Arbitration Act of the Republic of Croatia, and its structure and operation are prescribed by the Rules of Procedure of the Court of Arbitration of CFF, which are fully compliant with the minimum procedural standards.

- The Court of Arbitration of the CFF is an independent, permanent, and highly qualified court guaranteeing fair proceedings. Moreover, even though such criterion is not applicable to coach-club disputes (*infra*), it also meets the requirement of equal representation as pursuant to article 5 of the Rules of Procedure of the Court of Arbitration of the CFF, its members are appointed by the Executive Committee of the CFF, 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 of CFF 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 players' 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."

- Anyhow, article 22 c) of the FIFA RSTP edition 2020[1], applicable to the case at hand, unlike article 22 c) of the FIFA RSTP edition 2021[2], does not make any

[1] FIFA RSTP ed. 2020- article 22.1 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;
[2] FIFA RSTP edition 2021 – article 22.1. Without prejudice to the right of any player, coach, association, 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; 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

reference to the notion of equal representation. What is clear should not be interpreted as per the legal maxim *in claris non fit interpretatio* whilst the fact that equal representation was not a necessity in club-coach disputes is confirmed by Mr Omar Ongaro in an article published in the European Sports Law Bulletin. The changes to article 22 lit (c) in the 2021 edition of the FIFA RSTP, now foreseeing in the criterion of equal representation, do not codify an existing practice applied by the FIFA judicial bodies prior to said change being introduced.

- As to alleged jurisdiction of FIFA in light of the failure of the CFF regulations to foresee an appeal possibility against decisions of the Court of Arbitration of the CFF, it should be noted this criterion is not reflected in the FIFA RSTP but merely in the FIFA National Dispute Resolution Chamber (NDRC) Standard Regulations of 1 January 2008 and this on an optional basis whilst these regulations have no binding force and this optional criterion contained in these regulations goes beyond the criteria set out in the FIFA Regulations. Furthermore, and in any case, the CFF, through articles 11(d) and (e), 63 and 86 of its statutes has ensured that all its members can appeal against decisions of the Arbitration Court of the CFF before the CAS, even if the Rules of Procedure of such court do not specify it and even if the Croatian Arbitration Act does not foresee the possibility to appeal against awards of the arbitration institution but foresees the possibility to challenge such awards before materially and locally competent state courts. Anyhow, CAS jurisdiction was recognized in the CFF Statutes, and confirmed by CAS 2019/A/6666 and CAS 2017/A/5372 in which CAS panels reviewed decisions rendered by the Court of Arbitration of the CFF. Even if there would be no recourse available, such would not be surprising because arbitration is a one instance procedure, like CAS Ordinary procedures, and a double degree of jurisdiction does not form part of Swiss public policy.

- The Court of Arbitration of the CFF meeting the minimum criteria set by FIFA is confirmed by a joint letter issued by the European Club Association ("ECA"), the European Professional Football Leagues ("EPFL"), FIFPro division Europe and UEFA in which the state that *"newly formed HNS Court of Arbitration is fully compliant with the requirements defined in FIFA Circular №1010."*

- The above is also confirmed by the FIFA DRC decision №20-01209 dated 18 February 2021, where the FIFA DRC notably found that *"in view of the specific circumstances at hand, in in particular, the recognition of its proper functioning by the local stakeholders, the NDRC should be recognized as a potentially competent body to deal also with employment – related disputes between a player and a club of an international dimension."*

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 coaches and clubs;

➢ **Merits**

- The Appellant's termination of the Contract shall be evaluated exclusively in light of article 373 of the Obligations Act of the Republic of Croatia which directly applies to all contractual obligations in case of *force majeure.*

- Article 373 of the Obligations Act of the Republic of Croatia states:

  "Impossibility of performance

  Where neither Party is Liable for Impossibility of Performance

  (1) Where performance of an obligation of one party to a bilateral contract becomes impossible due to an extraordinary external events that occurred after entering into a contract and before the performance is due and which could not have been foreseen or prevented, avoided or eliminated by a party to a contract and for which neither of the parties is liable, the obligation of the other party shall also cease, and if it has performed its obligation partially, it has the right to restitution according to the regulations relating to restitution in case of unjust enrichment.

  (2) In case of partial impossibility of performance of one party due to an event for which neither of the parties is liable, the other party may terminate the contract if partial performance does not meet its needs; otherwise the contract shall remain valid and the other party shall be entitled to request proportional reduction of its obligation."

- In accordance with Article 373 of the Obligations Act of the Republic of Croatia in cases of *force majeure*, contracts automatically cease by the operation of law. As such, it becomes "*completely pointless and superfluous to comment on*" the potestative nature of Article 9 paragraph 4 of Contract and its alleged invalidity as the Contract was "*ceased by operation of law*" and following which the Appellant made a decision on the termination of the Contract, a decision which was justified since the Croatian law gives such possibility.

- The above argument is also supported by the fact that the other coaches of the Appellant, working together in the technical staff with the First Respondent, submitted to the Appellant written statements for *"the purposes of legality and justification of the termination of the contract with the Appellant because for all of them, just like for the First Respondent, the contracts ceased in an identical matter in accordance with Article 373 of the Obligations Act*".

- In any case, irrespective of the above, the Coach would not be entitled to compensation as the Club had reached an oral agreement with its former head-coach that the liquidated damages paid to the former head-coach would also include any entitlements of his technical staff, including the First Respondent, and the former head coach would pay him directly. Oral agreements are

completely valid (CAS 2013/A/3091) and this oral agreement is supported by public statements of the former head coach made to the press.

- In subsidiary order, and should Swiss law be applied to the matter, the First Respondent failed to mitigate his damages and worse tried to conceal its actual salary at his new employer. First Respondent signed a contract as the second assistant coach with NK Osijek, whilst in reality, just like his time at GNK Zagreb, he was the first assistant coach at NK Osijek, therefore contractually earning a lower salary as second assistant coach at NK Osijek whilst having part of his salary, as actual first assistant coach, paid to a colleague of him who then paid him the difference directly.

B. The First Respondent's Position

73. In his Answer to the Appeal Brief, the First Respondent submitted the following requests for relief:

"(...) The CAS Panel to issue an award:

- *rejecting all reliefs sought by the Appellant in its Requests for Relief from the Appeal brief, and*
- *confirming entirely the challenged FIFA PSC Decision, and*
- *ordering the Appellant to pay all the costs of the proceedings before CAS and FIFA PSC, and to pay a significant contribution towards the legal fees and other expenses incurred by the First Respondent in connection with these proceedings of at least CFH 8,000.00."*

74. In support of his requests for relief, the First Respondent submitted, in essence, the following arguments:

➢ **Applicable law**

- The First Respondent argues that the Contract does not contain a clause referring to the applicable law in case of disputes and the Appellant's interpretation of Article 12 of the Contract, stating: *"The issues not covered by this contract, will be regulated by the Rules on the status of coaches and other regulations of CFF, general acts of the Club, and secondarily, the provisions of the Sports Act and the Obligations Act"* is completely wrong. This provision only enumerates several CFF Regulations and Acts in case an issue is not defined in the Contract, but it does not determine the applicable law. As there is no clause on applicable law in the Contract, FIFA Regulations shall apply primarily and subsidiarily Swiss law.
- Furthermore, the First Respondent deems that FIFA Regulations and subsidiarily Swiss law shall apply even if the above cited clause would be interpreted as a clause on governing law. According to the established FIFA and CAS jurisprudence and in the light of Article R58 of the CAS Code, FIFA Regulations

prevail over the national law chosen by the parties, as the main objective of FIFA is to create a standard set of rules to which all the actors in the football community (including coaches) should be subject to and could rely on.

