Arbitration CAS 2012/A/2988 PFC CSKA Sofia v. Loïc Bensaïd, award of 14 June 2013

Panel: Mr Manfred Nan (The Netherlands), Sole Arbitrator

Football
Agency contract
Disciplinary consequences of a failure to apply national provisions
Validity of an agency contract concluded with an agent not complying with the obligations of the FIFA PAR
Binding effect of a valid agency contract on the parties
Entitlement of the agent to receive remuneration from the club pursuant to the contract
Commercial discount to be taken into account

1. **Based on article 23 of the FIFA Players' Agents Regulations (PAR), players' agents should respect and adhere to the statutes, regulations, directives and decisions of the competent bodies of the licensing national association, as well as the laws governing job placement applicable in the territory of the association. However, failure to respect such national provisions, in principle, has only national disciplinary consequences.**

2. **The FIFA PAR clearly establish the sanctions to be imposed on an agent who does not comply with its obligations. However, the invalidity of an agreement is not one of the consequences provided by the applicable provision. In this respect, an agency contract is not to be declared null and void because of an alleged violation by an agent of the ban of double representation provided by the FIFA PAR. Likewise, a club which was fully aware of the fact that an agent acted as *"personal agent of a player"* and which voluntarily entered into the obligations set out in an agency contract, which contract was signed on the same date and by the same executive president as the employment contract concluded between said club and the player represented by the agent, is bared from invoking the nullity of the agency contract. Moreover, there can be no fraud from the side of an agent who made it transparent to the club that he represented the player, therefore no wilful deception from the side of the agent rendering the agency contract invalid.**

3. **An agency contract of an international nature is primarily governed by the FIFA PAR, not by national laws, rules and regulations. Whether an agent was entitled to represent a national football club based on such national provisions is a matter for the national authorities to assess. Nevertheless, even if it would turn out that the agent was not entitled to conclude an agency contract with the club, the club cannot invoke these national provisions at a late stage of the proceedings as it should have verified whether the agent was entitled to conclude the agency contract with it before concluding such contract. Consequently, the agency contract is binding on the club.**

4. In accordance with the general principles of *bona fide* and *pacta sunt servanda,* in principle a club which knowingly entered into a valid agency contract with an agent must fulfil its obligations, unless the agent is remunerated twice for his services rendered in the same transaction. Absent any proof of a double remuneration, a club which freely undertook to pay a commission to an agent for the intermediary services rendered with a view to having a player sign an employment contract with it, must pay the commission agreed to the agent if the player finally signed an employment contract with the club.

5. A commercial discount voluntarily given to a club by an agent drafted by the agent's lawyer must be taken into account.

I. PARTIES

1. PFC CSKA Sofia (hereinafter: the "Appellant" or the "Club") is a football club with its registered office in Sofia, Bulgaria. The Club is registered with the Bulgarian Football Association, which in turn is affiliated to the Fédération Internationale de Football Association (hereinafter: "FIFA"). The Club is currently playing in the A PFG, which is the highest football league in Bulgaria.

2. Mr Loïc Bensaïd (hereinafter: the "Respondent" or the "Agent") is a players' agent of French nationality, licensed and registered with the French Football Association (hereinafter: the "FFF"), which in turn is affiliated to FIFA.

II. FACTUAL BACKGROUND

A. Background Facts

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

4. On 5 January 2010, the Agent and the French football player E. (hereinafter: the "Player"), a professional football player of French nationality, signed a *"representation mandate"* (hereinafter: the "Mandate") with the Agent. The content of the Mandate, translated from its original French text into English, which translation remains undisputed by the parties, reads as follows:

"Nice the 5th of January 2010

The football player E. born […] at CAEN, gives a power of representation to Mr. Loic Bensaid, licensed agent (no 21050801) from F.F.F, to negociate [sic] an employment contract with PFC CSKA Sofia.

The Validity of this contract ends the 2nd of February 2010".

5. On 20 January 2010, the Club and the Agent concluded a *"contract for mediation"* (hereinafter: the "Mediation Contract"), by means of which the Club recognized a commission to the Agent for securing the engagement of the Player. The Mediation Contract contained the following relevant clauses:

"Today, 20.01.2010 in Sofia between

PROFESSIONAL FOOTBALL CLUB CSKA (…), hereinafter THE CLUB

And

BENSAID LOIC ANDRE, citizen of France with license No. 21050801 as personal agent of the player E., hereinafter THE AGENT,

THE CONTRACT FOR THE FOLLOWING WAS SIGNED:

I. SUBJECT OF THE CONTRACT.

Art. 1. THE CLUB appoints and THE AGENT accepts to intermediate in conditions of compensation for the signing of the professional contract with the player (…)

II. PRICE AND CONDITIONS OF PAYMENT.

Art. 2. THE CLUB is obliged to pay as price for the intermediation of the AGENT the amount of 130.000 EURO (…). The agreed sum will be paid in two equal parts as follows:

- *65.000 EURO (…) payable until 28.02.2010.*
- *65.000 EURO (…) payable until 31.03.2010.*

III. RIGHTS AND OBLIGATIONS OF THE CLUB.

Art. 3. THE CLUB has the right to receive from the AGENT full and correct information regarding all personal terms of the player for the signing of a professional contract.

Art. 4. THE CLUB is obliged to pay to the AGENT the amount agreed under the conditions described in Art. 2 of the current contract.

IV. RIGHTS AND OBLIGATIONS OF THE AGENT.

Art. 5. THE AGENT is obliged to intermediate to THE CLUB for the signing of the professional contract with the player.

Art. 6. THE AGENT has the right to receive from THE CLUB AGENT the amount agreed under the conditions described in Art. 2 of the current contract only in case that the player signs a professional contract with THE CLUB as a player free from any contractual relations with other football clubs and agents.

Art. 7. The Parties agree that if the player (…) is not transferred to another football club until the 15.08.2010, they will re-negociate [sic] the conditions of his labor contract with THE CLUB.

V. SETTLEMENT OF ARGUABLE MATTERS.

Art. 8. All arguments occurred between the parties of the current contract about its fulfilment will be settled in a friendly way by signing of documents between them.

Art. 9. If no such agreements can be reached, then all arguments, occurred between the parties according the fulfilment of the current contract, including arguments occurred or having any relations to the interpretation, unreality, non-fulfillment or cancelation will be decided by the competent organs of FIFA.

VI. CONCLUSION.

Art. 10. The current contract enters into force from the date of its signing and is in force until the final payment of the sum agreed in Art. 2".

6. On 20 January 2010, the Club and the Player (who was a free agent at that time) concluded an employment contract (hereinafter: the "Employment Contract"), valid from 20 January 2010 until 30 June 2011, which provides that *"The PLAYER is represented under the present contract by the Players' Agent, Loic Bensaid (…)".* According to the Employment Contract, the Player was entitled to receive a monthly wage of EUR 6,000 and a remuneration of EUR 227,000 to be paid as follows:

- EUR 55,000 due until 28 February 2010;
- EUR 44,000 due until 20 June 2010;
- EUR 38,000 due until 15 September 2010;
- EUR 45,000 due until 15 January 2011;
- EUR 45,000 due until 30 June 2011.

7. On 2 February 2010, with further reminders on 23 February, 23 March and 24 March 2010, the Agent sent invoices to the Club for an amount of EUR 130,000 in accordance with the Mediation Contract.

8. On 26 April 2010, the Club transferred an amount of EUR 20,000 to the Agent with payment reference *"INVOICE N: 1/2010".*

9. On 2 August 2010, the Agent's legal representative wrote a letter to the Club, confirming receipt of EUR 20,000 and mentioned the following:

"About this subject, my client asked me, as part of setting up some good business relationships between [the Club] and RIVIERA FOOTBAL MANAGEMENT [(the agency of the Agent)], to give to [the Club] a commercial discount of 40.000 € (forty thousand euros). Thereof, [the Club] is still debtor of 70.000 € (seventy thousand euros) to RIVIERA FOOTBALL MANAGEMENT. The whole sum must be paid before Wednesday August 4th 2010. In case of failing receipt of payment, I have the instructions from my client to collect the sum by any legal way".

10. On 10 August 2010, the Player was transferred from the Club to the English club Blackpool FC for a transfer fee of EUR 450.000.

B. Proceedings before the Single Judge of the FIFA Players' Status Committee

11. On 18 May 2011, the Agent lodged a claim with the FIFA Players' Status Committee against the Club arguing that the Club had failed to comply with its contractual obligations towards him, since it had only paid the amount of EUR 20,000 and that therefore, the remaining sum of EUR 110,000 was still outstanding. In particular, the Agent claimed to be entitled to:

- EUR 110,000 representing the alleged outstanding commission, plus EUR 1,268 as default interest;
- EUR 5,000 for damages allegedly suffered.

12. On 25 July 2011, the Club rejected the Agent's claim and submitted a counterclaim with the FIFA Players' Status Committee, requesting it to decide that the Agent had to reimburse the unduly received amount of EUR 20,000 as it considered the Mediation Contract to be null and void.

13. On 18 July 2012, the Single Judge of the FIFA Players' Status Committee (hereinafter: the "Single Judge") rendered his decision (hereinafter: the "Appealed Decision") and decided to partially accept the claim of the Agent and awarded an amount of EUR 110,000 to the Agent, as well as 5% interest per year on the said amount accruing as from 18 July 2012. The Appealed Decision contained the following operative part:

"1. The claim of the [Agent] is partially accepted.

2. The [Club] has to pay to the [Agent] the amount of EUR 110,000, as well as 5% interest per year on the said amount as from 18 July 2010 until the date of effective payment, within 30 days as from the date of notification of this decision.

3. Any further claims lodged by the [Agent] are rejected.

(…)

5. The counter-claim of the [Club] is rejected.

6. The final costs of the proceedings in the amount of CHF 13,000 are to be paid by the [Club]. (…)

(…)

8. The entire file shall be submitted to FIFA's Disciplinary Committee in order to commence disciplinary proceedings against the [Agent] in relation to the present matter (cf art. 19 par. 8 in connection with art. 30 par. 3 et seq. of the Players' Agents Regulations (edition 2008))".

14. On 29 October 2012, FIFA notified the grounds of the decision of the Single Judge to the parties. The relevant paragraphs of the Appealed Decision read as follows:

"(…)

9. (…) the Single Judge was keen to underline that the mandate concluded on 5 January 2010 between the Claimant and the player had not been replaced by the agreement signed on 20 January 2010 between the Claimant and the Respondent since the parties to the two contractual documents were

different and, therefore, the mandate and the agreement had to be seen as two separate valid representation agreements.

(…)

15. (…) the Single Judge formed the view that, although the Claimant appears to have represented the Respondent and the player in the same transaction, the documentary evidence contained in the file clearly demonstrates that the Claimant could not have possibly been remunerated twice for his services. Consequently, and in accordance with the general principles of bona fide and pacta sunt servanda the Single Judge decided that the Respondent must fulfil the obligation it voluntarily entered into with the Claimant by means of the agreement signed between the parties, and therefore, the Respondent must pay the claimant for the services he rendered in connection with the transfer of the player to the Respondent.

(…)

21. As a consequence of all the above, the Single Judge concluded his deliberations on the present dispute by deciding that the Claimant's claim is partially accepted in that the Respondent has to pay to the Claimant the amount of EUR 110.000 and that the counterclaim of the Respondent had to be rejected. Furthermore, the Single Judge considered the request for interest of the Claimant and held that an interest of 5% per year over the aforementioned amount should apply as from the date of the present decision and until the date of effective payment

(…)".

