Arbitration CAS 2020/A/7581 MSK Zilina v. Fédération Internationale de Football Association (FIFA) & Besir Demiri, award of 22 November 2021

Panel: Mr Lars Hilliger (Denmark), Sole Arbitrator

Football
Termination of the employment contract without just cause by the club
Jurisdiction of an independent arbitration tribunal established at national level
Jurisdiction of the FIFA DRC
Just cause of termination
Principle of the positive interest and duty to mitigate

1. **If an independent arbitration tribunal, established at national level within the framework of the association and/or a collective bargaining agreement and guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs, were to exist at national level, the dispute between a club and a player may be referred to the said body, provided that the parties have explicitly chosen to summit their dispute thereto by means of a clear, specific and exclusive arbitration clause.**

2. **In a case where one of the parties refers the dispute to the FIFA Dispute Resolution Chamber (DRC) and where the other party disputes the competence of the FIFA DRC, it is up to the FIFA DRC to examine, initially and based on the evidence before it, whether the requirements of guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs have been fulfilled, in which case, and in the affirmative, the FIFA DRC will decline its own jurisdiction and then refer the parties to the national decision-making body initially chosen by parties. If the relevant requirements have not been met, then FIFA DRC will decline the jurisdiction of the said body and accept its own jurisdiction. However, the mere allegation that the national decision-making body is established in accordance with the statutes of the national federation and composed of a chairman, a vice-chairman and an equal number of members representing players and clubs, does not have as a consequence, *per se*, that the said body is established in line with the criteria set out in the FIFA regulations.**

3. **Just cause for termination cannot be based on a unilateral and potestative provision established exclusively in favour of the club, as such provisions are deemed invalid within the meaning of the FIFA regulations and Swiss law.**

4. **The injured party is entitled to a whole reparation of the damages suffered, pursuant to the principle of *"positive interest"*, under which compensation for breach must be aimed at placing the injured party in the position it would have been in had the contract been fulfilled to its end, with due consideration to the duty to mitigate damages.**

I. THE PARTIES

1. MSK Zilina (the "Appellant" or the "Club") is a professional football club based in Slovakia and affiliated with the Slovak Football Association (the "SFA"), which, in turn, is affiliated with the Fédération Internationale de Football Association. The Club is currently participating in the Slovakian Superliga, which is top tier division in Slovakia.

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

3. Mr Besir Demiri (the "Second Respondent" or the "Player") is a professional football player of North Macedonian nationality. The Player is currently under contract with the Albanian football club, FK Kukesi SH.A.

II. FACTUAL BACKGROUND

4. Below is a summary of the relevant facts and allegations as established by the Sole Arbitrator on the basis of the decision rendered by the FIFA Dispute Resolution Chamber (the "FIFA DRC" or the "Chamber") on 23 September 2020 (the "Appealed Decision"), the written submissions of the Parties and evidence adduced. Additional facts and allegations found in the Parties' written submissions and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, the Sole Arbitrator refers in this Award only to the submissions and evidence he considers necessary to explain his reasoning.

5. On 14 June 2019, the Club and the Player entered into a CONTRACT ON PROFESSIONAL PERFORMANCE OF SPORT (the "Contract"), valid as from 15 June 2019 until 30 June 2022.

6. According to the Contract, the Player was entitled, *inter alia*, to a monthly basic salary of EUR 6,000 net to be paid monthly. In addition, pursuant to the Contract, *"After every 15 championship matches played the club will increase the basic monthly salary of the player by 500,- EUR (five hundred EUR) from the following month"*. It is not disputed by any of the Parties that on 9 November 2019, the Player fulfilled this condition.

7. The Contract further stated, *inter alia*, as follows:

> *"[…]*
> ***Article II***
> *1) Performance of sport activity is the main earning activity and the basic source of income of the player. The player will perform sport activity in football. The starting date of the performance of sport agreed between the parties is 15 June 2019.*
> *2) Contracting parties agreed on the basic monthly salary for the performance of sport of the player for the club in the sum of 6.000,- EUR net (six-thousand EUR), which the club undertakes to pay to the*

player from 15 June 2019. Basic monthly salary is payable on the 15th day of the following month to the account of the player stated in the header of present contract.
[…]

Article III
Special Provisions on Remuneration of the Player
1) For the purposes of this article the term "championship match" means match in the top domestic competition in category of adults (Fortuna liga) or the match in UEFA competitions (Champions League, Europa League) and the player plays at least 45 minutes in the match. In case the player plays less than 45 minutes in the match it is considered as ½ of the match.
2) After every 15 championship matches played the club will increase the basic monthly salary of the player by 500,- EUR (five hundred EUR) from the following month
[…]
7) In case the player is still employed by the club in 30 June 2020 the club will pay the player a sign-on bonus in the sum of 10.000,- EUR net (ten thousand EUR) on 15 July 2020.
[…]

Article VII
Termination and Expiration of the Present Contract
1) The present contract expires upon the expiry of the time for which it was concluded.
2) The contract may be terminated before its expiration by the mutual agreement of the contractual parties in written form.
[…]
5) The club has a right to unilaterally terminate the present contract in accordance with § 40 sec. 4 of the act no. 440/2015 Coll. on Sport.
6) The player has a right to unilaterally terminate the present contract in accordance with § 40 sec. 5 of the act no. 440/2015 Coll. on Sport.
7) Unless the applicable laws and regulations of Slovak Republic or regulations of SFZ state otherwise the termination period in case of termination of the present agreement is one month and it starts on the first day of the calendar month following the service of notice of termination to the other contracting party.
8) The notice of termination of the contract shall be executed in written form and it shall contain the grounds of the termination otherwise it is invalid and null.
[…]

Article IX
Final provisions
1) The contractual parties agree that their mutual rights and obligations shall be exercised under the regulations of Slovak Football Association, UEFA and FIFA. Determining law shall be the law of Switzerland. The contractual parties agreed that disputes arising from the present contract shall be solved mainly by the agreement. In case it is not possible to reach the agreement the disputes shall fall under jurisdiction of the Dispute Resolution Chamber of Slovak Football Association, that is governed by their its statue and regulations. The contractual parties agreed to subjugate the statute and procedural rules of Dispute Resolution Chamber of Slovak Football Association valid at the time of beginning of the arbitration proceedings, unless the transitive regulations state otherwise.
[…]".

8. On 27 March 2020, the general assembly of the Appellant, whose decision-making power is exercised by the sole shareholder, decided to take the steps necessary for the Appellant to enter into the process of liquidation.

9. On the same day, the Club forwarded a termination letter to the Player, stating, *inter alia*, as follows:

"On 27 March 2020 the general assembly of the company whose activity is performed by single shareholder in accordance with § 190 sec.1 of the Commercial Code, decided to disestablish the company MSK Zilina, a.s. that entered into liquidation and the liquidator of the company was established.