- Lastly, the analyses of Article 14(1) and Article 57 of the FIFA Statues in conjunction with Article 11 of the CFF Statutes are additional argument for the primary application of the FIFA Regulations, as these provisions undoubtedly establish an indirect affiliation of the Appellant and the First Respondent to FIFA and thus, being bound to the FIFA Statutes.

➢ **FIFA competence**

- The Single Judge of the FIFA PSC had jurisdiction to decide on the present matter for the following reasons:

  - It concerns an employment–related dispute between a club and a coach with an international dimension.

  - Article 11 of the Contract which stipulates: *'The contracting parties shall resolve all possible disputes amicably, otherwise they agree on the jurisdiction of the Arbitral Tribunal of HNS" (translation of the First Respondent)* does not constitute an exclusive arbitration clause and it does not refer to the Court of Arbitration of CFF having exclusive jurisdiction. As per the wording of that clause, the Appellant and the First Respondent had a choice – either to submit the dispute to mediation or to the Court of Arbitration of CFF, in other words there was no element of exclusivity.

- The case law, provided by the Appellant (CAS 2013/A/3278, CAS 2018/A/5624, CAS 2012/A/2983, CAS 2016/A/4838, FIFA DRC Decision dated 25/1/2018, FIFA PSC Decision dated 26/1/2016, FIFA PSC Decision dated 6/12/2018) does not prove its allegation that the choice-of-forum is exclusive. Said case law relates to disputes between a player and a club where the choice-of-forum refers to only one exclusive court/arbitration, without any other options for solution.

- The lack of exclusivity of the arbitration clause is supported when comparing the standard form of the professional coaching contracts with the standard form of the professional player's contracts at CFF level. Namely the arbitration clause, contained in article 12 of the standard form of the professional coaching contract, which is identical to Article 11 of the Contract, essentially differs from the arbitration clause, contained in article 16 par.7 of the standard form of the professional player's contract, which stipulates:

  "In case of a dispute, the tribunal of jurisdiction shall be the Court of Arbitration of CFF. The Club and the Player shall not refer disputes related to the Contract to regular courts. The Club and the Player shall fully comply with the CFF regulations stipulating activities of the Court of Arbitration of CFF, including the way of appointing arbiters or the arbitration panel. The Club and the Player, pursuant to the Arbitration Act, have explicitly agreed that an award of the Court

of Arbitration of CFF may be appealed against before the Court of Arbitration for Sports (CAS) in Lausanne, Switzerland. Any challenge of an award of the Court of Arbitration of CFF shall not affect implementation of the award… ".

Opposed to Article 11 of the Contract and Article 12 of the standard form of the professional coaching contract stipulates:

"The contracting parties agree to resolve all possible disputes from this Contract by mutual agreement, and otherwise agree on the jurisdiction of the Court of Arbitration of the CFF. " (the translation submitted by the Appellant)

- Pursuant to article 16 par.7 of the standard form of the professional player's contract, professional players can only submit their disputes to the Arbitration Court of the CFF with a subsequent appeal possibility to the CAS, whilst Article 11 of the Contract and article 12 of the standard form of the professional coaching contracts, gives the Coach "*a choice, either to go through the process of mediation and resolve the dispute amicably, or otherwise to submit their dispute to the CFF Arbitral Tribunal*", and such a choice excludes the possibility that the parties had agreed on an exclusive jurisdiction clause.

- Additionally, and in any case, the Arbitration Court of the CFF does not fulfil the minimum requirements set by FIFA to be considered a validly constituted National Dispute Resolution Chamber since it is not an independent arbitration tribunal, does not guarantee fair proceedings and does not respect the principle of equal representations of coaches and clubs. More precisely,

  - The arbitrators of the Court of Arbitration of the CFF are elected among the representatives of clubs and players, excluding the representatives of coaches, which is in contradiction with FIFA NDRC Standard Regulations for the composition of an arbitral tribunal.

  - The President and Vice–President of the Court of Arbitration of the CFF are appointed by the Executive Committee of the CFF, which predominantly consists of representatives of clubs, with no representation of coaches nor players.

  - Contrary to what the Appellant alleges, the decisions of the Court of Arbitration of the CFF are not appealable. The Rules of Procedure of the Court of Arbitration of CFF are clear and provide that *"the award of the Court of Arbitration is final and may not be appealed against"* which means that there is no statutory right for the parties to appeal a CFF decision to CAS and such statutory right is not granted by the FIFA Statutes either, as wrongfully alleged by Appellant.

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

- Hence, since the Parties did not agree on an exclusive jurisdiction clause and the Court of Arbitration of the CFF does not meet the minimum criteria set by, FIFA, the FIFA PSC had jurisdiction to hear the dispute.

➢ **Merits**

- The Contract is a valid and binding fixed term employment contract in the sense of the Swiss Code of Obligations (the "SCO") and it was terminated by the Appellant without just cause and without sending any previous warning to the First Respondent.

- The reasons contained in the Appellant's termination notice, e.g., the right for unilaterally termination under Article 9.4 of the Contract and the rationalization of costs in order to secure the future operations of the Club in light of COVID-19 pandemic, do not constitute a just cause for the unilateral termination of the Contract.

- A clause granting one party to an employment contract a right to unilaterally terminate an employment relationship, at any time, for completely non-objective reasons or without providing any explanation and/or reasons for such termination, which is exactly what Article 9.4 of the Contract pretends, is an abusive and potestative clause and as such null and void in the sense of Swiss law and the FIFA RSTP. Moreover, such a clause also runs counter with the principle that a termination of contract should be the *"ultima ratio"*.

- Hence Article 9.4. of the Contract cannot be applied, nor can one accept Appellant's statement for rationalization of costs following the pandemic. This argument is artificial because the Contract was terminated only 14 days after the suspension of the First Croatian football league amid COVID-19 and at a moment when the duration of the pandemic and its economic impact could not be foreseen. Comparing the Club's financial reports for the financial years 2019 and 2020, it can be seen that its turnover for the year 2020 (381 940 537 Croatian cuna equal to approximately EUR 50 925 405) is almost the same as for the year 2019 (382 435 429 Croatian cuna equal to approximately EUR 50 991 390). Additionally, after the termination of the Contract with the First Respondent, the Appellant spent around EUR 10 800 000 on transfer fees for signing new contract with football players - EUR 3 600 000 in summer 2020 and EUR 7 200 000 on January and February 2021. All these facts reaffirm that the contractual termination is not connected to rationalization of costs and the COVID-19 pandemic.

- Moreover, the unilateral termination of the Contract was not in line with the FIFA COVID-19 Guidelines, issued in April 2020. The Guidelines never provided an option for the pandemic to be a reason for the unilateral termination of contracts with players or coaches.

- The Appellant terminated the Contract without just cause and as a result the First Respondent is entitled to compensation, amounting to the remaining value of the

Contract, reduced with the remunerations he earned under the new contract with the football club NK Osijek, plus a default interest of 5% per year as from 29 May 2020 until the date of effective payment.

- Finally, all allegations of the Appellant regarding him intentionally lowering his remuneration with the new club or concealing part of his salary in a contract of a different coach at his new club are speculative and wrong, whilst NK Osijek, compared to the Appellant is a small club, with limited financial funds.

