Arbitration CAS 2012/A/3007 Mini FC Sinara v. Sergey Leonidovich Skorovich, award of 29 November 2013

Panel: Mr András Gurovits (Switzerland), Sole arbitrator

Football
Contract of employment
Arbitrability of labour disputes
Assessment of whether or not an arbitration agreement has been concluded
Situation where the intent of the parties is not sufficiently clear

1. **Art. 177 para. 1 of the Swiss Federal Act on Private International Law (PIL) provides that every pecuniary claim can be subject to arbitration. In other words, Art. 177 para. 1 PIL provides arbitrability of any claim that has an economic interest. In accordance with the jurisprudence of the Swiss Federal Tribunal, this also applies to monetary claims under a labour contract which, thus, also fall under the scope of Art. 177 PIL. When assessing the arbitrability of claims, the Swiss Federal Tribunal also considered the risk of a party that the arbitral award may not be enforced in the relevant state. The Swiss Federal Tribunal has confirmed that this possible risk will not alter the arbitrability of the dispute under Swiss Law as the Swiss legislator, when enacting Art.177 PIL, deliberately accepted the risk that an award may not be enforceable in a given jurisdiction. It is, therefore, the parties' duty to assess the risk whether an award will be enforceable before they agree on arbitration and enter into an arbitration agreement.**

2. **An arbitration agreement is an agreement pursuant to which the parties agree to have existing and/or future disputes resolved by an arbitral tribunal in accordance with the relevant procedural provisions, thus excluding the competence of the state courts. It is decisive that the parties express their will to confer jurisdiction to a court of arbitration rather than a state court. When assessing whether an arbitration agreement has been concluded, it must be analysed, in a first step, whether there is an actual consensus between the contracting parties to have their dispute resolved by an arbitration panel, excluding jurisdiction of the state courts. Where such actual consensus cannot be established, the contract must be construed following the principle of good faith which means that each party's declarations must be interpreted in the way it may have been understood by any other reasonable party acting in good faith. If an arbitration clause is to be interpreted emphasis must also be put on the fact that by agreeing on arbitration a party's right for challenges and appeals can be significantly restricted. Therefore, in case of doubt, a restrictive interpretation must take place. If, however, it has been established that the parties agreed to exclude their dispute from state court proceedings, but the parties disagree about the conduct of the arbitration proceedings, the so-called utility or benevolence principle shall be followed, pursuant to which a**

result should be sought which will allow to respect and maintain the arbitration agreement.

3. If the relevant provisions under an employment agreement do not provide a sufficiently clear intent of the parties to exclude their disputes from resolution before state courts and to have, instead, an arbitration court resolve such disputes, there is no space to apply the utility or benevolence principle according to which an understanding must be sought that allows to maintain an arbitration agreement. It is to be concluded that the parties did not want to exclude competence of the state courts, and that they rather wanted to maintain the competence of the state courts.

I. THE PARTIES

1. Sverdlovsk Regional Sports Public Fund "Mini-football club Sinara" (hereinafter referred to as "the Appellant" or "MFC Sinara") is a Russian Futsal team competing in the Russian Futsal Super League affiliated to the Russian Football Union ("RFU").

2. Mr Sergey Leonidovich Skorovich (hereinafter referred to as "the Respondent") is a Russian futsal coach formerly employed by the Appellant.

II. FACTUAL BACKGROUND

3. On 6 June 2010, the Appellant and the Respondent signed an employment agreement in Russian language. In accordance with the English translation provided by the Appellant on 9 April 2013 (the "Employment Agreement"), Article 9 of the Employment Agreement (headed "Disputes") provided for the following:

   "9.1 Any and all disputes arising in relation to performance of this employment agreement shall be settled by the Parties by way of negotiations.

   9.2 The Parties agree that any disputes arising out of this employment agreement or in connection with it shall be settled by mediation procedures in the legal bodies of the RFU and the MFAR.

4. *9.3 If the Parties fail to settle the disputes by negotiations and/or in the legal bodies of the RFU and the MFAR, it shall be settled in accordance with the applicable laws of the Russian Federation".*

5. Article 12.2 of the Employment Agreement, further, provided (under the heading "Final Conditions"):

   "12.2 Any other relations between the Parties not regulated by this employment agreement shall be governed by the applicable laws of the Russian Federation".

