Arbitration CAS 2009/A/1784 MSK Zilina v. Velimir Vidic, award of 27 August 2009

Panel: Mr Lars Hilliger (Denmark), President; Mr Hendrik Willem Kesler (The Netherlands); Mr Goetz Eilers (Germany)

Football
Termination of a contract of employment between a player and a club
Applicable law
Arbitration clause not validly concluded between the parties
Termination without just cause

1. **Under article 22 lit. b of the FIFA Regulations for the Status and Transfer of Players (RSTP), the RSTP are applicable where the parties did not agree in the employment agreement on the application of a specific law and where the agreement is of an international dimension as defined under said article. Article 62 par. 2 of the FIFA Statutes provides that CAS shall apply Swiss law subsidiarily to the FIFA Regulations when an appeal is lodged before it in relation to a FIFA decision. Consequently, the RSTP and Swiss law are applicable not only to the part of the dispute which refers directly to the DRC Decision but also to issues in relation to the interpretation and execution of the employment agreement.**

2. **An annex to an employment agreement which is not originally part of the employment agreement providing for a jurisdiction clause and fixing the law applicable to the employment agreement must be considered as an amendment to said agreement which requires *"the consent of both Contracting parties"* given in writing, as provided under the employment agreement. Under normal circumstances, when a party signs a contractual document, his signature can be opposed to him. However, when a club is proposing a contractual amendment to a player, the club has to make sure that the player understands the content of the document he is signing especially if the document is written in another language than the contract and contains a jurisdiction clause. The burden of proof in this respect which is high due to the importance of the document must be borne by the party alleging its validity. The lack of clarity on the existence of a mutual consent of the parties on the said document must thus be opposed to the parties according to the principle *"contra stipulatorem"*.**

3. **By not allowing a player to play, by asking a player to bring his outfit back and by not paying the player's salary, a club is breaching and terminating the employment contract with immediate effect. This termination therefore infringes article 13 RSTP, unless the club proves there was a just cause as defined under article 14 RSTP. In this respect, *"poor performance"* is not a just cause of termination.**

MSK Zilina ("the Appellant") is a football club affiliated to the Slovak Football Association (SFA), a member of FIFA since 1993.

Velimir Vidic ("the Respondent" or "the Player") is a professional Bosnian football player. He last played from February until May 2009 for the Swiss football club FC Gossau in the Challenge League of the Swiss Football League but is currently without a professional contract with any club.

On 6 February 2008, the Player and the Appellant signed an employment agreement for the period as of 6 February 2008 until 30 June 2010.

Among other financial benefits, the parties agreed on a monthly salary of EUR 5,000.- as well as two sign-on boni of EUR 10,000 each, payable on 30 June 2008 and 31 December 2009. Article VII of the employment agreement provides that *"the Contracting parties respect the regulations and rules issued by"* the SFA, UEFA and FIFA and that the parties *"consider them binding and will abide by them"*. The same article provides further that *"any amendment to the Contract may be executed only with the consent of both Contracting parties in a form of written amendments hereto"*. Eventually, Article VII par. 6 provides that *"the annex specifying players' remuneration and other agreements between the player and Club shall form an integral part hereof"*.

The parties also signed a document called "annex 3" which provides that *"all disputes arising from this contract, including disputes concerning its validity, interpretation or cancellation shall be resolved before the Arbitration court of the SFA pursuant to its internal regulations. Definite law is the law valid on the territory of the Slovak Republic* (…)*"*.

On 16 May 2008, the Player was called by the Appellant's sports manager, Mr. Karol Belanik, just before the daily training of the Appellant's first team. During the discussion between the Player and Mr. Belanik held in Mr. Belanik's office, the latter explained to the Player that the people in charge of the Appellant's management were not satisfied with the performance of the Player which they were claiming to be poor, despite a good start in the first four games of the Player with the first team. Mr. Belanik then explained that the Appellant wanted to terminate the contract with the Player.

On 17 May 2008, the Player called Mr. Belanik to try and solve the matter but nothing seemed to have changed to the situation prevailing between the Parties after this telephone conference. The same day, Mr. Andreutti, Director of the company Valin s.r.o., filed a claim against the Player before the police of Zilina (Slovakia) which started investigations on damages which were made, between 1 May 2008 and 16 May 2008, in one apartment located in the building where the Player was staying with his wife and their daughter. A door had been broken causing material damages in an amount of EUR 400.- The building belonged to the company Valin s.r.o., which Chairman was also the Appellant's president.

On 18 May 2008, the Player returned his training outfit to the Appellant's staff.