In accordance with § 40 sec. let.c) of the Act No. 440/2015 Coll. On port and on amendment of other acts in the cording of later regulations (hereinafter referred to as Act on Sport) the sports organization has a right to terminate the contract on professional performance of sport in case the sport organization is disestablished.

In view of the above we hereby terminate [the Contract],

In accordance with § 41 sec. 2 of the Act of Sport, the termination period is one month and it starts the first day of the calendar month following the service of notice of termination, i.e. from 01 April 2020, and ends on the final fay of the respective month, i.e. on 30 April 2020".

10. By letter of 30 April 2020, the legal representative of the Player wrote, *inter alia*, as follows to the Club:

"Pursuant to the documentation I received from the Player, I can confirm the following:

a) that on 14 June 2019 the Player signed with MŠK Žilina a.s. from Slovakia (hereinafter: the Club) a Contract on professional performance of sport valid from 15 June 2019 until 30 June 2022 (hereinafter: the Employment contract), pursuant to which the Club, inter alia, undertook to pay to the Player as follows:
   - *monthly salary of net EUR 6,000.00 (six thousand euros), and*
   - *increased monthly salary of net EUR 6,500.00 (six thousand and five hundred euros) in case the Player participates in 15 championship matches of the Club and plays at least 45 minutes in each and every of said championship matches, and*
   - *sign-on bonus in net amount of EUR 10,000.00 on 15/7/2020; and*

b) that on 9/11/2019 the Player accomplished the condition in participation in 15th championship match of the Club for at least 45 min; and

c) that on 27 March 2020 the Club issued without any prior notice on unilateral Termination of the Contract professional performance of sport (hereinafter: Notice of termination).

2/ On this note, the Player shall state that the aforementioned behaviour of the Club (i.e. unilateral termination of the Employment contract) clearly constitutes a heavy breach of the Employment contract without just cause in the sense of applicable FIFA Regulations on the Status and Transfer of Players (hereinafter: FIFA RSTP).

3/ In this context, the Player kindly asks the Club to pay him compensation in net amount of EUR 186,339.00 (one hundred and eighty-six thousand three hundred and thirty-nine euro), in the sense of the art. 17. of FIFA RSTP; along with all relevant taxes and contributions on top of all above specified net amounts, all within next 15 days.

4/ Should the Club fail to fulfill the above mentioned financial obligations within the given deadline, the Player shall be forced to file a claim against the Club before the FIFA Dispute Resolution Chamber (DRC), whereas the Claimant shall request aforementioned compensation in accordance with article 17. of FIFA RSTP, as well as the imposition of sporting sanctions against the Club, all due to the aforementioned severe breach of the Employment contract committed by the Club".

11. On 4 May 2020, the Club reiterated that the Contract was duly terminated, stating, *inter alia*, as follows:

"[…] Please kindly note that [the Contract] was concluded pursuant to the §35 et seq. of [Act of Sport] and Transfer Regulations of Slovak Football Association effective at the time of conclusion of the employment contract.

The parties specially and expressively mutually agreed that the club has a right to unilaterally terminate the employment contract in accordance with §40 sec. 4 of the Act of Sport (c.f. art. VII sec. 5 of the employment contract).

The §40 sec.4c) of the Act of Sport states that sport organization is entitled to terminate the employment contract in case the sport organization is being disestablished

The same is provided in the Transfer Regulations of Slovak Football Association (c.f. art. 30 sec.1c)).

As we informed your client the general assembly of the company, whose activity is performed by single shareholder in accordance with §190 sec. of the Commercial ode, decided in 27 March 2020 to disestablish the company MSK Zilina, a.s. that entered into liquidation and the liquidator of the company was established.

Therefore the club had just cause and legal cause, that was also previously agreed in the employment contract, to terminate the contract with your client with a one minth termination perod in accordance with §41 sec. 2 of the Act of Sport. […]".

12. On 13 June 2020, and following the suspension of the Slovakian football activities due to the Covid-19 pandemic, the Slovakian First Division resumed with the Club's participation in the tournament.

13. Finally, on 30 June 2020, the Club exited the liquidation procedure.

14. On 10 September 2020, the Player signed a new employment contract with the Albanian football club, FK Kukesi SH.A., valid until 30 June 2022.

III. PROCEEDINGS BEFORE THE FIFA DISPUTE RESOLUTION CHAMBER

15. On 26 June 2020, the Player lodged a claim against the Club in front of FIFA, requesting payment of compensation for breach of contract in the amount of EUR 180,009.50 net plus interest at a rate of 5% *p.a.* from *"the respective date of maturity"*, i.e. 27 March 2020, corresponding to the residual value of the Contract. Furthermore, the Player argued that on 9 November 2019, he fulfilled the conditions set out in Article III.2 of the Contract by having participated in 15 Championship matches, which is why the Player submitted that his monthly salary was increased by EUR 500 to a total of EUR 6,500 net per month.

16. In its reply, the Club argued that FIFA was not competent to deal with the matter at hand with the consequence that the Player's claim should be deemed inadmissible.

17. In this respect, the Club referred to Article IX sec. 1 of the Contract, pursuant to which the Dispute Resolution Chamber of the SFA (the "SFA DRC") is competent to decide the dispute.

18. The Club further specified that the SFA DRC had been established in accordance with the Act of Sport and with the Statutes of the SFA, which provide that the SFA DRC *"is composed of chairman, vice-chairman and equal number of members representing players and clubs"*.

19. With regard to the substance of the claim, the Club held that it had terminated the Contract with just cause, considering that it was in liquidation in accordance with national rules.

20. Moreover, the Club argued that it had the right to terminate the Contract unilaterally in accordance with the Act of Sport and that the parties had agreed on this specific point in the Contract. Furthermore, the Club noted that at the time of the termination of the Contract, the football competitions in Slovakia were suspended due to the Covid-19 pandemic without any certainty on whether and when they would be resumed.

21. The FIFA DRC initially noted that in accordance with the Regulations on the Status and Transfer of Players (the "Regulations"), the Chamber would, in principle, be competent to deal with the matter at stake as it concerned an employment-related dispute with an international dimension between a Slovakian club and a North Macedonian player.

22. However, the Chamber acknowledged that the Club contested the competence of the FIFA DRC to deal with the present case, alleging the exclusive competence of the SFA DRC, based on Article IX sec.1 of the Contract.

23. In this regard the FIFA DRC initially emphasised that it is competent to deal with a matter such as the one at hand unless an independent arbitration tribunal, guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs, has been established at national level within the framework of the association and/or collective bargaining agreement.

24. Furthermore, and in relation to the above, the FIFA DRC stressed that one of the basic conditions that needs to be met to establish that a body other than the FIFA DRC is

competent to settle an employment-related dispute between a club and a player of an international dimension is that the jurisdiction of the relevant national arbitration tribunal or national court derives from a clear reference in the employment contract.