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

15. By letter dated 15 November 2012, the Club filed its statement of appeal, together with 4 exhibits, against the decision of the Single Judge dated 18 July 2012, with the Court of Arbitration for Sport (hereinafter: the "CAS") in Lausanne, Switzerland, followed by an appeal brief dated 28 November 2012, together with 27 exhibits, submitting the following requests for relief:

"Primarily

1. to set aside the decision passed on 18 July 2012 by the Single Judge of the FIFA Players' Status Committee, save for the ruling under paragraph III point 8 that is not opened for appeal.

2. to establish that Mr. Loic Bensaid acted in breach of the FIFA Players' Agents Regulations (edition 2008), when he entered into the contract for mediation with PFC CSKA Sofia, on 20 January 2010.

3. to render the contract for mediation between Mr. Loic Bensaid and PFC CSKA Sofia null and void; or, alternatively- not binding for PFC CSKA Sofia.

4. to establish that Mr. Loic Bensaid is not entitled to receive any commission from PFC CSKA Sofia in connection with the transfer of the player, E., to PFC CSKA Sofia, this means the claim filed by Mr. Loic Bensaid with FIFA on 6 June 2011 is rejected in its entirety.

5. To order Mr. Loic Bensaid to reimburse the unduly received amount of EUR 20,000 to PFC CSKA Sofia, increased with interest of 5% per anum accrued since 27 April 2010 until the date of effective payment.

Alternatively, only if the above under items no. 1 to 5 is rejected

6. To revise the decision passed on 18 July 2012 by the Single judge of the FIFA Players' Status Committee under paragraph III point 2 so that the commission due to Mr. Loic Bensaid is reduced to EUR 4,170 (i.e. 3% of EUR 139,000) and that no interest is due. Since PFC CSKA Sofia already paid Mr. Loic Bensaid the amount of EUR 20,000 on 26 April 2010, this means the claim filed by Mr. Loic Bensaid with FIFA on 6 June 2011 is rejected in its entirety.

7. To order Mr. Loïc Bensaïd to reimburse the unduly received balance of EUR 15,830 to PFC CSKA Sofia, increased with interest of 5% per annum accrued since 27 April 2010 until the date of effective payment.

More alternatively, only if the above under items no. 6 and 7 is rejected

8. To revise the decision on 18 July 2012 by the Single Judge of the FIFA Players' Status Committee under paragraph III point 2 so that the commission due to Mr. Loïc Bensaïd is reduced to EUR 13.900 (i.e. 10% of EUR 139,000) and that no interest is due. Since PFC CSKA Sofia already paid Mr. Loïc Bensaïd the amount of EUR 20,000 on 26 April 2010, this means the claim filed by Mr. Loïc Bensaïd with FIFA on 6 June 2011 is rejected in its entirety.

9. To order Mr. Loïc Bensaïd to reimburse the unduly received balance of EUR 6,100 to PFC CSKA Sofia, increased with interest of 5% per annum accrued since 27 April 2010 until the date of effective payment.

More alternatively, only if the above under items no. 8 and 9 is rejected

10. To revise the decision passed on 18 July 2012 by the Single Judge of the FIFA Players' Status Committee under paragraph III point 2 so that the commission due to Mr. Loïc Bensaïd is reduced to a reasonable amount to be determined at the discretion of the Panel and that no interest is due.

At any rate

11. To order Mr. Loïc Bensaïd to bear all the costs incurred with the present procedure as well as those incurred with the procedure at FIFA in the amount of CHF 13,000, of which CHF 1,000, increased with interest of 5% per annum as of 25 July 2011 until the date of effective payment, has to be reimbursed directly to PFC CSKA Sofia.

12. To order Mr. Loïc Bensaïd to pay PFC CSKA Sofia a contribution towards its legal and other costs, in an amount to be determined at the discretion of the Panel.

As evidentiary requests

1) To order Mr. Loïc Bensaïd to disclose information/documentation in original about any and all payments made by the player, E., to him and/or to his company, RIVIERA FOOTBALL MANAGEMENT, in the 2010 year; and

2) To contact the player, E., via his current employer, Blackpool FC, England (address: […]) and to order him to disclose information/documentation in original about any and all payments made by him to Mr. Loïc

Bensaïd and/or to the latter's company, RIVIERA FOOTBALL MANAGEMENT, in the 2010 year".

16. By letter dated 3 December 2012, FIFA renounced to its right to intervene in the present arbitration procedure.

17. Pursuant to Article 50 para. 1 of the Code of Sports-related Arbitration (hereinafter: the "CAS Code"), the President of the CAS Appeal's Arbitration Division decided to submit the appeal to a Sole Arbitrator, taking into account the circumstances of the case.

18. On 17 January 2013, the Secretary General of the CAS, considering Articles R33, R52, R53 and R54 of the CAS Code gave notice to the parties that Mr Manfred Peter Nan, attorney-at-law in Arnhem, the Netherlands, was duly appointed as Sole Arbitrator by the President of the CAS Appeal's Arbitration Division.

19. On 1 February 2013, the Agent filed its answer, with 26 exhibits, whereby he requested CAS to decide the following:

"On a principal level:

> DISMISS all the actions, claims and arguments of the PFC CSKA Sofia club;

> Partially UPHOLD the decision passed on 18 July 2012 insofar as the Single Judge of the FIFA Players' Status Committee in particular held and adjudged:

- The only valid >representation contract> which had to be taken into account was the agreement signed by the Claimant and the Respondent since the mandate had ben concluded to reassure the Respondent that the player had been effectively contacted by the Claimant" (consideration n°8);

"The documentary evidence contained in the file clearly demonstrates that the Claimant could not have possibility been remunerated twice for his services. Consequently, and in accordance with the general principles of bona fide and pacta sunt servanda the Single Judge decided that the Respondent must fulfil the obligation it voluntarily entered into with the Claimant by means of the agreement signed between the parties, and therefore, the respondent must pay the Claimant for the services he rendered in connection with the transfer of the player to the Respondent" (consideration n°14);

"The Respondent has to respect its contractual obligations stipulated in the agreement concluded with the Claimant. Consequently, the Single Judge came to conclusion that the Claimant has no obligation to reimburse the amount of EUR 20.000 already received and, therefore, that the counterclaim has to be rejected" (consideration n°20);

"The Respondent/Counter-Claimant, PFC CSKA Sofia, has to pay to the Claimant/Counter-Respondent, Loïc Bensaïd, the amount of EUR 110.000, as well as 5% interest per year on the said amount" (consideration n°III.2).

REVERSE the decision passed on 18 July 2012 by the Single Judge of the FIFA Players' Status Committee for the remainder of the considerations;

HOLD AND ADJUDGE that the contract for mediation of 20 January 2010 which was signed by the Respondent and the Appellant is perfectly valid;

HOLD AND ADJUDGE that the contract of 5 January 2010 does not constitute a valid contract for mediation;

As a consequence, HOLD AND ADJUDGE that the only valid representation contract which must be taken into account is the contract signed on 20 January 2010;

As a consequence, HOLD AND ADJUDGE that Mr Loïc Bensaïd did not find himself in a prohibited situation of dual representation;

FIND that the applicable law in this particular case is the law of the parties as stipulated in the contract signed on 20 January 2010;

DISMISS the application of Bulgarian law and French law to this dispute;

As a consequence, ORDER the PFC CSKA Sofia club to pay to Mr Loïc Bensaïd the amount of € 110,000 pursuant to articles 2 and 4 of the contract for mediation of 20 January 2010;

ORDER the PFC CSKA Sofia club to pay to Mr Loïc Bensaïd the amount of € 10,000 by way of damages due to time-wasting tactics used by the Appellant and its bad faith during the contractual relationship;

ORDER the PFC CSKA Sofia club to pay the costs of the proceedings that were incurred by Mr Loïc Bensaïd for a total amount of € 13,000, which includes the amount of € 3,000 that was granted by the Single Judge of the FIFA Players' Status Committee in his decision of 18 July 2012;

ORDER that the amount of € 110,000 which the PFC CSKA Sofia club shall be ordered to pay shall bear annual interest of 5% from the date the Respondent first took action, in other words from the date of the formal notice of 16 April 2010;

In the alternative:

HOLD AND ADJUDGE that Swiss law applies to this dispute due to the lack of provisions in the contract for mediation of 20 January 2010;

In the event of a dual representation, HOLD AND ADJUDGE that Mr Loïc Bensaïd was not in an effective situation of conflict of interests;

ORDER that the amount of € 110,000 which the PFC CSKA Sofia club shall be ordered to pay shall bear annual interest of 5% from the date Mr Loïc Bensaïd lodged his claim before the FIFA Players' Status Committee on 17 May 2011;

In the event that Mr Loïc Bensaïd loses the case, ORDER a fair distribution of the costs of the proceedings between the parties;

In the ultimate alternative:

HOLD AND ADJUDGE that a situation of dual representation and an effective situation of conflict of interests cannot invalidate the contract of 20 January 2010;

HOLD AND ADJUDGE that the situation of dual representation is only a disciplinary matter;

Possibly REFER the file concerning Mr Loïc Bensaïd to the disciplinary body for sanctions".

20. On 19 February 2013 and pursuant to Article R44.3 of the CAS Code, the Sole Arbitrator decided to reject the Club's request for evidentiary measures.

21. On 20 February 2013, the Sole Arbitrator invited FIFA to lodge a copy of its file related to this matter, which it did by letter dated 14 March 2013.

22. On 26 February 2013 and pursuant to Article R56 of the Code, the Sole Arbitrator decided to dismiss the Club's request to invite the FFF to disclose certain documents in the absence of exceptional circumstances being argued.

23. On 12 March 2013, the CAS Court Office issued, on behalf of the Sole Arbitrator, an Order of Procedure which confirmed amongst others that CAS has jurisdiction to rule on this matter, that the applicable law would be determined in accordance with Article R58 of the Code and that a hearing would be held on Monday 25 March 2013. The parties signed and returned such Order of Procedure to the CAS Court Office.

24. Both parties requested the Sole Arbitrator explicitly to apply the 2010 edition of the CAS Code.

25. On 25 March 2013 a hearing was held at the CAS headquarters in Lausanne, Switzerland.

26. The Sole Arbitrator was assisted at the hearing by Mr Fabien Cagneux, Counsel to the CAS. During the hearing, the Club was represented by Mr Georgi Gradev, external counsel, and Mr Radostin Vasilev, the Club's in-house lawyer. The Agent was present and accompanied by Ms Barbara Wright, interpreter.

27. At the outset of the hearing the parties confirmed having no objection in relation to the composition of the Panel.

28. Pursuant to Article R56 of the Code, the Sole Arbitrator rejected the Club's request at the hearing to file three FIFA decisions dated 23 October 2012, bearing in mind that the Agent did not agree with the request and no exceptional circumstances occurred.

29. The Sole Arbitrator heard evidence from the parties and the following two witnesses who were called by the Agent, in order of appearance:

- Mr Mariano Bizzarri, players' agent, in person;
- E., the Player, by teleconference with agreement of the Sole Arbitrator pursuant to Article R44.2 of the CAS Code.

30. Each witness heard by the Sole Arbitrator was invited to tell the truth subject to the sanctions of perjury. Each party and the Sole Arbitrator had the opportunity to examine and cross-examine the witnesses and each other. The parties then had ample opportunity to present their case, submit their arguments and answer to the questions posed by the Sole Arbitrator. At the closing of the hearing, both parties confirmed having no objection in relation to the manner in which the hearing was held and also confirmed that their right to be heard had been granted and well respected.

