Arbitration CAS 2008/A/1741 Leonid Kovel v. FC Karpaty & Fédération Internationale de Football Association (FIFA), award of 15 October 2009

Panel: Mr Alasdair Bell (United Kingdom), President; Prof. Ulrich Haas (Germany); Mr João Nogueira da Rocha (Portugal)

Football
Contract of employment
Applicable law
Burden of proof
Unilateral option in a loan agreement
Conduct of the player leading to the conclusion that he has unlawfully terminated his contract of employment

1. **The application of Swiss law as stipulated in Article 60 para. 2 of the FIFA Statutes is limited and only applies if there is a gap in the FIFA regulations. On the other hand, where the FIFA regulations conclusively regulate a legal question, there is no scope to have recourse to Swiss law.**

2. **The general civil rules on the burden of evidence apply also in CAS proceedings. As a result, in CAS arbitration, any party seeking to prevail on a disputed issue must meet the "burden of proof", i.e. must satisfy the obligation to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to the issue in question. Moreover, each party, according to the general rules of Swiss law, must articulate precisely all the pertinent facts on which its claims or defenses rely.**

3. **Options for the transfer of a player are common in loan agreements. Such options can only be exercised if the player consents to sign an employment contract with the beneficiary of the option. If the player has indeed signed such an employment contract, the option is thus not unlawful.**

4. **A player can only enter into one employment relationship at a time. Thus, if a player signs a second contract and his conduct demonstrates that he has no intention of meeting his obligations under his first contract then it may be deemed that the player has effectively terminated the first contract.**

Mr Leonid Kovel, the Appellant, is a young football player who plays as centre forward. He is currently 22 years old. Mr Leonid Kovel was born and grew up in Belarus. He was registered with FC Dynamo Minsk, a Belarussian football club, from childhood until he signed his first professional agreement.

FC Karpaty, Respondent 1, is a Ukranian football club and is a member of the Ukrainian Football Federation and the Ukrainian Premier League.

The Fédération Internationale de Football Association (FIFA), Respondent 2, is the governing body of international football on a worldwide level. It exercises regulatory, supervisory, disciplinary and coordinating functions over national associations, clubs, officials and players, worldwide. FIFA is an association under Swiss law and has its headquarters in Zurich, Switzerland.

On 26 February 2007, FC Dynamo Minsk and FC Karpaty entered into a loan agreement pursuant to which it was agreed that, in consideration of the payment of the amount of USD 70'000.--, Mr Leonid Kovel's registration would be temporally transferred from FC Dynamo Minsk to FC Karpaty. The loan agreement was concluded for a period beginning from 26 February 2007 until 31 December 2007.

The parties to this loan agreement agreed as follows: *""Karpaty" has a right to buyout of transfer rights for the "Football Player" during period of loan. In this case, "Karpaty" transfer to "Dynamo" 430'000 (four hundred thirty thousand) US dollars till December 31, 2007. In case of possible future transfer of the "Football Player" from "Karpaty" to the third club, "Dynamo" receives 50 (fifty) per cents of transfer sum"* (clause 5).

In these circumstances, FC Karpaty and Mr Leonid Kovel entered into a labour agreement, dated 26 February 2007, and valid as of the same date until 31 December 2007. The contract provided for a monthly salary of UAH 5'000.--, along with unspecified bonuses depending on the player's performances.

On 21 November 2007, FC Karpaty exercised the above-mentioned buyout option by transferring the amount of USD 430'000-- to FC Dynamo Minsk.

FC Karpaty informed FC Dynamo Minsk of the buyout of transfer rights and the payment of the appropriate amount by letter dated 23 November 2007.

According to FC Karpaty, a second employment contract dated 1 January 2008 and valid from that date until 31 December 2011 was concluded with the player. The agreement provided for a monthly salary of UAH 5'000.-- along with unspecified bonuses depending on the player's performances. According to FC Karpaty, although the agreement was signed on 26 November 2007, 1 January 2008 was stipulated as the date of the contract since it was the date when it came into effect (i.e. it entered into effect when the loan agreement came to an end).

