Arbitration CAS 2012/A/2726 Edmond Lutaj v. FC KS Flamurtari, award of 12 February 2013

Panel: Mr Bernhard Welten (Switzerland), Sole Arbitrator

Football
Contract of employment between a club and a coach
CAS Jurisdiction
Text message sent by a coach to the club as an offer to resign

1. **The FIFA Statutes expressly refer to two possible ways of appealing against decisions: (i) a national independent body respecting certain criteria of fairness and equity for the parties or (ii) CAS. If the national federation's applicable rules expressly provide that no national independent appeals body exist and refer to *"another arbitration institute recognized by FIFA"*, it can therefore only be the CAS. This interpretation is confirmed by the fact that the new national federation's applicable rules now make an express reference to CAS in the absence of a national arbitration body.**

2. **A text message sent by the coach to the President of the Club containing the message *"I am ready to review my position"* or *"I am ready to resign from my duty as coach"*. has to be understood as an offer made by the coach to eventually resign as head coach. This is a clear offer to resign as a head coach. If this offer is neither accepted nor denied by the other party, there can be no mutual agreement to terminate the contract between the parties.**

1. FACTUAL BACKGROUND

1.1 Parties

1. Mr. Edmond Lutaj ("E. Lutaj", "Coach" or the "Appellant") is a professional football coach, born in Vlore, Albania, on 22 September 1967.

2. Football Club KS Flamurtari ("FC Flamurtari", the "Club" or the "Respondent") is a football club with its registered office in Lagja Pavaresisë, ALB-9401 Vlora, Albania. It is affiliated to the Albanian Football Association and takes part to the "Superliga", the highest professional league in Albanian football. It has been a member of the "Superliga" since many years.

1.2 Background

3. On 31 August 2011, the Appellant signed an employment agreement with the Respondent to be the head coach of the Respondent's first team for the period of 1 August 2011 until 31 May 2013.

4. The terms of the employment agreement provided for the Appellant to be paid a basic salary of net EUR 3'500 per month, as well as a bonus for each match to be won net Albanian Lek (ALL) 25'000, corresponding to approximately EUR 178, as well as net ALL 1'000'000 (approx. EUR 7'120) for the team's participation in the UEFA Cup.

5. Furthermore, the employment agreement provided that any dispute between the Parties shall be settled mutually, and, if not possible, the appropriate authorities of the Albanian Football Federation shall be competent. Further, any additions, modifications or cancellations of any part of the employment agreement shall be made by mutual agreement of the Parties. Spoken accords shall not be valid.

6. On 5 December 2011, the team FC Flamurtari played against Dinamo Tirnana and tied a 3rd game in a row. Based on this unsatisfying result, the Appellant wanted to have a meeting with the president of FC Flamurtari, Mr. Shpetim Gjika ("President").

7. After this game of 5 December 2011, the Appellant sent a text message from his mobile telephone to the President and asked for a meeting with the text: *"I am sorry that I am writing this SMS. You deserve better. I am ready to review my position"*. In reply, the President wrote: *"We take that discussion further tomorrow"* (English translations by the Appellant). The Respondent's translation of the text messages are: *"I am sorry for these words I am writing. Flamurtari deserves more. You deserve more. I am ready to resign from my duty as coach. Mondi", "Let's meet and talk tomorrow"*.

8. On 6 December 2011, the day after the last game, the Appellant held the training session with the first team as usual. During the match review and team training, the sport director of the Respondent, Mr. Perparim Lushaj ("Sport Director") was attending and told the Appellant that the President wanted a meeting with him and the Sport Director after the training session.

9. Later on 6 December 2011 and shortly before the Appellant met with the President and the Sport Director, the Appellant received many phone calls from journalists wondering if he was still the head coach of the Club. On TV, it was spread that Mr. Shkelqim Muça was supposed to take over as the new head coach of the first team.

10. Based on the Appellant's statement, he confronted the President with the information from the media. The President denied the veracity of the rumours but explained that he was not satisfied with the performance of the first team and that he held the Appellant responsible for the bad results. The Appellant made it clear that he wanted to continue as head coach of the Club and he asked for the President's support. The Respondent, however, filed three witness statements of former employees of the Club stating that the Appellant did confirm his resignation as the head coach of the first team during the meeting of 6 December 2011.