31. The Sole Arbitrator confirms that he carefully heard and took into account in his decision all the submissions, evidence and arguments presented by the parties, even if they have not been specifically summarized or referred to in the present award.

IV. SUBMISSIONS OF THE PARTIES

32. The submissions of the Club, in essence, may be summarized as follows:

- The Club points out that the Appealed Decision is invalid because the Single Judge breached several mandatory principles of (Swiss) law.
- The Club argues that the Single Judge ruled *ultra petita* by awarding interest that was not requested.
- The Club submits that the Agent and the Player concluded a valid and binding brokerage contract (Mandate), which commenced on 5 January 2010 and expired on 2 February 2010. As a consequence, the Club is of the opinion that the Agent acted exclusively as agent of the Player regarding the negotiations and signing of the employment contract on 20 January 2010 between the Player and the Club.
- The Club refers to CAS jurisprudence (TAS 2007/A/1310) and points out that the Mediation Contract concluded between the Club and the Agent on 20 January 2010 is null and void because the Agent acted in violation of the mandatory provisions of Art. L222-10 of the French Code of Sport and Art. 18 FSAR *"by entering into the* [Mediation Contract] *with the Appellant on 20 January 2010, i.e. during the term of validity and effectiveness of the Mandate; stipulating remuneration (EUR 130,000) that obviously exceeds 10% of the Employment Contract (guaranteed) value (…); agreeing to be paid by a third party, i.e. by the Appellant; and failing or omitting to register the* [Mediation Contract] *with the FFF (in order to cover his double brokerage)".*
- Furthermore, the Club argues that the Agent violated several provisions of the FIFA Players' Agents Regulations (hereinafter referred to as "FIFA PAR") and refers to a variety of CAS jurisprudence in order to show that the Mediation Contract is null and void because an agreement cannot be enforced if it is prohibited by the FIFA Rules (Swiss Supreme Court ATF 128 I 91; ICC 3267/1984; CAS 2004/A/701 p. 40; CAS 2008/A/1517 p. 50; CAS 2008/A/1665 p. 18; CAS 2011/A/2660 p. 8.21).
- The Club submits that dual representation/double brokerage is not only explicitly forbidden by Article 19 paragraph 8 of the 2008 FIFA PAR but also contrary to Art. 20 paragraph 1 of the Swiss Code of Obligations (hereinafter referred to as the "SCO"), and therefore the Mediation Contract is null and void. The Club refers to FIFA and CAS jurisprudence (CAS 2008/A/1517 and CAS 2008/A/1665).
- In continuation, the Club argues that *"it was induced to enter into the* [Mediation Contract] *by the wilful deception of the Agent; hence, the* [Mediation Contract] *is invalid or, at least, does not bind the Appellant, on the ground of Art. 28 par. 1 SCO".*
- Furthermore, the Club refers to Article 1 paragraph 5, Article 2 paragraph 1 Article 12 paragraph 1, Article 19 paragraph 4, Article 21 paragraph 2 and Article 23 of the FIFA

PAR and argues that although the Agent is obliged to comply with the national laws, he breached *"the public norms"* mentioned in the Bulgarian and French national law and regulations *"by failing to register with the National Agency for Employment and to obtain a certificate (…). As a result, the Brokerage Contract is not binding"*.

- The Club refers to Article 19(4) of the FIFA PAR and Article 415 SCO, as well as to CAS jurisprudence (CAS 2011/A/2660; CAS 2006/A/1019), and states that the Agent is not entitled to claim an agency fee from the Club for the following reasons.

  The Agent was paid by the Player for his services *"via the latter's company, RIVIERA"*;

  - The Agent *"was acting as agent for both the Appellant and the Player at the same time contrary to good faith";*
  - The Single Judge *"disrespected (…) the legal principle of nemo auditor propriam turpitudinem allegans (…) (no one shall be heard, who invokes his own guilt)";*
  - The Agent *"did not render any services whatsoever for the Appellant in the acquisition of the Player; such services having been provided exclusively by Mr. Bizzarri, who acted for the Appellant in the said transaction"*.
  - The Player was represented by the Agent at all times and did not authorize the Club to pay the Agent after the employment contract was signed.

- The Club points out that *"from the date of commencement of the Employment Contract (20 January 2010) up to and including the date of its end due to the Player's transfer in Blackpool FC (10 August 2010)"*, the Player was entitled to receive from the Club the total gross amount of EUR 139.000.

- The Club argues that even if an agency fee is due to be paid by the Club, pursuant to Article 19 par. 4 in conjunction with Article 20 par. 1 and 4 of the FIFA PAR, the Agent would only be entitled to EUR 4.170, which is 3% of the actually received basic income of the Player, or pursuant to Article L222-10 of the French Code of Sport and Article 18 FSAR, the Agent would only be entitled to EUR 13.900, which is 10% of the gross guaranteed income, which the Player actually received.

- *"More alternatively"*, the Club points out that the agreed commission amounting to EUR 130.000 is *"nearly 40% of the total guaranteed contract value"* and *"almost equal to the wages received by the Player under the employment Contract"*, and therefore *"clearly disproportionate"*, which *"requires adjustment under Art. 417 CO, which is imperative law"*.

- In continuation, the Club states that the Agent renounced EUR 40.000 of his fee by letter dated 2 August 2010, and therefore the Agent is *"precluded from claiming more than EUR 70.000 as a fee"*.

- The Club further submits that the Agent *"is obliged to make restitution of the unduly received amount of EUR 20.000 from the Appellant"*. The Club refers to Article 62 SCO and *"the principle of quod nullum est nullum producit effectum"*.

33. The submissions of the Agent, in essence, may be summarized as follows:

- The Agent points out that on the basis of the Mediation Contract, concluded between the Club and the Agent on 20 January 2010, he is entitled to the lump sum of EUR

130.000, because he secured the engagement of the Player to the Club. The Agent states that the Club only paid EUR 20.000 on 27 April 2010, which payment *"constitutes formal acknowledgement on the part of the Appellant of the work carried out by the Respondent"*.

- The Agent argues that the Mediation Contract is *"subject"* to the *"FIFA rules"* and is *"governed"* by the *"rules laid down by private international law"*. The Agent adds that *"French and Bulgarian domestic laws do not apply to this dispute (…)* and that *"Swiss law does not apply to this dispute with the exception of the calculation of the applicable interest rate"*.
- In continuation, the Agent states that the decision of the Single Judge is valid and not *"ultra petita"*. The Agent refers to Article 73.1 and 104.1 of the SCO and submits that the Single Judge *"strictly and accurately applied the applicable rules of law concerning the rate of interest at 5%"*.
- The Agent refers to the principle of *pacta sunt servanda,* the *bona fide* principle and CAS jurisprudence and points out that the parties must *"comply with the contractual commitments they enter into (…)* and that *"The dual representation referred to by the Appellant shall not constitute a breach of international public order"*.
- The Agent argues that the Club *"acted in bad faith with regard to the performance of its contractual obligations as stipulated in the contract of 20 January 2010"*, because it never replied to the various letters sent and because it *"has never attempted to settle the dispute amicably despite the Respondent's proposal to waive part of his debt and the transfer of the player, E., to Blackpool FC in August 2010"*.
- The Agent submits that the Mandate signed on 5 January 2010, which is not registered at the FFF, stipulates that the Player gives the Agent the exclusive power to represent him (only) in order to negotiate an employment contract with the Club. The Agent argues that this document *"cannot be classed as a mandate agreement (…)* and that it *"was signed at the Appellant's insistence as it wanted to be reassured that the Respondent was indeed in contact with the player"*.
- In continuation, the Agent emphasizes that the Player never paid any remuneration to the Agent or to his company Riviera Football Management and refers to a written confirmation made by the Player dated 27 April 2012.
- Furthermore, the Agent argues that the *"*[Mediation Contract] *dated 20 January 2012 replaced the alleged* [Mandate] *of 5 January 2010, and in fine, the initial debtor – namely the Player – was released from its obligations in favour of the new debtor, namely the PFC CSKA Sofia Club"*.
- The Agent submits that Article 19 para. 8 FIFA PAR is not applicable, because the Player *"never remunerated the Respondent and consequently the* [Mandate] *of 5 January 2010 had no legal value whatsoever"*.
- The Agent points out that there is no situation of dual representation and/or conflicts of interest since the Agent *"pursuant to the* [Mediation Contract] *of 20 January 2010, only represented the Appellant"*, but if so, *"only a disciplinary sanction is likely to be taken"*.

- The Agent refers to *nemo auditor propriam turpitudinem allegans,* and argues that *"the Appellant cannot rely on its own shortcomings in the drafting and performance of the disputed contract to exonerate itself from its contractual obligations"*.

V. ADMISSIBILITY

34. The appeal was filed within the deadline provided by Article 67 par. 1 of the FIFA Statutes and stated in the decision of the Single Judge, *i.e.* within 21 days after notification of such decision. Furthermore, it complied with all other requirements of Article R48 of the Code.

35. It follows that the appeal is admissible.

VI. JURISDICTION

36. The jurisdiction of CAS, which is not disputed, derives from Articles 66 and 67 of the FIFA Statutes and Article R47 of the CAS Code. Moreover, it is confirmed by the signature of the Order of Procedure by the parties.

37. It follows that the CAS has jurisdiction to decide the present dispute**.**

38. Pursuant to Article R57 of the Code, the Sole Arbitrator has full power to review the facts and the law. Therefore, the Sole Arbitrator has the power and the duty to examine the whole case and to decide whether the appealed decision is just and appropriate.

VII. APPLICABLE LAW

39. Article R58 of the CAS Code reads as follows:

"The Panel shall decide the dispute according to the applicable regulations and 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".

40. Both parties agree that the rules and regulations of FIFA shall apply primarily, in particular the FIFA PAR. Both parties also signed the Order of Procedure confirming the applicability of article R58 of the CAS Code to the present proceedings.

41. The Club finds that, pursuant to article 66 (2) of the FIFA Statutes, Swiss law shall apply subsidiarily.

42. The Agent does not agree to the subsidiary application of Swiss law, except for the calculation of the applicable interest rate. He argued that the parties solely agreed to the application of the regulations of FIFA in the Mediation Contract.

43. The Sole Arbitrator noted that article 8 and 9 of the Mediation Contract read as follows:

> *"8. All arguments occurred between the parties of the current contract about its fulfillment [sic] will be settled in a friendly way by signing of documents between them.*
>
> *9. If no such agreements can be reached, then all arguments, occurred between the parties according the fulfillment [sic] of the current contract, including arguments occurred or having any relations to the interpretation, unreality, non-fulfillment [sic] or cancelation will be decided by the competent organs of FIFA".*

44. The Sole Arbitrator noted that in the Mediation Contract the parties did not specifically agree on the application of any rules and regulations or any national laws; the parties solely determined that in case a dispute would arise in relation to the Mediation Contract and no amicable solution could be reached, the parties would submit their dispute to the competent organs of FIFA.

45. The Sole Arbitrator finds that the parties, by agreeing to submit any dispute to the competent organs of FIFA, agreed on the application of the relevant rules and regulations of FIFA, including the FIFA Statutes.

46. Article 66(2) of the FIFA Statutes provides as follows:

> *"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".*

47. In addition to this clear provision determining the subsidiary application of Swiss law, the Sole Arbitrator finds it incomprehensible why the Agent finds that Swiss law is not applicable subsidiary to the relevant rules and regulations of FIFA, but should be applied in order to calculate the interest allegedly due to him. The Sole Arbitrator also noted that, although the Agent objected to the subsidiary application of Swiss law, he anticipated to the application thereof by corroborating the findings of the Single Judge in the Appealed Decision with additional arguments based on provisions of the Swiss Code of Obligations (hereinafter: the "SCO").