25. In order to decide on its own competence, the FIFA DRC considered that it should, first and foremost, analyse whether the Contract, at the root of the dispute, contained a clear jurisdiction clause.

26. Having examined the relevant provision of the Contract, the FIFA DRC concluded that Article IX sec. 1 of the Contract constitutes a clear jurisdiction clause in favour of the SFA DRC.

27. However, the FIFA DRC further found that the Club had failed to provide any relevant documentation proving that an independent arbitration tribunal in compliance with the requirements of the FIFA regulations had been established in Slovakia.

28. As a consequence, the FIFA DRC established that the Club's objection to the competence of FIFA to deal with the present matter had to be rejected and that the FIFA DRC was competent to consider the substance of the present matter.

29. Having established its competence, the Chamber concluded that the June 2020 edition of the Regulations is applicable to the matter at hand.

30. Bearing in mind that, pursuant to the applicable rules, any party claiming a right on the basis of an alleged fact carries the burden of proof, the FIFA DC acknowledged the facts of the case and highlighted that the underlying issue in this dispute was to determine whether the Contract had been unilaterally and prematurely terminated or not and, if so, with or without just cause, and subsequently to establish the financial and/or sporting consequences for any party found to be in breach of contract.

31. The FIFA DRC initially noted that the Club submitted having terminated the Contract on 27 March 2020 with just cause, based on Article 40 sec. 5 let. C) of the Act of Sport, since the Club was in liquidation as defined in para. 190 sec. 1 of the Slovak Commercial Code. Moreover, it was noted that the Club argued that at the time of termination of the Contract, the national football competitions were suspended and that it was uncertain whether and when they would be resumed due to the Covid-19 pandemic.

32. The FIFA DRC then went on to emphasise that only when there are objective criteria which do not reasonably permit the expectation of a continuation of an employment relationship between two parties, a contract may be terminated prematurely. As such, a premature termination of an employment contract can only ever be an *ultima ratio* measure.

33. Based on the documentation and information on file, the FIFA DRC pointed out that the Player contested the reasons set forth in the termination notice and considered that the Contract was terminated without just cause.

34. In accordance with the principle of the burden of proof, the FIFA DRC then noted that the Club had failed to provide any documentary evidence with regard to the content of the Act of Sport and the Slovakian Commercial Code, and the argumentation of the Club could therefore not be upheld since it had not been demonstrated that the Club was in fact in liquidation as per the Slovakian Commercial Code and that it had indeed terminated the Contract with just cause in accordance with the Act of Sport.

35. Based on that, the FIFA DRC concluded that the Club had terminated the Contract without just cause.

36. Having established that the Club is to be held liable for the early termination of the Contract without just cause, and taking into consideration Article 17 (1) of the Regulations, the FIFA DRC considered that the Player was entitled to receive compensation from the Club for breach of contract.

37. Taking into consideration, *inter alia*, the remuneration due to the Player under the Contract until its regular expiry date of 30 June 2022, and taking into consideration that the Player had demonstrated that his salary had been increased to EUR 6,500 per month as from 9 November 2019, the FIFA DRC found that the amount of EUR 182,000 should serve as a basis for determining the amount of compensation for breach of contract.

38. The FIFA DRC further observed that the Player had not entered into any other employment relationship following the termination of the Contract.

39. However, since the Player had deliberately limited his claim to a total amount of EUR 180,009.50, and since the FIFA DRC, in accordance with the legal principle of *ne ultra petita*, the FIFA DRC found that the Player could not be awarded more than the total amount claimed, i.e. EUR 180,009.50.

40. Moreover, taking into consideration the Player's request regarding interest, and taking into consideration the constant practice of the FIFA DRC, the Player was awarded interest on the said amount at 5% as from the date of the claim.

41. On 23 September 2020, the FIFA DRC rendered the Appealed Decision and decided, *inter alia*, as follows:

> *"1. The claim of the Claimant, BESIR DEMIRI, is admissible.*
>
> *2. The claim of the Claimant is partially accepted.*
>
> *3. The Respondent, MSK Zilina, has to pay to the Claimant the following amount:*
>
> - *EUR 180,009.50 as compensation for breach of contract without just cause plus 5% interest p.a. as from 26 June 2020 until the date of effective payment.*
>
> *4. Any further claims of the Claimant are rejected.*

[…]

7. *In the event that the amount due, plus interest as established above is not paid by the Respondent within 45 days as from the notification by the Claimant of the relevant bank details to the Respondent, the following consequences shall arise:*

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

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

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

42. On 17 November 2020, the grounds of the Appealed Decision were communicated to the Parties.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

43. On 4 December 2020, the Appellant filed its Statement of Appeal/Appeal Brief in accordance with Articles R47, R48 and R51 of the CAS Code of Sports-related Arbitration (the "CAS Code") against the Respondents with respect to the Appealed Decision.

44. On 30 January 2021 and 1 February 2021, respectively, the Second Respondent and the First Respondent filed their Answers in accordance with Article R55 of the CAS Code.

45. On 1 February 2021, and in accordance with Articles R33, R52, R53 and R54 of the CAS Code, the Parties were informed by the CAS Court Office that the Panel had been constituted as follows:

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

46. By letter of 1 March 2021, and based on confirmation received from the Parties that they preferred or did not object to having an award issued solely on the basis of their written submissions, and since the Sole Arbitrator deemed himself sufficiently informed to decide the case and to render an award based solely on the written submissions, the Parties were informed that the Sole Arbitrator had decided to do so.

47. All Parties signed and returned the Order of Procedure, thereby, *inter alia*, confirming that their right to be heard had been respected.