Various press communications were released on 19 May 2008. In those press releases, Mr. Belanik expressed the Appellant's discontent with the Player's performance and referred to other *"internal matters"* which lead the Appellant to lose confidence in the Player. On the basis of their interview with

Mr. Belanik, the journalists concluded that the Appellant had decided to terminate the contract with the Player, who would not appear in the Appellant's first team anymore.

The Player and his wife, who had access to those press releases on the internet, decided to send a fax letter to the Appellant on the same day. In this fax letter, the Player required from the Appellant an explanation as to why he was forbidden *"the access to the club"* and why he had had to *"return his training outfit"*. The Player reminded the Appellant of the terms of his employment agreement and claimed that he had correctly executed his contractual obligations. Explaining that he did not understand the Appellant's *"behavior"* against him, the Player suggested to find an amicable solution to the problem but warned that *"if you* [the Appellant] *would still be breaking the contract obligations which follow from the above mentioned contracts, and if you don't let me do the training, and if you don't let me the access to the club, I inform you that I will achieve all my rights in front of the one's superiors in the UEFA and FIFA"*. The Player asked for the Appellant's reply within 7 days, indicating to the Appellant his address and fax number in Neum, Bosnia and Herzegovina.

The Player left Zilina a few days later, with his wife and his one and half year old daughter. On 29 May 2008, he received a fax dated 23 May 2008 and written in German from Mr. Belanik, who informed him that the Appellant's staff had decided not to nominate the Player in the first team due to the fact that police investigations in relation with criminal acts of the Player were still pending and that no judgment had been issued (*"In Bezug darauf, dass die Polizeiuntersuchung der strafbarer Handlung von Velimir Vidic noch verläuft und bis jetzt kein Urteil gefällt wurde, hat MSK Zilina a.s. die Nominationen von Velimir Vidic für restliche Spiele der Corgon liga gestoppt"*).

Mr. Belanik further wrote in this letter that the Appellant was interested in terminating the Player's employment agreement, as the Player had left Slovakia and had not participated to the trainings of the team since 16 May 2009, which led to the breach of the said employment agreement (*"in Bezug darauf, dass dieser Spieler aus der Slowakischen Republik weggefahren ist und seit 16.5.2008 nicht am Trainingsprozess teilnimmt, womit er den Vertrag über Zusammenarbeit zwischen MSK Zilina a.s. und Spieler verletzt und aus diesen Gründen hat MSK Zilina a.s. Interesse, angegebenen Spielervertrag, (…), zu beenden"*).

On 25 August 2008, the District police of Zilina decided to suspend the criminal investigations related to the damages caused to the property of Valin s.r.o. *"in up until now undetected time and period from 1st May 2008 until 10:00 in the morning on 16th May 2008 in Zilina*, (…), *where Admir Vladavic lives"* for the reason that the Player could not be heard as a witness. Moreover, the District police of Zilina explain in its report that the Player *"had not accepted registered post, whereas it was detected that he does not reside in the temporary address, nor he appears in the place of his employment address, even his current residence is unknown. Therefore for the stated reasons on 25th August 2008 a search for the residence of the witness Velimir Vidic was launched in the said case.* (…). *In case the suspension reason passes over, the criminal prosecution shall proceed"*. No complaint was filed against the decision taken by the District police of Zilina.

On 28 July 2008, the Player had lodged a complaint against the Appellant before FIFA, claiming that the Appellant had breached the employment agreement concluded between the Parties. The Player stated in his claim that the Appellant terminated unilaterally and without just cause such agreement by declaring that his performance had been poor. Furthermore, the Player explained FIFA that he had been banned from training, obliged to hand over his equipment to the Appellant and instructed

to move out of his apartment. He declared that he had not received his salary for the months of June and July 2008 and requested that the Appellant be ordered to allow him to rejoin the club or, should this be refused, to pay him EUR 50,000.- as compensation.

On 3 October 2008, the Player modified his claim and renounced to ask for his reintegration into the Appellant's team. He extended his financial claim by claiming the payment of the salaries of May to September 2008 as well as EUR 50,000.- of compensation. In spite of having been solicited by FIFA to answer the Player's claim, through letters sent to the SFA on 21 August, 2 September, 12 September, 29 September, 21 October and 29 October 2008, the Appellant did not respond.

On 29 October 2008, FIFA sent a fax letter to the SFA, to the attention of the Appellant, and to the Player informing the Parties that the investigations of the FIFA Dispute Resolution Chamber (DRC) had been completed and that the matter would be submitted to the DRC for a formal decision on the basis of the documentation and evidence at the disposal of FIFA.