11. On 7 December 2011, the Sport Director came to pick up the Appellant. The latter thought that they would go and meet again with the President. However, the Sport Director informed the Appellant that the President decided to dismiss him as head coach with immediate effect and a new head coach (Mr. Shkelqim Muça) was already appointed. The Appellant requested another meeting with the President. However, such meeting never took place.

12. The Appellant lodged a formal claim at the Albanian Football Association's National Centre for Disputes Settlement ("NCDS") as he did not receive his monthly salary for November 2011, as well as the remaining 19 monthly salaries until the end of the contract.

13. On 20 January 2012, the NCDS decided *"to reject the action forwarded by the applicant Edmond Lutaj"* and to charge him court fees of ALL 100'000. Furthermore, the NCDS stated that this decision may be appealed within 21 days from its publication to the authority provided for in section 34 of the "Rregullore e dhomes se zgjidhjes se konflikteve te FSHF" (National Centre for Dispute Settlement Rules; "NCDS Rules").

2. PROCEEDINGS BEFORE CAS

14. On 9 February 2012, Edmond Lutaj filed a statement of appeal against Football Club KS Flamurtari regarding the decision of the National Centre for Dispute Settlement of the Albanian Football Association of 20 January 2012 ("Decision"). The Appellant challenged the Decision submitting the following prayers for relief:

"1.1 Set aside the decision of the Football Association of Albania's National Centre for Dispute Settlement, dated 20 January 2012.

1.2 Obligate KS Flamurtari (the "Respondent") to carry out the outstanding salary payments from 1 November 2011 until 31 May 2013 as provided in the Agreement between Edmond Lutaj and the Respondent, i.e. nineteen (19) equal installments of EUR 3'500 as monthly salary, a total of EUR 66'500, to Edmond Lutaj. The referred amounts are in net value.

1.3 Put the Respondent under the obligation to pay default interest of five (5) percent p.a. from the day on which each of the respective payments was due.

1.4 Decide that the cost of the proceedings shall be borne by the Respondent.

1.5 Grant Edmond Lutaj a contribution towards his legal fees and other costs incurred in connection with this arbitration".

15. On 15 February 2012, the CAS Court Office acknowledged receipt of the Appellant's appeal of 9 February 2012 and drew the attention of the Appellant to Article R47 of the Code of Sports-related Arbitration ("Code") regarding the jurisdiction of the CAS. It was pointed out that the statutes or regulations of the sports-related body which issued the appealed decision must expressly recognize the CAS as the appeals arbitral body. Article 34 of the NCDS Rules does not expressly provide for the CAS jurisdiction.

16. On 20 February 2012, the Appellant replied that the Albanian Football Association did confirm in writing (see confirmation of 20 February 2012) that the interpretation of article 34 of the NCDS Rules is that the CAS has the jurisdiction to rule on the appeal concerning the Decision.

17. On 20 February 2012, the Appellant filed his appeal brief.

18. On 6 March 2012, in the absence of any objection from the Respondent on the Appellant's request that the case be submitted to a sole arbitrator, the CAS Court Office confirmed that a sole arbitrator shall be appointed by the President of the CAS Appeals Arbitration Division.

19. On 15 March 2012, the Respondent filed its answer and requested the following:

    - The NCDS Rules do not expressly provide for the CAS jurisdiction for appeals against NCDS decisions and the Respondent does not expressly consent with CAS having jurisdiction;

    - *"If CAS will continue with the arbitrations procedure, we request the rejection of all the demands made by Mr. Edmond Lutaj as unfounded in evidence, in the contract and the laws and regulations".*

20. On 26 March 2012, the Appellant requested for a hearing to be held. Furthermore, he requested the permission to file a complementary statement based on the Respondent's answer of 15 March 2012, especially regarding the Respondent's objection against the CAS jurisdiction.

21. On 2 April 2012, the CAS informed the Parties that the Sole Arbitrator appointed to decide the present dispute was Mr. Bernhard Welten, attorney-at-law in Bern, Switzerland.

22. On 3 April 2012, the CAS informed the Parties that no response was filed by the Respondent regarding its eventual consent to file further submissions by the Parties.

23. On 15 May 2012, in the absence of any objection from the Respondent on a possible further round of submissions, the Parties were granted by the Sole Arbitrator a deadline of 10 days to file further submissions strictly limited to the issue of the CAS jurisdiction.

