Arbitration CAS 2013/A/3061 Sergei Kuznetsov v. FC Karpaty Lviv, award of 16 April 2014

Panel: Prof. Christian Duve (Germany), Sole Arbitrator

Football
Breach of a contract of employment
Res judicata and conditions for the modification of a final decision
Review by the CAS in the absence of a final, binding judgment on a specific question
Interpretation of a contract according to the Ukrainian Civil Code

1. **The plea of *res judicata* is based on the principle of public interest. It is intended to safeguard the certainty of rights which have already been adjudicated upon and defined by a judgment. According to the Swiss Federal Tribunal, this principle applies to a decision once it becomes final and cannot be contested by the parties or by the judicial body rendering this decision. Accordingly, *res judicata* precludes a subsequent decision about the same object, among the same parties, relying on the same facts and based on the same cause of action. However, a final decision might be modified subsequently in limited circumstances if a party to the decision requests the revision or interpretation thereof.**

2. **In the absence of a final, binding judgment on the question of what payments are due to the one of the parties, *res judicata* does not preclude review by the CAS.**

3. **According to Article 213 of the Ukrainian Civil Code, when interpreting a contract, i.e., "the consent to the deal", one should take into account the literal meaning of the terms as well as compare the relevant parties to the deal, common practice and previous negotiations, in order to discover the true intention of the parties.**

A. THE PARTIES

1. Mr Sergei Kuznetsov (the *Appellant* or the *Player*) is a professional football player of Ukrainian nationality. The Appellant was registered with the Ukrainian football club FC Karpaty from September 2008 until November 2011.

2. FC Karpaty (the *Respondent* or the *Club*, jointly referred to as the *Parties*) is a professional Ukrainian football club based in the city of Lviv, Ukraine, and affiliated with the Football Federation of Ukraine (the *FFU*).

B. FACTUAL BACKGROUND

3. The following summary presents an overview of the main facts relevant to the dispute. Further facts may be set out, where relevant, in connection with the legal analysis.

4. On 1 September 2008, the Respondent and the Appellant entered into an employment contract for three playing seasons from 1 September 2008 until 30 June 2011 (the *Employment Contract*).

5. According to Article 1.1 of the Employment Contract:

> *"In accordance with the terms of the Contract, the Club employs the Player and undertakes to pay him a salary and provide working conditions that are necessary for his performance of work as a professional player, provided by the laws of Ukraine and regulatory documents of the Club".*

6. Article 3.1.2 of the Employment Contract stipulates that the Player has the right to *"[e]xercise and acquire other rights provided by the regulatory documents of the Club, this Contract, statutory and other football rules and regulations in Ukraine and the current legislation of Ukraine".*

7. According to Article 3.2.7 of the Employment Contract, the Player undertakes to *"contact only the Club's medical service, and fulfil all requirements of the officials from the medical service"* in case of an illness or an injury.

8. In turn, according to Article 3.4.6 of the Employment Contract, the Club undertakes to *"[o]rganize a full medical service for the Player, control that execution of the Contract provisions would not harm his health".*

9. Article 4 of the Employment Contract stipulates that:

> *"4.1 The Player shall be paid a salary in the amount of* ***5,000.00 (five thousand) UAH*** *kopeks per month.*
>
> *4.2 The Player can receive some other bonuses and remuneration according to the results of his performance.*
>
> *4.3 If necessary, the Player can be provided with an official housing paid for.*
>
> *[…]*
>
> *4.7 For the terms of the Contract, the Player is subject to social insurance and social security services in accordance with the labor and social security laws of Ukraine.*
>
> *4.8 Deductions for the compulsory state social insurance, retention of tax from the Player's revenue and health insurance shall be held by the Club in accordance with the laws of Ukraine"* (Emphasis added).

10. Article 5.2 of the Employment Contract stipulates that the Parties are responsible for fulfilment of their duties in accordance with the laws of Ukraine. According to Article 5.3 of the Employment Contract, in the event of the Player's failure to perform his duties under the

Employment Contract, the Club has the right to reduce or deprive the Player of bonuses or remuneration, etc., in accordance with the applicable rules of the Club.

11. On the same day that the Parties entered into the Employment Contract, 1 September 2008, the Parties also concluded an agreement on additional payments (the *Agreement on Additional Payments*). According to the wording of the Agreement on Additional Payments:

> *"1. The Parties agreed to establish and pay to the Player on monthly basis a* ***personal increment in addition to the base salary in the amount of 9,000 (nine thousand) U.S. dollars*** *during the term of the personal Contract of the Player with the Club,* ***on condition of his play for the main squad of the Premier League team "Karpaty"****.*
>
> *2. When signing the personal Contract of the Player with the Club, the Club paid to the Player the remuneration in the amount of 50,000 (fifty thousand U.S. dollars).*
>
> *3. The Parties agreed on payment by the Club to the Player* [of] *the remuneration in the amount of 50,000 (fifty thousand) U.S. dollars in 2009 and 2010 in the period between 1st and 30th June of each year, on condition of the valid personal Contract of the Player with the Club and that in the previous competitive season he has played at least in 75%* [of] *official games of the main squad of the Premier League team "Karpaty".*
>
> *4. The Parties agreed on compensation of the Player's* ***expenses for renting housing*** *within the term of the personal Contract of the Player with the Club* ***in the amount of 300 (three hundred) U.S. dollars****.*
>
> *5. All calculations provided in paragraphs 1-4 of this Agreement shall be made in the national currency of Ukraine, in the amount equivalent to the specified sums in U.S. dollars.*
>
> *6. Payment of all mandatory fees from the sums obtained under paragraphs 1-4 of this Agreement shall be made by the Player on his own.*
>
> […]
>
> *9. This Agreement shall enter into force upon signing by the parties and repeal in the event of termination of the personal Contract of the Player with the Club"* (Emphasis added).

12. On 10 August 2010, the Parties extended the validity of the Employment Contract until 31 December 2011.

13. On 31 January 2011, the Player was severely injured during a friendly match played at the winter camp. In order to rehabilitate the Player's injured left Achilles tendon, the Club organised conservative therapy for him in February 2011.

14. In March 2011, the Club decided that further treatment for the Player should be provided by the medical service of FC Shakhtar Donetsk. From 3 to 31 March 2011, the doctors of FC Shakhtar treated the Player with *"grow factors"* therapy. This treatment consisted of injections of a special substance that enhanced growth of the injured tissues.

15. According to the Player, on 12 April 2011, he requested a referral for further medical treatment from Mr Dyminskyy, the Honorary President of FC Karpaty. The Player stated that the Club offered to cover his treatment abroad in exchange for an extension of his Employment Contract. Alternatively, according to the Player, the Club offered to cover the expenses of his medical treatment in Ukraine.

16. On 17 April 2011, the Player addressed a letter to the Respondent informing the Club that he had contacted a hospital in Germany and had submitted his MRT results. The Player stated that the hospital recommended urgent surgery. The MRT results revealed his ligaments were in a state of pre-rupture. Without surgery, the Player risked a complete rupture and a longer recovery period of eight or nine months, compared to the two or three months recovery period estimated after surgery. Further, the Player indicated that he was not ready to accept the offer to extend his Employment Contract and would have to undergo a surgery at his own expense. Finally, the Player noted that:

> *"Taking into account the said above, I notify the management of FC "Karpaty", as well as the Premier League, about the fact that on 18th April 2011, I am leaving for Germany to get prepared for the surgery, which is preliminary scheduled on 20th April 2011. According to the doctor's forecasts, I will be able to come back to the Club not earlier than on 24th April 2011".*

17. On 20 April 2011, the Club informed the Player that he was in breach of the Employment Contract due to his absence from the place of work and his application to a different medical service than that selected by the Club. The Club demanded the Player's immediate return and execution of his obligations under the Employment Contract. In addition, the Club informed the Player that financial and disciplinary sanctions would be imposed on him pending the results of the internal investigation.

18. On 23 April 2011, the Appellant underwent surgery in Germany at his own expense and returned to the Club two weeks later.

19. As of April 2011, the Club stopped making monthly payments of USD 9,000.00 to the Player as required by the Agreement on Additional Payments.

20. On 19 June 2011, the Player sent a letter to the Club stating that he had notified the Respondent on 15 June 2011 *"about the necessity of having a final consultation concerning the surgery made on* [his] *Achilles in the German clinic "Klinikum Bogenhausen""*, and that he had requested that the Club take him to the training camp in Germany with the main team. The Player further informed the Club that since he *"was not taken to the training camp,* [he] *had to go on* [his] *own to Germany to have a consultation and go through the final stage of* [his] *post-surgery rehabilitation in the period from 20th June to 2nd July 2011".*

21. On 21 June 2011, the Club issued an order imposing penalties on the Player in connection with his alleged violation of the Employment Contract *"that was manifested in the repeated self-willed absence from the location of the Karpaty team, absence from the workplace since 20th June 2011 and self-treatment without addressing the medical service of the Club".* The Club ordered the establishment of an individual training schedule for the Player and assigned an individual coach to him. In addition, the Club

decided to *"deprive Kuznetsov S.S. of the payment due to the Player under the Agreement on additional payments dated 1st September 2008 for the period up to 31.12.2011"* referring to Articles 3.3 and 5.3 of the Employment Contract.

22. In July 2011, the Player filed a claim with the Disciplinary Committee of the Ukrainian Premier League (the *Disciplinary Committee*) and requested (i) unilateral termination of the Employment Contract, (ii) payment of the outstanding wages, and (iii) reimbursement of the medical treatment expenses.

23. On 29 July 2011, the Disciplinary Committee reviewed the Appellant's complaint and a counter-claim filed by the Club on 21 July 2011. The Disciplinary Committee postponed the hearing of the dispute on the merits until the next meeting in order to provide the Parties with an opportunity to settle the dispute. In addition, the Disciplinary Committee indicated that this decision could be appealed to the Control and Disciplinary Committee of the FFU (the *CDC*).

24. The Player filed an appeal with the CDC requesting free agent status so that he might continue his professional career. On 4 August 2011, taking into account the Disciplinary Committee's decision to schedule the next meeting on 11 August 2011 and the end of the transfer period on 31 August 2011, the CDC instructed the Disciplinary Committee to review the dispute and to render a decision by 11 August 2011. In addition, the CDC instructed the Disciplinary Committee to provide the Parties with a written reasoning of the decision by 15 August 2011.

25. On 11 August 2011, the Disciplinary Committee reviewed the Appellant's complaint and the counter-claim and decided to postpone the hearing of the dispute on the merits until the next meeting. The Disciplinary Committee further instructed the Parties to clarify their requests for relief and to substantiate the requests with documentary evidence. In addition, the Disciplinary Committee indicated that this decision could be appealed to the CDC.

26. The Appellant filed an appeal before the CDC against the decision of the Disciplinary Committee dated 11 August 2011.

C. DECISION OF THE CDC DATED 22 AUGUST 2011

27. The CDC hearing took place on 18 and 22 August 2011. At its conclusion, the CDC rendered its decision (the *First CDC Decision*). The First CDC Decision ordered:

> 1. to dismiss the claim filed by the Player;
>
> 2. to partially satisfy FC Karpaty's demands and oblige the Player to return to the Club for the proper execution of the Employment Contract with FC Karpaty which was valid until 31 December 2011; and
>
> 3. to oblige FC Karpaty to establish conditions for the proper execution of the Employment Contract by the Player.