FC Karpaty submitted the above-mentioned agreement to the Ukrainian Professional Football League on 2 January 2008.

On 3 January 2008, an employment contract was entered into between Mr Leonid Kovel and FC Saturn.

FC Saturn then announced on its webpage that Mr Leonid Kovel would be transferred from FC Dynamo Minsk to the Russian club FC Saturn.

FC Karpaty informed FC Dynamo Minsk and FC Saturn by fax letters dated 3, 5 and 8 January 2008 of the alleged valid employment relationship between Mr Leonid Kovel and FC Karpaty.

By letter dated 27 December 2007, Mr Leonid Kovel informed FC Karpaty that he was not willing to enter into a new agreement with FC Karpaty.

By letter dated 9 January 2008, FC Karpaty requested Mr Leonid Kovel to fulfil his obligations towards the club.

On 12 January 2008, FC Karpaty placed Mr Leonid Kovel on its transfer list with a minimal amount of USD 3 millions.

On the same day, FC Dynamo Minsk made several attempts to return to FC Karpaty the amount paid of USD 430'000.--. FC Karpaty refused this transfer.

Eventually, FC Karpaty accepted the repayment of the option fee.

On 6 February 2008, FC Karpaty filed a claim with the FIFA Dispute Resolution Chamber (the "FIFA DRC") against Mr Leonid Kovel, FC Saturn and FC Dynamo Minsk, putting forward mainly that the second employment contract was valid and that FC Dynamo Minsk had unlawfully transferred Mr Leonid Kovel to FC Saturn.

In response, Mr Leonid Kovel argued that the second employment contract was falsified (in particular, on the grounds that his signature on that contract had allegedly been forged) and that the only contract he had ever signed with FC Karpaty was the first employment contract dated 26 February 2007.

On 21 August 2008, FIFA DRC decided that "it is established that a valid contractual relationship still exists between the Claimant, Club of Professional Football "Karpaty", and the first Respondent, Leonid Kovel, until 31 December 2011".

FIFA DRC's main conclusions were as follows:

> *"5. (…). Furthermore, from the documents on file, the members of the Chamber noted that it appeared that FC Dinamo Minsk had not objected to the exercise of the option until 12 January 2008, when it apparently repeatedly tried to transfer the money back, which had however been refused by CPF "Karpaty"; (…)*
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> *9. In this context, the members of the Chamber proceeded to deliberate on the player's allegation according to which he had never signed the contract in question as he had not been present in Ukraine on the 1 January 2008, and that consequently his signature had been forged;*
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> *10. With regard the player's accusation of forgery, the Dispute Resolution Chamber attached importance to clarifying that it was not competent to adjudicate on criminal offences, such as the alleged forgery of a signature;*

11. In this sense, the Chamber added that, as a general principle, it is up to the party invoking a forgery of a signature to initiate the corresponding proceedings before the competent penal authorities. Such steps, however, did not appear to have been taken by the player in the present matter;

12. In this regard, and with reference to the standing jurisprudence of the Players' Status Committee and the Dispute Resolution Chamber, the members of the Chamber recalled that the authenticity of a signature was to be presumed until evidence to the contrary is presented, unless an evident and manifest difference between the signatures in question is ascertained; (…)

14. What is more, the Dispute Resolution Chamber also relied on the forensic report issued by the Ministry of Justice of Ukraine, which concludes that the player himself had signed each page of the contested agreement, and emphasized that the player on his part had neither contested the said report nor presented any evidence whatsoever in order to corroborate his allegation that his signature had been forged;

15. Furthermore, and reverting to the player's argument that he had been in Belarus on 1 January 2008 and therefore not been able to sign the contract, the Chamber deemed it fit to point out that the relevant contract was signed on 26 November 2007 [emphasis added] *with 1 January 2008 as the date of its entry into force".*

On 18 December 2008, Mr Leonid Kovel filed his statement of appeal against FIFA DRC's decision of 21 August 2008.