C. The Second Respondent's Position

75. In its Answer to the Appeal Brief, the Second Respondent submitted the following requests for relief:

"(...) FIFA respectfully requests the CAS to issue an award on the merits:

a) Rejecting the Appellant's appeal in its entirety;

b) Confirming the decision rendered by the FIFA PSC on 9 February 2021."

76. In support of its requests for relief, the Second Respondent's position in essence, may be summarized as follows:

➢ **Applicable law**

- The FIFA Statutes and the FIFA Regulations, namely the FIFA RSTP (ed.2020) constitute the applicable law to the present proceedings and subsidiarily Swiss law applies should the need arise to fill a possible gap in the regulations of FIFA.

➢ **FIFA competence**

- FIFA fully supports "*the legal background that formed the basis of the Appealed Decision*" and "*does not consider it necessary to add more to the reasoning followed by the PSC when rendering the Appealed Decision*".

- Solely in the case that the Court of Arbitration of the CFF were to be considered as having exclusive jurisdiction as per the jurisdiction clause contained in the Contract, still the Court of Arbitration of the CFF "*does not fulfill the requirements to be considered an independent and impartial tribunal that would allow it to assume jurisdiction to the detriment of the PSC*".

- Namely:

  - There is a structural inequality between clubs and players in the composition of the CFF's Executive Committee which appoints the arbitrators in the Court of Arbitration of CFF. The CFF's Executive Committee is predominantly composed of executives of football clubs and of no former coaches/players (with the exception of the President) or coaches'/players' representatives. "*This acts a clear and decisive factor on the assessment of*

its independence as established by the recent judgement of the European Court of Human Rights ("ECHR") in the case Ali Riza and others v. Turkey.".

- The legal framework of the Court of Arbitration of CFF does not establish a mechanism for replacement of arbitrators in case of recusal, challenge or withdrawal. The lack of a procedure for the replacement of challenged arbitrators violates the right to an independent and impartial tribunal foreseen in Circular 1010.

- The Procedural Rules of the Court of Arbitration of CFF expressly prohibit appeals against the decisions of that tribunal which means that no recourse appears to be available to parties wishing to challenge its decisions, in violation of their right to fair proceedings.

VI. JURISDICTION

77. The jurisdiction of CAS, which is not disputed by the Parties, derives from Article R47 of the CAS Code and Article 58 (1) of the FIFA Statutes (2019 edition).

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

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

79. Article 58 (1) of the FIFA Statutes

"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."

80. As the present appeal is filed against a final decision of the FIFA PSC, the CAS has jurisdiction to rule on the appeal filed by GNK Dinamo. CAS jurisdiction was also confirmed by the Order of Procedure duly signed by the Parties.

VII. ADMISSIBILITY

81. 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, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. […]"

82. In accordance with Article 58 para.1 of the FIFA Statutes:

"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."

83. The grounds of the Appealed Decision were notified to the Parties on 4 March 2021 whilst the Statement of Appeal was filed on 19 March 2021, therefore within the deadline set forth in Article 58 (1) of the FIFA Statutes. The Statement of Appeal also complied with the requirements of Article R48 of the CAS Code. Consequently, the appeal is admissible.

VIII. APPLICABLE LAW

84. Article 187 par.1 of the Swiss Private International Law Act ("PILA") provides:

"The arbitral tribunal shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such choice, according to the rules of the law which in the case has the closest connection."

85. Article R58 of the CAS Code provides as follows:

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

86. Article 57.2 of the FIFA Statutes stipulates the following:

"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."

87. Article 26 of the FIFA RSTP (edition March 2020) provides:

"1. Any case that has been brought to FIFA before these regulations come into force shall be assessed according to the previous regulations.

2. As a general rule, all other cases shall be assessed according to these regulations with the exception of the following:

a) disputes regarding training compensation;
b) disputes regarding the solidarity mechanism;
c) labour disputes relating to contracts signed before 1 September 2001.

Any cases not subject to this general rule shall be assessed according to the regulations that were in force when the contract at the centre of the dispute was signed, or when the disputed facts arose."

88. Article 10 and Article 12 of the Contract provide as follows:

"The contracting parties undertake to observe the provisions of the Statutes of the CFF, Rules on the status of coaches and other regulations of the CFF and general acts of the Club for the duration of this contract."

"The issues not covered by this contract, will be regulated by the Rules on the status of coaches and other regulations of the CFF, general acts of the Club, and secondarily, the provisions of the Sports Act and the Obligations Act."

89. Relying on the above clauses, the Appellant and the Respondents hold diametrically opposed views as to what constitutes the applicable law.

90. The Appellant submits that the Regulations of the CFF (the Rules on the Status of Coaching of the CFF and the Statutes of the CFF) shall apply and subsidiarily Croatian law, namely the Sports Act of the Republic Croatia and the Obligations Act of the Republic of Croatia) as per the explicit choice of law contained in the Contract.

91. The First Respondent contests the applicability of the Regulations of the CFF and Croatian law indicating that Article 12 of the Contract cannot be interpreted as a *"clause on applicable law"*. In his Answer, the Coach referred to Article R58 of the CAS Code, and submitted that the FIFA Regulations shall prevail over any national law chosen by the Parties as the main objectives of the FIFA regulations are to create a standard set of rules to which all football stakeholders are subject to and are able to rely on. Subsidiarily Swiss law shall apply.

92. According to the Second Respondent, as per Article 57.2 of the FIFA Statutes and Article R58 of the CAS Code, the FIFA Statutes and the FIFA Regulations, namely the FIFA RSTP edition March 2020 constitute the applicable law to the matter at hand and subsidiarily Swiss law shall apply if the needed arise to fill in a possible gap in the regulations of FIFA.

93. In evaluating the different position of the Parties regarding the applicable law, the Panel considers that the starting point of its analysis must be Article R58 of the CAS Code.

94. In this respect, it should be noted that Article R58 of the CAS Code gives priority to the applicable regulations over the Parties' choice of law. In this respect reference can be made to CAS awards 2014/A/3527 and 2017/A/5374.

95. In the award CAS 2014/A/3527, the Panel held as follows:

"54. This provision recognizes the pre-eminence of the "applicable regulations" to the "rules of law chosen by the parties", which apply only subsidiarily. Article R58 of the Code does not admit any derogation and imposes a hierarchy of norms, which implies

for the Panel the obligation to resolve the matter pursuant to the regulations of the relevant "federation, association or sports-related body". (CAS 2014/A/3527)

96. In the award CAS 2017/A/5374 the Panel stated as follows:

"It follows from this provision (Article R58) that the "applicable regulations", i.e. the statutes and regulations of the sports organization 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."

97. The Panel subscribes the above awards and the interpretation of Article R58 of the CAS Code and therefore the Panel shall primarily apply the FIFA regulations.

98. Additionally, as the FIFA regulations lay down uniform standards at global level, where such rules need further clarification or interpretation, the Panel shall apply Swiss law as per article 57.2 of the FIFA Statutes, this to ensure the uniform interpretation of the standards of the industry.

99. Consequently, when evaluating whether the Court of Arbitration of the CFF complies with the requirements set by FIFA in order for it to be recognized as an independent arbitrational tribunal guaranteeing fair proceedings, the Panel shall mainly apply the FIFA RSTP and the FIFA Circular Letter n°1010 and in doing so it will contrast the Rules of Procedure of the Court of Arbitration of the CFF with the FIFA RSTP and the FIFA Circular Letter n° 1010.