48. In light of the above, the Sole Arbitrator is satisfied to accept the subsidiary application of Swiss law, should the need arise to fill a possible gap in the various regulations of FIFA.

49. Furthermore, the Club maintains that in addition to Swiss law, article 1(5), 2(1), 12(1), 19(4), 21(2) and, in particular, article 23 of the PAR, as well as article 4 of Annex 1 of the FIFA PAR give priority to *"the laws applicable in the territory of the association[s], in particular those relating to job placement"*, over any private association regulations on players' agents. Against this background, the Club finds it indispensable that all state laws applicable to players' agents' activities in the territory of the associations concerned, particularly those relating to job placement, must be respected and taken into account by the Sole Arbitrator.

50. The Club finds that, on the one hand, since the Agent was based in France and licensed by the FFF, the Agent was subject to the obligations imposed by national French legislation, *i.e.*

the French Code of Sport and the Sports Agents Regulations of the FFF (hereinafter: the "FSAR"), in particular when such legislation is of imperative nature. On the other hand, the Club finds that since the Agent brought about and negotiated an employment contract for the Player with a Bulgarian employer, the Agent was also bound by the compulsory provisions of the Bulgarian law on Employment Promotions (hereinafter: the "LEP") and the pertinent Ordinance for the Terms and Conditions for Carrying out Employment Mediation (hereinafter: the "Ordinance"). In this respect, the Club made reference to CAS jurisprudence, according to which allegedly FIFA rules cannot trump mandatory rules of the SCO (ATF 132 III 285, consid. 1) and that mandatory provisions of state law must be respected by FIFA (CAS 2011/A/2563).

51. The Agent argues that the Mediation Contract is of an international nature; the Agent is of French nationality, whereas the Club is Bulgarian. The domestic law of each of the parties (French and Bulgarian) cannot be applied as the application of such domestic laws was never expressly desired by the parties. As a result the considerations of the CAS Panel in TAS 2007/O/1310, to which reference is made by the Club, cannot be applied.

52. The Agent further maintained that certain provisions of the French Code of Sport had not yet come into force when the Mediation Contract was concluded on 20 January 2010 and that certain provisions of the Bulgarian LEP violated European community law.

53. As to the subsidiary application of French and Bulgarian law, the Sole Arbitrator noted that the FIFA PAR refers several times to the *"laws applicable in the territory of the association"* and that players' agents should act in compliance with such national laws. These national provisions therefore, in principle, form an integral part of the FIFA PAR. However, the Sole Arbitrator finds that a distinction is to be made between the unlawful behaviour of a players' agent for which he could be disciplinarily sanctioned by a national association and the validity of an international contract that allegedly has been concluded in violation of such national provisions.

54. The Sole Arbitrator is hesitant to apply national provisions directly to the present dispute, in particular in respect of the validity of the Mediation Contract, as the present dispute is of an international nature and the Mediation Contract does not refer to any national law. Article 66(2) of the FIFA Statutes determines that CAS shall *"primarily apply the various regulations of FIFA and, additionally, Swiss Law"*. In a previous CAS Award, a CAS Panel considered that *"[w]ith this choice of law clause, the FIFA Statutes take into account an important characteristic of international sport. For, the latter is a global phenomenon which demands globally uniform standards. Only if the same terms and conditions apply to everyone who participates in organised sport, are the integrity and equal opportunity of sporting competition guaranteed"* (CAS 2006/A/1180, §7.9 with further reference to CAS 2005/A/983 & 984, §68). The Sole Arbitrator fully agrees with this point of view and finds that he should be restrictive in applying national provisions other than Swiss law.

55. In respect of ATF132 III 285 and CAS 2011/A/2563 relied on by the Club, the Sole Arbitrator noted that the former concerned an issue of *res iudicata*, where the Swiss Federal Court finally held that procedural public policy is violated when the arbitral tribunal leaves

unheeded in its award the material legal force of an earlier judgement or when it deviates in the final award from the opinion expressed in a preliminary award as to a material preliminary issue. In the absence of any explanation from the Club, it is not clear to the Sole Arbitrator why this decision of the Swiss Federal Tribunal would be relevant in determining the law applicable to the merits. CAS 2011/A/2563 concerned an arbitration regarding the necessity of having requested the grounds of a FIFA decision in order to file an appeal with CAS. The rules of FIFA were deemed not to have violated any fundamental rights or any Swiss mandatory provision. Again, the Sole Arbitrator is at a miss as to why this should lead him to decide why national French or Bulgarian provisions would have to be applied to the present matter based on this jurisprudence. In light of the above, the Sole Arbitrator is of the opinion that no procedural public policy is violated by primarily applying the respective regulations of FIFA over national French and Bulgarian provisions.

56. However, the Sole Arbitrator finds that, particularly based on article 23 of the FIFA PAR, players' agents should respect and adhere to the statutes, regulations, directives and decisions of the competent bodies of the licensing national association, *i.e.* in this case the FFF, as well as the laws governing job placement applicable in the territory of the association, but that failure to respect such national provisions, in principle, has only national disciplinary consequences, as will be explained in more detail below. However, to the extent necessary in respect of specific arguments put forward by the Club based on national provisions, and if the Sole Arbitrator deems himself sufficiently informed in this respect, the Sole Arbitrator will consider the direct applicability (or non-applicability) of such specific provisions to the present dispute in more detail below.

57. Consequently, the Sole Arbitrator will primarily apply the rules and regulations of FIFA, in particular the FIFA PAR, and subsidiarily Swiss law, should the need arise to fill a possible gap in the various regulations of FIFA. French and Bulgarian laws and regulations are in principle not applicable, however, insofar as the Club relies on provisions of the FIFA PAR that specifically refer to the applicability of national provisions, the Sole Arbitrator will consider such arguments in more detail below.

VIII. MERITS

A. The Main Issues

58. The main questions to be considered by the Sole Arbitrator are the following:

a) Should the Mediation Contract be declared null and void or not binding for the Club?

b) Is the Agent entitled to any payments from the Club?

c) If the Agent is entitled to payments from the Club, to what amount is the Agent entitled?

d) Is the Agent entitled to any interest?

a) Should the Mediation Contract be declared null and void or not binding for the Club?

59. As a primary request for relief the Club submits that the Mediation Contract that was concluded with the Agent is null and void for several reasons. The Club finds that if an agency contract has been concluded in contravention of regulatory requirements or if it is found to contain inappropriate conditions, the contract is to be declared null and void and the agent will no longer be entitled to claim the agreed remuneration and may even be forced to reimburse any fees that have already been paid to him.

60. Below the Sole Arbitrator will consider the specific arguments put forward by the Club separately and to the extent necessary to explain his decision. The Sole Arbitrator wishes to point out that the submissions of the parties were comprehensive and that numerous arguments and claims are interrelated to each other. If an argument is not discussed in the present Award, it is not because such argument was overlooked, but because the Sole Arbitrator did not find it necessary to adjudicate such arguments to explain his final decision.

aa) Should the Mediation Contract be declared null and void because of a violation of article 19(8) of the FIFA PAR and article 20(1) of the SCO?

61. The Club confirms to agree with the Appealed Decision insofar as it determines that the Mandate between the Player and the Agent was validly concluded. According to this Mandate, the Agent was the exclusive players' agent of the Player for the conclusion of the Employment Contract with the Club. The Club states that before and during the signing of the Employment Contract, the Agent acted exclusively as the agent of the Player referring to Clause XIII of the Employment Contract and "Transfer Instruction 6778" out of the FIFA Transfer Matching System.

62. The Club argues that, based on the Agent's statements in the FIFA proceedings, it appears the Agent was mandated both as agent of the Player and as agent of the Club. The Club maintains that one can infer from article 19(8) of the FIFA PAR that dual representation or double brokerage is explicitly forbidden; a licensed agent may only represent the interests of one party (*i.e.* a player or a club) per transaction.

63. In the Appealed Decision it was determined that *"the Single Judge was keen to emphasize that art. 19 par. 8 of the Regulations, which provides inter alia that 'A players' agent may only represent the interests of one party per transaction', was enacted, among other things, in order to ensure that a players' agent is not remunerated twice for the services he renders in a same transaction"*. The Club considers that there is one other prohibition of paramount importance in addition to the one mentioned by the Single Judge, *i.e.* that an agent will not advise/act on behalf of another person in violation of his contract in a same transaction (regardless if he will or will not be paid for his services by such other party; cf. article 450 of the SCO).

64. The Club finds that by representing the Player at an earlier stage of the transfer, the Agent had a conflict of interest; the Club had the risk of being disadvantaged. The Club made

reference to a decision from FIFA according to which, allegedly, a contract was considered null and void because a players' agent was in a conflict of interest (CAS 2008/A/1665, § 18(c)). The Club also made reference to a CAS Award according to which allegedly *"the sanction for contracts that are against the FIFA Regulations is the invalidity of such agreements"* (CAS 2008/A/1517).

65. Consequently, the Club finds that the Mediation Contract is null and void in the sense of article 20 of the SCO, having illegal content and/or violations *bonos mores*.

66. The Agent finds that the Club cannot question the validity of a contract that it drew up itself. The Agent argues that it is important to note that although several letters were sent by the Agent to the Club, the Club never deemed it necessary to question the sums claimed by the Agent. To the contrary, the Club paid an amount of EUR 20,000 to the Agent's company, which proves that the Club was perfectly aware of the fact that it owed money to the Agent. Only in the proceedings before the Single Judge of the FIFA PSC (18 months after the Mediation Contract was concluded and more than a year after the said invoices were sent), the Club questioned the merits of the said amount. Thus, the Agent finds that the Mediation Contract has been freely entered into by the parties.

67. Additionally, the Agent argues that although the FIFA PAR are intended to lay down the legal framework for representation contracts that are signed by clubs and players' agents, it mainly refers to contracts for mediation that are signed by players' agents and players and do not apply to the Mediation Contract.

68. In the alternative, based on article 18(1) of the SCO, the Agent finds that the Sole Arbitrator has to ascertain the true and common intention of the parties when they concluded the Mediation Contract. In this respect, it is to be concluded that the parties freely agreed to the Mediation Contract; the Club undertook to pay a commission to the Agent for the intermediary services rendered with a view to having the Player sign an employment contract with it. As the Player signed the Employment Contract with the Club, the commission was thus owed to the Agent.

69. In light of the above, the Agent finds that the Mediation Contract is perfectly valid and, as a consequence, is binding upon the parties, which should lead to a confirmation of the Appealed Decision in respect of the amount of EUR 110,000 that should be paid to the Agent by the Club.

70. The Sole Arbitrator noted that article 19(8) of the FIFA PAR determines the following:

"Players agents shall avoid all conflicts of interest in the course of their activity. A players' agent may only represent the interests of one party per transaction. In particular, a players' agent is forbidden from having a representation contract, a cooperation agreement or shared interests with one of the other parties or with one of the other parties' players' agents involved in the player's transfer or in the completion of the employment contract".

71. The translation into English of article 20(1) of the SCO stipulates:

"A contract is void if its terms are impossible, unlawful or immoral".

72. The translation into English of article 18(1) of the SCO reads as follows:

"When assessing the form and terms of a contract, the true and common intention of the parties must be ascertained without dwelling on any inexact expressions or designations they may have used either in error or by way of disguising the true nature of the agreement".

73. The Sole Arbitrator observes that indeed on 5 January 2010, the Agent and the Player concluded a *"representation mandate"* (the Mandate), in which the Player *"gives a power of representation"* to the Agent *"to negociate* [sic] *an employment contract with"* the Club.