On 16 January 2009, Mr Leonid Kovel filed his appeal brief against FIFA DRC's decision. Mr Leonid Kovel requested the Court of Arbitration for Sport (CAS) to reverse FIFA DRC's decision dated 21 August 2008 and to replace it with a decision which confirms that:

- The second employment contract is invalid, and is of no binding effect on Mr Leonid Kovel;
- Mr Leonid Kovel shall have no liability to FC Karpaty vis-à-vis the second employment contract;
- In any event, FIFA was incorrect in holding in its decision that a valid contractual relationship does, or could remain between Mr Leonid Kovel and FC Karpaty, and as such, Mr Leonid Kovel is free to continue to perform his obligations under the agreement concluded with FC Saturn;
- FC Karpaty and FIFA are liable to Mr Leonid Kovel in the full amount of the costs of the appeal.

On 9 February 2009, FIFA filed its answer. FIFA requested the CAS to dismiss the appeal and uphold the decision delivered by the FIFA DRC on 21 August 2008. Alternatively, FIFA requested, should the CAS conclude that the second employment contract had been terminated by Mr Leonid Kovel, that the consequences for breach of contract without just cause in the protected period be imposed on Mr Leonid Kovel, according to Article 17 § 1 and 3 of the FIFA Regulations for the Status and Transfer of Players. Furthermore, FIFA requested that *"all costs related to the present procedure as well as the legal expenses of the second Respondent shall be borne by the Appellant".*

On 10 February 2009, FC Karpaty filed its answer. FC Karpaty requested the CAS to uphold the decision delivered by the FIFA DRC on 21 August 2008 in full, especially noting that a valid contractual relationship was still existing between FC Karpaty and Mr Leonid Kovel until 31 December 2011, that Mr Leonid Kovel was not free to continue to perform his obligations under the agreement concluded with FC Saturn and that Mr Leonid Kovel was liable to FC Karpaty in the full amount of the costs of the appeal.

On 5 May 2009, the Panel notified the following decisions regarding various preliminary questions raised by Mr Leonid Kovel in letters dated 24 February 2009, 10 March 2009 and 8 April 2009:

- The Panel, in accordance with the Article R64.2 of the Code of Sports-related Arbitration ("the Code"), rejected the Appellant's request that the answer of FC Karpaty be deemed withdrawn due to the non payment of its share of the advance costs;
- The Panel decided that the Appellant may only withdraw the appeal against Respondent FIFA if FIFA consents to this;
- The Panel dismissed the request for disclosure of the duplicate originals of the temporary and permanent contract by FC Karpaty and the Ukrainian Football Federation. The Panel considered, on the basis of Article R44.3 of the Code, that it *"would only make sense to grant such a request if the Appellant is then allowed to produce an expert report regarding the validity of the disputed contract. In this respect, the Panel considers that the production of an expert report at this stage of the proceedings would not be appropriate and notes that the authenticity of the signature of the player goes to the heart of this dispute and, as such, the Appellant could have commissioned any such report a long time ago"*;
- The Panel rejected the Appellant's request to make further written submission since there were no exceptional circumstances as required under Article R56 of the Code.

By letter dated 15 May 2009, FIFA refused the withdrawal of the appeal against itself.

On 16 June 2009, the CAS informed the parties that a hearing would take place on 14 July 2009 at the CAS Headquarters in Lausanne, Switzerland.

By letter dated 9 July 2009, Mr Leonid Kovel sent to the CAS an expert report written by Mr AA Frolov and translated from Russian into English. Mr Leonid Kovel asked for permission to enter this report as evidence in the present procedure pursuant to Article R56 of the Code on basis of exceptional circumstances developed in the above-mentioned letter.

By letter dated 13 July 2009, the parties were informed of Mr Leonid Kovel's request of 9 July 2009 under Article R56 of the Code and that the Panel would handle it as a preliminary issue at the hearing.

As announced, the hearing took place on 14 July 2009 in Lausanne. No objections were made by the parties concerning the composition of the Panel and/or the proceedings at this stage.