100. In similar fashion and despite the explicit choice of law contained in the Contract, for what concerns the termination of the Contract and the possible damages, since the notions "just cause" and "compensation" are regulated by the FIFA RSTP and these notions form part of the industry standards set by FIFA, the termination and possible compensation payable shall be evaluated primarily in light of the FIFA RSTP with Swiss law applying subsidiarily.

101. Any other issues that the Panel must deal with in this case, if any, and which would not be addressed in the FIFA RSTP and for which FIFA has thus not set a uniform industry standard, are subject to the explicit choice of law chosen by the Parties.

102. Finally, this arbitral proceeding is further governed by the Swiss Federal Act on Private International Law ("PILA") and more specifically by articles 176 et seq. of the PILA, since at least one of the Parties is domiciled outside Switzerland and because the seat of the arbitration is in Switzerland (Article R27 of the CAS Code).

IX. MERITS OF THE APPEAL

103. Based on the Parties' written submissions and in order to resolve the present matter, the Panel has to determine the following key issues:

A. Did the Single Judge of the FIFA PSC have jurisdiction to resolve the dispute between the Parties?

B. If the Single Judge of FIFA PSC had jurisdiction to resolve the dispute between the Parties, then was the Contract terminated with or without just cause?

C. If the Contract was terminated without just cause what are the consequences of the unilateral termination and is the First Respondent entitled to compensation and interest?

A. *Did the Single Judge of the FIFA PSC have jurisdiction to resolve the dispute between the Parties?*

104. The Panel is reminded that whereas the Club maintains that the Single Judge of the FIFA PSC wrongfully considered himself competent to hear the dispute between the Parties, the Respondents submit that the Appealed Decision must be confirmed, not only since the jurisdiction clause contained in the Contract was not exclusive but also because the Court of Arbitration of the CFF does not meet the minimum criteria set by FIFA for it to be recognized as an independent and impartial body guaranteeing fair proceedings, especially since the principle of parity is not respected at CFF level.

105. In light of the above, it seems advisable to recall the wording of Article 22 lit. c) of the FIFA RSTP edition March 2020), which provides as follows:

"(...) 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 (...)".

106. The Panel, furthermore reiterates that Article 11 of the Contract provides as follows:

"The contracting parties agree to resolve all possible disputes from this Contract by mutual agreement, and otherwise agree on the jurisdiction of the Court of Arbitration of the CFF." (the translation submitted by the Appellant)

107. Keeping in mind the above as well as the fact that the international dimension of the dispute is no longer in dispute, the starting point of the Panel's analysis is to verify whether the Parties agreed to submit their disputes to a different body than FIFA, namely the Court of Arbitration of the CFF and if so whether the Parties and FIFA are bound by such choice of forum.

108. In this respect, the Panel observes that the Single Judge held as follows in the Appealed Decision:

"Par. II.7. In this respect, after analyzing the contents of the aforementioned clause, the Single Judge agreed that the clause at stake indeed refers to the Arbitral Tribunal of HNS, but does not refer to said decision – making body as having the exclusive jurisdiction to deal with the matter. Thus, given the non – exclusive nature of the aforementioned clause, the Single Judge understood that the parties mutually admitted that any dispute arising from the contract at stake could be referred to other competent bodies, such as the Player's Status Committee."

109. The Panel cannot agree with the reasoning of the Single Judge set out above as it cannot find any regulatory nor jurisprudential basis that supports the said legal reasoning. Namely, article 22 lit. c) of the FIFA RSTP does not refer to the necessity of an "exclusive" jurisdiction clause, as invoked in the Appealed Decision. Rather, according to the jurisprudence of the CAS, an employment related dispute of an international dimension can be settled by an organ other than the FIFA DRC or FIFA PSC if, *inter alia*, the jurisdiction of that organ derives from a clear reference in the employment contract (CAS 2014/A/3684-93, para.60).

110. The Panel considers that Article 11 of the Contract is sufficiently clear in that the Parties agreed on the jurisdiction of Court of Arbitration of the CFF for it to resolve their disputes.

111. In reaching such conclusion, the Panel is also mindful of Swiss law and more specifically to article 5 (1) of the PILA and article 17 of the Swiss Civil Procedural Code ("SCCP") which provide as follows:

Article 5 (1) PILA:

"In matters involving an economic interest, parties may agree on the court that will have to decide any potential or existing dispute arising out of a specific legal relationship. The agreement may be entered into writing, by telegram, telex, telecopier or any other means of communication which permits it to be evidenced by a text. Unless otherwise agreed, a choice of forum is exclusive."

Article 17 SCCP:

"Unless the law provides otherwise, the parties may agree on which court has jurisdiction over an existing or future dispute arising from a particular legal relationship. Unless the agreement provides otherwise, the action may only be brought before agreed court."

112. Keeping in mind the above, the Panel holds that the jurisdiction of the Court of Arbitration of the CFF derived from a clear clause in the Contract, a clause which must also be considered exclusive and that consequently, the reasoning contained in the Appealed Decision based on which the Single Judge of the FIFA PSC retained jurisdiction was wrong.

113. Having reached the above intermediate conclusion, the Panel is obliged to review whether there is any other regulatory basis on which the Single Judge of the FIFA RSTP

would have been competent to hear the dispute between the Parties. Namely, according to the Respondents, the Court of Arbitration of the CFF would not meet the minimum criteria for it to be recognized as an independent and impartial body guaranteeing fair proceedings in that it would *inter alia* not respect the principle of parity.

114. Even-though the Panel is aware that the Appealed Decision stopped short of analyzing this issue (as it seems to the Panel, that FIFA had come to the erroneous conclusion that the Court of Arbitration of the CFF required exclusive jurisdiction, so went no further), the Panel considers that pursuant to the *de novo* power granted to it as per Article R57 of the CAS Code it can indeed analyze whether the Court of Arbitration of the CFF meets the minimum criteria set by FIFA. In fact, pursuant to Article R57 of the CAS Code, the Panel is not limited to the facts and legal arguments of the previous instance whilst the (lack of) competence of the FIFA PSC opposed to that of the Court of Arbitration of the CFF still stems from an analysis of article 22 lit (c) of the FIFA RSTP (ed. March 2020), the latter article having been analyzed and applied by the Single Judge of the FIFA PSC, albeit incorrectly.

115. Once again it is reminded that Article 22 of the FIFA RSTP contains an exception to the residual competence of the FIFA PSC provided the contract between the parties (the Club and the Coach) contains a clear reference whereby they have decided to submit any such dispute to a different organ, which as indicated above was the case in the matter under review, and the organ on which jurisdiction is installed, is an independent arbitration tribunal guaranteeing fair proceedings.

116. The majority of the Panel finds that the burden of proof, with respect to the existence of such arbitration tribunal, lies with the party contesting the competence of the FIFA PSC. In the present case the majority of the Panel observes that it is the Appellant that must substantiate in its appeal to CAS why the Single Judge of the FIFA PSC, in the Appealed Decision, wrongfully considered himself competent, i.e. it must demonstrate that the Court of Arbitration of CFF is an arbitral tribunal at national level, meeting the minimum procedural standards.

117. In this respect, reference is made to award CAS 2018/A/5659, in which it was held as follows:

> *"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; (iii) this independent arbitral tribunal guarantees fair proceedings (...)"*

118. As mentioned before, it is obvious to the Panel that the Contract contains an arbitration clause in favour of a national arbitral body.

119. Thus, the question that remains open for the Panel and that should be assessed is whether the national arbitral body is "*an independent arbitration tribunal guaranteeing fair proceedings*".