24. On 25 May 2012, the Appellant filed a statement to confirm the CAS jurisdiction in this case. He referred to articles 10 (b) and (c) of the Statutes of the Albanian Football Association which oblige the AFA members, like the Respondent, to acknowledge the authority of the CAS. As long as the Albanian Legislation did not (yet) establish an appropriate Court of Arbitration in Albania for national disputes, such disputes shall be referred to the CAS. The Appellant further pointed out that the new version of article 34 NCDS Rules (now article 35) expressly referring to the CAS as appeals body.

25. The Respondent failed to file any additional submission with respect to the jurisdiction of CAS.

26. On 21 August 2012, the CAS informed the Parties about the Sole Arbitrator's decision that CAS has jurisdiction to deal with the present dispute. The motivation thereof is included in the present award. At the same time, the Parties were consulted on whether they wished a hearing to be held or if they preferred to have an award based on the written submissions.

27. On 28 August 2012, the Appellant expressed his preference for a hearing to be held and repeated his request for filing further submissions.

28. The Respondent failed to provide its position with respect to the holding of a hearing and/or a further round of submissions.

29. On 19 September 2012, the CAS informed the Parties that the Sole Arbitrator agreed on a second round of submissions.

30. On 1 October 2012, the Appellant filed his additional submission.

31. On 11 October 2012, the Respondent filed its additional submission.

32. On 15 January 2013, the CAS Court Office informed the Parties about the Sole Arbitrator's decision made based on Article R57 of the Code not to hold a hearing in the present matter, as the Sole Arbitrator considered himself sufficiently well informed to render an award on the bases of the Parties' written submissions.

33. On 15 January 2013, the CAS Court Office sent the Parties the Order of Procedure to be signed. The Appellant confirmed that his right to be heard has been respected. The Respondent failed to sign and return the Order of Procedure. However, the Respondent never requested any hearing in the course of the proceedings.

3. CAS JURISDICTION AND ADMISSIBILITY OF THE APPEAL

34. The jurisdiction of CAS is disputed in the case at hand as the Respondent does not agree that CAS shall have jurisdiction in this matter.

35. In the appeal statement of 9 February 2012, the Appellant pointed out to article 34 NCDS Rules as well as articles 62 to 64 of the FIFA Statutes 2011, to justify the CAS jurisdiction. In his statement of 25 May 2012, the Appellant referred to article 10 (b) of the Statutes of the Albanian Football Association ("AFA") which obliges member clubs to acknowledge the authority of the CAS in accordance with the Statutes and Regulations of FIFA and UEFA. Article 10 (b) states: *"Acknowledge the authority of Court of Arbitration for Sport (CAS) in Lausanne (Switzerland) as specified in the relevant dispositions of FIFA and UEFA Statutes"*. The Appellant further referred to article 10 (c) of the AFA Statutes which provides: *"Any dispute at national level arising from or related to the application of the statutes or regulations of AFA or any contract, should refer to an independent and unbiased court of arbitration, which is the Court of Arbitration for Sport in Lausanne as specified in the relevant dispositions of FIFA and UEFA Statutes, since the Albanian legislation have [not yet] (added by the Sole Arbitrator) established an appropriate court of arbitration in Albania which fulfills the minimum requisites set by FIFA and UEFA. The Court of Arbitration for Sport in Lausanne shall settle the dispute instead of another ordinary court, unless this is forbidden by the Albanian legislation in force"*. When filing his submission of 25 May 2012, no such national court of arbitration had yet been established in Albania. Furthermore, the Appellant filed a written witness statement from Mr. Enlon Lila, Head of Legal Department at the AFA, of 20 February 2012 which states *"…the interpretation of article 34 in the "Rregullore e dhomes se zgjidhjes se konflikteve te FSHF is that the Court of Arbitration for*

Sport, the CAS, has the jurisdiction to rule on the appeal concerning the decision of 20 January 2012 from the Football Association of Albania's National Resolution Chamber for Disputes Settlement, regarding Edmond Lutaj / Football Club KS Flamurtari".

36. In his statement of 25 May 2012, the Appellant further informed that in the meantime the Albanian Football Association changed the regulations which now clearly state in article 35 (formerly article 34) *"In case such a board does not exist and during a transitory phase, the appeal can be forwarded at the Sports Arbitration Court (CAS) in Lausanne Switzerland".*

37. The Respondent did not file any statement based on the request of the CAS of 15 May 2012. However, in its answer of 15 March 2012, the Respondent stated that the Rregullore e zgjithjes se konflikteve te FSHF does not expressly provide for the CAS jurisdiction, that the Respondent does not expressly consent to CAS Arbitration and that therefore the CAS has no jurisdiction in this case.