The DRC took its decision ("the DRC Decision") on 31 October 2008. The DRC Decision can be summarized as follows for its relevant parts:

> *"1. First of all, the Dispute Resolution Chamber analysed whether it was competent to deal with the case at hand. In this respect, it took note that the present matter was submitted to FIFA on 28 July 2008. Consequently, the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber, edition 2008 (hereinafter: Procedural Rules), are applicable to the matter at hand (cf. art. 21 paras. 2 and 3 of the Procedural Rules).*
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> *2. Subsequently, the members of the Chamber referred to art. 3 para. 1 of the Procedural Rules and confirmed that in accordance with art. 24 para 1 in combination with art. 22 lit. b of the Regulations on the Status and Transfer of Players (edition 2008), the Dispute Resolution Chamber is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a Bosnian player and a Slovakian club.*
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> *3. Furthermore, the Chamber analysed which regulations should be applicable as to the substance of the matter. In this respect, it confirmed that in accordance with art. 26 paras. 1 and 2 of the Regulations on the Status and Transfer of Players (edition 2008), and considering that the present claim was lodged on 28 July 2008 and the relevant employment contract was signed on 6 February 2008, the current version of the regulations (edition 2008; hereinafter: Regulations) is applicable to the matter at hand as to the substance.*
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> *4. The competence of the Chamber and the applicable regulations having been established, the Chamber entered into the substance of the matter. In doing so, the members of the Chamber started by acknowledging that, according to the player, the employment contract he had concluded with Zilina on 6 February 2008 was unilaterally terminated by the club on 16 May 2008 without just cause. The club appeared to have motivated the termination of the relevant employment contract with the player's allegedly poor performance and had subsequently banned the player from training and ordered him to return his equipment to the club and move out of his apartment.*
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> *5. With respect to all of the player's allegations, the Dispute Resolution Chamber first of all lent emphasis to the fact that Zilina had omitted to provide FIFA with any statements whatsoever in response to the player's complaint and to his initial request to rejoin the club, although it had repeatedly been invited to proceed accordingly. In this regard, the Chamber established that, in doing so, Zilina had renounced its right to defense and had, in particular, not denied that it had unilaterally terminated the employment relationship between the*

parties to the present dispute due to the player's alleged poor performance. The members of the Dispute Resolution Chamber therefore had no alternative but to conclude that Zilina accepts the player's allegations in this respect.

6. Consequently, in a next step, the members of the Chamber proceeded to evaluate whether Zilina had a just cause to terminate the employment contract in question. In this regard, the Dispute Resolution Chamber recalled that, according to the player, Zilina had terminated his labour agreement exclusively invoking his allegedly poor performance.

7. In this context, the Dispute Resolution Chamber referred to its established jurisprudence, according to which a player's poor performance does in principle not constitute a valid reason to unilaterally terminate an employment contract. In this respect, the Chamber in particular underlined the general lack of objective criteria while assessing a player's performance and held that, also in the present case, such reasoning could not serve as a just cause for the termination of an employment contract.

8. As a consequence, and since Zilina had not put forth any other arguments possibly justifying the termination of the relevant labour agreement, the Dispute Resolution Chamber established that Zilina had terminated its employment contract with the player without just cause and was, on the basis of art. 17 para. 1 of the Regulations, liable to pay compensation for breach of contract to the player. In this respect, the Chamber noted that the player had requested to receive the total amount of EUR 85,000.

9. In continuation, before turning their attention to the determination of the applicable amount of compensation in the present case, the members of the Chamber recalled that the player had in fact been employed with Zilina until 16 May 2008, but had undisputedly not received any salary for the said month. Thus, the Dispute Resolution Chamber decided that, firstly, the player was to receive his salary for half the month of May on a pro rata basis, amounting to EUR 2,500.

10. Subsequently, the Dispute Resolution Chamber went on to establish the amount of compensation for contractual breach due to the player. In this regard, the members of the Chamber took into account the original duration of the agreement, the player's contractual entitlements as well as his financial claim, and decided that EUR 82,500 is a reasonable and justified amount to be paid by Zilina to the player as compensation for breach of contract in the matter at hand.

11. As a consequence, the Dispute Resolution Chamber concluded its deliberations on the present dispute by deciding that Zilina has to pay the total amount of EUR 85,000 to the player.

12. Finally, and for the sake of good order, the Chamber emphasised that the contractual relationship between he parties to the present dispute has come to an end".

For the above-mentioned reasons, the DRC decided the following:

"1. The claim of the Claimant, the player Velimir Vidic is accepted.

2. The Respondent, the club MSK "Zilina", shall pay the amount of EUR 85,000 to the Claimant, Velimir Vidic, within 30 days as from the date of notification of the present decision.