28. In reaching this decision, the CDC considered the statement of Mr Pastushenko, the team

doctor of FC Karpaty, who confirmed that the Player's medical condition worsened after the surgery in Germany, which the Club had not approved. In addition, the CDC noted that the Player did not provide any documentary evidence as to the payment agreements concluded with the Club or evidence of any outstanding payments. The CDC further noted that the Player was not available to perform his duties according to the Employment Contract as of mid-June 2011, thus violating terms of the Employment Contract. Accordingly, the CDC ruled that there was no basis for unilateral termination of the Employment Contract by the Player.

29. After the First CDC Decision was released on 4 October 2011, the Player travelled to the Club in order to offer his services. However, the Player also appealed the First CDC Decision before the Appeal Committee of the FFU (the *AC*).

D. DECISION OF THE AC DATED 14 NOVEMBER 2011

30. On 14 November 2011, the AC issued its decision (the *First AC Decision*). The AC decided unanimously to partially satisfy the appeal claim, changing the resolution of the First CDC Decision as follows:

> *"1. To terminate the Contract No 08/58 dated 1 September 2008 between Kuznetsov S.S. and FC "Karpaty" for the continuous improper execution of par. 3.4.6 of the Contract, and give Kuznetsov S.S. a status of free agent starting from 14 November 2011.*
>
> ***2. To oblige FC "Karpaty" to make full payments to Kuznetsov S.S. as of 14 November 2011, based on the provisions of the Contract and additional agreements and amendments thereto, including Agreement on additional payments dated 1 September 2008.***
>
> *3. To oblige FC "Karpaty" to pay Kuznetsov S.S. a compensation for his expenses related to elimination of health problems, monetary funds in the amount of 7,334.00 UAH and 11,731.53 EUR.*
>
> *4. To reject other claims of Kuznetsov S.S."* (Emphasis added).

31. When considering the Player's requests to terminate the Employment Contract unilaterally, grant him free agent status, order payment of the outstanding salary and compensate him for the medical expenses, the AC paid specific attention to the obligation of the Club to *"[o]rganize a full medical service for the Player, control that execution of the Contract provisions would not harm his health"* according to Article 3.4.6 of the Employment Contract. When evaluating the health of the Player, the AC found that the Club had not established that surgery in Germany was not necessary. It accepted the conclusion of the German medical specialists concerning the need for surgery. Accordingly, the AC held that the Player's claim for compensation for his medical treatment should be satisfied on the basis of Article 3.4.6 of the Employment Contract and Articles 8.2.4.a and 8.2.4.b of the FFU Regulations on the Status and Transfer of Football Players (the *FFU RSTP*).

32. In view of the Club's violation of the obligations stipulated in Article 3.4.6 of the Employment Contract and Articles 8.2.4.a and 8.2.4.b of the FFU RSTP, the AC terminated the Employment

Contract, granted the Player free agent status, and ordered the Club to make all payments to the Player up to the date of termination of the Employment Contract, in accordance with Article 9 of the FFU RSTP. Specifically, the AC ruled to *"oblige FC "Karpaty" to make full payments to Kuznetsov S.S. as of 14 November 2011, based on the provisions of the Contract and additional agreements and amendments thereto,* ***including the Agreement on additional payments dated 1 September 2008****"* (emphasis added).

33. The AC found that the Player *"failed to provide any undisputable evidence that Kuznetsov S.S. and the Club had reached an agreement on the increased salary"*.

34. In compliance with the First AC Decision, the Club reimbursed the Player for his expenses related to the surgery in Munich, Germany, in the amount of UAH 7,334.00 and EUR 11,731.53. The Club also paid the Player an additional USD 13,200.00, i.e. USD 9,000.00 for October, and an equivalent sum for November 2011, i.e. USD 4,200.00. In addition, the Club compensated the Player's apartment rental expenses for the time period of April 2011 until the unilateral termination of the Employment Contract on 14 November 2011, which amounted to USD 2,240.00. The Player was paid his basic salary of UAH 5,000.00 up to the point that the Employment Contract was terminated.

35. On 22 December 2011, the Player filed a complaint with the CDC claiming that the Respondent did not fully comply with the First AC Decision. The Player claimed he was owed an additional monthly amount of USD 9,000.00 for the months of April until September 2011, when he was unable to perform for the Club due to his injury. Accordingly, the Player demanded the outstanding payment of USD 54,000.00 (USD 9,000.00 per month for the time period April-September 2011) from the Club.

36. On 11 January 2012, the Player filed an additional complaint with the CDC demanding payment of USD 91,764.00 (USD 458.82 per day multiplied by 200 days of temporary incapacity of work). The daily rate of USD 458.82 was calculated as an average daily payment received by the Player from FC Karpaty for a period of the *"active labor activity"*. In making this calculation, the Player relied on Article 34 (4) of the Law of Ukraine "On the mandatory state social insurance with respect to accidents at work and professional disease" and regulations of "Procedure for calculation of average salary" which was approved by the Resolution of the Cabinet of Ministers of Ukraine No 100 dated 8 February 1995.

E. DECISION OF THE DISCIPLINARY COMMITTEE OF THE FFU DATED 12 APRIL 2012

37. In response to the Player's complaints, on 2 February 2012, the CDC requested the AC to provide an interpretation in relation to the execution of the First AC Decision.

38. On 17 February 2012, the CDC addressed a letter to the AC specifically requesting guidance on the execution of the point 2 of the First AC Decision, ordering:

> *"****2. To oblige FC "Karpaty" to make full payments to Kuznetsov S.S. as of 14 November 2011, based on the provisions of the Contract and additional***

agreements and amendments thereto, including Agreement on additional payments dated 1 September 2008".

39. On 23 February 2012, the AC provided the following answer to the CDC:

> *"1. The salary is paid for the executed work (Article 1 of Law of Ukraine "On remuneration of Labor", Article 94 of the Labor Code of Ukraine);*
>
> *2. For the executed work the salary is paid in particular in fixed form (pt. 1 art. 2 of law of Ukraine "On remuneration of labor");*
>
> *3. Extras belong to additional salary not the main one (pt. 2 art. 2 of law of Ukraine "On remuneration of labor");*
>
> *4. Extras are rewards, in particular, for special conditions of work (pt. 2 art.2 of law of Ukraine "On remuneration of labor");*
>
> *5. If the employee is obliged to undergo a medical treatment and receives instruction to undergo such treatment, his average salary for the time of his stay in the medical institution is preserved (Art. 123 of the Labor Code of Ukraine);*
>
> *6. A compensatory mechanism in regards to payments due to employee for the period of his temporary disability is provided by the law of Ukraine "On obligatory social insurance with respect to temporary disability and expenses related to the burial".*

40. On 12 April 2012, the CDC hearing took place. The CDC rendered a decision (the *Second CDC Decision*).

41. Taking into account the AC's guidance on the execution of the point 2 of the First AC Decision, the CDC came to the following conclusions:

> *"1. The Law of Ukraine "On obligatory social insurance with respect to temporary disability and expenses related to the burial" regulates order of salary payment for the period of temporary disability, accept for the cases when a temporary disability is caused by an accident at work or a professional disease.*
>
> *2. If temporary disability is caused by an accident at work or a professional disease the order of salary payment for the period of temporary disability is regulated by the norms of Law of Ukraine "On obligatory state social insurance against accidents at work and a professional disease that led to disability".*
>
> *3. According to pt. 4. art. 34 of Law of Ukraine "On obligatory state social insurance against accidents at work and a professional disease that led to disability", the financial aid in relation to temporary disability paid amounts to 100% of an average income (taxable income).*
>
> *4. The FFU AC decision dated 14 [November] 2011 confirmed that FC Karpaty Lviv has not fully executed conditions of Article 3.4.6 of the Contract No 08/58 dated 1 September 2008 with Kuznetsov S.S. in relation to the complete medical service of the football player as well as in relation to safeguarding*

that execution of the indicated Contract does not cause any harm to the health of the football player. […]*".*

42. In view of these conclusions, and taking into account Article 34 (4) of the Law of Ukraine "On obligatory state social insurance against accidents at work and a professional disease that led to disability", the CDC held that the Player's claim for outstanding payments during the period of his temporary disability was well-founded. Accordingly, the CDC decided that it was necessary *"to satisfy in full demands of Kuznetsov S.S."* and *"to oblige FC Karpaty Lviv to pay 91,764.00 U.S. Dollars to Kuznetsov S.S."* within ten days of the receipt of the Second CDC Decision in order to *"comply with point 2 of the AC decision dated 14 November 2011"*.

43. As a result the CDC ordered:

> *"1. To satisfy in full demands of Kuznetsov S.S. representative – Skoropashkin I.A. claim No 162 dated 11 January 2012.*
>
> *2.* ***With the purpose of execution of point 2 of the FFU AC decision dated 14 November 2011*** *to oblige FC "Karpaty" Lviv to pay 91,764 (ninety one thousand seven hundred sixty four) U.S. Dollars to Kuznetsov S.S.' benefit within 10 days from the receipt of this decision"* (Emphasis added).

44. The CDC did indicate that the Second CDC Decision could be appealed by the Parties to the AC within ten days of receipt of the Second CDC Decision.

F. DECISION OF THE APPEAL COMMITTEE OF THE FFU DATED 6 NOVEMBER 2012

45. On 11 June 2012, the Club filed an appeal against the Second CDC Decision with the AC. The Club requested that the AC annul the Second CDC Decision and reject the Player's request for relief. In addition, FC Karpaty requested that the AC order the Player to pay the Club compensation in the amount of UAH 5,000.00.

46. In its decision dated 6 November 2012 (the *Second AC Decision*), the AC summarised the Respondent's grounds for appeal as:

> *"1. Financial terms of the contract employment relations between FC "Karpaty" and the player were regulated by the following documents: Contract No 08/58 dated 1 September 2008, in accordance to which a salary amount of 5,000.00 UAH per month was fixed for the player and the Agreement on additional payments dated 1 September 2008, by which, along with other payments, a personal allowance in the amount of 9,000.00 USD was determined for the player in addition to the fixed salary; that personal allowance shall be charged and paid on condition that the player has played in the main squad of the Premier League of FC Karpaty team in the corresponding month (par. 1).*
>
> *2. Salary in the amount determined by the contract with charges and deductions of all taxes and fees required by the applicable legislation of Ukraine, had been paid to the player throughout the period of his employment relations with FC Karpaty, including – from the moment when the player went to*

Germany for medical treatment (18 April 2011) and up to 14 November 2011 (day of the player's dismissal from work) by means of cashless transfer to the bank card account of the player.

3. Reference of the FFU CDC to part 4, Article 34 of the Law of Ukraine "On compulsory state social insurance against accidents at work and professional diseases that lead to disability" is groundless, since it has no provisions under which we can conclude that there are reasons for the player to get payments under the compulsory state social insurance and it does not contain provisions in accordance to which we could draw a conclusion about the reasons of "paying out the unpaid sum". Also, the Appellant draws attention to the incorrect identification of the player's injury by the FFU CDC.

4. Regardless of which type of insurance referred to in this case, or "in connection with a temporary disability", or "work accident and professional disease that lead to a disability", principles of operation of both types of social insurance are identical and provide, firstly, that the exercise of any payment occurs exclusively in connection with occurrence of an insurance accident and at the expense of the relevant designated fund, and secondly, the need for a separate formal reason for payment and a separate procedure of taking the appropriate decision by the Fund on execution of such payments (such as the act of investigating an accident or the act of investigating professional disease and (or) the MSEC (the Medical-Social Expert Commission) conclusion about the degree of employability loss of the insured person – according to Article 13 of the Law No 21105, a sick leave certificate – in accordance with Part 1, Article 51 of the Law No 2240)".