38. In the case at hand, it was the National Centre for Dispute Settlement of the AFA which took the Decision. The NCDS stated in clause 3 of its decision: *"Against this decision appeal is allowed within 21 days from the publication at the authority provided for in section 34 of National Centre for Dispute Settlement Rule".*

39. Article 34 NCDS Rules states: *"As a final resource a decision passed by the Chamber can be appealed to a National Arbitration institute recognized by FSHF in accordance with the FIFA guidelines. If such an institute does not exist there, and during a transitional period the appeal can be brought before another arbitration institute recognized by FIFA and subject to agreement with FIFPro".* This clause does not expressly foresee an appeal to the CAS, as mentioned by the Respondent. However, the Sole Arbitrator considers that the intent of the legislator is to allow appeals against decisions of the Chamber before CAS for the reasons expressed below.

40. The Statutes of the AFA itself, in its article 10 (b) does provide as a duty for members like the Respondent to acknowledge the authority of the CAS as specified in the relevant provisions of the FIFA and UEFA Statutes. Furthermore, lit. (c) states that any dispute at the national level related to any contract*, "shall be referred to the CAS as independent and unbiased court of arbitration".*

41. The FIFA Statutes expressly refer to two possible ways of appealing against decisions: a national independent body respecting certain criteria of fairness and equity for the parties or CAS. Article 34 NCDS Rules expressly provide that no national independent appeals body exist and refer to *"another arbitration institute recognized by FIFA"* which can therefore only be the CAS. This interpretation is confirmed by the fact that the new NCDS Rules now make an express reference to CAS in the absence of a national arbitration body. Finally, Mr. Enlon Lila, Head of the Legal Department at the AFA, also interpreted Article 34 NCDS in the same manner.

42. The reference to the agreement of FIFPro should, in the Sole Arbitrator's opinion, only be understood as whether FIFPro would also recognize appeals before CAS or any other constituted national arbitration body which satisfy the criteria set forth by FIFA. It appears that, since the implementation of the FIFA Statutes in 2004, in which the jurisdiction of CAS was officially recognized to settle football-related disputes, FIFPro has never objected to the

jurisdiction of the CAS to deal national matters in the event that no independent national appeals body exist.

43. In the case at hand, the dispute is about an employment contract between the Parties and therefore it certainly is covered by article 10 (c) of the AFA Statutes (*"…dispute related to any contract…"*). As the Respondent is a member of AFA, it is certainly bound by AFA's Statutes and therefore it recognizes the CAS being competent to hear an appeal against the Decision of 20 January 2012. The Appellant had a licence as coach from AFA and therefore he accepted the Statutes and Regulations of the Albanian Football Association as well. The Parties further agreed in the employment agreement that the Statutes and Regulations of the Club, the Albanian Football League, the Albanian Football Association as well as UEFA and FIFA are an integral part of the agreement. They therefore accepted that CAS is competent to hear this appeal. Further the Appellant filed his appeal against the Decision based on clause 3 of the Decision.

44. Based on all of the above arguments, the Sole Arbitrator is of the opinion that the CAS is competent to hear this case.

45. Under Article R57 of the Code, the Sole Arbitrator has the full power to review the facts and the law. Therefore, the Sole Arbitrator does not only examine the formal aspects of the Decision appealed against, but he holds a trial de novo, evaluating all facts, including new facts, which may not have been mentioned by the Parties before the NCDS, and all legal issues involved in the dispute.

46. The appeal was filed within the deadline provided by article 34 NCDS Rules, namely within 21 days after notification of the Decision. The appeal also complies with the requirements of Article R48 of the Code, and is therefore admissible.

4. APPLICABLE LAW

47. Article R58 of the Code provides that the Sole Arbitrator 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 Sole Arbitrator deems appropriate. In the latter case, the Sole Arbitrator shall give reasons for his decision.

48. The Parties agreed in the employment agreement signed on 31 August 2011 that the Statutes and Regulations of the Club (Respondent), the (Albanian) Football League, the (Albanian) Football Association and UEFA and FIFA are an integral part of the agreement.