V. PARTIES' REQUESTS FOR RELIEF AND SUBMISSIONS

A. The Appellant

48. In its Statement of Appel/Appeal Brief, the Appellant requested the CAS:

> *"1. The Appeal filed by the Appellant against the Decision of the Dispute Resolution Chamber Judge passed on 23 September 2020 regarding an employment-related dispute concerning the player Besir Demiri (FIFA DRC Ref. no.: 20-00910) is upheld.*
>
> *2. FIFA had no jurisdiction and was not competent to hear the dispute between the parties.*
>
> *3. The Decision of the Dispute Resolution Chamber Judge passed on 23 September 2020 regarding an employment-related dispute concerning the player Besir Demiri (FIFA DRC Ref. no.: 20-00910) is therefore annulled.*
>
> *4. FIFA shall bear the arbitration costs.*
>
> *Alternatively if CAS decides that FIFA had jurisdiction and was competent to hear the dispute between the parties the Appellant kindly requests that CAS renders the award as follows:*
>
> *1. The Appeal filed by the Appellant against the Decision of the Dispute Resolution Chamber Judge passed on 23 September 2020 regarding an employment-related dispute concerning the player Besir Demiri (FIFA DRC Ref. no.: 20-00910) is upheld.*
>
> *2. The Appellant had just cause to terminate the employment contract with the Respondent* [the Player].
>
> *3. The Decision of the Dispute Resolution Chamber Judge passed on 23 September 2020 regarding an employment-related dispute concerning the player Besir Demiri (FIFA DRC Ref. no.: 20-00910) is therefore annulled.*
>
> *4. FIFA and the Respondent* [the Player] *shall bear the arbitration costs.*
>
> *Alternatively if CAS decides that FIFA had jurisdiction and was competent to hear the dispute between the parties and the Appellant had no just cause to terminate the employment contract with the Respondent* [the Player]*:*
>
> *1. The Appeal filed by the Appellant against the Decision of the Dispute Resolution Chamber Judge passed on 23 September 2020 regarding an employment-related dispute concerning the player Besir Demiri (FIFA DRC Ref. no.: 20-00910) is partially upheld.*
>
> *2. The compensation awarded to the Respondent* [the Player] *in the appealed decision shall be adjusted to the amount … (to be determined in the arbitration proceedings with regard to the 'Mitigated Compensation' principle as set out in sec. 57 of this appeal and salaries already paid as set out in sec. 53).*
>
> *3. The Appellant, FIFA and Respondent* [the Player] *shall proportionally share the arbitration costs.*

49. The Appellant's submissions, in essence, may be summarised as follows:

- Initially, it is correct that, pursuant to the Regulations, the FIFA DRC has competence to adjudicate on employment-related disputes between a club and a player that have an international dimension, which is the case in this dispute.

- However, and also pursuant the Regulations, the parties may explicitly opt in writing to refer such disputes to an independent arbitration tribunal established within the framework of the association and/or a collective bargaining agreement.
- As confirmed in the Appealed Decision, the Club and Player agreed on a clear jurisdiction clause in favour of the SFA DRC, which was included in the Contract, however, the FIFA DRC found that the Appellant did not provide the relevant documentation, i.e. the Act of Sport, and thus failed to prove that an independent arbitration tribunal had been established in Slovakia in compliance with the requirements of the Regulations.
- However, in accordance with the principle of *iura novit curia,* the Appellant is not in a position to prove that the Act of Sports in fact exists or to prove its content.
- Furthermore, the FIFA DRC could have requested the Appellant to provide a copy of the relevant national law or regulations, if so needed, since national law and regulations need to be taken into consideration in accordance with the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (the "Procedural Rules".)
- The FIFA DRC also failed to take into consideration the Statutes of the SFA, which outlines the establishment, function and composition of the SFA DRC, even if these statutes were in the possession of FIFA as they have been approved by the same.
- Moreover, given the complexity of the case, the Appellant should have been granted a second round of submissions, and by not doing so, the FIFA DRC violated the Appellant's rights to a due process and to be heard.
- Furthermore, the FIFA DRC was not competent to decide on its own competence.
- The Appellant was in liquidation through a decision made by the sole shareholder at the time of the termination of the Contract, and such a well-known fact needs not be additionally proven.
- As such, the FIFA DRC should have found itself incompetent to decide the matter.
- The Appellant had no overdue payable, its only creditor was its own sole shareholder, and the liquidation was caused by the uncertainty of the Covid-19 pandemic and in order to secure the debt owing to the sole shareholder.
- In order to effectively minimise the Appellant's budget, the liquidator terminated a number of employment contracts.
- When the debt was secured and the budget minimised, the liquidator decided to terminate the liquidation and resume the Appellant's regular activity as of 30 June 2020.
- The Contract was concluded between the Player and the Club pursuant to the provisions of the Act of Sport and in accordance with the SFA Regulations effective at the time of conclusion of the Contract. Both the Act of Sport and the SFA Regulations are available online, but no English translation is available.
- Pursuant to the Act on Sport and the SFA Regulations, a club has a unilateral right to terminate the employment contract with an athlete in case the club is being wound up.

- The same was agreed between the Player and the Club in the Contract.
- The notice period was one month following the service of the termination notice and started on 1 April 2020 and ended on 30 April 2020. Thus, the Player was still under contract with the Appellant during April 2020 and, accordingly, also received his salary for the said month on 14 May 2020.
- The Player's right to equal treatment was never breached and the Appellant did in fact terminate the employment relationship with seventeen different players in all.
- In any case, the FIFA DRC erred in its calculation of the compensation payable to the Player since the Player had already received his monthly salaries for March and April 2020.
- Furthermore, the Player's salary under his new contract must be deducted from any amount of compensation payable to the Player.

B. The First Respondent

50. In its Answer, the First Respondent requested the CAS to:

"(a) Reject the Appellant's appeal in its entirety.

(b) Confirm the Appealed Decision and, in particular, that the FIFA DRC was competent to deal with the dispute between the Appellant and the Player.

(c) Order the Appellant to bear all costs incurred with the present procedure, and

(d) Order the Appellant to make a contribution to FIFA's legal costs".

51. The First Respondent's submissions, in essence, may be summarised as follows:

- Initially, it is fundamental to point out that the FIFA DRC, the competence of which is disputed by the Club, forms part of a private dispute resolution system of a Swiss association, founded in accordance with Article 60 *et seq.* of the Swiss Civil Code (the "SCC").
- In this regard, Article 22(b) of the Regulations provides that FIFA, as a general rule, will be competent to hear employment-related disputes between a club and a player of an international dimension unless the parties explicitly opt to refer their dispute to an independent arbitration tribunal guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs at national level within the framework of the association and/or a collective bargaining agreement.
- Thus, and since the international dimension of the present dispute is not in dispute if an independent arbitration tribunal guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs exists at national level, a dispute between parties of an international dimension may be referred to the said body provided that the parties have explicitly chosen to submit such a dispute thereto by means of a clear, specific and exclusive arbitration clause.