74. Furthermore, the Sole Arbitrator notes that not only the Employment Contract concluded between the Player and the Club provides that *"[t]he Player is represented under the present contract by the* [Agent] *(…)"*, but also the Mediation Contract explicitly provides in its preamble that the Agent signed it in his capacity *"as personal agent of the player".*

75. Moreover, at the occasion of the hearing, the Player confirmed that he was represented by the Agent regarding the signing of the Employment Contract with the Club and Mr Bizzarri confirmed that he acted as consultant for the Club in the negotiations. As a result, the Sole Arbitrator has no hesitation to believe that on the one hand the Agent represented the Player regarding the signing of the Employment Contract between the Player and the Club, and on the other hand, Mr Bizzarri acted as consultant for the Club.

76. In continuation, the Sole Arbitrator turns its attention to the implications of the concurrent existence of the Mandate and the Mediation Contract.

77. The Sole Arbitrator concurs with the Single Judge that the Mandate and the Mediation Contract must be seen as two distinct agreements, which concurrent existence could lead to disciplinary sanctions because of possible infringements of the FIFA Regulations.

78. The Sole Arbitrator notes that article 30 of the FIFA PAR provides that *"in the case of international disputes in connection with the activity of players' agents, a request for arbitration proceedings may be lodged with the FIFA Players' Status Committee"* and *"if there is a reason to believe that cases raise a disciplinary issue, the Players' Status Committee or single judge (…) shall submit the file to the Disciplinary Committee together with the request for the commencement of disciplinary proceedings (…)".*

79. The Sole Arbitrator observes that in this regard the Single Judge decided to submit the file to the FIFA Disciplinary Committee to investigate possible infringements of the FIFA PAR by the Agent. As a consequence, the issue whether the Agent violated the FIFA PAR falls outside the scope of the current proceedings before the Sole Arbitrator. The Sole Arbitrator notes that at the hearing the Agent confirmed that the disciplinary proceedings at FIFA are pending.

80. In light of the Club's reference to CAS 2008/A/1665 and the alleged contradicting jurisprudence of the FIFA DRC in respect of double representation, the Sole Arbitrator

finds that he is not sufficiently informed of the particular facts of that matter. It does not become clear from the Award whether the agent was remunerated twice for his services or whether the club was aware that the agent already had a representation contract with the player, nor were these facts considered important by the Panel in the appeal proceedings before CAS as they were not referred to in the legal considerations of the Award.

81. The FIFA PAR does not determine the consequences for a contract if an agent acted contrary to provisions of the FIFA PAR. As maintained in CAS jurisprudence *"the FIFA Regulations do not state the consequences of a failure regarding the form of an agency contract or payment details as to be the invalidity of an agency agreement"* (CAS 2007/A/1371 and CAS 2011/A/2660). The Sole Arbitrator observes that the FIFA PAR clearly establish what the consequences are if an agent does not comply with its obligations, namely the sanctioning of the agent based upon article 33 of the FIFA PAR (*"[t]he following sanctions may be imposed on players' agents for violation of these regulations and their annexes in accordance with the FIFA Disciplinary Code: (…)"*), but the invalidity of an agreement is not one of the consequences provided.

82. Moreover, the Sole Arbitrator finds that even if the Mediation Contract is concluded by the Agent in violation of his obligations prescribed by provisions of the FIFA PAR, still, because of the fact that the Club was fully aware that the Agent also represented the Player, it cannot invoke article 20(1) of the SCO and/or the argument of double representation to have the Mediation Contract declared null and void. Regardless of these issues of double representation, the Club voluntarily entered into the obligations set out in the Mediation Contract, which contract was signed on the same date and by the same executive President as the Employment Contract, which also clearly determined that the Agent represented the Player. Consequently, the Sole Arbitrator finds that it cannot be said that the terms of the Mediation Contract were impossible, unlawful or immoral.

83. Therefore, even if the FIFA Disciplinary Committee would establish (multiple) violations of the FIFA PAR by the Agent, the Mediation Contract is not null and void solely for that reason. As a result, the Sole Arbitrator finds that the Mediation Contract is not null and void only because of a possible (or multiple) infringement(s) of the FIFA PAR by the Agent.

84. Consequently, the Sole Arbitrator finds that the Mediation Contract is not to be declared null and void because of a violation by the Agent of article 19(8) of the FIFA PAR and article 20(1) of the SCO.

ab) Is the Mediation Contract to be declared null and void because of a violation of article L222-10 of the French Code of Sport and/or article 18 of the FSAR?

85. The Club finds that the Agent violated article L222-10 of the French Code of Sport and article 18 FSAR, by entering into the Mediation Contract with the Club during the validity of the Mandate, stipulating remuneration (EUR 130,000) that obviously exceeds 10% of the value of the Employment Contract (which is, allegedly, EUR 331,000 according to the Club), agreeing to be paid by a third party, *i.e.* the Club, and failing or omitting to register the Mediation Contract with the FFF (in order to cover his double brokerage).

86. Based on the above, the Club asserts that the Mediation Contract is null and void, having been formed in violation of the mandatory provision of article L222-10 of the French Code of Sports and article 18 of the FSAR, as was held by a previous CAS Panel in TAS 2007/O/1310.

87. As set out above already, the Agent finds that the parties freely agreed to the Mediation Contract; the Club undertook to pay a commission to the Agent for the intermediary services rendered with a view to having the Player sign the Employment Contract with it. As the Player finally signed the Employment Contract with the Club, the commission to the Agent fell due.

88. The Sole Arbitrator notes that article 23(1) and (2) of the FIFA PAR determine the following:

"Players' agents shall respect and adhere to the statutes, regulations, directives and decisions of the competent bodies of FIFA, the confederations and the associations, as well as the laws governing job placement applicable in the territory of the association.

Players' agents shall ensure that every transaction concluded as a result of their involvement complies with the provisions of the aforementioned statutes, regulations, directives and decisions of the competent bodies of FIFA, the confederations and the associations, as well as the laws applicable in the territory of the association".

89. The Sole Arbitrator notes that article L222-10 of the French Code of Sport determines the following in the translation provided by the Club, which remained undisputed by the Agent:

"A sports agent can only act on behalf of one party to the same contract, which gives the mandate and only which can remunerate him. The mandate specifies the amount of this remuneration, which may not exceed 10% of the value of the concluded contract. Any agreement contrary to the provisions of this section shall be deemed null and void".

90. Article 18 of the FSAR, in the translation provided by the Club, which remained undisputed by the Agent, provides as follows:

"Contracts between sports agents and players or clubs are signed in triplicate, one of which is transmitted to the FFF for registration. (…) The terms of the contract must always comply with the applicable laws and regulations, in particular as regards the duration, remuneration and age of the players concerned. The sports agent should only be paid by his client for the services rendered and not by any third party. Pursuant to Article L.222-10 of the Code of Sports, the mandate specifies the amount of this remuneration, which may not exceed 10% of the value of the concluded contract. Any agreement contrary to the provisions of this subsection shall be deemed null and void".

91. The Sole Arbitrator refers to his considerations *supra* (cf. §39-57), in light of the law applicable to the merits.

92. The Sole Arbitrator observes that, contrary to the FIFA PAR, the French Code of Sport and the FSAR determine that a violation of a players' agent of one or more national

requirements for players' agents should lead to the invalidity of the agreement and that the FIFA PAR specifically refer to the application of the *"statutes, regulations, directives and decisions of the competent bodies of FIFA, the confederations and the associations, as well as the laws governing job placement applicable in the territory of the association"*, *i.e.* statutes, regulations, directives and decisions of the FFF, as well as the laws governing job placement in the territory of the FFF.

93. Turning his attention to the applicability of the national provisions referred to by the Club, the Sole Arbitrator finds, considering all the above, that the question whether the national French provisions should be applied can be left unanswered as the preamble of the Mediation Contract proves that the Club was fully aware of the fact that the Agent acted as *"personal agent of the player"*. As determined *supra* (cf. §82-83), the fact that the Club voluntarily entered into the obligations set out in the Mediation Contract, which contract was signed on the same date and by the same executive President as the Employment Contract, which also clearly determined that the Agent represented the Player, bars the Club from invoking double representation by the Agent as a ground for having the Mediation Contract declared null and void by CAS in the present appeal proceedings.

94. Consequently, the Sole Arbitrator is of the view that the Club must have been fully aware of the fact that the Agent already represented the Player at the time of conclusion of the Mediation Contract.

95. The Sole Arbitrator finds that the CAS Award referred to by the Club (TAS 2007/O/1310) is of no avail to the present dispute as in the Award referred to by the Club, French law is declared the law governing the contract as this was determined in the mediation contract, whereas in the present matter no clear choice of law clause was adopted in the Mediation Contract and Swiss law is applicable subsidiarily.

96. Subsequently, and in accordance with the general principles of *bona fide* and *pacta sunt servanda,* the Sole Arbitrator concurs with the Appealed Decision insofar as it determines that in principle the Club must fulfil its obligations pursuant to the Mediation Contract towards the Agent.

ac) Should the Mediation Contract be held invalid because of willful deception of the Club by the Agent?

97. The Club also bases its conclusion that the Mediation Contract should be declared null and void on article 28(1) of the SCO. It finds that the Mediation Contract is a false contract for non-existent activities in the context of the Player's transfer to the Club. The Agent never rendered any agency services at all under the said treaty. The Mediation Contract was concluded upon the explicit insistence of the Agent and the latter drafted it in order to supposedly conceal payments made to the Player through the Agent. The Agent allegedly explained to the Club that this practise is customary in France. The Agent further explained that such arrangements are made if a player wishes to receive more money, through his agent, to offset a lower salary. The Agent said that the "commission" thus would enable the Club to reduce the pertinent salary costs, social security contributions and taxes to the benefit of the Player. The Agent allegedly added that in this kind of arrangements, the agent acts as a broker of the player but is paid by the club based on the exception contained in

article 19(4) of the FIFA PAR. As the Agent insisted the Player to receive more money than the sums stipulated in the Employment Contract, through the Agent, and as the Club was desperate to acquire the Player's services at any cost, the Club had no other option but to sign the Mediation Contract as a *condition sine qua non*.

98. However, according to the Club, during the course of the Player's employment with the Club, the former informed the Club that he was not aware of the existence of the Mediation Contract and its content. The Player declared to the Club that he has never insisted to receive any payments via his agent and has never actually received any payments from his agent. Therefore, the Club submits that it was induced to enter into the Mediation Contract by the willful deception of the Agent; hence, the Mediation Contract is invalid, or, at the least, does not bind the Club, on the ground of article 28(1) of the SCO.

99. It appears the Agent did not put forward any specific position in this respect, but relies on the more general arguments he made in respect of the issues decided *supra*.

100. The Sole Arbitrator notes that the translation into English of article 28(1) of the SCO reads as follows:

"A party induced to enter into a contract by the fraud of the other party is not bound by it even if his error is not fundamental".

101. The Sole Arbitrator has already determined that the Club must have been aware of the fact that the Agent represented the Player when it entered into the Mediation Contract with the Agent and the Employment Contract with the Player (cf. §94-95). Accordingly, the Sole Arbitrator finds that there was no fraud from the side of the Agent, as he made it transparent to the Club that he represented the Player. In the opinion of the Sole Arbitrator, it can therefore not be said the Agent induced the Club to enter into the Mediation Contract; there is no wilful deception from the side of the Agent.