At the beginning of the hearing, the Panel examined as preliminary issue Mr Leonid Kovel's request dated 9 July 2009 to enter a new expert report as evidence in the present procedure.

FIFA's representative asked the Panel to reject that request, referring in particular to the decision rendered on 5 May 2009 by the Panel and refusing the disclosure requested by Mr Leonid Kovel as he could not at this stage produce an expert report regarding the validity of the disputed contract. FIFA's representative added that it was prejudicial to the rights of the defence to produce a new report five days before the hearing as this granted no meaningful opportunity for the two Respondents to react carefully. FIFA's representative also added that Mr Leonid Kovel had invoked no new arguments since the decision rendered by the Panel on 5 May 2009.

For the same reasons, the counsel of FC Karpaty also concluded that Mr Leonid Kovel's request of 9 July 2009 be dismissed.

In response, the counsel of Mr Leonid Kovel stated that Mr Leonid Kovel does not dispute any more having signed the second employment agreement but only that he signed it consciously. According to Mr Leonid Kovel's counsel, the timing of the signature on the second employment agreement is essential in order to demonstrate that the contract could not have been signed on 26 November 2007, all alleged by FC Karpaty.

The Panel deliberated and decided to dismiss Mr Leonid Kovel's request to present as new evidence the expert report sent to the CAS on 9 July 2009. The Panel immediately notified to the parties the holding of the decision and informed the parties that the grounds of the decision would be notified in the final award.

The grounds of the decision are as follows: According to Article R56 of the Code, the parties shall neither be authorized to supplement their arguments, nor to produce new exhibits, nor to specify further evidence on which they intend to rely after the submission of the grounds for the appeal and of the answer, unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances. The Panel considers that there are no exceptional circumstances that authorize Mr Leonid Kovel to present, at this stage, a new expert report. Indeed, the Panel is of the opinion that Mr Leonid Kovel was in possession of one original exemplar of the contested agreement since the beginning of the year and, as a result, could have commissioned and produced such a report a long time ago. In addition, it would moreover be unfair and prejudicial to the rights of the defence to accept such a report as it would grant no meaningful opportunity for the two Respondents to react. The Panel also refers to the content of its decision dated 5 May 2009, which remains fully applicable. In that decision, the Panel had noted that the authenticity of the signature of the player went to the heart of the dispute and now it had, in any event, transpired that the player did not dispute the authenticity of his signature any longer; only the date on which he signed the contract. Finally, the Panel noted that, contrary to the express admission made by the counsel of Mr Leonid Kovel at the hearing (i.e. that the player accepted that the signature on the contract was his) in its letter of 9 July 2009 submitted only days before the hearing the counsel of Mr Kovel apparently still did not accept that the second employment contract had been signed by the player.

At the conclusion of the hearing, the parties, after having made submissions in support of their respective requests for relief, raised no objections regarding their right to be heard and to be treated equally in the arbitration proceedings.

Following the hearing, the counsel of Mr Leonid Kovel sent a letter dated 23 July 2009 pointing to the fact that the player and his agent had to leave the hearing before it had finished in order to travel back to Russia and, for this reason, could not deal directly with questions that arose at the end of the hearing with regard to the divergence between the passport details of the player that appear on the first and second employment contracts. In that letter, it is stated that: *"the Player does not dispute that the passport details on the First and Second Employment Contracts are different. However, he would simply like the Panel to take note of the fact that it is a common procedure of the Club, and indeed many clubs in the Ukraine, Belarus and Russia, that the passport details of players are often added after the contract is signed, but before the contract is registered with the national association and/or professional league"*. The letter goes on to state: *"this is precisely what happened in the case of the First Employment Contract: the Player was given the document to sign, but it did not include his passport details. These were added by the Club at a later point before it was registered with the Ukrainian Premier League"*. A document was enclosed to the over-mentioned letter.

By letter dated 24 July 2009, the CAS, pursuant to Article R56 of the Code, invited the Respondents to determine whether or not they agree with this new statement being part of the file.