6. The parties also signed an additional agreement (in Russian language) attached to the

Employment Agreement. In accordance with the English translation of such additional agreement provided by the Appellant together with its Statement of Appeal dated 30 November 2012 (the "Additional Agreement") the parties had agreed as follows:

"…2010/2011 (First season)

Bonuses for signing the contract:

1,000,000 rubles [sic], are paid to the Worker within the first year (2010-2011) from the date of signing of the labor [sic] agreement. The worker also receives the 3rd room apartment which market cost makes not less than 6,000,000 rubles [sic]. Thus the area of this apartment should be not less than 100 square meters. The apartment should be issued on S.L. Skorovich before the season 2012/2013… Salary: 250,000 rubles [sic] a month….

2011/2012 (Second season)

Salary: 300,000 rubles [sic] a month…

2012/2013 (Third season)

Salary: 300,000 rubles [sic] a month…".

7. After the Appellant had terminated the Employment Agreement with effect from 1 February 2012, the Respondent sent a letter to the Appellant on 21 April 2012 requesting, among other things, the payment of RUB 6 million as an equivalent for the apartment that was mentioned in the Additional Agreement. As the Appellant did not proceed to any payment, the Respondent filed a claim with the National Dispute Resolution Chamber of the RFU (the "DRC"). On 22 June 2012, the DRC rendered its decision and ordered that the Appellant pay the Respondent an amount of RUB 100,000 for the remainder under the sign-in fee as well as RUB 900,000 as a compensation for the unjustified termination of the Employment Agreement. In respect of the Respondent's claim for payment of an amount equivalent to the value of the apartment, the DRC ordered that the parties shall enter into an additional agreement in compliance with Russian Laws.

8. The Respondent appealed against the decision of the DRC in respect of the apartment with the Players' Status Committee of the RFU (the "PSC"). On 26 September 2012, the PSC determined that the Appellant was to pay to the Respondent the amount of RUB 6 million as a compensation for the apartment (the "Appealed Decision").

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

9. The Appellant filed its statement of appeal against the Appealed Decision with the Court of Arbitration for Sport (hereinafter referred to as the "CAS") by letter dated 30 November 2012. On 26 December 2012, the Appellant submitted its appeal brief in accordance with Article R51 of the Code of sports-related Arbitration (hereinafter referred to as the "CAS Code").

10. On 6 December 2012, the Respondent sent a letter to the CAS Court office answering, inter alia, and agreeing to the Appellant's request for the stay of the Appealed Decision.

11. With letter dated 11 March 2013, the Respondent filed his answer and raised the objection of lack of jurisdiction of CAS in the present matter.

12. On 5 April 2013, the Appellant submitted its submission on jurisdiction and admissibility of the appeal (the "appellant's reply").

13. On 23 April 2013, the Respondent submitted its answer to the Appellant's Reply (the "second answer").

14. On 10 May 2013, the Appellant filed its rejoinder on jurisdiction and admissibility of the appeal (the "appellant's rejoinder").

15. By letters dated 21 May 2013 and 17 May 2013, the Appellant and the Respondent, respectively, returned to the CAS Court Office the signed order of procedure.

16. On 22 May 2013, the hearing was held at the CAS Court Office in Lausanne. The Appellant was represented by its counsel Mr Jorge Ibarrola. The Respondent was personally present together with his legal counsel Mr Mikhail Prokopets and Mr Georgi Gradev together with his interpreter Ms Olga Tissot. The expert witnesses Ms N.V. Chernykh (called by the Appellant) and Mr Y. Zaitsev (called by the Respondent) were heard by means of skype.

17. By letter dated 31 May 2013, the CAS Court office sent the parties copies of a letter of the Appellant dated 21 May 2013 and it annexes thereto as well as of the two documents provided by the Respondent at the beginning of the hearing. In the same letter, the Respondent was asked to provide an English translation of Article 30 of the RFU's Regulation on the Status and Transfer of Players.