102. Consequently, also this argument of the Club to have the Mediation Contract being declared null and void is rejected.

ad) Was the Club not bound by the Mediation Contract because of breach of public norms in Bulgaria?

103. According to the Club, with reference to article 2(1) of the FIFA PAR and pursuant to article 28.5 LEP and article 5 of the Ordinance, a prior registration with the National Agency for Employment and a certificate issued by the Minister of Labour and Social Policy or by an official authorized by him are required, in order to operate a private job placement in Bulgaria for profit. According to the Club, a similar provision allegedly exists in France.

104. The Club finds that the Agent breached the aforementioned public norms by failing to register with the National Agency for Employment and to obtain a certificate from the Minister of Labour and Social Policy or an official authorised by him prior to rendering job placement services in Bulgaria. As a result, the Club adduces that the Mediation Contract is not binding to it and is thus not obliged to pay any compensation to the Agent.

105. The Agent maintains that the provisions of the Bulgarian LEP infringe the provisions of article 49 and 56 of the EC treaty which introduces the free movement of services within the European Union.

106. Moreover, the Agent argues that the Club cannot effectively rely on the LEP when the Agent's licence, which was issued to him by the FFF, was recognised by FIFA enabling him to carry out his work within all national federations that are members of FIFA, which is obviously also the case for the Bulgarian Football Federation.

107. Finally, the Agent finds that the Club should have requested the Agent to provide any supporting documents to show that he complied with the LEP when the Mediation Contract and Employment Contract were signed on 20 January 2010.

108. The Sole Arbitrator noted that article 12(1) of the FIFA PAR reads as follows:

"If all of the prerequisites for the issue of a players' agent licence are satisfied, including the signing of the Code of Professional Conduct and the conclusion of professional liability insurance or bank guarantee (where applicable), the association shall issue the licence. The licence is strictly personal and non-transferable. Essentially, it allows the players' agent to conduct his work in organised football on a worldwide basis, with due respect to the laws applicable in the territory of the association (cf. article 2.1)".

109. The Sole Arbitrator understands that by having been granted a licence from the FFF, the Agent was in principle entitled to conduct his work in organised football on a worldwide basis. As the present Mediation Contract is of an international nature, such agreement is primarily governed by the FIFA PAR, not by Bulgarian laws, rules and regulations. Whether the Agent was entitled to represent a Bulgarian football club based on such national provisions is a matter for the Bulgarian authorities to assess. Nevertheless, even if it would turn out that the Agent was not entitled to conclude the Mediation Contract with the Club, the Sole Arbitrator finds that the Club cannot invoke these national Bulgarian provisions at this stage of the proceedings as it should have verified whether the Agent was entitled to conclude the Mediation Contract with it before concluding such contract.

110. Consequently, the Sole Arbitrator rejects the Club's argument and finds that the Mediation Contract is binding on the Club. Subsequently, the Sole Arbitrator does not deem it necessary to adjudicate the other arguments put forward by the Agent.

b) Is the Agent entitled to any payments from the Club?

111. The Club is of the opinion that the Sole Arbitrator has to decide on the question whether the Agent has a right to claim a fee, even though he did not act as the Club's agent in the conclusion of the Employment Contract and relies on several arguments in this respect.

ba) Should the Agent not be entitled to any fees based on a violation of article 415 of the SCO?

112. The Club maintains that the FIFA PAR does not provide for an answer to the question whether the Agent has forfeited his right to a fee in case he acts against the prohibition of

double representation set out in article 19(8) of the FIFA PAR. Therefore, according to the Club, there is a loophole in the FIFA PAR that needs to be filled by Swiss law, in particular by article 415 of the SCO.

113. The Club holds that article 415 of the SCO provides for two non-cumulative hypothesis, namely: 1) when the broker *"acts on behalf of another person in violation of his contract"* and; 2) when the broker *"has arranged for a promise of a fee also from that other person contrary to good faith"*. If only one of these hypothesis is proven, the agent *"forfeits his right to a fee and to reimbursement of his expenses by the principal"*.

114. Different from the Appealed Decision, the Club maintains that there is no need to prove whether the Player – who continued to be represented by the Agent – has actually paid any money to the Agent or his company under the Mandate or not, if the Club can prove the existence of hypothesis 1) above, the Agent must be deemed to have forfeited his right to a fee from the Club.

115. The Agent maintains that the Mandate concluded between him and the Player is invalid as it did not determine the amount of remuneration to be paid to the Agent by the Player and the Mandate was not officially registered with the FFF.

116. The Agent maintains that the Player never paid any remuneration to him and provided a witness statement of the Player in this respect. At the occasion of the hearing, the Player confirmed the content of his witness statement on this issue and that he did not pay any money to the Agent personally or to his company regarding his transfer to the Club. Furthermore, the Sole Arbitrator notes that the Club – bearing the burden of proof - did not provide any evidence regarding payments made by the Player to the Agent or his company in relation to the signing of the employment contract between the Player and the Club.

117. In light of the above, the Agent is of the opinion that the Single Judge was correct to hold in his Appealed Decision that *"the documentary evidence contained in the file clearly demonstrates that the* [Agent] *could not have possibly been remunerated twice for his services. Consequently, and in accordance with the general principles of bona fide and pacta sunt servanda the Single Judge decided that the* [Club] *must fulfil the obligation it voluntarily entered into with the* [Agent] *by means of the* [Mediation Contract] *signed between the parties, and therefore, the* [Club] *must pay the* [Agent] *for the services he rendered in connection with the transfer of the* [Player] *to the* [Club]*"*.

118. The Sole Arbitrator finds that the Agent did not violate article 415 of the SCO. First, the Agent did not act in violation of his Mediation Contract with the Club because the Club was aware of the fact that the Agent was acting as the players' agent of the Player. Subsequently, the Mandate does not determine that the Player is obliged to remunerate the Agent for his services and, moreover, even if the Mandate would have made reference to a remuneration, *quod non*, still article 415 of the SCO would not have been violated as it is not proven that the Agent acted in bad faith towards the Club.

119. Consequently, the Sole Arbitrator finds that the criteria of article 415 of the SCO are not fulfilled and that it does not prevent the Agent from being entitled to the remuneration determined in the Mediation Contract.

bb) Should the Agent not be entitled to any fees based on the legal principle of nemo auditor propriam turpitudinem allegans?

120. Furthermore, the Club requests the Sole Arbitrator to take into account the basic principle of *nemo auditor propriam turpitudinem allegans* (*i.e.* no one shall be heard, who invokes his own guilt), which provision is allegedly regularly applied by the judicial bodies of FIFA.

121. The Club considers that the Single Judge ruled that the Agent has *"used a dual representation"* and FIFA has even opened disciplinary proceedings against him for that illicit behavior. The Club finds it a blatant controversy in the Appealed Decision that the Agent can be sanctioned for his unlawful acts by FIFA, but at the same time merit protection from FIFA in respect of the validity of the Mediation Contract.

122. The Club further maintains that according to Swiss literature, the double function of a "broker negotiator", such as the Agent, is forbidden. Therefore, once the Single Judge found that the Agent violated his duty of good faith as he acted as well for the other party in spite of the distinct conflict of interests, regardless of whether the Agent was or was not remunerated by the Player, the Single Judge was obliged to rule that the Agent forfeited his right to a fee.

123. The Club is of the firm opinion that players' agents who consciously do not comply with the FIFA PAR, such as the Agent, (who, moreover, is a sports lawyer), must not be allowed to seek for assistance of protection by FIFA or CAS. In this respect the Club referred to CAS 2011/A/2660, §8.21. In other words, the Single Judge had to conclude that due to the Agent's fault *ex tunc*, as established by FIFA, the Agent was not and is not eligible to receive any commission from the Club based on the Mediation Contract.

124. The Agent maintains to be surprised by this argument of the Club, as he finds that the Club is awkwardly trying to avoid performing its own contractual obligations by ignoring its own errors and faults with regard to the performance of the contract and by transferring the responsibility for the said errors and faults to the Agent.

125. The Agent refers to the Mediation Contract and emphasizes that the Club was fully aware that he acted as the personal players' agent of the Player. The Mediation Contract was entered into despite the fact that it infringed the legal and regulatory provisions the Club referred to in its appeal brief. The Club thus relies on legal and regulatory provisions which it has knowingly refused to apply to the Mediation Contract. The Agent finds that the Club does not lack audacity but that its bad faith is undeniable and shall not go unnoticed.

126. On the basis of the above, the Agent maintains that the principle of *nemo auditor propriam turpitudinem allegans* perfectly fits the Club's attitude, which cannot rely on its own turpitude in order to avoid its obligations in respect of the Agent. As a consequence, the Sole

Arbitrator should dismiss this argument of the Club and uphold that the Agent is entitled to receive the remainder of the commission owed by the Club, *i.e.* EUR 110,000.

127. The Sole Arbitrator finds that the Club erred in arguing that the Single Judge has established that the Agent committed a fault and that he violated his duty of good faith as he also represented the interests of the Player in spite of the distinct conflict of interests. The violation of the Agent is not established, at present, disciplinary proceedings are pending before the FIFA Disciplinary Committee and a formal decision is still to be taken in this respect.

128. Moreover, the Sole Arbitrator finds that the violations of the Agent, if any, are disciplinary infringements. However, the Agent did not act in bad faith towards the Club. As determined *supra,* the question whether indeed the Agent violated the FIFA PAR by representing two parties in the same transaction, falls outside the scope of the present arbitration and is to be determined by the FIFA Disciplinary Committee. Finally, the Agent denies having represented two parties in the conclusion of the Employment Contract and thus "does not invoke his own guilt". Whether the Agent actually violated the prohibition on double representation has to be determined by the FIFA Disciplinary Committee.

129. For the avoidance of doubt, even if the Agent would be sanctioned by the FIFA Disciplinary Committee for violating certain provisions of the FIFA PAR, the Club is barred from invoking this argument as it must have been aware of the double representation at the time it entered into the Mediation Contract with the Agent.

bc) Was the Mediation Contract concluded in violation of substantive public policy?

130. In continuation, the Sole Arbitrator turns his attention to the question whether the Mediation Contract is invalid because it is concluded in violation of the provisions in the SCO as mentioned by the Club and/or substantive public policy. Although certain individual elements have been adjudicated *supra*, the Sole Arbitrator considered it important for his reasoning to deal with arguments related to substantive public policy also in a separate paragraph.

131. The law and rules applicable have its confines in the *ordre public* (public order). Usually, the term *ordre public* is thereby divested of its purely Swiss character and is understood in the sense of a universal, international or transnational sense. This *ordre public* provision is supposed to prevent a decision conflicting with basic legal or moral principles that apply supranationally. This, in turn, is to be assumed if the application of the rules of law agreed by the parties were to breach fundamental legal doctrines or were simply incompatible with the system of law and values. Such a doctrine is the prohibition of binding oneself excessively. This is to be found not only in Swiss law, but also in many other legal systems, and can therefore be deemed to be part of international *ordre public*. When a binding obligation qualifies as being excessive is a question of judgement which cannot be answered generally and which can be decided only on the basis of the specific circumstances of the individual case (see HAAS U., Football Disputes between Players and Clubs before the CAS,

Sport Governance, Football Disputes, Doping and CAS Arbitration, 2nd CAS & SAV/FSA Conference Lausanne 2008, page 223).