3. In the event that the above-mentioned amount is not paid within the indicated deadline, the present matter will be submitted upon request to the FIFA Disciplinary Committee for its consideration and decision.

4. The Claimant is instructed to inform the Respondent directly and immediately of the account number to which the remittance is to be made and to notify the Dispute Resolution Chamber of every payment received".

The DRC Decision was notified to the Parties on 17 November 2008 and the Appellant requested for the grounds of the DRC Decision on 25 November 2008. The grounded decision has been notified to the Parties on 23 January 2009.

On 13 February 2009, the Appellant filed with the Court of Arbitration for Sport (CAS) a statement of appeal against the DRC Decision and completed it with an appeal brief on 23 February 2009.

Referring to annex 3 of the employment agreement, the Appellant first claims that all disputes arising out of such agreement must be decided by the Court of SFA under the internal rules of such Court and under Slovak law. Based on the foregoing, the Appellant finds that the DRC was not entitled to decide on the dispute.

The Appellant then explains that it did not terminate the employment agreement with the Respondent. The Appellant states that the Respondent had not taken part to the training of its first team since 16 May 2008 and had left Slovakia. The Appellant believes that this early departure was linked to a criminal procedure which was initiated against the Respondent. The Appellant further claims that it does not have the Respondent's actual address.

Eventually, the Appellant states that the proceedings before the DRC have never been notified to it by the SFA.

Based on these submissions, the Appellant filed the following request for relief:

> *"to annul the decision appealed against and to reject the claim of the Claimant [the Player]".*

The Respondent replied to the Appellant's submissions on 20 March 2009.

The Respondent submitted to CAS the following requests for relief:

> *"the Appellant's statement of Appeal be dismissed, and the Respondent to be paid the amount of Euros 105,000. We also suggest that the Appellant should pay the costs of the arbitration".*

On 17 April 2009, the Player commented on the Appellant's letter dated 7 April 2009, questioning the relationships between the Appellant and the SFA but not bringing any material, factual or legal new submission.

A hearing was held on 3 June 2009.

LAW

CAS jurisdiction and admissibility

1. The jurisdiction of CAS is disputed and the Appellant claims that the present dispute should be decided by the arbitration tribunal of the SFA. The Panel first considered that the appeal was filed against a decision passed by the DRC. According to article 24 of the Regulations for the Status and Transfer of Players ("the Regulations") and article 63 paragraph 1 of the FIFA Statutes, a DRC Decision is directly appealable before CAS.

2. At the moment of the dispute, the Appellant and the Player were affiliated with the SFA, which is a member of FIFA. Based on CAS constant jurisprudence, both parties are therefore indirect members of FIFA and bound by its Statutes and Regulations. Furthermore, the Appellant and the Player declared in the employment agreement signed on 6 February 2008 that they considered to be bound *inter alia* by the FIFA Regulations (article VII).

3. Based on the foregoing, the Panel decides that it has jurisdiction to decide on the appeal.

4. As to the time limit to lodge an appeal before CAS, article 63 par. 1 of the FIFA Statutes provides that the appeal must be lodged *"within 21 days of notification of the decision in question"*. The decision was notified to the Appellant by means of a fax dated 23 January 2009 and the Appellant's appeal was lodged on 13 February 2009, therefore within the statutory time limit set forth by the FIFA Statutes, which is undisputed.

5. It follows that the appeal is admissible.

6. In accordance with Article R55 of the Code and given that the Panel may consider the matter at stake de novo, the Respondent's counterclaim, i.e. his request to be paid by the Appellant an amount of EUR 105,000.-, and not EUR 85,000.- as requested before the DRC, which was confirmed at the hearing without objection from the Appellant, is admissible.

Applicable law

7. Art. R58 of the Code of Sports-related Arbitration (the "Code") provides the following:

   "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".

8. The dispute is an employment-related dispute. Referring to annex 3 of the employment agreement, the Appellant claims that this dispute is subject to Slovak law and that the arbitration tribunal of the SFA had jurisdiction to decide on it and not the DRC.

9. The Panel first finds that the appealed DRC Decision was issued by FIFA and that the Parties did not agree on an applicable law with regard to the dispute before CAS. As far as the DRC Decision is concerned, the Panel shall thus decide according to the FIFA Regulations and Swiss law. The Panel then notes that this is an employment-related dispute. The interpretation of the employment agreement and of the rights and obligations of the Parties in relation with it should thus be made according to the law it is governed by.