By letters dated 28 July 2009 and 29 July 2009, the Respondents objected to Mr Leonid Kovel's submission of 23 July 2009 being taken into consideration in the present procedure arguing, in particular, that there were no "exceptional circumstances" with the meaning of R56 of the Code and that the claims made in the letter of 23 July 2009 as to the "common procedures" of many clubs in Ukraine, Belarus and Russia were unfounded and speculative.

On 4 August 2009, the President of the Panel, in accordance with the Article R56 of the Code, accepted the statement submitted on 23 July 2009 as part of the file. The Panel took into consideration *"the fact that the player had to leave the hearing early in order not to miss his flight and therefore could not answer, during the hearing, to the questions related to the passport details"*. The Panel also invited the Respondents to file any comment regarding the above-mentioned letter.

By letter dated 10 August 2009, FC Karpaty asked the Panel to reject Mr Leonid Kovel's arguments, invoking in particular that *"there were no blanks or other possibilities to print in any data after signing but before the registration of the contract in Professional Football league of Ukraine like it is alleged by the Appellant"*. FC Karpaty also noted that *"the Appellant didn't make any statements of similar content at any moment before in course of investigation of the case in FIFA plenipotentiary organs and in CAS while such statements would be absolutely natural and even indispensable from his side if to assume that such fact really occurred"*.

By letter dated 11 August 2009, FIFA stated that *"the document presented by the Appellant rather appears to be a part of a draft of an employment contract to be concluded between the Appellant and the first Respondent than the final version of their first employment contract dated 26 February 2007 … as apart from the Appellant's passport details, also his address as well as the name and function of the Respondent's representative signing the contract are missing"*. FIFA went on to say that *"it is not likely that the first employment contract was signed by the parties without all of these indications having been included first. Accordingly, as the parties' signatures are missing on the document presented by the Appellant, there is no evidence that this was indeed the version of the first employment contract that was finally signed by the parties"*. In conclusion, FIFA added that the relevant document was not *"in any way suitable to prove that the Appellant's passport details on his employment contract with the first Respondent*

dated 1 January 2008 were included after the parties had it or that his signatures on that contract would have been procured by improper means".

LAW

Jurisdiction and Admissibility

1. The jurisdiction of CAS, which is not disputed, derives from Article 61 para. 1 of the FIFA Statutes and Article R47 of the Code. Furthermore, the parties confirmed the jurisdiction of CAS by signing the order of procedure.

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

3. The mission of the Panel follows from Article R57 of the Code, granting the Panel full power to review the facts and the law of the case. Furthermore, the same article provides that the Panel may issue a new decision which replaces the decision challenged or may annul the decision and refer the case back to the previous instance.

4. The appeal of Mr Leonid Kovel was filed within the deadline set by the FIFA Statutes and stated in the decision rendered by the FIFA DRC.

5. It follows that the appeal is admissible.

Applicable law

6. Article R58 of the Code provides:

   "The panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

7. Article 62 para. 2 of the FIFA Statutes further provides for the application of the various Regulations of FIFA and, additionally, Swiss law.

8. In the present matter, the parties have not agreed on the application of any particular law. Therefore, the rules and regulations of FIFA shall apply and, additionally, Swiss law.

9. The FIFA Rules and Regulations fall to be applied primarily and Swiss law, where necessary. In this respect, the application of Swiss law as stipulated in Article 60 para. 2 of the FIFA Statutes is limited and only applies if there is a gap in the FIFA Regulations. On the other hand, where

the FIFA Regulations conclusively regulate a legal question, there is no scope to have recourse to Swiss law (see TAS 2005/A/983 & 984, para. 93; CAS 2006/A/1325, para. 45 *et seq.*).

Signature of the Second Employment Contract

10. The Panel, in the examination of the disputed facts, finds itself bound to apply the general civil rules on the burden of evidence in order to determine which party to the present dispute should bear the consequences of the failure to prove its claims or defences.

11. Pursuant to Article 8 of the Swiss Civil Code: *"Chaque partie doit, si la loi ne prescrit le contraire, prouver les faits qu'elle allègue pour en déduire son droit"* [Translation: "Unless the law provides otherwise, each party shall prove the facts upon which it relies to claim its right"].