18. On 4 June 2013, the Respondent submitted his translation of the Article 30 of the RFU's Regulation on the Status and Transfer of Players together with the copy of a Russian court decision (including an English translation thereof). By letter dated 6 June 2013, the Respondent provided his comments to the documents submitted by the Appellant on 21 May 2013.

19. By letter dated 11 June 2013, the Appellant commented on the Respondent's submission of 4 June 2013.

IV. THE PARTIES' SUBMISSIONS

20. In his statement of appeal, the Appellant submitted the following prayers:

"1. The Appealed Decision issued on 26 September 2012 by the Committee on the Status of Players of the Russian Football Union is annulled.

2. Sverdlovsk Regional Sports Public Fund 'Mini-football club 'Sinara' ' does not owe any amount to Mr Skorovich Sergey Leonidovich.

3. The Russian Football Union and Skorovich Sergey Leonidovich shall bear all costs of the proceedings.

4. The Russian Football Union and Skorovich Sergey Leonidovich shall be ordered to compensate Sverdlovsk Regional Sports Public Fund 'Mini-football club Sinara' ' for its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters, in an amount to be determined at the discretion of the Panel.

Provisional Measures

5. The Appealed Decision is stayed until the CAS issues its final award".

21. The Appellant principally submits that:

a. Competence of CAS derives from Articles 53(2) of the RFU Regulations on settlement of disputes. Competence of CAS is, further, confirmed at the end of the Appealed Decision.

b. On the merits, the only remaining issue between the parties is the nature and the interpretation of the benefit agreed in favour of the Respondent in the form of the apartment.

c. The parties did neither agree that ownership in the apartment was to be transferred nor did they agree on any remuneration in kind. They parties rather agreed that the Appellant was to provide to the Respondent a proper accommodation the value of which would correspond to RUB 6,000,000. This obligation was an "obligation to do" and not an "obligation to pay".

d. The obligation to provide such accommodation was contingent on the existence of the Agreement and only due as long as the contractual relationship under the Agreement was maintained.

22. In his Answer the Respondent submitted the following prayers:

"Primarily:

1) The Court of Arbitration for Sport has no jurisdiction to adjudicate the present dispute.

Subsidiarily, only if the above is rejected

2) The appeal filed by Sverdlovsk Regional Sports Public Fund 'Mini-football club Sinara' against the decision issued by the RFU Players' Status Committee on 26 2012 is not admissible.

At any rate

3) The appeal filed by Sverdlovsk Regional Sports Public Fund 'Mini-football club Sinara' against the decision issued by the RFU Players' Status Committee on 26 2012 is dismissed.

4) The decision issued by the RFU Players' Status Committee on 26 September 2012 is confirmed.

5) Sverdlovsk Regional Sports Public Fund 'Mini-football club Sinara' shall bear the entire costs of this arbitration.

6) Sverdlovsk Regional Sports Public Fund 'Mini-football club Sinara' shall contribute to the legal and other costs incurred by Mr. Skorovich Sergey Leonidovich in the amount of no less than EUR 20,000 (Twenty thousand Euros)".

23. The Respondent principally submits that:

    a. While Art. 53 para. 2 of the RFU Regulations on Settlement of Disputes provides for the right to appeal against decisions passed by the PSC to the CAS and the Appealed Decision also provides for the right to appeal against it to the CAS, the Agreement contains two *lex specialis* choice-of-forum clauses providing for a two-stage jurisdiction system in case of a contractual dispute. The parties agreed that, on a first stage, pre-judicial settlement proceedings in the legal bodies of the RFU were to be conducted, and on a second stage, in case of no settlement being reached, the competent civil state court was to resolve the dispute, to the exclusion of any other jurisdiction, including CAS. Therefore, the CAS has no jurisdiction to hear the dispute at stake.

    b. On the merits, it was agreed between the parties that the Respondent was to receive a sign-in bonus in the form of a real estate in addition to the monetary award agreed. They agreed on a transfer of title in the apartment to the Respondent, rather than on providing the Respondent with a temporary accommodation.

    c. The Appellant terminated the Agreement without just cause and promised to cancel all its debts towards the Respondent, but it failed to provide the apartment to the Respondent. The Respondent has, therefore, the right to sue the Appellant for performance plus damages due to delay or, alternatively, to waive subsequent performance and to ask for compensation of damages arising out of the non-performance of the Agreement. The parties had agreed that the minimum market value of the apartment would be RUB 6 million. As the Appellant had failed to transfer title to the apartment to the respondent, the Appellant caused to the Respondent damage in the amount of at least RUB 6 million.

    d. The Appellant had failed to pay the advance of costs to the CAS on time as the CAS prescribed. Therefore, the appeal is not admissible.