10. In this respect, the Panel notes that the employment agreement does not provide for any specific choice of law but only refers to the *"SFA, UEFA and FIFA Regulations"* (article VII par. 1). Article VII paragraph 5 of the employment agreement provides that *"the present contract shall come into force on the date of the signing by both Contracting parties"*. Article VII paragraph 6 refers to one annex, the one *"specifying the player's remuneration"*, and *"other agreements between the player and Club"*, which *"shall form an integral part"* of the employment agreement.

11. Based on a literal construction of the employment agreement, the Panel comes to the conclusion that the original version of the employment agreement is made of the core document consisting in 7 articles and one annex. The Panel finds that annex 3 to the employment agreement, which provides for an arbitration clause and the application of Slovak law, was not originally part of the employment agreement and must thus be considered as an amendment to it which requires *"the consent of both Contracting parties"* given in writing, as provided under article VII par.3 of the employment agreement.

12. Based on the foregoing, the Panel first finds that the Parties did not agree in the employment agreement on the application of a specific law. Such an agreement could only have taken place at the earliest when the Parties signed annex 3 but annex 3 is considered to be an amendment to the employment agreement and was not originally part of it. Therefore, the Panel cannot rely on annex 3 in order to determine the law which first governed the employment agreement.

13. Considering the above, the Panel finds that the employment agreement is of an international dimension as defined under article 22 lit. b of the FIFA Regulations. The FIFA Regulations are thus applicable in the present case, which is in line with article VII par. 1 of the employment agreement. Article 62 par. 2 of the FIFA Statutes provides that CAS shall apply Swiss law subsidiarily to the FIFA Regulations when an appeal is lodged before it in relation to a FIFA Decision. Consequently, the Panel deems appropriate to apply the FIFA Regulations and Swiss law not only to the part of the dispute which refers directly to the DRC Decision but also to issues in relation to the interpretation and execution of the employment agreement.

14. This will lead the Panel to apply the FIFA Regulations and Swiss law when deciding on the validity of annex 3 and of the amendments to the employment agreement contained therein. Slovak law will only be taken into consideration by the Panel if it concludes that such amendments were validly made under Swiss law.

Merits

15. The whole dispute consists in two main issues.

16. The first issue raised by the Appellant is the one of the competent jurisdiction in first instance. The Appellant claims that according to annex 3 of the employment agreement, the internal arbitration tribunal of the SFA had jurisdiction to decide on the dispute, whereas the Respondent claims that the DRC had jurisdiction. The second issue is linked to the termination of the employment agreement. The Appellant claims that the Respondent left the club without notice and that the employment agreement was still valid, whereas the Respondent argues that the Appellant had terminated his agreement and that he was forced by the Appellant to leave the club.

A. Was the DRC competent in first instance?

17. As mentioned under part 5 *"Applicable law"*, annex 3 to the employment agreement provides for a jurisdiction clause in favor of the arbitration tribunal of the SFA. This annex was made in writing and signed by both parties, as required under Swiss law. Thus, annex 3 meets the formal requirements of article VII paragraph 3 of the employment agreement.

18. Yet, article VII paragraph 3 provides expressly that the *"consent of both Contracting parties"* is necessary to amend the employment agreement. According to Swiss law, there is consent of both parties or, in other words, a mutual consent on the content of an agreement or on its amendments, when the consent expressed by one party corresponds to the consent expressed by the other party (*"échange de manifestations de volonté concordantes"*). The court will first see what each party meant when it expressed its consent. If the meanings of the consents do not correspond, the court will then consider what the other party could understand in good faith. If the court finds that a party could, in good faith, understand that the other party consents with the content of the agreement or its amendment, the court will, in principle, find that the agreement came into force or that the amendment was validly made.

19. When an agreement or its amendment is made in writing, the court will also take into consideration which party drafted the document. Any lack of clarity will then be interpreted against its author.

20. In the present case, the Respondent claims that he did not understand the content of annex 3 and therefore did not agree on the amendments to the employment agreement. The Panel first notes that no witness confirmed whether the Respondent had or had not understood the content of annex 3. The Appellant claims that it explained the document to the Respondent who understood it and agreed to it by signing it. This could be sufficient under normal circumstances as, usually, when a party signs a contractual document, his signature can be opposed to him. However, in the present case, annex 3 was written in Slovak when the employment agreement had been drafted in English. The Appellant claims that annex 3 was a new document required by the SFA and that it had no time to translate it into English. This

argument must be rejected. Annex 3 is indeed a brief document whose content is however very important. It contains a jurisdiction clause and fixes the law applicable to the employment agreement.

21. The Panel finds that the Appellant had to make sure that the Respondent, who did not speak any Slovak, understood the content of the document he was signing. The burden of proof in this respect must be borne by the Appellant. Due to the importance of annex 3, the Panel also finds that the level of proof must be high.