132. The Swiss Federal Tribunal in its judgement dated 27 March 2012 (4A_558/2011) confirmed that public policy in the meaning of Article 190 (2) (e) PILA *"has both substantive and procedural contents (ATF 132 III 389 at 2.2.1 p. 392; 128 III 191 at 4a p. 194; 126 III 249 at 3b p. 253 with references). The substantive adjudication of a dispute violates public policy only when it disregards some fundamental legal principles and consequently becomes completely inconsistent with the important, generally recognized values, which according to dominant opinions in Switzerland should be the basis of any legal order. Among such principles are the rule of pacta sunt servanda, the prohibition of abuse of rights, the requirement to act in good faith, the prohibition of expropriation without compensation, the prohibition of discrimination and the protection of incapables (ATF 132 III 389 at 2.2.1; 128 III 191 at 6b p. 198 with references)"*.

133. The translation into English of article 19 SCO affirms the parties' freedom to contract by providing:

"1. The terms of a contract may be freely determined within the limits of the law.

2. Clauses that deviate from those prescribed by law are admissible only where the law does not prescribe mandatory forms of wording or where deviation from the legally prescribed terms would contravene public policy, morality or rights of personal privacy".

134. Moreover, the translation into English of article 20(1) of the SCO adds: *"a contract is void if its terms are impossible, unlawful or immoral"*, and article 28 of the SCO provides that *"a party induced to enter into a contract by the fraud of the other party is not bound by it even if its error is not fundamental"*.

135. The translation into English of article 415 of the SCO provides: *"Where the broker acts in the interests of a third party in breach of the contract or procures a promise of remuneration of such party in circumstances tantamount to bad faith, he forfeits his right to a fee and to any reimbursement of expenses"*.

136. The Sole Arbitrator observes that the preamble of the Mediation Contract proves that the Club was fully aware of the fact that the Agent acted as *"personal agent of the player"*. Nevertheless, the Club voluntarily entered into the obligations set out in the Mediation Contract, which contract was signed on the same date and by the same executive President as the employment contract between the Club and the Player. Therefore, the Sole Arbitrator finds it hard to believe that the Club *"was induced to enter into the Brokerage Contract by the wilful deception of the Agent"*. Furthermore, no abuse of rights (*"Nemo auditur propriam turpitudinem allegans"*) could be established. Consequently, and in accordance with the general principles of *bona fide* and *pacta sunt servanda,* the Sole Arbitrator concurs with the Single Judge that in principle the Club must fulfil its obligations, unless the Agent is remunerated twice for his services rendered in the same transaction.

137. However, the Sole Arbitrator observes that the Player at the hearing confirmed that he did not pay any money to the Agent personally or to his company regarding his transfer to the Club. Furthermore, the Sole Arbitrator notes that the Club – bearing the burden of proof – did not provide any evidence regarding payments made by the Player to the Agent or his

company in relation to the signing of the employment contract between the Player and the Club.

138. In light of the above, the Sole Arbitrator is of the opinion that the Mediation Contract itself is not contrary to the above mentioned provisions of Swiss law or public policy.

bd) Were the Agent's activities causal to the conclusion of the Employment Contract?

139. In continuation, the Club refers to a letter/direction issued by the Bureau of the FIFA Players' Status Committee in June 1999. In a Decision of 21 November 2011, the FIFA PSC determined the following in respect of this letter:

"In this respect, the Bureau had held that players' agents' activities must be causal to the conclusion of employment contracts and that, as a general rule, if an employment contract is signed without the involvement of a particular players' agent, the [client] concerned does not owe any commission to the agent. This said, the Single Judge recalled that this legal interpretation of the Bureau of the Players' Status Committee is still applicable and has since been confirmed by the Players' Status Committee in its jurisprudence" (cf. Decision of the FIFA PSC dated 21 November 2011).

140. According to the Club, *in casu*, Mr Bizzarri acted for the Club in the acquisition of the Player. There is no evidence on file proving that the Agent carried out any agency activities whatsoever for the Club before, during or after the conclusion of the Employment Contract. Rather, there is enough irrefutable evidence proving that the Agent exercised agency activities for the Player.

141. Subsequently, the Club concludes that the Agent is not entitled to any remuneration from the Club at all, as he did not render any services whatsoever for the Club.

142. The Agent maintains that the Club's allegations in this respect are contradicted by the evidence provided. This evidence formally certifies that the Club paid EUR 20,000 to the Agent for the services rendered by the latter. In the event that the Club had refuted or denied the Agent's work, it had numerous opportunities to contest the invoices sent by the Agent. Nevertheless, the Club refrained from making such comments as it is fully conscious of the significant work carried out by the Agent to ensure that the Player would sign the Employment Contract with the Club.

143. Subsequently, the Agent concludes that the payment of EUR 20,000 constitutes a formal acknowledgement on the part of the Club of the work carried out by the Agent. In addition, the Agent maintains that this is also corroborated by the witness statement of Mr Bizzarri.

144. In respect of the requirements for an Agent to be entitled to be remunerated for his services, the Sole Arbitrator notes that article 28 of the FIFA PAR determines the following:

"1. Any contract concluded as a result of negotiations conducted by a licensed players' agent who was engaged by the club concerned shall specify the players' agent's name.

2. If the club does not use the services of a players' agent, this fact shall also be explicitly mentioned in the relevant transfer and/or employment contract(s)".

145. The Sole Arbitrator finds that it cannot be said that the Agent did not provide any services for the Club. It becomes apparent from the Mediation Contract and the Employment Contract, to which both the Club and the Agent were contractual parties, that the Agent assisted in the conclusion of the Employment Contract, be it as the formal representative of the Player. The fact however remains that it is not sure whether the Employment Contract would have been concluded without the services of the Agent.

146. This point of view is corroborated by the following statement of the Club in its appeal brief: *"[a]s the* [Agent] *insisted the Player to receive more money than the sums stipulated in the Employment Contract, through the* [Agent]*, and as the* [Club] *was desperate to acquire the Player's services at any cost, the* [Club] *had no other option but to sign the* [Mediation Contract] *as a condition sine qua non"* (cf. §102 of the appeal brief). The Sole Arbitrator interprets this statement as a confirmation of the Club that should it have rejected to sign the Mediation Contract, probably no Employment Contract with the Player would have been concluded.

147. In addition, the Sole Arbitrator is of the opinion that the Club has foregone its right to put forward its, in principle, legitimate argument that the Agent did not render any services to the Club and that therefore no remuneration is due to the Agent, by having paid an amount of EUR 20,000 to the Agent, as the Club thereby acknowledged its debt towards the Agent. The Sole Arbitrator deems that this argument of the Club appears to be an *ex post* argument, only advanced for the first time after the Agent lodged a claim with FIFA, to try and avoid having to pay the due amounts to the Agent.

148. Consequently, also this claim of the Club is rejected.

be) Did the Player authorize the Club to pay the Agent on his behalf?

149. According to the Club, article 19(4) of the FIFA PAR determines that, in the absence of a national regulation establishing who is responsible for paying the agent, payment shall be made exclusively by the client to the agent. The representation contract must explicitly state in what manner the agent will be paid. The above provision however allows a player to authorize the club to pay the agent. In order to prevent conflicts of interest resulting from double representation, the player may only authorize payment once the employment contract has been signed.

150. The Club maintains that in the present matter, such written authorization from the Player is missing. Notably, the Player neither signed the Mediation Contract, nor gave his written consent to the Club to pay the Agent on his behalf at a later stage.

151. Therefore, the Club finds that the Agent is not entitled to claim compensation from the Club for the acquisition of the Player, who was represented by the Agent at all times.

152. The Agent did not put forward any specific position in this respect.

153. The Sole Arbitrator noted that article 19(4) of the FIFA PAR determines the following:

"The representation contract shall explicitly state who is responsible for paying the players' agent and in what manner. Any laws applicable in the territory of the association shall be taken into account. Payment shall be made exclusively by the client of the players' agent directly to the players' agent. However, after the conclusion of the relevant transaction, the player may give his written consent for the club to pay the player's agent on his behalf. The payment made on behalf of the player must reflect the general terms of payment agreed between the player and the player's agent".

154. The Sole Arbitrator notes that it is not disputed by the Agent that no written consent was given by the Player that the Club would pay the Agent on his behalf. Accordingly, the Club did not assume the debt of the Player.

155. However, by entering into the Mediation Contract with the Agent, the Club concluded a new contract distinct from the Mandate. The Agent's claim for the total amount of EUR 130,000 derives solely from the Mediation Contract, which is not directly connected to the Mandate concluded between the Agent and the Player.

156. Consequently, the Sole Arbitrator finds that also this claim of the Club, insofar as it sought to be released from its obligation to pay the amounts deriving from the Mediation Contract to the Agent, is rejected.

c) If the Agent is entitled to payments from the Club, to what amount is the Agent entitled?

157. The Club advances several arguments why the remuneration in a total amount of EUR 130,000 to be paid by the Club to the Agent should be reduced. The Sole Arbitrator will consider the Club's arguments in this respect separately below.

ca) Is the Agent's remuneration to be reduced based on article 20(1) and (4) of the FIFA PAR?

158. The Club argued that if an agency fee is due to be paid by the Club to the Agent, *quod non*, the Sole Arbitrator has to establish that the Player was the principal of the Agent. Referring to article 20(1) and (4) of the FIFA PAR, the Club maintains that in the absence of any compensation being determined in the Mandate, the Agent is entitled to payment of compensation amounting to three percent of the basic income of the Player during the term of the Employment Contract.

159. In invoice 1 and 2 sent to the Club by the Agent, he made express reference to article 19(4) of the FIFA PAR. If one has to follow the Agent's argumentation at FIFA that he acted for the Club, *quod non*, then he would have referred to article 20 of the FIFA PAR and, in particular, paragraph 5, which provides for the terms of payment of the agent's remuneration when he acts for a club.

160. The Agent finds that these secondary claims of the Club shall not be upheld as they are contradictory to the provisions in the Mediation Contract, which should prevail as it reflects

the express wishes of the parties. To grant one of the secondary claims of the Club would constitute a serious breach of the contractual freedom and the principles of *bona fide* and *pacta sunt servanda* and would go against the established jurisprudence of CAS, although it did not corroborate this allegation with any references to CAS jurisprudence.

161. Consequently, the Agent requests the Panel to uphold the Appealed Decision passed by the Single Judge and that the Club has to pay the Agent the amount of EUR 110,000.

162. The Sole Arbitrator notes that article 20(1) and (4) of the FIFA PAR determine the following:

> *"1. The amount of remuneration due to a players' agent who has been engaged to act on a player's behalf is calculated on the basis of the player's annual basic gross income, including any signing-on fee that the players' agent has negotiated for him in the employment contract. Such amount shall not include the player's other benefits such as a car, a flat, point premiums and/or any kind of bonus or privilege which is not guaranteed.*
>
> *4. If the players' agent and the player cannot reach agreement on the amount of remuneration to be paid or if the representation contract does not provide for such remuneration, the players' agent is entitled to payment of compensation amounting to three per cent of the basic income described in paragraph 1 above which the player is due to receive from the employment contract negotiated or renegotiated by the players' agent on his behalf".*

163. The Sole Arbitrator noted that the Agent indeed referred to the wrong provision in the FIFA PAR when requesting the Club to comply with its payment obligations towards him. However, the Sole Arbitrator does not find this a compelling argument to reduce the compensation to be paid to an amount as if the Mediation Contract would have been concluded with a player.

164. As maintained *supra* (cf. §156), the Sole Arbitrator finds that the only relevant contract in respect of the Agent's claim for the amount of EUR 110,000 was the Mediation Contract concluded between the Agent and the Club and not the Mandate concluded between the Agent and the Player. The Sole Arbitrator finds that Article 20(1) and (4) of the FIFA PAR are only applicable to the relation between a players' agent and a player.