24. The submissions of the parties will be discussed in more detail below where the context so requires.

V. PROVISIONAL MEASURES

25. In his response to the Appellant's request for provisional measures of 6 December 2013, the Respondent confirmed that because of the appeal being pending in CAS he was not in a position to enforce the Appealed decision and that, therefore, this application of the Appellant was moot. The CAS took note of this mutual agreement between the parties.

VI. ADMISSIBILITY

26. The statement of appeal was filed within the deadline granted by Art. 49 of the CAS Code and by article 53 para. 2 of the RFU Regulations on settlement of disputes. The statement of appeal complied with the requirements of Art. 48 of the CAS Code and the appeal brief was filed within the prescribed deadline.

27. The Respondent contends that if the Appellant is not in a position to provide the requested payment evidence, it is the CAS' obligation to terminate this procedure immediately.

28. On 8 April 2013, the CAS Court Office informed the parties that parties are not entitled to request the termination of an arbitral proceeding. Art. R64.2 of the CAS Code is applied by the CAS Court Office exclusively. The CAS Court Office, however, confirmed in its letter of 8 April 2013 that the Appellant had paid the advance of costs within the prescribed deadline. The Sole Arbitrator does, thus, not review this matter any further.

VII. JURISDICTION

1. The parties' main positions

29. The Respondent challenges the jurisdiction of CAS. The parties discussed this issue in their written briefs as well as at the hearing.

30. The Respondent mainly argues that clause 9 of the Agreement provides a two-stage procedure. Pursuant to clause 9.2 of the Agreement, the parties' dispute is, in a first stage, subject to pre-judicial settlement or conciliation procedures with the legal bodies of the RFU. In a second step, the dispute shall, in accordance with clause 9.3 of the Agreement, be brought to the competent civil court according to the current legislation of the Russian Federation, to the exclusion of any arbitral jurisdiction. Clause 9.3 of the Agreement makes reference to Art. 308 of the Labour Code of Russia which provides that individual labour disputes that are not settled by the employer and the employee are to be reviewed in the court. There is no regulation in Russian Law conferring jurisdiction on CAS in case of a labour dispute. It was the will of the parties to refer any dispute to the civil state courts in Russia. The dispute at hand is a labour matter and cannot therefore, pursuant to mandatory Russian Law be the subject of arbitration proceedings.

31. According to the Appellant, clause 9.2 of the Agreement provides that a dispute shall be settled by mediation procedures with the legal bodies of the RFU and the AMFR. If the parties fail to settle the dispute on this level, the dispute shall be settled, pursuant to clause 9.3 of the Agreement, in accordance with the applicable Laws of the Russian Federation. Clause 9 para. 3 of the Agreement is, however, a pure governing Law clause by which the parties convened that Russian Law will apply on the merits of any dispute arising out of the Agreement. Thus, Clause 9.3 of the Agreement does, not confer jurisdiction to the civil state courts of Russia. As the RFU regulations provide that any dispute shall be resolved by CAS and as the matter at hand can be the subject of arbitration proceedings, the CAS, rather than the state courts, shall be

competent to hear the present case.

2. Admissibility of arbitration proceedings in labour disputes

32. In support of his challenge of the arbitrability of the present matter, the Respondent mainly submits that Art. 308 of the Labour Code of Russia is a peremptory norm requiring the exclusive jurisdiction of the state courts. This rule falls within the range of fundamental principles, constituting matters of public policy and must, thus, be taken into consideration in the present dispute as a matter of public policy in accordance with Art. 19 of the Swiss Federal Act on Private International Law ("PIL"). The CAS must, therefore, respect the mandatory jurisdiction of the state courts in labour disputes under Russian law.