22. As no independent witness could confirm that the Respondent had understood the content of annex 3, the Panel needs to rely on the written evidence which is in the file. As previously mentioned, the Panel first notes that annex 3 is written in Slovak, a language which the Respondent does not speak. It then stresses that the Respondent was assisted by a licensed agent when he concluded the employment agreement, as evidenced under article VII par. 7. This shows that the Respondent needed support in order to understand the content of the employment agreement and, logically, of any of its amendments. Yet, the content of annex 3 was explained to the Respondent by the Appellant itself and not by his agent.

23. Then, the Panel finds that the fact that annex 3 was signed separately could only mislead the Respondent who could understand that this document was only a formality required by the SFA with no material impact on the contractual relationship. It is indeed very unusual not to include an arbitration clause and a choice of law in the contract or at least specifically refer to it as an annex of the employment agreement. Yet, no reference is made to annex 3 in the employment agreement.

24. The Appellant argues that the SFA wants a separate document *"in order to check it more easily"*. This is not a sufficient justification. One would have expected from the Appellant to translate the document into English, submit it to the Respondent's agent and specifically refer to it in the employment agreement. By doing so, any third party would understand that annex 3 was not only submitted to the Respondent but understood by him. The Appellant was in charge of drafting the contractual documentation. The lack of clarity on the existence of a mutual consent of the Parties on annex 3 must thus be opposed to it, according to the principle *"contra stipulatorem"* and the Panel therefore concludes that there is no sufficient proof that the Respondent indeed agreed on the content of annex 3.

25. According to article 22 lit. b of the Regulations, FIFA is competent for *"employment-related disputes between a club and a player that have an international dimension unless an independent arbitration tribunal guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs has been established at national level within the framework of the Association and/or a collective bargaining agreement"*.

26. In the FIFA commentary on article 22 lit. b of the Regulations, footnote 101, FIFA points out that *"a clear reference to the competence of the national arbitration tribunal has to be included in the employment contract. In particular, the player needs to be aware at the moment of signing the contract that the parties shall be submitting potential disputes related to their employment relationship to this body"*. In the present case, the conditions set by the FIFA Regulations are clearly not met.

27. Based on the Regulations and on Swiss law, the Panel thus finds that annex 3, together with the arbitration clause and the choice of law it contains, is not valid.

28. In accordance with article 22 lit. b of the Regulations, the Panel decides that the DRC had jurisdiction to decide on the dispute. The DRC Decision cannot be annulled on this ground.

29. With respect to the Appellant's submissions on the absence of notification of the proceedings before the DRC, the Panel can only reject those submissions as it cannot believe that six letters from FIFA to the Appellant were lost at the level of the SFA. It is the usual procedure by FIFA to notify clubs through the national federations, which, to the knowledge of the Panel, diligently and systematically transfer the FIFA notifications to their member clubs. Moreover, the Panel notes that the Appellant admitted itself that it had been informed by the SFA of the international transfer certificate procedure concerning the Respondent. This shows that the SFA knows that it must notify its members of any FIFA correspondence and acts accordingly.

B. Circumstances of the termination of the employment agreement

30. The Panel now considers the circumstances of the termination of the employment agreement.

31. The relevant facts which took place between 15 May and 29 May 2008 clearly show that the Appellant did not want the Respondent to play in its first team. One reason was clearly the alleged *"poor performance"* of the Respondent. The other reason raised by the Appellant is a criminal procedure which is apparently pending against the Respondent in relation with EUR 400.- of damages which the Respondent would have caused to a door in the building where he was living with his family. To the Appellant, those damages justified that the Respondent could not play anymore with the Appellant's first team and that a solution should be found.

32. The Panel notes that the Appellant's version on the circumstances of the departure of the Respondent slightly changed at the hearing. The Appellant indeed claims that it wanted to find an amicable solution with the Respondent and that it offered him to pay his salary until the end of the year.

33. Here again, the Panel cannot rely on independent witness statements and can only listen to the contradictory versions of the Respondent and of Mr. Belanik, the Appellant's sport manager.

34. The Panel thus needs to rely on what evidently happened during those critical days. It first notes that both Parties admit that a meeting was held on May 16, 2008 when the Player was prevented from participating in the first team's training. During this meeting, Mr. Belanik explained to the Player that the Appellant did not want him to play anymore for the first team due to his *"bad performance"*. This meeting took place before the criminal procedure started, namely before 17 May 2008. This means that the Appellant, at that time, already knew that it did not want the Respondent in its first team anymore before knowing about the criminal procedure.