- However, in cases where – despite the parties' explicit concrete choice of forum in favour of a national decision-making body – one of the parties nevertheless refers a dispute to the FIFA DRC and the counterparty disputes the competence of the said FIFA decision-making body, the FIFA DRC would examine whether, according to the documents on file, the relevant national decision-making body is an independent arbitration tribunal guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs. In the affirmative, the FIFA DRC would decline its jurisdiction and refer the parties to the national decision-making body initially chosen by the parties.
- However, if the relevant requirements are not met by the aforementioned body, the FIFA DRC would not recognise its jurisdiction, and it would consequently accept its own competence to adjudicate on the matter as to substance.
- As a general rule, and as confirmed by the CAS, in order to establish whether a national body is an independent arbitration tribunal, it must be proven by the party challenging the competence of the FIFA DRC, in the present case the Club, that the pertinent national body meets the minimum procedural standards set out in the different FIFA regulations and as implemented by FIFA in various documents, including FIFA Circular no. 1010 and the NDRC Standard Regulations.
- If the party challenging the FIFA DRC's competence is not in a position to provide unambiguous and clear evidence in this respect, FIFA remains competent.
- With regard to the alleged national independent arbitration tribunal, the Appellant failed to provide any relevant documentation before the FIFA DRC with regard to the existence and functioning of such. And as a result, the FIFA DC was not put in a position to verify the existence or functioning of such an alleged body.
- Thus, and despite the consensus that there is a clear arbitration clause in the Contract in favour of the SFA DRC, the Appellant failed to prove that the dispute resolution system it relies upon complies with the minimum requirements established by Article 22(b) of the Regulations and Circular no. 1010.
- It must be recalled that it is for the Appellant to prove that the dispute resolution system of the SFA complies with the minimum requirements provided by the Regulations, guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs.
- Also before the CAS, the Appellant has failed to provide documentary evidence, and, more importantly, has not explained or argued on the basis of tangible documentary evidence how the SFA DRC complies with the minimum requirements established by Article 22(b) of the Regulations and Circular no. 1010.
- The mere reference in general to the Act of Sport and the rules and regulations of the SFA is not sufficient, as is also the case with the reference to links to the alleged relevant documents, which in any case are not available in English.
- As such, it is evident that the Appellant has utterly failed to put the FIFA DRC, and now the Sole Arbitrator, in a position to be able to properly address the dispute resolution system it relies upon.

- In particular, the Appellant failed to demonstrate that the SFA DRC can be regarded as an independent and impartial arbitration tribunal within the meaning of Article 22(b) of the Regulations and respecting the principles contained in Circular no. 1010.
- With regard to the Appellant's allegations that its right to due process and its right to be heard have been violated by nature from not having been granted a *"second exchange of correspondence in order to appropriately find all the facts of the case"* and that the matter has not been submitted to the SFA DRC whose *"respective members would have better knowledge of the applicable national laws and regulations"*, these have to be dismissed.
- First of all, the Appellant was invited to provide its position and submit any documentary evidence it considered useful, which it did, and the Appellant never requested a second round of submissions and never objected to the closure of the investigation phase.
- Furthermore, even if the Appellant's due process rights were violated in any way (*quod certe non*), such breaches are in any case cured in the scope of these arbitration proceedings, in light of Article R57 of the CAS Code, as consistently sustained by CAS jurisprudence.
- Finally, Article 3(1) of the Procedural Rules explicitly states that the FIFA judicial bodies *"shall examine their jurisdiction, in particular in light of art 22 to 24 of the [Regulation]"* and Article 3(3) of the Procedural Rules in any event clarifies that *"proceedings before the single judge or the DRC judge shall also be conducted in accordance with these rules"*.

- With regard to the merits of the dispute, this dispute is entirely "horizontal" in nature insofar as no reliefs are sought against FIFA with respect to the contractual dispute between the Club and the Player.

- Consequently, FIFA does not have the standing to be sued in relation to the contractual relationship between the Club and the Player and will therefore not comment any further on the dispute, which exclusively concerns the other Parties.

C. The Second Respondent

52. In his Answer, the Second Respondent requested the Sole Arbitrator to issue an award:

"- Rejecting all reliefs sought by the Appellant in its Request for Relief from the Appeal Brief, and

- Confirming entirely the challenged FIFA DRC Decision, and

- Ordering the Appellant to pay all the costs of the proceedings before the CAS and to pay a significant contribution towards the legal fees and other expenses incurred by the Player in connection with these proceedings".

53. The Second Respondent's submissions, in essence, may be summarised as follows:

- With regard to the competence of the FIFA DRC, as a general rule, the FIFA DRC is competent to hear employment-related disputes between a football club and a football player of an international dimension.

- Exceptionally, a national arbitration dispute resolution is competent to hear such a dispute only if the parties 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 and if such a tribunal is guaranteeing fair proceedings and respecting the principle of equal representation of football players and football clubs.
- Even though the Contract contains a specific arbitration clause, the Club has failed to demonstrate, not only before FIFA but also during these proceedings, that the SFA DRC is in line with FIFA Circular no. 1010 and with the FIFA National Dispute Resolution Chamber Standard Regulations.
- As such, the Club has failed to provide all relevant documentation in order to discharge its burden of proving that the SFA DRC is to be deemed an independent arbitration tribunal fulfilling the requirements of the Regulations.
- The Club's mere allegations that the SFA DRC is constituted in accordance with the SFA Statutes and is composed of a chairman, a vice-chairman and an equal number of members representing players and clubs, do not automatically mean that the SFA DRC is in line with Circular no. 1010 and with the FIFA National Dispute Resolution Chamber Standard Regulations.
- On the contrary, pursuant to the SFA Statutes, the Conference of the SFA is competent and authorised to elect the Chairman and Vice-Chairman of the SFA DRC, which conference consisted of 87 delegates with voting rights, of whom 86 delegates were representatives of the football clubs, while only one is a delegate of a players association.
- This in not in line with the rules set out in Circular no. 1010 and the FIFA National Dispute Resolution Chamber Standard Regulations, which prescribe that the chairman and the deputy chairman must be chosen by consensus by the player and club representatives and that the parties must have equal influence over the appointment of arbitrators.
- Already based on that, the Appellant has not discharged its burden of proof to show that the SFA DRC is in line with FIFA Circular no. 1010 in any event.
- All in all, the SFA DRC is not in line with the requirements, and the FIFA DRC was therefore competent to hear this case in the first instance, and all the Appellant's allegations that the FIFA DRC had no jurisdiction/competence to hear this case have to be rejected.
- All allegations of the Appellant about the alleged due process rights violations and violations of the right to be heard within the scope of the proceedings before the FIFA DRC are completely groundless, and the Appellant was offered ample opportunity to present its case before the FIFA DRC.
- Furthermore, the FIFA DRC was fully entitled to decide on its own jurisdiction in accordance with the Procedural Rules.
- With regard to the merits of the dispute, the allegations of the Appellant that it had just cause to terminate the Contract unilaterally based on the national Act of Sport are

irrelevant to the case at hand since the Regulations, and subsidiarily, Swiss law are applicable to this matter.