33. The Sole Arbitrator, however, notes that Art. 177 para. 1 PIL provides that every pecuniary claim can be subject to arbitration. In other words, Art. 177 para. 1 PIL provides arbitrability of any claim that has an economic interest. In accordance with the jurisprudence of the Swiss Federal Tribunal, this also applies to monetary claims under a labour contract which, thus, also fall under the scope of Art. 177 PIL (cf. Swiss Federal Tribunal, decision 4A_388/2012, no. 3.4.1; and Swiss Federal Tribunal, decision 4A_654/2011, no. 3.4).

34. The Respondent also argues that the difficulties to be encountered in the recognition and enforcement of an award in Russia speaks against arbitrability of the present matter. However, when assessing the arbitrability of claims, the Swiss Federal Tribunal also considered the risk of a party that the arbitral award may not be enforced in the relevant state. The Swiss Federal Tribunal has confirmed that this possible risk will not alter the arbitrability of the dispute under Swiss Law as the Swiss legislator, when enacting Art.177 PIL, deliberately accepted the risk that an award may not be enforceable in a given jurisdiction. It is, therefore, the parties' duty to assess the risk whether an award will be enforceable before they agree on arbitration and enter into an arbitration agreement (cf. Swiss Federal Tribunal, decision 4A_388/2012, no. 3.3).

35. The present claim is undisputedly of a monetary nature and has an economic interest. Therefore, in accordance with constant practice of the Swiss Federal Tribunal, the Sole Arbitrator holds that the present appeal is, in principle, admissible under Art. 177 para. 1 PIL.

3. Did the parties agree on arbitration?

36. Given that the appeal is, in principle, admissible it must, in a next step, be assessed whether the parties had actually agreed on arbitration and entered into an arbitration agreement.

37. Pursuant to Article R27 of the CAS Code, *"These Procedural Rules apply whenever the parties have agreed to refer a sports-related dispute to the CAS. Such disputes may arise out of an arbitration clause inserted in a contract or regulations or of a later arbitration agreement (ordinary arbitration proceedings) or involve an appeal against a decision rendered by a federation, association or sports-related bodywhere the statutes or regulations of such bodies, or a specific agreement provides for an appeal to CAS (appeal arbitration proceedings).*

Such disputes may involve matters of principle relating to sport or matters of pecuniary or other interests brought into play in the practice or the development of sport and, generally speaking, any activity related or connected to sport. […]".

38. Article R58 of the CAS Code provides that *"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 choice, according to the law of the country in which the federation, association or sport-related body which has issued the Appealed 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".*

39. It is undisputed that the law applicable on the merits is the Regulations issued by the Russian Football Union and, subsidiarily, the Laws of Russia. The present proceeding is an international arbitration proceeding in accordance with the 12th chapter of the PIL. In accordance with Art. 176 para. 1 of the PIL, the provisions of the 12th chapter apply to arbitral tribunals with seat in Switzerland, provided that at the time when the arbitration agreement was concluded at least one party's domicile or ordinary residence was not in Switzerland. This condition is fulfilled in the present case. Pursuant to the Agreement, both parties were domiciled in Russia, thus not in Switzerland. None of the parties has argued otherwise.

40. In accordance with Art. 178 para. 1 of the PIL, the arbitration agreement must be concluded in writing, by telegram, telex, telefax or other means of communication which allows proof of the agreement by text. Art 178 para. 2 of the PIL provides that the arbitration agreement shall be valid if it conforms to the laws chosen by the parties, to the law governing the dispute or to Swiss law. The parties have not argued that the requirements under Russian Law in respect of validity of an arbitration agreement are less strict than those under Swiss law. Further, in their submissions both parties have referred to the jurisprudence of the Swiss Federal Tribunal. This question will, thus, be reviewed on the basis of the principles developed and confirmed by the Swiss Federal Tribunal (cf. Swiss Federal Tribunal, decision 4A_388/2012, no. 3.4.1).