35. Then, the Player brought his training outfit back on 18 May 2008, which is undisputed. The Player claims that he was asked by Mr. Belanik to do so, which Mr. Belanik contests. The Panel finds that if the Appellant did not want the Respondent to leave, it was its duty to refuse the outfit back or to warn in writing the Player that, by doing so, he was refusing to train with any of the Appellant's teams, which was clearly in violation of his employment agreement.

36. However, it appears that the Appellant did not try to contact the Respondent since the second meeting held with Mr. Belanik on 17 May 2008. It is on the contrary the Respondent who sent a fax to the Appellant on 19 May 2008 expressing his concerns and his wish to stay with the Appellant. In particular, the Respondent wrote that he did not understand why he was not allowed to play with the Appellant and why he had to bring his outfit back. The Respondent then expressed clearly that he thought to have no other choice but to leave his apartment and go back to his home country and claimed that the Appellant was breaching its contractual obligations.

37. Despite the very clear content of the Respondent's fax, the Appellant waited until 29 May 2008 to fax its reply to the Respondent. In its letter, which is written in German, the Appellant refers to the criminal procedures against the Respondent and claims that *"In Bezug darauf dass dieser Spieler aus der Slowakishen Republik weggefahren ist,* (…) *hat MSK Zilina a.s. Interesse, angegegebenen Spielervertrag,* (…) *zu beenden"*. With this letter, the Appellant does not clearly express its position as to the contractual relationship. The Respondent is being addressed to at the third person, a link seems to be made with the pending criminal procedure and the Appellant seems to consider the Respondent's departure as a reason for potentially terminating the employment agreement.

38. The Panel finds that this exchange of faxes between the Parties is particularly telling. On the one side, the Respondent clearly writes what is his understanding of the situation and what he intends to do. On the other side, the Appellant does not clearly express his understanding of the situation and what consequences it draws from it. One would indeed expect more clarity from the Appellant who was, at that time, the Respondent's employer. If the Appellant found that the employment agreement with the Respondent had not been terminated, it should have warned the Respondent that if he left the club, he would infringe his contractual obligations, which could lead to the termination of the contract.

39. Should the Appellant have decided to terminate the employment agreement, it was its duty to reply in writing to the Respondent and explain clearly the circumstances of the termination or to explain why it considered, for any reason, that the employment agreement had been terminated by mutual consent.

40. Far from acting diligently, the Appellant waited several days, knowing that its employee would leave the country and addressed him a letter which was not only written in another language than the employment agreement but which content did not clearly express the situation prevailing between the Parties. The Panel noted in particular that the Appellant never formally summoned the Respondent not to leave the country and come to the training or to come back and train, once he had gone back to Bosnia.

41. Eventually, the Panel stresses that the Appellant did not pay Respondent's his salary since he left the club. In its letter dated 23 May 2008 but faxed on 29 May 2008, the Appellant does not give any reason for not paying the Player's salary, which, to the Panel's view, should be the case if it considered the employment agreement as still valid.

42. Based on the foregoing, the Panel concludes that the Appellant's attitude between 15 May and 29 May 2008 confirms that the Appellant terminated the contract with immediate effect on 16 May 2008 despite the opposition of the Respondent. This termination infringes the employment agreement which was concluded for a fixed period of time until 30 June 2010 (article II) and therefore infringes article 13 of the Regulations, unless the Appellant proves there was a just cause as defined under article 14 of the Regulations.

43. The Panel dismisses all the arguments of the Appellant with regard to the criminal proceedings. It first finds that nothing proves that the Respondent is guilty of anything. It then notes that the Appellant never claimed that such proceeding was a reason for terminating the employment agreement. This factual point has therefore no impact on the dispute.

C. Termination without just cause and financial consequences

44. As mentioned above, the Panel found that it was the Appellant which terminated the employment agreement. Based on the Regulations, CAS jurisprudence and Swiss law (see CAS 2006/A/1062, CAS 2006/A/1180, CAS 2008/A/1517 and CAS 2008/A/1518), the Panel finds that the termination of the agreement was without just cause and that article 17 of the Regulations is applicable. In fact, the Appellant indirectly admits it as it does not claim that the employment agreement was terminated and that there was any cause to do so. The Appellant notably agreed that *"poor performance"* is not a just cause of termination.

45. Article 17 of the Regulations provides that in case of termination of a contract without just cause:

"In all cases, the party in breach shall pay compensation. (…) compensation for breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport and other objective criteria. These criteria shall include, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years (…)".

46. Based on the clear wording of article 17 of the Regulations, the Appellant, which terminated the employment agreement without just cause, must pay compensation to the Respondent.