47. The AC considered the Parties' positions as well as the AC's guidance on point 2 of the First AC Decision. In addition, the AC considered the CDC's reasoning in the Second CDC Decision. The AC noted that the CDC failed to take into account all relevant provisions of the applicable regulations. Specifically, the AC indicated that a precondition of payments according to both the Law of Ukraine "On the compulsory state social insurance against temporary disability and expenses related to burial" and the Law of Ukraine "On the mandatory state social insurance against accidents at work and professional disease that lead to disability" was the provision of the necessary documents (e.g. a sick leave certificate) by the injured person. The AC further noted that no such documents were submitted by the Parties to the record and were not available to the Player. Accordingly, the AC concluded that:

> *"[D]ue to the fact that materials of the case do not contain the said documents as well as any information that such documents are available to Kuznetsov S.S. or were submitted to FC Karpaty, point 2 of the decision of the FFU AC dated 14 November 2012 is so that it cannot be executed in connection with the failure of Kuznetsov S.S. to submit a complete set of documents confirming the occurrence of the insurance event".*

48. As a result, on 6 November 2012, the AC ordered:

> *"1. To satisfy the appeal of LLC "Professional Football Club 'Karpaty'" No348 dated 11 June 2012 [against] the decision of the FFU CDC dated 12 April 2012.*
>
> *2. To cancel the decision of the FFU CDC dated 12 April 2012, which satisfied the claim No 162 dated 11 January 2012 of Skoropashkin I.A., the representative of Kuznetsov S.S., and obliged FC Karpaty to pay 91,784.00 USD to Kuznetsov S.S.*

3. To make a new decision, which refuses in full satisfaction of requirements in the claim No 162 dated 11 January 2012 from Skoropashkin I.A., the representative of Kuznetsov S.S., about paying 91,764.00 USD (ninety one thousand seven hundred and sixty four) to Kuznetsov S.S..

4. To oblige Kuznetsov S.S. to pay in favour of FC Karpaty the paid cash contribution amounting to 5,000.00 UAH".

49. The Parties were notified of the Second AC Decision on 25 December 2012.

G. PROCEEDINGS BEFORE THE CAS

50. On 15 January 2013, the Player filed the Statement of Appeal before the Court of Arbitration (the *CAS*).

51. On 18 January 2013, the CAS Court Office informed the FFU of the appeal and invited the FFU to file an application to participate in the arbitration within ten days, if it intended to participate in proceedings.

52. The same day, the CAS Court Office acknowledged receipt of the Statement of Appeal. It advised the Parties that within ten days of the expiry of the time limit for Appeal, the Appellant should file a brief statement of the facts and legal arguments giving rise to the Appeal with CAS. The CAS Court Office advised the Parties that the Appellant requested the appointment of a Sole Arbitrator and that the Appellant had chosen English as the language of the arbitration

53. On 21 January 2013, the FFU informed the CAS Court Office that it did not intend to participate as a party in the arbitration.

54. On 23 January 2013, the CAS Court Office informed the Parties that the Respondent did not express its opinion as to the time extension requested by the Appellant. Furthermore, the CAS Court Office informed the Parties that the Deputy President of the CAS Appeals Arbitration Division invited the Appellant to file its Appeal Brief on or before 14 February 2013.

55. On 8 February 2013, the CAS Court Office informed the Parties that the Respondent failed to express its position on the Appellant's request for an appointment of a Sole Arbitrator within the granted deadline. The CAS Court Office further advised the Parties that the issue had been submitted to the Deputy President of the CAS Appeals Arbitration Division, who confirmed the Appellant's request.

56. On 14 February 2013, the Appellant submitted its Appeal Brief and requested an extension of seven days of the deadline to submit Annexes to the Appeal Brief, as the Annexes had not yet been completed.

57. On 15 February 2013, the CAS Court Office acknowledged receipt of the Appeal Brief as well as the request for an extension of the deadline to file Annexes. The CAS Court Office informed the Parties that the Respondent had until 19 February 2013 to object to the request.

58. On 26 February 2013, the CAS Court Office acknowledged receipt of the Appellant's exhibits filed on 18 February 2013 and further advised that within 20 days of receipt of the letter, the Respondent should submit its Answer.

59. On 27 February 2013, the CAS Court Office received a copy of a Power of Attorney from Mr Jorge Ibarrola in his capacity as legal counsel for the Respondent and the request to forward all further correspondence to counsel's offices in Switzerland.

60. On 1 March 2013, the CAS Court Office informed the Respondent that the Answer should be submitted to CAS within 20 days of receipt of the letter dated 1 March 2013.

61. On 15 March 2013, the CAS Court Office provided the Parties with a copy of the Statement of Independence signed by Prof Dr Christian Duve, who was appointed as Sole Arbitrator by the Deputy President of CAS Appeals Arbitration Division. The CAS Court Office further informed the Parties that, as per the Statement of Independence, Prof Dr Duve disclosed that he was acting as Chairman in another matter to which FC Karpaty was a party but that the matter was unrelated to the current issue. The Parties were further reminded that should there be any objections, a request of challenge should be filed within seven days after the grounds for the challenge became known.

62. On 26 March 2013, the CAS Court Office informed the Parties that no objections had been filed and the Panel had been constituted as follows:

    Sole Arbitrator: Prof Dr Christian Duve, attorney-at-law in Frankfurt am Main, Germany.

63. The same day, the Respondent requested an extension of the deadline to file its Answer until 5 April 2013.

64. On 28 March 2013, the CAS Court Office informed the Parties that the requested time extension was granted and it invited the Respondent to file its Answer on or before 5 April 2013.

65. On 9 April 2013, the CAS Court Office acknowledged receipt of the Respondent's Answer filed on 5 April 2013. The Parties were invited to submit to the CAS Court Office by 16 April 2013 their preference for either a hearing or for the Sole Arbitrator to issue an award solely on the Parties' written submissions.

66. On 18 April 2013, the CAS Court Office advised the Parties that the Sole Arbitrator had decided to hold a hearing.

67. On 13 May 2013, in response to the arguments put forward by the Respondent in its Answer, the Player filed an Additional Submission and named Mr Gataullin as a witness in support of the new submission.

68. On 17 May 2013, the CAS Court Office invited the Respondent to provide the CAS Court Office with its position regarding the admissibility of submissions made by the Appellant on 13 May 2013.

69. On 22 May 2013, the Respondent informed the CAS Court Office that the Club opposed the admissibility of the Appellant's Additional Submission dated 13 May 2013, as well as the new oral evidence upon which the Appellant intended to rely. The Respondent further asserted that there were no exceptional circumstances which justified the introduction of new arguments or evidence.

70. On 6 June 2013, the CAS Court Office informed the Parties that the Sole Arbitrator had decided neither to admit the Appellant's additional submissions of 13 May 2013 to the record nor to order the hearing of Mr Gataullin as witness. Furthermore, the Parties were invited to submit any regulatory provisions or decisions (of Ukrainian courts of bodies) upon which they intended to rely at the hearing on or before 20 June 2013. The Appellant was also invited to submit his written observations strictly regarding the Respondent's complaint that CAS lacked jurisdiction over the Appellant's requests for relief No 2 and 4 on or before 20 June 2013.

71. On 18 June 2013 and after having duly consulted the Parties, the CAS Court Office informed the Parties that they were called to appear at the hearing to be held on Monday 22 July at 9:30 a.m. at the CAS Headquarters.

72. On 20 June 2013, the Appellant filed a Submission of Appellant on Customary Law with the CAS Court Office in addition to the information requested by the Sole Arbitrator on 6 June 2013. The Player also named two new witnesses, Mr Gataullin and Mr Kharitonchuk, in support of the new submission.

73. On 21 June 2013, the CAS Court Office acknowledged receipt of the Appellant's letter dated 20 June 2013 and confirmed that it had not received any response to the CAS letter dated 6 June 2013 from the Respondent.

74. On 5 July 2013, the CAS Court Office provided the Parties with a copy of the Order of Procedure and requested that the Parties sign and return a copy of the Order to the CAS Court Office within one week. In regards to the Appellant's submission of 20 June 2013, the CAS Court Office requested that the Appellant submit reasons justifying the admission of the Appellant's submission so late in the proceedings by 8 July 2013. The Respondent was granted an opportunity to raise any objections to the admissibility of such submission within five days of receipt of the Appellant's response.

75. On 11 July 2013, the CAS Court Office advised the Parties that the Appellant failed to submit reasons justifying the admission of his submissions of 20 June 2013 by the deadline. The Respondent was granted the opportunity to raise any objections to such admission within five days of receipt of the letter.

76. On 16 July 2013, the Respondent informed the CAS Court Office that it opposed the admissibility of the 20 June 2013 submission. The Respondent deemed the submission to be materially similar in both content and language to the Appellant's additional submission dated 13 May 2013. Furthermore, the Respondent stated that the submission was supplementary to the arguments submitted in the Appellant's Appeal Brief of 14 February 2013 and that no exceptional circumstances allowed the Appellant to supplement or amend its request or

argument.

77. The same day, the CAS Court Office received the Order of Procedure signed by the Appellant.

78. On 17 July 2013, the Respondent informed the CAS Court Office that it maintained its objection to the Appellant's submissions dated 20 June 2013 and to the admissibility of evidence the Appellant proposed therein. The Respondent also provided the CAS Court Office with a signed copy of the Order of Procedure.

79. On 18 July 2013, the CAS Court Office informed the Parties that the Sole Arbitrator found that the Appellant failed to establish the exceptional circumstances required to justify the late filing of the Submission of Appellant on Customary Law of 20 June 2013. Thus, the Sole Arbitrator excluded it from the CAS file as far as it exceeds the instructions given in the CAS Court Office letter of 6 June 2014. Furthermore, the Sole Arbitrator declined to hear Mr Gatuallin or Mr Kharitonchuk at the hearing. The Sole Arbitrator authorised Mr Kononov's participation in the proceedings via Skype and requested the Appellant provide four copies of a complete translation of the Law of Ukraine on Compulsory State Social Insurance in cases of Accidents at Work and Professional Diseases that lead to Disability. The Parties were provided with a copy of the hearing schedule.

H. SUBMISSIONS OF THE PARTIES

80. The following outline of the Parties' positions is illustrative and does not comprise every contention put forward by the Parties. The Sole Arbitrator has, however, considered all the submissions made by the Parties, even absent specific reference to those submissions in the following summary.

I. Submissions of the Player (Appellant)

81. In his Statement of Appeal filed on 14 January 2013, the Appellant requests the CAS to:

(i) set aside the decision of the Appeals Committee of the Football Federation of Ukraine dated 6 November 2012;

(ii) render a new decision ordering the Respondent (i) to pay to the Appellant outstanding wages, (ii) to reimburse the Appellant's medical treatment expenses and (iii) to pay compensation for breach of the Employment Contract without just cause in the total amount of USD 107,116.00;

(iii) order the Respondent to pay interest at the rate of 5% (Swiss Code des Obligations) as from the day of the breach of the Employment Contract;

(iv) order the Respondent to pay all the costs of the arbitration proceedings; and

(v) order the Respondent to pay the Appellant the amount of EUR 5,000.00 *"as for helping it regarding the costs and legal fees incurred and to be incurred in the present appeal procedure"*.