12. This principle applies also in CAS proceedings (see for instance CAS 96/159 & 96/166, published in Digest of CAS Awards II 1998-2000, pp. 434 ff.; CAS 2006/A/1325, para. 72-73). As a result, in CAS arbitration, any party seeking to prevail on a disputed issue must meet the "burden of proof", i.e. must satisfy the obligation to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to the issue in question.

13. Moreover, it is important to recall that each party, according to the general rules of Swiss law, must articulate precisely all the pertinent facts on which its claims or defenses rely (HOHL F., Procédure Civile, vol. I, Bern 2001, p. 152, n. 785).

14. In the course of the proceedings it has been established that Mr Leonid Kovel did, in fact, sign the second employment contract with FC Karpaty, in particular, as the counsel for the player admitted at the beginning of the hearing that Mr Leonid Kovel does not dispute this any more.

15. In light of the foregoing, the main question to resolve is whether Mr Leonid Kovel's signature on the second employment contract was obtained by improper means, as he attempted to demonstrate, in particular, at the hearing.

16. The Panel starts from the position that whatever date the second employment contract was signed by Mr Leonid Kovel, it is presumed to be valid since he actually signed it.

17. As a result, Mr Leonid Kovel has to explain with precision the pertinent facts on which his claim relies, in particular, in order to persuade the Panel that his signature was procured by improper means. The player bears the burden of proof in this respect, i.e. the onus to substantiate his allegations and to prove that the second employment agreement is not valid.

18. In this respect, Mr Leonid Kovel alleges that he cannot have signed the second employment contract on 1 January 2008 because he was not in Lviv but in Minsk on that date and, in addition, that he cannot have signed it on 26 November 2007 either, as alleged by FC Karpaty in its appeal brief and at the hearing. The Appellant mainly refers to his brother, agent and advisor statements.

19. However, in contesting only the date of the contract, Mr Leonid Kovel does not allege precisely how his signature on the second employment contract could have been procured by improper means. In particular, he has not explained what kind of improper means could have been used by FC Karpaty to obtain his signature on the said agreement. As a result, the Panel considers that Mr Leonid Kovel did not fulfill his obligation (1) to explain precisely how his signature could have been obtained by improper means and, consequently, (2) to prove that his signature has effectively been obtained by improper means.

20. The Panel considers that, in the absence of compelling evidence from the Appellant, it does not have to imagine when and in which precise circumstances Mr Leonid Kovel's signature could have been obtained by improper means.

21. Nevertheless, the Panel notes that the counsel of Mr Leonid Kovel suggested at the hearing that the second employment contract may have been signed the same day as the first employment agreement (or loan agreement) was signed by the Appellant, on 26 February 2007.

22. Such a hypothesis must be rejected considering Mr Leonid Kovel's passport numbers, which are different between the first employment agreement and the second employment agreement. The Panel indeed remarks that the passport number mentioned in the second employment agreement results from the Appellant's passport delivered on 19 March 2007. Thus, the second employment agreement cannot have been signed on 26 February 2007, as suggested by the Appellant.

23. In summary, the arguments presented by Mr Leonid Kovel, in order to demonstrate that he could not have signed the second agreement on 26 November 2007, as alleged by FC Karpaty, are not sufficient to convince the Panel that this was not the case and that his signature had been procured by "improper means". Moreover, the Panel recalls that even if it would have been established that the contract was signed on a date other than 26 November 2007 that would not, in itself, be sufficient to demonstrate the invalidity of the agreement.

24. As a result of the above, the Panel concludes that Mr Leonid Kovel did not fulfil his obligation to allege the relevant facts and prove that his signature on the disputed document has been obtained by improper means.

The Option is unlawful

25. The Appellant considers that he cannot have been bound to FC Karpaty because the loan agreement contains a unilateral option in favour of Respondent 1, which is allegedly unlawful.