120. The criteria that must be fulfilled for an arbitration tribunal to be classed as independent and duly constituted under the terms of Article 60 par.3 lit. c) of the FIFA Statutes are listed in the FIFA Circular Letter n° 1010 dated 20 December 2005. Although FIFA's Circular Letters are not regulations in a strict legal sense, they are nevertheless relevant for the interpretation of the FIFA Regulations (see for example awards CAS 2004/A/594, CAS 2015/A/4153, CAS 2016/A/4448 and CAS 2020/A/7144). In this document, FIFA stated *inter alia* the following:

"(....) the terms "independent and "duly constituted" in accordance with art.60 par.3 (c) of the FIFA Statutes require that an arbitration tribunal meet the minimum (international) procedural standard as laid down in several laws and rules of procedure for arbitration tribunals. This minimum procedural standard comprises the following conditions and principals:

- ***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 interested 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. (....)"

121. Bearing in mind the above, the Panel shall analyse if the Court of Arbitration of the CFF is an independent arbitral tribunal established at national level, guaranteeing fair proceedings in accordance with Article 22 lit. c) FIFA RSTP (ed. March 2020) and FIFA Circular Letter n°1010 dated 20 December 2005.

122. In this regard, the Panel firstly shall review if the Court of Arbitration of the CFF must respect the principle of parity and whether this principle is applicable in disputes between clubs and coaches.

123. It is reminded that according to the Appellant, it is irrelevant whether the Court of Arbitration of the CFF respects the principle of parity because the matter concerns a dispute between a club and a coach, not a club and a player and Article 22 lit. c) of the applicable FIFA RSTP edition, opposed to Article 22 lit. b) does not require for a national arbitral body to meet this principle when deciding a dispute between a club and a coach.

124. Whereas the Panel observes that it is true that Article 22 lit. c) of the FIFA RSTP differs in its wording from Article 22 lit. b) of the FIFA RSTP, only the latter article, dealing with disputes between clubs and players, explicitly requiring equal representation, still the majority of the Panel deems that the assessment of whether a national arbitration body is independent, guaranteeing fair proceeding must be made on the basis of FIFA Circular Letter n° 1010 as this circular is the FIFA document interpreting and clarifying FIFA regulations and defining the *minimum procedural standards,* that must be met and which includes the principle of parity. The principle of parity shall apply to *"every interested group*", including coaches as a stakeholder. The opposite, not applying the principle of parity would have been a contradiction with the global purpose of FIFA to create a standard set of rules to which all football stakeholders, including coaches are subject to and able to rely on to receive an adequate protection.

125. Thus, the majority of the Panel considers that the evaluation of whether the Court of Arbitration of CFF respects the principle of parity must apply to the matter at hand and this, contrary to the Appellant's allegations that equal representation is/was not a necessity in club-coach disputes for a national body to be considered validly constituted as per the FIFA minimum procedural standards. Additionally, the majority of the Panel finds comfort in reaching this conclusion when looking at the wording of the new article 22 lit. (c) in the 2021 edition of the FIFA RSTP, now foreseeing in the criterion of equal representation, which according to the majority of the Panel clarifies and codifies an existing practice applied by the FIFA judicial bodies prior to said change being introduced.

126. Having reached the above intermediate conclusion, the Panel observes that the requirement of whether the Court of Arbitration of the CFF is an independent arbitral tribunal guaranteeing fair proceedings and respecting the principal of parity, is to be analysed in abstract terms.

127. In conducting this abstract analysis, the majority of the Panel notes that the FIFA Circular letter n° 1010 indicates that parties must have equal influence over the appointment of arbitrators and that this means for example that every party has the right to appoint an

arbitrator and that the two appointed arbitrators appoint the chairman of the tribunal. According to this Circular, the principle of parity implies that in a scenario where arbitrators are to be selected from a predetermined list, every interested group must be able to exercise equal influence over the compilation of the arbitrators list.

128. Pursuant to FIFA Circular letter n° 1010, the Panel is of the opinion that the principle of parity can also be respected if the parties have equal influence over the composition of the Court of Arbitration of the CFF and/or have equal influence over the nomination of the arbitrators deciding the case. Hence, to determine whether the principle of parity has been respected in the matter at hand, an abstract analysis of the Rule of Procedure of the Court of Arbitration of the CFF is required to verify if the parties have equal influence over the composition of this arbitral body.

129. To undertake such analysis, the majority of the Panel considers it useful to recall the wording of Articles 5, 45.1 and 48.1 of the Rules of Procedure of the Court of Arbitration of CFF:

*"**Article 5:***

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 the 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 players' representatives under a) of this Article and the clubs of the First CFL.
4) Members of the Court of Arbitration shall have master of law degree.

(...)

Article 45:

1) The award of the Court of Arbitration is final and binding upon the parties (...)"

(...)

Article 48:

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

130. In similar fashion, the majority of the Panel deems it useful to recall the wording of Articles 17, 36.1, 36.6, 38.1 lit. h), 40, 42.1, 42.2, 42.3, 42.4 and 62.3 of the Statutes of the CFF, which provide as follows:

"Article 17:

1) Members of the Federation are: 20 football associations in counties, 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.

(...)

Article 36:

1) The Assembly shall consist of:
- *One representative of each county football associations / ZFA,*
- *Two representatives of each club participating in the highest level of football competition in which half of the clubs have professional status,*
- *Two representatives of the clubs of the Second Division of the Croatian Football League, who shall represent all clubs of the Second Division of the Croatian Football League,*
- *Three representatives of the clubs of the Third Division of the Croatian Football League, one from each group of the Third Division, who shall represent all clubs of the Third Division of the Croatian Football League,*
- *Ten representative of the clubs participating in the competition levels lower than the Third Division of the Croatian Football League, while ensuring the regional representation,*
- *One representative of women's football,*
- *One representative of the union of players registered with the clubs of the highest competition level,*
- *One representative of the union of coaches engaged by the clubs of the highest competition level.*

(...)

6) The representative of coaches shall be appointed among the candidates proposed by the Experts Committee of the Federation's Executive Committee by an absolute majority of votes of the senior team coaches of the clubs participating at the highest competition level.

(...)

Article 38:

1) *Members falling within the power of Assembly shall be: (...)*

   h) election and dismissal of the members of the Executive Committee,

(...)

Article 40:

1) *Decisions of the Assembly are reached by a majority of votes of all representatives in the Assembly, unless otherwise prescribed by these Statutes, and the meeting may start if the majority of all representatives are present. (...)*

(...)

Article 42:

1) *The Executive Committee shall consist of 17 members.*
2) *The Executive Committee shall include, as a rule, only one member from an individual direct member of the Federation. The Federation's direct member whose candidate has been elected the President of the Federation may have two members in the Executive Committee, including the President.*
3) *A candidate for a member of the Executive Committee is proposed by a direct member of the Federation.*
4) *The President, the Vice – President and the members of the Executive Committee are proposed, elected and removed as set forth in the Assembly's rules of procedure. Elections shall be free and secret. By way of exception, if the number of candidates is equal to the number of vacancies, the elections may be also public.*

(...)

Article 62:

3) The President and arbitrators of the Court of Arbitration are appointed by the Executive Committee of the Federation and only a person with Master of Laws degree can be appointed President." (...)

131. When assessing the compliance of the Court of Arbitration of the CFF with the principle of parity, the majority of the Panel deems that it shall analyse how its members are appointed, both for what concerns the President and the Vice–President and the other members of the Court of Arbitration of the CFF.