47. In order to calculate the compensation, the Panel took note that the employment agreement was signed for a period starting on 6 February 2008 and ending on 30 June 2010. The Panel then notes that the Appellant did not prove that he had paid any salary to the Respondent since 1 May 2008.

48. In accordance with Swiss law, the Respondent can thus claim his salary from 1 May 2008 until the end of the contract (CAS 2004/A/587). Upon deduction of the CHF 20,000.- (EUR 13,000.-) paid by FC Gossau to the Player from 1 February 2009 until 31 May 2009, the amount due by the Appellant to the Respondent from 1 May 2008 until 30 June 2010 would then amount to EUR 137,000.-, taking into consideration the monthly salaries for this period of EUR 5,000.- and EUR 20,000.- on sign on fees.

49. In his answer, the Respondent seems to ground his claim on the salaries and sign on fee due until 1 January 2009, which makes a total amount of EUR 55,000.- and he seems to claim additional damages for EUR 50,000.-. However, the Respondent does not limit his claim in the answer and only requests that *"the Appellant's Statement of Appeal be dismissed, and the Respondent be paid the amount of Euros 105,000.-"*.

50. The Panel thus finds that it is only limited by the amount of EUR 105,000 when it fixes the compensation due by the Appellant to the Respondent but not by the legal means for such compensation mentioned by the Respondent in his answer [see ATF 122 III and POUDRET/BESSON in Comparative Law of International Arbitration, 2nd ed., Schulthess, Zurich, nr. 807].

51. The Panel first notes that the file reveals that the Respondent's loss of earnings from 1 May 2008 until 31 May 2009, amounts to EUR 52,000.- (13 months x EUR 5,000.- minus EUR 13,000.- paid by FC Gossau from 1 February 2009 until 31 May 2009). Although no one can predict if the Respondent will sign a new contract with a third club and what will be his income, the Panel decides, in this particular case, that the remaining potential EUR 85,000.- of loss of earnings until 30 June 2010 (13 months x EUR 5,000.- plus EUR 20,000.- on sign on fees) must be taken into consideration.

52. With respect to the limit of EUR 30,000.- which correspond to 6 monthly salaries, namely the maximum compensation for damages provided under article 337c of the Swiss code of obligations, the Panel finds that this amount must be granted to the Respondent for the following reasons:

    (1) The employment agreement was signed until 30 June 2010.

    (2) The Player could not play with another club from 15 May 2008 until 1 February 2009. Although the Player managed afterwards to find another club, it was for a limited period of time. It is likely that the Player will suffer further losses of earnings until 30 June 2010. As provided under article 17 of the Regulations, this situation must be taken into consideration when evaluating the damage suffered by the Player.

    (3) The employment agreement, whose duration was set at 29 months, was terminated by the Appellant after less than four months, without just cause, in the middle of the football season. The time remaining on the contract was thus of more than 25 months and only three monthly salaries were paid by the Appellant.

    (4) The Respondent had the right to a second sign on fee of EUR 10,000.- before the end of the employment agreement.

(5) The negative impact of the early termination of the employment agreement on the Respondent's career as such is obvious. This must also be taken into consideration.

(6) Although the Panel decides in appeal, it must also take into consideration the fact that the DRC granted EUR 85,000.- of damages to the Respondent and that its calculation is not disputed by the Parties. As the Appellant did not question this amount and did not bring any mitigating circumstance before CAS, the Panel considers that any change to the DRC Decision should be made only for material and obvious reasons, which are not available in this case.

53. The Panel thus comes to the conclusion that it is fair to grant the Respondent with EUR 105,000.- of compensation for loss of earnings and damages to cover the consequences of the termination of the employment agreement without just cause. The Panel notes that by doing so, the whole contractual dispute between the Parties is settled and the Respondent cannot claim any additional compensation for the period from 1 June 2009 until 30 June 2010.

54. Based on the foregoing, the Panel decides that the statement of appeal must be dismissed, the conclusions of the answer be granted and the DRC Decision be upheld, subject to the increase of the compensation due to the Respondent by the Appellant from EUR 85,000.- to EUR 105,000.

The Court of Arbitration for Sport rules

1. The appeal filed by MSK Zilina on 13 February 2009 is dismissed and the decision dated 31 October 2008 of the FIFA Dispute Resolution Chamber is upheld subject to number 2 and 3 of the operative part of the present award.

2. The counterclaim filed by Velimir Vidic on 20 March 2009 against MSK Zilina is accepted.

3. MSK Zilina shall pay a compensation for breach of contract to Velimir Vidic of EUR 105,000.- instead of EUR 85,000.- as decided by the FIFA Dispute Resolution Chamber.

4. (…).

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

6. (…).