82. On 14 February 2013, the Appellant filed its Appeal Brief requesting the CAS to:

(i) overturn the Appeals Committee of the Football Federation of Ukraine decision of 6 November 2012;

(ii) condemn Respondent to be liable for the unilateral termination of the Employment Contract without just cause;

(iii) condemn the Respondent to reimburse unpaid salaries for the period of his temporary disability to the Player in the amount of USD 56,700.00 or equivalent in UAH;

(iv) condemn the Respondent to pay compensation for unilateral termination in the total amount of USD 45,000.00 or equivalent in UAH; and

(v) *"condemn the Respondent to help Player's expenses for legal aid in the amount of 8000 USD"*.

83. In the Appeal Brief, the Appellant claims that the Club failed to pay the Appellant his additional salary under the Agreement on Additional Payments amounting to USD 9,000.00 monthly between April and September 2011. Furthermore, the Player maintains that the Club breached the Employment Contract and should therefore be ordered to pay compensation for the unilateral termination of the Employment Contract without just cause as well as reimbursement for *"unpaid salaries for the period of temporary disability"*.

84. The Player asserts that according to Article 34 (4) of the Law of Ukraine "On compulsory state social insurance against accidents at work and professional diseases that lead to disability" *"allowance for a temporary disability shall be paid at the rate [of] 100% of the average earnings (taxable income)"*. The Appellant states that the Club paid social duties from the monthly salary stipulated in the Employment Contract amounting to UAH 5,000.00. However, according to the Player, the Club should pay 100% of his salary, which he claims includes monthly payments under the Agreement on Additional Payments. The Player argues that it is common practice in Ukraine that in case of an injury of a player, a *"full"* salary (*"including USD 9,000.00"*) shall be paid.

85. The Player disagrees with the Respondent's argument that the Agreement on Additional Payments requires the Club to pay the Player USD 9,000.00 only for those months that he performs "for the main team". The Player stipulates that prior to joining FC Karpaty his monthly salary with the Russian Club FC Nostra amounted to USD 10,000.00. Accordingly, the Player argues that he could not have accepted a contract with a base salary of approximately EUR 500.00 (i.e. UAH 5,000.00) as suggested by the Respondent. The Player maintains that a precondition of performance for the main squad for the payment of salary has a potestative character, is illegal and should therefore be disregarded.

86. In addition, the Player asserts that the Club acted in bad faith by introducing such a condition to the Agreement on Additional Payments and further, by not providing him with the required medical treatment. As a consequence, the Player argues, the Club should be ordered to pay

compensation for its unilateral termination of the Employment Contract according to Article 10 (4) of the FFU RSTP.

87. Specifically, the Player requests an amount which remained unpaid due to the Club's breach of the Employment Contract as of 14 November 2011, namely salary for the remaining 1.5 months of the Employment Contract's validity, i.e. EUR 500.00 + USD 9,000.00 + USD 300.00 (apartment compensation) x 1.5 = approx. USD 15,000.00.

88. In addition, the Appellant invokes *"the specificity of sport criteria as club acting in bad faith put the Player and his family in a difficult financial situation. To discourage this misbehaviour of the club in future, we ask the CAS to appoint additional compensation in the amount of 3 months' salary, i.e. 30,000.00 USD"*.

89. Finally, the Appellant argues that *"according to the principle pacta sunt servanda, the Player is entitled to receive unpaid salaries for April – September 2011 in the total amount of 6 x 9,000.00 USD + 300 [USD] (apartment compensation) = 56,700.00 [USD]"*. In this respect, the Sole Arbitrator notes that the outstanding payments for this period amount to USD 55,800.00 (6 x USD 9,000.00 and 6 x USD 300.00) and not USD 56,700.00, the amount according to the Player's calculation in the Appeal Brief.

II. Submissions of the Club (Respondent)

90. In its Answer, the Respondent requests that the Sole Arbitrator reject the Appellant's appeal in its entirety, to confirm the decision issued by the AC dated 6 November 2012 and to order the Appellant to pay all costs of this arbitration, including the costs which the Respondent has incurred in the arbitration, in an amount to be determined at the discretion of the Sole Arbitrator.

91. The Club claims that although the CAS exercises jurisdiction over other aspects of the dispute, the CAS has no jurisdiction over the Appellant's prayers for relief No 2 and 4, which concern the question of the Respondent's liability for unilateral termination of the Employment Contract without just cause and requested the Respondent pay compensation for the unilateral termination of the Employment Contract, respectively. The Respondent maintains that request No 2 is inadmissible, since the issue of liability for the unilateral termination of the Employment Contract was not finally decided in the previous instances. The Respondent asserts the same reasoning applies to the Appellant's request for compensation for the Respondent's unilateral termination of the contract without just cause (request No 4), which the Respondent argues was never raised by the Player at any stage of the FFU proceedings.

92. As to the merits of the dispute, the Club maintains that the Player was already paid his complete salary according to the Employment Contract and was not entitled to any further payments in accordance with the Agreements on Additional Payments. In addition, the Club maintains that the Player cannot be paid an allowance for temporary disability because he *"did not file the proper documentation with his employer, FC Karpaty, and, therefore, the latter could not request it from the competent Social Insurance Fund"*. Finally, the Club argues that FC Karpaty is not obliged to pay any further amounts to the Player in addition to those already paid in compliance with the First AC Decision.

93. Specifically, the Club argues that the Employment Contract is the only contract which must be taken into account when calculating salary payments for the period of temporary disability. The Club argues that additional payments of USD 9,000.00 under the Agreement on Additional Payments were only payable to the Player in case he was *"fielded"*. Accordingly, the Club maintains that *"the second part of the remuneration is clearly a bonus contingent upon the Player's actually playing with the FC Karpaty's first team"*. The Club asserts that this condition was not a potestative one and was clearly agreed to by the Parties and previously uncontested by the Player. Finally, the Club maintains that there is no customary rule in Ukrainian Football that supports the Player's request for additional amounts regulated by the Agreement on Additional Payments in case of an injury.

94. The Respondent denies the Player's allegations that the Club acted in bad faith. The Respondent notes it offered the Appellant proper medical assistance and that the Player himself decided to take care of his medical situation personally despite the Respondent's instructions. As to the assertion that the Respondent committed extortion by making the availability of medical care contingent on the Appellant signing an extension of his Employment Contract, the Respondent notes that no proof of any extortion was ever filed by the Appellant before the competent instances of the FFU.

95. Finally, the Respondent maintains that the Appellant failed to prove his temporary disability with a valid documentation and is not entitled to request any additional compensation in this regard.

I. HEARING

96. A hearing was held on 22 July 2013 in Lausanne, Switzerland.

97. In addition to the Sole Arbitrator and Ms Olga Troshchenovych, *ad hoc* clerk, the following persons attended the hearing:

(A) For the Appellant:

- Mr Kuznetsov, the Appellant (*via* Skype);

- Mr Dmytro Korobko, legal counsel to the Appellant;

- Ms Yeva Abramyan, interpreter;

- Mr Kononov, witness called by the Appellant (*via* Skype).

(B) For the Respondent:

- Mr Taras Pankevych, legal counsel to the Respondent;

- Mr Jorge Ibarrola, legal counsel to the Respondent;

- Mr Nazar Girskyy, advisor to the Respondent;

- Ms Natalie St Cyr Clarke, intern at Libra Law, counsel to the Respondent;

- Mr Pastushenko, witness called by the Respondent (*via* Skype).

98. Each witness heard by the Panel was invited by the Sole Arbitrator to tell the truth and was reminded of the possible consequences of untruthful statements. Each Party and the Panel had the opportunity to examine and cross-examine witnesses and present their arguments. Both Parties agreed that there was no need to examine Mr Pylypenko, witness for the Respondent, in relation to the questions of social security. The Parties did not raise any objections as to the procedure and confirmed that their right to be heard had been respected.

99. In addition, during the hearing the Appellant referred to an interview on 19 July 2013 by Mr Dedyshyn of FC Karpaty concerning salary payment to another player, as well as to a 18 July 2013 FFU decision rendered in a dispute between FC Karpaty and one of the players. The Appellant stated that he would file a substantiated request to admit this evidence to the record after the hearing.

J. SUMMARY OF TESTIMONIES

100. The following summary of testimonies is an overview of statements made during the hearing. The Sole Arbitrator has carefully considered in its deliberations complete testimonies and arguments presented by the Parties, even if they have not been specifically summarised below or otherwise appear in this award.

I. Statement of Mr Kuznetsov, the Appellant

101. The Player testified that as of the moment he left for Munich to undergo medical treatment, the Respondent stopped paying him his full salary. The Appellant stated that he had received a monthly payment of UAH 4,000 after taxes but the Club had ceased paying the additional payment of USD 9,000.00.

102. The Player further testified that it was standard procedure within the Club for players to be paid incomplete salaries if, for example, if the president of the Club was not satisfied with the player's performance.

103. The Appellant testified that after treatment of his injury with FC Shakhtar, there were no other opportunities to obtain adequate treatment in Ukraine and, therefore, he decided to go abroad. The Player further stated that Mr Dyminskyy of FC Karpaty would have agreed to pay compensation for such a treatment only if the Player had signed a contract extension.

104. The Appellant explained that he returned to the Club after the surgery and continued to play for the Respondent in compliance with the First CDC Decision. The Player further reiterated that he had applied for the unilateral termination of the Employment Contract and had requested free agent status due to the Club's failure to pay his complete salary.

105. In addition, the Appellant testified that it was normal practice at that time for players to have two different contracts with the Club. However, according to the Appellant, other players who sustained injuries received full payment of their salaries from to both contracts during the period of their injury.

106. Finally, the Appellant could not explain the exact calculation of the amounts he claimed from the Club, but indicated that his intention was to receive the outstanding salary payments for the six months of his employment when FC Karpaty had stopped paying his complete salary under both contracts.

II. Testimony of Mr Kononov

107. Mr Kononov, the former coach of FC Karpaty, testified that he worked for the Club from 2008-2011 and had personally selected the Appellant for the team. At the time of the hearing, Mr Kononov was employed as a Director General of FC Sevastopol, the club the Player was playing for.

108. Mr Kononov confirmed that players of FC Karpaty usually received their complete salary in the event of an injury, but that the Appellant had not received his full salary. Mr Kononov stated that he had not been aware of any other players that had not received their full salaries including the additional amount. However, according to Mr Kononov, the players could be deprived of bonus payments if they failed to obtain a specific placement in the championship or win a match.

109. Mr Kononov stated that, in his opinion, the conflict between the Appellant and the Respondent had been caused by the Appellant's refusal to sign the contract.

III. Testimony of Mr Pastushenko

110. Mr Pastushenko, the team doctor of the Club, testified that the Player had received the so-called conservatory treatment for his injury on 31 January 2011. According to Mr Pastushenko, the Player was then sent to FC Shakhtar Donetsk after the doctors failed to obtain satisfactory results in Lviv.

111. Mr Pastushenko testified that the Player had received a special injection in Donetsk – a growth factor prepared from his own blood. Mr Pastushenko testified that the Player had been treated until 31 March 2011 and should then have been closely monitored for 45 days before starting rehabilitation after 15 May 2011. Mr Pastushenko maintained that the doctors of the Club had not received any recommendations from the medical experts of FC Shakhtar Donetsk in relation to a surgery.