132. As regards the President and the Vice–President, Article 5.2 of the Rules of Procedure of the Court of Arbitration of the CFF explicitly states that they are appointed by the Executive Committee of the CFF. As regards the other members of the Court of Arbitration of the CFF, Article 62.3 of the Statutes of the CFF and Article 5.3 of the

Rules of Procedure of the Court of Arbitration of the CFF foresee that the Executive Committee of the CFF appoints the arbitrators of the Court of Arbitration of the CFF too.

133. Hence, all members of the Court of Arbitration of the CFF are appointed by the Executive Committee of the CFF, which according to the Panel, in and by itself is not necessarily problematic.

134. However, it appears that within the Executive Committee of the CFF, six of the 17 members are currently club representatives, the rest are representatives of the individual direct members of the Federation, and none are former players or coaches (with the exception of the President who is a former player) or persons apparently proposed by players or coaches, or their unions or associations.

135. Consequently, the majority of the Panel considers that club representatives clearly have a dominant position as players and coaches do not enjoy any level of representation in the Executive Committee of the CFF, the latter being the body appointing the members of the Court of Arbitration of the CFF.

136. The Panel notes that the Appellant maintained that players enjoyed parity and pointed to other decisions that supported this view. However, even if the Panel were to accept this claim, it notes that the First Respondent is a coach, not a player and the majority of the Panel finds that as a stakeholder, coaches have some specific needs that need consideration and protection compared to players and should therefore be able to nominate their representatives to the National Dispute Resolution Chamber to ensure its independence and fair proceedings. These specific needs refer to the fact that not all coaches have been players; it happens sometimes that they act as a team, signing one contract through the head coach who is distributing the remuneration to their team of assistant coaches; with the exception of a very few countries, coaches are not organized in unions or associations. For those and other reasons in some countries (for example England) there are separate National Dispute Resolution Chambers dealing only with dispute between coaches and clubs, which is not the case with the Court of Arbitration of the CFF. As the Panel is informed there is no Coaches' union or association in Croatia, neither the Parties presented any evidence that the coaches are represented by the players' union, recognized by FIFPro to protect their interests. However, this would not stop the Executive Committee of the CFF seeking out arbitrators that were nominated by the coaches in the top league or that were former coaches.

137. Lacking any evidence demonstrating that each stakeholder, including coaches, gets to designate and submit their own representatives to the Executive Committee of the CFF, the majority of the Panel is of the opinion that the structural inequality in the composition of the Executive Committee of the CFF enables the club representatives to exercise more influence over the compilation of the list of arbitrators.

138. The principal of parity is thus not respected.

139. The majority point of view of the Panel is further strengthened by the fact that the General Assembly of the CFF, pursuant to its Article 40.1 elects the members of the Executive Committee of the CFF by a simple majority. According to Article 36.1 of the

Statutes of the CFF the composition of the General Assembly includes one representative of each county football associations, two representatives of each club participating in the highest level of football competition, two representatives of the clubs of the Second Division of the Croatian Football League, three representatives of the clubs of the Third Division of the Croatian Football League, ten representatives of the clubs participating in the competition levels lower than the Third Division of the Croatian Football League, one representative of the women's football and only two members representatives of players and coaches. Club representatives thus have a vast majority within the General Assembly and appear to be able to decide who sits on the Executive Committee of the CFF, the latter appointing the members of the Court of Arbitration of the CFF.

140. Having considered the above, the majority of the Panel concludes that because the principle of parity is not met, the condition of an independent court guaranteeing fair proceedings, as enshrined in Article 22 of the FIFA RSTP and FIFA Circular Letter n°1010 is not met in this particular case. The foregoing is sufficient to find that the Court of Arbitration of the CFF does not comply with the minimum procedural standards under FIFA RSTP and FIFA Circular Letter n°1010.

141. Irrespective of the above, the majority of the Panel deems it necessary to comment on the objections of the Respondents regarding the (i) lack of a replacement procedure of the challenged arbitrators and (ii) the absence of recourse against decisions of the Court of Arbitration of the CFF, which according to the Respondents violate the right to an independent and impartial tribunal guaranteeing fair proceedings.

142. When it comes to the issue of the challenge mechanism, the majority of the Panel notes that Article 9.3 of the Rules of Procedure of the Court of Arbitration of the CFF regulates the appointment of arbitrators, but does not establish a mechanism for their replacement in case of recusal, challenge or withdrawal. Furthermore, Article 4.3 of the Rules of Procedure of the Court of Arbitration of the CFF states that *"if some questions of a procedural nature have not been regulated by these Rules, the Court of Arbitration shall apply provisions of the Arbitration Act and, subsidiarily, the Civil Procedure Act"*. The majority of the Panel considers that in the way it is regulated the replacement procedure in the Court of Arbitration of the CFF is quite unclear which in combination with the structural inequality between clubs and coaches in the composition of the CFF Executive Committee creates however an uncertainty for the respect of the right to independent and impartial tribunal at national level, as set in FIFA Circular Letter n°1010.

143. As to the arguments raised by the Respondents in relation to the absence of recourse against decisions of the Court of Arbitration of the CFF, the Panel refers to the wording of Article 48.1 of the Rules of Procedure of the Court of Arbitration of CFF, which provides as follows:

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

144. Keeping in mind the above-mentioned provision, the Panel deems that the specific rule contained in Article 48.1 of the Rules of Procedure of the Court of Arbitration of the CFF clearly prevents the Appellant and the First Respondent from appealing the decisions of the Court of Arbitration of the CFF.

145. The Panel does not concur with the Appellant's submissions that the decisions of the Court of Arbitration of the CFF are appealable before CAS in view of the statutory competence, arising from Articles 11.2 lit. d) and lit. e), 63 and 86 of the Statutes of the CFF, stating:

Article 11.2 lit. d) and lit. e):

"(...) 2) The Federation, its bodies and official persons, members of the Federation, league, clubs, players, coaches, referees, official persons, licensed match agents, licensed players' agents and other stakeholders in football shall:

(...)

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;

(...)

e) recognize the jurisdiction of the Federation's Court of Arbitration and accordingly refer in the last instance any dispute of national dimension arising from or related to the application of the HNS Statutes or regulations only to these arbitrations which will settle all disputes to the exclusion of any ordinary court, unless expressly prohibited by the legislation in force in the Republic of Croatia."

Article 63:

"1) The Federation, its bodies and officials, members of the Federations, leagues, players, coaches, football referees, officials and other members of football recognize the jurisdiction of the Court of Arbitration for Sport (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 organization.

2) In case of any dispute under the jurisdiction of the 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 decision of competent bodies of FIFA and UEFA and CAS. The Federation shall ensure that all these obligations are fully met."

Article 86:

"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."

146. These Articles are general provisions recognizing the jurisdiction of CAS in general terms, as required by FIFA 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 especially to coaches which status and position appears to be different from that of the players. Being so and taking into consideration the rule of Article 48.1 of the Rules of Procedure of the Court of Arbitration of the CFF, the regulation in regard to the right of recourse to CAS creates an uncertainty, which according to the majority of the Panel could jeopardise the implementation of fair proceedings at national level, especially for disputes with international dimension, as set up in Article 22 lit. c) of the FIFA RSTP.