26. The Panel recalls that options for the transfer of a player are common in loan agreements, as pointed out by FIFA in its answer dated 9 February 2009.

27. The Panel however notes that such an option can only be exercised if the player consents to sign an employment contract with the beneficiary of the option.

28. As already mentioned, the Panel has deemed that Mr Leonid Kovel's signature on the second employment agreement had not been obtained by improper means. Hence, the agreement signed by Mr Leonid Kovel was valid.

29. As a result of the above, the Panel concludes that the option mentioned at clause 5 of the loan agreement is not unlawful as alleged by Mr Leonid Kovel. Indeed, the Appellant's contractual obligations toward FC Karpaty result from the two employment agreements and not from the option itself.

30. The Panel adds in this respect that the precedents invoked by Mr Leonid Kovel are not applicable in the present matter since in these cases unilateral options were contained in employment contracts entered into between a club and a player, which is presently not the case.

The impermissibility of the Decision

31. According to Article 18 para. 5 of the FIFA Regulations for the Status and Transfer of Players, *"if a professional enters into more than one contract covering the same period, the provisions set forth in Chapter IV shall apply"*.

32. FIFA explains in its Commentary on the Regulations that a player can only enter into one employment relationship at a time. Thus, if a player signs a second contract and his conduct demonstrates that he has no intention of meeting his obligations under his first contract then it may be deemed that the player has effectively terminated the first contract (FIFA Commentary on Article 18 para. 5 of the FIFA Regulations for the Status and Transfer of Players).

33. As already mentioned, on 26 November 2007, Mr Leonid Kovel signed an employment agreement with FC Karpaty for a period of 4 years, until 31 December 2011.

34. As admitted by Mr Leonid Kovel in his appeal brief, he signed a new employment contract with FC Saturn on 3 January 2008, only 6 weeks after the agreement with FC Karpaty.

35. The Panel has noted that Mr Leonid Kovel informed FC Karpaty on 27 December 2007 that he was not willing to enter into an agreement with FC Karpaty and that on 9 January 2008 FC Karpaty requested Mr Leonid Kovel to fulfil his obligations to the club. After this, Mr Leonid Kovel was placed on the transfer list by FC Karpaty and eventually FC Karpaty also accepted repayment of the option fee that it had paid to FC Dynamo Minsk pursuant to which it was able to conclude the second employment contract with the player.

36. The Panel considers that this pattern of behaviour together with the signature of the new employment contract with FC Saturn on 3 January 2008 must, according to Article 18 para. 5 of the FIFA Regulations for the Status and Transfer of Players, lead to the conclusion that Mr

Leonid Kovel acted in breach of his employment contract with FC Karpaty and terminated it unlawfully.

37. The Panel considers it is not for it to establish the precise consequences of the above-mentioned unlawful termination of the contract. The consequences of such a behaviour shall have to be determined, upon request of the parties, by the FIFA DRC in an ulterior proceeding according in particular to Article 17 of the FIFA Regulations for the Status and Transfer of Players. Indeed, the Panel notes that the consequences of the behaviour adopted by the Appellant are not the object of the present arbitration and that, in any case, the parties did not furnish to the Panel the relevant and necessary information to examine such consequences.

The Court of Arbitration for Sport rules:

1. The Appeal filed on 18 December 2008 by Mr Leonid Kovel against the decision issued on 21 August 2008 by the FIFA DRC is partially upheld.

2. The decision rendered on 21 August 2008 by the FIFA DRC is partially reversed in the sense that:

   a) Mr Leonid Kovel signed and entered into a valid employment contract with FC Karpaty on 26 November 2007.

   b) Mr Leonid Kovel terminated unlawfully the said employment contract with FC Karpaty by his course of behavior including entering into a new employment contract with FC Saturn on 3 January 2008.

3. The consequences of the unlawful termination of the contract concluded on 26 November 2007 shall have to be determined, upon request of the parties, by the FIFA DRC in an ulterior proceeding according in particular to Article 17 of the FIFA Regulations for the Status and Transfer of Players.

4. (…).

5. All other claims are dismissed.