112. According to Mr Pastushenko, a month and a half after surgery, the MRI and the ultrasound diagnostics showed an inflammation of the Player's Achilles tendon. This indicated that additional treatment was required. In Mr Pastushenko's view, the Player could have recovered faster, by 15 May 2011, if he had not undergone surgery in Germany.

K. POST-HEARING PROCEEDINGS

113. On 13 August 2013, the Appellant submitted an extract of an interview of Mr Dedyshyn, Director General of FC Karpaty, published on FC Karpaty's official website on 19 July 2013 concerning the full payment of salary to the football player Mr Oschipko (a third party) during his sick leave. In addition, the Appellant submitted an operating part of the FFU's Dispute Resolution Chamber (the *DRC*) award in the case Mr Cristobal Marquez Crespo vs. FC Karpaty, dated 17 July 2013 (the *Cristobal Award*). The Appellant indicated that in the event the CAS accepted the award, the Appellant would circulate the entire award as soon as it has been communicated to the Parties. Finally, the Appellant indicated that the above-mentioned documents had not been available to him before the hearing date. Therefore, the Appellant requested the Panel accept the new evidence in light of these exceptional circumstances and in accordance with Article R56 of the CAS Code.

114. On 15 August 2013, the Sole Arbitrator invited the Respondent to comment on the Appellant's request.

115. On 26 August 2013, the Respondent opposed the admissibility of the Appellant's submission of 13 August 2013. The Respondent asserted that the Appellant had failed to establish any exceptional circumstances in accordance with Article R56 of the CAS Code. First, the Appellant had failed to provide the documents in a timely fashion, as documents had been available before the hearing and well before the date of the official request (filed three weeks after the hearing). Second, the Respondent claimed that the submitted documents were *"not pertinent in any way to the case at hand"*.

116. On 24 September 2013, the Sole Arbitrator accepted the new evidence (the operating portion of the FFU DRC award and the interview with Mr Dedyshyn) submitted by the Appellant in light of the dates of these documents (17 and 19 July 2013 respectively) and the fact that the Appellant had previously announced his intention to submit them to the record during the hearing.

117. On 30 September 2013, the Appellant submitted the full version of the Cristobal Award dated 17 July 2013. The Sole Arbitrator invited the Respondent to submit its observations on this award.

118. On 11 October 2013, the Respondent filed its observations in relation to the new evidence accepted on 24 September 2013. The Respondent argued that the Cristobal Award concerned the specific situation of a particular player and thus did not prove the existence of a custom or obligation within the Club to pay players during their sick leave. The Respondent further maintained that the respective contracts between the players (the Appellant and Mr Oschipko) on the one side, and the Club on the other side, were not identical and therefore comments made in relation to one contract had no bearing on the other. The Respondent reiterated that the Appellant and FC Karpaty contracted, under the Agreement on Additional Payments, to condition the payment of personal extras upon certain requirements being fulfilled. According to the Respondent, this was not the case in relation to the player Mr Oschipko, who was mentioned in the interview. Finally, the Respondent argued that the issue of payment of

"personal extras" was not within the scope of competence of the Sole Arbitrator. In Respondent's view, the Sole Arbitrator was precluded from reviewing this issue due to the res judicata principle.

119. On 17 October 2013, the Appellant filed his comments on the Respondent's submission dated 11 October 2013. Specifically, the Appellant provided comments in relation to the interview with Mr Dedyshyn of FC Karpaty concerning the full salary payment to the player Mr Oschipko during his sick leave. The representative of the Appellant stated it was coincidental that he also serves as a legal representative of Mr Oschipko. The Appellant stated that *"he is not entitled by (his) client to disclose the contents of the contract, but Mr Oschipko allowed to me to give some general remarks in the present case about the contract of Mr Oschipko with the Respondent"*.

120. The Player further argued that the Respondent would have deceived the CAS by stating that the contracts were not necessarily uniform and requested that the Panel invite the Respondent to produce as new evidence the labour contract between FC Karpaty and Mr Oschipko dated 27 July 2010, on the basis of Article R44.3 of the CAS Code.

121. The Appellant maintained that information concerning salary payments to Mr Oschipko during his sick leave became available to the Appellant only upon the publication of the interview with Mr Dedyshyn on 19 July 2013. On the basis of these circumstances, the Appellant requested the CAS allow this new evidence on the basis of Article R56 of the CAS Code in view of the exceptional circumstances so that both contracts could be compared.

122. On 18 October 2013, the CAS Court Office invited the Respondent to submit its observations in relation to the Appellant's evidentiary request.

123. On 23 October 2013, the Club opposed the admissibility of the evidence proposed by the Appellant. The Respondent argued that there were no exceptional circumstances within the meaning of Article R56 of the CAS Code that would justify admission of the new evidence at this late stage of the proceedings. The Club further indicated that, given that the Appellant's counsel was also counsel to Mr Oschipko, the Appellant must have had access to the evidence prior to admission of the interview to the file. Accordingly, the Respondent argued that the contract could have been produced at an earlier stage of the proceedings. Finally, the Club argued that *"the issue of personal extras in this case is subject to* res judicata*"*. The Respondent asserted that the present case must be decided solely according to Ukrainian legislation and the contract between the Appellant and the Respondent.

124. On 6 November 2013, the Sole Arbitrator requested counsel to the Appellant to inquire with his other client, Mr Oschipko, whether Mr Oschipko would agree to disclose a blackened version (no monetary amounts or any other confidential personal information) of the section of his contract related to additional monthly payments. The Sole Arbitrator confirmed the disclosed section would be kept confidential by the Sole Arbitrator and other parties to these proceedings.

125. On 11 November 2013, the Appellant informed the Sole Arbitrator that Mr Oschipko had provided his consent to disclose a blackened version of the contract with FC Karpaty.

126. On 19 November 2013, the Sole Arbitrator invited the Appellant to produce the blackened copy of the contract between Mr Oschipko and FC Karpaty. The Sole Arbitrator noted Mr Oschipko's contract could be relevant to interpreting of the contract between the Parties if both contracts contain identical clauses. The Sole Arbitrator further noted that the decision to admit a portion of Mr Oschipko's contract was without any prejudice as to the Sole Arbitrator's final decision in relation to the res judicata arguments raised by the Respondent.

127. On 21 November 2013, the Appellant submitted a blackened version of the labour agreement between Mr Oschipko and FC Karpaty.

128. On 22 November 2013, the Respondent informed the Sole Arbitrator that Mr Oschipko had cancelled the Power of Attorney held by Mr Korobko, the Appellant's counsel. The Respondent submitted a copy of the registration of withdrawal of Power of Attorney which was previously granted by Mr Oschipko to the Appellant's counsel. In order to *"avoid that the CAS receives illegal evidence from Mr Korobko"*, the Respondent requested that Mr Korobko provide the CAS with written confirmation by Mr Oschipko that the latter had actually given his consent to disclose the version of the Employment Contract with FC Karpaty.

129. On 28 November 2013, the CAS Court Office invited the Appellant to comment on the admissibility of the new documents submitted by the Respondent as well as to provide observations on the Respondent's allegations.

130. On 29 November 2013, the Appellant informed the Sole Arbitrator that the Power of Attorney did not concern the representation of Mr Oschipko before CAS, but rather, the representation of Mr Oschipko in a dispute with FC Karpaty before the FFU. In addition, the Appellant argued that his Counsel became aware of the withdrawal of the Power of Attorney only from the Respondent's correspondence. In addition, the Appellant noted that the withdrawal was dated 21 November 2013, 18:05. A copy of the labour agreement was provided to the CAS on 21 November 2013 at 11:40. The Appellant assured the Sole Arbitrator that the disclosure of the labour agreement had been made in good faith.

131. On 3 December 2013, the Respondent reiterated its request that:

> *"Mr Korobko provides evidence that Mr Oschipko has given his consent to the production of the contract and thus affirm that the Appellant has not acted illegally by producing the contract. Even if the contract was produced before Mr Korobko became aware of the termination of the PoA, Mr Oschipko's continued consent to the production of the contract must still be proven"*.

132. On 18 December 2013, the Sole Arbitrator informed the parties that, after having inquired this issue, the third party consent was not required and invited the Respondent to comment on the merits of the labour agreement by 23 December 2013.

133. By letter of 23 December 2013, the Respondent filed the requested comments and reserved its right with respect to the admissibility of this agreement.

L. CAN THE SOLE ARBITRATOR ACCEPT AND CONSIDER THE EMPLOYMENT CONTRACT BETWEEN MR OSCHIPKO AND FC KARPATY?

134. In light of the Appellant's submission of a blackened version of the labour agreement between Mr Oschipko and FC Karpaty on 21 November 2013, and the Respondent's subsequent requests for written consent by Mr Oschipko, the Sole Arbitrator made an inquiry into the issue of third party consent to the production of documents. In the Procedural Order dated 18 December 2013, the Sole Arbitrator considered the Appellant's request to submit Mr Oschipko's contract as an example of a similarly situated player who was paid his full salary during the time he was injured. In response, the Respondent contended that the third party contract could not be admitted unless the Appellant provided further evidence of Mr Oschipko's consent.

135. The Sole Arbitrator found that third party consent is not explicitly required by the CAS Rules, International Bar Association Rules (the *IBA Rules*) or the Swiss Rules of International Arbitration (the *Swiss Rules*) though, even if consent was required, the record suggests Mr Oschipko has done so (1.). While confidentiality of sensitive information is a concern, the redacted contract is sufficiently protective of Mr Oschipko's privacy and the Respondent has never raised this issue (2.).

1. Consent of a third party

136. Neither the CAS Rules, the IBA Rules nor the Swiss Rules directly address the question of consent for the submission of evidence in the control of a third party. While the IBA Rules and Swiss Rules are not directly applicable to the present proceedings, they could serve as guidance to the Sole Arbitrator given their international acceptance.

137. Article 3.9 of the IBA Rules concerns production of a document possessed by a person who is not a party to the arbitration. If the party who seeks the document *"cannot obtain the document on its own"*, it may ask the tribunal to *"take whatever steps are legally available to obtain the requested documents, or seek leave from the Arbitral Tribunal to take such steps itself"*. The tribunal will then consider whether (i) the document is relevant to the case and material to its outcome, (ii) applicable requirements of Article 3.3 have been satisfied and (iii) any reasons for objection listed in Article 9.2 are present. Based on this determination, the tribunal may order any party to the arbitration to take such steps as the tribunal considers appropriate (see International Bar Association Rules on the Taking of Evidence in International Arbitration 2010 (IBA Rules), Article 3.9). This rule illustrates the general practice of placing significant discretion with the tribunal to accept evidence from third parties if it is relevant and material to the case.

138. Similarly, the Commentary to the IBA Rules notes that the arbitration laws of different jurisdictions permit a tribunal to take varied approaches to obtaining evidence held by third parties. Therefore, the Rules leave open any option that is legally available within that jurisdiction and empower the tribunal to either pursue third party evidence itself or order a party to do so (see Commentary on the revised text of the 2010 IBA Rules on the Taking of Evidence in International Arbitration, p 11).

139. As with the IBA Rules, the Swiss Rules of International Arbitration do not directly treat the current issue. Under the Swiss Rules, a tribunal may request any evidence it considers relevant to the dispute (whether in the possession of a party to the arbitration or a third party) and is free to determine the admissibility, relevance, materiality and weight of that evidence (see BERGER/KELLERHALS, *International and Domestic Arbitration in Switzerland,* 2nd ed (2010), pp 343, 354). In making such determinations, a tribunal should be guided by the principles of equality and good faith as well as considerations of procedural economy, proportionality, fairness, and commercial or technical confidentiality or legal privilege (see Swiss Private International Law Statute, Article 182 (3) (*"PILA"*); Swiss Code of Civil Procedure, Article 373 (1) (the *"CCP"*)).