147. Furthermore, the majority of the Panel deems necessary to comment on the Appellant's objection to lack of competence of the Single Judge of the FIFA PSC in regard of the FIFA DRC decision, rendered on 18 February 2021, case Ref. №20-01209 where FIFA DRC declared itself non – competent in favour of the Court of Arbitration of the CFF. The majority of the Panel would like to stress that the FIFA DRC's jurisprudence in the matter of its competence when it comes to the Court of Arbitration of the CFF is not unanimous, as well CAS is not bound by a FIFA DRC decision, which it could have been in addition reviewed *de novo,* if that decision had been brought before it.

148. The mentioned decision did not make the required analysis on the conformity of the Court of Arbitration of the CFF with the minimum procedural standards, set under FIFA Circular №1010 but simply found, that *"in view of the specific circumstances at hand,* in particular, the recognition of its proper functioning by the local stakeholders, the NDRC should be recognized as a potentially competent body to deal also with employment – related disputes between a player and a club of an international dimension.".

149. Thus, the Appellant's submissions with respect to the FIFA DRC decision shall be rejected.

150. The Appellant refers as well to an ECA publication with regard to that FIFA DRC decision which the Panel considers as non-binding for CAS. The conclusion of the publication stating: "(...) this is the first time that the FIFA DRC has recognized that its *competence can be excluded in favour of the HFF DRC. However, it appears that special attention was put on the fact that the players' local union was "supportive" of such body. While the use of that argument is understandable, it is important to note that the "support" of the local players' union is not one of the minimum requirements for FIFA to recognize an NDRC."* does not seem to be in favour of the FIFA DRC decision nor contrary to the Panel's opinion made above on the issue of competence.

151. Finally, the majority of the Panel feels it necessary to point the recent CAS jurisprudence (awards CAS 2021/A/7859 and CAS 2021/A/7800) which considered the key issue whether or not the Court of Arbitration of the CFF complies with the minimum standards of independence as per the FIFA regulations. In both awards, the majority of the Panel considers said awards relevant for the conclusions reached in this award, awards in which two different Sole Arbitrators, albeit relying on different elements, reached one and the same conclusion - the Court of Arbitration of CFF cannot be qualified as a national adjudicating body that is an independent and impartial national tribunal.

152. Having considered *inter alia* the above CAS jurisprudence but based on its own considerations and the specificity of the case at hand, as this case concerns a dispute between a club and a coach, the majority of the Panel rules that the Court of Arbitration of CFF does not meet the minimum procedural standards for a NDRC to be considered independent, impartial and guaranteeing fair proceedings.

153. Therefore, the Single Judge of the FIFA PSC had jurisdiction to rule over the case at first instance.

B. If the Single Judge of FIFA PSC had jurisdiction to resolve the dispute between the Parties, then was the Contract terminated with or without just cause?

154. In its Appeal Brief, the Appellant submitted that the Contract was terminated on 26 March 2020 with just cause by way of an "operation of law", this in accordance with Article 373 of the Obligations Act of the Republic of Croatia which directly applies in case of a force majeure event – the COVID-19 pandemic allegedly qualifying as a force majeure event. During the pandemic the Appellant allegedly tried to partially fulfil its obligations towards the First Respondent through the proposed decision to reduce his salaries. As the latter explicitly refused such proposal, the Appellant was left with "no choice" than to terminate the Contract on the basis of the above-mentioned provision.

155. However, when analyzing the wording of the Termination Letter, the Panel observes that the letter does not mention the notion force majeure as the reason for the termination nor does it mention that the Contract was terminated by an operation of law. Rather the Termination Letter stated that GNK Dinamo was unilaterally terminating the Contract pursuant to its contractual right contained in Article 9 paragraph 4 of the Contract and that this decision was taken "to rationalize costs to continue its activities and work in the future" due to "this extraordinary and unpredictable event (pandemic caused by coronavirus COVID-19)".

156. As such, the Panel considers that the termination of the Contract and its alleged just cause should exclusively be analyzed keeping in mind the reasons explicitly invoked in the Termination Letter as these are the only reasons that matter to analyse if the Appellant had a just cause to unilaterally terminate the Contract when it sent its Termination Letter. In fact, the Panel concludes that the reasons stated in the Termination Letter were the actual reasons that existed at the time of termination, as opposed to reasons that may have been thought up at a later stage by outside counsels during the legal proceedings.

157. Having held the above, and in the absence of a specific definition of what constitutes "just cause", the Panel, in application of what is mentioned in chapter VIII – Applicable law, refers to the well–established CAS Jurisprudence (for example, awards CAS 2018/A/6029, CAS 2006/A/1180 and CAS 2018/A/6064) as to what concerns a just cause, jurisprudence which has constantly referred to the principles of Swiss law, subsidiarily applicable to the present dispute.

158. According to CAS 2018/A/6029 *"a "valid reason" or "just cause" for termination of an employment contract exists when the relevant breach by the other party (or other impeding circumstances) is of such nature, or has reach such a level of seriousness, that*

the essential conditions under which the contract was concluded are no longer present and the injured party cannot in good faith be expected to continue the employment relationship… ".

159. In other words, only when there are objective criteria, which do not reasonably permit to expect a continuation of the employment relationship between the parties, can a contract be terminated prematurely. Hence, if more lenient measures can be taken by an employer to ensure the employee's fulfilment of his contractual duties, such measures must be taken before terminating an employment contract. As it is stressed in the award CAS 2014/A/3684 *"a premature termination of an employment contract can always only be an ultima ratio".* Otherwise, the principle of contractual stability would not be respected.

160. Article 9 paragraph 4 of the Contract, which was invoked by the Appellant as the main reason to terminate the Contract, provides as follows:

"The club has the right to unilaterally terminate the contract, in which case the coach is not entitled to any compensation."

161. After examining the content of the aforementioned clause, the Panel considers that this clause is clearly of a potestative nature, it is not bilateral whilst it limits the rights of the First Respondent in an excessive manner and leads to an unjustified disadvantage towards the Appellant. This finding is in line with the established CAS jurisprudence (for example, awards CAS 2016/A/4852, CAS 2014/A/3675 and CAS 2008/A/1517).

162. In CAS 2016/A/4852 the Panel concludes:

"A contractual clause contained in a footballer's employment contract under which only the club, but not the player may unilaterally terminate the employment contract is unilateral and potestative and therefore contrary to the regulations of FIFA. Consequently it is null and void…."

163. The same considerations are expressed in CAS award CAS 2014/A/3675:

"A clause in an employment contract which – contrary to the FIFA regulations – is of unilateral and potestative nature and to the benefit to the employer (club) only in that it grants the employer the unilateral right to terminate the employment contract while at the same time excluding the player's right to compensation for the otherwise remaining period of the contract cannot be validly invoked as a legal basis for unilateral termination of an employment contract…"

164. In the present case, the Appellant was the only party that could decide to unilaterally terminate the Contract, without any explanation while the First Respondent was not at liberty to do the same and further, it left the Coach in a position that he could not seek compensation for this unilateral act of the Club. Therefore, the Panel fully shares the conclusion of the Single Judge of the FIFA PSC in that Article 9 paragraph 4 of the Contract must be considered null and void. Consequently, this clause cannot be validly invoked as a legal basis for the unilateral termination of the Contract.