- Moreover, and in line with the well-established jurisprudence of both FIFA and the CAS, just cause for termination of a contract cannot be based on the unilateral and potestative provisions established exclusively in favour of a club, as such provisions are deemed invalid within the meaning of the Regulations and Swiss law.
- The Appellant considers having terminated the Contract in accordance with §40 sec. 4 of the Act of Sport, which allegedly grants the Appellant an unbalanced unilateral right to terminate the Contract, which is abusive and contrary to the general principle of contractual stability.
- Moreover, the Player was never warned about the termination, which is normally required by Swiss law.
- The Appellant's immediate termination *in casu* obviously contravenes the principle of *ultimo ratio* with regard to the unilateral termination of the employment relationship, which principle is duly explained and accepted in CAS jurisprudence.
- In any case, the Appellant, at the time of termination of the Contract, and even today, has not been duly wound up.
- Furthermore, and even if that would have been the case, according to CAS jurisprudence, the mere liquidation of a football club will not "qualify" automatically as a just cause for the unilateral termination of an employment contract, since such a club actually has to show that the financial problems that led to the judicial liquidation were not imputable to any commercial company created for administrating its professional activities or that such difficulties were attributable to other unrelated circumstance, in order to have just cause for the unilateral termination in such a situation.
- The Appellant never submitted any evidence to support the allegation that it had in fact just cause to terminate the Contract.
- The Appellant also failed to produce any evidence in support of its allegations that it sustained financial difficulties amid the Covid-19 pandemic.
- The FIFA Covid-19 Guidelines furthermore does not entitle clubs to terminate contracts due to the Covid-19 pandemic.
- Moreover, at the time of termination of the Contract, the Appellant was already planning to resume its sporting activities and even made these plans public, which shows the bad faith of the Appellant when terminating the Contract.
- As the Appellant terminated the Contract without just cause, the Player is entitled to receive outstanding remuneration until the date of termination (EUR 1,009.50 net) and compensation for breach of contract in accordance with Article 17 of the Regulations based on a monthly salary of EUR 6,500 and, in addition, the sign-on bonus of EUR 10,000 net set out in Article III par. 7 of the Contract.

- Based on the special circumstances of the case and the Appellant's bad faith, the amount of compensation should not be mitigated at all by the Player's earnings arising of his new contract.

VI. JURISDICTION

54. 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.* […]*".*

55. With respect to the Appealed Decision, the jurisdiction of the CAS derives from Article 58 (1) of the FIFA Statutes as it determines that *"[a]ppeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question"* and Article R47 of the CAS Code.

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

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

58. Furthermore, and in case the Sole Arbitrator finds that the FIFA DRC had jurisdiction to decide on the Player's claim, the CAS is competent to deal with the merits of the matter as well.

59. In addition, none of the Respondents objected to the jurisdiction of the CAS, and all Parties confirmed the CAS' jurisdiction when signing the Order of Procedure.

VII. ADMISSIBILITY

60. The grounds of the Appealed Decision were notified to the Appellant on 17 November 2020, and the Statement of Appeal/Appeal Brief was lodged on 4 December 2020, *i.e.* within the statutory time limit of 21 days set out in Article 58 par. 1 of the FIFA Statutes, which is not disputed. Furthermore, the Statement of Appeal/Appeal Brief complied with all the requirements of Articles R48 and R51 of the CAS Code.

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

VIII. APPLICABLE LAW

62. Pursuant to Article 57 (2) of the FIFA Statutes

> *"The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss Law".*

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

64. With reference to the above, and given that the Appealed Decision was rendered by the FIFA DRC, the Respondents both submit that the FIFA Statutes and regulations constitute the applicable law to the matter at hand and that Swiss law must be applied subsidiarily should the need arise to fill a possible gap in the FIFA regulations.

65. The Appellant, on the other hand, submits that pursuant to Article IX 1) of the Contract, the regulations of Slovak Football Association and national Slovakian legislation should be taken into consideration when deciding on the dispute.

66. However, the Sole Arbitrator further notes that the said clause also refers to the regulations of UEFA and FIFA, adding that *"Determining law shall be the law of Switzerland".*, which is why the Sole Arbitrator finds that it does not constitute a valid choice of law clause, which would justify the application of Slovakian law and regulations.

67. Based on the above, the Sole Arbitrator is satisfied that the various rules and regulations of FIFA are primarily applicable, in particular the Regulations on the Status and Transfer of Players and the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber and, subsidiarily, Swiss law should the need arise to fill a possible gap in the various regulations of FIFA.

IX. MERITS

68. Initially, the Sole Arbitrator notes that the factual circumstances of this case are in essence undisputed by the Parties, including the fact that the Club and the Player entered into the Contract on 14 June 2019, valid until 30 June 2022, according to which the Player initially was entitled, *inter alia*, to a monthly basic salary of EUR 6,000, to be paid monthly, which monthly salary was later increased to EUR 6,500 as from December 2019, due to the Player having participated in 15 championship matches for the Club by 9 November 2019.

A. Jurisdiction of the FIFA DRC

69. The Contract, states, *inter alia*, as follows:

> *"Article IX*
>
> *1) The contractual parties agree that their mutual rights and obligations shall be exercised under the regulations of Slovak Football Association, UEFA and FIFA. Determining law shall be the law of Switzerland. The contractual parties agreed that disputes arising from the present contract shall be solved mainly by the agreement. In case it is not possible to reach the agreement the disputes shall fall under jurisdiction of the Dispute Resolution Chamber of Slovak Football Association, that is governed by their its statue and regulations. The contractual parties agreed to subjugate the statute and procedural rules of Dispute Resolution Chamber of Slovak Football Association valid at the time of beginning of the arbitration proceedings, unless the transitive regulations state otherwise".*

70. Furthermore, it is undisputed that, on 27 March 2020, the Club terminated the Contract stating that it was entitled to do so since the Club was in a liquidation procedure, while the Player considered the unilateral termination of the Contract as a breach of contract.

71. Consequently, on 26 June 2020, the Player filed a claim in front of FIFA against the Club, requesting payment of compensation for breach of contract in the amount of EUR 180,009.50 plus interest as of 27 March 2020.

72. Before the FIFA DRC, the Club argued, *inter alia*, that FIFA was not competent to decide the dispute with the consequence that the Player's claim should be deemed inadmissible.

73. However, on 23 September 2020, the FIFA DRC rendered the Appealed Decision and found the claim of the Appellant admissible since, *inter alia*, it was found that regardless of the existence of a valid arbitration clause set out in the Contract, the Appellant had *"failed to prove that an independent arbitration tribunal in compliance with the requirements of the FIFA regulations has been established in Slovakia"*, on which ground the objection to the competence of FIFA had to be rejected.

74. With regard to the merits of the dispute, the FIFA DRC found that the Club terminated the Contract without just cause and that the Club is consequently liable to pay to the Player the amount of EUR 180,009.50 as compensation for breach of contract.

75. Following the Appellant's appeal to the CAS, the Sole Arbitrator now has to decide on the issue of FIFA jurisdiction and, if indeed FIFA had jurisdiction to decide the dispute, he also has to decide on the merits of the dispute, *i.e.* the Player's claim.

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

77. Article 3 (1) of the FIFA Procedural Rules provides, *inter alia*, as follows:

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

78. Article 22 of the Regulations states, *inter alia*, as follows:

"Competence of FIFA

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

a) […]

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

79. With regard to the present dispute, the Sole Arbitrator notes that it is undisputed between the Parties that the dispute between the Club and the Player is an employment-related dispute between a club and a player of an international dimension, the Appellant being a Slovakian football club and the Player being a professional football player of North Macedonian nationality.