140. While a tribunal lacks the power to compel an unwilling third party to produce a document (see PILS, Art. 184(2) and CCP, Art. 375(2)), this is not the situation at hand. Instead, a Party to the proceedings has produced a document, the document is relevant to the case and material to its outcome and the privacy of the third party is adequately protected. Furthermore, though neither the CAS Rules, IBA Rules nor Swiss Rules explicitly require third party consent, it was nonetheless provided by Mr Oschipko when he allowed the Appellant to deliver general remarks on the subject and later, to submit a blackened version of the document itself.

141. Even if, as the Respondent argues, Mr Oschipko's withdrawal of Power of Attorney from Mr Korobko affected the admissibility of the document (which is not indicated by the CAS, IBA or Swiss Rules), Mr Oschipko did so only after the labour agreement was produced to the Arbitral Panel. (As noted in para 131, the Sole Arbitrator received the agreement over six hours before the time and date of the withdrawal.)

142. Thus, the Sole Arbitrator exercised the "broadly accepted" right granted by both the IBA Rules and the Swiss Rules to admit such evidence (BERGER/KELLERHALS, *International and Domestic Arbitration in Switzerland,* 2nd ed (2010), 345). The Sole Arbitrator is satisfied that the information already on file confirms Mr Oschipko's consent and that the confidentiality of the agreement is sufficiently protected to warrant admission of the labour agreement.

2. Confidentiality of sensitive information

143. The Respondent cited confidentiality concerns as a basis for withholding the contract from the arbitration. However, the Sole Arbitrator is satisfied that sufficient protections are built into rules of arbitration to ensure the confidentiality of sensitive information in this case. Moreover, the Sole Arbitrator's orders for production and instructions to the parties similarly protected the confidentiality of the labour agreement.

144. Article 9.2(b) of the IBA Rules allows evidence to be admitted (in accordance with the other grounds for objection listed in Article 9.2) unless the tribunal determines a *"legal impediment or privilege under the legal or ethical rules determined by the Arbitral Tribunal"* exists and applies. Furthermore, Article 3.13 establishes additional confidentiality protections for evidence admitted to the arbitration. It confirms that documents produced – whether by a party or non-party – are to be kept confidential and used only in connection with the arbitration (see IBA Rules, Article 3.13).

145. In addition to the confidentiality provisions of various arbitration rules, the Sole Arbitrator limited the admission of the contract solely to the section relevant to the current dispute. Before inviting the Appellant to produce a copy of this section, the Sole Arbitrator ordered that all monetary amounts and personal information be redacted. Lastly, the Sole Arbitrator instructed the parties to maintain the confidentiality of the contract and limit its use to the current arbitral proceedings.

146. It is of note that the Respondent, in its submission dated 23 October 2013, did not invoke confidentiality in relation to the production of the labour agreement. Instead, the Respondent relies solely on its request that Mr Korobko provide evidence of Mr Oschipko's consent to the production of the document. However, as noted in detail above, such a requirement does not appear explicitly in the CAS, IBA or Swiss Rules. Nonetheless, even if Mr Oschipko's consent was required, the Sole Arbitrator is satisfied that such consent has been granted based on the information already on file.

147. For these reasons, the Sole Arbitrator is satisfied that the confidentiality of sensitive information contained in Mr Orshipko's labour agreement is assured for the purposes of these proceedings. The Sole Arbitrator, in the Procedural Order dated 18 December 2013, invited the Respondent to comment on the merits of the produced employment contract. The Sole Arbitrator also admitted the registration of Mr Oschipko's withdrawal of the Power of Attorney submitted by the Respondent on 22 November 2013.

148. On 23 December 2013, the Respondent submitted its comments on the merits of the produced employment contract. In particular, the Respondent submitted that the contract had no relevance to the present dispute on the ground that *"every contract must be considered individually and any agreement reached by parties to another contract is neither binding nor beneficial to anyone who is not a party to the same"*. In addition, the Respondent maintained its objection to the admission of the contract on the basis that there was no *"clear evidence that Mr Korobko obtained his former client's consent to disclose the employment contract, in spite of his fundamental confidentiality obligation"*.

M. JURISDICTION OF CAS

149. The competence of CAS to hear an appeal stems from Article R47 of the CAS Code, which in its relevant part stipulates:

> *"An appeal against the* ***decision of a federation****, association or sports-related body may be filed with the CAS insofar as* ***the statutes or regulations of the said body so provide*** *or as the Parties have concluded a specific arbitration agreement and insofar as* ***the Appellant has exhausted the legal remedies available to him prior to the appeal****, in accordance with the statutes or regulations of the said sports-related body"* (Emphasis added).

150. As for the first two conditions of Article R47, the appeal filed by the Player is directed against the Second AC Decision, thus, against a decision of a federation. Second, the regulatory basis for the appeal before CAS against a decision of the AC is explicitly provided by Article 51 of the FFU Statute:

> *"Court of Arbitration for Sport (CAS) (Lausanne, Switzerland) shall have an exclusive jurisdiction to rule on […]; and, in addition, to rule on Appeals against decisions of the FFU Appellate Committee as a body of last instance […]".*

151. As a third and final precondition for CAS jurisdiction, the Appellant must have exhausted the legal remedies available to him prior to the appeal. Requests for relief No 1 and No 5 are routine requests (to overturn the prior decision and to condemn the Respondent to aid the Appellant with his legal expenses respectively). They satisfy the third jurisdictional precondition. The content of requests No 2 and No 3 has been considered before the CDC and on appeal before the AC (see paras 32, 34 and 49 above). Thus, they too satisfy the third precondition. However, the following section explains that the Appellant has not fully pursued the legal remedies available to him with respect to request for relief No 4. For this reason, the Sole Arbitrator does not have jurisdiction over request No 4.

1. Exhaustion of local remedies

(a) Parties' submissions

152. In its Answer, the Respondent contends the Appellant did not fulfil the third precondition for CAS jurisdiction because the Appellant did not exhaust all remedies available to him at the national level in relation to his requests for relief. Specifically, the Respondent notes that *"the CAS has no jurisdiction to rule on the Appellant's prayers for relief No 2 and 4 of the Appeal Brief, respectively such prayers for relief are inadmissible"*. In his Appeal Brief, the Player requested *inter alia* the following:

> *"2. To condemn the Respondent to be liable for unilateral Labour contract termination without just cause.*
>
> […]
>
> *4. To condemn the Respondent to pay compensation for unilateral contract termination in the total amount of 45,000.00 USD or equivalent in Ukrainian Hryvnias".*

153. The Respondent argues that the issue of *"termination without just cause"* of the Employment Contract as well as the claim for compensation *"based on such a purported breach of contract, were raised for the first time in the appeal to the CAS"*. Since the Claimant failed to raise these claims in prior proceedings, and thus they were not addressed in the Second AC Decision, the Respondent contends the availability of relief for requests No 2 and No 4 have not yet been exhausted at the FFU level.

154. The Appellant did not provide any clarifications in this regard.

(b) Claims before the CDC and AC

155. An examination of whether the Appellant has exhausted all legal remedies in relation to the requests for relief No 2 and No 4 must start by differentiating the claims that were filed by the

Appellant before the dispute resolution bodies of the FFU and their holdings. The procedural history of this case includes four decisions that were rendered on the national level before an appeal was filed to the CAS.

156. According to the First CDC Decision and the First AC Decision, the Player sought (a) termination the Employment Contract, (b) free agent status in light of the non-execution of contractual obligations by the Club, (c) award of the unpaid portion of his salary from the Club and (d) compensation for his medical treatment. In addition, the Player asserts that he claimed compensation for the Club's unilateral termination of the Employment Contract. The Club denies that this compensation claim was raised at any time before the current proceedings.

157. The First CDC Decision dismissed the claims filed by the Player. The Player then appealed to the AC. In the First AC Decision, the AC ruled that the Club breached its obligations under the Employment Contract in relation to the provision of the necessary medical service to the Player, i.e., Article 3.4.6 of the Employment Contract. As a result, in the First AC Decision, the AC ruled:

> *"**1. To terminate the Contract No 08/58 dated 1 September 2008 between Kuznetsov S.S. and FC "Karpaty" for the continuous improper execution of par. 3.4.6 of the Contract**, and give Kuznetsov S.S. a status of free agent starting from 14 November 2011.*
>
> ***2. To oblige FC "Karpaty" to make full payments to Kuznetsov S.S. as of 14 November 2011, based on the provisions of the Contract and additional agreements and amendments thereto, including Agreement on additional payments dated 1 September 2008.***
>
> *3. To oblige FC "Karpaty" to pay Kuznetsov S.S. a compensation for his expenses related to elimination of health problems, monetary funds in the amount of 7,334.00 UAH and 11,731.53 EUR.*
>
> *4. To reject other claims of Kuznetsov S.S."* (Emphasis added).

158. In compliance with the First AC Decision, the Club granted the Player free agent status and compensated the Player for his medical expenses. In addition, the Club paid the Player USD 13,200.00 based on the Agreement on Additional Payments for October, i.e., USD 9,000.00, and an equivalent amount for the half of November 2011 preceding termination of the Employment Contract, i.e., USD 4,200.00. The Club also compensated the Player USD 2,240.00 for the costs of his rental apartment for the time period from April 2011 until 14 November 2011.

159. As detailed in the Second CDC Decision and the Second AC Decision and reiterated in the submissions of the Parties filed in the course of these proceedings, the Player then complained to the CDC that the Club did not fully comply with the First AC Decision. Notably, the Player did not appeal any portion of the First AC Decision. Instead, he asserted the Club withheld *"his salaries, envisaged by the Agreement on Additional Payments dated 1 September 2008"* for the time period from April to September 2011, when the Player did not perform on the pitch. The Player

interpreted the first AC Decision to include payments under the Agreement on Additional Payments in point 2 of its ruling.

160. In his complaint to the CDC on 22 December 2011, the Player requested an outstanding amount of USD 54,000.00 (monthly payments of USD 9,000.00 under the Agreement on Additional Payments for April until September 2011). Subsequently, in his complaint dated 11 January 2012 and pursuant to Article 34 (4) of the Law of Ukraine "On the mandatory state social insurance with respect to accidents at work and professional disease" and regulations of "Procedure for calculation of average salary", the Player claimed disability compensation in the amount of USD 91,764.00 for the period in which he was temporarily unable to work, i.e. from April to September 2011 (USD 458.82 per day multiplied by 200 days off work). However, this claim for disability compensation was not brought before CAS.

(c) Exhaustion of legal remedies with respect to request for relief No 2

161. As outlined above, in the first FFU proceedings, the AC ruled that the Employment Contract was terminated due to the Respondent's *"continuous improper execution of par. 3.4.6 of the Contract"*. Although the Player did not specifically request a determination of liability concerning the termination of the Contract, the First AC Decision settled this question by focusing on the Club's failure to provide full medical service to the Player. This finding was not appealed by either Party and the date of termination – 14 November 2011 – appears to have been accepted by both Parties in subsequent proceedings.

162. Therefore, with respect to the question of liability for unilateral termination of the Employment Contract, the Player has exhausted the legal remedies available to him as required for CAS jurisdiction under Article R47 of the CAS Code. However, for reasons set out below in Section II, the Sole Arbitrator is prevented from adjudicating this request on the basis of *res judicata*.