49. The Appellant stated in his appeal brief of 20 February 2012 that the Statutes and Regulations of the Albanian Football Association, UEFA and FIFA shall apply primarily and additionally, Albanian Law could be applicable in case the sentence in the employment agreement *"The Head Coach shall correctly apply all and any of the above statutes and regulations pursuant to law and public order"* is interpreted in the way that it refers to Albanian law. However, the Appellant is of the opinion

that articles 62 and 63 FIFA Statutes in which the CAS is recognized and a reference to Swiss law is made, constitutes a basis for the subsidiary application of Swiss law rather than Albanian law.

50. The Respondent did not take any position at all regarding the applicable law, neither in its response of 15 March 2012 nor in its additional submission of 11 October 2012.

51. Based on the employment agreement signed on 31 August 2011, it is obvious and uncontested that the Parties agreed that the Statutes and Regulations of the Respondent, the Albanian Football League and Association as well as UEFA and FIFA are applicable. The employment agreement does not foresee any specific reference to a national law. This situation is quite surprising especially when seeing that the Respondent has its seat in Albania and the Appellant is Swedish.

52. As the Appellant is Swedish, the employment agreement is therefore considered as an international contract. The Sole Arbitrator could look at the Albanian and Swedish International Private Law Acts to see what national law could be applicable, additionally to the Statutes and Regulations mentioned in the agreement. However, as the Appellant in his appeal brief clearly refers to Swiss law as being applicable in addition to the Statutes and Rules of the sports organisations and the Respondent did (in two submissions) not object to this opinion, the Sole Arbitrator hereby decides that in consideration of these reasoning given by the Appellant and especially article 62 para.2 of the FIFA Statutes, Swiss law shall be applicable in addition to the Statutes and Regulations of the Respondent, the Albanian Football League and Association as well as FIFA and UEFA.

5. MERITS

5.1 The Position of Edmond Lutaj

53. The Appellant's submissions can be summarized, in essence, as follows:

(1) On 5 December 2011, the Appellant sent a text message from his mobile phone to the President of the Club, informing him that he is willing to review his position as head coach of the Club's first team (employment agreement of 31 August 2011). In the meeting with the President and the Sport Director (Mr. Perparim Lushaj) on 6 December 2011, he explained to the President that he wants to continue his job as head coach of the first team and wishes to have the President's support. They had a long discussion and the President adjourned the meeting with the intention to announce a decision regarding the Appellant's future in the Club on 7 December 2011. Instead of going to a meeting on 7 December 2011, the Sport Director picked the Appellant up and told him that he was dismissed with immediate effect.

(2) The Appellant considers the President's decision of 7 December 2011 to dismiss him as a unilateral termination of the contract without just cause and asks for payment of the November 2011 salary including default interests starting from 4 December 2011. Further,

the Appellant requests the payment of the salary from 1 December 2011 until 31 May 2013, the fixed contractual period, including default interests.

(3) The Appellant never received any written statement or confirmation of the termination from the President. However, the Appellant is of the opinion that in accordance with the employment agreement, a spoken agreement regarding a cancelation of the agreement is not valid.

5.2 The Position of FC Flamurtari

54. The Club's position can be summarized, in essence, as follows:

(1) The Respondent is of the view that with the text message sent by the Appellant to the President on 5 December 2011, the Appellant presented his resignation as the head coach of the Club's first team. It translates the text message as *"…I am ready to leave my position as a coach"*. It was for the President to accept this resignation and the unilateral termination of the employment agreement by the Appellant. Only then the Club was looking for a new coach; the contract with the new head coach Shkelqim Muça was then signed on 15 December 2012.

(2) The Respondent fulfilled its contractual obligations to pay the Appellant's salaries, including the November 2011 salary. Regarding any further claim, the Respondent is of the opinion that the Appellant terminated the employment contract unilaterally and if the Sole Arbitrator thinks this was not the case, the contract was at least cancelled by mutual consent of the Parties. In other words, the Club accepted the Appellant's offer to resign as head coach of the Club's first team. Therefore, the Appellant has no further claims against the Club.

(3) The Respondent informs that on 5 December 2011, the Appellant informed Mr. Perparim Lushaj, Sport Director, that he had submitted his resignation. On 6 December 2011, he further informed the players and the staff about his resignation. Even in the meeting with the President and the Sport Director on 6 December 2011, he confirmed his position to resign as head coach. Thereafter, he did not appear in the Club and the training centre anymore.