80. In accordance with the above, the Sole Arbitrator further notes that if an independent arbitration tribunal, established at national level within the framework of the association and/or a collective bargaining agreement and guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs, were to exist at national level, the dispute between the Club and the Player may be referred to the said body, provided that the parties have explicitly chosen to summit their dispute thereto by means of a clear, specific and exclusive arbitration clause.

81. Moreover, the Sole Arbitrator notes that in a case like the present dispute, where one of the parties refers the dispute to the FIFA DRC and where the other party disputes the competence of the FIFA DRC, it is up to the FIFA DRC to examine, initially and based on the evidence before it, whether the above-mentioned requirements have been fulfilled, in which case, and in the affirmative, the FIFA DRC will decline its own jurisdiction and then refer the parties to the national decision-making body initially chosen by parties.

82. However, if the relevant requirements have not been met, then FIFA DRC will decline the jurisdiction of the said body and accept its own jurisdiction, as was the case with the Appealed Decision.

83. In order to decide on the issue of FIFA jurisdiction, the Sole Arbitrator initially finds, based on the facts of the case and the Parties' submissions, that it is up to the Club to discharge the

burden of proof to establish that the Club and the Player, by means of a clear, specific and exclusive arbitration clause, have explicitly chosen to summit their dispute to an independent arbitration tribunal established at national level within the framework of the association and/or a collective bargaining agreement and guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs.

84. In doing so, the Sole Arbitrator adheres to the principle of *actori incumbit probatio*, which has been consistently observed in CAS jurisprudence, and according to which *"in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them (…). The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some fact and persuade the deciding body, it must actively substantiate its allegations with convincing evidence"* (*e.g.* CAS 2003/A/506, para 54; CAS 2009/A/1810&1811, para 46; and CAS 2009/A/1975, para 71ff).

85. Initially, the Sole Arbitrator notes that it is not disputed by the Respondents that Article IX (1) of the Contract constitutes a valid arbitration clause, stating, *inter alia*, that: *"[…] In case it is not possible to reach the agreement the disputes shall fall under jurisdiction of the Dispute Resolution Chamber of Slovak Football Association, that is governed by their its statue and regulations. […]"*.

86. The Sole Arbitrator finds no reason do derogate from this point of view, which is also confirmed in the Appealed Decision.

87. However, the Sole Arbitrator finds that the Club has not adequately discharged the burden of proof to establish that the necessary requirements of the SFA DRC, as the competent national decision-making body, have been fulfilled to show that the FIFA DRC is not competent to decide the present dispute.

88. The Sole Arbitrator notes that the relevant criteria are derived from general legal principles and furthermore recalled in FIFA Circular no. 1010 of 20 December 2005 and in FIFA National Dispute Resolution Chamber Standard Regulations.

89. Moreover, the principles have been confirmed in CAS jurisprudence, *e.g.* in CAS 2010/A/2289 with regard to the principle of equal representation

90. In its written submission before the CAS, the Appellant has referred, *inter alia*, to the Statutes of the SFA, which, according to the Appellant, outline the establishment, function and composition of the SFA DRC, and therefore, again according to Appellant, substantiate that the SFA DRC fulfils the relevant criteria.

91. Moreover, and in accordance with the principle of *iura novit curia,* the Appellant submits that it was not in a position to prove that the Act of Sport exists or to prove its content, and the Appellant further submits that the FIFA DRC could have requested the Appellant to provide a copy of the relevant national law or regulations, if so needed.

92. However, the Sole Arbitrator finds that the Appellant, by doing so, has not adequately discharged the burden of proof to establish that the necessary requirements of the SFA DRC have been fulfilled.

93. The mere reference to national rules and regulations without any sufficient explanation is not enough.

94. As such, the mere allegation that the SFA DRC is established in accordance with the Statutes of the SFA and composed of a chairman, a vice-chairman and an equal number of members representing players and clubs, does not have as a consequence, *per se*, that the said chamber is established in line with the criteria set out in FIFA Circular no. 1010 of 20 December 2005 and in FIFA National Dispute Resolution Chamber Standard Regulations.

95. For example, pursuant to these criteria, the chairman and the vice-chairman of the dispute resolution body in question must be chosen by consensus by the player and club representatives, and the parties must have equal influence over the appointment of arbitrators.

96. The Sole Arbitrator does not find himself convinced that this is the case with regard to the SFA DRC based on the evidence on file and the Parties' submissions in that regard.

97. In order words, the Sole Arbitrator finds that the Appellant has failed to put him in a position to be able to properly address the dispute resolution system upon which the Appellant relies upon.

98. Based on above alone, and without going further into detail regarding the further requirements to be fulfilled by the SFA DRC in order to be considered an independent arbitration guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs, the Sole Arbitrator is confident in concluding that the Appellant did not discharge its burden of proof to establish that the necessary requirements of the SFA DRC, as the competent national decision-making body, are fulfilled.

99. Based on that, the Sole Arbitrator agrees with the First Respondent that the FIFA DRC was competent to decide on the merits of the Player's claim as it did in the Appealed Decision.

100. As FIFA had jurisdiction to decide on the merits of the Player's claim, the Sole Arbitrator now also has to decide on the merits of the dispute, i.e. the Player's claims.

B. The Player's claims

101. With regard to the merits of the dispute, the Sole Arbitrator initially notes that the Club never disputed FIFA's argument that FIFA does not have the standing to be sued in relation to the contractual relationship between the Club and the Player.

102. As such, the Sole Arbitrator is satisfied to accept this argument, for which reason FIFA is not to be considered a party to the present proceedings with regard to this aspect of the present

dispute. The Sole Arbitrator further notes that this is in line with the jurisprudence of the CAS in purely horizontal disputes between, *e.g.,* a club and a player.

103. Moreover, the Sole Arbitrator notes that in order to decide on the merits of the dispute, he first has to decide on whether the Club terminated the Contract with or without just cause, and, in case the Contract was terminated without just cause, then also has to decide on the financial consequences, if any, of the termination of the Contract.

a) The termination of the Contract

104. The Sole Arbitrator initially notes that it is undisputed between the Parties that, on 27 March 2020, the Club terminated the Contract prematurely and that the Club submits that it was entitled to do so due to the Club being in a liquidation procedure through the decision of the general assembly on the same date. The decision-making power of the general assembly is exercised by the sole shareholder of the Club.

105. The Club further submits that, pursuant to the Act of Sport and in accordance with Article VII of the Contract, such termination subject to a one-month notice is to be considered lawful and in line with the agreement with the Player, which is why the termination was made with just cause.

106. The Player, on the other hand, disputes that the Contract was terminated without just cause, thus making the Club liable to pay compensation to the Player.

107. In order to decide on this issue, the Sole Arbitrator initially finds, based on the facts of the case and the Parties' submissions, that it is up to the Club to discharge the burden of proof to establish that the Club had just cause to terminate the Contract due to the Club allegedly being in a liquidation procedure.