41. An arbitration agreement is an agreement pursuant to which the parties agree to have existing and/or future disputes resolved by an arbitral tribunal in accordance with the relevant procedural provisions, thus excluding the competence of the state courts (cf. Swiss Federal Tribunal, decision 4P_162/2003, no. 3.1). It is decisive that the parties express their will to confer jurisdiction to a court of arbitration rather than a state court (cf. Swiss Federal Tribunal, decision 4A_246/2011, no. 2.2.3).

42. When assessing whether an arbitration agreement has been concluded, it must be analysed, in a first step, whether there is an actual consensus between the contracting parties to have their dispute resolved by an arbitration panel, excluding jurisdiction of the state courts. Where such actual consensus cannot be established, the contract must be construed following the principle of good faith which means that each party's declarations must be interpreted in the way it may have been understood by any other reasonable party acting in good faith (cf. Swiss Federal Tribunal, decision 4A_246/2011, no. 2.2.3; decision 4A_627/2011, no. 3.3). If an arbitration clause is to be interpreted emphasis must also be put on the fact that by agreeing on arbitration a party's right for challenges and appeals can be significantly restricted. Therefore, in case of

doubt, a restrictive interpretation must take place (cf. Swiss Federal Court, decision 4A_244/2012, no. 4.2). If, however, it has been established that the parties agreed to exclude their dispute from state court proceedings, but the parties disagree about the conduct of the arbitration proceedings, the so-called utility or benevolence principle shall be followed, pursuant to which a result should be sought which will allow to respect and maintain the arbitration agreement (cf. Swiss Federal Court, decision 4A_244/2012, no. 4.2; decision 4A_246/2011, no. 2.2.3).

43. Based on the submissions of the parties, the Sole Arbitrator cannot establish any actual consensus between the parties who disagree about whether or not they have entered into an arbitration agreement. Therefore, the Sole Arbitrator will revert to an objective contract interpretation assessing the declarations of the parties in accordance with the principle of good faith.

44. The Appellant submits, in particular, that the arbitration clause contained in the RFU regulations is valid and was accepted by the Respondent. The Swiss Federal Tribunal confirmed that who accepts a general reference knowing the arbitration clause contained in the document referenced thereby accepts such arbitration clause. The Swiss Federal Tribunal also considered that an athlete accepted the arbitration clause by initiating an internal procedure based on the applicable regulations, without reservation as to the fact that it included an arbitration clause in favour of CAS in a second stage. This is what happened in the present case. The Respondent, in accordance with clause 2.2.14 and clause 2.5.12 of the Agreement had indeed agreed to refer to the RFU Regulations which contained an arbitration clause in favour of CAS jurisdiction and thereby accepted such arbitration clause. Moreover, the Respondent had turned spontaneously to the RFU jurisdiction to claim compensation against the Appellant. By doing so, he invoked application of the RFU Statutes and other regulations. Thereby he explicitly, or at least implicitly, agreed to be subject to arbitration.

45. The Sole Arbitrator notes that clauses 2.2.14 and 2.5.12 of the Agreement provide that the parties had to comply with the Regulations of the RFU as well as of FIFA and UEFA. He also notes that in accordance with clause 2.3 and 2.6 the parties shall have any other rights and perform any other obligations set forth in the Labour Code of the Russian Federation. Assuming that the RFU Regulations provide for arbitration by CAS and the Labour Code of Russia provides jurisdiction of state courts in labour matters, which is in principle not disputed, there would be a contradiction in respect of competence where this question to be answered solely on the basis of clauses 2.2.14, 2.3 as well as 2.5.12 and 2.6 of the Agreement. These clauses do neither clearly refer the dispute to arbitration, nor to the state courts. While the Swiss Federal Tribunal has accepted, in certain cases where the relevant conditions were met, that an arbitration agreement can also be entered into by means of reference to another document that provides arbitration proceedings, the Sole Arbitrator holds that for the above reasons, and for the reasons discussed below, clauses 2.2.14 and 2.5.12 of the Agreement do not allow to conclude that this is the case in the matter at hand and the parties accepted an arbitration clause by means of reference.