5.3 The Evaluation of the Sole Arbitrator

(a) Employment agreement

55. It is uncontested that the Parties signed an employment agreement on 31 August 2011 for a time period of 1 August 2011 until 31 May 2013 (two football seasons). The contract states that the Statutes and Regulations of the Club, Albanian Football League and Association as well as UEFA and FIFA are an integral part of the agreement. Under clause IX (Final Provisions) para. 2 the agreement states: *"Any addition, modification or cancellation of any part of the present agreement shall be made by mutual accord of the parties. Spoken accords are not valid. The agreement shall not be given to third parties except for the National Football Federation"*.

56. In clause III para.1 the Club's obligation is defined as to pay a monthly salary of EUR 3'500 to be paid the 3rd day of each upcoming month. Para. 2 further defines the bonus payments of ALL 25'000 for each match won and ALL 1'000'000 for the team's participation in the UEFA Cup. All amounts (salary and bonus) are net amounts.

(b) Actions from 5 to 7 December 2011

57. It is uncontested by the Parties that the Appellant wrote a text message with his mobile phone to the President of the Club. The Appellant translates the text as *"I am sorry that I am writing this SMS. You deserve better. I am ready to review my position"*. The Respondent translates this text as *"I am sorry for these words I am writing. Flamurtari deserves more. You deserve more. I am ready to resign from my duty as coach"*. The main sentence of this text message is the last sentence. The translations of the wording slightly differ between the Parties. However, even the Appellant's statement (*"I am ready to review my position")* has to be understood as an offer made by the Appellant to eventually resign as head coach. The translation of the Respondent is not a (unilateral) termination of the employment agreement but a clear offer to resign as a head coach. The Sole Arbitrator finds that even if the translations slightly differ, the text message sent by the Appellant to the President of the Club on 5 December 2011 has to be understood as an offer to step down as head coach of the Club.

58. In response of the Appellant's text message, the President replied: *"We take that discussion further tomorrow"* (Appellant's translation). The Respondent translates this response as *"let's meet and talk tomorrow"*. It is therefore obvious that the President of the Club did neither accept nor reject the Appellant's offer to terminate the employment contract at this stage.

59. It is uncontested by the Parties that the Appellant, the President and Mr. Perparim Lushaj, Sport Director, met on 6 December 2011 to discuss the matter. The Parties' information as to what the Appellant said during this meeting, however, differs. The Respondent has filed several witness statements regarding the content of this discussion. The witness statements of Bujar Goguja and Sokol Branica do not bring any proof of the content of the said meeting between the Appellant, the President and the Sport Director as the two witnesses themselves were not present in this meeting. Sokol Branica further stated in his witness statement that the Appellant informed him on 5 December 2011 that he wrote to the President of the Club suggesting his resignation as head coach. As stated before, the text message sent by the Appellant is considered as such an offer to cancel the employment contract.

60. The third witness statement filed by the Respondent regarding the Appellant's words during the meeting with the President and the Sport Director on 6 December 2011 is actually from the former Sport Director, Perparim Lushaj, himself. A first statement of this witness is that on 5 December 2011, the Appellant offered the President to cancel the employment contract; this corresponds to the actual text message which was sent from the Appellant to the President. Apparently, based on this offer of the Appellant, the Sport Director gave his irrevocable resignation as Sport Director to the President by telephone on 5 December 2011.

61. An interesting point of Perparim Lushaj's witness statement is that the witness states that on 6 December 2011, the Appellant *"despite the insistence of the Club President, demanded his resignation for*

the reason of bad scores although the full financial, technical and moral support of the Club President and other Club managers". Based on this statement, the President of the Club did not accept the Appellant's offer to mutually terminate the employment agreement. The Parties were not in agreement either to continue the employment agreement. The Sole Arbitrator is of the opinion that this witness statement is wrong in relation to the Appellant's alleged position in the meeting of 6 December 2011. This is clearly supported by the claims filed by the Appellant with the NDCS; if the Appellant had the chance to continue his job as head coach but instead confirmed his resignation as stated by the Mr. Perparim Lushaj, why would he thereafter claim for the salaries due based on the employment agreement. This would be a *"venire contra factum proprium"*. On the contrary, this claim shows that the Appellant was finally willing to continue as head coach of the Club's first team and that in the meeting with the President and the Sport Director on 6 December 2011, he came back on the content of his text message.

62. Furthermore, it is uncontested by the Respondent that the Sport Director picked the Appellant up in the morning of 7 December 2011 and informed him about the President's decision to dismiss him as new head coach. The Appellant proved that on the internet there were several articles dated 6 December 2011 showing that the President had already appointed a new head coach. These proofs confirm the Appellant's statement made in his appeal brief that he received many phone calls shortly before the meeting with the President and the Sport Director on 6 December 2011, asking him if he still was the head coach of the Club. Further it is a fact that on 7 December 2011 at the latest, the President officially presented the new head coach of the Club, replacing the Appellant.