(d) Exhaustion of legal remedies with respect to request for relief No 4

163. The Player asserts that his initial complaint to the CDC included a claim for compensation for the Club's unilateral termination of the Employment Contract without just cause. However, this complaint was not produced in the current arbitration. Moreover, the decisions rendered in the prior proceedings do not indicate that this claim was ever raised or decided on. Thus, the Sole Arbitrator finds the Appellant has not exhausted the local remedies available to him prior to the present appeal. For this reason, the CAS does not have jurisdiction over this request.

164. Neither the First CDC Decision nor the First AC Decision made any reference to this claim by the Appellant. Instead, the First AC Decision focused on Article 9(3) of the FFU RSTP, which pertains to salary – not compensation – owed to a player in the event of termination of a contract on the initiative of his club. Based on this provision, the AC ordered the Respondent to *"make full payments"* to the Player as of 14 November 2011 under the Employment Contract and related agreements, and to pay compensation for his medical expenses. The issue of compensation for termination of a contract is treated in Article 10(4) of the FFU RSTP, which the First AC Decision did not reference.

165. Furthermore, even if the Appellant had brought this claim and the AC had ruled on it, the Appellant failed to appeal the First AC Decision. Instead, in later proceedings, the Player sought payments of specific amounts related to his additional salary and his temporary disability.

166. In addition, neither the clarifications provided by the AC in relation to the execution of point 2 of the First AC Decision, nor the Second CDC and AC Decisions, made any reference to the Player's entitlement to compensation for unilateral termination of the Employment Contract.

167. Because the issue of compensation for the unilateral termination of the Employment Contract was not treated in prior proceedings, no decision on this issue existed to be appealed before the CAS. Consequently, the Player did not exhaust the legal remedies available to him prior to the present appeal. Request for relief No 4 does not fulfil the prerequisites stipulated by Article R47 of the CAS Code and the Sole Arbitrator does not have jurisdiction over this request.

N. TIMELINESS OF THE APPEAL

168. The Statements of Appeal fulfilled the formal requirements set forth in Article R49 of the CAS Code. None of the Parties objected to the timeliness of the Appeal and admissibility of the Answer.

O. SCOPE OF THE PANEL'S REVIEW

169. The scope of the Panel's jurisdiction is defined in Article R57 of the CAS Code. Article R57 of the CAS Code provides the following:

> *"[t]he Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance".*

170. Under this provision, the Panel has the full *de novo* power to review the facts and the law. In other words, the Panel has the power to establish not only whether the decision of a disciplinary body being challenged was correct or not, but also to issue a new decision (cf. CAS 2009/A/1974, para 8, citing CAS 2007/A/1426).

P. APPLICABLE LAW

171. Article R58 of the CAS Code stipulates the law applicable to the merits:

> *"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".*

172. Considering the terms of the Employment Contract, the Parties agree that the current dispute

shall be governed by the FFU Regulations and the current legislation of Ukraine.

Q. MERITS

173. After dismissing request for relief No 4 for lack of jurisdiction, the Player's remaining requests for relief No 1, 2, 3 and 5 are:

> *"1. To overturn Appeals Committee of Football Federation of Ukraine decision of 6 November 2012;*
>
> *2. To condemn the Respondent to be liable for unilateral Labour contract termination without just cause;*
>
> *3. To condemn the Respondent to reimburse unpaid salaries to the Player in the amount of 56,700 USD or equivalent in Ukrainian Hryvnas;*
>
> […]
>
> *5. To condemn the Respondent to help Player's expenses for legal aid in the amount of 8000 USD".*

174. Before turning to these questions, the Sole Arbitrator will clarify the applicable legal framework (I.). The Sole Arbitrator shall then consider whether the Player is prevented from asserting the above claims in view of the *res judicata* objections raised by the Respondent (II.), and if not, whether the Player is entitled to claim outstanding payments amounting to USD 55,800.00[1] (III.).

I. Applicable Regulatory Framework

1. The Employment Contract and the Agreement on Additional Payments

175. The primary sources of the Parties' rights and obligations in dispute are the Employment Contract and the Agreement on Additional Payments. The Sole Arbitrator will, therefore, carefully consider the relevant provisions stipulated above (see paras 6-12 above).

2. Ukrainian legislation

176. In their submissions, the Parties refer to various aspects of Ukraine legislation. The Sole Arbitrator is mindful of Article 213 of the Civil Code of Ukraine which stipulates relevant norms in context with the present dispute:

> *"3. When interpreting the consent of the deal one should take into consideration the unified meaning of the words and definitions for whole text of the deal and meaning of the terms widely recognized in the specific area of relations.*

---

[1] Note the revised amount requested by the Appellant is USD 55,800.00 rather than USD 56,700.00 as explained in para 184.

In a case the literal interpretation of the words meaning and widely recognized meaning of the terms in specific area of relations does not allow to interpret the contents of the some parts of the deal, the contents shall be determined by comparing the relevant part of the deal with the other parts of the deal and its whole content, Parties intentions.

4. If applying the rules stipulated in part 3 of this article it is impossible to determine real intentions of Parties, who executed the deal it has to be taken into consideration the aim of the deal, the content of previous negotiations, set standards of Parties relations, common practice, further Parties behavior, text of modal contracts as well as other circumstances which have significant meaning".

II. Is the Player prevented from claiming outstanding payments in view of the res judicata objections raised by the Club?

177. The Respondent contended during the hearing and the following exchange of submissions that all issues decided by the First AC Decision are final under the principle of *res judicata*. Therefore, the Respondent concluded, the Sole Arbitrator was prevented from considering all requests for the additional payments from the Club made by the Appellant to the CAS in its Appeal Brief filed on 14 February 2013.

178. In light of this broad assertion, the Sole Arbitrator considers whether the principle of *res judicata* precludes the Player's requests. The Sole Arbitrator finds that request for relief No 2 is precluded by *res judicata*, as the First AC Decision on this matter was final and binding. However, the remaining requests, namely request for relief No 3, were not subject to final judgment and therefore do not run afoul of the doctrine of *res judicata*.

179. The plea of *res judicata* is based on the principle of public interest. It is intended to safeguard the certainty of rights which have already been adjudicated upon and defined by a judgment (cf. CAS 2006/A/1029, para 14). According to the Swiss Federal Tribunal, this principle applies to a decision once it becomes final and cannot be contested by the parties or by the judicial body rendering this decision. Accordingly, *res judicata* precludes a subsequent decision about the same object, among the same parties, relying on the same facts and based on the same cause of action (cf. CAS 2006/A/3061, para 14, and CAS 2010/A/2058, para 17). However, a final decision might be modified subsequently in limited circumstances if a party to the decision requests the revision or interpretation thereof (CAS 2010/A/2058, para 18).

180. In the present case, the First AC Decision was indeed ambiguous in relation to the outstanding payments due to the Player. On one hand, the AC noted that *"regarding the additional amounts of salaries not received by Mr Kuznetsov, Mr Kuznetsov failed to provide uncontested evidence in relation to respective and final agreement of the parties in this regard"*. On the other hand, in the operative part of the First AC Decision, the AC clearly ordered:

"2. To oblige FC "Karpaty" to make full payments to Kuznetsov S.S. as of 14 November 2011, based on the provisions of the Contract and additional agreements and amendments thereto, including Agreement on additional payments dated 1 September 2008".

181. The First AC Decision ordered the Club to pay the full outstanding amount due to the Player

under both the Employment Contract and the Agreement on Additional Payments. It further found that the Employment Contract was terminated as of 14 November 2011 by the Club's breach of Article 3.4.6 of the Employment Contract. Yet, the First AC Decision did not specify the exact amount owed by the Club to the Player, thereby leaving room for interpretation and inhibiting a final, binding judgment on the amount of outstanding salary payments that the Club owed the Player at this time.

182. Due to this ambiguity, and the Player's complaints that the Club had failed to comply with the First AC Decision, the FFU commenced a second level of proceedings. These subsequent proceedings resulted in the Second CDC Decision, appealed by the Respondent, and the consequent Second AC Decision, appealed by the Appellant. No *res judicata* concerns arose during this time, as the appeals process is an extension of an existing dispute rather a subsequent action. The proper recourse after the Second AC Decision was an appeal to the CAS, which the Appellant pursued.

183. Because a final, binding judgment was not issued on the question of what payments are due to the Player during the period of his recovery, *res judicata* does not preclude review by the CAS. Consequently, the Sole Arbitrator is not prevented from adjudicating the question of whether any additional salary payments or medical expenses are due to the Player from the Club.

184. Conversely, with regard to the Player's request for relief No 2, the First AC Decision rendered a final binding decision terminating the Employment Contract as of 14 November 2011 due to the Club's breach of its contractual obligation to provide full medical services to the Player. Unlike the question of the Player's compensation for unpaid salaries, the holding on termination of the Employment Contract presented no ambiguity. When the Player complained to the CDC of the Club's non-compliance with the First AC Decision, the Player did not appeal the termination aspect of the decision before the CDC or in a subsequent proceeding. Thus, as the issue has been finally determined, *res judicata* precludes the Sole Arbitrator from adjudicating request for relief No 2.

III. Is the Appellant entitled to claim payment of outstanding amounts of USD 55,800.00?

185. As stated above, the Player asserts that the Club should be ordered to pay outstanding payments of USD 56,700.00 according to the principle *pacta sunt servanda*. Specifically, the Player requests that the Sole Arbitrator order payment of the *"unpaid salaries from April – September 2011"* and *"apartment compensation"* in the total amount of USD 56,700.00 according to the Player's calculation. The Player claims the Club failed to pay this sum for the period when the Player was unable to perform due to his injury. The Sole Arbitrator notes that the outstanding payments for this period amount to USD 55,800.00 (6 x USD 9,000.00 and 6 x USD 300.00) and not USD 56,700.00, the amount according to the Player's calculation in the Appeal Brief.

186. The Sole Arbitrator shall first review whether the Player is entitled to additional compensation for rental costs (1.) and then turn to the question of outstanding salaries in accordance with the Agreement on Additional Payments (2.). Finally, for the sake of completeness, the Sole Arbitrator shall briefly address the issue of the social security payments (3.).

1. Additional compensation for rental costs

187. In his Appeal Brief and during the hearing, the Player requested *inter alia* payment of the outstanding rental costs in accordance with the Agreement on Additional Payments. Specifically, the Player claims monthly payments of USD 300.00 from April to September 2011, which amount to USD 1800.00.

188. The Parties do not dispute that according to Article 4 of the Agreement on Additional Payments, the Parties *"agreed on compensation of the Player's expenses for renting housing within the term of the personal Contract of the Player with the Club in the amount of 300 (three hundred) U.S. dollars"*.

189. However, according to the statement of appeal filed by the Club before the AC against the Second CDC Decision (undisputed by the Player) in compliance with First AC Decision, the Club *inter alia* paid the Player USD 2,240.00 (i.e. USD 300.00 per month) for his rental costs. This amount was based on Article 4 of the Agreement on Additional Payments for the time period of April 2011 until the unilateral termination of the Employment Contract on 14 November 2011. Since the Club has already reimbursed the Player for this cost following the First AC Decision, the Player is not entitled to claim any further outstanding amounts in relation to the rental costs.

2. Outstanding payments in accordance with the Agreement on Additional Payments

190. In addition, the Appellant further claims he is owed payment of *"unpaid salaries for April-September 2011"* according to the principle *pacta sunt servanda*, amounting to USD 54,000.00, i.e. 6 x USD 9,000.00.