165. As to the alleged "rationalization of costs" in order to secure the future activities of the Club amid COVID-19 pandemic, the Panel considers that the Appellant did not discharge its burden of proof and did not adduce any evidence in this regard. On the contrary, from the evidence presented by the First Respondent, the Panel presumes that after the unilateral termination of the Contract, the Club did not encounter any financial problems. On 22 April 2020, the Appellant hired a new coaching staff of eight employees, its turnover for the financial year 2020 (approx. EUR 50,925,405.00) was almost the same when compared to the financial year 2019 (approx. EUR 50,991,390.00) and the amount spent by the Appellant to sign new players between the end of March 2020 till end of February 2021 appears to have amounted to EUR 10,800,000.00. These facts, which were not contested by the Appellant, or at least not in a convincing way, illustrate what appears to be a stable financial condition of the Club which could thus not invoke a unilateral termination of its contractual obligations because of "rationalization of costs" or COVID-19 pandemic.

166. Lastly, the Panel notes that the Appellant terminated the Contract immediately after the First Respondent objected to the reduction of his salary, without any prior *bona fide* discussions or negotiations.

167. In view of the foregoing, the Panel finds that the Appellant terminated the Contract without just cause.

C. *If the Contract was terminated without just cause what are the consequences of the unilateral termination and is the First Respondent entitled to compensation and interest?*

168. Having established that the Appellant terminated the Contract without just cause, it follows that the First Respondent is entitled to compensation. Since the applicable regulations in force at the time the claim was filed before the FIFA PSC did not contain any specific provision3 on how to calculate compensation in coach-club related disputes and article 17 of the FIFA RSTP is not applicable to said disputes, the Panel must apply Swiss law as a starting point.

169. Article 337c of the Swiss Code of Obligations provides:

> *"Where the employer dismisses the employee with immediate effect without just cause, the employee is entitled to damages in the amount he would have earned had the employment relationship ended after the required notice period or on expiry of its agreed duration."*

170. In line with the above article, the Single Judge of the FIFA PSC defined the amount of compensation due on the basis of the residual value of the Contract and this because the Contract did not foresee a liquidated damages clause. In doing so, the Single Judge of the FIFA PSC took into consideration the remaining remuneration from the date of

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[3] 1. The legal framework for coaches, Annex 8 of the RSTP, only entered into force on 1 January 2021.

termination until 31 May 2021, which was equal to an amount of EUR 278,880 ("Residual Value").

171. From the Residual Value, the Single Judge of the FIFA PSC deducted the sum of EUR 90,000, equal to the remuneration received by the First Respondent from September 2020 until 31 May 2021 under the employment contract with the Croatian club NK Osijek ("New Salary").

172. As a result of the difference between the Residual Value and the New Salary, the Single Judge of the FIFA PSC determined that the payable compensation amounted to EUR 188,880.

173. The Appellant contested the amount of compensation payable for the following two reasons.

174. First, the Appellant, by making reference to press-coverage, submitted that Coach was not entitled to any compensation as the Club had allegedly reached an oral agreement with its former head-coach Mr. Nenad Bjelica pursuant to which the liquidated damages paid to him as per the agreed mutual termination agreement would also include any and all entitlements of his technical staff, including the First Respondent, and that the former head coach would thus pay him directly.

175. Secondly, the Appellant submitted that any compensation should be further reduced as the First Respondent manipulated his salary with the NK Osijek because it was extremely low whilst he was actually performing the job of a "First Assistant Coach" and not of a "Second Assistant Coach", as such hiding part of his salary in the contract of a colleague of the technical staff at NK Osjiek.

176. From his side, First Respondent fully supported the calculation of the Single Judge of the FIFA PSC whilst he submitted that he had not received any compensation from the former head-coach nor that he had manipulated his salary at NK Osijek to avoid further mitigation.

177. After reviewing the Appealed Decision and the arguments raised by the Appellant, the Panel sees no reason to deviate from the conclusions of the Single Judge of the FIFA PSC as the Appellant did not adduce any convincing evidence in support of its allegations.

178. Namely, for what concerns its allegation of manipulation by the Coach of his salary at NK Osijiek, it is not substantiated by any corroborating evidence whilst its allegation that the Coach's compensation was included in the agreement reached between the Club and the former head-coach Mr. Nenad Bjelica is contradicted by the sequence of events set out in the factual section. More precisely, whilst the Club and the former head-coach Mr. Nenad Bjelica signed a mutual termination agreement on the 16 April 2020, which would, according to the Appellant, allegedly also have included the severance pay for the Coach, the Club in its letter dated 21 April 2020, sent in reply to a letter of the Coach dated 6 April 2020 in which the Coach requested to be paid the residual value of the

Contract, stated that it had the right to terminate the Contract pursuant to its article 9.4. and without any compensation being due.

179. Clearly, if the Appellant would have reached an oral agreement with its former head-coach that the termination agreement they had reached and the payment foreseen therein also included the severance pay of the Coach, it would have mentioned so in its letter dated 21 April 2020. Rather the letter of the Club dated 21 April 2020 remains completely silent regarding the alleged oral agreement nor does it state that the Coach shall contact Mr. Nenad Bjelica to obtain his payment as such would have been included in the payment agreed upon with Mr. Nenad Bjelica. On the other side, even if such an agreement would have been concluded with Mr. Nenad Bjelica, it would not have bound the Respondent because the former head-coach did not have the power to represent the Mr Poms and execute agreements on his behalf. Therefore, also this argument, other than not being corroborated by any evidence, must be rejected.

180. Finally, the Panel observes that the Parties did not make any submissions on the applicable interest rate, which is a topic that is not covered for in the FIFA RSTP, and which could therefore have been argued as per Croatian law and this as per the explicit choice of law clause contained in the Contract.

181. Therefore, and lacking any submissions on interests, the Panel confirms that the First Respondent is entitled to receive the amount of EUR 188,880 as compensation for breach of the Contract without just cause plus 5% interest p.a. as from 29 May 2020 until the date of effective payment.

X. COSTS

182. . Article R64.4 of the CAS Code provides:

"At the end of the proceedings, the CAS 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."

183. . Furthermore, Article R64.5 of the CAS Code provides that:

"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."

184. Taking into account the outcome of the arbitration, in particular the fact that the appeal is rejected, the Panel considers it reasonable and fair that the arbitration costs, which will be communicated separately by the CAS Court Office to the Parties at a later stage, shall be entirely borne by the Appellant.

185. Finally, pursuant to Article R64.5 of the CAS Code and in consideration of the complexity and outcome of the proceeding as well as the conduct and the financial resources of the Parties, the Panel rules that the Appellant shall bear its own costs and pay a contribution towards the First Respondent's legal fees and other expenses incurred in connection with these arbitration proceedings in the amount of CHF 5'000 (five thousand Swiss Francs).

186. The Fédération Internationale de Football Association shall bear its own costs because it did not use the services of an external counsel.

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 GNK Dinamo Zagreb on 19 March 2021 against the decision issued on 9 February 2021 by the Single Judge of the FIFA PSC is dismissed.

2. The decision issued on 9 February 2021 by the Single Judge of FIFA PSC is confirmed.

3. The costs of the arbitration, to be determined and served separately to the Parties by the CAS Court Office, shall be borne by GNK Dinamo Zagreb.

4. GNK Dinamo Zagreb shall pay to Rene Poms an amount of CHF 5'000 (five thousand Swiss Francs) towards the latter's legal fees and other expenses incurred in connection with the present proceedings.

5. GNK Dinamo Zagreb and the Fédération Internationale de Football Association shall bear their own costs.

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

Seat of arbitration: Lausanne, Switzerland
Date: 16 January 2023

THE COURT OF ARBITRATION FOR SPORT

Yasna Stavreva
President of the Panel

Wouter Lambrecht
Arbitrator

Mark Hovell
Arbitrator