63. The Respondent states that after the meeting between the Appellant, the President and the Sport Director on 6 December 2011, the Appellant never appeared in the Club and in the training centre again. This statement is, however, not confirmed by any of the three witness statements. The Appellant, however, states that in the morning of 7 December 2011, the Sport Director came to pick him up and informed him that the President decided to dismiss him as head coach with immediate effect and that a new head coach had already been appointed. It is interesting to see that the Sport Director who filed a witness statement and who is a cousin of the President of the Club, did not state any of these facts in his witness statement. Based on the above, the Sole Arbitrator is of the opinion that there is no doubt that the new head coach, Shkelqim Muça, was presented already on 7 December 2011 and started to coach the Respondent's first team with immediate effect. In the view of the Sole Arbitrator, these are further facts showing that the Appellant requested the President to continue as head coach and have the President's support during the meeting of 6 December 2011.

64. Finally, the Respondent did not file any witness statement from any (former) player of the first team confirming that the Appellant did no longer coach the team in the training on 6 December 2011 as pretended. Based on all the facts mentioned before, the Sole Arbitrator is therefore of the opinion that the Appellant coached the team until the meeting with the President and Sport Director later on 6 December 2011. When the Appellant wanted to come back to the training centre on 7 December 2011, the Sport Director informed him that a new head coach had been appointed by the President and therefore the Appellant was not allowed to go to the Club or the Club's training centre.

(c) Termination of the employment agreement

65. As stated before, the text message sent by the Appellant to the President on 5 December 2011 is considered as an offer to mutually terminate the employment agreement. In his reply, the President of the Club did neither accept nor reject this offer; he informed the Appellant that they will talk about this the next day. On 6 December 2011, the Appellant met the President together with the Sport Director. Based on the evaluation of the proofs, the Sole Arbitrator is of the opinion - as stated by the Appellant - that during this meeting of 6 December 2011, the Appellant informed the President to be finally willing to continue as head coach and asked for the President's support. The Respondent never stated that the President accepted the Appellant's offer to mutually terminate the employment agreement. Also, the Respondent did not mention anything about the acceptance of the Appellant's offer to cancel the contract. The Respondent, however, pretends that the contract was terminated unilaterally by the Appellant by way of the text message of 5 December 2011.

66. It is therefore not contested that in the meeting of 6 December 2011, the President did not accept the Appellant's offer to cancel the employment contract, sent by text message on 5 December 2011. Based on the facts and discussions, the Respondent should, however, have taken a decision on 6 December 2011. In not accepting the Appellant's offer in this meeting of 6 December 2011 and based on the Appellant's request to finally continue as head coach and have the President's support, such offer made by the Appellant in his text message of 5 December 2011 became null and void. Based on the principal of good faith which governs all contractual relationships, the Appellant could have expected the President's answer in this meeting of 6 December 2011. As the President did not accept the Appellant's offer, he sent a message to the Appellant that he was willing to continue the contractual relationship as well. No mutual termination of the contract did happen either on 6 or on 7 December 2011.

67. Based on the above and in view of the proceedings before the NCDS and the CAS, the Sole Arbitrator is of the opinion that no mutual termination of the employment agreement happened. The Appellant's offer to terminate the contract was not accepted; the Appellant did not unilaterally terminate the employment agreement. It was, therefore, the President who terminated the employment agreement for the Respondent when informing the Appellant through the Sport Director (who apparently resigned from his job on 5 December 2011) early in the morning of 7 December 2011 that he had been dismissed as head coach. There are no written documents, signed by the Parties, available regarding a mutual or unilateral termination of the employment agreement.

(d) Contractual Obligations

68. Based on clause IX (Final Provisions) para. 2 of the employment agreement, the cancelation (of any part) of the agreement shall be made by mutual accord of the Parties and spoken accords are not valid. The Sole Arbitrator finds that no mutual accord of the Parties to cancel the contract had occurred. There is no written agreement. Furthermore, the Sole Arbitrator is of the opinion that the Parties did not even orally agree to terminate the contract which is shown by the claims filed by the Appellant to the NDCS and the CAS. The Sole Arbitrator also found that it was finally the Respondent which terminated the contract, without just cause. As a

consequence, it is therefore the Respondent's duty to continue to pay the monthly salaries of net EUR 3'500 to the Appellant.