165. Consequently, this argument of the Club is rejected by the Sole Arbitrator.

cb) Is the Agent's remuneration to be reduced based on article L222-10 of the Code of Sport and/or article 18 of the FSAR?

166. The Club maintains that pursuant to article L222-10 of the Code of Sport and article 18 of the FSAR *"the amount of [the agent's] remuneration […] may not exceed 10% of the value of the concluded contract"*. Based on this assumption, the Club calculated the remuneration actually received by the Player during the term of the Employment Contract, which allegedly constitutes an amount of EUR 139,000.

167. Against this background, the Club concludes that the Agent would be entitled to receive 10% of the gross guaranteed income, which the Player actually received from the Employment Contract that was negotiated by the Agent on his behalf, *i.e.* an amount of EUR 13,900 (10% of EUR 139,000).

168. The Agent finds that the Club cannot rely on the provisions of the French Code of Sport as the parties to the Mediation Contract never agreed to the application of French law to such agreement.

169. The Sole Arbitrator finds that these national French provisions are not directly applicable to the present matter. The FIFA PAR are primarily applicable and in the absence of a clear provision in the FIFA PAR determining that national provisions should be taken into account in regulating the maximum compensation allowed to be paid to a players' agent, there is no discretion to apply such purely domestic rules to a contract of an international nature.

170. Consequently, also this claim of the Club is rejected.

cc) Is the Agent's remuneration to be reduced based on article 417 of the SCO?

171. More alternatively, the Club requests the Sole Arbitrator to apply a reasonable reduction on the Agent's remuneration, applying article 417 of the SCO, which is, allegedly, imperative law. According to the Club, the entire guaranteed value of the Employment Contract was EUR 331,000 gross, whilst the total agreed remuneration for the Agent amounted to EUR 130,000. The Club finds this figure clearly disproportionate as the Agent would be entitled to nearly 40% of the total guaranteed contractual value.

172. Moreover, the Club maintains that the Player actually received an amount of EUR 139,000 from the Club during the term of effectiveness of the Employment Contract. The amount to be received by the Agent, *i.e.* EUR 110,000 is therefore almost equal to the wages received by the Player under the Employment Contract.

173. The Agent did not put forward any specific position in this respect, but it is assumed that the Agent relies on the more general arguments in respect of the Club's secondary claims, as set out above.

174. The Sole Arbitrator observed that the translation into English of article 417 of the SCO reads as follows:

> *"Where an excessive fee has been agreed for identifying an opportunity to enter into or facilitating the conclusion of an individual employment contract or a purchase of land or buildings, on application by the debtor the court may reduce the fee to an appropriate amount".*

175. The Sole Arbitrator observed that the Club voluntary agreed to a fee for the Agent of EUR 130,000 and obtained the services of the Player for free; it did not pay any transfer fee to the former club of the Player. However, within seven months upon registration of the Player

with the Club, the Club transferred the Player to the English football club Blackpool for a transfer fee of EUR 450,000. The Sole Arbitrator deems it important to take this fact into account in assessing the alleged inappropriateness of the remuneration to be paid by the Club to the Agent.

176. In light of the fact that the Club alleges to have effectively paid a total amount of remuneration of EUR 139,000 to the Player during his registration with the Club, the Sole Arbitrator observes that this amount was only part of the total salary the Player would have been entitled to receive should he not have been transferred to Blackpool before the end of his Employment Contract with the Club. The Club thus made a profit of EUR 450,000 in the registration and subsequent transfer of the Player to Blackpool. The Sole Arbitrator noted that if the fee to the Agent and the entire salary the Player could possibly have earned during the term of the Employment Contract would be deducted from this profit, still the Club would have benefitted from the registration of the Player, which registration was made possible due to the services of the Agent. In addition, the Club obviously also profited from the performance of the Player as a football player during his registration with the Club

177. Considering such circumstances, the Sole Arbitrator does not find the fee of EUR 130,000 to be paid by the Club to the Agent to be disproportionate.

cd) Is the Agent's remuneration to be reduced based on the Agent's letter dated 2 August 2010?

178. Finally, the Club is eager to recall that on 2 August 2010, the Agent, by his legal representative, Mr Nicolas Mattei, wrote to the Club, renouncing EUR 40,000 of his fee under the Mediation Contract. In this letter, Mr Mattei indicated that *"[i]n case of failing receipt of payment, I have the instructions from my client to collect the sum by any legal way"*, but he did not submit that the renouncement of EUR 40,000 would be withdrawn by the Agent in case of non-compliance with the Agent's request for payment by the Club until a certain deadline. Therefore, the Club finds that, notwithstanding all of the above arguments, the Agent is precluded from claiming more than EUR 70,000 as a fee.

179. The Agent argues that Mr Mattei sent the above-mentioned letter as an amicable proposal to settle the dispute. In other words, it was a commercial discount of EUR 40,000. The Agent further maintains that against all expectations, the Club did not reply to this letter, thereby confirming its desire not to comply with its contractual commitments. As a consequence, it is not surprising that more than two years after the signing of the Mediation Contract, the Club is once again attempting to exonerate itself from its contractual obligations.

180. The Sole Arbitrator observes that the letter dated 2 August 2010 reads as follows:

"Object: Commercial discount about E. transfer to CSKA SOFIA in January 2010

(…)

About this subject, my client asked me, as part of setting up some good business relationships between CSKA SOFIA and RIVIERA FOOTBAL MANAGEMENT, ***to give to*** *(emphasize added) CSKA SOFIA a commercial discount of EUR 40.000 (…).*

Thereof, CSKA SOFIA is still debtor of EUR 70.000 (…) to RIVIERA FOOTBALL MANAGEMENT. The whole sum must be paid before Wednesday August 4th 2010.

In case of failing *(emphasize added) receipt of payment, I have the instructions from my client* ***to collect the sum*** *(emphasize added) by any legal way (…)"* [emphasis added].

181. The Sole Arbitrator notes that the Club argues that with this letter the Agent reduced his fee with EUR 40.000. At the hearing the Agent informed the Sole Arbitrator that this letter was the result of several telephone contacts with the Club and was sent to achieve a quick solution.

182. Although no quick solution was reached, and therefore no payment was made by the Club, the Sole Arbitrator observes that the letter appears to give an unrestricted commercial discount to the Club of EUR 40.000. In continuation, the Sole Arbitrator notes that the letter explicitly confirms that the Club is therefore still debtor of EUR 70.000 and warns the Club that in case of non payment the sum will be collected by any legal way. The Agent neither contested the wording of the letter sent by his lawyer in his answer, nor at the hearing.

183. The Sole Arbitrator finds that this is not a situation where a discount on the total debt is given only if payment is made within a certain timeframe, failing which the initial total debt falls due again. If this would have been the intention of the Agent's lawyer, the letter should have specifically made reference to such intention. From the wording of the letter it appears that a commercial discount was given to the Club, *i.e.* a unilateral act from the Agent voluntarily reducing his claim vis-à-vis the Club, as opposed to an offer to reduce the claim if the Club would pay such amount within a certain deadline, failing which the initial claim would revive. In the absence of such clear intention from the Agent and taking into account the fact that the letter was drafted by the Agent's lawyer, the Sole Arbitrator finds that on 2 August 2010, the Agent voluntarily and permanently reduced his claim to an amount of EUR 70.000.

184. As a result, the Sole Arbitrator is of the opinion that the Agent is in principle entitled to receive EUR 70.000.

185. In light of the above, it is not necessary to consider the Club's claim to be reimbursed with the amount of EUR 20,000 or any of the other claims and requests for relief.

d) Is the Agent entitled to any interest?

186. The Club maintains that the Single Judge ruled *ultra petita* in his Appealed Decision by awarding interest on the adjudicated compensation at the rate of 5% *per annum*, from 18 July 2012, where there was no request made by the Agent, who limited his request for default interest to the total amount of EUR 1,268.

187. In this respect the Agent maintains that *"in all events, the capitalized amount of the interest that may be owed by the Club would not have been superior to that requested by the Agent"*. In this particular case,

the parties did not provide for the possible payment of interest on the sums owed pursuant to the Mediation Contract. As a consequence, Swiss law is applicable in the absence of rules of law chosen by the parties.

188. The Agent argues that, based on article 73(1) and 104(1) of the SCO, in the absence of contractual provisions in the Mediation Contract, the Single Judge strictly and accurately applied the applicable rules of law concerning the rate of interest at 5%. As a consequence, the Appealed Decision is perfectly valid, contrary to what the Club claims.

189. The Sole Arbitrator observed that the Mediation Contract does not contain any provisions regarding the interest rate.

190. The Sole Arbitrator noted that the translation into English of article 73(1) of the SCO determines the following:

"Where an obligation involves the payment of interest but the rate is not set by contract, law or custom, interest is payable at the rate of 5% per annum".

191. The Sole Arbitrator adheres to the position expressed by the Club, that the Single Judge ruled *ultra petita* in his Appealed Decision. However, in the present appeal proceedings the Agent refers to article 73(1) and 104(1) of the SCO which would enable the Sole Arbitrator to repair procedural flaw in the previous litigation, this is also in line with the *de novo* competence of CAS in appeal proceedings pursuant to Article R57 of the CAS Code (cf. CAS 2009/A/1880-1881, §17-23). In the opinion of the Sole Arbitrator, this does not constitute a counterclaim, which would have been inadmissible, as the Agent requests the interest awarded in the Appealed Decision to be confirmed.

192. Although the Sole Arbitrator does not find the amount of interest awarded in the Appealed Decision to be disproportionate, in light of the fact that the Agent's legal representative, by letter of 2 August 2010, reduced the claim to EUR 70,000, this should be taken into account in determining the interest due to the Agent.

193. The letter of the Agent's legal representative of 2 August 2010 reads as follows:

"(…) Thereof, [the Club] is still debtor of 70.000 € (seventy thousand euros) to RIVIERA FOOTBALL MANAGEMENT. The whole sum must be paid before Wednesday August 4th 2010. In case of failing receipt of payment, I have the instructions from my client to collect the sum by any legal way".

194. In light of the above, the Sole Arbitrator finds that by this letter a new deadline for payment was granted and that payment of the amount EUR 70,000 fell due only on 4 August 2010.

195. Consequently, the Club is liable to pay to the Agent 5% interest *per annum* over an amount of EUR 70,000 as from 4 August 2010 until the date of effective payment.

B. Conclusion

196. Based on the foregoing, and after taking into due consideration all the evidence produced and all the arguments made, the Sole Arbitrator finds that:

a) The Mediation Contract concluded between the Club and the Agent is not null and void.
b) The Agent is entitled to receive remuneration pursuant to the Mediation Contract from the Club.
c) The Agent is entitled to a lump sum payment of EUR 70,000 from the Club.
d) The Agent is entitled to 5% interest *per annum* over the amount of EUR 70,000 as from 4 August 2010 until the date of effective payment by the Club.

197. Any further claims or requests for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 15 November 2012 by PFC CSKA Sofia against the Decision issued on 18 July 2012 by the Single Judge of the Players' Status Committee of the Fédération Internationale de Football Association is partially upheld.

2. The Decision issued on 18 July 2012 by the Single Judge of the Players' Status Committee of the Fédération Internationale de Football Association is overturned only insofar as it awarded *"EUR 110,000, as well as 5% interest per year on the said amount as from 18 July 2012 until the date of effective payment"*.

3. PFC CSKA Sofia is ordered to pay the amount of EUR 70,000 to Mr Loïc Bensaïd, plus 5% interest *per annum* as from 4 August 2010 until the date of effective payment.

4. (…).

5. (…).

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