108. However, the Sole Arbitrator finds that the Club has not adequately discharged the burden of proof to establish that it had just cause to terminate the Contract.

109. First of all, the Sole Arbitrator notes that the Act of Sport is not applicable to this dispute as already stated above under VIII.

110. With regard to the submission of the Club that, pursuant to the Contract, the Club was nevertheless entitled to terminate the Contract prematurely when in a liquidation procedure, the Sole Arbitrator finds no grounds to support this submission.

111. First of all, the contractual provision refers to a national rule which is not applicable to this dispute.

112. Moreover, the Sole Arbitrator finds that the said provision of the Contract is established exclusively in favour of the Club, which to some extent is free to decide whether and when to enter into a liquidation procedure.

113. The Sole Arbitrator finds that the just cause for termination cannot be based on such unilateral and potestative provision established exclusively in favour of the Club, as such provisions are deemed invalid within the meaning of the Regulations and Swiss law.

114. Moreover, it is not clear to the Sole Arbitrator if the Club in fact had legally entered into a liquidation procedure at the time of termination of the Contract, even if so decided by the general assembly, which was fully controlled by the sole shareholder of the company.

115. The Sole Arbitrator further notes that not all the Players of the Club had their contracts terminated due to the alleged liquidation procedures and that the Club resumed its activity under the same legal entity shortly after the termination of the Contract and after having taken advantage of the liquidation procedure to reduce the costs of the Club. Actually, the Appellant itself confirms that the decision to enter into a liquidation procedure was made, at least partly, to secure the debt owing to the sole shareholder of the Club, who was the only creditor.

116. Based on the above, and as already set out, the Sole Arbitrator finds that the Club has not adequately discharged the burden of proof to establish that it had just cause to terminate the Contract.

117. Given these circumstances, the Sole Arbitrator finds that the Contract was terminated by the Club without just cause.

b) The financial consequences, if any, of the termination of the Contract.

118. The Sole Arbitrator initially notes that since the Contract was terminated without just cause by the Club, the Sole Arbitrator has to decide on the Players' claim for compensation.

119. Before FIFA the Player requested payment of compensation for breach of contract in the amount of EUR 180,009.50 net plus interest at a rate of 5% as from 27 March 2020, corresponding to the residual value of the Contract.

120. It is not disputed by the Parties that the Player was entitled under the Contract to a monthly salary of EUR 6,500 net as from December 2019 until 30 June 2022.

121. Furthermore, during these proceedings, the Club submitted evidence for its payment of the Player's salaries for March and April 2020, which payments are not disputed by the Player.

122. Moreover, and also during these proceedings, the Player confirmed that on 10 September 2020, he signed a new employment contract with the Albanian football club, FK Kukesi SH.A., valid until 30 June 2022. According to this contract, the Player is entitled to receive a monthly salary of Leke 60,000 (Appr. EUR 488) until the end of June 2021 and of Leke 69,000 (Appr. EUR 561) from July 2021 until June 2022.

123. The Sole Arbitrator initially notes that it follows from Article 17 (1) of the FIFA RSTP that:

"In all cases, the party in breach shall pay compensation. Subject to the provisions of article 20 and Annexe 4 in relation to training compensation, and unless otherwise provided for in the contract, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period".

124. The Sole Arbitrator further notes, consistent with the well-established CAS jurisprudence, that the injured party is entitled to a whole reparation of the damages suffered, pursuant to the principle of *"positive interest"*, under which compensation for breach must be aimed at placing the injured party in the position it would have been in had the contract been fulfilled to its end (CAS 2012/A/2698; CAS 2008/A/1447).

125. Moreover, the Sole Arbitrator observes that Article 337c (1) and (2) of the Swiss Code of Obligations ("SCO") provides as follows: *"(1) If the employer dismisses the employee without notice in the absence of a valid reason, the latter shall have a claim for compensation of what he would have earned if the employment relationship had been terminated by observing the notice period or until the expiration of the fixed agreement period. (2) The employee must permit a set-off against this amount for what he saved because of the termination of the employment relationship, or what he earned from other work, or what he has intentionally failed to earn".*

126. In view of the above, it has been proven to the comfortable satisfaction of the Sole Arbitrator that the Player has the right to compensation to be determined under the provisions of Article 17 of the FIFA Regulations, in the light of the principle of "positive interest" as specified above and with due consideration to the duty to mitigate damages according to Swiss law, which is consistent with CAS jurisprudence (CAS 2005/A/909-910-911; CAS 2005/A/801; CAS 2004/A/587). Thus, the Sole Arbitrator does not support the submission of the Player that, based on the special circumstances of the case and the alleged bad faith of the Club, the Player's earnings from his new club should not be deducted.

127. With regard to the residual value of the Contract, the Sole Arbitrator initially finds that the monthly salaries from May 2020 until 30 June 2022, i.e. 26 months at EUR 6,500 per month, amounts to EUR 169,000.

128. Moreover, the Sole Arbitrator finds that the Player, if the Contract had not been terminated by the Club, would have been entitled to receive the amount of EUR 10,000 net as set out in Article III par. 7 of the Contract as a "sign-on bonus".

129. As such, the total amount of EUR 179,000 net must serve as the basis for the calculation of the compensation payable by the Club.

130. According to the Player's new contract, the Player is entitled to receive the total amount of EUR 11,612 (10 months at EUR 488 + 12 months at EUR 561).

131. As a consequence, the Sole Arbitrator finds that the Player is entitled to receive from the Club the amount of EUR 167,388 net (EUR 179,000 - EUR 11,612) as compensation for breach of contract.

132. With regard to the claim for interest, and subject to Swiss law being applicable, the Sole Arbitrator finds that the amount of 167,388 payable to the Player is subject to interest at the rate of 5% *p.a.* pursuant to the SCO from 26 June 2020, as decided in the Appealed Decision.

133. Finally, and for the sake of good order, the Sole Arbitrator finds no support for the Appellant's allegations that its right to due process and its right to be heard were violated during the proceedings before FIFA.

134. In any case, any such potential breach has in all circumstances been cured within the scope of these arbitration proceedings in accordance with Article R57 of the CAS Code, as confirmed by CAS jurisprudence.

135. Finally, the Sole Arbitrator does not agree with the Appellant that FIFA violated its own rules and regulations when the FIFA DRC decided on its own jurisdiction.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by MSK Zilina on 4 December 2020 against the decision rendered by the FIFA Dispute Resolution Chamber on 23 September 2020 is partly upheld.

2. The decision rendered by the FIFA Dispute Resolution Chamber on 23 September 20 is set aside with regard to point n. 3, which is replaced as follows by this Arbitral Award:

   "MSK Zilina is ordered to pay to Mr Besir Demiri the following amount:

   - *EUR 167,388 net as compensation for breach of contract without just cause plus 5% interest p.a. as from 26 June 2020 until the date of effective payment".*

3. (…).

4. (…).

5. (…).

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