69. The Appellant is requesting also the salary for November 2011 which he pretends was never paid by the Respondent. The Respondent mentioned the filing of *"a pay slip for the month of November 2011"*. However, this exhibit no. 5 was actually never filed, even after the CAS explicitly requested for this exhibit to be filed on several occasions.

70. The Appellant, in his further submissions, confirmed that the November 2011 salary had still not been paid by the Respondent. In conclusion, the Sole Arbitrator finds that this November 2011 salary in the amount of net EUR 3'500 is still due by the Respondent, in the absence of any proof to the contrary.

71. Clause III (Obligations of the Club) of the employment agreement states that the monthly salaries shall be paid the 3rd day of each upcoming month. Starting with the 4th day of each upcoming month, the salary will therefore become overdue. This means that for each monthly payment claimed for the time period of 1 November 2011 until 31 May 2013, the default interest will start on the 4th day of the upcoming month, *i.e.* 4 December 2011, 4 January 2012 etc. In order to calculate this default interest in an easier way, the average due date can be calculated for the time period from 1 November 2011 until 31 January 2013. The middle of this time period is 15 June 2012. As the due date is starting 1 month and 3 days later (e.g. 3 December 2011 for the month November 2011) this gives as an "average" due date of the before mentioned time period 18 July 2012 and therefore the default interest shall start to run on 19 July 2012. Starting from this day a default interest of 5% based on article 104 Swiss Code of Obligations (CO) has to be paid by the Respondent in addition to the salary.

6. CONCLUSION

72. In conclusion, the Sole Arbitrator finds that:

(1) The Appellant made an offer for a mutual termination of the employment contract with his text message sent to the President of the Club on 5 December 2011.

(2) The Appellant came back on the content of his text message of 5 December 2011 during the meeting of 6 December 2011.

(3) The President of the Respondent did not accept this offer for a mutual termination of the employment contract. He did not accept either the Appellant's request to continue the employment relationship as head coach of the Club.

(4) The President terminated the employment agreement unilaterally and orally only on 7 December 2011 at the latest, *i.e.* without just cause, when giving the information of the termination through the Sport Director and presenting the new head coach of the first team on 7 December 2011.

(5) As the employment contract is a contract with a fix period from 1 August 2011 until 31 May 2013 which can only be cancelled by the mutual accord of the Parties and that spoken accords are not valid, the contract at hand should therefore be considered as formally effective. It is only the Parties' duties which change insofar as the Appellant has no longer to offer his services to the Respondent while the Respondent remains obliged to pay the monthly salaries to the Appellant.

(6) Based on the employment agreement, the Respondent has to pay the Appellant the monthly payments starting from 1 November 2011 until 31 May 2013 and therefore a total of 19 monthly payments in the total amount of EUR 66'500.

(7) Based on the employment agreement, the monthly salaries shall be paid until the 3rd day of each upcoming month. On the 4th day of each upcoming month the salary payment is therefore overdue and the legal interest rate of 5 % (article 104 CO) shall be additionally paid by the Respondent. For the monthly payments from November 2011 until January 2013 the average due date is 18 July 2012. Starting from 19 July 2012 the interest rate of 5 % shall be paid.

(8) On the day of this decision not all monthly payments did already become due. The Respondent is therefore obliged to pay the monthly payments for February, March, April and May 2013 in accordance with the contract. The salary payments until 31 January 2013 in the total amount of EUR 52'500 are overdue and in addition to the salary a late payment interest of 5%, starting on 19 July 2012 is due by the Respondent.

(9) Based on all the above, the appeal must be accepted.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by Edmond Lutaj against the decision dated 20 January 2012 of the Football Association of Albania's National Centre for Disputes Settlement is upheld.

2. Football Club Flamurtari shall pay to Edmond Lutaj the net amount of EUR 52,500 (fifty-two thousand five hundred Euros) plus 5% interest p.a. starting from 19 July 2012. Further, Football Club Flamurtari is ordered to pay the not yet due salaries for the time period of 1 February 2013 until 31 May 2013. The payments shall be made in accordance with the employment agreement; the net amount of EUR 3'500 per month shall be paid the 3rd day of each upcoming month, *i.e.* on 3 March, 3 April, 3 May and 3 June 2013.

3. (…).

4. (…).

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