46. Clause 9 of the Agreement is headed "Disputes". Considering Art. 18 of the Swiss Code of

Obligations which provides that the content rather than the heading of a clause is relevant for assessing what the parties have actually agreed, the Sole Arbitrator holds that the provisions set out in clause 9 allow to conclude that it was the parties' intention to lay down, in such clause 9, a dispute resolution mechanism, and not - at least partly - a choice of law provision.

47. The Appellant's position that clause 9 para. 3 of the Agreement is a choice of law clause rather than a choice of jurisdiction provision is not convincing, for various reasons. First, clause 9 of the Agreement is headed "Disputes" which very much speaks in favour of the relevant provisions dealing with the resolution of disputes, rather than applicable laws. It would go against logic to assume that in this context clause 9 para. 3 shall be a choice of law clause.

48. Second, clause 12.2 of the Agreement states that any *"other relations by the Parties not regulated by this employment agreement shall be governed by the applicable laws of the Russian Federation"*. This is a clear choice of law clause. It would not be conceivable that the parties wanted to set out in clause 12.2 a choice of law provision, and another choice of jurisdiction provision in clause 9 that bears the title "Disputes". The Appellant has not provided any convincing explanation why this should be the case. Rather, if one were to assume that in the second part of clause 9 para. 3 of the Agreement the parties wanted to deal with the applicable laws, and not procedural aspects as the wording implies, one would, acting reasonably and in good faith, expect the parties to then also include into clause 9.3 another provision that would set out how the dispute shall be finally resolved, as otherwise clause 9 para. 3 of the Agreement would leave the question open how the parties shall proceed if the fail to settle on the RFU legal bodies level pursuant to clause 9 para. 2 of the Agreement.

49. Third, clause 9 paras. 2 and 3 of the Agreement (as per the translation provided by the Appellant) state *"The Parties agree that any disputes arising out of this employment agreement … shall be settled by mediation procedures in the legal bodies of the RFU and the MFAR"* and *"If the Parties fail to settle the disputes by negotiations and/or in the legal bodies of the RFU and the MFAR, it shall be settled in accordance with the applicable laws of the Russian Federation"* (emphasis added). The term to "settle" is used several times, in connection with the dispute resolution or settlement procedure on the RFU legal bodies level as well as in connection with settlement in case the procedure on the RFU legal bodies level fails. Against this background, one would, acting reasonably, expect that the first part of clause 9 para. 3 deals with the condition *"if the Parties fail to settle … in the legal bodies of the RFU…"* and, then, the second part deals with the consequences of such failure *"… it shall be settled in accordance with the applicable laws of the Russian Federation"*, i.e. the parties shall proceed in accordance with the applicable laws of the Russian Federation - and not the parties shall apply the laws of the Russian Federation. Acting reasonably and in good faith, one would not expect that the parties wanted to mix procedure and governing law in the same sentence. The Sole Arbitrator also notes that the second part of clause 9 para. 3 in its original Russian version provides the term "рассмотрение" (rassmotrenie) which can be translated as *investigation* or *examination* (according to the laws of the Russian Federation) which also leads to the conclusion that clause 9 para. 3 of the Agreement is about procedure and not applicable laws.

50. The Appellant has not demonstrated that the applicable laws of Russia refer this kind of

disputes to arbitration before CAS.

51. The Sole Arbitrator concludes that the relevant provisions under the Agreement do not provide a sufficiently clear intent of the parties to exclude their disputes from resolution before state courts and to have, instead, an arbitration court resolve such disputes. Therefore, there is no space to apply the utility or benevolence principle according to which an understanding must be sought that allows to maintain an arbitration agreement (cf. also Swiss Federal Tribunal, decision 4A_244/202, no. 4.3). It is to be concluded that the parties did not want to exclude competence of the state courts, and that they rather wanted to maintain the competence of the state courts.

52. Against this background, the Sole Arbitrator holds that there is no valid arbitration agreement in place between the parties. Therefore, the CAS is not competent to hear the present case.

VII. MERITS

53. As the CAS is not competent the merits of this case are not to be discussed any further.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Court of Arbitration for Sport has no jurisdiction to decide the present case and the appeal filed by Sverdlovsk Regional Sports Public Fund "Mini-football club 'Sinara'" is therefore inadmissible.

2. (…).

3. (…).

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