191. The Player argues that the monthly payments of USD 9,000.00 should have been paid to him during the time period of his injury, i.e. from April to September 2011, in addition to his monthly salary of UAH 5,000.00. The Appellant maintains that although the monthly amount of USD 9,000.00 was set in the Agreement in Additional Payments rather than in the Employment Contract, it nonetheless constituted a portion of his regularly monthly salary. This regular monthly salary, according to the Player, was to be paid whether the Player was fielded for the main squad or injured. However, the Club withheld the additional monthly payment of USD 9,000.00 from April to September 2011 because the Player was temporarily disabled and unable to perform on the pitch.

192. In support of his claim, the Player notes that when he played for a Russian Club FC Nostra, his monthly salary was USD 10,000.00. The Player maintains he would not have agreed to sign a new contract with FC Karpaty for a salary of only UAH 5,000.00, the amount stipulated in the Employment Contract.

193. In addition, the Appellant maintains that it is common practice in Ukraine to conclude two separate agreements with football players. However, according to the Appellant, all players receive complete payments in case of an injury as required by both their principal employment contract and any additional agreements. In addition, the Player argues that *"performing for principal team"* is a potestative condition which should be disregarded.

194. The Club, in turn, maintains that the only salary which must be taken into consideration when determining the amount of monthly payments in case of an injury *"is the salary agreed upon in the Employment Contract"*.

195. The Respondent further asserts that the additional payments owed to the Player under the Agreement on Additional Payments were not part of the monthly salary of the Player. Instead, the additional payments represent a *"bonus contingent upon the Player's actually playing with the FC Karpaty's first team"*. The Club maintains that this reading of the Agreement on Additional Payments is supported by the plain meaning of this agreement as well as Article 4.2 of the Employment Contract indicating that the Parties may agree on additional payments *"according to the results of [the Player's] activities"*.

196. In addition, the Club notes that the conditions of the Agreements on the Additional Payments were freely agreed upon by the Parties and, therefore, did not represent a potestative condition. In any event, the Respondent asserts this regulation is valid since the decision not to field the Player was required by his medical condition rather than a unilateral decision of the coach or the Club.

197. Finally, the Respondent contests the application of customary law or common practice in Ukrainian football to the question of full salary payment in case of injury. The Club maintains that there is no need to look beyond the four corners of the Agreement on Additional Payments as the text of the Agreement is clear.

198. As described above, the First AC Decision found that the Club was in breach of its obligations in light of its failure to provide the necessary medical treatment to the Player in accordance with the Employment Contract. As a consequence, the AC ordered termination of the Employment Contract, granted the Player free agent status and ordered the Club to pay compensation for his medical expenses and to make full settlements with the Player in relation to the outstanding payments due to him. According to Article 9 (6) of the FFU RSTP, referenced by the AC, in case of the breach of a contract by the Club, the Club shall, *inter alia*, *"repay the outstanding debt to the player for the time period of his employment"*. The question is, accordingly, whether in addition to the amount the Club has already paid (the Player's monthly base salary of UAH 5,000, medical expenses and additional payments of USD 9,000.00 per month for October and part of November 2011), the First AC Decision requires the Club pay an additional USD 54,000.00 to make full settlement with the Player as of 14 November 2011.

199. According to Article 1 of the Agreement on Additional Payments, the Parties agreed:

> *"[…] to establish and pay to the Player on monthly basis a* ***personal increment in addition to the base salary in the amount of 9,000 (nine thousand) U.S. dollars*** *during the term of the personal Contract of the Player with the Club,* ***on condition of his play for the main squad of the Premier League team "Karpaty"***" (Emphasis added).

200. According to Article 213 of the Ukrainian Civil Code, when interpreting a contract, i.e., *"the consent to the deal"*, one should take into account the literal meaning of the terms as well as compare the relevant parties to the deal, common practice and previous negotiations, in order

to discover the true intention of the parties.

201. In the present case, the clause in question stipulates that the additional monthly payments should be paid to the Player *"on condition of his play for the main squad of the Premier League team "Karpaty""*. However, the difference in the basic salary amounts due according to the Employment Contract, i.e. approximately EUR 500.00, and the Agreement on Additional Payments, i.e. USD 9,000.00, suggests that this additional amount was indeed intended to be a monthly salary payment due to the Player. This interpretation is supported by the fact that before joining FC Karpaty, the Player received a monthly salary of USD 10,000.00. In addition, according to the statements provided by the Player and the former coach of FC Karpaty, Mr Kononov, the Player was one of the strongest members on the main squad. It would be surprising if one of the team's best players agreed to a monthly remuneration of only approximately EUR 500.00, particularly given that the Player played on the main team of FC Karpaty when it qualified for the UEFA Europa League.

202. It is unclear from the wording of the clause in question whether the Player must actually be fielded by the Club or whether the Player should be registered with the squad of the main team (as opposed to the second squad of the Club not participating in the Premier League games). The contractual clause does not provide any guidance in this regard and also does not stipulate what happens in case of an injury. Rather, the clause suggests that the Player should "play", meaning as a member of the main squad of the Premier League of FC Karpaty rather than actually participate in the game, i.e., be fielded. Otherwise, the payment of the additional monthly payments would depend on circumstances beyond the Player's control and would place an undue burden on him.

203. The argument that the additional payments due according to Article 1 of the Agreement on Additional Payments are part of the monthly salary is further supported by the Player's contention that it is a common practice in Ukraine to conclude two different salary agreements to minimize the Club's tax burden. According to Article 6 of the Agreement on Additional Payments, *"payment of all mandatory fees from the sums obtained under paragraphs 1-4 of this Agreement shall be made by the Player on his own"*. By concluding a second agreement for the larger portion of the salary, and assigning responsibility for the payment of mandatory fees for this sum to the Player, the Club shifts the burden of tax responsibility to the Player. Accordingly, the Club's expenses are lower as it pays mandatory fees for a smaller portion of the Player's income. In light of the reasoning above, the amounts payable under the Employment Contract and the Agreement on Additional Payments should be considered the complete monthly salary payable to the Player.

204. This interpretation is also supported by the rationale of the FFU CDC Decision dated 17 July 2013, rendered in a dispute between FC Karpaty and the player Cristobal Marquez Crespo. There, the CDC reviewed the Club's financial obligations to players as memorialized in both a basic contract concluded between the parties and an agreement on additional payments. The parties had agreed to monthly payments of UAH 5,000.00 according to the contract. They had also agreed on the *"monthly payments for the duration of individual contract and on condition of playing for the main squad of Premier League "Karpaty" team"* according to the Agreement on Additional Payments amounting to EUR 14,600.00.

205. Considering whether both amounts were due to the Player in case of an injury, the CDC referred to the FIFA DRC Decision No 117546 dated 30 November 2007, para 19, stating that:

> *"In continuation, as far as the Claimant's financial claim is concerned, the Chamber went on to emphasize that, as a general rule, it comes under the club's obligations to be responsible for its players in case of an injury caused during a training by the player for his club in fulfillment of his contractual obligations. This principle is essential within the scope of the provisions related to the maintenance of contractual stability between professionals and clubs …. Any conclusion establishing the contrary would mean to prejudice the weaker party (the employee). As a result to this principle, it is in particular the club's obligation to continue to pay the salaries of a player during the latter's inability to work for an injury caused during fulfillment of his employment contract …".*

206. The FFU CDC went on to rule that *"during the period when the Player was injured, he had an absolute right to personal allowances in full amount"* as provided by para 1 of the Agreement on Additional Payments. This decision supports a similar conclusion in the present case that the additional payments due according to Article 1 of the Agreement on Additional Payments were payable on a monthly basis during the Player's injury.

207. This conclusion is further supported by Mr Kononov's testimony. Mr Kononov confirmed that players of FC Karpaty usually received their full salary in the event of injury. Furthermore, in Mr Dedyshyn of FC Karpaty's interview dated 19 July 2013, he stated that the Club paid Mr Oschiko his complete salary during his stay at the hospital. Indeed, according to the blackened version of Mr Oschipko's employment contract submitted to the review of the Sole Arbitrator, the relevant clauses of the Player's Agreement on Additional Payments and the clause on the payment of additional amounts included in Mr Oschipko's contract are comparable.

208. The Club was under an obligation to keep paying the *"Player on monthly basis a personal increment in addition to the base salary in the amount of 9,000 (nine thousand) U.S. dollars during the term of the personal Contract of the Player with the Club"*. In view of the witness testimony and additional evidence outlined above, in particular the interview of Mr Dedyshyn and the FFU CDC Decision dated 17 July 2013, the Sole Arbitrator need not rely on the blackened version of the employment contract between Mr Oschipko and the Respondent to support this finding.

209. The Parties agree that the Employment Contract with the Player was terminated on 14 November 2011. Nor is it disputed that the Player did not receive the monthly payments amounting to USD 9,000.00 according to Article 1 of the Agreement on Additional Payments during the time period from April 2011 until September 2011. Accordingly, this amount was payable to the Player as a result of the point 2 of the First AC Decision stipulating that FC Karpaty was obliged *"to make full payments to Kuznetsov S.S. as of 14 November 2011, based on the provisions of the Contract and additional agreements and amendments thereto, including Agreement on additional payments dated 1 September 2008"*. The Second AC Decision should have concluded that an amount of USD 9,000.00 x 6, i.e. USD 54,000.00, was still outstanding and payable to the Player by the Club.

3. Social security payments

210. For the sake of completeness, the Sole Arbitrator agrees with the Second AC Decision and notes that no additional amounts can be claimed by the Player or calculated in this dispute on the basis of the Law of Ukraine "On compulsory social state insurance against accidents at work and professional diseases that lead to disability" for the period of April to September 2011, when the Player was temporarily incapacitated. According to the information provided by the Parties, a disability group was never determined for the Player in the present case. In addition, the Player does not dispute that he received income in the amount of UAH 5,000.00 taxable by the Club, which served as a basis for the payment of the social contributions by the Club, during the whole time period of his employment up to the termination of the Employment Contract on 14 November 2011. Further, it is undisputed by the Parties that the Player failed to submit all the necessary documents to apply social security payments from the Social Fund according to Ukrainian legislation. Finally, the Parties agreed during the hearing that this claim should be brought, if at all, against the respective state authorities of Ukraine and was misplaced in the current dispute.

IV. Conclusion

211. In light of the forgoing reasoning, the Player's appeal against the Club is partially granted. The Sole Arbitrator finds that the Player is entitled to claim an outstanding amount of monthly payments of USD 54,000.00. However, the Player is not entitled to claim compensation for any rental costs. In addition, the Sole Arbitrator is precluded from hearing the Player's requests for relief No 2 and 4 of the Appeal Brief.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The Appeal filed by Mr Kuznetsov against the decision issued by the Appellate Committee of the Ukrainian Football Federation on 6 November 2012 is partially upheld. The decision issued by the Appellate Committee of the Ukrainian Football Federation on 6 November 2012 is set aside and replaced with the following:
"The Football Club "Karpaty" is ordered to pay to Mr Kuznetsov an outstanding amount of USD 54,000.00 in accordance with the Agreement on Additional Payments concluded on 1 September 2008 in order to fully comply with the point 2 of the operative part of the decision of the Appellate Committee of the Ukrainian Football Federation dated 14 November 2011".

(…)

4. All other prayers for relief are dismissed.